SEC. 517. EXPANSION OF AUTHORIZED PRIMARY DUTIES OF AIR FORCE RESERVE COMPONENT FULL-TIME SUPPORT PERSONNEL.

[Please note: The "Changes to Existing Law" section at the end sets out in red-line format how the legislative text below would amend existing law.]

(a) DEFINITION OF ACTIVE GUARD AND RESERVE DUTY.—Section 101(d)(6)(A) of title 10, United States Code, is amended by striking "days or more" and all that follows and inserting "days or more—

"(i) for the purpose of organizing, administering, recruiting, instructing, or training the reserve components; and

"(ii) in the case of a member of a reserve component of the Air Force, for the purpose of instructing or training in the United States or the Commonwealth of Puerto Rico or possessions of the United States—

"(I) members of the armed forces on active duty; or

"(II) members of foreign military forces (under the same authorities and restrictions as are applicable to members of the regular components providing such instruction or training).

(b) MILITARY TECHNICIANS (DUAL STATUS).—

(1) ADDITIONAL DUTIES AS AUTHORIZED PRIMARY DUTIES FOR AIR COMPONENT MEMBERS.—Section 10216(a) of such title is amended—

(A) in paragraph (1)(C), by striking "in organizing" and all that follows and inserting "with primary duties consisting of one or more of the duties described in paragraph (2).";

(B) by redesignating paragraphs (2) and (3) as paragraphs (4) and (5), respectively; and

(C) by inserting after paragraph (1) the following new paragraphs (2) and (3):

"(2) Duties referred to in this paragraph are the following:

"(A) The organizing, administering, instructing, or training of the Selected Reserve.

"(B) The maintenance and repair of supplies or equipment issued to the Selected Reserve or the armed forces.

"(C) In the case of a Federal civilian employee who is a member of the Air Force Reserve or Air National Guard and subject to paragraph (3), the instructing or training in the United States or the Commonwealth of Puerto Rico or possessions of the United States of—

"(i) members of the armed forces on active duty; or

"(ii) members of foreign military forces (under the same authorities and restrictions as are applicable to members of the regular components providing such instruction or training).

"(3)(A) A Federal civilian employee is a military technician (dual status) by reason of paragraph (2)(C) only if the performance of duties described in that subparagraph as the primary duties of the employee has been approved—

"(i) by the Chief of the Air Force Reserve, in the case of an employee who is a member of the Air Force Reserve; or

"(ii) by the Director of the Air National Guard, in the case of an employee who is a member of the Air National Guard.

"(B) Of the total number of Federal civilian employees who are members of the Air Force Reserve or Air National Guard and who are military technicians (dual status), not more than five percent may be assigned to have duties described in paragraph (2)(C) as their primary duties. Of the members of the Air Force Reserve who are so assigned, no more than half may be assigned to provide instruction or training for equipment or missions that are not assigned to the Air Force Reserve as of the time of the provision of such instruction or training, and of the members of the Air National Guard who are so assigned, no more than half may be assigned to provide instruction or training for equipment or missions that are not assigned to the Air National Guard as of the time of the provision of such instruction or training.".

(2) TECHNICAL AMENDMENTS.—Subparagraph (C) of paragraph (5) of such section, as redesignated by paragraph (1)(B), is amended—

(A) in clause (i), by striking "active-duty members of the armed forces" and inserting "members of the armed forces on active duty"; and

(B) in clause (ii), by striking "applicable to active-duty members" and inserting "as are applicable to members of the regular components".

(c) FEDERAL ACTIVE DUTY.—

(1) ADDITIONAL DUTIES AS AUTHORIZED PRIMARY DUTIES FOR AIR COMPONENT MEMBERS.—Subsection (a) of section 12310 of such title is amended—

(A) in paragraph (1)—

(i) by inserting "a Reserve who is" after "may order";

(ii) by striking "organizing" and all that follows through "components"; and

(iii) by adding at the end the following new sentence: "However, only a Reserve who is a member of a reserve component of the Air Force may be ordered to active duty under this paragraph to perform Active Guard and Reserve duty described in clause (ii) of section 101(d)(6)(A) of this title, and such an order may be made only with the approval of the Chief of the Air Force Reserve, in the case of a member of the Air Force Reserve, or the Director of the Air National Guard, in the case of a member of the Air National Guard."; and

(B) by adding at the end the following new paragraphs:

"(3) A Reserve ordered to active duty under paragraph (1) shall perform duties specified in section 101(d)(6)(A) of this title as that Reserve's primary duties.

