

(2) if the request is denied, the member may appeal to the first general officer or flag officer in the chain of command of the member, and in the case of such an appeal a decision on the appeal must be made within 15 days from the date of the appeal.

(Added Pub. L. 112-239, div. A, title V, §571(a), Jan. 2, 2013, 126 Stat. 1753.)

#### CHAPTER 1211—NATIONAL GUARD MEMBERS IN FEDERAL SERVICE

Sec.	
12401.	Army and Air National Guard of the United States: status.
12402.	Army and Air National Guard of the United States: commissioned officers; duty in National Guard Bureau.
12403.	Army and Air National Guard of the United States: members; status in which ordered into Federal service.
12404.	Army and Air National Guard of the United States: mobilization; maintenance of organization.
12405.	National Guard in Federal service: status.
12406.	National Guard in Federal service: call.
12407.	National Guard in Federal service: period of service; apportionment.
12408.	National Guard in Federal service: physical examination.

##### AMENDMENTS

1996—Pub. L. 104-106, div. A, title XV, §1501(b)(18)(A), Feb. 10, 1996, 110 Stat. 497, inserted “the” after “Army and Air National Guard of” in items 12401, 12402, 12403, and 12404.

#### § 12401. Army and Air National Guard of the United States: status

Members of the Army National Guard of the United States and the Air National Guard of the United States are not in active Federal service except when ordered thereto under law.

(Added Pub. L. 103-337, div. A, title XVI, §1662(f)(1), Oct. 5, 1994, 108 Stat. 2993.)

##### PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3495 and 8495 of this title, prior to repeal by Pub. L. 103-337, §1662(f)(2).

##### EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as a note under section 10001 of this title.

#### § 12402. Army and Air National Guard of the United States: commissioned officers; duty in National Guard Bureau

(a) The President may, with their consent, order commissioned officers of the Army National Guard of the United States and the Air National Guard of the United States to active duty in the National Guard Bureau.

(b)(1) The number of officers of the Army National Guard of the United States in grades below brigadier general who are ordered to active duty in the National Guard Bureau may not be more than 40 percent of the number of officers of the Army authorized for duty in that Bureau and, to the extent practicable, shall not exceed 40 percent of the number of officers of the Army serving in that Bureau in any grade below brigadier general.

(2) The number of officers of the Air National Guard of the United States in grades below brigadier general who are ordered to active duty in the National Guard Bureau may not be more than 40 percent of the number of officers of the Air Force authorized for duty in that Bureau and, to the extent practicable, shall not exceed 40 percent of the number of officers of the Air Force serving in that Bureau in any grade below brigadier general.

(Added Pub. L. 103-337, div. A, title XVI, §1662(f)(1), Oct. 5, 1994, 108 Stat. 2993; amended Pub. L. 104-106, div. A, title XV, §1501(b)(18)(B), Feb. 10, 1996, 110 Stat. 497.)

##### PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3496 and 8496 of this title, prior to repeal by Pub. L. 103-337, §1662(f)(2).

##### AMENDMENTS

1996—Pub. L. 104-106 inserted “the” in section catchline.

##### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103-337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104-106, set out as a note under section 113 of this title.

##### EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as a note under section 10001 of this title.

#### § 12403. Army and Air National Guard of the United States: members; status in which ordered into Federal service

Members of the Army National Guard of the United States ordered to active duty shall be ordered to duty as Reserves of the Army. Members of the Air National Guard of the United States ordered to active duty shall be ordered to duty as Reserves of the Air Force.

(Added Pub. L. 103-337, div. A, title XVI, §1662(f)(1), Oct. 5, 1994, 108 Stat. 2993; amended Pub. L. 104-106, div. A, title XV, §1501(b)(18)(B), Feb. 10, 1996, 110 Stat. 497.)

##### PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3497 and 8497 of this title, prior to repeal by Pub. L. 103-337, §1662(f)(2).

##### AMENDMENTS

1996—Pub. L. 104-106 inserted “the” in section catchline.

##### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103-337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104-106, set out as a note under section 113 of this title.

##### EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as a note under section 10001 of this title.

**§ 12404. Army and Air National Guard of the United States; mobilization; maintenance of organization**

During an initial mobilization, the organization of a unit of the Army National Guard of the United States or of the Air National Guard of the United States ordered into active Federal service shall, so far as practicable, be maintained as it existed on the date of the order to duty.

