

1 **SEC. ____ . MILITARY TECHNICIAN MODERNIZATION**

2 (a) IN GENERAL.—Section 709 of title 32, United States Code, is amended to read as
3 follows:

4 **“§709. Military Technicians (dual status): employment, use, status**

5 “(a) Under regulations prescribed in accordance with section 10503(9) of title 10, persons
6 may be appointed, employed, administered, detailed, assigned, and disciplined by the adjutants
7 general as military technicians (dual status) in—

8 “(1) the organizing, administering, instructing, or training of Army National
9 Guard or Air National Guard units or personnel to meet Federal readiness standards set
10 by the Secretary of the Army or the Secretary of the Air Force;

11 “(2) the maintenance and repair of supplies issued to the National Guard or the
12 armed forces; and

13 “(3) the performance of the following additional duties to the extent that the
14 performance of those duties does not interfere with the performance of the duties
15 described by paragraphs (1) and (2):

16 “(A) Support of any operation or mission undertaken by the technician’s
17 unit at the request of the President or the Secretary of Defense.

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

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

22 “(i) active-duty members of the armed forces;

1 “(ii) members of foreign military forces (under the same
2 authorities and restrictions applicable to active-duty members providing
3 such instruction or training);

4 “(iii) Department of Defense contractor personnel; or

5 “(iv) Department of Defense civilian employees.

6 “(b) A person employed under this section must meet each of the following requirements:

7 “(1) Be a military technician (dual status) as defined in section 10216(a) of title
8 10.

9 “(2) Be a member of the Service component of the National Guard of the State,
10 Commonwealth, Territory, or District in which the person is serving as a military
11 technician (dual status).

12 “(3) Hold the military grade specified by the Chief of the National Guard Bureau
13 for the military technician (dual status) position.

14 “(4) While performing duties as a military technician (dual status) wear the
15 military uniform appropriate for the member’s grade and component of the armed forces,
16 conform to military grooming standards, display proper military customs and courtesies,
17 and refrain from conduct that is prejudicial to the efficiency of the service or military
18 good order and discipline.

19 “(c) A military technician (dual status) employed under this subsection is an employee of
20 the National Guard and an employee of the United States. Notwithstanding paragraphs (2) and
21 (4) of section 101(c) of title 10, any act or omission by a military technician (dual-status)
22 performing duty under this subsection or any member performing duties under sections 502 and
23 503 of this title, including the use of force in defense of Federal property taken pursuant to

1 regulations prescribed by the Chief, National Guard Bureau, shall be considered an act by an
2 employee of the United States Government under section 2671 of title 28.

3 “(d)(1) The military aspects of military technician (dual status) employment and service
4 are paramount over all other aspects of employment.

5 “(2) Notwithstanding any other provision of law, a military technician (dual status) who
6 is involuntarily separated from the National Guard or ceases to hold the military grade specified
7 for that position shall be promptly removed from technician employment by the adjutant general
8 of the jurisdiction concerned. A technician who is involuntarily separated from technician
9 employment under this paragraph, not as a result of misconduct or personal failure to maintain
10 military fitness for duty standards and is certified in writing by the adjutant general as not
11 pending investigation nor awaiting action for misconduct, shall, at the election of the technician
12 concerned, be granted highest priority consideration then available for priority placement under
13 Federal law.

14 “(3) Notwithstanding any other provision of law, a military technician (dual status) who
15 fails to meet the military security standards established for a member of a reserve component
16 may be removed from employment as a technician and concurrently discharged from the
17 National Guard by the adjutant general of the jurisdiction concerned.

18 “(4) A military technician (dual status) may, at any time, be separated from technician
19 employment for cause by the adjutant general of the jurisdiction concerned. For cause includes
20 conduct, committed at any time, that is prejudicial to the efficiency of the service or military
21 good order and discipline.

22 “(5)(A) all personnel actions, discipline, or conditions of employment, including adverse
23 actions pertaining to a military technician (dual status) shall be accomplished by the adjutant

1 general of the jurisdiction concerned in accordance with the authorities and conditions set forth
2 in section 10508(b)(3) of title 10.

3 “(B) A right of appeal by a military technician (dual-status), which may exist with respect
4 to actions, including separations, based upon laws or regulations relating to military membership
5 as a member of the National Guard of the jurisdiction concerned or relating to service as a
6 member of the reserve component of the Army or Air Force, shall not extend beyond the adjutant
7 general concerned.