"(4) Of the total number of members of the Air Force Reserve and Air National Guard on active duty under paragraph (1), not more than 10 percent may be assigned to perform duties described in clause (ii) of section 101(d)(6)(A) of this title as their primary duties. Of the members of the Air Force Reserve who are so assigned, no more than half may be assigned to provide instruction or training for equipment or missions that are not assigned to the Air Force Reserve as of the time of the provision of such instruction or training, and of the members of the Air National Guard who are so assigned, no more than half may be assigned to provide instruction or training for equipment or missions that are not assigned to the Air National Guard as of the time of the provision of such instruction or training.".

(2) TECHNICAL AND CONFORMING AMENDMENTS.—Subsection (b) of such section is amended—

(A) in the matter preceding paragraph (1), by striking "primary Active Guard and Reserve duties (as described in subsection (a)(1))" and inserting "primary duties (as described in subsection (a)(3))";

(B) in paragraph (4)(A), by striking "active-duty members of the armed forces" and inserting "members of the armed forces on active duty"; and

(C) in paragraph (4)(B), by striking "applicable to active-duty members" and inserting "as are applicable to members of the regular components".

(d) STATE ACTIVE DUTY.—Section 328(b) of title 32, United States Code, is amended—

(1) by inserting "(1)" after "DUTIES.—";

(2) by inserting "shall perform duties specified in section 101(d)(6)(A) of title 10 as that member's primary duties and" after "under subsection (a)";

(3) by striking "the member's" and all that follows and inserting "such primary duties."; and

(4) by adding at the end the following new paragraph:

"(2) Of the total number of members of the Air National Guard performing duty under subsection (a), not more than 10 percent may be assigned to perform duties described in clause (ii) of section 101(d)(6)(A) of title 10 as their primary duties, and of the members who are so assigned, no more than half may be assigned to provide instruction or training for equipment or missions that are not assigned to the Air National Guard as of the time of the provision of such instruction or training.".

(e) NATIONAL GUARD TECHNICIANS.—

(1) ADDITIONAL DUTIES AS AUTHORIZED PRIMARY DUTIES FOR AIR NATIONAL GUARD MEMBERS.—Section 709 of such title is amended—

(A) in subsection (a)—

(i) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(ii) by inserting after paragraph (1) the following new paragraph (2):

"(2) in the case of persons who are members of the Air National Guard, in the instructing or training in the United States or the Commonwealth of Puerto Rico or possessions of the United States of—

"(A) members of the armed forces on active duty; or

"(B) members of foreign military forces (under the same authorities and restrictions as are applicable to members of the regular components providing such instruction or training);"; and

(B) in subsection (b)—

(i) by inserting "(1)" after "(b)";

(ii) by redesignating paragraphs (1), (2), (3), and (4) as subparagraphs (A), (B), (C), and (D), respectively; and

(iii) by adding at the end the following new paragraphs:

"(2) A person who is a member of the Air National Guard may be employed as a technician under subsection (a) in the performance of duties described in paragraph (2) of that subsection as the primary duties of that person only if the performance by that person of such duties as the primary duties of that person is approved by the Director of the Air National Guard.

"(3) Of the total number of members of the Air National Guard employed as technicians under subsection (a), not more than five percent may be assigned to perform duties described in

paragraph (2) of that subsection as their primary duties, and of the members who are so assigned, no more than half may be assigned to provide instruction or training for equipment or missions that are not assigned to the Air National Guard as of the time of the provision of such instruction or training.”.

(2) TECHNICAL AND CONFORMING AMENDMENTS.—Subsection (a) of such section, as amended by paragraph (1)(A), is further amended—

(A) in the matter preceding paragraph (1), by striking “technicians in—” and inserting “technicians—”;

(B) in paragraph (1), by inserting “in” before “the organizing”;

(C) in paragraph (3), as redesignated by paragraph (1)(A)(i), by inserting “in the” before “maintenance”; and

(D) in paragraph (4), as redesignated by paragraph (1)(A)(i)—

(i) in the matter preceding subparagraph (A)—

(I) by inserting “in the” before “performance”; and

(II) by striking “duties described by paragraphs (1) and (2)” and inserting “primary duties described by paragraphs (1), (2), and (3)”;

(ii) in subparagraph (C)(i), by striking “active-duty members of the armed forces” and inserting “members of the armed forces on active duty”; and

(iii) in subparagraph (C) (ii), by striking “applicable to active-duty members” and inserting “as are applicable to members of the regular components”.

(f) FURTHER CONFORMING AMENDMENT.—Section 502(f)(2)(B)(ii) of title 32, United States Code, is amended by striking "to instruct" and all that follows and inserting "to instruct—

"(I) members of the armed forces on active duty;

"(II) members of foreign military forces (under the same authorities and restrictions as are applicable to members of the regular components providing such instruction);

"(III) Department of Defense contractor personnel; or

"(IV) Department of Defense civilian employees.".

