

TITLE 46
MILITIA AND MILITARY AFFAIRS

CHAPTER 1
STATE MILITIA -- ORGANIZATION AND STAFF

46-101. NATIONAL DEFENSE ACT -- DEFINITIONS. The state of Idaho does hereby accept the benefits and provisions of the national defense act, and it is the intent of this code to conform to all laws and regulations of the United States affecting the national guard.

DEFINITIONS. --As used in this code:

(a) "National guard" means the Idaho army national guard and the Idaho air national guard.

(b) "National defense act" means the federal law for making further and more effective provisions for the national defense and for other purposes approved June 3, 1916, (Title 32, United States Code) and any and all other acts that have been or may hereafter be enacted amendatory thereof and supplementary thereto.

(c) "Uniform code of military justice" means the law for the disciplining of the armed forces of the United States (Chapter 47, Title 10, United States Code).

(d) "Officer" means commissioned officers and warrant officers.

[(46-101) 1927, ch. 261, sec. 1, p. 510; I.C.A., sec. 45-101; am. 1957, ch. 174, sec. 1, p. 312.]

46-102. STATE MILITIA -- MEMBERSHIP -- EXEMPTIONS. The militia of the state of Idaho shall consist of all able-bodied citizens of the state, and all other able-bodied persons who have or shall have declared their intentions to become citizens of the United States and are residents of the state of Idaho; who shall be more than eighteen (18) years of age, and except as hereinafter provided, not more than forty-five (45) years of age, subject to the following exemptions:

1. Persons exempted from service in the militia by the constitution of the state of Idaho and by the laws of the United States from enlistment or draft into the regular army. Provided, however, that voluntary enlistments, with the written consent of the parent or guardian of any able-bodied citizen over the age of sixteen (16) years may be accepted and such enlistees inducted into the organized militia of the state of Idaho in time of war, and as classified in section [46-103](#), Idaho Code, except that the provision for the enlistment of able-bodied citizens under the age of eighteen (18) years will terminate six (6) months following the declaration of peace.

[(46-102) 1927, ch. 261, sec. 2, p. 510; I.C.A., sec. 45-102; am. 1943, ch. 46, sec. 1, p. 92; am. 2008, ch. 126, sec. 1, p. 346.]

46-103. STATE MILITIA -- DIVISION INTO CLASSES. The militia of the state of Idaho shall be divided into three (3) classes, to wit:

The national guard, the organized militia, and the unorganized militia. The national guard shall consist of enlisted personnel between the ages of seventeen (17) and sixty-four (64), organized and equipped and armed as provided in the national defense act, and of commissioned officers between the ages of eighteen (18) and sixty-four (64) years, who shall be appointed and commissioned by the governor as commander-in-chief, in conformity with the

provisions of the national defense act, the rules and regulations promulgated thereunder, and as authorized by the provisions of this act. The organized militia shall include any portion of the unorganized militia called into service by the governor, and not federally recognized. The unorganized militia shall include all of the militia of the state of Idaho not included in the national guard or the organized militia.

[(46-103) 1927, ch. 261, sec. 3, p. 510; I.C.A., sec. 45-103; am. 1957, ch. 174, sec. 2, p. 312.]

46-104. ENROLLMENT OF PERSONS LIABLE TO SERVICE -- DUTY OF COUNTY ASSESSOR -- PENALTY. Whenever the governor deems it necessary he may order a registration under such regulations as he may prescribe, to be made by the assessors of the various counties of this state, of all persons resident in their respective counties and liable to serve in the militia. Such registration shall be on blanks furnished by the adjutant general, and shall state the name, residence, age and occupation of the person registered and their military service.

If any assessor wilfully refuses or neglects to perform any duty which may be required of him by the governor under the authority of this chapter, he shall be deemed guilty of a misdemeanor and, on conviction thereof, he shall be fined in a sum of not less than \$300.00 nor more than \$800.00.

[(46-104) 1927, ch. 261, sec. 7, p. 510; I.C.A., sec. 45-104; am. 1957, ch. 174, sec. 3, p. 312.]

