Unraveling the Labyrinth of National Guard Duty Statuses
Friday, March 13, 2020

Organization of the National Guard

- Must first understand the Militia
- The "First Muster:"
  - 1565: St. Augustine, FL
  - 1637: Salem, Mass

America Gains Independence; Debates Defense

- George Washington recognizes need for a "well-regulated and disciplined militia"
- Founding Fathers chose to maintain small standing Army and rely on militias for support
- Some delegates argued for federal control of militias; others argued for state control
- Compromise in "Militia Clauses"
The Militia Clauses

Art. I, § 8, Cl. 15
Congress shall have power to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions

Art. I, § 8, Cl. 16
Congress shall have power to provide for organizing, arming . . . Militia, reserving to the states the appointment of officers and authority to train the militia according to the discipline prescribed by Congress

The Dick Act, 1903
- Created “The National Guard (NG)
- Implemented required training: 24 drills / 5 AT
- Provided President authority to “call forth militia”
- Amended in 1908 - NG could serve overseas and for any length of time
- Created: “Militia Affairs Office” (now National Guard Bureau NGB)
National Defense Act of 1916

- National Guard of the United States (NGUS later ARNGUS/ANGUS) as a Reserve Component
- Established Federal recognition of units and officers
- 48 drills, 15 days Annual Training
- Stiffened standards/training requirements, annual inspections
- Established dual status – State NG & NGUS
- President can “Federalize” in an emergency

Federal Refinements

- 1933 NDAA- Dual status (simultaneous enlistment)
  - Units, not people, ordered into active federal service
- Selective Training and Reserve Act 1940:
  - Presidential call-up of NG for one year of training, extended to 18 months, mobilized for duration of WWII
- Armed Forces Unification Act 1947:
  - Created Dept. of the Air Force
- National Security Act 1947:
  - divided NG into Army National Guard (ARNG) & Air National Guard (ANG)

ARNGUS/ANGUS as Reserve Components

10 U.S.C. § 10101

Reserve Components Named

The reserve components of the armed forces are:

1. The Army National Guard of the United States.
2. The Army Reserve.
3. The Naval Reserve.
4. The Marine Corps Reserve.
5. The Air National Guard of the United States.
7. The Coast Guard Reserve.
The Reserve Components

Department of the Army    Department of the Navy    Department of the Air Force

What is the NG?

10 U.S.C. 101(c) Reserve Components.—The term “National Guard” means the Army National Guard and the Air National Guard.

(2) The term “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.

(3) The term “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.

United States vs. Dern

…and there must be a state National Guard before there can be a National Guard of the United States…

The United States may organize, may arm, and may discipline, but all of this is in contemplation of and preparation for, the time when the militia may be called into the national service. Until that event, the government of the militia is committed to the states.

74 F.2d 485, 487 (D.C. Cir. 1934)
Dual Membership

Members join both the National Guard of the United States (NGUS) and their State National Guard (NG)

**ARNGUS/ANGUS (NGUS):** Reserve Components;
**ARNG/ANG (NG):** organized state militia

Enlistment Oath: (32 U.S.C. § 304)
“I do solemnly swear that I will support and defend the Constitution of the United States and the State of _______________; and that I will obey the orders of the President and the Governor of __________.”

Duty Statuses of National Guard

- **Federal (RC) Status – ARNGUS/ANGUS**
  - Title 10 (Federally controlled, Federally funded) **Active Duty**
- **State Status – ARNG/ANG**
  - Title 32 (State controlled, Federally funded)
  - State Active Duty (State controlled, State funded – pure “historical” militia status)
  - State Defense Forces (State controlled, State funded, not federally recognized)

NG/NGUS Hats

*Perpich v. Department of Defense*

496 U.S. 334 (1990)

“Since 1933 all persons who have enlisted in the state National Guard unit have simultaneously enlisted in the National Guard of the United States. In the latter capacity they became part of the Enlisted Reserve Corps of the Army, but unless and until ordered to active duty in the Army, they retain their status as members of a separate state Guard unit.

“(A)ll of the (National Guard members) now must keep three hats in their closets – a civilian hat, a state militia hat, and an Army/AF Force hat – only one hat is to be worn at any particular time.”
NG MEMBER STATUSES

- Civilian
- Title 10
- Title 32
- State Active Duty
- Dual Technicians*

***The Adjutant General***

NG Military Personnel Duty Statuses

- Title 32 Traditional Guardsmen (DSG/M-DAY; Title 32 502(a) training; 90% of NG force)
- Title 32 Active Guard Reserve (32 USC 328 (IAW 502(f))
- Title 32 Dual Status Technicians (32 USC 709)
- Title 10 Active Guard Reserve (AGR) (10 USC 12310, IAW 12301(d))
- Title10 Mobilized/Activated (e.g. 10 USC 12302, 10 USC 12304b)
- Title 10 Active Duty For Operational Support (10 USC 12301(d))

WHO IS IN THE ARMORY

- Title 32 AGR
- Title 32 Traditional Guardsmen
- Guardsmen in State Active Duty
- Dual Status Technician
- Non-Dual Status Technician
- T5 Employee (Civilian)
- State Employee

***The Adjutant General***
## Title 10

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<thead>
<tr>
<th>10 U.S.C. § 10105/10111</th>
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<td><strong>ARNGUS/ANGUS</strong> are Reserve Components of the Army or Air Force that consist of federally recognized units, organizations, and personnel of the Army or Air National Guard</td>
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<th>10 U.S.C. § 10106/10112</th>
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<td>The Army/Air National Guard while in the service of the United States (ARNGUS/ANGUS status) are components of the Army/Air Force</td>
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## Title 32

- **Title 32, U.S.C.** governs the National Guard while in “state service” when federally funded and carrying out federal training requirements (IDT/AT training for federal mission IAW 502(a)) and other authorized duty
- While on Title 32 orders, paid by DoD but Command is with Governor. Under Title 32, the Federal Government can request National Guardman to perform additional training or other duties under 502(f)
  - Can be called up without his/her consent.
  - Receives the pay and allowances provided by federal law for military.
  - Operates under the control of state and territorial governors.

## Use of Guard by State during disasters

### Features:
- Operate under the control of their governor,
- Are paid full-time Federal military pay and receive eligible allowances
- Can perform typical disaster relief tasks
- Are not subject to the restrictions of the Posse Comitatus Act (that is, they can perform law enforcement functions).
### State Active Duty (SAD) The Governor’s Militia

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<th>Governor</th>
<th>President</th>
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<td>State Funds</td>
<td>Federal</td>
<td>Federal</td>
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<td>Mission Types</td>
<td>In accordance with State Law (riot control, natural disasters, emergencies)</td>
<td>Training and/or other federally authorized missions</td>
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<td>Military Discipline</td>
<td>Civilian LE State Military Code</td>
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<td>UCMJ</td>
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### NG COMMAND AND CONTROL

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<td>Governor</td>
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<td>Title 32</td>
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<td>Mission Types</td>
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<td>Training (SAD), annual</td>
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<td>Federal pay and allowances</td>
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<td>Discipline</td>
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The National Guard Today

450,000
National Guard Soldiers and Airmen

Serving the 54 States, Territories, the District of Columbia and the United States of America