

**MEMORANDUM OF AGREEMENT
BETWEEN
THE STATE OF SOUTH CAROLINA
AND
THE DEPARTMENT OF DEFENSE
FOR THE USE AND ESTABLISHMENT OF A DUAL-STATUS COMMANDER
PURSUANT TO TITLE 32, U.S. CODE**

- I. PURPOSE.** This Memorandum of Agreement (MOA) provides the terms, responsibilities, and procedures for the use of a Dual-Status Commander, when established pursuant to 32 U.S. Code §325 or 32 U.S. Code §315. This MOA also outlines the process for establishment of a Dual-Status Commander, when the Governor of South Carolina and the Secretary of Defense or their designees mutually agree that such establishment is necessary and proper. Finally, this MOA provides the letters of authorization, consent, detail, and permission required by 32 U.S. Code §325 or 32 U.S. Code §315 for execution by the Governor of South Carolina and the Secretary of Defense or their designees, necessary for the establishment of a Dual-Status Commander to perform specified functions in defined jurisdictions for a designated operation and duration. As appropriate, with regard to the Dual-Status Commander, assignment as a commander in the Federal and State chains of command, order to active duty, and appointment as an officer in the Army National Guard or the Air National Guard will occur in accordance with applicable Federal and South Carolina procedures.
- II. APPLICABILITY.** This MOA applies in those circumstances when an Army National Guard or Air National Guard officer is established as a Dual-Status Commander pursuant to 32 U.S. Code §325 or when a commissioned officer of the Regular Army or Regular Air Force is established as a Dual-Status Commander pursuant to 32 U.S. Code §315.
- III. PROCESS FOR ESTABLISHMENT OF A DUAL-STATUS COMMANDER.**
- A. When the Governor of South Carolina and the Secretary of Defense or their designees agree that it is necessary and proper to establish an Army National Guard or Air National Guard officer as the Dual-Status Commander in accordance with 32 U.S. Code §325:
1. The Governor of South Carolina or the Governor's designee will issue a letter (TAB A) specifying:
 - (a) The name and grade of the Dual-Status Commander;
 - (b) Whenever possible, the name and grade of a successor Dual-Status Commander;
 - (c) That the officer(s) so named is (are) qualified and certified to perform the duties of a Dual-Status Commander;
 - (d) Consent for the Dual-Status Commander and the successor Dual-Status Commander, if named, to serve in both State and Federal duty statuses;
 - (e) The operation for which the Dual-Status Commander is being established;



- (f) The jurisdiction in which the Dual-Status Commander is permitted to perform [his/her] duties in a State status (i.e., State Active Duty status or in duty status pursuant to Title 32, U.S. Code); and
 - (g) The duration for which the Dual-Status Commander is established.
 - 2. The Secretary of Defense or the Secretary of Defense's designee will issue a letter (TAB B) specifying:
 - (a) The name and grade of the Dual-Status Commander;
 - (b) Whenever possible, the name and grade of a successor Dual-Status Commander;
 - (c) Authorization for the Dual-Status Commander and the successor Dual-Status Commander, if named, to serve in both State and Federal duty statuses;
 - (d) The operation for which the Dual-Status Commander is being established;
 - (e) The joint operations area in which the Dual-Status Commander is permitted to perform [his/her] duties in a Federal status (i.e. Title 10, U.S. Code); and
 - (f) The duration for which the Dual-Status Commander is established.
 - 3. The Governor of South Carolina and the Secretary of Defense or their designees will effect the order to Federal active duty and the assignment of the Dual-Status Commander as commander of State and Federal forces, as appropriate.
- B. When the Governor of South Carolina and the Secretary of Defense or their designees agree that it is necessary and proper to establish a commissioned officer in the Regular Army or Regular Air Force as the Dual-Status Commander in accordance with 32 U.S. Code §315:
- 1. The Governor of South Carolina or the Governor's designee will issue a letter (TAB C) specifying:
 - (a) The name and grade of the Dual-Status Commander;
 - (b) Whenever possible, the name and grade of a successor Dual-Status Commander;
 - (c) Acceptance of the detail of the officer so named to the Army National Guard of South Carolina or the Air National Guard of South Carolina, as the case may be;
 - (d) Agreement to tender to the detailed officer a commission in the Army National Guard of South Carolina or the Air National Guard of South Carolina, as the case may be;
 - (e) Understanding that this commission is terminable at the Secretary of Defense's or Governor's discretion;
 - (f) The operation for which the Dual-Status Commander is being established;