Section-by-Section Analysis

This proposal would authorize a limited number of Air Force Active Guard and Reserve (AGR) personnel and dual status military technicians (DSMT)[1] to instruct and train active duty and members of foreign military forces in the United States, the Commonwealth of Puerto Rico or possessions of the United States as a part of their primary duties. Air Force AGRs and DSMTs are already performing these duties, but only to the extent that the duties do not interfere with the AGR/DSMT's primary duties of organizing, administering, [recruiting], instructing and training the reserve components (Pub. L. 109–364, sections 525(a), 527; 10 U.S.C. 101, 10216, and 12310; 32 U.S.C. 328, 502, and 709). The current limitation hampers the Air Force efforts to move toward a more efficient, unified, and integrated Total Force training model.

Legislative relief is necessary to afford maximum efficiency of assigned assets (in both active and reserve components). Under current statute, reserve component support has been maximized (despite the willingness and desire for greater partnering in the training realm) because reserve component full-time support can only be used as an 'additional duty' when conducting training for active duty or foreign students. An Air Force High Velocity Analysis of our training missions is currently underway. Preliminarily, it indicates that flexibility to increase involvement of currently-authorized AGRs and DSMTs would increase support to allied nation requirements and allow for larger student throughput.

While the Military Personnel Appropriations (MPA) account offers the ability to use reserve component members to facilitate surge training requirements, the projected training requirements expected to benefit from this proposed legislation may be either surge or steady-state requirements. Moreover, the demand for instructors can be more easily managed and supported through the use of the already assigned and appropriated reserve component service-members. This change promotes service efficiencies, while preserving limited MPA for use in

[1] Dual status military technicians are Federal civilian employees who are required to maintain membership in the Selected Reserve as a condition of employment. As civilian employees, they are not expected to recruit for the reserve components. 5 United States Code (U.S.C.) 3101, 32 U.S.C. 709 and 10 U.S.C. 10216(a).

other equally important mission requirements. In the event greater surge capacity is needed beyond currently-authorized AGR and DSMT authorizations, the preserved MPA could be used to provide additional reserve component manpower on a short-term basis.

AGR and technician management – by statute – is a power of the reserve components (see, e.g. 10 U.S.C. 8038, 8038, 10503). Both reserve components have separate career planning, management, and career tracks for their AGR and technician personnel. Adding to these existing elements of security and control, the legislative proposal requires reserve component consent before training can be assigned as a primary duty to any AGR or technician.

This proposal balances the Air Force components' competing interests, respects their differences, and capitalizes on their respective strengths. Drastic manpower changes are not anticipated, but limitations have been included to ensure that full-time support reserve component personnel continue to focus mainly on their role supporting the reserve component. For the active component, instructing and training positions are often viewed as career development, seasoning, and non-deployable, restful, opportunities. Thus, the active component is protective of and needs to maintain its involvement in the training mission. Meanwhile, the reserve components desire to participate in steady state, training missions while also remaining current in and relevant to combat-coded missions. These competing interests create a natural tension, helping to ensure the three components negotiate a balanced and mutually-beneficial degree of involvement in the training mission – neither over-burdening nor under-utilizing reserve component resources. This proposal also facilitates the Air Force's efforts to accomplish recommendation #30 from the National Commission on the Structure of the Air Force (NCSAF) (replacing some of the 1,800 active component instructor pilots with reserve component volunteers) while allowing the reserve components to maintain control over and manage their personnel.

Current law has already proven that true integration works. Under current law, both title 10 and title 32 technicians may maintain and repair supplies issued to the armed forces – without regard to the parent component (10 U.S.C. 10216 and 32 U.S.C. 709). This model has worked seamlessly, benefitting all three components for nearly a decade. This proposal seeks to expand the same authority to instructing and training of the armed forces.

Finally, the Air Force worked closely with the Army components, Chief of the National Guard Bureau, and the Navy to establish consensus in making the proposed change for all the Services. Those efforts, however, confirmed the findings of the NCSAF that: "[t]he differences among the military services and the characteristics of their Reserve Components are significant."[2] While the other Services understand and appreciate the Air Force need for this legislative change, they do not currently partner with and do not anticipate soon partnering with their reserve components in the same way or to the same degree as the Air Force.

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[2] NCSAF, *Report to the President and Congress of the United States*, January 30, 2014 (hereinafter "*NCSAF Report*"), p. 67. Two of the NCSAF members expressly stated that they wanted "to emphasize and make clear that the findings and recommendations provided in this report were based on and are intended to be applied solely to the U.S. Air Force, including both its Active and Reserve Components." *Id.* Accordingly, the NCSAF cautioned that applying its recommendations to other services might be a misapplication. *Id.*

The proposed changes to **10 U.S.C. 101(d)(6)(A)** are broad, encompassing all possible primary duties included in AGR duty. Restrictions on when or how each of those duties can be assigned are then provided in subsequent activation and authority statutes.

