TITLE 32—NATIONAL GUARD

This title was enacted by act Aug. 10, 1956, ch. 1041, 70A Stat. 596

AMENDMENTS


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POSITIVE LAW; CITATION

This title has been made positive law by section 2 of act Aug. 10, 1956, ch. 1041, 70A Stat. 596, which provided in part that: “Title 32 of the United States Code, entitled ‘National Guard’, is revised, codified, and enacted into law, and may be cited as ‘Title 32, United States Code, §—.’”
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REPEALS

Section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641, repealed the sections or parts of sections of the Revised Statutes or Statutes at Large covering provisions codified in this act, ‘‘except with respect to rights and duties that matured, penalties that were incurred, and proceedings that were begun, before the effective date of this act [Aug. 10, 1956] and except as provided in section 49’’.

SAVINGS AND SEVERABILITY PROVISIONS

Section 49 of act Aug. 10, 1956, ch. 1041, 70A Stat. 640, provided that:
“(a) In sections 1–48 of this Act, it is the legislative purpose to restate, without substantive change, the law replaced by those sections on the effective date of this Act. However, laws effective after March 31, 1955, that are inconsistent with this Act shall be considered as superseding it to the extent of the inconsistency.
“(b) References that other laws, regulations, and orders make to the replaced law shall be considered to have been taken or committed under the corresponding provisions of sections 1–48.
“(c) Actions taken and offenses committed under the replaced law shall be considered to have been taken or committed under the corresponding provisions of sections 1–48.
“(d) If a part of this Act is invalid, all valid parts that are severable from the invalid part remain in effect.
“(e) In chapter 47 of title 10, United States Code, enacted by section 1 of this Act, no inference of a legislative construction is to be drawn from the part in which any article is placed nor from the catchlines of the part or the article as set out in that chapter.
“(f) The enactment of this Act does not increase or decrease the pay or allowances, including retired and retainer pay, of any person.
“(g) The enactment of this Act does not affect the status of persons who, on the effective date of this Act, have the status of warrant officer, of the Army Mine Planter Service.

RESTATEMENT OF SUSPENDED OR TEMPORARILY SUPERSEDED PROVISIONS

Section 50 of act Aug. 10, 1956, ch. 1041, 70A Stat. 640, provided that: ‘‘If on the effective date of this Act a provision of law that is restated in this Act and repealed by section 53 would have been in a suspended or temporarily superseded status but for its repeal, the provisions of this Act that restate that provision have the same suspended or temporarily superseded status.’’

IMPROVEMENT OF UNITED STATES CODE BY PUB. L. 85-861: LEGISLATIVE PURPOSE; REPEAL OF INCONSISTENT PROVISIONS; CORRESPONDING PROVISIONS; SAVINGS AND SEVERABILITY PROVISIONS; STATUS; REPEALS

Section 34 of Pub. L. 85-861 provided that:
“(a) In sections 1–32 of this Act, it is the legislative purpose to restate, without substantive change, the law replaced by those sections on the effective date of this Act. However, laws effective after December 31, 1957, that are inconsistent with this Act shall be considered as superseding it to the extent of the inconsistency.
“(b) References that other laws, regulations, and orders make to the replaced law shall be considered to have been taken or committed under the corresponding provisions of sections 1–32.
“(c) Actions taken under the replaced law shall be considered to have been taken or committed under the corresponding provisions of sections 1–32.
“(d) If a part of this Act is invalid, all valid parts that are severable from the invalid part remain in effect.
“(e) The enactment of this Act does not increase or decrease the pay or allowances, including retired and retainer pay, of any person.

CHAPTER 1—ORGANIZATION

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AMENDMENTS


§ 101. Definitions

In addition to the definitions in sections 1–5 of title 1, the following definitions apply in this title:

(1) For purposes of other laws relating to the militia, the National Guard, the Army National Guard of the United States, and the Air National Guard of the United States, the term ‘‘Territory’’ includes Guam and the Virgin Islands.

(2) ‘‘Armed forces’’ means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(3) ‘‘National Guard’’ means the Army National Guard and the Air National Guard.

(4) ‘‘Army National Guard’’ means that part of the organized militia of the several States and Territories, Puerto Rico, and the District of Columbia, active and inactive, that
(A) is a land force;
(B) is trained, and has its officers appointed, under the sixteenth clause of section 8, article I, of the Constitution;
(C) is organized, armed, and equipped wholly or partly at Federal expense; and
(D) is federally recognized.

(5) "Army National Guard of the United States" means the reserve component of the Army all of whose members are members of the Army National Guard.

(6) "Air National Guard" means that part of the organized militia of the several States and Territories, Puerto Rico, and the District of Columbia, active and inactive, that—
(A) is an air force;
(B) is trained, and has its officers appointed, under the sixteenth clause of section 8, article I of the Constitution;
(C) is organized, armed, and equipped wholly or partly at Federal expense; and
(D) is federally recognized.

(7) "Air National Guard of the United States" means the reserve component of the Air Force all of whose members are members of the Air National Guard.

(8) "Officer" means commissioned or warrant officer.

(9) "Enlisted member" means a person enlisted in, or inducted, called, or conscripted into, an armed force in an enlisted grade.

(10) "Grade" means a step or degree, in a graduated scale of office or military rank, that is established and designated as a grade by law or regulation.

(11) "Rank" means the order of precedence among members of the armed forces.

(12) "Active duty" means full-time duty in the active military service of the United States, performed by a member of the Army National Guard of the United States or the Air National Guard of the United States, that—
(A) is an active duty of the United States;
(B) is performed by a member of the Army National Guard, that the organized militia of the several States and Territories, Puerto Rico, and the District of Columbia, active and inactive, that—
(C) is organized, armed, and equipped wholly or partly at Federal expense; and
(D) is federally recognized.

(13) "Supplies" includes material, equipment, and stores of all kinds.

(14) "May" is used in a permissive sense. The words "no person may * * *" mean that no person is required, authorized, or permitted to do the act prescribed.

(15) "Includes" means includes but is not limited to.

(16) "Pay" includes basic pay, special pay, incentive pay, retired pay, and equivalent pay, but does not include allowances.

(17) "Spouse" means husband or wife, as the case may be.

(18) "Full-time National Guard duty" means training or other duty, other than inactive duty, performed by a member of the Army National Guard of the United States or the Air National Guard of the United States in the member’s status as a member of the National Guard of a State or territory, the Commonwealth of Puerto Rico, or the District of Columbia under section 316, 502, 503, 504, or 505 of this title for which the member is entitled to pay from the United States or for which the member has waived pay from the United States.


HISTORICAL AND REVISION NOTES
1956 ACT

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<td>101(16)</td>
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The definitions in clauses (2) and (9)–(17) reflect the adoption of terminology which, though undefined in the source statutes restated in this title, represent the closest practicable approximation of the ways in which the terms defined have been most commonly used. Where established uses conflict, a choice has been made.

In clause (1), the definition of "Territory" in 32:4c is executed throughout this revised title by specific reference, where applicable, to the Territories, Puerto Rico, and the Canal Zone.

In clause (2), a definition of "National Guard" is inserted for clarity.

In clause (3)(A), the words "a land force" are substituted for 32:2. The National Defense Act of 1916, §117 (last 66 words), 39 Stat. 212, is not contained in 32:2. It is also omitted from the revised section as repealed by the act of February 28, 1925, ch. 13, 43 Stat. 1991.

In clauses (3) and (4), the word "Army" is inserted to distinguish the organizations defined from their Air Force counterparts.

In clause (3) and (5), the words "unless the context or subject matter otherwise requires—" and "as provided in this title", in 32:4b, are omitted as surplusage.

In clauses (3)(B) and (5)(B), the words "has its officers appointed" are substituted for the word "officered", in 32:4b.

In clauses (4) and (6), only that much of the description of the composition of the Army National Guard of the United States and the Air National Guard of the United States is used as is necessary to distinguish these reserve components, respectively, from the other reserve components.

In clause (5)(A), the words "an air force" are substituted for the words "for which Federal responsibility has been vested in the Secretary of the Air Force or the Department of the Air Force pursuant to law", in 10:1835, and for 32:2 (less applicability to Army National Guard), to make the definition of "Air National Guard" parallel with the definition of "Army National Guard", and to make explicit the intent of Congress in creating the Air National Guard, that the organized militia henceforth should consist of three mutually exhaustive classes comprising the Army, Air, and Naval militia.

In clause (8), words showing how enlisted members became such are inserted to make clear that enlist-
In accordance with the traditional military policy of the United States, it is essential that the strength and organization of the Army National Guard and the Air National Guard as an integral part of the first line defenses of the United States be maintained and assured at all times. Whenever Congress determines that more units and organizations are needed for the national security than are in the regular components of the ground and air forces, the Army National Guard of the United States and the Air National Guard of the United States, or such parts of them as are needed, together with such units of other reserve components as are necessary for a balanced force, shall be ordered to active Federal duty and retained as long as so needed.

(Aug. 10, 1956, ch. 1041, 70A Stat. 597.)

§ 103. Branches and organizations

The Army National Guard of each State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, and the Virgin Islands includes such members of the staff corps corresponding to the staff corps of the Army as the Secretary of the Army may authorize.

Army, subject, in time of peace, to such general exceptions as the Secretary of the Army may authorize; and the organization of the Air National Guard and the composition of its units shall be the same as those prescribed for the Air Force, subject, in time of peace, to such general exceptions as the Secretary of the Air Force may authorize.

(c) To secure a force the units of which when combined will form complete higher tactical units, the President may designate the units of the National Guard, by branch of the Army or organization of the Air Force, to be maintained in each State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, and the Virgin Islands. However, no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the approval of its governor.

(d) To maintain appropriate organization and to assist in training and instruction, the President may assign the National Guard to divisions, wings, and other tactical units, and may detail commissioned officers of the National Guard or of the Regular Army or the Regular Air Force, as the case may be, to command those units. However, the commanding officer of a unit organized wholly within a State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands may not be displaced under this subsection.

(e) To insure prompt mobilization of the National Guard in time of war or other emergency, the President may, in time of peace, detail a commissioned officer of the Regular Army to perform the duties of chief of staff for each fully organized division of the Army National Guard, and a commissioned officer of the Regular Air Force to perform the duties of the corresponding position for each fully organized wing of the Air National Guard.

(f) Unless the President consents—

(1) an organization of the National Guard whose members have received compensation from the United States as members of the National Guard may not be disbanded and

(2) the actual strength of such an organization in commissioned officers or enlisted members may not be reduced below the minimum strength prescribed by the President.


### Historical and Revision Notes

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In subsection (a), the words "within their respective borders" are omitted as surplusage.

In subsection (b), the word "Army" is substituted for the word "Regular Army", since the Army is the category for which the organization is prescribed, and the Regular Army is a personnel category for which no organization is prescribed. Similarly, the words "Air Force" are used instead of the words "Regular Air Force".

In subsection (c), the words "by branch of the Army or organization of the Air Force" are substituted for the words "as to branch or arm of service". The words "branch, organization, or allotment of a unit" are substituted for the words "allotment, branch, or arm of units or organizations".

In subsections (d) and (e) the word "commissioned" is inserted, since 32:3 and 10 historically applied only to commissioned officers (see opinion of the Judge Advocate General of the Army (JAGA) 1963/4078, 6 May 1953).

In subsection (d), the word "brigades" is omitted as surplusage.

In subsection (e), the word "tactical" is omitted as surplusage.

In subsection (f), the words "have received compensation from the United States as members of the National Guard" are substituted for the words "shall be entitled to and shall have received compensation under the provisions of this title". The words "actual strength * * * in commissioned officers or enlisted members" are substituted for the words "commissioned or enlisted strength".

### Amendments


Subsec. (d). Pub. L. 109–163, §1057(b)(3), substituted "State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands" for "State or Territory, Puerto Rico, or the District of Columbia".


Subsecs. (c), (d). Pub. L. 100–456, §1234(b)(1), struck out "the Canal Zone," after "Puerto Rico,".

### Council of Governors


### Comptroller General Assessments of National Guard Management

Pub. L. 107–314, div. A, title V, §511(a), Dec. 2, 2002, 116 Stat. 2356, provided that: "Not later than one year after the date of the enactment of this Act (Dec. 2, 2002), the Comptroller General shall submit to Congress a report on management of the National Guard. The report shall include the following:

(1) The Comptroller General's assessment of the effectiveness of the implementation of Department of Defense plans for improving management and accounting for personnel strengths in the National Guard, including an assessment of the process that the Department of Defense, the National Guard Bureau, the Army National Guard and State-level National Guard leadership, and leadership in the other reserve components have for identifying and addressing in a timely manner specific units in which non-participation rates are significantly in excess of the established norms.

(2) The Comptroller General's assessment of the effectiveness of the process for Federal recognition of senior National Guard officers and recommendations for improvement to that process."
“(3) The Comptroller General’s assessment of the process for, and the nature and extent of, the administrative or judicial corrective action taken by the Secretary of Defense, the Secretary of the Army, and the Secretary of the Air Force as a result of Inspector General investigations or other investigations in which allegations against senior National Guard officers are substantiated in whole or in part.

“(4) The Comptroller General’s determination of the effectiveness of the Federal protections provided for members or employees of the National Guard who report allegations of waste, fraud, abuse, or mismanagement and the nature and extent to which corrective action is taken against those in the National Guard who retaliate against such members or employees.

STUDY OF STATE AND FEDERAL MISSIONS OF NATIONAL GUARD

Pub. L. 103–160, div. A, title V, §522, Nov. 30, 1993, 107 Stat. 1655, directed Secretary of Defense to provide for a study of State and Federal missions of National Guard to be carried out by a federally funded research and development center, including consideration of both separate and integrated requirements (including requirements pertaining to personnel, weapons, equipment, and facilities) that derive from those missions, required an interim report not later than May 1, 1994, and a final report not later than Nov. 15, 1994, directed Secretary to submit each report to Congress, not later than 15 days after the date on which it is received by the Secretary, and directed Secretary, together with Secretary of the Army and Secretary of the Air Force, to conduct evaluation of assumptions, analysis, findings, and recommendations of the study and, not later than Feb. 1, 1995, to submit to Congress a report on the evaluation.

RETENTION OF ANCIENT PRIVILEGES AND ORGANIZATION

Section 32 of act Aug. 10, 1956, provided that:

“(a) Any corps of artillery, cavalry, or infantry existing in any of the States on the passage of the Act of May 8, 1792, which by the laws, customs, or usages of those States has been in continuous existence since the passage of that Act, shall be allowed to retain its ancient privileges, subject, nevertheless to all duties required by law of militia: Provided, That those organizations may be a part of the National Guard and entitled to all the privileges thereof, and shall conform in all respects to the organization, discipline, and training to the National Guard in time of war:

“Provided further, The State Militia of Massachusetts, shall be considered to be in derogation of any other ancient privileges to which the First Corps Cadets is entitled under the laws, customs, or usages of the State of Massachusetts.”

EX. ORD. NO. 13528. ESTABLISHMENT OF THE COUNCIL OF GOVERNORS

Ex. Ord. No. 13528, Jan. 11, 2010, 75 F.R. 2053, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 1822 of the National Defense Authorization Act of 2008 (Public Law 110–181), and in order to strengthen further the partnership between the Federal Government and State governments to protect our Nation and its people and property, it is hereby ordered as follows:


(a) There is established a Council of Governors (Council). The Council shall consist of 10 State Governors appointed by the President (Members), of whom no more than five shall be of the same political party. The term of service for each Member appointed to serve on the Council shall be 2 years, but a Member may be reappointed for additional terms.

(b) The President shall designate two Members, who shall not be members of the same political party, to serve as Co-Chairs of the Council.

SIRC. 2. Functions. The Council shall meet at the call of the Secretary of Defense or the Co-Chairs of the Council to exchange views, information, or advice with the Secretary of Defense; the Secretary of Homeland Security; the Assistant to the President for Homeland Security and Counterterrorism; the Assistant to the President for Intergovernmental Affairs and Public Engagement; the Assistant Secretary of Defense for Homeland Defense and America’s Security Affairs; the United States Northern Command; the Chief, National Guard Bureau; the Commandant of the Coast Guard; and other appropriate officials of the Department of Homeland Security and the Department of Defense, and appropriate officials of other executive departments or agencies as may be designated by the Secretary of Defense or the Secretary of Homeland Security. Such views, information, or advice shall concern:

(a) matters involving the National Guard of the various States;

(b) homeland defense;

(c) civil support;

(d) synchronization and integration of State and Federal military activities in the United States; and

(e) other matters of mutual interest pertaining to National Guard, homeland defense, and civil support activities.

SIRC. 3. Administration.

(a) The Secretary of Defense shall designate an Executive Director to coordinate the work of the Council.

(b) Members shall serve without compensation for their work on the Council. However, Members shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law.

(c) Upon the joint request of the Co-Chairs of the Council, the Secretary of Defense shall, to the extent permitted by law and subject to the availability of appropriations, provide the Council with administrative support, assignment or detail of personnel, and information as may be necessary for the performance of the Council’s functions.

(d) The Council may establish subcommittees of the Council. These subcommittees shall consist exclusively of Members of the Council and any designated employees of a Member with authority to act on the Member’s behalf, as appropriate to aid the Council in carrying out its functions under this order.

(e) The Council may establish a charter that is consistent with the terms of this order to refine further its purpose, scope, and objectives and to allocate duties, as appropriate, among members.

SIRC. 4. Definitions. As used in this order:

(a) the term “State” has the meaning provided in paragraph (15) of section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101(15)); and

(b) the term “Governor” has the meaning provided in paragraph (5) of section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(5)).

SIRC. 5. General Provisions.

(a) Nothing in this order shall be construed to impair or otherwise affect:

(1) the authority granted by law to a department, agency, or the head thereof; or
§ 105. Inspection

(a) Under regulations prescribed by him, the Secretary of the Army shall have an inspection made by inspectors general, or, if necessary, by any other commissioned officers of the Regular Army detailed for that purpose, to determine whether—

(1) the amount and condition of property held by the Army National Guard are satisfactory;

(2) the Army National Guard is organized as provided in this title;

(3) the members of the Army National Guard meet prescribed physical and other qualifications;

(4) the Army National Guard and its organization are properly uniformed, armed, and equipped and are being trained and instructed for active duty in the field, or for coast defense;

(5) Army National Guard records are being kept in accordance with this title;

(6) the accounts and records of each property and fiscal officer are properly maintained; and

(7) the units of the Army National Guard meet requirements for deployment.

The Secretary of the Air Force has a similar duty with respect to the Air National Guard.

(b) The reports of inspections under subsection (a) are the basis for determining whether the National Guard is entitled to the issue of military property as authorized under this title and for determining which units of the National Guard meet deployability standards.

(1) the amount and condition of property held by the Army National Guard are satisfactory;

(2) the Army National Guard is organized as provided in this title;

(3) the members of the Army National Guard meet prescribed physical and other qualifications;

(4) the Army National Guard and its organization are properly uniformed, armed, and equipped and are being trained and instructed for active duty in the field, or for coast defense;

(5) Army National Guard records are being kept in accordance with this title;

(6) the accounts and records of each property and fiscal officer are properly maintained; and

(7) the units of the Army National Guard meet requirements for deployment.

The Secretary of the Air Force has a similar duty with respect to the Air National Guard.

§ 107. Availability of appropriations

(a) Under such regulations as the Secretary concerned may prescribe, appropriations for the National Guard are available for—

(1) the necessary expenses of members of a regular or reserve component of the Army or the Air Force traveling on duty in connection with the National Guard;

(2) the necessary expenses of members of the Regular Army or the Regular Air Force on duty in the National Guard Bureau or with the Army Staff or the Air Staff, traveling to and from annual conventions of the Enlisted Association of the National Guard of the United States, the National Guard Association of the United States, or the Adjutants General Association;

(3) the transportation of supplies furnished to the National Guard as permanent equipment;

(4) the office rent and necessary office expenses of officers of a regular or reserve component of the Army or the Air Force on duty with the National Guard;

(5) the expenses of the National Guard Bureau, including clerical services;

(6) the promotion of rifle practice, including the acquisition, construction, maintenance, and equipment of shooting galleries and suitable target ranges;

(7) such incidental expenses of authorized encampments, maneuvers, and field instruction as the Secretary considers necessary; and
(8) other expenses of the National Guard authorized by law.

(b) The expenses of enlisted members of the Regular Army or the Regular Air Force on duty with the National Guard shall be paid from appropriations for the Army National Guard or the Air National Guard, as the case may be, but not from the allotment of a State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands. Payable expenses include allowances for subsistence and housing under sections 402 and 403 of title 37 and expenses for medicine and medical attendance.

(c) The pay and allowances for the Chief of the National Guard Bureau and officers of the Army National Guard of the United States or the Air National Guard of the United States called to active duty under section 12402 of title 10 shall be paid from appropriations for the pay of the Army National Guard or Air National Guard.


HISTORICAL AND REVISION NOTES

1956 ACT

Revised section Source (U.S. Code) Source (Statutes at Large)


107(c) .... 32:22 (words between 5th and 7th semicolons of proviso)....

In subsection (a), the words “strengths in enlisted members of the active” are substituted for the words “number of enlisted men in active service”. The words between the eighth and ninth semicolons of 32:22, relating to horses and draft animals, are omitted as obsolete, since no animals are now authorized for the National Guard. The words “under section 106 of this title” are inserted, since only appropriations under title XVI, § 1676(a)(1), Oct. 5, 1994, 108 Stat. 3018: “members of the active” are substituted for the words “officers of a * * * reserve commission in the National Guard” are omitted as surplusage.

In subsection (b), the words “Reserve Officers holding commission in the National Guard” are omitted as covered by the words “officers of a * * * reserve component of the Army or the Air Force”. The words “Army General Staff” are substituted for the words “War Department General Staff” to conform to section 3501(b) of title 10.

In subsection (c), the words “under sections 251 and 252 of title 37” are substituted for the words “provided in section 19 of title 37”, since allowances for subsistence and quarters are now covered by those sections. The words “shall be paid from appropriations for the National Guard, but not from the allotment of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia” are substituted for the words “shall constitute a charge against the whole sum annually appropriated for the support of the National Guard, and shall be paid therefrom and not from the allotment duly appropriated for any particular State, Territory, or the District of Columbia”.

The work “appropriations” is substituted for “funds appropriated” for consistency in the title.

AMENDMENTS

1926—Subsec. (b). Pub. L. 108–136 substituted “State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands” for “State or Territory, Puerto Rico, or the District of Columbia”.

2003—Subsec. (a)(2). Pub. L. 111–84 substituted “members” for “officers”, “Army Staff” for “Army General Staff”, and “the Enlisted Association of the National Guard of the United States, the National Guard Association of the United States”, for “the National Guard Association of the United States”.

1997—Subsec. (b). Pub. L. 105–85 substituted “and housing” for “and quarters”.

1994—Subsec. (c). Pub. L. 103–337 substituted “12402” for “3496 or 8496”.