8 “(C) Notwithstanding any other provision of law, no appeal, complaint, grievance, claim,
9 or action arising under the provisions of sections 2302, 7511, 7512, and 7513 of title 5; section
10 717 of the Civil Rights Act of 1991 (42 U.S.C. 2000e-16); or sections 7116 or 7121 of title 5; or
11 under any other provision of law, shall extend to activity occurring while the member is in a
12 military pay status or to actions, including separations, based upon laws or regulations relating to
13 military membership as a member of the National Guard of the jurisdiction concerned or relating
14 to service as a reserve of the Army or Air Force, or pertaining to actions undertaken under
15 paragraphs (2) or (3).

16 “(D) No appeal, complaint, grievance, claim, or action shall be instituted, filed, or
17 proceed until the adjutant general is first provided written notice by the technician. Such notice
18 shall be provided within 45 calendar days after the action or term of employment giving rise to
19 the appeal, complaint, grievance, or claim. If final written notice of disposition is not provided
20 by the adjutant general to the technician within 90 calendar days after receipt of notice by the
21 technician, the appeal, complaint, grievance, claim, or action may proceed.

22 “(6) A technician shall be notified in writing of the termination of the technician’s
23 employment as a technician and, unless the technician is serving under a temporary appointment,

1 is serving in a trial or probationary period, or has voluntarily ceased to be a member of the
2 National Guard when such membership is a condition of employment, such notification shall be
3 given at least 30 days before the termination date of such employment.

4 “(7) Any administratively imposed civilian hiring controls or restrictions, including
5 personnel ceilings, hiring freezes, administrative furloughs, grade restrictions, or reductions shall
6 not apply to military technicians (dual status) unless such hiring controls are determined by the
7 Chief of the National Guard Bureau to be a direct result of a reduction in military force structure.
8 For the purposes of a furlough due to a lapse in appropriations, technicians shall be treated as
9 uniformed members of the armed forces.

10 “(e) Sections 2108, 3502, 4303, 5102, 7511, and 7512 of title 5; the Age Discrimination in
11 Employment Act of 1967 (29 U.S.C. 621-634); the Rehabilitation Act of 1973 (29 U.S.C. 701-7961);
12 and section 1076d(a)(2) of title 10 do not apply to a person employed under this section. A
13 person employed under this section who is performing Active Guard and Reserve duty (as that
14 term is defined in section 101(d)(6) of title 10) may not use civilian employee leave under
15 sections 6307 or 6323(a)(1) of title 5 during such duty.

16 “(f) Notwithstanding sections 5544(a) and 6101(a) of title 5 or any other provision of
17 law, the Chief of the National Guard Bureau shall establish the hours of duties for military
18 technicians (dual status). Notwithstanding sections 5542 and 5543 of title 5 or any other
19 provision of law, technicians shall be granted an amount of compensatory time off from their
20 scheduled tour of duty equal to the amount of any time spent by them in irregular or overtime
21 work, and shall not be entitled to compensation for such work.

22 “(g) The Chief of the National Guard Bureau may not prescribe for purposes of eligibility
23 for Federal recognition under section 301 of this title a qualification applicable to technicians

1 employed under subsection (a) that is not applicable pursuant to that section to the other
2 members of the National Guard in the same grade, branch, position, and type of unit or
3 organization involved.

4 “(h) Notwithstanding the provisions of section 14506, 14507, or 14508 of title 10, the
5 Chief of the National Guard Bureau may, at the request of the adjutant general of the jurisdiction
6 concerned, and with the officer's consent, retain on the reserve active-status list an officer in the
7 grade of major, lieutenant colonel, colonel, or brigadier general who is a reserve officer of the
8 Army or Air Force and who, as a condition of continued employment as a National Guard
9 military technician (dual status) is required to maintain membership in a Selected Reserve unit or
10 organization.

11 “(i) In this section:

12 “(1) The term ‘military pay status’ means a period of military service under titles
13 10 or 32 with respect to which the amount of pay payable to a technician for that service is based
14 on rates of military pay provided for under title 37.

15 “(2) The term ‘fitness for duty in the reserve components’ refers only to military-
16 unique requirements that attend to requirements for military service as a member of the Army
17 National Guard or Air National Guard or as a reserve of the Army or Air Force or service on
18 active duty, that are established by the Secretary of the Army or the Secretary of the Air Force
19 and that pertain to requirements of law or policy relating to military membership as a member of
20 the National Guard of the jurisdiction concerned.