The proposed changes to **10 U.S.C. 10216(a)(1)(C)** expressly identify the duties listed in the newly-added **10 U.S.C. 10216(a)(2)** as being "primary" and adds training active duty and foreign military as a permissible primary duty for Air Force technicians. **10 U.S.C. 10216(a)(3)** then clarifies that the Chief of the Air Force Reserve or the Director of the Air National Guard must approve the assignment of training active duty and foreign military as a permissible primary duty for members of their respective components before any such duty may be assigned and places limits on the number of personnel who may perform that duty.

The proposed technical and conforming changes to **10 U.S.C. 10216(a)(5)(C)(i) and (ii), 10 U.S.C. 12310(b), and 32 U.S.C. 709(a)(4)(C)** revise the sentence structures to be more precise and to adopt more common usage.

The proposed changes to **10 U.S.C. 12310(a)(1)** incorporate the definition of Active Guard and Reserve duty provided in 10 U.S.C. 101(d)(6), as discussed above. The newly added sentence then provides the new training authority for Air Force AGRs; requires approval of the Chief of the Air Force Reserve or the Director of the Air National Guard, as applicable; and is modeled on the second sentence of 10 U.S.C. 12301(d).

The proposed changes to **10 U.S.C. 12310(a)(3)** explicitly identify the duties described in 10 U.S.C. 101(d) as being the "primary duties" of an AGR. The proposed changes to **10 U.S.C. 12310(a)(4)** establish limits to the number of title 10 AGRs that may train active duty and foreign military as a primary duty.

The proposed changes to **32 U.S.C. 328(b)** follow the form of 32 U.S.C. 328(a) of incorporating the definition of AGR duties described in 10 U.S.C. 101(d), explicitly identify those duties as being the "primary duties" of an AGR, and establish limits to the number of title 32 AGRs that may train active duty and foreign military as a primary duty.

The proposed technical and conforming changes to **32 U.S.C. 502(f)(2)(B)(ii)** are intended to use language that is consistent with the other provisions addressed by this legislative proposal.

Conforming changes to 10 U.S.C. sections 1141(2) and (4); 12012(a); and 16132(d); and 38 USC sections 3002(7) and 3301(1)(C)(i), are also recommended, so those statutes would refer to Active Guard and Reserve duty as defined in 10 U.S.C. 101(d)(6), rather than listing the authorized AGR primary duties, as the statutes do now. Similar conforming changes were made to 10 USC sections 523(b)(1) and 582(1) in recent years.

Budgetary Implications: This proposed legislation is budget neutral as there is zero increase in manpower, facility requirements or workload. The resource requirements and number of personnel reflected in the tables below, therefore, provide information on the total number of AGRs and DSMTs projected to be authorized in the Air Force Reserve and Air National Guard for the years indicated. This legislative change would allow the Air Force to consider enhancing

those-existing AGR's and DSMT's authorized scope of work to include training missions, regardless of the student population composition. All fiscal laws regarding proper use of federal appropriations as intended by Congress remain unaffected by this legislative proposal. Any authorized/required reimbursement under current statutes would remain in effect should this proposal be adopted.

RESOURCE REQUIREMENTS ($MILLION)								
	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	Appropriation From	Budget Activity	Dash-1 Line item
Air Force Reserve (AFR) Technicians	696.2 194.4 10.9 16.0 0.2	697.8 196.8 11.0 16.2 0.2	716.4 199.9 11.2 16.4 0.2	735.4 203.7 11.4 16.8 0.2	750.1 207.7 11.6 17.1 0.2	Operation and Maintenance, Air Force Reserve	01 01 01 04 04	010 020 050 060 080
AFR AGRs	354.8	359.8	367.0	375.3	384.0	Military Personnel, Air Force Reserve	01	90
Air National Guard (ANG) Technicians	1470.3 430.1 128.5	1479.4 433.9 131.3	1486.4 438.8 132.8	1508.3 445.6 135.1	1535.6 453.5 137.5	Operation and Maintenance, Air National Guard	01	010 020 050
ANG AGR	1694.1	1717.5	1755.4	1800.5	1832.9	National Guard Personnel, Air Force	01	90
Total	4995.5	5043.9	5124.5	5232.3	5330.2			
NUMBER OF PERSONNEL AFFECTED								
	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	Appropriation To	Budget Activity	Dash-1 Line Item
AFR Technicians	7487 2091 117 172 2	7413 2091 117 172 2	7495 2091 117 172 2	7551 2091 117 172 2	7551 2091 117 172 2	Operation and Maintenance, Air Force Reserve	01 01 01 04 04	010 020 050 060 080
AFR AGRs	2820	2820	2820	2820	2820	Military Personnel, Air Force Reserve	01	90
ANG Technicians	15,986 4,628 1,340	15,901 4,628 1,340	15,797 4,628 1,340	15,754 4,620 1,340	15,754 4,620 1,340	Operation and Maintenance, Air National Guard	01	010 020 050
ANG AGRs	14,662	14,642	14,670	14,710	14,710	National Guard	01	90

						Personnel, Air Force		
Total	49,305	49,126	49,132	49,177	49,177			

CHANGES TO EXISTING LAW: This proposal would make the following changes to titles 10 and 32, United States Code (matter to be omitted is shown as ~~struck-through text~~; matter to be inserted is <u>underlined</u>):

TITLE 10, UNITED STATES CODE

§ 101. Definitions

(a) ***

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(d) DUTY STATUS.—The following definitions relating to duty status apply in this title:

(1) The term "active duty" means full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. Such term does not include full-time National Guard duty.

