



DEPARTMENTS OF THE ARMY AND THE AIR FORCE
NATIONAL GUARD BUREAU
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ARLINGTON, VA 22202-3231

NGB-ARH

5 SEP 2006

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Policy for Title 32 ARNG Full-Time National Guard Duty (AGR) Soldiers Performing State Active Duty (SAD)

1. References:

- a. Title 10, United States Code (USC), Section 12310.
- b. Title 32, USC, Section 502 (f).
- c. AR 135-18, The Active Guard Reserve (AGR) Program, 1 November 2004.
- d. National Guard Regulation (NGR) 600-5, The Active Guard Reserve (AGR) Program Title 32, Full-Time National Guard Duty, 20 February 1990.
- e. AR 623-3, Evaluation Reporting System, 15 May 2006.

2. The purpose of this memorandum is to update NGR 600-5, chapter 3-3. Current legal opinion prohibits Full-Time National Guard Duty (here after referred to as AGR) AGR Soldiers from performing SAD missions outside of their normal day-to-day operations. These normal day-to-day operations are codified under Title 10 USC. Also, The Department of the Army Office of the Judge Advocate General (OTJAG) issued a memorandum dated 29 October 2002, stating that AGR Soldiers could not lawfully serve on SAD, even if on leave because it violated fiscal law. Additionally, AGR Soldiers can not individually volunteer for SAD missions. Attempts were made by NGB to obtain legislative relief at the DoD level, but were unsuccessful. The most recent National Defense Authorization ACT (NDAA) also contained this prohibition.

3. Emergency doctrine was developed and implemented by NGB to address the recent increase and severity of natural disasters within our borders. Under this emergency doctrine, AGR Soldiers can respond to an emergency situation when necessary to save human life, prevent immediate human suffering, or lessen major property damage or destruction. This type of emergency response was implemented during the hurricane Katrina event. However, upon stabilization, i.e. within a reasonable time period, those individually activated AGR Soldiers should be replaced with a traditional Soldier. This reasonable time period has been directed by CNGB as part of the NGB emergency doctrine. At this time, the South West Border mission is not considered an emergency situation; therefore States must adhere to current law and policy.

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4. Title 32 ARNG AGR Soldiers may support SAD missions in an AGR status while performing their statutory duties codified under Title 10 USC and within the capacity of the paragraph and line number of their assigned unit when one of the following conditions exists:
 - a. The Governor declares a state of emergency.
 - b. The Governor activates the AGR Soldier's modified table of organization and equipment or table of distribution and allowances (MTOE / TDA) unit of assignment.
 - c. ARNG equipment or property is loaned or leased in support of a SAD mission and AGR Soldiers are required to transport, operate, maintain, or secure the equipment.
5. AGR officers and enlisted Soldiers supporting SAD missions for more than 59 total days are required to obtain a letter of input from the SAD mission supervisor for their rater for the completion of their Officer Evaluation Report (OER) or Non-Commissioned Officer Evaluation Report (NCOER), IAW AR 623-3, Table 3-1.
6. Soldiers serving under the Command Leadership and Staff Assignment Policy (CLASP) who are mobilized for SAD with their respective unit will perform their duties inherent in their MTOE or TDA.
7. Under Title 10 USC, section 12310, AGR Soldiers perform AGR duties, and they should not perform SAD missions or be placed in a SAD status. To place these AGR Soldiers in a SAD status is an inappropriate use of federal funds and possible dual compensation or Anti-Deficiency Act violations. The restrictions on the use of AGR Soldiers are onerous, but placing these personnel in a SAD status contravenes law, and carries substantial risk.
8. Publication of this policy guidance rescinds ARH Memo 04-014, Policy for Title 32 ARNGUS AGR Soldiers performing State Active Duty (SAD).

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9. Point of contact for this action is MAJ Chuck Slaney, NGB-ARH-S at 703-607-3295,
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