

ORNGTPR 715

Human Resources

Technician Voluntary and Non-Disciplinary Personnel Actions

Joint Force Headquarters
Oregon National Guard
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UNCLASSIFIED

Human Resources

Technician Voluntary Non-Disciplinary Personnel Actions

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History. This publication is new. All information contained in National Guard Bureau Technician Personnel Regulation (NGB TPR) 715, Voluntary And Non-Disciplinary Actions, dated 23 Feb 1987 is updated and included in this regulation.

Summary. This Regulation implements and describes voluntary and non-disciplinary personnel actions applicable to Technicians in the Oregon National Guard. The information is based on Title 32 United States Code.(USC) Section 709 and Title 5 Code of Federal Regulations (CFR) section 715.

Applicability. This regulation applies to all Oregon National Guard Federal Technicians. Non-disciplinary actions that are not applicable to non-dual-status technicians are identified in the text.

Proponent and exception authority. The proponent for this regulation is the Director of Manpower and Personnel (J1). The Director has authority to approve exceptions to this

regulation that are consistent with controlling law and regulation. The Director may delegate this approval authority in writing, to a branch chief or specialist in the proponent office.

Suggested Improvements. Users are invited to send comments and suggested improvements to: Joint Force Headquarters - Oregon, ATTN: J1/HR, PO Box 14350, 1776 Militia Way, Salem, OR 97309-5047.

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Section 1

Introduction

1-1. Purpose

The purpose of this regulation is to describe voluntary and non-disciplinary personnel actions applicable to Federal Technicians in the Oregon National Guard (ORNG).

1-2. References

Required and related publications and prescribed and referenced forms are listed in appendix A.

1-3. Explanation of abbreviations and terms

Abbreviations and special terms used in the regulation are referenced in the glossary.

1-4 Responsibilities

Options to effect voluntary personnel actions are available to all ORNG technicians. Oregon National Guard leadership, supervisors and the individual technicians have distinct roles in dealing with voluntary and non-disciplinary personnel actions. First, there needs to be a clear understanding of the issues that result in normal personnel actions in the management of the technician force (some of which are covered in this regulation) versus those issues of an inappropriate behavior or poor performance in the workplace. The process of dealing with issues of inappropriate behavior or poor performance is identified in NGB TPR 752, Discipline and Adverse Action, and ORNG Suppl 1 to TPR 752, dated 1 April 2001. Poor performance and inappropriate conduct corrective actions should be addressed in advance of application with the Human Resources Office.

a. **Leadership and Supervisors:** ORNG leaders and supervisors should be knowledgeable of the options for voluntary and non-disciplinary personnel actions so they can properly advise their subordinate technicians when necessary. Leaders and supervisors also have options to direct non-disciplinary personnel actions in several situations. However, supervisors should never use these options in lieu of other, more appropriate actions to address performance and conduct issues.

b. **Individual Technicians:** Technicians should be familiar with personnel actions that they are responsible to initiate. This regulation identifies the usual actions that can be requested by the employee. If a technician feels that a personnel action was taken on them that was not appropriate, this regulation identifies the course of action that they may pursue.

Section 2

Voluntary Actions

2-1. Resignation

a. Resignation is a voluntary termination of employment. A technician can resign at any time; advance notice is not required. Management may ask for a reasonable period of notice to allow for replacement or work adjustment but may not set an earlier or later date than the date selected by the technician. Supervisors should encourage technicians to give specific reasons for resigning since these reasons are used to determine future employment eligibility and entitlement to various benefits including unemployment compensation. They also provide the leadership with helpful information in assessing employment trends.

b. A technician who plans to resign should complete a Standard Form (SF) 52, Request for Personnel Action, or use a signed and dated memo to document the effective date and reasons for resigning. The technician will submit the written resignation to his or her supervisor. The supervisor will keep a copy and send the original to the HRO for processing.

c. When a technician resignation is made orally, the supervisor should try to obtain written confirmation of the resignation from the technician. If this is not possible, the person to whom the resignation request was made will prepare a memorandum of record to document the request including reasons given by the technician, the date, and names of any witnesses. The supervisor will complete an SF-52 and attach the memorandum and any other relevant documents. The supervisor will keep a copy of the documents and send the originals to the HRO for processing.