(2) The term "active duty for a period of more than 30 days" means active duty under a call or order that does not specify a period of 30 days or less.

(3) The term "active service" means service on active duty or full-time National Guard duty.

(4) The term "active status" means the status of a member of a reserve component who is not in the inactive Army National Guard or inactive Air National Guard, on an inactive status list, or in the Retired Reserve.

(5) The term "full-time National Guard duty" means training or other duty, other than inactive duty, performed by a member of the Army National Guard of the United States or the Air National Guard of the United States in the member's status as a member of the National Guard of a State or territory, the Commonwealth of Puerto Rico, or the District of Columbia under section 316, 502, 503, 504, or 505 of title 32 for which the member is entitled to pay from the United States or for which the member has waived pay from the United States.

(6)(A) The term "active Guard and Reserve duty" means active duty performed by a member of a reserve component of the Army, Navy, Air Force, or Marine Corps, or full-time National Guard duty performed by a member of the National Guard pursuant to an order to full-time National Guard duty, for a period of 180 consecutive days or more<u>—</u>

<u>(i)</u> for the purpose of organizing, administering, recruiting, instructing, or training the reserve components<u>; and</u>

<u>(ii) in the case of a member of a reserve component of the Air Force, for the purpose of instructing or training in the United States or the Commonwealth of Puerto Rico or possessions of the United States—</u>

(I) members of the armed forces on active duty; or

(II) members of foreign military forces (under the same authorities and restrictions as are applicable to members of the regular components providing such instruction or training).

(B) Such term does not include the following:

(i) Duty performed as a member of the Reserve Forces Policy Board provided for under section 10301 of this title.

(ii) Duty performed as a property and fiscal officer under section 708 of title 32.

(iii) Duty performed for the purpose of interdiction and counter-drug activities for which funds have been provided under section 112 of title 32.

(iv) Duty performed as a general or flag officer.

(v) Service as a State director of the Selective Service System under section 10(b)(2) of the Military Selective Service Act (50 U.S.C. App. 460(b)(2)).

* * * * *

§ 10216. Military technicians (dual status)

(a) IN GENERAL.—(1) For purposes of this section and any other provision of law, a military technician (dual status) is a Federal civilian employee who—

(A) is employed under section 3101 of title 5 or section 709(b) of title 32;

(B) is required as a condition of that employment to maintain membership in the Selected Reserve; and

(C) is assigned to a civilian position as a technician ~~in organizing, administering, instructing, or training of the Selected Reserve or in the maintenance and repair of supplies or equipment issued to the Selected Reserve or the armed forces~~ with primary duties consisting of one or more of the duties described in paragraph (2).

(2) Duties referred to in this paragraph are the following:

(A) The organizing, administering, instructing, or training of the Selected Reserve.

(B) The maintenance and repair of supplies or equipment issued to the Selected Reserve or the armed forces.

(C) In the case of a Federal civilian employee who is a member of the Air Force Reserve or Air National Guard and subject to paragraph (3), the instructing or training in the United States or the Commonwealth of Puerto Rico or possessions of the United States of—

(i) members of the armed forces on active duty; or

(ii) members of foreign military forces (under the same authorities and restrictions as are applicable to members of the regular components providing such instruction or training).

(3)(A) A Federal civilian employee is a military technician (dual status) by reason of paragraph (2)(C) only if the performance of duties described in that subparagraph as the primary duties of the employee has been approved—

(i) by the Chief of the Air Force Reserve, in the case of an employee who is a member of the Air Force Reserve; or

(ii) by the Director of the Air National Guard, in the case of an employee who is a member of the Air National Guard.

(B) Of the total number of Federal civilian employees who are members of the Air Force Reserve or Air National Guard and who are military technicians (dual status), not more than five percent may be assigned to have duties described in paragraph (2)(C) as their primary duties. Of the members of the Air Force Reserve who are so assigned, no more than half may be assigned to provide instruction or training for equipment or missions that are not assigned to the Air Force Reserve as of the time of the provision of such instruction or training, and of the members of the Air National Guard who are so assigned, no more than half may be assigned to provide instruction or training for equipment or missions that are not assigned to the Air National Guard as of the time of the provision of such instruction or training.