Subsec. (b). Pub. L. 92–119, § 1(a)(2), (3), redesignated subsec. (b) as (a) and substituted “appropriation for the National Guard” for “appropriation appropriated”.

Former subsec. (a), which provided for apportionment for appropriations for Army National Guard and Air National Guard under prescribed formulas among States, territories, Puerto Rico, Canal Zone, District of Columbia, was struck out.

Subsecs. (b), (c). Pub. L. 92–119, § 1(a)(4), redesignated subsec. (c) as (b). Former subsec. (b) redesignated (a) and amended.

1967—Subsec. (c). Pub. L. 90–83 substituted “402 and 403” for “251 and 252”.

EFFECTIVE DATE OF 2003 AMENDMENT


EFFECTIVE DATE OF 1997 AMENDMENT


EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 1001 of Title 10, Armed Forces.

AVAILABILITY OF APPROPRIATED FUNDS FOR THE STATE PARTNERSHIP PROGRAM

Pub. L. 111–84, div. A, title XII, § 1210, Oct. 28, 2009, 123 Stat. 2517, provided that:

“(a) REGULATIONS REQUIRED.—Not later than 90 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense, in consultation with [the] Secretary of State, shall prescribe regulations regarding the use of funds appropriated to the Department of Defense to pay the costs incurred by the National Guard in conducting activities under the State Partnership Program. The Secretary of Defense shall transmit to the appropriate congressional committees a copy of the regulations not later than 15 days after the date on which the regulations are prescribed under this subsection.
"(b) LIMITATIONS.—
"(1) APPROVAL BY COMMANDER OF COMBATANT COMMAND AND CHIEF OF MISSION.—Funds shall not be available under subsection (a) for activities conducted under the State Partnership Program in a foreign country unless such activities are jointly approved by the commander of the combatant command concerned and the chief of mission concerned.
"(2) PARTICIPATION BY MEMBERS.—Funds shall not be available under subsection (a) for the participation of a member of the National Guard in activities conducted under the State Partnership Program in a foreign country unless the member is on active duty in the Armed Forces at the time of such participation.

"(c) REPORT.—Not later than 90 days after the date of the enactment of this Act, and not later than the end of each of the fiscal years 2010 through 2013, the Secretary of Defense shall submit to the appropriate congressional committees a report describing the civilian engagement activities conducted under the State Partnership Program, including a detailed description of the activities undertaken and funds expended in the previous fiscal year under the State Partnership Program.

"(d) DEFINITION.—In this section, the term ‘appropriate congressional committees’ means—
"(1) the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives; and
"(2) the Committee on Armed Services and the Committee on Foreign Relations of the Senate.''

§ 108. FORFEITURE OF FEDERAL BENEFITS
If, within a time fixed by the President, a State fails to comply with a requirement of this title, or a regulation prescribed under this title, the National Guard of that State is barred, in whole or in part, as the President may prescribe, from receiving money or any other aid, benefit, or privilege authorized by law.


HISTORICAL AND REVISION NOTES

Revised source (U.S. Code) | Source (Statutes at Large)
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The words “does not comply” are substituted for the words “shall * * * have failed or refused to comply”. The words “a requirement of, or regulation prescribed under, this title” are substituted for the words “any requirement of this title, or any regulation promulgated thereunder and in aid thereof by the President or the Secretary of the Army”. The words “money or any other aid” are substituted for the words “pecuniary or other aid”. The words “or provided by this title or any other” are omitted as surplusage.

AMENDMENTS
1994—Pub. L. 103-337 amended section generally. Prior to amendment, section read as follows: “If, within a time to be fixed by the President, a State does not comply with or enforce a requirement of, or regulation prescribed under, this title its National Guard is barred, in whole or partly as the President may prescribe, from receiving money or any other aid, benefit, or privilege authorized by law.”

EFFECTIVE DATE OF 1994 AMENDMENT
Amendment by Pub. L. 103-337 effective at end of 90-day period beginning on Oct. 5, 1994, see section 904(d) of Pub. L. 103-337, set out as an Effective Date note under section 10601 of Title 10, Armed Forces.

§ 109. MAINTENANCE OF OTHER TROOPS
(a) In time of peace, a State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands may maintain no troops other than those of its National Guard and defense forces authorized by subsection (c).

(b) Nothing in this title limits the right of a State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands to use its National Guard or its defense forces authorized by subsection (c) within its borders in time of peace, or prevents it from organizing and maintaining police or constabulary.

(c) In addition to its National Guard, if any, a State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands may, as provided by its laws, organize and maintain defense forces. A defense force established under this section may be used within the jurisdiction concerned, as its chief executive (or commanding general in the case of the District of Columbia) considers necessary, but it may not be called, ordered, or drafted into the armed forces.

(d) A member of a defense force established under subsection (c) is not, because of that membership, exempt from service in the armed forces, nor is he entitled to pay, allowances, subsistence, transportation, or medical care or treatment, from funds of the United States.

(e) A person may not become a member of a defense force established under subsection (c) if he is a member of a reserve component of the armed forces.


HISTORICAL AND REVISION NOTES
1956 ACT

Revised source (U.S. Code) | Source (Statutes at Large)
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109(a) | 32:194(a) (1st sentence).
109(a) | 32:194(a) (as applicable to 32:194(a) (1st sentence)).
109(b) | 32:194(a) (less 1st sentence).
109(b) | 32:194(c) (less applicability to 32:194(a) (1st sentence)).

June 3, 1916, ch. 134, § 61 (less (b)); restated Aug. 18, 1941, ch. 363 (less last 3 provisos); restated Oct. 1, 1942, ch. 570 (less (b)); restated June 26, 1944, ch. 279 (less (b)); restated Sept. 27, 1950, ch. 1058 (less (b)), 64 Stat. 1072.

In subsection (a), the words “those of its National Guard” are substituted for the words “as authorized in accordance with the organization prescribed under this Act.”

In subsections (a) and (b), the provisions of 32:194(c) are exhausted by the enumeration of the jurisdictions named.

In subsection (b), the words “Nothing in this title limits” are substituted for the words “Nothing contained in this Act shall be construed to limit”.

In subsection (c), the word “Defense” is substituted for the word “Army”.

In subsection (d), the word “individual” is substituted for the word “person”.
§ 111. Suspension of certain provisions of this title

In time of war, or of emergency declared by Congress, the President may suspend the operation of any provision of sections 307(e), 309, 310, and 323(d) and (e)\(^1\) of this title with respect to the Army National Guard or the Air National Guard.


Historical and Revision Notes

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<td>111</td>
<td>50:1199 (as applicable to National Guard).</td>
<td>Sept. 3, 1954, ch. 1297, §269 (as applicable to National Guard), 68 Stat. 1132.</td>
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Reference to the exception in section 307(a) is omitted as unnecessary because a suspension of section 307(e) of this title, or of section 8365 or 8366 of Title 10, will in effect suspend that exception so far as it refers to the suspended section. A reference to the remainder of section 307(a) is omitted as unnecessary because the general rule that it states exists independently of that part of the source law for section 307(a) that is suspended under this section. A reference to section 307(f) is omitted as unnecessary because a suspension of section 307(e) will in effect suspend section 307(f) so far as it applies to section 307(e), 50:1199 (2d sentence) is omitted as inapplicable to the National Guard.

References in Text


Delegation of Functions

Functions of President under this section delegated to Secretary of Defense, see section 1(11) of Ex. Ord. No. 11390, Jan. 22, 1968, 33 F.R. 841, set out as a note under section 301 of Title 3, The President.

§ 112. Drug interdiction and counter-drug activities

(a) FUNDING ASSISTANCE.—The Secretary of Defense may provide funds to the Governor of a State who submits to the Secretary a State drug interdiction and counter-drug activities plan satisfying the requirements of subsection (c). Such funds shall be used for the following:

(1) The pay, allowances, clothing, subsistence, gratuities, travel, and related expenses, as authorized by State law, of personnel of the National Guard of that State used, while not in Federal service, for the purpose of drug interdiction and counter-drug activities.

(2) The procurement of services and equipment for the purpose of drug interdiction and counter-drug activities.

(3) The procurement of services and equipment, for the National Guard of that State used for the purpose of drug interdiction and counter-drug activities. However, the use of such funds for the procurement of equipment may not exceed $5,000 per item, unless approval for procurement of equipment in excess of that amount is granted in advance by the Secretary of Defense.

(b) USE OF PERSONNEL PERFORMING FULL-TIME NATIONAL GUARD DUTY.—(1) Under regulations prescribed by the Secretary of Defense, personnel of the National Guard of a State may, in accordance with the State drug interdiction and counter-drug activities plan referred to in subsection (c), be ordered to perform full-time Na-

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\(^1\) See References in Text note below.
ional Guard duty under section 502(f) of this title for the purpose of carrying out drug interdiction and counter-drug activities.

(2)(A) A member of the National Guard serving on full-time National Guard duty under orders authorized under paragraph (1) shall participate in the training required under section 502(a) of this title in addition to the duty performed for the purpose authorized under that paragraph. The pay, allowances, and other benefits of the member while participating in the training shall be the same as those to which the member is entitled while performing duty for the purpose of carrying out drug interdiction and counter-drug activities. The member is not entitled to additional pay, allowances, or other benefits for participation in training required under section 502(a)(1) of this title.

(B) Appropriations available for the Department of Defense for drug interdiction and counter-drug activities may be used for paying costs associated with a member’s participation in training described in subparagraph (A). The appropriation shall be reimbursed in full, out of appropriations available for paying those costs, for the amounts paid. Appropriations available for paying those costs shall be available for making the reimbursements.

(C) To ensure that the use of units and personnel of the National Guard of a State pursuant to a State drug interdiction and counter-drug activities plan does not degrade the training and readiness of such units and personnel, the following requirements shall apply in determining the drug interdiction and counter-drug activities that units and personnel of the National Guard of a State may perform:

(i) The performance of the activities may not adversely affect the quality of that training or otherwise interfere with the ability of a member or unit of the National Guard to perform the military functions of the member or unit.

(ii) National Guard personnel will not degrade their military skills as a result of performing the activities.

(iii) The performance of the activities will not result in a significant increase in the cost of training.

(iv) In the case of drug interdiction and counter-drug activities performed by a unit organized to serve as a unit, the activities will support valid unit training requirements.

(3) A unit or member of the National Guard of a State may be used, pursuant to a State drug interdiction and counter-drug activities plan approved by the Secretary of Defense under this section, to provide services or other assistance (other than air transportation) to an organization eligible to receive services under section 508 of this title if:

(A) the State drug interdiction and counter-drug activities plan specifically recognizes the organization as being eligible to receive the services or assistance;

(B) in the case of services, the performance of the services meets the requirements of paragraphs (1) and (2) of subsection (a) of section 508 of this title; and

(C) the services or assistance is authorized under subsection (b) or (c) of such section or in the State drug interdiction and counter-drug activities plan.

(c) PLAN REQUIREMENTS.—A State drug interdiction and counter-drug activities plan shall—

(1) specify how personnel of the National Guard of that State are to be used in drug interdiction and counter-drug activities;

(2) certify that those operations are to be conducted at a time when the personnel involved are not in Federal service;

(3) certify that participation by National Guard personnel in those operations is service in addition to training required under section 502 of this title;

(4) certify that any engineer-type activities (as defined by the Secretary of Defense) under the plan will be performed only by units and members of the National Guard;

(5) include a certification by the Attorney General of the State (or, in the case of a State with no position of Attorney General, a civilian official of the State equivalent to a State attorney general) that the use of the National Guard of the State for the activities proposed under the plan is authorized by, and is consistent with, State law; and

(6) certify that the Governor of the State or a civilian law enforcement official of the State designated by the Governor has determined that any activities included in the plan that are carried out in conjunction with Federal law enforcement agencies serve a State law enforcement purpose.

(d) EXAMINATION OF PLAN.—(1) Before funds are provided to the Governor of a State under this section and before members of the National Guard of that State are ordered to full-time National Guard duty as authorized in subsection (b), the Secretary of Defense shall examine the adequacy of the plan submitted by the Governor under subsection (c). The plan as approved by the Secretary may provide for the use of personnel and equipment of the National Guard of that State to assist the Immigration and Naturalization Service in the transportation of aliens who have violated a Federal or State law prohibiting or regulating the possession, use, or distribution of a controlled substance.

(2) Except as provided in paragraph (3), the Secretary shall carry out paragraph (1) in consultation with the Director of National Drug Control Policy.

(3) Paragraph (2) shall not apply if—

(A) the Governor of a State submits a plan under subsection (c) that is substantially the same as a plan submitted for that State for a previous fiscal year; and

(B) pursuant to the plan submitted for a previous fiscal year, funds were provided to the State in accordance with subsection (a) or personnel of the National Guard of the State were ordered to perform full-time National Guard duty in accordance with subsection (b).

(e) END STRENGTH LIMITATION.—(1) Except as provided in paragraph (2), at the end of a fiscal year there may not be more than 4000 members of the National Guard—

(A) on full-time National Guard duty under section 502(f) of this title to perform drug interdiction or counter-drug activities pursuant to an order to duty; or
(B) on duty under State authority to perform drug interdiction or counter-drug activities pursuant to an order to duty with State pay and allowances being reimbursed with funds provided under subsection (a)(1).

(2) The Secretary of Defense may increase the end strength authorized under paragraph (1) by not more than 20 percent for any fiscal year if the Secretary determines that such an increase is necessary in the national security interests of the United States.

(f) ANNUAL REPORT.—The Secretary of Defense shall submit to Congress an annual report regarding assistance provided and activities carried out under this section during the preceding fiscal year. The report shall include the following:

(1) The number of members of the National Guard excluded under subsection (e) from the computation of end strengths.

(2) A description of the drug interdiction and counter-drug activities conducted under State drug interdiction and counter-drug activities plans referred to in subsection (c) with funds provided under this section.

(3) An accounting of the amount of funds provided to each State.

(4) A description of the effect on military training and readiness of using units and personnel of the National Guard to perform activities under the State drug interdiction and counter-drug activities plans.

(g) STATUTORY CONSTRUCTION.—Nothing in this section shall be construed as a limitation on the authority of any unit of the National Guard of a State when such unit is not in Federal service, to perform law enforcement functions authorized to be performed by the National Guard by the laws of the State concerned.

(h) DEFINITIONS.—For purposes of this section:

(1) The term "drug interdiction and counter-drug activities", with respect to the National Guard of a State, means the use of National Guard personnel in drug interdiction and counter-drug law enforcement activities, including drug demand reduction activities, authorized by the law of the State and requested by the Governor of the State.

(2) The term "Governor of a State" means, in the case of the District of Columbia, the Commanding General of the National Guard of the District of Columbia.

(3) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.


1 See References in Text note below.
Subsec. (e), Pub. L. 105–85, §1031(d), designated par. (1) as subsec. (e) and struck out par. (2) which read as follows: “The Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives an annual report specifying for the period covered by the report the number of members of the National Guard excluded under paragraph (1) from the computation of end strengths.”

Subsecs. (g) to (l), Pub. L. 105–85, §1031(c), added subsec. (g) and redesignated former subsecs. (g) and (h) as (h) and (i), respectively.

1996—Subsec. (a), Pub. L. 104–106, §1021(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “The Secretary of Defense may provide to the Governor of a State who submits a plan to the Secretary under subsection (b) sufficient funds for—

(1) the pay, allowances, clothing, subsistence, gratuities, travel, and related expenses of personnel of the National Guard of that State used for—

(A) the purpose of drug interdiction and counter-drug activities; and

(B) the operation and maintenance of the equipment and facilities of the National Guard of that State used for that purpose; and

(2) the procurement of services and leasing of equipment for the National Guard of that State used for the purpose of drug interdiction and counter-drug activities.”

Subsec. (b), Pub. L. 104–106, §1021(e), added subsec. (b).

Former subsec. (b) redesignated (c).

Subsec. (c), Pub. L. 104–106, §1021(c), substituted “A State drug interdiction and counter-drug activities plan” for “A plan referred to in subsection (a)” in introductory provisions and “training” for “annual training” in par. (3) and added pars. (4) and (5).

Pub. L. 104–106, §1021(b)(3), redesignated subsec. (b) as (c).

Former subsec. (c) redesignated (d).

Subsec. (d), Pub. L. 104–106, §1021(b)(3), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (g).

Subsec. (d)(1). Pub. L. 104–208 inserted at end “The plan as approved by the Secretary may provide for the use of personnel and equipment of the National Guard of that State to assist the Immigration and Naturalization Service in the transportation of aliens who have violated a Federal or State law prohibiting or regulating the possession, use, or distribution of a controlled substance.”

Pub. L. 104–106, §1021(d)(1), inserted “and before members of the National Guard of that State are ordered to full-time National Guard duty as authorized in subsection (b)” after “under this section” and substituted “under subsection (c)” for “under subsection (b)”.


Subsec. (d)(3)(B). Pub. L. 104–106, §1021(d)(2)(B), added subpar. (B) and struck out former subpar. (B) which read as follows: “funds were provided to the State pursuant to such plan.”

Subsec. (e)(1). Pub. L. 104–106, §1021(h)(1), substituted “sections 12031 and 12032” for “sections 517 and 528”.

Subsec. (e)(2). Pub. L. 104–106, §1021(h)(2), substituted “the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives” for “the Committees on Armed Services of the Senate and House of Representatives”.


Former subsec. (f) redesignated (h).

Subsec. (g), Pub. L. 104–106, §1021(b)(2), redesignated subsec. (d) as (g) and transferred it to appear before subsec. (h), as redesignated.

Subsec. (h), Pub. L. 104–106, §1021(b)(1), redesignated subsec. (f) as (h).

Subsec. (h)(1). Pub. L. 104–106, §1021(g), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “The term ‘counter-drug activities’ includes the use of National Guard personnel, while not in Federal service, in any law enforcement activities authorized by State and local law and requested by the Governor.”

Subsec. (i), Pub. L. 102–25 substituted “in consultation with the Director of National Drug Control Policy,” for “in consultation with—

(A) the Attorney General of the United States in the case of a plan submitted for fiscal year 1990; and

(B) the Director of National Drug Control Policy in the case of a plan submitted for subsequent fiscal years.”

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

NATIONAL GUARD COUNTERDRUG SCHOOLS

Pub. L. 109–469, title IX, §901, Dec. 29, 2006, 120 Stat. 3536, provided that:

“(a) AUTHORITY TO OPERATE.—Under such regulations as the Secretary of Defense may prescribe, the Chief of the National Guard Bureau may establish and operate, or provide financial assistance to the States to establish and operate, not more than 5 schools (to be known generally as ‘National Guard counterdrug schools’).

“(b) PURPOSE.—The purpose of the National Guard counterdrug schools shall be the provision by the National Guard of training in drug interdiction and counterdrug activities and demand reduction activities to personnel of the following:

“(1) Federal agencies.

“(2) State, local, and tribal law enforcement agencies.

“(3) Community-based organizations engaged in such activities.

“(4) Other non-Federal governmental and private entities and organizations engaged in such activities.

“(c) COUNTERDRUG SCHOOLS SPECIFIED.—The National Guard counterdrug schools operated under the authority in subsection (a) are as follows:

“(1) The National Interagency Civil-Military Institute (NICI), San Luis Obispo, California.

“(2) The Multi-Jurisdictional Counterdrug Task Force Training (MCTFT), St. Petersburg, Florida.

“(3) The Midwest Counterdrug Training Center (MCTC), Johnston, Iowa.

“(4) The Regional Counterdrug Training Academy (RCTA), Meridian, Mississippi.

“(5) The Northeast Regional Counterdrug Training Center (NCTC), Fort Indiantown Gap, Pennsylvania.

“(d) USE OF NATIONAL GUARD PERSONNEL.—

“(1) IN GENERAL.—To the extent provided for in the State drug interdiction and counterdrug activities plan of a State in which a National Guard counterdrug school is located, personnel of the National Guard of that State who are ordered to full-time National Guard duty authorized under section 112(b) of that [sic] title 32, United States Code, may provide training referred to in subsection (b) at that school.

“(2) DEFINITION.—In this subsection, the term ‘State drug interdiction and counterdrug activities plan’, in the case of a State, means the current plan submitted by the Governor of the State to the Secretary of Defense under section 112 of title 32, United States Code.

“(e) TREATMENT UNDER AUTHORITY TO PROVIDE COUNTERDRUG SUPPORT.—The provisions of section 1004 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 10 U.S.C. 374 note) shall apply to any activities of a National Guard counterdrug school under this section that are for an agency referred to in subsection (a) of such section 1004 and for a purpose set forth in subsection (b) of such section 1004.

“(f) ANNUAL REPORTS ON ACTIVITIES.—

“(1) IN GENERAL.—Not later than February 1 each year, the Secretary of Defense shall submit to Congress a report on the activities of the National Guard counterdrug schools during the preceding year.
§ 113. Federal financial assistance for support of additional duties assigned to the Army National Guard

(a) AUTHORITY.—The Secretary of the Army may provide financial assistance to a State to support activities carried out by the Army National Guard of the State in the performance of duties that the Secretary has assigned, with the consent of the Chief of the National Guard Bureau, to the Army National Guard of the State. The Secretary shall determine the amount of the assistance that is appropriate for the purpose.

(b) COVERED ACTIVITIES.—(1) Except as provided in paragraph (2), financial assistance may be provided for the performance of an activity by the Army National Guard under subsection (a) only if—

(A) the activity is carried out in the performance of a responsibility of the Secretary of the Army under paragraph (6), (10), or (11) of section 3013(b) of title 10; and

(B) the Army National Guard was selected to perform the activity under competitive procedures that permit all qualified public-sector and private-sector sources to submit offers and be considered for selection to perform the activity on the basis of the offers, subject to the exceptions provided in section 2304(c) of title 10.

(2) Paragraph (1)(B) does not apply to an activity that, on October 17, 1998, was performed for the Federal Government by employees of the Federal Government or employees of a State.

(c) DISBURSEMENT THROUGH NATIONAL GUARD BUREAU.—The Secretary of the Army shall disburse any contribution under this section through the Chief of the National Guard Bureau.

(d) AVAILABILITY OF FUNDS.—Funds appropriated for the Army for a fiscal year are available for providing financial assistance under this section in support of activities carried out by the Army National Guard during that fiscal year.

§ 114. Funeral honors functions at funerals for veterans

Subject to such regulations and restrictions as may be prescribed by the Secretary concerned, the performance of funeral honors functions by members of the National Guard at funerals for veterans of the armed forces may be treated by the Secretary concerned as a Federal function for which appropriated funds may be used. Any such performance of funeral honors functions at such a funeral may not be considered to be a period of drill or training, but may be performed as funeral honors duty under section 115 of this title.