d. No one in the supervisory chain can demand a technician's resignation. However, when a technician is faced with an adverse action, supervisors can advise the technician of the option to resign. The effective date of the resignation dictates whether or not remarks about the adverse action can be placed in the SF-50, Notification of Personnel Action, that documents the resignation. A technician who resigns rather than face the adverse action process forfeits his or her adverse action appeal rights. To make a well-informed decision, supervisors should refer the technician to the HRO for information on rights and benefits.

e. A technician may request to withdraw a resignation before it becomes effective. The technician must make the request in writing or follow up a verbal request in writing as soon as possible. There are two circumstances where the leadership may deny withdrawal and they are (1) when the technician's position has been or is scheduled to be abolished; or (2) when a commitment of the position to be vacated has been made to someone else (e.g. an individual is selected for the projected vacancy through the merit placement process and has given notice to his or her current employer). If a technician's request to withdraw a resignation before it becomes effective is denied, the leadership must provide written explanation of its decision and advise the technician of the right to request an appellate review or administrative hearing (see NGB TPR 752, Discipline and Adverse Action, for a description of both appeal processes). The leadership has the burden of establishing the validity of its reasons for denying withdrawal.

f. A technician who has resigned and then alleges that the resignation was not voluntary must be advised by the HRO of his or her right to appeal. The technician can request an appellate review or administrative hearing (see NGB TPR 752, Discipline and Adverse Action, for a description of both appeal processes). The burden is on the technician to prove by a preponderance of the evidence that the resignation was truly involuntary.

(1) "Preponderance of the evidence" means that the Adjutant General will consider the record as a whole and make a final decision based on the evidence that is more convincing than the opposing evidence.

(2) Case law holds that free choice is undermined to the extent that employees experience duress, time pressure, or mental incompetence at the time of their decision. Several decisions hold that a resignation is deemed involuntary if free choice is compromised (obtained by deception, coercion, duress, time pressure, or intimidation).

2-2. Change to a Lower Grade

a. A technician can request a voluntary change to a lower grade at any time. Such request are normally made for personal reasons and are usually in the technician's own best interest. The technician must submit a request for a voluntary change to a lower grade in writing and must address all facts and circumstances surrounding the action. The technician who requests and is granted a voluntary change to a lower grade does not have the right to pay-retention under Title 5 U.S.C. 5363(a)(3).

b. No one in the supervisory chain can demand that a technician request a change to a lower grade. However, when a technician is faced with an adverse action, supervisors can advise the technician of the option to voluntarily request a change to a lower grade. To make a well-informed decision, supervisors should refer the technician to the HRO for information on rights and benefits.

c. A technician may request to withdraw a voluntary request to change to a lower grade before it becomes effective. The technician must make the request in writing or follow up a verbal request in writing as soon as possible. There are two circumstances where the leadership may deny withdrawal and they are (1) when the technician's position has been or is scheduled to be abolished; or (2) when a commitment of the position to be vacated has been made to someone else (e.g. an individual is selected for the projected vacancy through the merit placement process and has given notice to his or her current employer). If a technician's request to withdraw a request to change to a lower grade before it becomes effective is denied, the leadership must provide written explanation of its decision and advise the technician of the right to request an appellate review or administrative hearing (see NGB TPR 752, Discipline and Adverse Action, for a description of both appeal processes). The leadership has the burden of establishing the validity of its reasons for denying withdrawal.

d. A technician who alleges that the request for change to a lower grade was not voluntary must be advised by the HRO of his or her right to appeal. The technician can request an appellate review or administrative hearing (see NGB TPR 752, Discipline and Adverse Action, for a description of both appeal processes). The burden is on the technician to prove by a preponderance of the evidence that the resignation was truly involuntary (see paragraph 2-2d(1) & (2)).

