**Section 400.1205 Nonjudicial Punishment**

a) General. This Subpart prescribes the requirements, policies, limitations and procedures for the imposition of nonjudicial punishment (NJP) pursuant to the Adjutant General's authority under Code Section 15. It is a modification of Part V of the MCM and should be interpreted consistent with the MCM. Unless modified by the Code or this Part, the applicable procedures contained in NGIL 27-10 and NGIL ANG Instruction 51-202 (both 2010; no later amendments or additions are incorporated) apply to NJP administered under this Subpart.

b) Use of Nonjudicial Punishment

1) Commander's Responsibility. Commanders are responsible for good order and discipline in their commands. Generally, discipline can be maintained through effective leadership, including administrative corrective measures. A commander should use nonpunitive disciplinary tools (e.g., counseling and reprimands) to the fullest extent to further the efficiency of the command before resorting to NJP. However, NJP may be used in all misconduct cases involving minor offenses for which the commander considers nonpunitive measures to be inadequate or inappropriate. In determining the method of discipline, commanders should consider the nature of the offense, the record of the service member, the need for good discipline, and the effect of punitive measures on the service member's record. All disciplinary measures shall be resolved at the lowest appropriate level and shall use the least severe discipline appropriate to the offense.

2) Statute of Limitations. Prompt action is essential for NJP to have the proper corrective effect. NJP may not be imposed for offenses committed more than 3 years before the date of initiation of NJP.

3) Applicability of Army or Air Force NJP Regulations

When the use of NJP is appropriate, the procedures of this Subpart shall be used in lieu of the administrative reduction in rank procedures created by applicable personnel regulations (Army Regulation (AR) 600-8-19, NGR (AR) 600-200 or ANGI 36-2503, etc.). When a situation arises that is not addressed by this Subpart, the Army or Air Force regulations concerning NJP should be consulted for guidance, as appropriate (e.g., AR 27-10, Air Force Instruction (AFI) 51-202).

4) Restriction on Punishment after Exercise of Jurisdiction by Civilian Authorities. An SMF member who has been tried in a civilian court may, but normally will not, be disciplined under this Subpart for the same acts over which the civilian court exercised jurisdiction. NJP action should not be used to discipline SMF members for civil court convictions because, in that instance, civil authorities have already disposed of criminal allegations and imposed criminal punishments. In cases of civil court convictions, the chain of command should normally consider appropriate administrative (i.e., nonpunitive) measures. Prior to imposition of NJP on SMF members for offenses that have been disposed of by civilian courts, commanders must obtain written approval of the Adjutant General or designee. Requests for that approval shall be staffed through command channels to:

Office of the Adjutant General

ATTN: NGIL-JA

1301 N. MacArthur Blvd.

Springfield IL 62702-2317

c) Personal Exercise of Discretion

1) A commander shall personally exercise discretion in the NJP process by:

A) Evaluating the case to determine whether NJP proceedings should be initiated.

B) Determining whether the member committed the offenses for which NJP proceedings are initiated.

C) Determining the amount and nature of any punishment, if punishment is appropriate.

2) No superior may direct any subordinate commander to impose NJP on any individual.

3) No superior may issue regulations or guidance that either directly or indirectly suggests to subordinate commanders that:

A) Certain categories of offenders or offenses should be disposed of by NJP (e.g., AWOL members shall be processed for NJP).

B) Predetermined kinds or amounts of punishment should be imposed for certain categories of offenders or offenses (e.g., AWOL NCOs shall be reduced one grade).

d) Multiple Punishments

1) When a commander determines that NJP is appropriate for a particular service member, all known offenses determined to be appropriate for disposition by NJP and ready to be considered at that time, including all the applicable offenses arising from a single incident or course of conduct, shall ordinarily be considered together and not made the basis for multiple punishments.

2) Double Jeopardy Prohibited

When a punishment has been imposed under NJP, or NJP proceedings are terminated for a reason tantamount to a finding of not guilty, further punishment may not be imposed for the same offense. Same offense means an offense that was part of a single incident or course of action. Administrative action, including administrative discharge proceedings, can be taken for an offense previously punished under NJP proceedings and does not constitute double punishment under this Subpart.

e) Cases Involving State or Federal Prosecution Interest

If an offense is subject to both NJP proceedings and to criminal trial in a State or federal court, the commander shall consult NGIL-JA prior to initiation of NJP proceedings.

f) Standard of Proof

1) NJP determinations must be supported by substantial evidence. For NJP purposes, this means a measure or degree of proof that reasonably convinces the imposing commander of the SMF member's guilt, considering:

A) all available direct evidence, i.e., evidence based on actual knowledge or observation of witnesses; and

B) all available indirect evidence, i.e., facts or statements from which reasonable inferences, deductions and conclusions may be drawn to establish an unobserved fact, knowledge or state of mind.

2) When considering the evidence, no distinction shall be made between the relative value of direct and indirect evidence. In some cases, direct evidence may be more convincing than indirect evidence and, in other cases, indirect evidence may be more convincing than the statement of an eyewitness.

g) Effect of Errors. Failure to comply with any of the procedural provisions in this Subpart shall not invalidate a punishment imposed under the Code, unless the error materially prejudiced a substantial right of the service member on whom the punishment was imposed.