~~(2)~~ (4) Military technicians (dual status) shall be authorized and accounted for as a separate category of civilian employees.

~~(3)~~ (5) A military technician (dual status) who is employed under section 3101 of title 5 may perform the following additional duties to the extent that the performance of those duties does not interfere with the performance of the primary duties described in paragraph ~~(1)~~ (2):

(A) Supporting operations or missions assigned in whole or in part to the technician's unit.

(B) Supporting operations or missions performed or to be performed by—

(i) a unit composed of elements from more than one component of the technician's armed force; or

(ii) a joint forces unit that includes—

(I) one or more units of the technician's component; or

(II) a member of the technician's component whose reserve component assignment is in a position in an element of the joint forces unit.

(C) Instructing or training in the United States or the Commonwealth of Puerto Rico or possessions of the United States of—

(i) ~~active-duty~~ members of the armed forces on active duty;

(ii) members of foreign military forces (under the same authorities and restrictions as are applicable to ~~active-duty~~ members of the regular components providing such instruction or training);

(iii) Department of Defense contractor personnel; or

(iv) Department of Defense civilian employees.

* * * * *

§ 12310. Reserves: for organizing, administering, etc., reserve components

(a) AUTHORITY.—(1) The Secretary concerned may order a Reserve who is a member of a reserve component under the Secretary's jurisdiction to active duty pursuant to section 12301(d) of this title to perform Active Guard and Reserve duty ~~organizing, administering, recruiting, instructing, or training the reserve components~~. However, only a Reserve who is a

member of a reserve component of the Air Force may be ordered to active duty under this paragraph to perform Active Guard and Reserve duty described in clause (ii) of section 101(d)(6)(A) of this title, and such an order may be made only with the approval of the Chief of the Air Force Reserve, in the case of a member of the Air Force Reserve, or the Director of the Air National Guard, in the case of a member of the Air National Guard.

(2) A Reserve ordered to active duty under paragraph (1) shall be ordered in the Reserve's reserve grade. While so serving, the Reserve continues to be eligible for promotion as a Reserve, if otherwise qualified.

(3) A Reserve ordered to active duty under paragraph (1) shall perform duties specified in section 101(d)(6)(A) of this title as that Reserve's primary duties.

(4) Of the total number of members of the Air Force Reserve and Air National Guard on active duty under paragraph (1), not more than 10 percent may be assigned to perform duties described in clause (ii) of section 101(d)(6)(A) of this title as their primary duties. Of the members of the Air Force Reserve who are so assigned, no more than half may be assigned to provide instruction or training for equipment or missions that are not assigned to the Air Force Reserve as of the time of the provision of such instruction or training, and of the members of the Air National Guard who are so assigned, no more than half may be assigned to provide instruction or training for equipment or missions that are not assigned to the Air National Guard as of the time of the provision of such instruction or training.

(b) DUTIES.—A Reserve on active duty under subsection (a) may perform the following additional duties to the extent that the performance of those duties does not interfere with the performance of the Reserve's primary ~~Active Guard and Reserve~~ duties (as described in subsection (a)~~(1)~~ (3)):

(1) Supporting operations or missions assigned in whole or in part to the reserve components.

(2) Supporting operations or missions performed or to be performed by—

(A) a unit composed of elements from more than one component of the same armed force; or

(B) a joint forces unit that includes—

(i) one or more reserve component units; or

(ii) a member of a reserve component whose reserve component assignment is in a position in an element of the joint forces unit.

(3) Advising the Secretary of Defense, the Secretaries of the military departments, the Joint Chiefs of Staff, and the commanders of the combatant commands regarding reserve component matters.

(4) Instructing or training in the United States or the Commonwealth of Puerto Rico or possessions of the United States of—

(A) ~~active-duty~~ members of the armed forces on active duty;

(B) members of foreign military forces (under the same authorities and restrictions as are applicable to ~~active-duty~~ members of the regular components providing such instruction or training);

(C) Department of Defense contractor personnel; or

(D) Department of Defense civilian employees.

(c) OPERATIONS RELATING TO DEFENSE AGAINST WEAPONS OF MASS DESTRUCTION AND TERRORIST ATTACKS.—(1) Notwithstanding subsection (b), a Reserve on active duty as described in subsection (a), or a Reserve who is a member of the National Guard serving on full-time National Guard duty under section 502(f) of title 32 in connection with functions referred to in subsection (a), may, subject to paragraph (3), perform duties in support of emergency preparedness programs to prepare for or to respond to any emergency involving any of the following:

(A) The use or threatened use of a weapon of mass destruction (as defined in section 1403 of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2302(1))) in the United States.

(B) A terrorist attack or threatened terrorist attack in the United States that results, or could result, in catastrophic loss of life or property.