- (g) The jurisdiction in which the Dual-Status Commander is permitted to perform [his/her] duties in a State status (i.e., State Active Duty status or in duty status pursuant to Title 32, U.S. Code); and
 - (h) The duration for which the Dual-Status Commander is established.
2. The Secretary of Defense or the Secretary of Defense's designee will issue a letter (TAB D) specifying:
- (a) The name and grade of the Dual-Status Commander;
 - (b) Whenever possible, the name and grade of a successor Dual-Status Commander;
 - (c) That the officer so named is qualified and certified to perform the duties of a Dual-Status Commander;
 - (d) That the officer so named is detailed to the Army National Guard of South Carolina or the Air National Guard of South Carolina, as the case may be;
 - (e) Permission for the detailed officer to accept a commission in the Army National Guard of South Carolina or the Air National Guard of South Carolina, as the case may be, without prejudicing [his/her] rank and without vacating [his/her] regular appointment;
 - (f) Authorization for the Dual-Status Commander and the successor Dual-Status Commander, if named, to serve in both State and Federal duty statuses;
 - (g) Understanding that this commission is terminable at the Secretary of Defense's or Governor's discretion;
 - (h) The operation for which the Dual-Status Commander is being established;
 - (i) The joint operations area in which the Dual-Status Commander is permitted to perform [his/her] duties in a Federal status (i.e. Title 10, U.S. Code); and
 - (j) The duration for which the Dual-Status Commander is established.
3. The Governor of South Carolina and the Secretary of Defense or their designees will effect the appointment of a Regular Army or Regular Air Force officer as an Army National Guard or Air Force National Guard officer and assignment of the Dual-Status Commander as commander of State and Federal forces as appropriate.

C. If the Governor of South Carolina and the Secretary of Defense or their designees agree to appointment of a Dual-Status Commander, such consent and authorization may be given orally to expedite the emergency response and, in such circumstances, the required appointment letters will be signed by the Governor and the Secretary of Defense or their designees as circumstances permit.

IV. DUAL-STATUS COMMANDER TERMS, RESPONSIBILITIES, AND PROCEDURES.

A. Mutually Exclusive Chains of Command. The Dual-Status Commander will exercise command on behalf of, and receive separate orders from, a Federal chain of command and exercise command on behalf of, and receive separate orders from, a State chain of command. As such, the Dual-Status Commander is an intermediate link in two distinct, separate chains of command flowing from different sovereigns. Although the Dual-Status Commander is empowered to exercise command on behalf of, and may receive orders from, two separate chains of command, those chains of command must recognize and respect the Dual-Status Commander's duty to exercise all authority in a completely mutually exclusive manner, i.e., either in a Federal or State capacity, giving orders on behalf of or relaying orders from the Federal chain of command to Federal military forces and giving orders on behalf of or relaying orders from the State chain of command to State military forces, but never relaying Federal orders to State military forces or State orders to Federal military forces. This MOA contains special procedures to maintain the required separation of State and Federal chains of command.

1. State Command and Control:

- (a) The Governor of South Carolina, through [his/her] Adjutant General, will provide command and control over South Carolina National Guard units and personnel operating in a State status (i.e., State Active Duty status or in duty status pursuant to Title 32, U.S. Code). The Dual-Status Commander, in [his/her] status as a member of the State chain of command, is subject to the orders of the Governor, through the Adjutant General of South Carolina.
- (b) The Dual-Status Commander, acting pursuant to State authority, may issue orders to assigned National Guard units and personnel serving in a State status (i.e., State Active Duty status or in duty status pursuant to Title 32, U.S. Code) in South Carolina.
- (c) Command and control of National Guard units and personnel provided to South Carolina from other States to serve in a State status (i.e., State Active Duty status or in duty status pursuant to Title 32, U.S. Code) will be determined by separate agreement between the supporting States and South Carolina.
- (d) Subject to the authority of the Governor, through the Adjutant General, the Dual-Status Commander will ensure that [his/her] orders issued to South Carolina National Guard units and personnel, as well as those provided by other States, serving in a State status (i.e., State Active Duty status or in duty status pursuant to Title 32, U.S. Code) are consistent with the law of South Carolina.
- (e) The Dual-Status Commander will exercise military justice authority over South Carolina National Guard personnel in accordance with South Carolina law. Military justice issues concerning supporting National

Guard personnel from a State other than South Carolina will be administered in accordance with that supporting State's code.