2-3. Voluntary Retirement

a. Age and service requirements for a voluntary retirement are different for Civil Service Retirement System (CSRS) and Federal Employee Retirement System (FERS). The HRO can provide these requirements. For the purposes of this regulation, a "voluntary" retirement includes the following retirement types:

- (1) For CSRS: Early Optional Retirement and Optional Retirement
- (2) For FERS: Immediate Retirement and Deferred Retirement

b. Application for any of the retirement types above is a voluntary expression of a technician's desire to retire. The technician will specify the effective date of retirement on his or her retirement application form, (SF 2801, Application for Immediate Retirement (CSRS), or SF 3107 Application for Immediate Retirement (FERS)).

c. No one in the supervisory chain can demand that a technician retire. However, when a technician is faced with an adverse action, supervisors can advise the technician of the option to retire (assuming the technician is eligible). To make a well-informed decision, supervisors should refer the technician to the HRO for information on rights and benefits.

d. A technician may request to withdraw an application to retire before it becomes effective. The technician must make the request in writing or follow up a verbal request in writing as soon as possible. There are two circumstances where the leadership may deny withdrawal and they are (1) when the technician's position has been or is scheduled to be abolished; or (2) when a commitment of the position to be vacated has been made to someone else (e.g. an individual is selected for the projected vacancy through the merit placement process and has given notice to his or her current employer). If a technician's request to withdraw an application to retire before it becomes effective is denied, the leadership must provide written explanation of its decision and advise the technician of the right to request an appellate review or administrative hearing (see NGB TPR 752, Discipline and Adverse Action, for a description of both appeal processes). The burden is on the technician to prove by a preponderance of the evidence that the retirement was truly involuntary.

e. A technician who has retired and then alleges that the requested retirement was not voluntary must be advised by the HRO of his or her right to appeal. The technician can request an appellate review or administrative hearing (see NGB TPR 752, Discipline and Adverse

Action, for a description of both appeal processes). The burden is on the leadership to establish the validity of its reason for denying withdrawal.

2-4. Abandonment of Position

a. The leadership can remove a technician for “abandonment of position” if the technician fails to report for work within a reasonable time (usually 10 calendar days). Supervisors must attempt to ascertain the technician’s intentions and document all attempts to do so. If the supervisor can not establish a technician’s intent to return, the supervisor will contact HRO to request removal. The HRO will process the removal action making the effective date the last day the technician was at work or the last day of approved leave, whichever is later. The HRO will mail the resulting SF-50, Notification of Personnel Action, to the technician’s last known home address.

b. If a Technician returns to work prior to administrative processing for abandonment of position is completed, processing will stop. Individual may still be subject to adverse action under NGB TPR 752.

c. “Abandonment of position” is a voluntary action by the technician and as such, does not require the 30-day notification established by Title 32 U.S.C. 709(f)(5).

d. A technician who asks to return to duty after an abandonment of position is affected will be advised by the HRO of his or her rights of appeal. The technician can request an appellate review of administrative hearing (see NGB TPR 752, Discipline and Adverse Action, for a description of both appeal processes). The burden is on the leadership to prove that the technician abandoned his or her position.

Section 3

Non-Disciplinary Action

3-1. Loss of Military Membership

a. Title 32 U.S.C. 709(b) requires dual-status technicians to maintain membership in the National Guard as a condition of employment and requires prompt termination of the technician when he or she loses membership in the National Guard. However, a technician who has lost military membership but has a pending Federal civilian disability claim may be retained in technician status until the Office of Personnel Management (OPM) adjudication is received.

b. The HRO will notify the technician in writing of her or her termination at least 30 calendar days before the termination date in accordance with (IAW) Title 32 U.S.C. 709(f)(5). Termination from technician employment should coincide with separation from the National Guard since waiting until the military separation date to issue the notice would not be in keeping with the intent of Congress. The following rules apply when the HRO computes the timing of the 30-day notice:

- (1) Day means calendar day
- (2) Calendar day is the 24-hour period between 12 midnight and 12 midnight (0000 to 2359)
- (3) The 30-day period begins the day after the notification is given directly to the technician or, if mailed, 5-days after the date mailed as shown on the certified mail return receipt
- (4) The last day of the 30-day period must be a regularly scheduled workday.
- (5) There is no prohibition against effecting this action during the period 15 December and 3 January.

c. Notification is not required if the technician voluntarily relinquishes National Guard membership to include failure to reenlist when no bar to reenlistment exists.

d. A technician has the option of waiving the 30-day notice but must submit the request to his or her supervisor and/or the HRO in writing.

3-2. Failure to Meet a Requirement of the Position

a. There are many situations that result in “failure to meet the requirement of the position”. The following represent the more common ones:

(1) Failure to maintain a compatible military assignment. For example, a technician fails a training course required for his or her military assignment and is moved to an incompatible military position. The leadership may request an exception to policy for the incompatible assignment, move the technician to a compatible assignment, or terminate the technician for failure to maintain a compatible military assignment.

