

## **Military Reserves Federal Call Up Authority**

By Rod Powers, About.com

In 1973, DOD adopted the total force policy, which recognized that active and reserve U.S. military forces should be readily available to support military operations. As a result, reserve forces were no longer considered to be forces of last resort; rather, they are now recognized as indispensable to the nation's defense from the earliest days of a conflict. In addition, the reserves' peacetime support to the active forces has taken on increased importance in areas such as peacekeeping missions, counterdrug operations, disaster aid, and exercise support. The seven reserve components are the Army Reserve, Army National Guard, Air Force Reserve, Air National Guard, Naval Reserve, Marine Corps Reserve, and Coast Guard Reserve.

The governor of each state can call the state's Army and Air National Guard units to active duty to help respond to domestic emergencies and disasters, such as those caused by hurricanes, floods, and earthquakes. If additional help is needed, a governor can request federal assistance through the Federal Emergency Management Agency (FEMA). With a presidential declaration of disaster, FEMA's federal assistance can include additional military support from DOD (both active duty and reserve forces).

### **Federal Call-Up Authority**

Title 10 U.S.C. 12301(a) provides that, in time of war or national emergency declared by the Congress, the entire membership of all reserve components or any lesser number can be called to active duty for the duration of the war or national emergency plus 6 months. Although this statute normally is viewed as the call-up authority for responding to a major threat to national security, DOD stated that it could be used to activate reservists for a domestic emergency. However, it has never been used for this purpose.

Title 10 U.S.C. 12302 provides that, in time of national emergency declared by the President, up to 1 million members of the Ready Reserve can be called to active duty for not more than 24 consecutive months. Similar to the previous authority, DOD stated that this statute could also provide access to reservists for a domestic emergency, although it has never been used for this purpose.

Title 10 U.S.C. 12304 provides that, when the President determines that it is necessary to augment the active forces for any operational mission, up to 200,000 members of the Selected Reserve can be called to active duty for not more than 270 days. (Note: The FY 2007 Military Authorization Act changes the maximum from 270 days to 365 days). This is known as Presidential Selected Reserve Call-Up (PSRC) authority. This provision also states that no unit or member may be ordered to active duty under this authority to provide assistance to either the federal government or a state in time of a serious natural or manmade disaster, accident, or catastrophe. Thus, this authority cannot be used to access reservists for domestic emergencies.

Title 10 U.S.C. 12301(b) provides that at any time a service secretary can order any reservist to active duty for up to 15 days each year. This authority traditionally has been viewed as the authority allowing the services to enforce the reservists' 2-week annual training requirement. However, DOD's Office of General Counsel provided an interpretation in 1994 stating that this authority could be used for operational missions as well as annual active duty for training. The legal opinion noted that this authority could not be used if a unit or member had already completed 15 days of annual training for the calendar year. DOD stated, however, that this

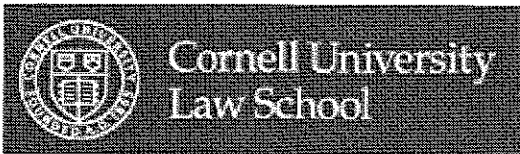
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authority has not been used to call reservists involuntarily to active duty for a domestic emergency.

In addition to the involuntary activation of reservists under the above conditions, 10 U.S.C. 12301(d) provides for call-up of reservists who volunteer for active duty. The number of volunteer reservists called to active duty and the length of time they may be kept on active duty generally depends upon the availability of funds and the end-strength authorizations for the active force.

There is separate statutory authority allowing involuntary call-up of Coast Guard reservists during domestic emergencies. Under provisions of 14 U.S.C. 712, Coast Guard Ready Reservists can be involuntarily activated to support domestic emergencies. Each reservist may be required to serve up to 30 days in any 4-month period and up to 60 days in any 2-year period.

*Above Information Courtesy of the U.S. General Accounting Office*



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## U.S. Code collection

TITLE 10 &gt; Subtitle E &gt; PART II &gt; CHAPTER 1209 &gt; § 12301

### § 12301. Reserve components generally

**(a)** In time of war or of national emergency

declared by Congress, or when otherwise authorized by law, an authority designated by the Secretary concerned may, without the consent of the persons affected, order any unit, and any member not assigned to a unit organized to serve as a unit, of a reserve component under the jurisdiction of that Secretary to active duty for the duration of the war or emergency and for six months thereafter. However a member on an inactive status list or in a retired status may not be ordered to active duty under this subsection unless the Secretary concerned, with the approval of the Secretary of Defense in the case of the Secretary of a military department, determines that there are not enough qualified Reserves in an active status or in the inactive National Guard in the required category who are readily available.

**(b)** At any time, an authority designated by the Secretary concerned may, without the consent of the persons affected, order any unit, and any member not assigned to a unit organized to serve as a unit, in an active status in a reserve component under the jurisdiction of that Secretary to active duty for not more than 15 days a year. However, units and members of the Army National Guard of the United States or the Air National Guard of the United States may not be ordered to active duty under this subsection without the consent of the governor of the State (or, in the case of the District of Columbia National Guard, the commanding general of the District of Columbia National Guard).

**(c)** So far as practicable, during any expansion of the active armed forces that requires that units and members of the reserve components be ordered to active duty as provided in subsection (a), members of units organized and trained to serve as units who are ordered to that duty without their consent shall be so ordered with their units. However, members of those units may be reassigned after being so ordered to active duty.

**(d)** At any time, an authority designated by the Secretary concerned may order a member of a reserve component under his jurisdiction to active duty, or retain him on active duty, with the consent of that member. However, a member of the Army National Guard of the United States or the Air National Guard of the United States may not be ordered to active duty under this subsection without the consent of the governor or other appropriate authority of the State concerned.

**(e)** The period of time allowed between the date when a Reserve ordered to active duty as provided in subsection (a) is alerted for that duty and the date when the Reserve is required to enter upon that duty shall be determined by the Secretary concerned based upon military requirements at that time.

**(f)** The consent of a Governor described in subsections (b) and (d) may not be withheld (in whole or in part) with regard to active duty outside the United States, its territories, and its possessions, because of any objection to the location, purpose, type, or schedule of such active duty.

**(g)**

**(1)** A member of a reserve component may be ordered to active duty without his consent if the Secretary concerned determines that the member is in a captive status. A

member ordered to active duty under this section may not be retained on active duty, without his consent, for more than 30 days after his captive status is terminated.

**(2)** The Secretary of Defense shall prescribe regulations to carry out this section. Such regulations shall apply uniformly among the armed forces under the jurisdiction of the Secretary. A determination for the purposes of this subsection that a member is in a captive status shall be made pursuant to such regulations.

**(3)** In this section, the term "captive status" means the status of a member of the armed forces who is in a missing status (as defined in section 551 (2) of title 37) which occurs as the result of a hostile action and is related to the member's military status.

**(h)**

**(1)** When authorized by the Secretary of Defense, the Secretary of a military department may, with the consent of the member, order a member of a reserve component to active duty—

**(A)** to receive authorized medical care;

**(B)** to be medically evaluated for disability or other purposes; or

**(C)** to complete a required Department of Defense health care study, which may include an associated medical evaluation of the member.

**(2)** A member ordered to active duty under this subsection may, with the member's consent, be retained on active duty, if the Secretary concerned considers it appropriate, for medical treatment for a condition associated with the study or evaluation, if that treatment of the member is otherwise authorized by law.

**(3)** A member of the Army National Guard of the United States or the Air National Guard of the United States may be ordered to active duty under this subsection only with the consent of the Governor or other appropriate authority of the State concerned.

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