21 “(j) For purposes of any administrative complaint, grievance, claim, or action arising
22 from, or relating to, such a personnel action or condition of employment:

1 “(1) The adjutant general of the jurisdiction concerned shall be considered the
2 head of the agency and the National Guard of the jurisdiction concerned shall be
3 considered the employing agency of the individual and the sole defendant or respondent
4 in any administrative action.

5 “(2) The National Guard of the jurisdiction concerned shall defend any
6 administrative appeal, complaint, grievance, claim, or action, and shall promptly
7 implement all aspects of any final administrative or judicial order, judgment, or decision
8 that does not involve or concern any military aspect of the performance of technician
9 duties under this section.

10 “(3) In any civil action or proceeding brought in any court arising from an action
11 under this section, the United States shall be the sole defendant or respondent.

12 “(4) The Attorney General of the United States shall defend the United States in
13 actions arising under this section.

14 “(5) Any settlement, judgment, or costs arising from an action described in
15 paragraph (1), (2), or (3) shall be paid from appropriated funds allocated to the
16 National Guard of the jurisdiction concerned.”.

17 (b) CLERICAL AMENDMENT.—The item relating to section 709 in the table of sections for
18 chapter 7 of title 32, United States Code, is amended to read as follows:

“709. Military Technicians (dual status): employment, use, status.”.

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

Section-by-Section Analysis

This proposal would extend and enhance authority to conduct the Military Technician program under 32 U.S.C. § 709 informed by lessons learned from National Guard Bureau’s (NGB) and Adjutants General’s implementation of the Dual Status Technician (DST) program. Extension and enhancement of this authority would afford the Chief of the National Guard

Bureau (CNGB) and the Adjutants General of the 54 National Guards from States, territories, the Commonwealth of Puerto Rico, and the District of Columbia clarity and authorization in implementing the DST program.

The amendment and modification of 32 U.S.C. § 709 would further define that a function of NGB is to establish policies and programs for the employment and use of National Guard technicians under section 32 U.S.C. § 709 as specified in 10 U.S.C. § 10503 and 10508 and the NGB Charter. While Adjutants General currently have the full spectrum of employment authorities regarding DST personnel, including appointing, employing, administering, detailing, assigning, and disciplining, the updated version of the Technician Act would clarify and harmonize CNGB's role and authorities consistent with later in time statutes like 10 U.S.C. § 10503 and 10508 and the NGB Charter. Further, the proposal would provide authority for DST personnel to support any DoD or Presidential requested operation undertaken by the DST's unit or Federal training and operations undertaken by a DST's unit.

Additionally, the amendment further defines that any act or mission by a DST, including use of force in defense of Federal property, shall be considered an act by an employee of the United States to ensure Federal Tort or other claims applications apply to these matters.

Historically, there has been confusion in the courts and in administrative actions, appeals, or claims regarding the jurisdiction over the military aspect of DST employment. This amendment clarifies the jurisdiction of the courts and administrative agencies is limited to the nonmilitary aspects of DST employment. The amendment further establishes the military aspects of DST employment shall be paramount over all other aspects of DST employment. The amendment updates the statute to remove outdated references to Non-Dual Status Technicians, thus allowing the statute to focus on DSTs and the requirements of their military mission. The civilian aspects of technician employment focus solely on pay, benefits, and Federal Tort Claims Act coverage.

The proposal also establishes a difference in involuntary separation, not because of misconduct, wherein DSTs shall be granted highest priority consideration for available priority placement. This resolves the issue of the availability of priority placement for involuntary, non-disciplinary separation actions.

The amendment defines the discipline authority reserved to the Adjutant General or those actions which may be brought as an administrative action or claim.

The statute establishes the Adjutant General as the "head of Agency" for purposes of administrative actions, appeals, or claims. The amendment also grants Adjutants General 90 days to resolve an appeal, complaint, grievance, or claim. This affords an opportunity to investigate and resolve these DST employment matters by providing additional time for reasoned analysis to avert or resolve these actions. Further, this amendment recognizes amicable settlements are preferable and many essential witnesses may only be available one weekend a month.

The amendment also limits or deconflicts civilian personnel statutes with military membership statutes. Further, the amendment disallows DSTs who are performing Active Guard and Reserve (AGR) duty (as that term is defined in 10 U.S.C. § 101(d)(6)) from using Federal civilian annual military, and sick leave while in AGR duty status. This amendment clarifies ambiguity in the current military technician statute that causes confusion on the ability to use civilian sick leave, and other approved civilian leave statuses while on AGR duty. The prohibition on the use of sick leave for DSTs performing AGR duty is based upon the AGRs military, not civilian, duty status. DSTs are entitled to use military time off procedures when sick or injured while employed as an AGR based on their military status. Using DST civilian sick leave while in AGR status is not appropriate, as the DST is not in a civilian employment status, and is receiving military benefits under their military status as a National Guard military member. Additionally, there has been a propensity for abuse of civilian sick leave, including using before or after holidays to receive full holiday pay.