(C) The intentional or unintentional release of nuclear, biological, radiological, or toxic or poisonous chemical materials in the United States that results, or could result, in catastrophic loss of life or property.

(D) A natural or manmade disaster in the United States that results in, or could result in, catastrophic loss of life or property.

(2) The costs of the pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for a Reserve performing duties under the authority of paragraph (1) shall be paid from the appropriation that is available to pay such costs for other members of the reserve component of that Reserve who are performing duties as described in subsection (a).

(3) A Reserve may perform duty described in paragraph (1) only while assigned to a reserve component weapons of mass destruction civil support team.

(4) Reserves on active duty who are performing duties described in paragraph (1) shall be counted against the annual end strength authorizations required by section 115(a)(1)(B) and 115(a)(2) of this title. The justification material for the defense budget request for a fiscal year shall identify the number and component of the Reserves programmed to be performing duties described in paragraph (1) during that fiscal year.

(5) A reserve component weapons of mass destruction civil support team, and any Reserve assigned to such a team, may not be used to respond to an emergency described in paragraph (1) unless the Secretary of Defense has certified to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives that that team, or that Reserve, possesses the requisite skills, training, and equipment to be proficient in all mission requirements.

(6) If the Secretary of Defense submits to Congress any request for the enactment of legislation to modify the requirements of paragraphs (1) and (3), the Secretary shall provide with the request-

(A) justification for each such requested modification; and

(B) the Secretary's plan for sustaining the qualifications of the personnel and teams described in paragraph (3).

(7) In this subsection, the term “United States” includes the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(d) TRAINING.—A Reserve on active duty as described in subsection (a) may be provided training consistent with training provided to other members on active duty, as the Secretary concerned sees fit.

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TITLE 32, UNITED STATES CODE

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§ 328. Active guard and Reserve duty: Governor's authority

(a) AUTHORITY.—The Governor of a State or the Commonwealth of Puerto Rico, Guam, or the Virgin Islands, or the commanding general of the District of Columbia National Guard, as the case may be, with the consent of the Secretary concerned, may order a member of the National Guard to perform Active Guard and Reserve duty, as defined by section 101(d)(6) of title 10, pursuant to section 502(f) of this title.

(b) DUTIES.—(1) A member of the National Guard performing duty under subsection (a) shall perform duties specified in section 101(d)(6)(A) of title 10 as that member's primary duties and may perform the additional duties specified in section 502(f)(2) of this title to the extent that the performance of those duties does not interfere with the performance of ~~the member's~~ such primary ~~Active Guard and Reserve~~ duties ~~of organizing, administering, recruiting, instructing, and training the reserve~~.

(2) Of the total number of members of the Air National Guard performing duty under subsection (a), not more than 10 percent may be assigned to perform duties described in clause (ii) of section 101(d)(6)(A) of title 10 as their primary duties, and of the members who are so assigned, no more than half may be assigned to provide instruction or training for equipment or missions that are not assigned to the Air National Guard as of the time of the provision of such instruction or training.

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§ 502. Required drills and field exercises

(a) ***

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(f)(1) Under regulations to be prescribed by the Secretary of the Army or Secretary of the Air Force, as the case may be, a member of the National Guard may—

(A) without his consent, but with the pay and allowances provided by law; or

(B) with his consent, either with or without pay and allowances;

be ordered to perform training or other duty in addition to that prescribed under subsection (a).

(2) The training or duty ordered to be performed under paragraph (1) may include the following:

(A) Support of operations or missions undertaken by the member's unit at the request of the President or Secretary of Defense.

(B) Support of training operations and training missions assigned in whole or in part to the National Guard by the Secretary concerned, but only to the extent that such training missions and training operations—

(i) are performed in the United States or the Commonwealth of Puerto Rico or possessions of the United States; and

~~(ii) are only to instruct active duty military, foreign military (under the same authorities and restrictions applicable to active duty troops), Department of Defense contractor personnel, or Department of Defense civilian employees.~~

(ii) are only to instruct—

(I) members of the armed forces on active duty;

(II) members of foreign military forces (under the same authorities and restrictions as are applicable to members of the regular components providing such instruction);

(III) Department of Defense contractor personnel; or

(IV) Department of Defense civilian employees.

(3) Duty without pay shall be considered for all purposes as if it were duty with pay.

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§ 709. Technicians: employment, use, status

(a) Under regulations prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be, and subject to subsections (b) and (c), persons may be employed as technicians ~~in~~—

(1) in the organizing, administering, instructing, or training of the National Guard;

(2) in the case of persons who are members of the Air National Guard, in the instructing or training in the United States or the Commonwealth of Puerto Rico or possessions of the United States of—

(A) members of the armed forces on active duty; or

(B) members of foreign military forces (under the same authorities and restrictions as are applicable to members of the regular components providing such instruction or training);

~~(2~~ (3) in the maintenance and repair of supplies issued to the National Guard or the armed forces; and

~~(3)~~ (4) in the performance of the following additional duties to the extent that the performance of those duties does not interfere with the performance of the primary duties described by paragraphs (1) ~~and (2)~~, (2), and (3):

(A) Support of operations or missions undertaken by the technician's unit at the request of the President or the Secretary of Defense.