2. Federal Command and Control:

- (a) The President, through the Secretary of Defense and the supported Combatant Commander, will provide command and control over Federal military units and personnel, including National Guard units and personnel serving in Title 10, U.S. Code, status. In [his/her] status as a member of the Federal chain of command, the Dual-Status Commander is subject to the orders of the President, through the Secretary of Defense and the supported Combatant Commander.
- (b) The Dual-Status Commander, acting pursuant to Federal authority, may issue orders to assigned or allocated Federal military units and personnel (i.e., military units and personnel on active duty pursuant to Title 10, U.S. Code, including units and personnel of the Army National Guard of the United States, Air National Guard of the United States, the Army Reserve, the Navy Reserve, the U.S. Marine Corps Reserve, and the Air Force Reserve).
- (c) Subject to the authority of the President, through the Secretary of Defense and the supported Combatant Commander, the Dual-Status Commander will ensure that [his/her] orders issued to Federal military units and personnel are consistent with the law of the United States.
- (d) Military justice authority over Federal military personnel will be exercised in regulations.

B. Missions.

- 1. State Military Mission: Plan, coordinate, and provide requested, authorized, and approved support to lead State agencies in accordance with guidance issued by the Governor of South Carolina or the Governor's designee.
- 2. Federal Military Mission: Plan, coordinate, and provide requested, authorized, and approved support to lead Federal agencies in accordance with guidance issued by the Secretary of Defense or the Secretary of Defense's designee.

- C. Compliance with Federal and State Laws. The Dual-Status Commander must comply with all State and Federal laws applicable to the assigned mission while executing [his/her] duties. If the Dual-Status Commander perceives that orders provided by the State or Federal chains of command may violate applicable Federal or State law or create a potential conflict of interest, [he/she] must refrain from executing such orders until [he/she] has consulted with a judge advocate from both the State and Federal chains of command. If after such consultation, the Dual-Status Commander perceives that the problem has not been resolved; [he/she] will notify both chains of command and request

appropriate guidance. Notwithstanding anything in this paragraph to the contrary, State and Federal laws and policies governing emergency and immediate response authorities remain in effect for the Dual-Status Commander when functioning in his or her separate State and Federal chains of command.

D. Mission Tasking Conflicts.

1. The Dual-Status Commander should ensure there are no conflicts between Federal and State mission tasking. If the Dual-Status Commander believes a conflict exists, [he/she] should notify both chains of command at the earliest possible opportunity. Both chains of command and the Dual-Status Commander must be involved in the resolution of such conflicts.
2. In the event a mission tasking conflict cannot be resolved, the Dual-Status Commander should consult with both the Federal chain of command and the State chain of command. While the conflict is being resolved, the Dual-Status Commander will continue to execute [his/her] Federal mission taskings with assigned Federal forces and will continue to execute [his/her] State mission taskings with assigned State forces. State and Federal laws and policies governing emergency and immediate response authorities also remain in effect for the Dual-Status Commander when functioning in his or her separate State and Federal chains of command.
3. If such mission tasking conflicts cannot be resolved, the Secretary of Defense or the Governor or their designees may terminate the issued Dual-Status Commander assignment as a Dual-Status Commander and the officer serving as Dual-Status Commander's dual status.

E. Sharing of Documentation. To avoid miscommunication, the State and Federal chains of command should authorize the Dual-Status Commander to share documents/guidance concerning their respective missions and mission taskings when the Dual-Status Commander determines it is necessary and proper.

F. Release of Federally Classified Information. The release of federally classified documents/guidance shall be conducted in accordance with Department of Defense directives and policies.