(2) Failure to maintain military appointment requirement for the position. For example, a technician holding an “enlisted only” position is appointed to officer ranks. (see paragraph 3-3.)

(3) Failure to maintain military rank required for the position. For example, a technician supervisor creates military rank inversion after being demoted militarily.

(4) Failure to maintain flying status.

(5) Failure to maintain current qualification as an instructor pilot.

(6) Failure to maintain a driver’s license.

(7) Failure to meet the physical standards established for their military position.

(8) Revocation of clearance to carry a firearm.

(9) Failure to maintain a security clearance required for the technician or compatible military assignment.

(10) Failure to remain qualified in the Personal Reliability Program.

(11) Failure to complete required training.

(12) Physically unable to perform technician duties efficiently and/or safely. For example, a heavy mobile equipment repair leader is physically prohibited by his or her physician from climbing. The supervisor should review applicable Equal Employment Opportunity Commission (EEOC) regulations regarding “reasonable accommodation” for handicapped individuals before acting in this situation.

b. If a technician can no longer meet a requirement of his or her position, the leadership must take appropriate action. If the situation is of a temporary nature, the leadership will review the portion of the duties the technician will be able to continue performing. Then the leadership decides if the organization can withstand curtailment of duties for the temporary period of time. Considerations to help the leadership decide have among its options:

(1) Leaving the technician in his or her position for the time period involved,

(2) Detailing the technician for the time period involved,

(3) Reassigning the technician,

(4) Offering the technician a change to a lower grade and a commensurate position, or

(5) Terminating the technician.

c. If the failure to meet a requirement of the position is permanent, the leadership must remove the technician from the position either by reassignment (with or without a change to a lower grade) or termination.

d. The leadership will document decisions made in each case with well-founded rationale. Supervisors will make no final decisions without HRO coordination since placement could involve such things as compatibility, qualifications, training, pay, and technician assistance program. Regardless of the option selected, the HRO must advise the technician in writing.

e. If the leadership determines a reassignment (with or without a change to a lower grade) is necessary, it must provide the technician a reasonable amount of time to accept or reject the offer. The HRO will provide written notification to inform the technician that if he or she rejects the offer, he or she will be terminated. The notification will include the termination date and will serve as a 30-day notice of termination. HRO will use paragraph 3-1.b. to compute the 30-day notification.

3-3. Military Appointment Requirements.

a. NGB determines the appropriate military rank (commissioned officer, warrant officer, or enlisted) for each technician Position Description (PD) based on the inherent military aspects of the position. There is a military rank relationship to technician work elements such as program management, senior leadership, technical expertise, blue-collar work, etc. A technician who fails to maintain the military appointment requirements of his or her PD must be removed from the position. Normally, this occurs when an enlisted technician is appointed to warrant officer or commissioned officer ranks. Technicians must be advised as early as possible about the effects such military appointment will have on his or her technician employment.

b. The military chain of command must be aware of this requirement and notify military member technicians that their accepting a warrant or commission may result in the loss of their technician employment.

c. When informed that a technician will receive a warrant or commission, the HRO will notify the technician in writing that unless they are selected for a technician position designated for his or her proposed military rank, they will be terminated upon receipt of temporary Federal recognition Army National Guard (ARNG) or graduation from the Air National Guard (ANG) Academy of Military Science (AMS). The HRO will ensure the 30-day notice requirement established by Title 32 U.S.C. 709(f)(5) is applied.

3-4. Termination of General Officers

a. A Federal technician promoted to general officer cannot continue in technician employment unless their technician position description requires the incumbent to be “the commander of a tactical combat unit”.

b. When informed that a technician will be promoted to general officer, the HRO will notify the technician in writing that promotion to general officer will result in termination from technician appointment upon the day before receipt of Federal recognition (ARNG) or not later than 14 days following the date of U.S. Senate confirmation of appointment to brigadier general (ANG). The HRO will ensure the 30-day notice requirement established by Title 32 U.S.C. 709(f)(5) is applied.