46-106. ORGANIZED MILITIA -- ORGANIZATION WHEN CALLED INTO ACTIVE SERVICE. Whenever the governor as commander-in-chief, shall call into the active service of the state the unorganized militia or any part thereof, it shall be organized into such units and shall be armed and equipped in such manner as the governor in his discretion shall deem proper. The officers thereof, shall be appointed and commissioned by the governor under such rules and regulations as he may deem expedient to promulgate.

[(46-106) 1927, ch. 261, sec. 9, p. 510; I.C.A., sec. 45-106; am. 1957, ch. 174, sec. 5, p. 312.]

46-107. CONFORMITY OF THE NATIONAL GUARD TO FEDERAL LAW. The governor is authorized and it shall be his duty from time to time to make and publish such orders as may be necessary to conform the national guard in organization, armament and discipline, and otherwise, to that prescribed and authorized by the national defense act and other laws of the United States and the regulations issued thereunder for the national guard.

[(46-107) 1927, ch. 261, sec. 10, p. 510; I.C.A., sec. 45-107; am. 1939, ch. 50, sec. 1, p. 91; am. 1957, ch. 174, sec. 6, p. 312.]

46-108. PROPERTY AND FISCAL OFFICER. The governor shall appoint with the advice and approval of the adjutant general, a property and fiscal officer who shall be selected from the national guard of Idaho and shall have had commissioned service therein for over three (3) years.

[(46-108) 1927, ch. 261, sec. 11, p. 510; I.C.A., sec. 45-108; am. 1957, ch. 174, sec. 7, p. 312.]

46-109. GENERAL ORDERS -- FORCE AND EFFECT AS STATUTES. The composition of all units of the national guard including the commissioned personnel thereof, other than that specifically provided for in this act, shall be fixed from time to time by the governor as commander-in-chief, and shall be announced in general orders, and shall be in accordance with federal laws and regulations pertaining to the national guard. Every order shall have the same force and effect as if specifically enacted and provided for by the statute.

[(46-109) 1927, ch. 261, sec. 13, p. 510; I.C.A., sec. 45-109; am. 1957, ch. 174, sec. 8, p. 312.]

46-110. GOVERNOR AS COMMANDER-IN-CHIEF -- FOREIGN TROOPS -- RESTRICTIONS ON ENTRY INTO STATE. The governor of the state by virtue of his office, shall be commander-in-chief of the national guard, except of such thereof, as may be at times in the service of the United States. No armed military force from another state, territory or district shall be permitted to enter the state of Idaho for the purpose of doing military duty therein, without the permission of the governor, unless such force has been called into active service of the United States, and is acting under authority of the president of the United States.

[(46-110) 1927, ch. 261, sec. 14, p. 510; I.C.A., sec. 45-110; am. 1957, ch. 174, sec. 9, p. 312.]

46-111. ADJUTANT GENERAL. There shall be an adjutant general who shall be appointed by the governor and shall hold office during the pleasure of the governor and his commission shall expire with the term of the governor appointing him. The adjutant general shall be the commanding general of the military forces of the state and in addition to the duties delegated to him by law, he shall perform such other duties as prescribed by the governor as commander-in-chief. The adjutant general shall be commissioned in the national guard with the rank of not less than brigadier general. No person is eligible for appointment as adjutant general unless he is a federally recognized member of the national guard with current service of not less than six (6) years as a commissioned officer in the national guard of Idaho and has attained the rank of colonel or above.

[(46-111) 1927, ch. 261, sec. 18, p. 510; am. 1931, ch. 186, sec. 1, p. 310; I.C.A., sec. 45-111; am. 1957, ch. 174, sec. 10, p. 312; am. 1987, ch. 330, sec. 1, p. 690; am. 2001, ch. 141, sec. 1, p. 507.]