§ 115. Funeral honors duty performed as a Federal function

(a) ORDER TO DUTY.—A member of the Army National Guard of the United States or the Air National Guard of the United States may be ordered to perform funeral honors duty, with the consent of the member, to prepare for or perform funeral honors functions at a funeral of a veteran under section 1491 of title 10. However, a mem-
member of the Army National Guard of the United States or the Air National Guard of the United States may not be ordered to perform funeral honors functions under this section without the consent of the Governor or other appropriate authority of the State concerned. Performance of funeral honors duty by such a member not on active duty or full-time National Guard duty shall be treated as inactive-duty training (including with respect to travel to and from such duty) for purposes of any provision of law other than sections 206 and 435 of title 37.

(b) SERVICE CREDIT.—A member ordered to funeral honors duty under this section shall be required to perform a minimum of two hours of such duty in order to receive—

(1) service credit under section 12732(a)(2)(E) of title 10; and

(2) as directed by the Secretary concerned, either—

(A) the allowance under section 435 of title 37; or

(B) compensation under section 206 of title 37.

(c) REIMBURSABLE EXPENSES.—A member who performs funeral honors duty under this section may be reimbursed for travel and transportation expenses incurred in conjunction with such duty as authorized under chapter 7 of title 37 if such duty is performed at a location 50 miles or more from the member’s residence.

(d) REGULATIONS.—The exercise of authority under subsection (a) is subject to regulations prescribed by the Secretary of Defense.


Amendments

2001—Subsec. (a). Pub. L. 107–107 inserted at end “Performance of funeral honors duty by such a member not on active duty or full-time National Guard duty shall be treated as inactive-duty training (including with respect to travel to and from such duty) for purposes of any provision of law other than sections 206 and 435 of title 37.”

2000—Subsec. (b)(2). Pub. L. 106–398 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “If authorized by the Secretary concerned, the allowance under section 435 of title 37.”

Effective Date of 2001 Amendment

Amendment by Pub. L. 107–107 applicable to funeral honors duty performed on or after Oct. 30, 2000, see section 562(c) of Pub. L. 107–107, set out as a note under section 12503 of Title 10, Armed Forces.

Effective Date of 2000 Amendment

Amendment by Pub. L. 106–398 applicable with respect to funeral honors duty performed on or after Oct. 1, 2000, see section 1 [div. A], title V, § 575(c) of Pub. L. 106–398, set out as a note under section 12503 of Title 10, Armed Forces.

CHAPTER 3—PERSONNEL

Sec. 301. Federal recognition of enlisted members.

302. Enlistments, reenlistments, and extensions.

303. Active and inactive enlistments and transfers.
§ 301. Federal recognition of enlisted members

To be eligible for Federal recognition as an enlisted member of the National Guard, a person must have the qualifications prescribed by the Secretary concerned for the grade, branch, position, and type of unit or organization involved. He becomes federally recognized upon enlisting in a federally recognized unit or organization of the National Guard.

(Aug. 10, 1956, ch. 1041, 70A Stat. 601.)

HISTORICAL AND REVISION NOTES

Revised section Source (U.S. Code) Source (Statutes at Large)
301 ........ 50:113(a) (as applicable to enlisted members). July 9, 1952, ch. 608, §703(a) (as applicable to enlisted members), 66 Stat. 502.

§ 302. Enlistments, reenlistments, and extensions

(a) Under regulations to be prescribed by the Secretary concerned, original enlistments in the National Guard may be accepted for—

(1) any specified term, not less than three years, for persons who have served in an armed force; or

(2) any specified term, not less than one year, for persons who have served in any armed force.

(b) Under regulations to be prescribed by the Secretary concerned, reenlistment in the National Guard may be extended—

(1) under regulations to be prescribed by the Secretary concerned, at the request of the member, for any period not less than six months; or

(2) by proclamation of the President, if Congress declares an emergency, until six months after termination of that emergency.


HISTORICAL AND REVISION NOTES

Revised section Source (U.S. Code) Source (Statutes at Large)
302 ........ 32:124.


32:124 (1st proviso) is omitted as executed. The word ‘‘reenlistments’’ is substituted for the words ‘‘subsequent enlistments’’.

AMENDMENTS

1961—Pub. L. 87–378 permitted original enlistments for any specified term, not less than three years, for persons who have not served in an armed force, authorized reenlistments for any specified period, or if the person last served in one of the highest five enlisted grades, for an unspecified period, extensions of enlistments or reenlistments at the request of the member for any period not less than six months after termination of the emergency.

EFFECTIVE DATE OF 1961 AMENDMENT

Section 6 of Pub. L. 87–378 provided that: ‘‘The amendments made by sections 3, 4, and 5 of this Act [amending this section and sections 3261 and 8261 of Title 10, Armed Forces] shall not affect any enlistment, reenlistment, or appointment entered into or made before the effective date of this Act [Oct. 4, 1961].’’

§ 303. Active and inactive enlistments and transfers

(a) Under regulations to be prescribed by the Secretary of the Army, a person qualified for enlistment in the active Army National Guard may be enlisted in the inactive Army National Guard for a single term of one or three years. Under regulations prescribed by the Secretary of the Air Force, a person qualified for enlistment in the active Air National Guard may be enlisted in the inactive Air National Guard for a single term of one or three years.

(b) Under such regulations as the Secretary of the Army may prescribe, an enlisted member of the active Army National Guard, not formerly enlisted in the inactive Army National Guard, may be transferred to the inactive Army National Guard. Under such regulations as the Secretary of the Air Force may prescribe, an enlisted member of the active Air National Guard, not formerly enlisted in the inactive Air National Guard, may be transferred to the inactive Air National Guard.

(c) In time of peace, no enlisted member may be required to serve for a period longer than that for which he enlisted in the active or inactive National Guard.


HISTORICAL AND REVISION NOTES

Revised section Source (U.S. Code) Source (Statutes at Large)
303(a) ...... 32:122.
303(b) ...... 32:133 (less proviso).
303(c) ...... 32:154 (1st 36 words of last par.).
303(d) ...... 32:133 (proviso).

June 3, 1916, ch. 134, §78 (1st and 2d sentences); restated June 4, 1920, ch. 227, subch. 1, §42 (less proviso); restated Feb. 28, 1925, ch. 371, §2 (1st and 2d sentences); restated June 15, 1933, ch. 87, §15 (1st and 2d sentences); 48 Stat. 156; July 9, 1952, ch. 608, §100(c), 66 Stat. 507.


In subsection (a), 32:132 (last 23 words) is omitted as covered by section 304 of this title.
In subsection (b), the words “Under such regulations as the Secretary may prescribe” are substituted for the word “likewise”. In subsection (c), the words “in the inactive * * * National Guard” are substituted for the words “not on the active list”, since there is no active list prescribed for the National Guard.

In subsection (d), the words “under any enlistment” are omitted as surplusage.

**AMENDMENTS**


1962—Subsec. (c). Pub. L. 87–649 repealed subsec. (c) which provided that a person enlisted in inactive Army National Guard or inactive Air National Guard is not entitled to pay under section 301 of title 37.

**EFFECTIVE DATE OF 1980 AMENDMENT**


**EFFECTIVE DATE OF 1962 AMENDMENT**

Amendment by Pub. L. 87–649 effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as an Effective Date Note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

§ 304. Enlistment oath

Each person enlisting in the National Guard shall sign an enlistment contract and subscribe to the following oath:

“I do hereby acknowledge to have voluntarily enlisted this day of , 19 , in the National Guard of the State of for a period of year(s) under the conditions prescribed by law, unless sooner discharged by proper authority.

“I , do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and of the State of against all enemies, foreign and domestic; that I will bear true faith and allegiance to them; and that I will obey the orders of the President of the United States and the Governor of and the orders of the officers appointed over me, according to law and regulations. So help me God.”

The oath may be taken before any officer of the National Guard of the State or Territory, or of Puerto Rico, or the District of Columbia, as the case may be, or before any other person authorized by the law of the jurisdiction concerned to administer oaths of enlistment in the National Guard.


**HISTORICAL AND REVISION NOTES**

1956 ACT

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<th>Revised section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
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<tr>
<td>304 [2123]</td>
<td>32:123.</td>
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The words “or affirmation” are omitted as covered by the definition of the word “oath” in section 1 of title 5.

1. The words “Each person” are substituted for the word “Men”. The words “National Guard” are substituted for the words “National Guard (Air National Guard)”.

**AMENDMENTS**


1962—Pub. L. 87–751 substituted “support and defend the Constitution of the United States and of the State of ___ against all enemies, foreign and domestic; that I will bear true faith and allegiance to them___ for “bear true faith and allegiance to the United States of America and to the State of ___: That I will serve them honestly and faithfully against all their enemies whomsoever” and inserted “So help me God.”

**EFFECTIVE DATE OF 1962 AMENDMENT**

Amendment by Pub. L. 87–751 not to effect any oath taken before one year after Oct. 5, 1962, see section 3 of Pub. L. 87–751, set out as a note under section 502 of Title 10, Armed Forces.

§ 305. Federal recognition of commissioned officers: persons eligible

(a) The following categories are eligible for Federal recognition as commissioned officers of the National Guard:

(1) Members of the National Guard.

(2) Members of the armed forces.

(3) Former officers of the armed forces.

(4) Former enlisted members of the armed forces who were discharged honorably or under honorable conditions.

(5) Graduates of the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, the United States Coast Guard Academy, or the United States Merchant Marine Academy.

(6) Graduates of a school, college, university, or officer’s training camp who received military instruction under the supervision of a commissioned officer of the Regular Army or the Regular Air Force, and whose fitness for appointment has been certified by that officer.

(7) Civilians who are specially qualified for duty in a technical or staff branch or organization.

(b) To be eligible for Federal recognition under this section with a view to serving as a nurse, a person must be a graduate of a hospital or university training school and a registered nurse.


**HISTORICAL AND REVISION NOTES**

1956 ACT

<table>
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<th>Revised section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
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<tr>
<td>305 [2111]</td>
<td>32:111 (less 37th through 54th words).</td>
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The word “individual” is inserted for clarity to distinguish the individual Federal recognition that is necessary to membership as an officer from the general...
Federal recognition that is necessary to all membership in the National Guard (see section 301 of this title).

The words “June 4, 1920” are omitted as obsolete. The words “‘persons commissioned’ * * * shall not be recognized as such under any of the provisions of this title unless they shall have been selected from the following classes”.

In clause (2), the words “reserve officers” are omitted as covered by the words “members of the Army, Navy, Air Force, or Marine Corps”.

In clause (4), the words “under honorable conditions” are inserted for clarity.

In clause (5), the words “the United States Air Force Academy” are inserted to reflect the establishment of that institution by the Air Force Academy Act (68 Stat. 47).

In clause (7), the words “‘staff branch’” are substituted for the words “Staff Corps and departments”.

§ 307

TITLED 32—NATIONAL GUARD

Page 18

The words “who are citizens of the United States” are omitted as covered by section 313(b) of this title. The words “with a view to serving” are substituted for the words “and have the physical and other qualifications prescribed by the Secretary of the Army” and section 3 of the source statute are omitted as covered by section 307(a)(2) of this title. The applicability of section 3 of the source statute to section 1 of the source statute is omitted as unnecessary.

AMENDMENTS


Subsec. (a)(5). Pub. L. 108–375, § 505(2), substituted “the United States Air Force Academy; or the United States Coast Guard Academy” for “the United States Air Force Academy”.

1967—Subsec. (a). Pub. L. 90–130, § 2(1)(A), struck out provision that, except as provided in subsec. (b), only male persons from the enumerated categories were eligible for Federal recognition as commissioned officers of the National Guard.

Subsec. (b). Pub. L. 90–130, § 2(1)(B), (C), struck out provision that women are eligible for Federal recognition as commissioned officers of the National Guard, with a view to serving as nurses or medical specialist, and substituted “person” for “woman” in description of the individual who must be a graduate of a hospital or university training school and a registered nurse in order to be eligible for Federal recognition under this section with a view to serving as a nurse.

1958—Subsec. (a). Pub. L. 85–861, § 2(5)(A), designated existing provisions as subsec. (a) and substituted “Except as provided in subsection (b), only male persons” for “Only persons”.


§ 307. Federal recognition of officers: examination; certificate of eligibility

(a) To be eligible for Federal recognition as an officer of the National Guard, a person must—

(1) receive an appointment with a view to filling a vacancy in a federally recognized unit or organization of the National Guard;

(2) have the qualifications prescribed by the Secretary concerned for the grade, branch, position, and type of unit or organization involved; and

(3) except as provided in subsections (d) and (e) of this section, pass an examination for physical, moral, and professional fitness to be prescribed by the President, and subscribe to the oath of office prescribed by section 312 of this title.

(b) The examination prescribed by subsection

(a)—

(1) shall be conducted, for the Army National Guard, by a board of three commissioned officers designated by the Secretary of the Army from members of the Regular Army or the Army National Guard of the United States, or both, and for the Air National Guard, by a board of three commissioned officers designated by the Secretary of the Air Force from members of the Regular Air Force or the Air National Guard of the United States, or both; and

(2) may be held before original appointment or promotion.

(c) If such a board finds a person qualified, the Chief of the National Guard Bureau may issue to him a certificate of eligibility for Federal recognition for the office for which he was found qualified. If he is originally appointed or promoted within two years to that office, he is entitled to Federal recognition without further examination, except as to physical condition.

(d) Subject to subsection (a)(1) and (2) and to such physical examination as may be prescribed, Federal recognition shall be extended to each officer of the Army Reserve who has qualified for appointment as an officer of the Army National Guard in his reserve grade. Similarly, Federal recognition shall be extended to each officer of the Air Force Reserve who has qualified for appointment as an officer of the Air National Guard.

Federal recognition extended under this subsection is effective from the date of appointment in the Army National Guard or the Air National Guard, as the case may be.

(e) Subject to subsection (a)(1) and (2), Federal recognition shall be extended to each officer of the Air Force Reserve who is appointed in a commissioned grade in the Air National Guard to fill a vacancy, if on the date on which he is appointed his reserve grade is the same as the grade in which he is appointed or his name is on a recommended list for promotion to that reserve grade.

(f) Federal recognition extended under subsection (d) or (e) is effective from the date of appointment in the Army National Guard or the Air National Guard, as the case may be.

### Historical and Revision Notes

#### 1956 ACT

<table>
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<tr>
<th>Revised section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
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<tbody>
<tr>
<td>307(a) ........</td>
<td>32:113 (1st sentence).</td>
<td>June 3, 1956, ch. 134, §74 (38th through 56th words); restated June 4, 1920, ch. 227, subch. 1, 41:7, §1.</td>
</tr>
<tr>
<td>307(b) .......</td>
<td>32:113 (2d sentence and 1st 24 words of 2d sentence).</td>
<td>June 3, 1956, ch. 134, §75, restated June 15, 1933, ch. 87, §12, 48 Stat. 158; July 9, 1932, ch. 608, §603 (10th par.).</td>
</tr>
<tr>
<td>307(c) .......</td>
<td>32:113 (3d sentence, less 1st 24 words).</td>
<td>July 9, 1952, ch. 608, §703(a) (as applicable to officers), 703(a) (less last 39 words), 68 Stat. 502.</td>
</tr>
<tr>
<td>307(d) .......</td>
<td>50:1115(a) (less last 39 words).</td>
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</table>

In subsection (b), the words “prescribed by subsection (a)” are substituted for the words “to determine such qualifications for appointment”. The word “designated” is substituted for the word “appointed”, since the filling of the positions involved is not an appointment to office in the constitutional sense. The words “of an individual as an officer or warrant officer” are omitted as surplusage.

(c) The word “originally” is inserted for clarity. The words “If such a board finds a person” are substituted for the words “if the applicant has been found”. The words “for individual Federal recognition for the office for which he was found qualified” are inserted for clarity. The words “that office” are substituted for the words “the office for which he was found qualified”.

In subsection (d), the words “Notwithstanding the provisions of section 113 of Title 32” are omitted as covered by the words of exception in revised subsection (a). The words “Subject to subsection (a)(1) and (2)” are inserted, since 50:1113(a) (less last 39 words) was not an exception to that part of 50:1113 relating to qualifications prescribed by the Secretary, or to the requirement that only members of federally recognized units can be federally recognized. The words “in his reserve grade” are substituted for the words “in the same grade in which he is appointed as a Reserve officer of the appropriate Armed Force of the United States”. The last sentence is inserted for clarity.

#### 1958 ACT

<table>
<thead>
<tr>
<th>Section of title 32</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
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<tbody>
<tr>
<td>307(c) .......</td>
<td>50:1349(b) (less 1st sentence, and less 36th through 50th words of 2d sentence).</td>
<td></td>
</tr>
<tr>
<td>307(f) .......</td>
<td>50:1349(b) (36th through 56th words of 2d sentence).</td>
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</table>

In subsection (e), the words “to subsection (a)(1) and (2)” are inserted, since 50:1349(b) was not an exception to that part of 50:1113 relating to qualifications prescribed by the Secretary, or to the requirement that only members of federally recognized units can be federally recognized. The words “without the examination prescribed in section 113 of Title 32” are omitted as covered by the words of exception in revised subsection (a). The last 37 words are substituted for 50:1349(b) (last 29 words of 2d sentence; and last sentence).

### Amendments

1994—Subsec. (a)(3). Pub. L. 103-337 struck out “and sections 8365 and 8366 of title 10” after “of this section”.

1980—Subsec. (g). Pub. L. 96-535 struck out subsec. (g) which prohibited extension of Federal recognition to members of the Virgin Islands National Guard in any grade above colonel.


1958—Subsec. (a)(3). Pub. L. 85-861, §2(b)(A), substituted “sections (d) and (e) of this section and sections 8365 and 8366 of title 10” for “subsection (d)”.

Subsecs. (e), (f). Pub. L. 85-861, §2(b)(B), added subsecs. (e) and (f).

### Effective Date of 1994 Amendment

Amendment by Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as an Effective Date note under section 10001 of Title 10, Armed Forces.

### Suspension of Subsection (e) of This Section

For authority of the President to suspend subsec. (e) of this section in time of war or emergency declared by Congress, see section 111 of this title.

#### §308. Federal recognition of officers: temporary recognition

(a) The Secretary of the Army may authorize temporary Federal recognition as an officer of the Army National Guard to any person who has passed the examination prescribed in section 307(b) of this title, pending his appointment as a reserve officer of the Army. The Secretary of the Air Force may do likewise for a person who has passed that examination pending his appointment as a reserve officer of the Air Force. Temporary recognition so extended may be withdrawn at any time. If not sooner withdrawn or replaced by permanent recognition upon appointment as a reserve officer in the same grade, it terminates one year after its effective date.

(b) To be eligible for temporary Federal recognition under subsection (a), a person must take an oath that during the period of temporary recognition he will perform his Federal duties as if he had been appointed as a reserve officer of the Army or the Air Force, as the case may be.


### Historical and Revision Notes

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<tr>
<th>Revised section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
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<tbody>
<tr>
<td>308(b) .......</td>
<td>50:1114 (3d sentence).</td>
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In subsection (a), the words “by regulations” are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions. The words “as an officer of the Army National Guard to any person” are substituted for the words “to any officer of the National Guard or Air National Guard”. The second sentence is inserted for clarity. The words “successfully”, “final determination of his eligibility for, and”, “in the grade concerned”, and “automatically” are omitted as surplusage. 50:1114 (proviso of last sentence) is omitted as surplusage.

In subsection (b), the words “To be eligible for temporary Federal recognition under subsection (a), a person” are substituted for the words “However, a temporary extension of Federal recognition shall be granted only when the office”. The words “the period of temporary recognition” are substituted for the words “such recognition”. The words “and obligations required of him” and “in the same grade” are omitted as surplusage.

### Amendments

§ 309. Federal recognition of National Guard officers: officers promoted to fill vacancies

Each officer of the National Guard who is promoted to fill a vacancy in a federally recognized unit of the National Guard, and who has been on the reserve active-duty list or the active-duty list of the Army or the Air Force for at least one year and has completed the minimum years of service in grade specified in section 14303 of title 10, shall be examined for Federal recognition in the grade to which the officer is promoted.


HISTORICAL AND REVISION NOTES

Revised Source (U.S. Code) Source (Statutes at Large)

The words “authorized under section 1227(a) of this title” are omitted as surplusage.

AMENDMENTS

1994—Pub. L. 103–337 substituted “National Guard officers: officers” for “officers: Army National Guard; officers” in section catchline and amended text generally. Prior to amendment, text read as follows: “Each officer of the Army National Guard who is promoted to fill a vacancy in a federally recognized unit thereof, and who is eligible for promotion under section 3363(b) of title 10, shall be examined for Federal recognition in the grade to which he is promoted. However, a second lieutenant or first lieutenant of the Army National Guard who has served creditably for at least one year in a position prescribed to be filled by a captain, and who has not previously been federally recognized under this section, may be examined for Federal recognition in the next higher grade without regard to section 3363(b) of title 10.”

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Oct. 1, 1996, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of Title 10, Armed Forces.

SUSPENSION OF THIS SECTION

For authority of the President to suspend this section in time of war or emergency declared by Congress, see section 111 of this title.

§ 310. Federal recognition of National Guard officers: automatic recognition

(a) Notwithstanding sections 307 and 309 of this title, if a second lieutenant of the National Guard is promoted to the grade of first lieutenant to fill a vacancy in a federally recognized unit in the National Guard, Federal recognition is automatically extended to that officer in the grade in which the officer is so appointed in the National Guard if the officer has been recommended for promotion under chapter 1405 of title 10 and has remained in an active status since the officer was so recommended. The extension of Federal recognition under this subsection is effective as of the date when the officer is appointed in the National Guard.


HISTORICAL AND REVISION NOTES

Revised Source (U.S. Code) Source (Statutes at Large)
310(a) ...... 50:1252 (less (2)). Sept. 3, 1954, ch. 1257, §139, 68 Stat. 1160.
310(b) ...... 50:1252(2).

In subsections (a) and (b), the words “federally recognized” are inserted for clarity.

In subsection (a), the words “or the date of the promotion, whichever is later” are omitted as inconsistent with section 3362(b) of title 10, requiring the discharge of each second lieutenant who is not promoted by the time he has three years of service. (See opinion of the Judge Advocate General of the Army (JAGA 1957/1019, Jan. 7, 1957).)

AMENDMENTS

1994—Pub. L. 103–337 substituted “National Guard officers: officers” for “officers: Army National Guard;” in section catchline and amended text generally. Prior to amendment, text read as follows: “(a) Notwithstanding sections 307 and 309 of this title, if a second lieutenant of the Army National Guard is promoted to the grade of first lieutenant to fill a vacancy in a federally recognized unit thereof, Federal recognition is automatically extended to him in the grade of first lieutenant, effective as of the date on which he completes three years of service computed under section 3360(a) of title 10.

“(b) Notwithstanding sections 307 and 309 of this title, if an officer of the Army Reserve in a reserve grade above second lieutenant is appointed in the next higher grade in the Army National Guard to fill a vacancy in a federally recognized unit thereof, Federal recognition is automatically extended to him in the grade in which he is so appointed in the Army National Guard, if he has been recommended for promotion to the grade concerned under section 3366, 3367, 3370, or 3383 of title 10 and has remained in an active status since he was so recommended. The extension of Federal recognition under this subsection is effective as of the date when the officer is appointed in the Army National Guard.”