(Added Pub. L. 103-337, div. A, title XVI, §1662(f)(1), Oct. 5, 1994, 108 Stat. 2993; amended Pub. L. 104-106, div. A, title XV, §1501(b)(18)(B), Feb. 10, 1996, 110 Stat. 497.)

**PRIOR PROVISIONS**

Provisions similar to those in this section were contained in sections 3498 and 8498 of this title, prior to repeal by Pub. L. 103-337, §1662(f)(2).

**AMENDMENTS**

1996—Pub. L. 104-106 inserted “the” in section catchline.

**EFFECTIVE DATE OF 1996 AMENDMENT**

Amendment by Pub. L. 104-106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103-337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104-106, set out as a note under section 113 of this title.

**EFFECTIVE DATE**

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as a note under section 10001 of this title.

**§ 12405. National Guard in Federal service: status**

Members of the National Guard called into Federal service are, from the time when they are required to respond to the call, subject to the laws and regulations governing the Army or the Air Force, as the case may be, except those applicable only to members of the Regular Army or Regular Air Force, as the case may be.

(Added Pub. L. 103-337, div. A, title XVI, §1662(f)(1), Oct. 5, 1994, 108 Stat. 2993.)

**PRIOR PROVISIONS**

Provisions similar to those in this section were contained in sections 3499 and 8499 of this title, prior to repeal by Pub. L. 103-337, §1662(f)(2).

**EFFECTIVE DATE**

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as a note under section 10001 of this title.

**§ 12406. National Guard in Federal service: call**

Whenever—

(1) the United States, or any of the Commonwealths or possessions, is invaded or is in danger of invasion by a foreign nation;

(2) there is a rebellion or danger of a rebellion against the authority of the Government of the United States; or

(3) the President is unable with the regular forces to execute the laws of the United States;

the President may call into Federal service members and units of the National Guard of any State in such numbers as he considers necessary

to repel the invasion, suppress the rebellion, or execute those laws. Orders for these purposes shall be issued through the governors of the States or, in the case of the District of Columbia, through the commanding general of the National Guard of the District of Columbia.

(Added Pub. L. 103-337, div. A, title XVI, §1662(f)(1), Oct. 5, 1994, 108 Stat. 2994; amended Pub. L. 109-163, div. A, title X, §1057(a)(5), Jan. 6, 2006, 119 Stat. 3440.)

**PRIOR PROVISIONS**

Provisions similar to those in this section were contained in sections 3500 and 8500 of this title, prior to repeal by Pub. L. 103-337, §1662(f)(2).

**AMENDMENTS**

2006—Par. (1). Pub. L. 109-163 substituted “Commonwealths or possessions” for “Territories, Commonwealths, or possessions”.

**EFFECTIVE DATE**

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as a note under section 10001 of this title.

**§ 12407. National Guard in Federal service: period of service; apportionment**

(a) Whenever the President calls the National Guard of a State into Federal service, he may specify in the call the period of the service. Members and units called shall serve inside or outside the territory of the United States during the term specified, unless sooner relieved by the President. However, no member of the National Guard may be kept in Federal service beyond the term of his commission or enlistment.

(b) When the National Guard of a State is called into Federal service with the National Guard of another State, the President may apportion the total number called from the Army National Guard or from the Air National Guard, as the case may be, on the basis of the populations of the States affected by the call.

(Added Pub. L. 103-337, div. A, title XVI, §1662(f)(1), Oct. 5, 1994, 108 Stat. 2994; amended Pub. L. 104-106, div. A, title XV, §1501(b)(19), Feb. 10, 1996, 110 Stat. 497.)

**PRIOR PROVISIONS**

Provisions similar to those in this section were contained in sections 3501 and 8501 of this title, prior to repeal by Pub. L. 103-337, §1662(f)(2).

**AMENDMENTS**

1996—Subsec. (b). Pub. L. 104-106 substituted “another State” for “another of those jurisdictions” and “States affected” for “jurisdictions affected”.

**EFFECTIVE DATE OF 1996 AMENDMENT**

Amendment by Pub. L. 104-106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103-337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104-106, set out as a note under section 113 of this title.

**EFFECTIVE DATE**

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as a note under section 10001 of this title.

**§ 12408. National Guard in Federal service: physical examination**

(a) Under regulations prescribed by the President, each member of the National Guard called