

**§ 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.

(Aug. 10, 1956, ch. 1041, 70A Stat. 607; Pub. L. 100-456, div. A, title XII, §1234(b)(6), Sept. 29, 1988, 102 Stat. 2059; Pub. L. 108-136, div. A, title V, §516, Nov. 24, 2003, 117 Stat. 1461; Pub. L. 109-163, div. A, title X, §1057(b)(6), Jan. 6, 2006, 119 Stat. 3442; Pub. L. 110-417, [div. A], title V, §517, Oct. 14, 2008, 122 Stat. 4442.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
325(a) .....	50:1120.	July 9, 1952, ch. 608.
325(b) .....	50:1122(b) (less last 17 words).	§§ 710, 712(b) (less last 17 words), 66 Stat. 503, 504.

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 Na-

tional Guard and Air National Guard in their respective States, Territories, and the District of Columbia”.

AMENDMENTS

2008—Subsec. (a)(2). Pub. L. 110-417, §517(a), struck out “in command of a National Guard unit” after “active duty” in introductory provisions.

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.

1988—Subsec. (a). Pub. L. 100-456 struck out “, the Canal Zone,” after “Puerto Rico”.

DELEGATION OF FUNCTIONS

Functions and authority of President under this section delegated to the Secretary of Defense, see Memorandum of President of the United States, Apr. 14, 2011, 76 F.R. 22003, set out as a note under section 315 of this title.

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

Memorandum of President of the United States, July 23, 2004, 69 F.R. 46397, which delegated to the Secretary of Defense the functions and authority of the President under this section, was superseded by Memorandum of President of the United States, Apr. 14, 2011, 69 F.R. 22003, set out as a note under section 315 of this title.

**§ 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.

(Aug. 10, 1956, ch. 1041, 70A Stat. 608; Pub. L. 107-314, div. A, title V, §512(a), Dec. 2, 2002, 116 Stat. 2537; Pub. L. 109-163, div. A, title X, §1057(b)(7), Jan. 6, 2006, 119 Stat. 3442.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
326 .....	32:91.	June 3, 1916, ch. 134, §102, 39 Stat. 208.

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 cognizance 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

2006—Pub. L. 109-163 substituted “States, the Commonwealth of Puerto Rico, the District of Columbia,