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of Title 10, Armed Forces.

SUSPENSION OF THIS SECTION

For authority of the President to suspend this section in time of war or emergency declared by Congress, see section 111 of this title.

§ 312. Appointment oath

Each person who is appointed as an officer of the National Guard shall subscribe to the following oath:

“I, , do solemnly swear (or affirm) that I will support and defend the Con-
stitution of the United States and the Constitution of the State of against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will obey the orders of the President of the United States and of the Governor of the State of , that I make this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office of in the National Guard of the State of upon which I am about to enter, so help me God.''

(Aug. 10, 1956, ch. 1041, 70A Stat. 603.)

**HISTORICAL AND REVISION NOTES**

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<th>Source (U.S. Code)</th>
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The words “Each person who is appointed as an” are inserted for clarity.

§ 313. Appointments and enlistments: age limitations

(a) To be eligible for original enlistment in the National Guard, a person must be at least 17 years of age and under 45, or under 64 years of age and a former member of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps. To be eligible for reenlistment, a person must be under 64 years of age.

(b) To be eligible for appointment as an officer of the National Guard, a person must—

1. be a citizen of the United States; and
2. be at least 18 years of age and under 64.


**HISTORICAL AND REVISION NOTES 1956 ACT**

<table>
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<tr>
<th>Revised section</th>
<th>Source (U.S. Code)</th>
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<tr>
<td>312(b)</td>
<td>32:4 (less 22 words before proviso)</td>
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</table>

In subsection (a), 32:4 (1st 19 words) is omitted as covered by section 101(3) and (5) of this title. 32:4 (54th through 62d words) is omitted as surplusage. The words “under 64” are substituted for the words “not more than sixty-four” to conform to an opinion of the Judge Advocate General of the Army (JAGA 1953/9033, 3 Dec. 1953). The word “Regular” is inserted before the words “Navy” and “Marine Corps.” The words “Regular Air Force” are inserted to complete the coverage of the revised section. The word “reenlistment” is substituted for the words “subsequent enlistment.”

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**AMENDMENTS 1956—Subsec. (b)(3). Pub. L. 90–130 struck out cl. (3) which inserted requirement that women appointed with a view to serving as a nurse or medical specialist be at least 21 years of age and under 64 years of age in order to be eligible for appointment as an officer of the National Guard. 1958—Subsec. (b). Pub. L. 85–861 inserted qualifications for appointment of women with a view to serving as nurses or medical specialists.

§ 314. Adjutants general

(a) There shall be an adjutant general in each State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, and the Virgin Islands. He shall perform the duties prescribed by the laws of that jurisdiction.

(b) The President shall appoint the adjutant general of the District of Columbia and prescribe his grade and qualifications.

(c) The President may detail as adjutant general of the District of Columbia any retired commissioned officer of the Regular Army or the Regular Air Force recommended for that detail by the commanding general of the District of Columbia National Guard. An officer detailed under this subsection is entitled to the basic pay and allowances of his grade.

(d) The adjutant general of each State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, and the Virgin Islands, and officers of the National Guard, shall make such returns and reports to the Secretary of the Army or the Secretary of the Air Force may prescribe, and shall make those returns and reports to the Secretary concerned or to any officer designated by him.


**HISTORICAL AND REVISION NOTES**

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In subsection (a), the word “appointed” is omitted, since the position is not filled by appointment in some cases. The Act of January 21, 1903, ch. 196, §12 (last 48 words of 1st sentence) are not contained in 32:11. They are also omitted from the revised section as covered by subsection (d) of this section.

In subsection (b), the word “grade” is substituted for the word “rank.” The words “To be eligible for appointment as * * * a person must be” are substituted for the words “each * * * shall be.” The words “of that jurisdiction” are substituted for the words “of the Territory for which he is appointed.”
§ 315. Detail of regular members of Army and Air Force to duty with National Guard

(a) The Secretary of the Army shall detail commissioned officers of the Regular Army to duty with the Army National Guard of each State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, and the Virgin Islands. The Secretary of the Air Force shall detail commissioned officers of the Regular Air Force to duty with the Air National Guard of each State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, and the Virgin Islands. With the permission of the President, the Secretary of the Army may detail enlisted members of the Regular Army for duty with the Army National Guard of each State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, and the Virgin Islands. The Secretary of the Air Force may detail enlisted members of the Regular Air Force for duty with the Air National Guard of each State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, and the Virgin Islands. When any part of the National Guard that is not in Federal service participates in an encampment, maneuver, or other exercise for instruction, together with troops in Federal service, the command of the post, air base, or other place where it is held, and of the troops in Federal service on duty there, remains with the officers in Federal service who command that place and the Federal troops on duty there, without regard to the rank of the officers of the National Guard not in Federal service who are temporarily participating in the exercise.

(b) The Secretary of the Army shall detail commissioned officers of the Regular Army to duty with the Army National Guard of each State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, and the Virgin Islands. The Secretary of the Air Force shall detail commissioned officers of the Regular Air Force to duty with the Air National Guard of each State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, and the Virgin Islands. When any part of the National Guard that is not in Federal service participates in an encampment, maneuver, or other exercise for instruction, together with troops in Federal service, the command of the post, air base, or other place where it is held, and of the troops in Federal service on duty there, remains with the officers in Federal service who command that place and the Federal troops on duty there, without regard to the rank of the officers of the National Guard not in Federal service who are temporarily participating in the exercise.

In subsection (c), the word “Regular” is inserted as an implication of 10:986 (last 2 words). The words “commanding general” are substituted for the words “brigadier general commanding”, since the commanding general might hold another grade.

The words “basic pay” are substituted for the words “active service pay” to conform to section 201 of the Career Compensation Act of 1949, 63 Stat. 805 (37 U.S.C. 232). The word “grade” is substituted for the word “rank”.

In subsection (d), the words “at such times and in such form” are omitted as covered by the words “such returns and reports as the Secretary *** may prescribe”.

AMENDMENTS


1991—Subsec. (b). Pub. L. 102–190 struck out “each Territory and” before “the District of Columbia” in first sentence, and struck out at end “To be eligible for appointment as adjutant general of a Territory a person must be a citizen of that jurisdiction.”

1990—Subsec. (d). Pub. L. 101–510 struck out at end “Each Secretary shall send with his annual report to Congress an abstract of the returns and reports of the adjutants general and such comments as he considers necessary for the information of Congress.”


HISTORICAL AND REVISION NOTES

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<tr>
<td>315(a) .........</td>
<td>32:183.</td>
<td>June 3, 1916, ch. 134, §113</td>
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<tr>
<td>316 ...........</td>
<td>32:183.</td>
<td>June 3, 1916, ch. 134, §113</td>
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The word “civilians” is substituted for the word “citizenry”. The word “capable” is omitted as surplusage.

§ 317. Command during joint exercises with Federal troops

When any part of the National Guard that is not in Federal service participates in an encampment, maneuver, or other exercise for instruction, together with troops in Federal service, the command of the post, air base, or other place where it is held, and of the troops in Federal service on duty there, remains with the officers in Federal service who command that place and the Federal troops on duty there, without regard to the rank of the officers of the National Guard not in Federal service who are temporarily participating in the exercise.

(Aug. 10, 1956, ch. 1041, 70A Stat. 605.)

HISTORICAL AND REVISION NOTES

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The words “not in Federal service” are inserted to show that the revised section applies only to joint exercises involving National Guard troops not in Federal service, since 32:72 was enacted before the establishment of the National Guard of the United States, in
1933. The words “troops in Federal service” are substituted for the words “troops of the United States”. The words “officers in Federal service who command” are substituted for the words “commander of the United States troops”. The words “post, air base, or other place” are substituted for the words “military post, or reservation, or elsewhere”. The words “that place and the Federal troops on duty there” are substituted for the words “there or elsewhere” The words “including outdoor target practice” and “field and coast defense instruction” are omitted as surplusage.


Section 319, act Aug. 10, 1956, ch. 1041, 70A Stat. 605, related to compensation for members of National Guard for disablment during training when not coverd by section 318 of this title.

Section 320, act Aug. 10, 1956, ch. 1041, 70A Stat. 606, related to hospitalization ordered by Secretary of Army or Air Force for members of National Guard.


Effective Date of Repeal

Repeal applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die, see section 604(g) of Pub. L. 99–661, set out as an Effective Date of 1986 Amendment note under section 1074a of Title 10, Armed Forces.

§ 322. Discharge of enlisted members

(a) An enlisted member of the National Guard shall be discharged when—

(1) he becomes 64 years of age; or

(2) his Federal recognition is withdrawn.

(b) An enlisted member who is discharged from the National Guard is entitled to a discharge certificate similar in form and classification to the National Guard certificate prescribed by the Secretary of the Army or the Air Force, as the case may be.

(c) In time of peace, an enlisted member of the National Guard may be discharged before his enlistment expires, under such regulations as may be prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be.

(Aug. 10, 1956, ch. 1041, 70A Stat. 606.)

HISTORICAL AND REVISION NOTES

Revised section Source (U.S. Code) Source (Statutes at Large)

322(a) ....... 32:125 (last par., less last 25 words).

322(b) ...... 32:129 (less last 27 words).

322(c) ...... 32:129 (last 27 words).

June 3, 1936, ch. 134, § 72, restated June 4, 1930, ch. 297, subch. I, § 46; restated June 15, 1933, ch. 87, § 10, 48 Stat. 197; July 9, 1942, ch. 608, § 606(d), 66 Stat. 507; June 3, 1936, ch. 134, § 110 (last par., less last 30, and last 25 words); restated Sept. 22, 1922, ch. 423, § 16 (last par., less last 30, and last 137 words); restated May 12, 1928, ch. 529 (less last 30, and last 25 words), 45 Stat. 500.

Subsection (a) is substituted for 32:154 (last par., less last 26, and last 26 words) to reflect an opinion of the Judge Advocate General of the Army (JAGA 1953-9033, 3 Dec. 1953).

In subsection (b), the words “is entitled to a discharge certificate similar in form and classification to the corresponding certificate” are substituted for the words “shall receive a discharge in writing in such form and with such classification as is or shall be”. The words “service in” are omitted as surplusage.

In subsection (c), the words “his enlistment expires” are substituted for the words “the expiration of terms of enlistment”.

§ 323. Withdrawal of Federal recognition

(a) Whenever a member of the National Guard ceases to have the qualifications prescribed under section 301 of this title or ceases to be a member of a federally recognized unit or organization of the National Guard, his Federal recognition shall be withdrawn.

(b) Under regulations to be prescribed by the President, the capacity and general fitness of an officer of the National Guard for continued Federal recognition may be investigated at any time by an efficiency board composed of commissioned officers of—

(1) the Regular Army or the Army National Guard of the United States, or both, who outrank him and who are detailed by the Secretary of the Army, if he is a member of the Army National Guard; or

(2) the Regular Air Force or the Air National Guard of the United States, or both, who outrank him and who are detailed by the Secretary of the Air Force, if he is a member of the Air National Guard.

If the findings of the board are unfavorable to the officer and are approved by the President, his Federal recognition shall be withdrawn.

(c) If a member of the Army National Guard of the United States or the Air National Guard of the United States is transferred to the Army Reserve or the Air Force Reserve, as the case may be, under section 12105, 12213(a), or 12214(a) of title 10, his Federal recognition is withdrawn.

(d) The Federal recognition of a reserve commissioned officer of the Army or the Air Force who is—

(1) federally recognized as an officer of the National Guard; and

(2) subject to involuntary transfer to the Retired Reserve, transfer to an inactive status list, or discharge under chapter 1407, 1409, or 1411 of title 10;

shall, if not sooner withdrawn, be withdrawn on the date of such involuntary transfer or discharge.

§ 324

HISTORICAL AND REVISION NOTES 1956 ACT

323(a) ... 32:154 (last 26 words of last par.).
323(b) ... 32:115 (last sentence, and last 24 words of 2d sentence).
323(c) ... 50:1116 (last 15 words of last sentence).

June 3, 1936, ch. 134, §76 (1st sentence, and 1st 24 words of 2d sentence); reconstituted June 15, 1935, ch. 87, §13 (1st sentence, and 1st 24 words of 2d sentence), 48 Stat. 158.

In subsection (a) the words “ceases to have the qualifications prescribed under section 300 of this title” are substituted for 32:154 (last 26 words of last par.), since it is implicit that a member who could not be paid would lose his federally recognized status (see JAGA 1933/9033, 3 Dec. 1953). The last 23 words of subsection (a) are inserted as a necessary implication of the rule stated in section 300(c) of this title.

In subsection (b), the words “or warrant officer” are omitted, since section 1019 of this title defines “officer” to include warrant officers. The word “detailed” is substituted for the word “appointed”, since the filling of the positions involved is not appointment to an office in the constitutional sense. The word “commissioned” is inserted after the words “composed of”, since the word “officer” alone, in 32:115, referred to a commissioned officer only (see opinion of the Judge Advocate General of the Army (JAGA 1953/4078, 6 May 1953)). The words “who outrank him” are substituted for the words “senior in rank to the officer under investigation”.

In subsection (c), the opening clause is substituted for the words “such transfer”. The words “his Federal recognition is withdrawn” are substituted for the words “shall terminate his federally recognized National Guard or Air National Guard status”.

§ 324. Discharge of officers; termination of appointment

1958 ACT

323(d) ... 50:1261 (as applicable to Federal recognition).
323(e) ... 50:1324 (as applicable to Federal recognition).

Sept. 3, 1954, ch. 1257, §1237; §1234 (as applicable to Federal recognition), 68 Stat. 1161, 1181.

The change in subsection (b)(1) and (2) is necessary to extend the efficiency board commissioned officers of the Army Reserve or Air Force Reserve, in accordance with the source law, the first sentence of section 76 of the Act of June 3, 1916, chapter 134 (formerly 32 U.S.C. 115 (1st sentence)).

In subsection (d), the words “notwithstanding section 115 of title 32” are omitted as surplusage.
In subsection (e), the words “if appropriate” are omitted as surplusage.

AMENDMENTS

1954—Subsec. (d). Pub. L. 83-337, §1676(a)(3), substituted “12105, 12213(a), or 12214(a)” for “3259, 3325(a), 8259, or 8332(a)”. Subsecs. (d), (e). Pub. L. 103-337, §1630(2), added subsec. (d) and struck out former subsecs. (d) and (e) which read as follows:

“(d) Except as provided in sections 1005 and 1006 of title 10, the Federal recognition of a second lieutenant of the National Guard who is discharged under section 8320(c) of title 10 for failure of promotion shall be withdrawn on the date of that discharge.”

“(e) Except as provided in sections 1005 and 1006 of title 10, the Federal recognition of a reserve officer of the Air Force who is not recommended for promotion under section 8368(c)(1) or (2) of title 10, or who is found to be not qualified for Federal recognition under section 8368(d) or (e) of title 10, shall be withdrawn.”

1956—Subsec. (b)(1). Pub. L. 85-861, §33(c)(2), substituted “the Regular Army or the Army National Guard of the United States, or both” for “a regular or reserve component of the Air Force”.
Subsec. (b)(2). Pub. L. 85-861, §33(c)(2), substituted “the Regular Air Force or the Air National Guard of the United States, or both” for “a regular or reserve component of the Air Force”.
Subsecs. (d), (e). Pub. L. 85-861, §2(11), added subsecs. (d) and (e).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 1676(a)(3) of Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, and amendment by section 1630(2) of Pub. L. 103-337 effective Oct. 1, 1996, see section 1691 of Pub. L. 103-337, set out as an Effective Date note under section 10001 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 33(c)(2) of Pub. L. 85-861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85-861, set out as a note under section 101 of Title 10, Armed Forces.

SUSPENSION OF SUBSECTION (d) OF THIS SECTION

For authority of the President to suspend subsec. (d) of this section in time of war or emergency declared by Congress, see section 111 of this title.

§ 324. Discharge of officers; termination of appointment

(a) An officer of the National Guard shall be discharged when—

(1) he becomes 64 years of age; or

(2) his Federal recognition is withdrawn.

The official who would be authorized to appoint him shall give him a discharge certificate.

(b) Subject to subsection (a), the appointment of an officer of the National Guard may be terminated or vacated as provided by the laws of the State of whose National Guard he is a member, or by the laws of the Commonwealth of Puerto Rico, or the District of Columbia, Guam, or the Virgin Islands, of whose National Guard he is a member.

(c) Notwithstanding subsection (a)(1), an officer of the National Guard serving as a chaplain, medical officer, dental officer, nurse, veterinarian, Medical Service Corps officer, or biomedical sciences officer may be retained, with the officer’s consent, until the date on which the officer becomes 68 years of age.

In subsection (a), the words “shall be discharged” are substituted for the words “shall thereafter cease to be a member thereof” since an official is required to give the officer a discharge certificate. The words “becomes 64 years of age” are substituted for the words “upon reaching the age of sixty-four years”. The words “his Federal recognition is withdrawn” are substituted for the words “When Federal recognition is withdrawn” as provided in section 115 of this title”.

In subsection (b), the words “Subject to subsection (a)” are inserted for clarity. The words “as provided by the laws” are substituted for the words “in such manner as” as provided by law”.

AMENDMENTS


2006—Subsec. (b). Pub. L. 109–163, §1057(b)(5), as amended by Pub. L. 111–363, substituted “State of whose National Guard he is a member, or by the laws of the Commonwealth of Puerto Rico, or the District of Columbia, Guam, or the Virgin Islands, of whose National Guard he is a member” for “State or Territory of whose National Guard he is a member, or by the laws of Puerto Rico or the District of Columbia, if he is a member of its National Guard”.


EFFECTIVE DATE OF 2011 AMENDMENT


§ 325. Relief from National Guard duty when ordered to active duty

(a) RELIEF REQUIRED.—(1) Except as provided in paragraph (2), each member of the Army National Guard of the United States or the Air National Guard of the United States who is ordered to active duty is relieved from duty in the National Guard of his State, or of the Commonwealth of Puerto Rico, Guam, or the Virgin Islands, or the District of Columbia, as the case may be, from the effective date of his order to active duty until he is relieved from that duty.

(2) An officer of the Army National Guard of the United States or the Air National Guard of the United States is not relieved from duty in the National Guard of his State, or of the Commonwealth of Puerto Rico, Guam, or the Virgin Islands, or the District of Columbia, under paragraph (1) while serving on active duty if—

(A) the President authorizes such service in both duty statuses; and

(B) the Governor of his State, or of the Commonwealth of Puerto Rico, Guam, or the Virgin Islands, or the commanding general of the District of Columbia National Guard, as the case may be, consents to such service in both duty statuses.

(b) ADVANCE AUTHORIZATION AND CONSENT.—The President and the Governor of a State or Territory, or of the Commonwealth of Puerto Rico, or the commanding general of the District of Columbia National Guard, as applicable, may give the authorization or consent required by subsection (a)(2) with respect to an officer in advance for the purpose of establishing the succession of command of a unit.

(c) RETURN TO STATE STATUS.—So far as practicable, members, organizations, and units of the Army National Guard of the United States or the Air National Guard of the United States ordered to active duty shall be returned to their National Guard status upon relief from that duty.


In subsection (a), the words “in the service of the United States” are omitted as surplusage. The words “effective date of his order to active duty until he is relieved from that duty” are substituted for the words “active-duty date of the orders and for as long as they remain on active duty in the service of the United States”. 50:1120 (last sentence) is omitted as surplusage, since the persons involved are members of the Army or the Air Force.

In subsection (b), the words “upon relief from that duty” are substituted for the words “upon being relieved from active duty”. The words “their National Guard status” are substituted for the words “to the National Guard and Air National Guard in their respective States, Territories, and the District of Columbia”.

AMENDMENTS


Subsecs. (b), (c). Pub. L. 110–417, §517(b), added subsec. (b) and redesignated former subsec. (b) as (c).

2006—Subsec. (a). Pub. L. 109–163 substituted “State, or of the Commonwealth of Puerto Rico, Guam, or the Virgin Islands” for “State or Territory, or of Puerto Rico” in par. (1) and introductory provisions of par. (2) and “State or Territory or Puerto Rico” in par. (2)(B).

2003—Subsec. (a). Pub. L. 108–136, §516(a), substituted “(a) RELIEF REQUIRED.—(1) Except as provided in paragraph (2), each” for “(a) Each” and added par. (2).

Subsec. (b). Pub. L. 108–136, §516(b), inserted heading, substituted “(1) Except as provided in paragraph (2), each” for “(a) Each” and added par. (2).


NATIONAL GUARD SUPPORT FOR 2004 DEMOCRATIC AND REPUBLICAN NATIONAL CONVENTIONS AND OTHER APPROPRIATE EVENTS

Memorandum of President of the United States, July 21, 2004, 69 F.R. 46367, provided: Memorandum for the Secretary of Defense

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby delegate to you the functions and authority of the President contained in section 325 of title 32, United States Code, with respect to activities related to the
§ 326. Courts-martial of National Guard not in Federal service: composition, jurisdiction, and procedures

In the National Guard not in Federal service, there are general, special, and summary courts-martial constituted like similar courts of the Army and the Air Force. They have the jurisdiction and powers, except as to punishments, and shall follow the forms and procedures, provided for those courts. Punishments shall be as provided by the laws of the respective States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, and the Virgin Islands.


HISTORICAL AND REVISION NOTES

The words “not in Federal service” are substituted for the words “Except in organizations in the service of the United States”. The words “have the jurisdiction and powers” are substituted for the words “and have jurisdiction and powers of the same subjects, and possess like powers”. The words “of three kinds, namely”, “provided for by the laws and regulations governing”, “proceedings of courts-martial of the National Guard”, and “modes of” are omitted as surplusage.

AMENDMENTS


2002—Pub. L. 107–314 inserted at end “Punishments shall be as provided by the laws of the respective States and Territories, Puerto Rico, and the District of Columbia.”

§ 327. Courts-martial of National Guard not in Federal service: convening authority

(a) In the National Guard not in Federal service, general, special, and summary courts-martial may be convened as provided by the laws of the respective States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, and the Virgin Islands.

(b) In the National Guard not in Federal service—

(1) general courts-martial may be convened by the President;

(2) special courts-martial may be convened—

(A) by the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where members of the National Guard are on duty; or

(B) by the commanding officer of a division, brigade, regiment, wing, group, detached battalion, separate squadron, or other detached command; and

(3) summary courts-martial may be convened—

(A) by the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where members of the National Guard are on duty; or

(B) by the commanding officer of a division, brigade, regiment, wing, group, detached battalion, detached squadron, detached company, or other detachment.

(c) The convening authorities provided under subsection (b) are in addition to the convening authorities provided under subsection (a).


HISTORICAL AND REVISION NOTES

In subsection (a), the words “Federal service” are substituted for the words “service of the United States”.

