

1958 ACT

<i>Section of title 32</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
101(2)	[No source].	[No source].
101(18)	[No source].	[No source].

In clause (2), the term “armed forces” is defined for legislative convenience and is defined the same as that term is defined in section 101(4) of title 10, United States Code.

The definition in clause (18) reflects the adoption of terminology which, though undefined in the source statutes restated in this title, represents the closest practicable approximation of the ways in which the term has been commonly used.

AMENDMENTS

1988—Cls. (4), (6). Pub. L. 100-456 struck out “the Canal Zone,” after “Puerto Rico.”

1984—Cl. (12). Pub. L. 98-525, §414(b)(1)(A), inserted at end “It does not include full-time National Guard duty.”

Cl. (19). Pub. L. 98-525, §414(b)(1)(B), added cl. (19).

1980—Cl. (1). Pub. L. 96-600 inserted reference to Guam.

Cl. (12). Pub. L. 96-513 struck out “duty on the active list,” after “Federal duty as”.

1972—Cl. (1). Pub. L. 92-492 inserted provision including within term “Territory” for purposes of this title and 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 Virgin Islands.

1960—Cl. (1). Pub. L. 86-624 struck out reference to Hawaii.

1959—Cl. (1). Pub. L. 86-70 struck out reference to Alaska.

1958—Cls. (2) to (18). Pub. L. 85-861 added cls. (2) and (18) and renumbered former cls. (2) to (16) as (3) to (17), respectively.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Sept. 15, 1981, see section 701(a) of Pub. L. 96-513, set out as a note under section 101 of Title 10, Armed Forces.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 6323; title 10 section 101; title 28 section 2671.

§ 102. General policy

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.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
102	50:921(b).	July 9, 1952, ch. 608, § 201(b), 66 Stat. 482.

The words “The Congress further declares * * * as expressed in the National Defense Act of 1916 as amended” and “It is the intent of Congress that” are omitted as surplusage. The words “United States” are substituted for the words “our” and “this Nation”. The words “more * * * than are in” are substituted for the words “in excess of those”. The words “Federal duty” are substituted for the words “military service of the United States”. The words “as long as so needed” are substituted for the words “so long as such necessity exists”.

§ 103. Branches and organizations

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

(Aug. 10, 1956, ch. 1041, 70A Stat. 597; Pub. L. 100-456, div. A, title XII, §1234(b)(1), Sept. 29, 1988, 102 Stat. 2059.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
103	32:9.	July 9, 1918, ch. 143 (proviso of 13th par. under “National Guard”), 40 Stat. 875.

The word “members” is substituted for the words “officers and enlisted men”. The word “Regular” is omitted, since the organization is now prescribed for the Army, and the Regular Army is only a personnel category.

AMENDMENTS

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

§ 104. Units: location; organization; command

(a) Each State or Territory and Puerto Rico may fix the location of the units and headquarters of its National Guard.

(b) Except as otherwise specifically provided in this title, the organization of the Army National Guard and the composition of its units shall be the same as those prescribed for the 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 and Territory, Puerto Rico, and the District of Columbia. 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 or Territory, Puerto Rico, or the District of Columbia 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.

(Aug. 10, 1956, ch. 1041, 70A Stat. 598; Pub. L. 100-456, div. A, title XII, § 1234(b)(1), (2), Sept. 29, 1988, 102 Stat. 2059.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
104(a)	32:6.	June 3, 1916, ch. 134, §§ 64, 65 (proviso), 68, 39 Stat. 198-200.
104(b)	32:5 (1st sentence).	
104(c)	32:5 (less 1st sentence).	June 3, 1916, ch. 134, § 60; June 4, 1920, ch. 227 subch. I, § 36; restated June 15, 1933, ch. 87, § 6, 48 Stat. 156.
104(d)	32:8.	
104(e)	32:10 (proviso).	
104(f)	32:16.	

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

In subsection (b), the word “Army” is substituted for the words “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 32:8 and 10 historically applied only to commissioned officers (see opinion of the Judge Advocate General of the Army (JAGA 1953/4078, 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

1988—Subsec. (a). Pub. L. 100-456, § 1234(b)(2), substituted “Each State or Territory and Puerto Rico” for “Each State and Territory, Puerto Rico, and the Canal Zone”.

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

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*, That for purposes of training and when on active duty in the service of the United States they may be assigned to higher units, as the President may direct, and shall be subject to the orders of officers under whom they shall be serving.

“(b) The First Corps Cadets, antedating, and continuously existing in the State of Massachusetts since, the Act of May 8, 1792, now designated as the 126th Tank Battalion, 26th Infantry Division, hereby declared to be a corps as defined in subsection (a) of this Act for all purposes thereof and now incorporated in the Organized Militia and a part of the National Guard of Massachusetts, shall be allowed to retain its ancient privileges and organization. The First Corps Cadets is hereby declared to be entitled to a lieutenant colonel in command and a major second in command; and those officers, when federally recognized, are entitled to the pay provided by law for their respective grades: *Provided*, That nothing in this section or other provisions of law 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.”

§ 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