46-112. DUTIES OF THE ADJUTANT GENERAL. (1) The adjutant general shall serve as head of the Idaho military division. The governor, as commander-in-chief, pursuant to his or her authority under section 4, article IV, of the constitution of the state of Idaho, shall administer and control the national guard, as that term is defined in section [46-103](#), Idaho Code. The adjutant general is responsible to the governor for the execution and publication of all orders relating to the militia, organization, activation, reactivation, inactivation, and allocation of units, recruiting of personnel, public relations, discipline, and training of the national guard and those members of the militia inducted into the service of this state as provided in this chapter. The adjutant general shall act as military chief of staff to the governor and chief of all branches of the militia or agencies within

the Idaho military division. The adjutant general may belong to the adjutants general association of the United States and to other organizations for the betterment of the national guard, subscribe to and obtain periodicals, literature, and magazines of such other organizations and pay dues and charges from moneys of this state appropriated for that purpose. Except for the authority expressly reserved for the governor under Idaho law, the adjutant general is responsible for emergency management pursuant to [chapter 10, title 46](#), Idaho Code, and all emergency activities undertaken pursuant to [chapter 10, title 46](#), Idaho Code, are subject to the approval of the adjutant general.

(2) The adjutant general, as the military chief of staff, will:

(a) Act as military advisor to the governor and perform, as the governor prescribes, military duties not otherwise designated by law;

(b) Adopt methods of administration for the national guard that are consistent with laws and regulations of the United States department of defense or any subdivision of the United States department of defense;

(c) Supervise and direct the organization, regulation, instruction, training, discipline, and other activities of the national guard;

(d) Attest and record all commissions issued by the governor and maintain a register of all commissioned personnel;

(e) Keep a record of all orders and regulations pertaining to the national guard and all other writings and papers relating to reports and returns of units comprising the national guard and militia, and act as custodian of all such orders, regulations, writings, papers, and returns;

(f) Superintend the preparation of returns, plans and estimates required by this state, by the department of the army, air force, navy and by the secretary of defense;

(g) Control the use of and care for, preserve and maintain all military property belonging to or issued to this state and pay from moneys appropriated by the state legislature, or allocated to the state from the federal government for these purposes, the necessary expenses for labor and material incurred in the repair of military property;

(h) Dispose of unserviceable military property belonging to this state, in accordance with applicable federal and state laws and regulations;

(i) Pay the members of the national guard when such members are to be paid from state funds, and ensure that the members of the national guard receive pay when such members are to be paid with funds allocated by the federal government;

(j) Be custodian of the seal of the office of adjutant general and deliver the same to his successor, and authenticate with the seal of the office of the adjutant general all orders and copies of orders issued by the adjutant general's office. An authenticated copy has the same force and effect as the original;

(k) Present to the governor before each regular session of the legislature, or as otherwise required, an estimate of the financial requirements for state moneys for operation of the department and the national guard during the next fiscal year, in accordance with section [67-3502](#), Idaho Code;

(l) Coordinate and plan the execution of state activities pertaining to the inauguration of the governor of the state of Idaho and other elected state executive officers; and

(m) Establish and administer, as in his or her judgment may be necessary and proper for military purposes, morale, welfare, and recreation programs or facilities for the benefit of the members of the Idaho military division and their lawful dependents. The adjutant general may promulgate rules to govern the operation of morale, welfare, and recreation programs or facilities. All proceeds derived from the operation of morale, welfare, and recreation programs or facilities within the state shall, after payment of operating expenses, notwithstanding any provision of Idaho law to the contrary, be used exclusively to benefit any morale, welfare, and recreation programs or facilities established pursuant to this section. Any sales of goods on a state reservation, state training facility, or state military installation under the jurisdiction of the adjutant general are exempt from payment of state sales taxes.

(3) The adjutant general, as head of the Idaho military division, will:

(a) Be the administrator of the division;

(b) Coordinate the functions of the division and offices of the division;

(c) Subject to Idaho law, appoint, suspend, demote, promote or dismiss employees of the division. The adjutant general may delegate this authority;

(d) Appoint an auditor for the division to conduct periodic financial and compliance audits of each office in the division and perform such other duties as prescribed by law. At least annually, the auditor shall audit accounts that are open for more than twelve (12) months. The auditor shall determine within the division compliance with purchase and bidding procedures prescribed by law;

(e) Adopt, with the approval of the governor, rules necessary for the operation of the Idaho military division;

(f) Establish and administer accounts for federal, state or other moneys made available to carry out the functions of the division;