In subsection (b), the words “A general court-martial may sentence to—” are substituted for the words “and such courts shall have the power to impose * * * to sentence”. The words “any combination of these punishments” are substituted for the words “or any two or more of such punishments may be combined in the sentences imposed by such courts”.

AMENDMENTS


2002—Pub. L. 107–314 amended section catchline and text generally. Prior to amendment, text read as follows:

“(a) In the National Guard not in Federal service, general courts-martial may be convened by the President or by the governor of a State or Territory or Puerto Rico or by the commanding general of the National Guard of the District of Columbia.”

1988—Subsec. (a). Pub. L. 100–456 substituted “Territory or Puerto Rico” for “ Territory, Puerto Rico, or the Canal Zone.”.

MODELS FOR STATE CODE OF MILITARY JUSTICE AND STATE MANUAL FOR COURTS-MARTIAL


“(1) The Secretary of Defense shall prepare a model State code of military justice and a model State manual for courts-martial to recommend to the States for use with respect to the National Guard not in Federal service. Both such models shall be consistent with the recommendations contained in the report that was in-
sued in 1998 by the Department of Defense Panel to Study Military Justice in the National Guard not in Federal Service.

"(3) The Secretary shall ensure that adequate support for the preparation of the model State code of military justice and the model State manual for courts-martial (including the detailing of attorneys and other personnel) is provided by the General Counsel of the Department of Defense, the Secretary of the Army, the Secretary of the Air Force, and the Chief of the National Guard Bureau.

"(5) If the funds available to the Chief of the National Guard Bureau are insufficient for paying the cost of the National Guard Bureau support required under paragraph (2) (including increased costs of pay of members of the National Guard for additional active duty necessitated by such requirement and increased cost of detailed personnel, per diem allowances, and travel expenses related to such support), the Secretary shall, upon request made by the Chief of the Bureau, provide such additional funding as the Secretary determines necessary to satisfy the requirement for such support.

"(4) Not later than one year after the date of the enactment of this Act [Dec. 2, 2002], the Secretary shall submit a report on the actions taken to carry out this subsection to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives. The report shall include proposals in final form of both the model State code of military justice and the model State manual for courts-martial required by paragraph (1), together with a discussion of the efforts being made to present those proposals to the States for their consideration for enactment or adoption, respectively.

"(5) In this subsection, the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.

§ 328. Active Guard and Reserve duty: Governor's authority

(a) AUTHORITY.—The Governor of a State or the Commonwealth of Puerto Rico, Guam, or the Virgin Islands, or the commanding general of the District of Columbia National Guard, as the case may be, with the consent of the Secretary concerned, may order a member of the National Guard to perform Active Guard and Reserve duty, as defined by section 101(d)(6) of title 10, pursuant to section 502(f)(2) of this title.

(b) DUTIES.—A member of the National Guard performing duty under subsection (a) may perform the additional duties specified in section 502(f)(2) of this title to the extent that the performance of those duties does not interfere with the performance of the member's primary Active Guard and Reserve duties of organizing, administering, recruiting, instructing, and training the reserve components.


Section 332, act Aug. 10, 1956, ch. 1041, 70A Stat. 609, authorized the president of a court-martial or a superior court of military jurisdiction to compel attendance of accused and witnesses in the National Guard not in Federal service.


EFFECTIVE DATE OF REPEAL


AMENDMENT AFTER REPEAL


EFFECTIVE DATE OF REPEAL

Repeal effective only with respect to claims arising on or after Dec. 29, 1981, see section 4 of Pub. L. 97–124, set out as an Effective Date of 1981 Amendment note under section 1089 of Title 10, Armed Forces.


CHAPTER 5—TRAINING

Sec.

501. Training generally.

502. Required drills and field exercises.

503. Participation in field exercises.

504. National Guard schools and small arms competitions.

505. Army and Air Force schools and field exercises.

506. Assignment and detail of members of Regular Army or Regular Air Force for instruction in the National Guard.

507. Instruction in firing; supply of ammunition.

508. Assistance for certain youth and charitable organizations.

509. National Guard Youth Challenge Program of opportunities for civilian youth.

AMENDMENTS

§ 501. Training generally

(a) The discipline, including training, of the Army National Guard shall conform to that of the Army. The discipline, including training, of the Air National Guard shall conform to that of the Air Force.

(b) The training of the National Guard shall be conducted by the several States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, and the Virgin Islands in conformity with this title.


In subsection (a), the words "that of" are substituted for the words "the system which is or may be prescribed for". The word "Army" is substituted for the words "Regular Army", since the Army is the category for which the discipline and training is prescribed and the Regular Army is a personnel category for which no discipline and training is prescribed. Similarly, the words "Air Force" are used instead of the words "Regular Air Force".

AMENDMENTS


DEMONSTRATION PROJECT TO INCREASE RESERVE COMPONENT INTERNET ACCESS AND SERVICES IN RURAL COMMUNITIES


"(a) AUTHORIZATION AND PURPOSE OF PROJECT.—The Secretary of the Army, acting through the Chief of the National Guard Bureau, may carry out a demonstration project in rural communities that are unserved or underserved by the telecommunications medium known as the Internet to provide or increase Internet access and services to units and members of the National Guard and other reserve components located in these communities.

"(b) PROJECT ELEMENTS.—In carrying out the demonstration project, the Secretary may—

"(1) establish and operate distance learning classrooms in communities described in subsection (a), including any support systems required for such classrooms; and

"(2) provide Internet access and services in such classrooms through GuardNet, the telecommunications infrastructure of the National Guard.

"(c) REPORT.—Not later than February 1, 2005, the Secretary shall submit to Congress a report on the demonstration project. The report shall describe the activities conducted under the demonstration project and include any recommendations for the improvement or expansion of the demonstration project that the Secretary considers appropriate."
NATIONAL GUARD CIVILIAN YOUTH OPPORTUNITIES
PILOT PROGRAM


(a) TERMINATION. —The authority under subsection (a) of section 1091 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484; 32 U.S.C. 501 note) to carry out a pilot program under that section is hereby continued through the end of the 18-month period beginning on the date of the enactment of this Act (Feb. 10, 1996) and such authority shall terminate as of the end of that period.

(b) LIMITATION ON NUMBER OF PROGRAMS.—During the period beginning on the date of the enactment of this Act and ending on the termination of the pilot program under subsection (a), the number of programs carried out under subsection (d) of that section as part of the pilot program may not exceed the number of such programs as of September 30, 1995."


“(a) PROGRAM AUTHORITY.—During fiscal years 1993 through 1995, the Secretary of Defense, acting through the Chief of the National Guard Bureau, may conduct a pilot program to be known as the ‘National Guard Civilian Youth Opportunities Program.’

“(b) PURPOSE.—The purpose of the pilot program is to provide a basis for determining:

“(1) whether the life skills and employment potential of civilian youth who cease to attend secondary school before graduating can be significantly improved through military-based training, including supervised work experience in community service and conservation projects, provided by the National Guard; and

“(2) whether it is feasible and cost effective for the National Guard to provide military-based training to such youth for the purpose of achieving such improvements.

“(c) CONDUCT OF THE PROGRAM.—The Secretary of Defense may provide for the conduct of the pilot program in such States as the Secretary considers to be appropriate.

“(d) PROGRAM AGREEMENTS.—(1) To carry out the pilot program in a State, the Secretary of Defense shall enter into an agreement with the Governor of the State or, in the case of the District of Columbia, with the commanding general of the District of Columbia National Guard.

“(2) Each agreement under the pilot program shall provide for the Governor or, in the case of the District of Columbia, the commanding general to establish, organize, and administer a National Guard civilian youth opportunities program in the State.

“(3) The agreement may provide for the Secretary to provide funds to the State for civilian personnel costs attributable to the use of civilian employees of the National Guard in the conduct of the National Guard civilian youth opportunities program.

“(e) PERSONS ELIGIBLE TO PARTICIPATE IN PROGRAM.—(1) A school dropout from secondary school shall be eligible to participate in a National Guard civilian youth opportunities program conducted under the pilot program.

“(2) The Secretary shall prescribe the standards and procedures for selecting participants for a National Guard civilian youth opportunities program from among school dropouts eligible to participate in the program.

“(f) AUTHORIZED BENEFITS FOR PARTICIPANTS.—(1) To the extent provided in an agreement entered into in accordance with subsection (d) and subject to the approval of the Secretary, a person selected for training in a National Guard civilian youth opportunities program conducted under the pilot program may receive the following benefits in connection with that training:

“(A) Allowances for travel expenses, personal expenses, and other expenses.

“(B) Quarters.

“(C) Subsistence.

“(D) Transportation.

“(E) Equipment.

“(F) Clothing.

“(G) Recreational services and supplies.

“(H) Other services.

“(1) Subject to paragraph (2), a temporary stipend upon the successful completion of the training, as characterized in accordance with procedures provided in the agreement.

“(2) In the case of a person selected for training in a National Guard civilian youth opportunities program conducted under the pilot program who afterwards becomes a member of the Civilian Community Corps under subtitle E of title I of the National and Community Service Act of 1990 (42 U.S.C. 12611 et seq.) (as added by section 1092(a)), the person may not receive a temporary stipend under paragraph (1)(I) while the person is a member of that Corps. The person may receive the temporary stipend after completing service in the Corps unless the person elects to receive benefits provided under subsection (f) or (g) of section 158 of such Act (42 U.S.C. 12618(f), (g)).

“(g) PROGRAM PERSONNEL.—(1) Personnel of the National Guard of a State in which a National Guard civilian youth opportunities program is conducted under the pilot program may serve on full-time National Guard duty for the purpose of providing command, administrative, training, or supporting services for that program. For the performance of those services, any such personnel may be ordered to duty under section 502(f) of title 32, United States Code, for not longer than the period of the program.

“(2) For fiscal year 1993, personnel so serving may not be counted for the purposes of—

“(A) any provision of law limiting the number of personnel that may be serving on full-time active duty or full-time National Guard duty for the purpose of organizing, administering, recruiting, instructing, or training the reserve components; or

“(B) section 524 (now 12301) of title 10, United States Code, relating to the number of reserve component officers who may be on active duty or full-time National Guard duty in certain grades.

“(3) A Governor participating in the pilot program and the commanding general of the District of Columbia National Guard (if the District of Columbia National Guard is participating in the pilot program) may procure by contract the temporary full-time services of such civilian personnel as may be necessary to augment National Guard personnel in carrying out a National Guard civilian youth opportunities program under the pilot program.

“(4) Civilian employees of the National Guard performing services for such a program and contractor personnel performing such services may be required, when appropriate to achieve a program objective, to be members of the National Guard and to wear the military uniform.

“(h) EQUIPMENT AND FACILITIES.—(1) Equipment and facilities of the National Guard, including military property of the United States issued to the National Guard, may be used in carrying out the pilot program.

“(2) Activities under the pilot program shall be considered noncombat activities of the National Guard for purposes of section 710 of title 32, United States Code.

“(i) STATUS OF PARTICIPANTS.—(1) A person receiving training under the pilot program shall be considered an employee of the United States for the purposes of the following provisions of law:

“(A) Subchapter I of chapter 81 of title 5, United States Code (relating to compensation of Federal employees for work injuries).

“(B) Section 1346(b) and chapter 171 of title 28, United States Code, and any other provision of law
§ 502. Required drills and field exercises

(a) Under regulations to be prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be, each company, battery, squadron, or detachment of the National Guard, unless excused by the Secretary concerned, shall—

(1) assemble for drill and instruction, including indoor target practice, at least 48 times each year; and

(2) participate in training at encampments, maneuvers, outdoor target practice, or other exercises, at least 15 days each year.

However, no member of such unit who has served on active duty for one year or longer shall be required to participate in such training if the first day of such training period falls during the last one hundred and twenty days of his required membership in the National Guard.

(b) An assembly for drill and instruction may consist of a single ordered formation of a company, battery, squadron, or detachment, or, when authorized by the Secretary concerned, a series of ordered formations of parts of those organizations. However, to have a series of formations credited as an assembly for drill and instruction, all parts of the unit must be included in the series within 90 consecutive days.

(c) The total attendance at the series of formations constituting an assembly shall be counted as the attendance at that assembly for the required period. No member may be counted more than once or receive credit for more than one required period of attendance, regardless of the number of formations that he attends during the series constituting the assembly for the required period.

(d) No organization may receive credit for an assembly for drill or indoor target practice unless—

(1) the number of members present equals or exceeds the minimum number prescribed by the President;

(2) the period of military duty or instruction for which a member is credited is at least one and one-half hours; and

(3) the training is of the type prescribed by the Secretary concerned.

(e) An appropriately rated member of the National Guard who performs an aerial flight under competent orders may receive credit for attending drill for the purposes of this section, if the flight prevented him from attending a regularly scheduled drill.

(f)(1) Under regulations to be prescribed by the Secretary of the Army or Secretary of the Air Force, as the case may be, a member of the National Guard may—

(A) without his consent, but with the pay and allowances provided by law; or

(B) with his consent, either with or without pay and allowances;

be ordered to perform training or other duty in addition to that prescribed under subsection (a).

(2) The training or duty ordered to be performed under paragraph (1) may include the following:

(A) Support of operations or missions undertaken by the member’s unit at the request of the President or Secretary of Defense.
(B) Support of training operations and training missions assigned in whole or in part to the National Guard by the Secretary concerned, but only to the extent that such training operations and training missions—

(i) are performed in the United States or the Commonwealth of Puerto Rico or possessions of the United States; and

(ii) are only to instruct active duty military, foreign military (under the same authorities and restrictions applicable to active duty troops), Department of Defense contractor personnel, or Department of Defense civilian employees.

(3) Duty without pay shall be considered for all purposes as if it were duty with pay.


**HISTORICAL AND REVISION NOTES**

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<td>502(a) .......</td>
<td>32:62 (1st sentence, less proviso)</td>
<td>June 3, 1956, ch. 134, §92; restated June 3, 1921, ch. 244, §12</td>
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<td>502(c) .......</td>
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<td>502(e) .......</td>
<td>32:62 (2d and 3d provisos of last sentence)</td>
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In subsection (a), the words “including target practice” and “such company, troop, battery, or detachment” shall have been * * * from participation in any part thereof” are omitted as surplusage.

In subsections (a) and (b), the word “trip” is omitted as obsolete.

In subsection (b), the words “parts of those organizations” are substituted for the words “subdivisions or parts thereof”. The words “but in the latter case”, “of subdivisions or groups”, “comprehend”, and “the time limit of” are omitted as surplusage.

In subsection (c), the word “member” is substituted for the words “officer, warrant officer, or enlisted man”. The words “series of formations” are substituted for the words “separate consecutive formations announced”. The words “regardless of the number of formations that he attends during the series” are substituted for the words “even though he may have attended more than one of the formations”. The words “sum”, “actual military”, and “of time” are omitted as surplusage. 32:62 (4th proviso of last sentence) is omitted as superseded by section 683 of title 10. 32:62 (last proviso of last sentence) is omitted as superseded by section 501(b) of the Career Compensation Act of 1949, 63 Stat. 626 (37 U.S.C. 301(b)).

In subsection (d), the word “members” is substituted for the words “officers and enlisted men”. The words “for which a member is credited” are substituted for the words “participated in by each officer and enlisted man at each assembly at which he shall be credited as having been present”. The words “for duty at such assembly”, “actual”, and “character of” are omitted as surplusage.

In subsection (e), the word “member” is substituted for the words “officer or enlisted man”. The words “Air Corps” are assigned to an Air Corps unit thereof, or * * * an officer or enlisted man of the Medical Department of the said National Guard regularly attached to an Air Corps unit of the National Guard by appropriate authority” are omitted, since the revised subsection applies only to members who perform flights under competent orders and who are thereby prevented from attending a regular drill.

**AMENDMENTS**

2006—Subsec. (f). Pub. L. 109–364 designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), struck out “Duty without pay shall be considered for all purposes as if it were duty with pay.” at end, and added pars. (2) and (3).

1993—Subsec. (b). Pub. L. 103–160 substituted “90 consecutive days” for “30 consecutive days” in second sentence.

1971—Subsec. (a). Pub. L. 92–156 inserted exception to training requirements for members performing active duty for one year or more if the training period falls during last one hundred and twenty days of required membership in National Guard.

1967—Subsec. (b). Pub. L. 90–168 substituted 30 consecutive days for seven consecutive days of the same calendar month as the time within which all parts of the unit must be included in a series of formations in order to be credited as an assembly for drill and instruction.


**EFFECTIVE DATE OF 1967 AMENDMENT**

Amendment by Pub. L. 90–168 effective first day of first calendar month following date of enactment of Pub. L. 90–168, which was approved Dec. 1, 1967, see section 7 of Pub. L. 90–168, set out as a note under section 138 of Title 10, Armed Forces.

§ 503. Participation in field exercises

(a)(1) Under such regulations as the President may prescribe, the Secretary of the Army and the Secretary of the Air Force, as the case may be, may provide for the participation of the National Guard in encampments, maneuvers, national training, military deployment, combat, exercises for field training, or other exercises for field training purposes as if it were duty with pay.

(b) Amounts necessary for the pay, subsistence, transportation, and other proper expenses of any part of the National Guard of a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the District of Columbia, or Guam, for participation in an exercise under subsection (a) may be set aside from funds allocated to it from appropriations for field training.
§ 504  National Guard schools and small arms competitions

(a) Under regulations to be prescribed by the Secretary of the Army or Secretary of the Air Force, as the case may be, members of the National Guard may—

(1) attend schools conducted by the Army or the Air Force, as appropriate;

(2) conduct or attend schools conducted by the National Guard; or

(3) participate in small arms competitions.

(b) Activities authorized under subsection (a) for members of the National Guard of a State or territory, Puerto Rico, or of the District of Columbia may—

(1) be conducted by the National Guard

(2) be attached to an organization of the Army corresponding to the organization of the Army National Guard to which the member belongs, for routine practical instruction at an air base during field training or other outdoor exercise.

A similar provision authorizes the Secretary of the Air Force to authorize a limited number of members of the Air National Guard to—

(1) attend any service school except the United States Air Force Academy, and to pursue a regular course of study at the school; or

(2) be attached to an organization of the Air Force corresponding to the organization of the Air National Guard to which the member belongs, for routine practical instruction at an air base during field training or other outdoor exercise.

In subsection (a), the words “members” are substituted for the words “officers, warrant officers, and enlisted men”. The words “for the purpose” and “for that purpose” are omitted as surplusage.

In subsection (b), the words “members” are substituted for the words “Army” and “Air Force”. The words “for the purpose” and “for that purpose” are omitted as surplusage.

AMENDMENTS

1965—Subsec. (b). Pub. L. 88–621 substituted provisions authorizing the Secretary of the Army of the United States to issue regulations for provisions authorizing the President to issue regulations, and provided that members of the National Guard may conduct or attend schools conducted by the National Guard.

§ 505  Army and Air Force schools and field exercises

Under such regulations as the President may prescribe and upon the recommendation of the governor of any State, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands or of the commanding general of the National Guard of the District of Columbia, the Secretary of the Army or the Secretary of the Air Force may authorize a limited number of members of its Army National Guard to—

(1) attend any service school except the United States Military Academy, and to pursue a regular course of study at the school; or

(2) be attached to an organization of the Army corresponding to the organization of the Army National Guard to which the member belongs, for routine practical instruction at or near an Army post during field training or other outdoor exercises.

Similarly, the Secretary of the Air Force may authorize a limited number of members of the Air National Guard to—

(1) attend any service school except the United States Air Force Academy, and to pursue a regular course of study at the school; or

(2) be attached to an organization of the Air Force corresponding to the organization of the Air National Guard to which the member belongs, for routine practical instruction at an air base during field training or other outdoor exercise.


HISTORICAL AND REVISION NOTES

Revised section  Source (U.S. Code)  Source (Statutes at Large)

The words “branch of the Army corresponding” are substituted for the words “same arm, corps, or department”, to conform to sections 3063 and 3064 of title 10.
In the second sentence, the words "organization of the Air Force corresponding" are substituted for the words "same arm, corps, or department", since the Air Force is not organized by statute into branches, arms, corps, or departments. The word "members" is substituted for the words "officers, warrant officers, and enlisted men." The words "service school" are substituted for the words "military-service school of the United States". Reference to the United States Air Force Academy is inserted to reflect its establishment by the Air Force Academy Act (63 Stat. 47).

AMENDMENTS


1988—Pub. L. 100–456, which directed the substitution of "Territory or Puerto Rico" for "Territory, Puerto Rico, or the Canal Zone," in subsec. (a), was executed to the introductory provisions of this section as the probable intent of Congress.

§ 506. Assignment and detail of members of Regular Army or Regular Air Force for instruction of National Guard

(a) The President shall assign for instruction of the National Guard such members of the Regular Army or the Regular Air Force as he considers necessary.

(b) The Secretary of the Army may detail members of the Regular Army to attend exercises for field or coast-defense instruction of the National Guard. Similarly, the Secretary of the Air Force may detail members of the Regular Air Force to attend exercises for field or coast-defense instruction of the Air National Guard. Members so detailed shall instruct the members of the National Guard at the exercise, as directed by the Secretary concerned, or as requested by the governor or commanding officer of the National Guard there assembled.

(Aug. 10, 1956, ch. 1041, 70A Stat. 611.)

HISTORICAL AND REVISION NOTES

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<td>§ 506(b) ......</td>
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June 3, 1936, ch. 134, §81 (1st sentence of 2nd par., less 1st 7 words); added June 4, 1920, ch. 227, subch. I, §§4 (5th sentence, less 1st 6 words); restated Sept. 22, 1922, ch. 423, §4 (5th sentence, less 1st 6 words); restated Feb. 28, 1925, ch. 371, §3 (5th sentence, less 1st 6 words); restated June 15, 1933, ch. 87, §16 (1st sentence of 2d par., less 1st 7 words), 48 Stat. 160. June 3, 1936, ch. 134, §96, 39 Stat. 207.

In subsection (a), the words "members of the Regular Army and the Regular Air Force" are substituted for the words "officers of the Regular Army" and "enlisted men of the Regular Army".

In subsection (b), the words "members" is substituted for the words "officers and enlisted men". The words "one or more", "information", and "encampment, maneuver, or other" are omitted as surplusage.

§ 507. Instruction in firing; supply of ammunition

Ammunition for instruction in firing and for target practice may be furnished, in such amounts as may be prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be, to units of the National Guard encamped at a post, camp, or air base. The instruction shall be under the direction of a commissioned officer selected for that purpose by the proper military commander.

(Aug. 10, 1956, ch. 1041, 70A Stat. 612.)

HISTORICAL AND REVISION NOTES

Revised section | Source (U.S. Code) | Source (Statutes at Large)
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The words "post camp, or air base" are substituted for the words "military post or camp". The words "such amounts" are omitted as surplusage. The words "National Guard" are substituted for the words "troops of the militia", since the source statute historically applied only to the organized militia (see opinion of the Judge Advocate General of the Army (JAGA 1952/4374, 9 July 1952)). The word "commissioned" is inserted, since 32:71 historically applied only to commissioned officers (see opinion of the Judge Advocate General of the Army (JAGA 1953/4078, 6 May 1953)).