(B) Support of Federal training operations or Federal training missions assigned in whole or in part to the technician's unit.

(C) Instructing or training in the United States or the Commonwealth of Puerto Rico or possessions of the United States of—

(i) ~~active-duty~~ members of the armed forces on active duty;

(ii) members of foreign military forces (under the same authorities and restrictions as are applicable to ~~active-duty~~ members of the regular components providing such instruction or training);

(iii) Department of Defense contractor personnel; or

(iv) Department of Defense civilian employees.

(b)(1) Except as authorized in subsection (c), a person employed under subsection (a) must meet each of the following requirements:

~~(1)~~ (A) Be a military technician (dual status) as defined in section 10216(a) of title 10.

~~(2)~~ (B) Be a member of the National Guard.

~~(3)~~ (C) Hold the military grade specified by the Secretary concerned for that position.

~~(4)~~ (D) While performing duties as a military technician (dual status), wear the uniform appropriate for the member's grade and component of the armed forces.

(2) A person who is a member of the Air National Guard may be employed as a technician under subsection (a) in the performance of duties described in paragraph (2) of that subsection as the primary duties of that person only if the performance by that person of such duties as the primary duties of that person is approved by the Director of the Air National Guard.

(3) Of the total number of members of the Air National Guard employed as technicians under subsection (a), not more than five percent may be assigned to perform duties described in paragraph (2) of that subsection as their primary duties, and of the members who are so assigned, no more than half may be assigned to provide instruction or training for equipment or missions that are not assigned to the Air National Guard as of the time of the provision of such instruction or training.

(c)(1) A person may be employed under subsection (a) as a non-dual status technician (as defined by section 10217 of title 10) if the technician position occupied by the person has been designated by the Secretary concerned to be filled only by a non-dual status technician.

(2) The total number of non-dual status technicians in the National Guard is specified in section 10217(c)(2) of title 10.

(d) The Secretary concerned shall designate the adjutants general referred to in section 314 of this title to employ and administer the technicians authorized by this section.

(e) A technician employed under subsection (a) is an employee of the Department of the Army or the Department of the Air Force, as the case may be, and an employee of the United States. However, a position authorized by this section is outside the competitive service if the technician employed in that position is required under subsection (b) to be a member of the National Guard.

(f) Notwithstanding any other provision of law and under regulations prescribed by the Secretary concerned—

(1) a person employed under subsection (a) who is a military technician (dual status) and otherwise subject to the requirements of subsection (b) who—

(A) is separated from the National Guard or ceases to hold the military grade specified by the Secretary concerned for that position shall be promptly separated from military technician (dual status) employment by the adjutant general of the jurisdiction concerned; and

(B) fails to meet the military security standards established by the Secretary concerned for a member of a reserve component under his jurisdiction may be separated from employment as a military technician (dual status) and concurrently discharged from the National Guard by the adjutant general of the jurisdiction concerned;

(2) a technician may, at any time, be separated from his technician employment for cause by the adjutant general of the jurisdiction concerned;

(3) a reduction in force, removal, or an adverse action involving discharge from technician employment, suspension, furlough without pay, or reduction in rank or compensation shall be accomplished by the adjutant general of the jurisdiction concerned;

(4) a right of appeal which may exist with respect to paragraph (1), (2), or (3) shall not extend beyond the adjutant general of the jurisdiction concerned; and

(5) a technician shall be notified in writing of the termination of his employment as a technician and, unless the technician is serving under a temporary appointment, is serving in a trial or probationary period, or has voluntarily ceased to be a member of the National Guard when such membership is a condition of employment, such notification shall be given at least 30 days before the termination date of such employment.

(g) Sections 2108, 3502, 7511, and 7512 of title 5 do not apply to a person employed under this section.

(h) Notwithstanding sections 5544(a) and 6101(a) of title 5 or any other provision of law, the Secretary concerned may prescribe the hours of duty for technicians. Notwithstanding sections 5542 and 5543 of title 5 or any other provision of law, such technicians shall be granted an amount of compensatory time off from their scheduled tour of duty equal to the amount of any time spent by them in irregular or overtime work, and shall not be entitled to compensation for such work.

(i) The Secretary concerned may not prescribe for purposes of eligibility for Federal recognition under section 301 of this title a qualification applicable to technicians employed under subsection (a) that is not applicable pursuant to that section to the other members of the National Guard in the same grade, branch, position, and type of unit or organization involved.