3-5. Management or Command-Directed Reassignment

a. A “management-directed reassignment” is a common Federal civilian service term. For National Guard Technicians, the term “command-directed reassignment” is sometimes used. The terms are defined as follows:

- (1) it is a directed move to a position with the same grade and pay.
- (2) it is a move made for a valid reason. For example: leadership’s need for the technician’s talents elsewhere; action to avoid a Reduction in Force (RIF); or to eliminate disruption and conflict where personal disagreements are affecting technician work relationships.
- (3) it is not a move to a lower graded position with retained pay
- (4) it is not a move from a position with non-competitive promotion potential to one without that potential.

b. The HRO must provide the technician written notification of a command-directed reassignment. The notification will include as a minimum:

- (1) the reason command has directed the reassignment with sufficient detail to show the action is for bona fide reasons.
- (2) the effective date of the reassignment
- (3) a reasonable amount of time (normally 10 calendar days) for the technician to accept or reject the reassignment
- (4) an explanation that if the technician does not accept the reassignment, that the letter constitutes a 30-day notice of termination, and

- (5) an explanation of benefits available to the technician if termination occurs.

3-6. Transfer of Function

a. Transfer of Function occurs when a unit or work element is moved within the state or eliminated from the state's force structure all together. Usually, full-time positions are moved or lost as a result of a transfer of function.

b. The HRO must provide the technician written notification of a transfer of function. The notification will include as a minimum:

- (1) the reason the transfer of function is occurring
- (2) the effective date of the transfer
- (3) an explanation of what personnel actions may be applied because of the transfer
- (4) an estimate of when a specific offer of future employment to will be made displaced technicians or when "reduction in force" procedures will be implemented if necessary, and
- (5) an explanation of benefits available to the technician if termination occurs.

3-7. Furlough for 30-Days or Less (22 Workdays)

a. The leadership has an inherent authority and obligation to furlough any or all of its technicians if there are legitimate reasons for doing so. Situations under which furlough can be used include lack of work, lack of funds, or unforeseeable circumstances such as breakdown of equipment, natural disasters, sabotage, or sudden emergencies requiring immediate curtailment of activities. NGB J-1/HR must be notified prior to initiating furlough actions for any reason.

b. The leadership may furlough technicians for 30 consecutive calendar days or 22 non-consecutive workdays. For example: A technician can be furloughed for one day per week for 22 weeks. Furloughs for longer periods are considered a Reduction-in-Force action and will be implemented only by the HRO.

c. Collective bargaining obligations and negotiated agreement provisions on furlough procedures must be honored. If a command needs an exception to negotiated procedures to implement the leadership's authority to act in an emergency, the leader requiring the exception will notify the HRO who will inform the labor organization of the nature of the emergency and how long the furlough may last.

d. The HRO is responsible for preparing and issuing written furlough notices. Such notices may be addressed to groups of technicians, but a copy must be provided to each technician a minimum of 24-hours before the effective date of the furlough or sent to the technician's address of record as soon as possible. Such notices will include:

- (1) the reason for the furlough
- (2) a description of the pattern and estimated length of the furlough (see paragraph 3-7.b.), and
- (3) an explanation of the right of the technician to ask The Adjutant General (TAG) to review the furlough action.

e. A technician who request TAG review of the furlough action will submit his or her objections to the HRO who forwards the concern to the Adjutant General. The Adjutant General takes whatever actions he or she deems appropriate to thoroughly review the technician's objections along with the leadership's need for the furlough. The Adjutant General then issues a decision summarizing the objections and the method of review and concluding with the reasons for the final decision. The written decision must also advise the technician that there is not administrative appeal of the Adjutant General's final decision.

3-8. Decrease in the Hours of Duty for a Part-Time Technician

a. Part time employment of a technician is implemented with the assumption by the technician that the hours of work will be consistent. Before the leadership can decrease the specific number of hours a part-time technician has been hired to work on his or her prearranged scheduled tour

of duty, it must provide the technician written notification of the decrease. As a minimum, the notification must be given to the technician in advance of the pay period in which the change is to occur. It must include the reason for the decrease and it must inform the technician of their right to have the Adjutant General review the action. The notification must be reviewed by the Director of Human Resources prior to the leadership presenting it to the technician.

b. A technician who requests TAG review of the decrease in hours will submit his or her objections to the HRO who forwards the concern to the Adjutant General. The Adjutant General takes whatever actions he or she deems appropriate to thoroughly review the technician's objections along with the leadership's need for the decrease. The Adjutant General then issues a decision summarizing the objections and the method of review and concluding with the reasons for the final decision. The written decision must also advise the technician that there is not administrative appeal to the Adjutant General's final decision.