§ 508. Assistance for certain youth and charitable organizations

(a) AUTHORITY TO PROVIDE SERVICES.—Members and units of the National Guard may provide the services described in subsection (b) to an eligible organization in conjunction with training required under this chapter in any case in which—

1. the provision of such services does not adversely affect the quality of that training or otherwise interfere with the ability of a member or unit of the National Guard to perform the military functions of the member or unit;

2. the services to be provided are not commercially available, or any commercial entity that would otherwise provide such services has approved, in writing, the provision of such services by the National Guard;

3. National Guard personnel will enhance their military skills as a result of providing such services; and

4. the provision of the services will not result in a significant increase in the cost of the training.

(b) AUTHORIZED SERVICES.—The services authorized to be provided under subsection (a) are as follows:

1. Ground transportation.

2. Air transportation in support of Special Olympics.

3. Administrative support services.

4. Technical training services.

5. Emergency medical assistance and services.

6. Communications services.

(c) OTHER AUTHORIZED ASSISTANCE.—Facilities and equipment of the National Guard, including military property of the United States issued to the National Guard and General Services Administration vehicles leased to the National Guard, and General Services Administration vehicles leased to the Department of Defense, may be used in connection with providing services to any eligible organization under this section.
§ 509

(1) The Boy Scouts of America.
(2) The Girl Scouts of America.
(3) The Boys Club of America.
(4) The Girls Club of America.
(6) The Young Women’s Christian Association.
(7) The Civil Air Patrol.
(8) The United States Olympic Committee.
(9) The Special Olympics.
(10) The Campfire Boys.
(12) The 4-H Club.
(13) The Police Athletic League.
(14) Any other youth or charitable organization designated by the Secretary of Defense.


§ 509. National Guard Youth Challenge Program of opportunities for civilian youth

(a) Program Authority and Purpose.—The Secretary of Defense may use the National Guard to conduct a civilian youth opportunities program, to be known as the “National Guard Youth Challenge Program”, which shall consist of at least a 22-week residential program and a 12-month post-residential mentoring period. The program shall seek to improve life skills and employment potential of participants by providing military-based training and supervised work experience, together with the core program components of assisting participants to receive a high school diploma or its equivalent, leadership development, promoting fellowship and community service, developing life coping skills and job skills, and improving physical fitness and health and hygiene.

(b) Conduct of the Program.—(1) The Secretary of Defense shall provide for the conduct of the Program in such States as the Secretary considers to be appropriate.

(2) The Secretary shall carry out the Program using—

(A) funds appropriated directly to the Secretary of Defense for the Program, except that the amount of funds appropriated directly to the Secretary and expended for the Program in fiscal year 2001 or 2002 may not exceed $65,500,000; and

(B) nondefense funds made available or transferred to the Secretary of Defense by other Federal agencies to support the Program.

(3) Federal funds made available or transferred to the Secretary of Defense under paragraph (2)(B) by other Federal agencies to support the Program may be expended for the Program in excess of the fiscal year limitation specified in paragraph (2)(A).

(4) The Secretary of Defense shall remain the executive agent to carry out the Program regardless of the source of funds for the Program or any transfer of jurisdiction over the Program within the executive branch. As provided in subsection (a), the Secretary may use the National Guard to conduct the Program.

(c) Program Agreements.—(1) To carry out the Program in a State, the Secretary of Defense shall enter into an agreement with the Governor of the State, or in the case of the District of Columbia, with the commanding general of the District of Columbia National Guard, under which the Governor or the commanding general will establish, organize, and administer the Program in the State.

(2) The agreement may provide for the Secretary to provide funds to the State for civilian personnel costs attributable to the use of civilian employees of the National Guard in the conduct of the Program.

(d) Matching Funds Required.—(1) The amount of assistance provided by the Secretary of Defense to a State program of the Program for a fiscal year under this section may not exceed 75 percent of the costs of operating the State program during that fiscal year.

(2) The limitation in paragraph (1) may not be construed as a limitation on the amount of assistance that may be provided to a State program of the Program for a fiscal year from sources other than the Department of Defense.

(e) Persons Eligible to Participate in Program.—A school dropout from secondary school shall be eligible to participate in the Program. The Secretary of Defense shall prescribe the standards and procedures for selecting participants from among school dropouts.

(f) Authorized Benefits for Participants.—

(1) To the extent provided in an agreement entered into in accordance with subsection (c) and subject to the approval of the Secretary of Defense, a person selected for training in the Program may receive the following benefits in connection with that training:

(A) Allowances for travel expenses, personal expenses, and other expenses.

(B) Quarters.

(C) Subsistence.

(D) Transportation.

(E) Equipment.

(F) Clothing.

(G) Recreational services and supplies.

(H) Other services.

(I) Subject to paragraph (2), a temporary stipend upon the successful completion of the training, as characterized in accordance with procedures provided in the agreement.

(2) In the case of a person selected for training in the Program who afterwards becomes a member of the Civilian Community Corps under sub-title E of title I of the National and Community Service Act of 1990 (42 U.S.C. 12611 et seq.), the person may not receive a temporary stipend under paragraph (1)(I) while the person is a member of that Corps. The person may receive the temporary stipend after completing service in the Corps unless the person elects to receive benefits provided under subsection (f) or (g) of section 158 of such Act (42 U.S.C. 12618).

(g) Program Personnel.—(1) Personnel of the National Guard of a State in which the Program is conducted may serve on full-time National Guard duty for the purpose of providing command, administrative, training, or support services for the Program. For the performance of those services, any such personnel may be ordered to duty under section 562(f) of this title for not longer than the period of the Program.
(2) A Governor participating in the Program and the commanding general of the District of Columbia National Guard (if the District of Columbia National Guard is participating in the Program) may procure by contract the temporary full-time services of such civilian personnel as may be necessary to augment National Guard personnel in carrying out the Program in that State.

(3) Civilian employees of the National Guard performing services for the Program and contractor personnel performing such services may be required, when appropriate to achieve the purposes of the Program, to be members of the National Guard and to wear the military uniform.

(h) EQUIPMENT AND FACILITIES.—(1) Equipment and facilities of the National Guard, including military property of the United States issued to the National Guard, may be used in carrying out the Program.

(2) Activities under the Program shall be considered noncombat activities of the National Guard for purposes of section 710 of this title.

(i) STATUS OF PARTICIPANTS.—(1) A person receiving training under the Program shall be considered an employee of the United States for the purposes of the following provisions of law:

(A) Subchapter I of chapter 61 of title 5 (relating to compensation of Federal employees for work injuries);

(B) Section 1346(b) and chapter 171 of title 28 and any other provision of law relating to the liability of the United States for tortious conduct of employees of the United States.

(2) In the application of the provisions of law referred to in paragraph (1)(A) to a person referred to in paragraph (1)—

(A) the person shall not be considered to be in the performance of duty while the person is not at the assigned location of training or other activity or duty authorized in accordance with a Program agreement referred to in subsection (c), except when the person is traveling to or from that location or is on pass from that training or other activity or duty;

(B) the person’s monthly rate of pay shall be deemed to be the minimum rate of pay provided for grade GS-2 of the General Schedule under section 5332 of title 5; and

(C) the entitlement of a person to receive compensation for a disability shall begin on the day following the date on which the person’s participation in the Program is terminated.

(3) A person referred to in paragraph (1) may not be considered an employee of the United States for any purpose other than a purpose set forth in that paragraph.

(j) SUPPLEMENTAL RESOURCES.—To carry out the Program in a State, the Governor of the State or, in the case of the District of Columbia, the commanding general of the District of Columbia National Guard may supplement funds made available under the Program out of other resources (including gifts) available to the Governor or the commanding general. The Governor or the commanding general may accept, use, and dispose of gifts or donations of money, other property, or services for the Program.

(k) REPORT.—Within 90 days after the end of each fiscal year, the Secretary of Defense shall submit to Congress a report on the design, conduct, and effectiveness of the Program during the preceding fiscal year. In preparing the report, the Secretary shall coordinate with the Governor of each State in which the Program is carried out and, if the Program is carried out in the District of Columbia, with the commanding general of the District of Columbia National Guard.

(l) DEFINITIONS.—In this section:

(1) The term “State” includes the Commonwealth of Puerto Rico, the territories, and the District of Columbia.

(2) The term “school dropout” means an individual who is no longer attending any school and who has not received a secondary school diploma or a certificate from a program of equivalency for such a diploma.

(3) The term “Program” means the National Guard Youth Challenge Program carried out pursuant to this section.

(m) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out the Program. The regulations shall address at a minimum the following:

(1) The terms to be included in the Program agreements required by subsection (c).

(2) The qualifications for persons to participate in the Program, as required by subsection (e).

(3) The benefits authorized for Program participants, as required by subsection (f).

(4) The status of National Guard personnel assigned to duty in support of the Program under subsection (g).

(5) The conditions for the use of National Guard facilities and equipment to carry out the Program, as required by subsection (h).

(6) The status of Program participants, as described in subsection (i).

(7) The procedures to be used by the Secretary when communicating with States about the Program.

2008—Subsec. (d). Pub. L. 110–417 amended subsec. (d) generally. Prior to amendment, text read as follows: “The amount of assistance provided under this section for the program of the Program may not exceed—

“(1) for fiscal year 1998, 75 percent of the costs of operating the State program during that year;

“(2) for fiscal year 1999, 75 percent of the costs of operating the State program during that year;

“(3) for fiscal year 2000, 65 percent of the costs of operating the State program during that year; and

“(4) for fiscal year 2001 and each subsequent fiscal year, 60 percent of the costs of operating the State program during that year.”


1999—Subsec. (a). Pub. L. 106–388, §1[(div. A), title V, §577(a)], struck out “‘acting through the Chief of the National Guard Bureau,’” after “‘The Secretary of Defense’”. Subsec. (b). Pub. L. 106–388, §1[(div. A), title V, §577(b)(1),(3)], inserted “‘(1)’ before “‘The Secretary of Defense’” and added pars. (2) and (3).

Pub. L. 106–388, §1[(div. A), title V, §577(b)(2)], as amended by Pub. L. 107–314, struck out “, except that Department of Defense expenditures under the program may not exceed $62,500,000 for any fiscal year’” before period at end.


1998—Subsec. (a). Pub. L. 106–65, §579(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: “The Secretary of Defense, acting through the Chief of the National Guard Bureau, may conduct a National Guard civilian youth opportunities program (to be known as the ‘National Guard Challenge Program’) to use the National Guard to provide military-based training, including supervised work experience in community service and conservation projects, to civilian youth who cease to attend secondary school before graduating so as to improve the life skills and employment potential of such youth.” Subsec. (b). Pub. L. 106–65, §579(b), substituted “$62,500,000” for “$50,000,000”.

Effective Date of 2009 Amendment
Pub. L. 111–94, div. A, title V, §593(b), Oct. 28, 2009, 123 Stat. 2337, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on October 1, 2009, and shall apply with respect to fiscal years beginning on or after that date.”

Effective Date of 2008 Amendment
Pub. L. 110–116, div. A, title V, §594(b), Oct. 14, 2008, 122 Stat. 4475, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on October 1, 2008, and shall apply with respect to fiscal years beginning on or after that date.”

Effective Date of 2002 Amendment

CHAPTER 7—SERVICE, SUPPLY, AND PROCUREMENT

Sec. 701. Uniforms, arms, and equipment to be same as Army or Air Force.

702. Issue of supplies.

703. Purchases of supplies by States from Army or Air Force.

704. Accountability: relief from upon order to active duty.

705. Purchase of uniforms and equipment by officers of National Guard from Army or Air Force.

706. Return of arms and equipment upon relief from Federal service.

707. Use of public buildings for offices by instructors.

708. Property and fiscal officers.

709. Technicians: employment, use, status.
§ 701. Uniforms, arms, and equipment to be same as Army or Air Force

So far as practicable, the same types of uniforms, arms, and equipment as are issued to the Army shall be issued to the Army National Guard, and the same types of uniforms, arms, and equipment as are issued to the Army shall be issued to the Air National Guard.

(Aug. 10, 1956, ch. 1041, 70A Stat. 612.)

HISTORICAL AND REVISION NOTES

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In subsection (a), the word “supplies” is substituted from the detailed description of stores, material, and equipment, since under section 101(12) of this title, “supplies” includes stores, material, and equipment. The words “may buy or manufacture” are substituted for the words ““is authorized to procure * * * by purchase or manufacture”. The words “within the limits of available appropriations made by Congress” and “from time to time” are omitted as surplusage.

In subsection (b), the words “the Secretary concerned is satisfied” are substituted for the words “it shall be shown to the satisfaction of the Secretary of the Army”.

In subsection (c), the words “the Secretary concerned” are substituted for the words “Army or the Air Force” and for the words “purchase, from the Department of the Army, of any article issued by any of the supply departments of the Army”.

In subsection (d), the words “No property may be issued to * * * unless that jurisdiction” are substituted for the words “Provided, That as a condition precedent to the issue of any property as provided for by this title” and “desiring such issue”.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–163 substituted “State, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands” for “State or Territory or Puerto Rico”.

1988—Subsec. (a). Pub. L. 100–456, §1234(b)(4), substituted “Territory or Puerto Rico” for “Territory, Puerto Rico, or the Canal Zone”.


HISTORICAL AND REVISION NOTES

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The words “shall be issued” are substituted for the words “shall * * * be uniformed, armed, and equipped with”. The words “as are issued” are substituted for the words “as are or shall be provided”. The words “Army” is substituted for the words “Regular Army”, since the Army is the category to which uniforms, arms, and equipment are issued, and the Regular Army is a personnel category only. Similarly, the words “Air Force” are used instead of the words “Regular Air Force”.

§ 702. Issue of supplies

(a) Under such regulations as the President may prescribe, the Secretary of the Army and the Secretary of the Air Force may buy or manufacture and, upon requisition of the governor of any State, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands or the commanding general of the National Guard of the District of Columbia, issue to its Army National Guard and Air National Guard, respectively, the supplies necessary to uniform, arm, and equip that Army National Guard or Air National Guard for field duty.

(b) Whenever the Secretary concerned is satisfied that the Army National Guard or the Air National Guard, as the case may be, of any State or Territory, Puerto Rico, or the District of Columbia is properly organized, armed, and equipped for field duty, funds allotted to that jurisdiction for its Army National Guard or Air National Guard may be used to buy any article issued by the Army or the Air Force, as the case may be.

(c) Under such regulations as the President may prescribe, the issue of new types of equipment, small arms, or field guns to the National Guard of any State or Territory, Puerto Rico, or the District of Columbia shall be without charge against appropriations for the National Guard.

(d) No property may be issued to the National Guard of a State or Territory, Puerto Rico, or the District of Columbia, unless that jurisdiction makes provision satisfactory to the Secretary concerned, for its protection and care.


HISTORICAL AND REVISION NOTES

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In subsection (a), the word “supplies” is substituted for the detailed description of stores, material, and equipment, since under section 101(12) of this title, “supplies” includes stores, material, and equipment. The words “may buy or manufacture” are substituted for the words “is authorized to procure * * * by purchase or manufacture”. The words “within the limits of available appropriations made by Congress” and “from time to time” are omitted as surplusage.

In subsection (b), the words “the Secretary concerned is satisfied” are substituted for the words “it shall be shown to the satisfaction of the Secretary of the Army”. The words “buy any article issued by the Army or the Air Force” are substituted for the words “purchase, from the Department of the Army, of any article issued by any of the supply departments of the Army”.

In subsection (c), the words “the Secretary concerned” are substituted for the words “Army or the Air Force” and for the words “purchase, from the Department of the Army, of any article issued by any of the supply departments of the Army”.

In subsection (d), the words “No property may be issued to * * * unless that jurisdiction” are substituted for the words “Provided, That as a condition precedent to the issue of any property as provided for by this title” and “desiring such issue”.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–163 substituted “State, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands” for “State or Territory or Puerto Rico”.

1988—Subsec. (a). Pub. L. 100–456, §1234(b)(4), substituted “Territory or Puerto Rico” for “Territory, Puerto Rico, or the Canal Zone”.

Subsecs. (b) to (d). Pub. L. 100–456, §1234(b)(1), struck out “the Canal Zone,” after “Puerto Rico,”.
§ 703. Purchases of supplies by States from Army or Air Force

(a) Subject to the approval of the Secretary of the Army, any State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands may buy from the Department of the Army, for its National Guard or the officers thereof, supplies and military publications furnished to the Army, in addition to other supplies issued to its Army National Guard. On the same basis, it may buy similar property from the Department of the Air Force. A purchase under this subsection shall be for cash, at cost plus transportation.

(b) In time of actual or threatened war, the United States may requisition for military use any property bought under subsection (a). Credit for the return in kind of property so requisitioned shall be given to the State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands from which it is received.

(c) Proceeds of sales by the Department of the Army and the Department of the Air Force under this section shall be credited to the appropriations from which the property was purchased, shall not be covered into the Treasury, and may be used to replace property sold under this section.


HISTORICAL AND REVISION NOTES

Revised section Source (U.S. Code) Source (Statutes at Large)


The words “to active duty” are substituted for the words “into the active military service of the United States”. The word “conditions” is omitted as covered by the word “terms”. The word “previously” is substituted for the word “therefore”. The word “liability” is omitted as covered by the word “accountability”. The words “that part” are substituted for the words “such portion of the National Guard of the United States or of the Air National Guard of the United States”.

AMENDMENTS

2006—Subsecs. (a), (b). Pub. L. 109–163 substituted “State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands” for “State or Territory, Puerto Rico, or the District of Columbia”.


§ 704. Accountability: relief from upon order to active duty

Upon ordering any part of the Army National Guard of the United States or the Air National Guard of the United States to active duty, the President may, upon such terms as he may prescribe, relieve the State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands, whichever is concerned, of accountability for property of the United States previously issued to it for the use of that part.


HISTORICAL AND REVISION NOTES

Revised section Source (U.S. Code) Source (Statutes at Large)


The words “to active duty” are substituted for the words “into the active military service of the United States”. The word “conditions” is omitted as covered by the word “terms”. The word “previously” is substituted for the word “therefore”. The word “liability” is omitted as covered by the word “accountability”. The words “that part” are substituted for the words “such portion of the National Guard of the United States or of the Air National Guard of the United States”.

AMENDMENTS

2006—Pub. L. 109–163 substituted “State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands” for “State or Territory, Puerto Rico, or the District of Columbia”.

1988—Pub. L. 100–456 struck out “the Canal Zone,” after “Puerto Rico,”.

§ 705. Purchase of uniforms and equipment by officers of National Guard from Army or Air Force

Officers of the Army National Guard not in Federal service may buy articles of individual clothing and equipment from the Department of the Army, under such regulations as the Secretary of the Army may prescribe. On the same basis, officers of the Air National Guard not in Federal service may buy those items from the Department of the Air Force. Purchases under this section shall be for cash, at average current costs, including overhead, as determined by the Secretary concerned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 613.)

In subsection (a), the words “stores * * * materiel” are omitted as covered by the word “supplies”. The words “other supplies issued” are substituted for the words “those issued under the provisions of this title”. The words “at cost plus transportation” are substituted for the words “at the price at which they shall be listed to the Army, with cost of transportation added”.

In subsection (b), 32:39a (less last 23 words) is omitted from the revised section as executed. The words “bought under subsection (a)” are substituted for the words “so purchased”. The words “for military use” are substituted for the words “for use in the military service thereof”. The words “and when so requisitioned by the United States and delivered” and “ultimate” are omitted as surplusage.

In subsection (c), the terms “Proceded of sales by the Department of the Army and the Department of the Air Force under this section” are substituted for the words “The funds received from such sale”. The words “from which the property was purchased” are substituted for the words “to which they shall belong”. The words “may be used to replace property sold under this section” are substituted for the words “shall be available until expended to replace therewith the supplies sold to the States in the manner herein authorized”.
§ 706. Return of arms and equipment upon relief from Federal service

So far as practicable, whenever units, organizations, or members of the National Guard are returned to their National Guard status under section 325(b) of this title, arms and equipment that the Secretary concerned determines are sufficient to accomplish their peacetime mission shall be returned with them.

(Aug. 10, 1956, ch. 1041, 70A Stat. 613.)

HISTORICAL AND REVISION NOTES

Revised section Source (U.S. Code) Source (Statutes at Large)


The words “So far as practicable” are inserted, since sufficient arms and equipment might not be available.

REFERENCES IN TEXT

Section 325(b) of this title, referred to in text, was redesignated section 325(c) of this title by Pub. L. 110–417, div. A, title V, § 517(b)(1), Oct. 14, 2008, 122 Stat. 4442.

§ 707. Use of public buildings for offices by instructors

Whenever practicable, instructors of the National Guard shall use State armories or other public buildings for offices.

(Aug. 10, 1956, ch. 1041, 70A Stat. 614.)

HISTORICAL AND REVISION NOTES

Revised section Source (U.S. Code) Source (Statutes at Large)


The reference to 10:1106 is omitted, since that section related only to sales of uniforms and equipment to caddets at the United States Military Academy. The reference to 10:904 is omitted as covered by the language of the revised section. The words “at average current costs, including overhead, as determined by the Secretary concerned” are inserted to reflect sections 4621 and 9621 of title 10, which apply to all sales of individual clothing and equipment. The words “articles of individual clothing and equipment” are substituted for the words “uniforms, accouterments, and equipment”. The words “active and inactive”, “on proper identification”, and “rules and” are omitted as surplusage.

§ 708. Property and fiscal officers

(a) The Governor of each State, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands, and the commanding general of the National Guard of the District of Columbia, shall appoint, designate or detail, subject to the approval of the Secretary of the Army and the Secretary of the Air Force, a qualified commissioned officer of the National Guard of that jurisdiction who is also a commissioned officer of the Army National Guard of the United States or the Air National Guard of the United States, as the case may be, to be the property and fiscal officer of that jurisdiction. If the officer is not on active duty, the President may order him to active duty, with his consent, to serve as a property and fiscal officer.

(b) Each property and fiscal officer shall—

(1) receipt and account for all funds and property of the United States in the possession of the National Guard for which he is property and fiscal officer; and

(2) make returns and reports concerning those funds and that property, as required by the Secretary concerned.

(c) When he ceases to hold that assignment, a property and fiscal officer resumes his status as an officer of the National Guard.

(d) The Secretaries shall prescribe a maximum grade, commensurate with the functions and responsibilities of the office, but not above colonel, for the property and fiscal officer of the United States for the National Guard of each State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, and the Virgin Islands.

(e) The Secretary of the Army and the Secretary of the Air Force shall prescribe joint regulations necessary to carry out subsections (a)–(d).

(f) A property and fiscal officer may intrust money to an officer of the National Guard to make disbursements as his agent. Both the officer to whom money is intrusted, and the property and disbursing officer intrusting the money to him, are peculiarly responsible for that money to the United States. The agent officer is subject, for misconduct as an agent, to the liabilities and penalties prescribed by law in like cases for the property and fiscal officer for whom he is acting.