(g) Establish, abolish or reorganize the positions or organizational structure within the Idaho military division, subject to legislative appropriation, if, in the adjutant general's judgment, the modification would make the operation of the division more efficient, effective or economical;

(h) Administer the Idaho youth challenge program in accordance with section [46-805](#), Idaho Code. In addition to moneys appropriated for the program, the adjutant general may accept and spend moneys from any other lawful public or private source; and

(i) Submit to the governor, the president of the senate and the speaker of the house of representatives annually by July 1 a report for the Idaho military division for the preceding fiscal year, including: the strength and condition of the national guard; the business transactions of the division; a detailed statement of expenditures for all military and civilian purposes; the disposition of all military and civilian property on hand or issued; a description of the activity of the Idaho youth challenge program; and a detailed statement of the national guard tuition incentive payments program pursuant to section [46-314](#), Idaho Code. The adjutant general will also submit any such similar returns and reports as may be required by federal laws and regulations.

(4) The adjutant general, subject only to applicable limitations prescribed under state law or rule, may:

- (a) Enter into contracts with individuals, this state, political subdivisions of this state or the federal government and its agencies for the purchase, acquisition, rental or lease of lands, buildings or military material and take title in the name of this state for the establishment and maintenance of armories, subject to legislative appropriation for these purposes;
- (b) Procure and contract for procurement of equipment and its issuance to members of the militia inducted into the service of this state;
- (c) Enter into agreements and plans with the state universities, community colleges or any educational institution supported by federal or state moneys for promotion of the best interests of the national guard and military training of students of the institutions;
- (d) Lease property acquired under this chapter for any public purpose for a period of one (1) year, which period is renewable;
- (e) Convey for any public purpose in the name of this state easements on real property acquired under this chapter;
- (f) Enter into contracts or agreements with the federal government that are deemed to be in the best interest of this state and the national guard;
- (g) Delegate the powers and duties in this section; and
- (h) Adopt methods of security for national guard personnel and for national guard reservations or facilities that are consistent with the laws, regulations or directives of the United States department of defense and the laws of this state.

[46-112, added 2016, ch. 205, sec. 2, p. 575.]

46-113. ASSISTANT ADJUTANTS GENERAL. There shall be two (2) assistant adjutants general who shall be appointed by and serve at the pleasure of the adjutant general.

(a) One (1) of the assistant adjutants general shall be appointed from the Idaho army national guard and may be chief of staff to the adjutant general for all the Idaho army national guard forces. He shall perform such duties as are assigned to him by the adjutant general. No person shall be eligible for appointment as assistant adjutant general under this subsection unless he is a member of the Idaho army national guard with at least six (6) years service as commissioned officer therein and has attained the rank of major or above. He shall be a federally recognized officer and may hold the rank of brigadier general or such other rank as may hereafter be authorized by the table of organization for the army national guard.

(b) The other assistant adjutant general shall be appointed from the Idaho air national guard and may be chief of staff to the adjutant general for all the Idaho air national guard forces. He shall perform such duties as are assigned to him by the adjutant general. No person shall be eligible for appointment as assistant adjutant general under this subsection unless he is a member of the Idaho air national guard with at least six (6) years service as a commissioned officer therein and has attained the rank of major or above. He shall be a federally recognized officer and may hold the rank of brigadier general or such other rank as may hereafter be authorized by the tables of organization for the air national guard.

(c) In the event of the absence or inability of the adjutant general to perform his duties, he shall designate one (1) of the assistant adjutants general to perform the duties of his office as acting adjutant general. If

neither assistant adjutant general is available, he may designate any national guard officer to be the acting adjutant general.

[(46-113) 1927, ch. 261, sec. 20, p. 510; am. 1931, ch. 186, sec. 2, p. 310; I.C.A., sec. 45-113; am. 1939, ch. 50, sec. 2, p. 91; am. 1957, ch. 174, sec. 12, p. 312; am. 1978, ch. 54, sec. 1, p. 101; am. 1989, ch. 354, sec. 1, p. 896; am. 1998, ch. 116, sec. 1, p. 432.]