3-9. Enforced Leave

The leadership has the right to require a technician to leave the worksite when it is determined that: (1) the technician is not ready, willing, and able to perform assigned duties; and/or (2) the technician's continued presence is highly undesirable or presents an immediate threat to Government property or the well being of the technician, co-workers, or the public. The following three examples illustrate this leadership right:

Figure 3-1. Examples for Applying Enforced Leave	
<i>Number</i>	<i>Description</i>
1.	A technician reports to work without required safety equipment. The technician's action make him or her not ready and able to perform assigned duties. The technician's supervisor can place the technician on annual leave, compensatory time-off, or leave-without-pay (LWOP) until he or she reports back to work with the required safety equipment.
2.	A technician appears for work in what the supervisor reasonably determines to be an unsafe state due to illness, alcohol abuse, medication, controlled substance abuse, or other causes. Attempts to have the technician explain the condition are unsuccessful. The supervisor determines that the technician's continued presence creates an immediate threat to Government property, the technician, and/or fellow co-workers. The supervisor gives the technician an option of being taken home or to a family physician or having a family member called. If the technician refuses to choose or is unable to choose, the supervisor selects and implements the best alternative. When the technician reports for work the next day, the supervisor tells him or her that unless there is a reasonable explanation, the leave status for the non-duty time will be LWOP. If there is a reasonable explanation (for example, reaction to new medication that can be supported by a doctor's statement), the supervisor can give the technician the option of using annual leave, compensatory time-off, or sick leave. The supervisor will then advise the technician that no further action will be taken or that the incident is still being appraised and disciplinary or adverse action could result.

3.	<p>A technician is in a rage, disrupting the entire shop (throwing objects, cursing, etc.). Attempts to calm the technician are not successful. The supervisor determines the technician's continued presence would be highly undesirable. The supervisor tells the technician that he or she is being placed in an LWOP status and to immediately leave the worksite and return when calmed down. The technician regains composure and reports to work the next day. The supervisor tells the technician that unless there is a reasonable explanation, the LWOP status from the previous day will not be changed. If the explanation alters the supervisor's position on the LOWP (for example, the technician first learned of a family member's serious illness), the technician can be offered the option of taking appropriate leave. The technician's advised that no further action will be taken or that the incident is still being appraised and disciplinary or adverse action could result.</p>
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Appendix A - References

Section I - Required Publications

Title 5 CFR, Administrative Personnel

Section 715 Nondisciplinary Separations, Demotions, and Furloughs (Cited in summary)

Title 5 U.S.C., Government Organization and Employees

Section 5363 Pay retention (Cited in para 2-2a)

Title 32 U.S.C., National Guard

Section 709 Technicians: employment, use, status (Cited in 2-4a, 3-1a and b, 3-3c, 3-4d)

Section II - Related Publications

NGB TPR 752

Discipline and Adverse Action

Section III - Prescribed Forms

This section contains no entries.

Section IV – Referenced Forms

SF 50

Notification of Personnel Action

SF 52

Request for Personnel Action

SF 2801

Application for Immediate Retirement (CSRS)

SF 3107

Application for Immediate Retirement (FERS)

Glossary
Section I – Abbreviations

ANG
Air National Guard

ARNG
Army National Guard

CFR
Code of Federal Regulations

CSRS
Civil Service Retirement System

EEOC
Equal Employment Opportunity Commission

FERS
Federal Employee Retirement System

HRO
Human Resource Office

IAW
In Accordance With

LWOP
Leave With Out Pay

NGB
National Guard Bureau

OPM
Office of Personnel Management

ORNG
Oregon National Guard

PD
Position Description

RIF
Reduction In Forces

SF
Standardl Form

TAG

The Adjutant General

TPR

Technician Personnel Regulation

USC

United States Code

Section II – Terms**Code of Federal Regulations:**

The Code of Federal Regulations (CFR) is the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government.

United States Code

United States Code is the consolidation and codification by subject matter of the general and permanent laws of the United States.

Section III – Special Abbreviations and Terms

This section contains no entries.