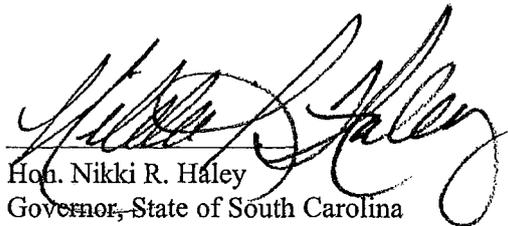
G. Anti-Terrorism/Force Protection Standards. South Carolina National Guard units and personnel, and those provided by other States, under the command of the Dual-Status Commander will comply with anti-terrorism/force protection (AT/FP) standards and guidance provided by their Governor, through their Adjutant General. Federal military units and personnel under the command of the Dual-Status Commander will comply with the AT/FP standards and guidance provided by the supported Combatant Commander.

H. Status. During the course of executing [his/her] assigned duties, the Dual-Status Commander shall clearly describe the status in which he/she is tasking military forces and the status of the affected forces and shall memorialize such status decisions and

actions in writing as soon as circumstances permit. The purpose of this requirement is to mitigate possible confusion in appropriate State/Federal mission taskings by the Dual-Status Commander. If it becomes necessary to make a change in such mission taskings, the Dual-Status Commander will ensure both the State and Federal chains of command are notified of the necessity for such changes.

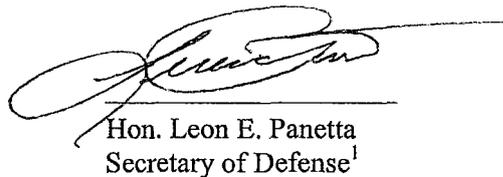
- I. Delegation from Sovereigns. It is agreed and understood that the State and Federal sovereigns may delegate their command authority to intermediate officials or officers who will, on their behalf, issue orders to the Dual-Status Commander. This delegation will typically occur via written orders but may take another form in exigent circumstances.
 - J. Incapacity or Relief of the Dual-Status Commander. In the event the Dual-Status Commander becomes incapacitated or otherwise unable to serve subsequent to his/her assignment, the Governor of South Carolina and the Secretary of Defense or their designees, agree to take those actions necessary to establish a successor Dual-Status Commander. Whenever possible, the original appointment letter should pre-designate a successor Dual-Status Commander to assume command in the event the duly appointed Dual-Status Commander becomes incapacitated or is relieved of command. If a qualified and certified successor Dual-Status Commander is not available when the Dual-Status Commander becomes incapacitated or is otherwise no longer able serve, the Adjutant General will designate an appropriate commander for South Carolina National Guard units and personnel, and those provided by other States, operating in a State status (i.e., State Active Duty status or in duty status pursuant to Title 32, U.S. Code), and the supported Combatant Commander will designate an appropriate commander for Federal military units and personnel (i.e., military units and personnel on active duty pursuant to Title 10, U.S. Code), until such time as a successor Dual-Status Commander can be appointed.
- V. EFFECTIVE DATE. This MOA will become effective upon signature by the Governor of South Carolina and the Secretary of Defense or their designees and remain in effect unless terminated in accordance with paragraph VII.
- VI. MODIFICATIONS. This MOA may be amended or revised by the mutual agreement of the Governor of South Carolina and the Secretary of Defense or their designee(s). Modifications and revisions made under exigent circumstances by the mutual oral agreement of the Governor of South Carolina and the Secretary of Defense or their designees will be memorialized in writing as soon as circumstances permit.
- VII. TERMINATION. This MOA may be terminated in writing by the Governor of South Carolina or the Secretary of Defense or their respective designee(s). A written termination will be provided to the other party as soon as possible but not later than 30 days prior to the intended date of termination. Similarly, the Governor of South Carolina or the Secretary of Defense or their respective designees may terminate at any time the letters of authorization, consent, detail, and permission required by 32 U.S. Code §325 or 32 U.S. Code §315 for Dual-Status Commander. Termination of these letters results in the release from Title 10, U.S. Code, active duty for a Dual-Status Commander occupying dual status in accordance

with 32 U.S. Code §325, and the release from State National Guard duty of a Dual-Status Commander occupying dual status in accordance with Title 32 U.S. Code §315.



Hon. Nikki R. Haley
Governor, State of South Carolina

9/16/11
Date



Hon. Leon E. Panetta
Secretary of Defense¹

SEP 30 2011
Date

¹ Pursuant to 76 Fed. Reg. 22003 (April 14, 2011)