In subsection (b)(2), the words “of the National Guard for which he is property and fiscal officer” are substituted for the words “of the National Guard of the State, Territory, or District of Columbia”.

In subsection (c), 32:49 (5th sentence) is omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions. The words “an officer” are substituted for the words “other officers”, since, under revised subsection (a), the property and fiscal officer is not required to be an officer of the National Guard. The words “accountable for public moneys” and “as agent” are omitted as surplusage.

AMENDMENTS


Subsec. (d). Pub. L. 109–163, § 1057(b)(2), substituted “State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, and the Virgin Islands” for “State or Territory, Puerto Rico, and the District of Columbia”.

1989—Subsec. (a). Pub. L. 101–189 substituted “The Governor of each State or Territory and Puerto Rico” for “The governor of each State or Territory, Puerto Rico”.

1988—Subsec. (a). Pub. L. 100–456 substituted “The Secretary concerned” for “the Secretary for the department concerned”.


1960—Subsec. (b). Pub. L. 96–513 redesignated pars. (2) and (3) as (1) and (2), respectively.


1932—Subsec. (b). Pub. L. 72–634 redesignated subsec. (e) as (d). Former subsec. (d), which authorized inspections at least once a year by Inspectors General of the departments concerned, was struck out.

1924—Subsec. (c). Pub. L. 43–143 struck out “and may be, and an employee of the United States. However, a position authorized by this section is outside the competitive service if the technician employed in that position is required under subsection (b) to be a member of the National Guard.”

EFFECTIVE DATE OF 1980 AMENDMENT


SEC. 708. (a) Under regulations prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be, and subject to subsections (b) and (c), persons may be employed as technicians in—

(1) the organizing, administering, instructing, or training of the National Guard;

(2) the maintenance and repair of supplies issued to the National Guard or the armed forces; and

(3) the performance of the following additional duties to the extent that the performance of those duties does not interfere with the performance of the duties described by paragraphs (1) and (2):

(A) Support of operations or missions undertaken by the technician’s unit at the request of the President or the Secretary of Defense.

(B) Support of Federal training operations or Federal training missions assigned in whole or in part to the technician’s unit.

(C) Instructing or training in the United States or the Commonwealth of Puerto Rico or possessions of the United States of—

(i) active-duty members of the armed forces;

(ii) members of foreign military forces (under the same authorities and restrictions applicable to active-duty members providing such instruction or training);

(iii) Department of Defense contractor personnel; or

(iv) Department of Defense civilian employees.

(b) Except as authorized in subsection (c), a person employed under subsection (a) must meet each of the following requirements:

(1) Be a military technician (dual status) as defined in section 10216(a) of title 10.

(2) Be a member of the National Guard.

(3) Hold the military grade specified by the Secretary concerned for that position.

(4) While performing duties as a military technician (dual status), wear the uniform appropriate for the member’s grade and component of the armed forces.

(c)(1) A person may be employed under subsection (a) as a non-dual status technician (as defined by section 10217 of title 10) if the technician position occupied by the person has been designated by the Secretary concerned to be filled only by a non-dual status technician.

(2) The total number of non-dual status technicians in the National Guard is specified in section 10217(c)(2) of title 10.

(d) The Secretary concerned shall designate the adjutants general referred to in section 314 of this title to employ and administer the technicians authorized by this section.

(e) A technician employed under subsection (a) is an employee of the Department of the Army or the Department of the Air Force, as the case may be, and an employee of the United States. However, a position authorized by this section is outside the competitive service if the technician employed in that position is required under subsection (b) to be a member of the National Guard.
(f) Notwithstanding any other provision of law and under regulations prescribed by the Secretary concerned—

(1) a person employed under subsection (a) who is a military technician (dual status) and otherwise subject to the requirements of subsection (b) who—

(A) is separated from the National Guard or ceases to hold the military grade specified by the Secretary concerned for that position shall be promptly separated from military technician (dual status) employment by the adjutant general of the jurisdiction concerned; and

(B) fails to meet the military security standards established by the Secretary concerned for a member of a reserve component under his jurisdiction may be separated from employment as a military technician (dual status) and concurrently discharged from the National Guard by the adjutant general of the jurisdiction concerned;

(2) a technician may, at any time, be separated from his technician employment for cause by the adjutant general of the jurisdiction concerned;

(3) a reduction in force, removal, or an adverse action involving discharge from technician employment, suspension, furlough without pay, or reduction in rank or compensation shall be accomplished by the adjutant general of the jurisdiction concerned;

(4) a right of appeal which may exist with respect to paragraph (1), (2), or (3) shall not extend beyond the adjutant general of the jurisdiction concerned; and

(5) a technician shall be notified in writing of the termination of his employment as a technician and, unless the technician is serving under a temporary appointment, is serving in a trial or probationary period, or has voluntarily ceased to be a member of the National Guard when such membership is a condition of employment, such notification shall be given at least 30 days before the termination date of such employment.

(g) Sections 2108, 3502, 7511, and 7512 of title 5 do not apply to a person employed under this section.

(h) Notwithstanding sections 5544(a) and 6101(a) of title 5 or any other provision of law, the Secretary concerned may prescribe the hours of duty for technicians. Notwithstanding sections 5542 and 5543 of title 5 or any other provision of law, such technicians shall be granted an amount of compensatory time off from their scheduled tour of duty equal to the amount of any time spent by them in irregular or overtime work, and shall not be entitled to compensation for such work.

(i) The Secretary concerned may not prescribe for purposes of eligibility for Federal recognition under section 301 of this title a qualification applicable to technicians employed under subsection (a) that is not applicable pursuant to that section to the other members of the National Guard in the same grade, branch, position, and type of unit or organization involved.


HISTORICAL AND REVISION NOTES

Revised section Revised section Source (U.S. Code) Source (Statutes at Large)

708(a) ...... 32–42 (1st par.). 708(a) ...... June 3, 1936, ch. 131, § 90;
32–42 (less 28 words before 32–42 (1st prov.). 32–42 (2d prov.).
1st prov.). 32–42 (2d par., and last sentence of 4th par.).
708(b) ...... 32–42 (less 28 words before 32–42 (3d par.).
1st prov.). 32–42 (4d par.).
708(c) ...... 32–42 (4d par., less last sentence). Ap. 21, 1928.
708(e) ...... 32–42 (last par., less prov.).
708(f) ...... 32–42 (128 words before 32–42 (128 words before 1st prov.).
1st prov.). 32–42 (1st prov.).
708(g) ...... 32–42 (provisos of last par.).

In subsection (a), the words “may be spent” are substituted for the words “shall be available”. The reference to animals for military purposes and forage, bedding, and other supplies and services for them, is omitted as obsolete, since animals are not now authorized for the National Guard. The word “persons” is substituted for the word “help”. The words “Army National Guard” and “Air National Guard” are substituted for the words “organizations of all kinds”. The words “the support of” are omitted as surplusage. The words “A caretaker employed under this subsection” are substituted for the words “Moneys hereafter appropriated under the provisions of this title for compensation of help for care of material, animals, armament, and equipment, in the hands of the National Guard of the several States, Territories, and the District of Columbia shall be available for the hire of caretakers”. The words “and other duties that do not interfere with the performance of his duties as caretaker” are substituted for 32:42a (1st proviso). 32:42a (2d and 3d provisos) is omitted as executed.

In subsection (b), the words “However, if a unit has more than one caretaker” are substituted for the words “but if there are as many as two caretakers in any unit”. The words “under this section”, in the first sentence of the revised subsection, are inserted for clarity. The words “under this section”, in the second sentence of the revised subsection, are substituted for the words “paid to caretakers who belong to the National Guard, as herein authorized”. The words “under any of the provisions of this title” are omitted as surplusage.

In subsection (c), the words “or organizations thereof” are omitted as surplusage.

In subsection (d), the words “one commissioned officer * * * in a grade below major * * * for each pool set up under subsection (c) and for each squadron of the Air National Guard” are substituted for the words “one such officer not above the grade of captain for each heavier-than-air squadron; and one such officer not above the grade of captain for each pool”. In subsection (e), the words “Funds appropriated by Congress” are substituted for the words “Funds hereafter appropriated under the provisions of this title for the support of”, in 32:42, and “such moneys”, in 32:42a. The words “are in addition to” are substituted for the words “shall be supplemental to”, in 32:42, and “may be used as supplemental to”, in 32:42a.

In subsection (f), the words “authorized to be employed under this section” are substituted for the
In no event shall the number of technicians employed under this section at any time exceed 53,100 with exception that such number is fixed at 49,200 for fiscal year beginning July 1, 1971. The words “authorized to be employed”. The words “person to employ them” are substituted for the words “by whom they shall be employed”. The words “by regulation authorized for” are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions.

**AMENDMENTS**


1997—Subsec. (b). Pub. L. 105–48 substituted “A technician” for “Except as prescribed by the Secretary concerned, a technician”.

1996—Subsec. (b). Pub. L. 104–106 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “Except as prescribed by the Secretary concerned, a technician employed under subsection (a) shall, while in the service of the Army, be a member of the National Guard and hold the military grade specified by the Secretary concerned for that position.”

1984—Subsec. (e)(6). Pub. L. 103–337, § 1070(d)(5)(A), substituted “30 days before” for “thirty days prior to”.


Subsec. (g)(2). Pub. L. 103–337, § 1070(d)(5)(B), substituted “paragraph (1)” for “clause (1) of this subsection”.


1971—Subsec. (b). Pub. L. 92–119 increased number of technicians employable under section from 42,500 to 53,100 with exception that such number is fixed at 49,200 for fiscal year beginning July 1, 1971.


Subsec. (a). Pub. L. 90–486 substituted provisions that persons may be employed as technicians in administration and training of National Guard and maintenance and repair of supplies issued to National Guard or armed forces for provisions that authorized the Secretaries of the Army and the Air Force to hire, out of funds allotted to them for the Army National Guard and the Air National Guard, respectively, competent persons to care for material, armament, and equipment of the Army National Guard and Air National Guard, and provisions that a caretaker so employed may also perform clerical duties incidental to his employment and other duties that do not interfere with performance of his duties as caretaker.

Subsec. (b). Pub. L. 90–486 substituted provisions requiring, except as prescribed by the Secretary concerned, any technician employed to be a member of the National Guard and hold the military grade specified by the Secretary concerned for that position so that they are employed as caretakers, provided that if a unit has more than one caretaker, one of them must be an enlisted member, and provisions that any compensation under this section is in addition to compensation otherwise provided for a member of the National Guard.

Subsec. (c). Pub. L. 90–486 substituted provisions authorizing the Secretary concerned to designate adjutants general to employ and administer the technicians authorized by this section for provisions authorizing the Secretary concerned to place in a common pool for care, maintenance, and storage the material, armament, and equipment of the Army National Guard or Air National Guard, with proviso that not more than 15 caretakers be employed for each pool.

Subsec. (d). Pub. L. 90–486 substituted provisions that a technician employed under subsec. (a) is an employee of the particular department concerned, and an employee of the United States, with proviso that a position authorized by this section is outside competitive service if technician so employed is required by subsec. (b) to be a member of the National Guard, for provisions that one commissioned officer of the National Guard in a grade below major may be employed for each pool set up and for each squadron of the Air National Guard.

Subsec. (e). Pub. L. 90–486 substituted provisions authorizing the adjutant general of the jurisdiction concerned to separate from technicians employment any technician for the specified grounds, provisions requiring the technician concerned to be notified in writing of the termination of his employment at least 30 days prior to the termination date of such employment, and provisions granting a limited right of appeal from such termination, for provisions appropriating funds by Congress for the National Guard as additional to funds appropriated by the several states and territories, etc., and provisions making such funds available for the hire of caretakers and clerks.

Subsec. (f). Pub. L. 90–486 substituted provisions making inapplicable sections 2108, 3502, 7511, and 7512 of Title 5 to any person employed under this section for provisions authorizing the Secretary concerned to fix the salaries of clerks and caretakers and to designate the person to employ them, and provisions authorizing compensation to include the amounts of the employer’s contributions to retirement systems.

Subsecs. (g), (h). Pub. L. 90–486 added subsecs. (g) and (h).

1961—Subsec. (f). Pub. L. 87–224 provided that the authorized compensation may include employer’s contributions to retirement systems, and that such contributions shall not exceed 6% per centum of the compensation upon which based.

**EFFECTIVE DATE OF 1999 AMENDMENT**

Amendment by Pub. L. 106–65 effective 180 days after the date of receipt by Congress of the plan required by section 523(d) of Pub. L. 105–85, set out as a note under section 10217 of Title 10, Armed Forces, or a report by the Secretary of Defense providing an alternative proposal to the plan required by section 523(d), see section 525 of Pub. L. 106–65, set out as a note under section 10217 of Title 10.

**EFFECTIVE DATE OF 1994 AMENDMENT**

Section 1070(b) of Pub. L. 103–337 provided that the amendment made by that section is effective as of Nov. 30, 1993, and as if included in the National Defense Authorization Act for Fiscal Year 1994, Pub. L. 103–160, as enacted.

**EFFECTIVE DATE OF 1980 AMENDMENT**

EFFECITIVE DATE OF 1968 AMENDMENT

Section 11 of Pub. L. 90–486 provided that: "This Act [see Short Title note below] becomes effective January 1, 1969, except that no deductions or withholdings from salary which result therefrom shall commence before the first day of the first pay period that begins on or after January 1, 1969."

SHORT TITLE

Section 1 of Pub. L. 90–486 provided: "That this Act [amending this section and section 715 of this title, sections 2105, 3832, 3834, and 3839 of Title 5, Government Organization and Employees, sections 3948, 3851, 8848, and 8851 of Title 10, Armed Forces, and section 418 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under this section] may be cited as the 'National Guard Technicians Act of 1968'."

MILITARY EDUCATION FOR ARMY NATIONAL GUARD CIVILIAN TECHNICIANS


Pub. L. 101–510, div. A, title V, §523(c), Nov. 30, 1993, 107 Stat. 1656, provided that: "A civilian technician of the Army National Guard serving in an active status on the date of the enactment of this Act [Nov. 30, 1993] who under the provisions of law repealed by subsection (b) [repealing section 523 of Pub. L. 101–456 and section 506(a)–(c) of Pub. L. 101–189, formerly set out as notes above] (or under other Department of the Army policy in effect on the day before such date of enactment) was granted credit on the technician's military record for the completion of certain education and training courses shall retain such credit, notwithstanding the provisions of subsections (a) [amending this section] and (b), for a period determined by the Secretary of the Army. Such a period may not terminate, in the case of any civilian technician, before the effective date of such civilian technician's next military [sic] promotion."

RETIEMENT CREDIT FOR CERTAIN FORMER NATIONAL GUARD TECHNICIANS


"'(a) Civil Service Retiree Credit.—A period of service performed under section 709 of title 32, United States Code (or under a prior corresponding provision of law), before January 1, 1969, which would not otherwise be creditable under subchapter III of chapter 83 of title 5, United States Code, because of the antepenultimate sentence of section 8332(b) of such title, shall be considered creditable service under such subchapter, notwithstanding such sentence, in the case of an individual described in subsection (b).

'(b) Covered Individuals.—Subsection (a) applies in the case of an individual who—

' before the end of the 14-month period beginning on the date of the enactment of this Act [Nov. 14, 1986], files appropriate written application with the Office of Personnel Management in accordance with regulations under subsection (c);

'(2) at the time of filing application under paragraph (1), is employed by the United States and is subject to subchapter III of chapter 83 of title 5, United States Code (other than under section 8344 of such title); and

'(3) before the date of the separation on which entitlement to an annuity under subchapter III of chapter 83 of title 5, United States Code, is based, makes an appropriate deposit under section 8344(c) of such title with respect to the period of service involved, based on the percentage of basic pay for such service which would be required under such section if such service had been performed as an employee under such subchapter.

'(c) Regulations.—The Office of Personnel Management shall prescribe regulations to carry out subsection (a). Such regulations shall be prescribed no later than 60 days after the date of the enactment of this Act [Nov. 14, 1986]."

SAVINGS PROVISION FOR ACCRUED CLAIMS; CONVERSION TO FEDERAL EMPLOYEE STATUS; CREDIT FOR PAST SERVICE; LEAVE CREDIT

Section 3 of Pub. L. 90–486, as amended by Pub. L. 101–530, §2, Nov. 6, 1990, 104 Stat. 2339, provided that:

"'(a) A claim accrued under section 715 of title 32, United States Code, before the effective date of this Act [see effective date note above] by reason of the act or omission of a person employed under section 709 of title 32, United States Code, may, if otherwise allowable, be settled and paid under section 715 of title 32, United States Code.

'(b) Except as provided in this Act and in the amendments made by this Act [see Short Title note above] and notwithstanding any law, rule, regulation, or decision to the contrary, the positions of persons employed under section 709 of title 32, United States Code, existing on the day before the effective date of this Act, and the persons holding those positions on that day, shall, on and after that effective date, be considered to be positions in and employees of the Department of the Army or the Department of the Air Force, as the case may be, and employees of the United States to the same extent as other positions in and employees of the Department of the Army or the Department of the Air Force. Such positions shall be outside the competitive service, if, as a condition of employment, the persons employed therein were, on the day before the effective date of this Act, required to be members of the Army National Guard or the Air National Guard.

'(c) All service under section 709 of title 32, United States Code, or prior corresponding provision of law, performed before the effective date of this Act, shall be credited to him in his new position.

Pub. L. 101–530, §3(b), Nov. 6, 1990, 104 Stat. 2339, provided that:

"'(1) General Rule.—Except as provided in paragraph (2), the amendment made by section 2 [amending section 3 of Pub. L. 90–486, set out above] applies only with respect to an individual performing service as an officer or employee of the Government on or after the date of enactment of this Act [Nov. 6, 1990] and only to determine—

'(A) any annual leave accruing under section 6303 of title 5, United States Code, to the individual on or after such date; and

'(B) the individual's length of service for the purposes of entitlement to Federal employee death and disability compensation, group life insurance, group health insurance, severance pay, tenure, and status.

'(12) Exception.—
§ 709

TITLE 32—NATIONAL GUARD

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["(A) Rule for individuals separating after December 31, 1968, and before the enactment of this Act.—The amendment made by section 2 of this Act applies with respect to any individual who separated from Government employment after December 31, 1968, and before the date of the enactment of this Act [Nov. 6, 1990], for the purpose of determining whether such individual satisfies the length of service requirement under section 8901(3)(A) of title 5, United States Code (relating to the definition of the term 'annuity', as in effect at the time of such individual's separation) for the purposes of chapter 89 of such title.

(B) Conditions for enrolment in a health benefits plan.—Any individual who satisfies the length of service requirement referred to in subparagraph (A) as a result of the application of the amendment made by section 2 shall be enrolled in a health benefits plan (described in section 8903 of such title) of such individual's choice.

(i) application for enrollment is received by the Office of Personnel Management within one year after the date of the enactment of this Act; and

(ii) such individual would have qualified under section 8905(b)(1) of such title at the time of such individual's separation."

Persons employed prior to January 1, 1969, whose employment was covered by Civil Service Retirement Provisions

Section 5(d) of Pub. L. 90–486 provided that: "Clause (4) of subsection (a) of this section [amending section 8332(b) of Title 5, Government Organization and Employees] and subsections (b) and (c) of this section [amending section 8336(c) and adding section 8339(d) of title 5] do not apply to any person employed prior to the effective date of this Act [see Effective Date note above] under section 709 of title 32, United States Code, whose employment under that section was covered by subchapter III of chapter 83 of title 5, United States Code."

Election to remain under state retirement system; reemployed technicians; continuation of federal contributions

Section 6 of Pub. L. 90–486, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "(a) Notwithstanding section 706(d) of title 32, United States Code, a person who, on the date of enactment of this Act [Aug. 13, 1968], is employed under section 709 of title 32, United States Code, and is covered by an employee retirement system of, or plan sponsored by, a State or the Commonwealth of Puerto Rico, may elect, not later than the effective date of this Act [see Effective Date note above], not to be covered by subchapter III of chapter 83 of title 5, United States Code, with the consent of the State concerned or Commonwealth of Puerto Rico, to remain covered by the employee retirement system of, or plan sponsored by, that State or the Commonwealth of Puerto Rico. Unless such an election, together with a statement of approval by the State concerned or the Commonwealth of Puerto Rico, is filed with the Secretary of the Army or the Secretary of the Air Force, as appropriate, on or before the effective date of this Act, the person concerned is covered by subchapter III of chapter 83 of title 5, United States Code, as of that date.

(b) A member of the National Guard of a State or the Commonwealth of Puerto Rico who was employed as a technician under section 709 of title 32, United States Code, or prior corresponding provision of law, who—

(1) was involuntarily ordered to active duty after January 1, 1968, from that employment and has not been released from that duty prior to the effective date of this Act [see Effective Date note above]; or

(2) is on active duty under section 265 [see 15 U.S.C. 2605, 3033, 3034 (see 12402)] of title 10, United States Code, on the effective date of this Act;

and was covered by a retirement system or plan of a State or the Commonwealth of Puerto Rico, may, if he is reemployed within sixty days under section 709 of title 32, United States Code, make the election described in subsection (a) of this section, within thirty days following the date of his reemployment.

(c) In the case of any person who files a valid election under this section and remains covered by an employee retirement system of, or plan sponsored by, a State or the Commonwealth of Puerto Rico, the United States may pay the amount of the employer's contributions to that system or plan that become due for periods beginning on or after the effective date of this Act [see Effective Date note above]. However, the payment by the United States, including any contribution that may be made by the United States toward the employer's tax imposed by section 3111 of the Internal Revenue Code of 1986 [former I.R.C. 1954], as amended (26 U.S.C. 3111), may not exceed the amount which the employing agency would otherwise contribute on behalf of the person to the Civil Service Retirement and Disability Fund under section 8334(a) of title 5, United States Code. Notwithstanding section 8332(b) of title 5, United States Code, as amended by section 5 of this Act, the service under section 709 of title 32, United States Code, or prior corresponding provision of law, of a person who has made an election to remain covered by the employee retirement system of, or plan sponsored by, a State or the Commonwealth of Puerto Rico, shall not be creditable toward eligibility for or amount of annuity under subchapter III of chapter 83 of title 5, United States Code. A person who retires pursuant to this election shall not be eligible for any rights, benefits, or privileges to which retired civilian employees of the United States may be entitled."

Compensation rates; conversion and adjustment of compensation to the general schedule

Section 8 of Pub. L. 90–486 provided that: "(a) Except as provided in section 709(g) of title 32, United States Code, the Secretary concerned shall fix the rate of basic compensation of positions existing on the date of enactment of this Act [Aug. 13, 1968] in accordance with the General Schedule set forth in section 5332, or under the appropriate prevailing rate schedule in accordance with section 5341 of title 5, United States Code, as applicable. In fixing such rate—

(1) If the technician is receiving a rate of basic compensation which is less than the minimum rate of the appropriate grade of the General Schedule, or which is less than the minimum rate of the appropriate grade or compensation level of the appropriate prevailing rate schedule, as applicable, in which his position is placed, his basic compensation shall be increased to that minimum rate.

(2) If the technician is receiving a rate of basic compensation which is equal to a rate of the appropriate grade of the General Schedule, or which is equal to a rate of the appropriate grade or compensation level under the appropriate prevailing rate schedule, as applicable, in which his position is placed, he shall receive basic compensation at that rate of the General Schedule, or at that rate under the prevailing rate schedule, as applicable.

(3) If the technician is receiving a rate of basic compensation which is between two rates of the appropriate grade of the General Schedule, or which is between two rates of the appropriate grade or compensation level under the appropriate prevailing rate schedule, as applicable, in which his position is placed, he shall receive basic compensation at that rate of the General Schedule, or at that rate under the prevailing rate schedule, as applicable.

(4) If the technician is receiving a rate of basic compensation which is in excess of the maximum rate of the appropriate grade of the General Schedule, or which is in excess of the maximum rate of the appropriate grade or compensation level of the appropriate prevailing rate schedule, as applicable, in which his position is placed, he shall continue to re-
ceive basic compensation without change in rate until—

“(A) he leaves that position, or

“(B) he is entitled to receive basic compensation at a higher rate.

but, when any such position becomes vacant, the rate of basic compensation of any subsequent appointee thereto shall be fixed in the manner provided by applicable law and regulation.

“(b) The conversion of positions and employees to appropriate grades of the General Schedule set forth in section 5332 of title 5, United States Code, and the initial adjustment of rates of basic compensation of those positions and technicians, provided for by this Act [see Short Title note above], shall not be considered to be transfers or promotions within the meaning of section 5334(b) of title 5, United States Code, and the regulations issued thereunder.

“(c) Each technician on the effective date of this Act [see Effective Date note above], whose position is converted to the General Schedule set forth in section 5332 of title 5, United States Code, or to the appropriate prevailing rate schedule, as applicable, who prior to the initial adjustment of his rate of basic compensation is initially adjusted under that subsection.

“(d) Each technician on the effective date of this Act whose position is converted to the General Schedule set forth in section 5332 of title 5, United States Code, or to the appropriate prevailing rate schedule, as applicable, shall be granted credit, for purposes of his first step increase under the General Schedule or prevailing rate schedule, for all satisfactory service performed by him since his last increase in compensation prior to the initial adjustment of his rate of basic compensation under subsection (a) of this section.

“(e) An increase in rate of basic compensation by reason of the enactment of subsection (a) of this section shall not be considered to be an equivalent increase with respect to step increases for technicians whose positions are converted to the General Schedule set forth in section 5332 of title 5, United States Code, or to the appropriate prevailing rate schedule under authority of this section.

REGULATIONS: APPROVAL BY SECRETARY OF DEFENSE; UNIFORMITY

Section 10 of Pub. L. 90–486 provided that: “Regulations prescribed by the Secretary of the Army and Secretary of the Air Force under this Act [see Short Title note above] shall be approved by the Secretary of Defense and shall, so far as practicable, be uniform.”

NUMBER OF CARETAKERS FOR AIR NATIONAL GUARD

Pub. L. 90–580, title II, Oct. 17, 1968, 82 Stat. 1124, provided that the number of caretakers authorized to be employed under this section may be such as is deemed necessary by the Secretary of the Army, and that they may be employed without regard to their military rank as members of the Air National Guard.

Similar provisions were contained in the following prior acts:

July 16, 1946, ch. 583, 60 Stat. 556.

§710. Accountability for property issued to the National Guard

(a) All military property issued by the United States to the National Guard remains the property of the United States.

(b) The Secretary of the Army shall prescribe regulations for accounting for property issued by the United States to the Army National Guard and for the fixing of responsibility for that property. The Secretary of the Air Force shall prescribe regulations for accounting for property issued by the United States to the Air National Guard and for the fixing of responsibility for that property. So far as practicable, regulations prescribed under this section shall be uniform among the components of each service.

(c) Under regulations prescribed by the Secretary concerned under subsection (b), liability for the value of property issued by the United States to the National Guard that is lost, damaged, or destroyed may be charged (1) to a member of the Army National Guard or the Air National Guard when in similar circumstances a member of the Army or Air Force serving on active duty would be so charged, or (2) to a State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands when the property is lost, damaged, or destroyed incident to duty directed pursuant to the laws of, and in support of the authorities of, such jurisdiction. Liability charged to a member of the Army National Guard or the Air National Guard shall be paid out of pay due to the member for duties performed as a member of the National Guard, unless the Secretary concerned shall for good cause remit or cancel that liability. Liability charged to a State, the Commonwealth of
Puerto Rico, the District of Columbia, Guam, or the Virgin Islands shall be paid from its funds or from any other non-Federal funds.

(d) If property surveyed under this section is found to be unserviceable or unsuitable, the Secretary concerned shall direct its disposition by sale or otherwise. The proceeds of the following under this subsection shall be deposited in the Treasury under section 4(b)(22) of the Permanent Appropriation Repeal Act, 1934:

(1) A sale.

(2) A stoppage against a member of the National Guard.

(3) A collection from a person, or from a State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands, to reimburse the United States for the loss or destruction of, or damage to, the property.

(e) If a State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands, whichever is concerned, neglects or refuses to pay for the loss or destruction of, or damage to, property charged against it under subsection (c), the Secretary concerned may bar it from receiving any part of appropriations for the Army National Guard or the Air National Guard, as the case may be, until the payment is made.

(f)(1) Instead of the procedure prescribed by subsections (b), (c), and (d), property issued to the National Guard that becomes unserviceable through fair wear and tear in service may, under regulations to be prescribed by the Secretary concerned, be sold or otherwise disposed of after an inspection, and a finding of unserviceability because of that wear and tear, by a commissioned officer designated by the Secretary. The State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands, whichever is concerned, is relieved of accountability for that property.

(2) In designating an officer to conduct inspections and make findings for purposes of paragraph (1), the Secretary concerned shall designate:

(A) in the case of the Army National Guard, a commissioned officer of the Regular Army or a commissioned officer of the Army National Guard who is also a commissioned officer of the Army National Guard of the United States; and

(B) in the case of the Air National Guard, a commissioned officer of the Regular Air Force or a commissioned officer of the Air National Guard who is also a commissioned officer of the Air National Guard of the United States.


In subsection (a), the words “as herein provided” are omitted as surplusage.

In subsections (b) and (f), the word “commissioned” is inserted, since 32:47 historically applied only to commissioned officers (see opinion of the Judge Advocate General of the Army (JAGA 1953/4078, 6 May 1953)).

In subsection (b), the words “by use in service or from any other cause” and “surveying” are omitted as surplusage. The words “a survey of the circumstances thereof” are substituted for the word “it”.

In subsection (c), the first 12 words of the second sentence are substituted for 32:47 (38th through 77th words of 2d sentence). Clause (2) is substituted for 32:154 (last proviso of 2d par.).

In subsection (d), the last sentence is substituted for 32:47 (words between semicolon and 1st colon of last sentence).

In subsection (e), the words “charged against it under subsection (c)” are substituted for the words “changed against such State, Territory, or the District of Columbia by the Secretary of the Army after survey by a disinterested officer appointed as hereinbefore provided”.

The words “may bar it from receiving” are substituted for the words “is authorized to debar such State, Territory, or the District of Columbia from further participation in any and all”.

In subsection (f), the words “Instead of the procedure prescribed by subsections (b)–(d)” are substituted for the words “and to constitute as to such property a discretionary substitute for the examination, report, and disposition provided for elsewhere in this section”. The words “finding of unserviceability because of that wear and tear” are substituted for the words “finding to that effect”.

1958 ACT

This change corrects a typographical error.

REFERENCES IN TEXT

Section 4(b)(22) of the Permanent Appropriation Repeal Act, 1934, referred to in subsection (d), is section 4(b)(22) of act June 26, 1934, ch. 756, 48 Stat. 1228, which was classified to section 725c(b)(22) of former Title 31, Money and Finance, by Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 877.

AMENDMENTS

1906—Subsecs. (c), (d)(3), (e), (f)(1). Pub. L. 109–163 substituted “State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands” for “State or Territory, Puerto Rico, or the District of Columbia” wherever appearing.

1993—Subsec. (f). Pub. L. 103–160 designated existing existing provisions as par. (1), substituted “subsections (b), (c), and (d)” for “subsections (b)–(d)”, struck out “of the Regular Army or the Regular Air Force, as the case may be,” after “commissioned officer”, and added parenthetical text.


### Historical and Revision Notes

#### 1956 Act

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<td>32:47 (last proviso of last sentence).</td>
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This change corrects a typographical error.
§ 711. Disposition of obsolete or condemned property

Each State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, and the Virgin Islands shall, upon receiving new property issued to its National Guard to replace obsolete or condemned issues of property, return the replaced property to the Department of the Army or the Department of the Air Force, as the case may be, or otherwise dispose of it, as the Secretary concerned directs. No money credit may be allowed for property disposed of under this section.
§ 714. Final settlement of accounts: deceased members

(a) In the settlement of the accounts of a member of the National Guard who dies after December 31, 1955, an amount due from the armed force of which he was a member shall be paid to the person highest on the following list living on the date of death:

(1) Beneficiary designated by him in writing to receive such an amount, if the designation is received, before the deceased member’s death, at the place named in regulations to be prescribed by the Secretary concerned.

(2) Surviving spouse.

(3) Children and their descendants, by representation.

(4) Father and mother in equal parts or, if either is dead, the survivor.

(5) Legal representative.

(6) Person entitled under the law of the domicile of the deceased member.

(b) Designations and changes of designation of beneficiaries under subsection (a)(1) are subject to regulations to be prescribed by the Secretary concerned. So far as practicable, these regulations shall be uniform with those prescribed for the armed forces under section 2771(b) of title 10.

(c) Under such regulations as the Secretary concerned may prescribe, payments under subsection (a) shall be made by the Department of the Army or the Department of the Air Force, as the case may be.

(d) A payment under this section bars recovery by any other person of the amount paid.


HISTORICAL AND REVISION NOTES

Revised section Source (U.S. Code) Source (Statutes at Large)

In subsection (a), the definition of the term “Department”, in 37:361, is omitted as unnecessary, since the particular departments referred to are spelled out in the revised text. The definition of the term “uniformed services”, in 37:361, is omitted as covered by the word “member” in this revised section. Clauses (1)–(6) are substituted for the last 5 clauses of 37:362. The words “regulations to be prescribed by the Secretary concerned” are substituted for the words “regulations of the Department concerned”, since the “Department”, as such, cannot issue regulations.

In subsection (a)(2), the words “Surviving spouse” are substituted for the words “widow or widower”. As defined in section 101(18) of this title, “spouse” includes a widower.

In subsection (b), the words “are subject to” are substituted for the words “shall be made under”.

In subsection (c), the word “Under” is substituted for the words “shall be made for”.

1961—Subsec. (c). Pub. L. 87–46 substituted “Payment under clause (6) of subsection (a) shall be made—

“(1) upon settlement by the General Accounting Office; or

“(2) as otherwise authorized by the Comptroller General.”

Designation of beneficiary made before January 1, 1956

Designation of beneficiary made before Jan. 1, 1956, considered as the designation of a beneficiary for the purposes of this section, see note set out under section 2771 of Title 10, Armed Forces.

§ 715. Property loss; personal injury or death: activities under certain sections of this title

(a) Under such regulations as the Secretary of the Army or Secretary of the Air Force may prescribe, he or, subject to appeal to him, the Judge Advocate General of the armed force under his jurisdiction, if designated by him, may settle and pay in an amount not more than $100,000 a claim against the United States for—

(1) damage to, or loss of, real property, including damage or loss incident to use and occupancy;

(2) damage to, or loss of, personal property, including property bailed to the United States or the National Guard and including registered or insured mail damaged, lost, or destroyed by a criminal act while in the possession of the National Guard; or

(3) personal injury or death; either caused by a member of the Army National Guard or the Air National Guard, as the case may be, while engaged in training or duty under section 316, 502, 503, 504, or 505 of this title or any other provision of law for which he is entitled to pay under section 206 of title 37, or for which he has waived that pay, and acting within the scope of his employment; or otherwise incident to noncombat activities of the Army National Guard or the Air National Guard, as the case may be, under one of those sections.

(b) A claim may be allowed under subsection (a) only if—

(1) it is presented in writing within two years after it accrues, except that if the claim...
accrues in time of war or armed conflict or if such a war or armed conflict intervenes within two years after it accrues, and if good cause is shown, the claim may be presented not later than two years after the war or armed conflict is terminated;

(2) it is not covered by section 2734 of title 10 or section 2672 of title 28;

(3) it is not for personal injury or death of such a member or a person employed under section 709 of this title, whose injury or death is incidental to his service;

(4) the damage to, or loss of, property, or the personal injury or death, was not caused wholly or partly by a negligent or wrongful act of the claimant, his agent, or his employee, or, if so caused, allowed only to the extent that the law of the place where the act or omission complained of occurred would permit recovery from a private individual under like circumstances; and

(5) it is substantiated as prescribed in regulations of the Secretary concerned.

For the purposes of clause (1), the dates of the beginning and end of an armed conflict are the dates established by the concurrent resolution of Congress or by a determination of the President.

(c) Payment may not be made under this section for reimbursement for medical, hospital, or burial services furnished at the expense of the United States or of any State or the District of Columbia or Puerto Rico.

(d) If the Secretary concerned considers that a claim in excess of $100,000 is meritorious, and the claim otherwise is payable under this section, the Secretary may pay the claimant $100,000 and report any meritorious amount in excess of $100,000 to the Secretary of the Treasury for payment under section 1304 of title 31.

(e) Except as provided in subsection (d), no claim may be paid under this section unless the amount tendered is accepted by the claimant in full satisfaction.

(f) Under regulations prescribed by the Secretary concerned, an officer or employee under the jurisdiction of the Secretary may settle a claim that otherwise would be payable under this section in an amount not to exceed $25,000. A decision of the officer or employee who makes a final settlement decision under this section may be appealed by the claimant to the Secretary concerned or an officer or employee designated by the Secretary for that purpose.

(g) Notwithstanding any other provision of law, the settlement of a claim under this section is final and conclusive.

(h) In this section, “settle” means consider, ascertain, adjust, determine, and dispose of a claim, whether by full or partial allowance or disallowance.

Amendments


1984—Subsec. (a). Pub. L. 98–564, §4(1), substituted “$100,000” for “$25,000”.

Subsec. (d). Pub. L. 98–564, §4(2), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “If the Secretary of the military department concerned considers that a claim in excess of $25,000 is meritorious and would otherwise be covered by this section, he may pay the claimant $25,000 and report the excess to Congress for its consideration”.

Subsec. (f). Pub. L. 98–564, §4(3), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: “In any case where the amount to be paid is not more than $5,000, the authority contained in subsection (a) may be delegated to any officer of the Army or the Air Force, as the case may be, who has been delegated authority under section 2733(g) of title 10, to settle similar claims, subject to appeal to the Secretary concerned, or his designee for that purpose”.

1974—Subsecs. (a), (d). Pub. L. 93–336, §3(1), (2), substituted “$25,000” for “$15,000”.

Subsec. (f). Pub. L. 93–336, §3(3), substituted “$5,000” for “$2,500”.

1972—Subsec. (b)(4). Pub. L. 92–445 inserted provision that claim may be allowed to extent that law of place where act or omission complained of occurred would permit recovery from a private individual under similiar circumstances, when damage to or loss of property, or personal injury or death was caused wholly or partly by a negligent or wrongful act of claimant, his agent, or his employee.

1970—Subsecs. (a), (d). Pub. L. 91–312 substituted “$15,000” for “$5,000”.

1968—Subsec. (a). Pub. L. 90–486 struck out “caused by a person employed under section 709 of this title acting within the scope of his employment;” after “acting within the scope of his employment;”.

Subsec. (f). Pub. L. 90–525 increased limitation on amount of settlement from $1,000 to $2,500 and provided for appeals to Secretary concerned, or his designee, from determinations delegating authority to settle claims to an officer of the Army or the Air Force.


Effective Date of 1968 Amendment

Amendment by Pub. L. 90–486 effective Jan. 1, 1968, except that no deductions or withholding from salary which result therefrom shall commence before the first day of the first pay period that begins on or after Jan. 1, 1968, see section 11 of Pub. L. 90–486, set out as a note under section 709 of this title.

Effective Date of 1962 Amendment


Savings Provision for Claims Arising Before January 1, 1969

Settlement and payment of claims arising under this section before January 1, 1969, see section 3(a) of Pub. L. 90–486, set out in a note under section 709 of this title.

§ 716. Claims for overpayment of pay and allowances, and travel and transportation allowances

(a) A claim of the United States against a person arising out of an erroneous payment of any pay or allowances made before, on, or after October 2, 1972, or arising out of an erroneous payment of travel and transportation allowances, to or on behalf of a member or former member of
the National Guard, the collection of which would be against equity and good conscience and not in the best interest of the United States, may be waived in whole or in part by—

(1) the Director of the Office of Management and Budget; or
(2) the Secretary concerned, as defined in section 101(5) of title 37, when—

(A) the claim is in an amount aggregating not more than $10,000; and
(B) the waiver is made in accordance with standards which the Director of the Office of Management and Budget shall prescribe.

(b) The Director of the Office of Management and Budget or the Secretary concerned, as the case may be, may not exercise his authority under this section to waive any claim—

(1) if, in his opinion, there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the member or any other person having an interest in obtaining a waiver of the claim; or
(2) if application for waiver is received in his office after the expiration of five years immediately following the date on which the erroneous payment was discovered.

c. A person who has repaid to the United States all or part of the amount of a claim, with respect to which a waiver is granted under this section, is entitled, to the extent of the waiver, to refund, by the department concerned at the time of the erroneous payment, of the amount repaid to the United States, if he applies to that department for that refund within two years following the effective date of the waiver. The Secretary shall pay from current appropriations that refund in accordance with standards which the Director of the Office of Management and Budget shall prescribe.

d. In the audit and settlement of accounts of any accountable officer or official, full credit shall be given for any amounts with respect to which collection by the United States is waived under this section.

e. An erroneous payment, the collection of which is waived under this section, is considered a valid payment for all purposes, and (f) this section does not affect any authority under any other law to litigate, settle, compromise, or waive any claim of the United States.


AMENDMENTS


Subsec. (a)(2). Pub. L. 104–316, § 116(1)(B), inserted “and” at end of subpar. (A), redesignated subpar. (C) as (B) and substituted “Director of the Office of Management and Budget” for “Comptroller General”, and struck out former subpar. (B) which read as follows: “the claim is not the subject of an exception made by the Comptroller General in the account of any accountable officer or official; and”.

Commonwealth of Puerto Rico, or a territory or possession of the United States.


§ 902. Homeland defense activities: funds

The Secretary of Defense may provide funds to a Governor to employ National Guard units or members to conduct homeland defense activities that the Secretary,\(^1\) determines to be necessary and appropriate for participation by the National Guard units or members, as the case may be.


AMENDMENTS

2006—Pub. L. 109–364 struck out “(a)” before “The Secretary”.

§ 903. Regulations

The Secretary of Defense shall prescribe regulations to implement this chapter.


§ 904. Homeland defense duty

(a) FULL-TIME NATIONAL GUARD DUTY.—All duty performed under this chapter shall be considered to be full-time National Guard duty under section 502(f) of this title. Members of the National Guard performing full-time National Guard duty in the Active Guard and Reserve Program may support or execute homeland defense activities performed by the National Guard under this chapter.

(b) DURATION.—The period for which a member of the National Guard performs duty under this chapter shall be limited to 180 days. The Governor of the State may, with the concurrence of the Secretary of Defense, extend the period one time for an additional 90 days to meet extraordinary circumstances.

(c) RELATIONSHIP TO REQUIRED TRAINING.—A member of the National Guard performing duty under this chapter shall, in addition to performing such duty, participate in the training required under section 502(a) of this title. The pay, allowances, and other benefits of the member while participating in the training shall be the same as those to which the member is entitled while performing the duty under this chapter. The member is not entitled to additional pay, allowances, or other benefits for participation in training required under section 502(a)(1) of this title.

(d) READINESS.—To ensure that the use of units and personnel of the National Guard of a State for homeland defense activities does not degrade the training and readiness of such units and personnel, the following requirements shall apply in determining the homeland defense activities that units and personnel of the National Guard of a State may perform:

(1) The performance of the activities is not to adversely affect the quality of training or otherwise interfere with the ability of a member or unit of the National Guard to perform the military functions of the member or unit.

(2) The performance of the activities is not to degrade the military skills of the members of the National Guard performing those activities.


§ 905. Funding assistance

In the case of any homeland defense activity for which the Secretary of Defense determines under section 902 of this title that participation of units or members of the National Guard of a State is necessary and appropriate, the Secretary may provide funds to that State in an amount that the Secretary determines is appropriate for the following costs of the participation in that activity from funds available to the Department for related purposes:

(1) The pay, allowances, clothing, subsistence, gratuities, travel, and related expenses of personnel of the National Guard of that State.

(2) The operation and maintenance of the equipment and facilities of the National Guard of that State.

(3) The procurement of services and equipment, and the leasing of equipment, for the National Guard of that State.


§ 906. Requests for funding assistance

A Governor of a State may request funding assistance for the homeland defense activities of the National Guard of that State from the Secretary of Defense. Any such request shall include the following:

(1) The specific intended homeland defense activities of the National Guard of that State.

(2) An explanation of why participation of National Guard units or members, as the case may be, in the homeland defense activities is necessary and appropriate.

(3) A certification that homeland defense activities are to be conducted at a time when the personnel involved are not in Federal service.


§ 907. Relationship to State duty

Nothing in this chapter shall be construed as a limitation on the authority of any unit of the National Guard of a State, when such unit is not in Federal service, to perform functions authorized to be performed by the National Guard by the laws of the State concerned.


§ 908. Annual report

(a) REQUIREMENT FOR REPORT.—After the end of each fiscal year, the Secretary of Defense shall submit to the congressional defense committees a report regarding any assistance pro-
vided and activities carried out under this chapter during that fiscal year. The report for a fiscal year shall be submitted not later than March 31 of the year following the year in which such fiscal year ended.

(b) CONTENT.—The report for a fiscal year shall include the following matters:

(1) The numbers of members of the National Guard excluded under subsection (i)(13) of section 115 of title 10 from being counted for the purpose of end-strengths authorized pursuant to subsection (a)(1) of such section.

(2) A description of the homeland defense activities conducted with funds provided under this chapter.

(3) An accounting of the amount of the funds provided to each State.

(4) A description of the effect on military training and readiness of using units and personnel of the National Guard to perform homeland defense activities under this chapter.


AMENDMENTS