The amendment provides CNGB authority to establish the duty hours.

Lastly, the proposed amendment would ensure Federal recognition requirements of DST personnel are the same as other National Guard members in the same grade, branch, position and type of unit or organization.

Resource Information: The National Guard used cost savings resulting from this proposal to meet the minimum (floor) end strength for dual status military technicians as requested for the FY 2024 NDAA. The table below reflects the best estimate of savings included in the Fiscal Year (FY) 2024 President’s Budget.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
ARNG - CIVILIAN PAY & MILITARY TECHNICIAN PAY	-16	-16	-16	-16	-16	Operation & Maintenance, Army National Guard	01 & 04	Various	Various
ANG - CIVILIAN PAY & MILITARY TECHNICIAN PAY	-12	-12	-12	-12	-12	Operation & Maintenance, Air National Guard	01 & 04	Various	Various

Changes to Existing Law: This proposal would amend Title 32 U.S.C. § 709 as follows:

32 U.S. Code § 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) the organizing, administering, instructing, or training of the National Guard;~~

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

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

~~(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;~~

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

~~(iii) Department of Defense contractor personnel; or~~

~~(iv) Department of Defense civilian employees.~~

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

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

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

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

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

~~(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 when the appeal concerns activity occurring while the member is in a military pay status, or concerns fitness for duty in the reserve components;~~

~~(5) with respect to an appeal concerning any activity not covered by paragraph (4), the provisions of sections 7511, 7512, and 7513 of title 5, and section 717 of the Civil Rights Act of 1991 (42 U.S.C. 2000e-16) shall apply; and~~

~~(6) 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)(1) Except as provided in subsection (f), sections 2108, 3502, 7511, and 7512 of title 5 do not apply to a person employed under this section.~~

~~(2) In addition to the sections referred to in paragraph (1), section 6323(a)(1) of title 5 also does not apply to a person employed under this section who is performing active Guard and Reserve duty (as that term is defined in section 101(d)(6) of title 10).~~

~~(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.~~

~~(j) In this section:~~

~~(1) The term "military pay status" means a period of service where the amount of pay payable to a technician for that service is based on rates of military pay provided for under title 37.~~

~~(2) The term "fitness for duty in the reserve components" refers only to military-unique service requirements that attend to military service generally, including service in the reserve components or service on active duty.~~

§709. Military Technicians (dual status): employment, use, status

(a) Under regulations prescribed in accordance with section 10503(9) of title 10, persons may be appointed, employed, administered, detailed, assigned, and disciplined by the adjutants general as military technicians (dual status) in—

(1) the organizing, administering, instructing, or training of Army National Guard or Air National Guard units or personnel to meet Federal readiness standards set by the Secretary of the Army or the Secretary of the Air Force;

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

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

(A) Support of any operation or mission 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;

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

(iii) Department of Defense contractor personnel; or

(iv) Department of Defense civilian employees.

(b) A person employed under this section must meet each of the following requirements:

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

(2) Be a member of the Service component of the National Guard of the State, Commonwealth, Territory, or District in which the person is serving as a military technician (dual status).

(3) Hold the military grade specified by the Chief of the National Guard Bureau for the military technician (dual status) position.

(4) While performing duties as a military technician (dual status) wear the military uniform appropriate for the member's grade and component of the armed forces, conform to military grooming standards, display proper military customs and courtesies, and refrain from conduct that is prejudicial to the efficiency of the service or military good order and discipline.

(c) A military technician (dual status) employed under this subsection is an employee of the National Guard and an employee of the United States. Notwithstanding paragraphs (2) and (4) of section 101(c) of title 10, any act or omission by a military technician (dual-status) performing

duty under this subsection or any member performing duties under sections 502 and 503 of this title, including the use of force in defense of Federal property taken pursuant to regulations prescribed by the Chief, National Guard Bureau, shall be considered an act by an employee of the United States Government under section 2671 of title 28.

(d)(1)The military aspects of military technician (dual status) employment and service are paramount over all other aspects of employment.

(2) Notwithstanding any other provision of law, a military technician (dual status) who is involuntarily separated from the National Guard or ceases to hold the military grade specified for that position shall be promptly removed from technician employment by the adjutant general of the jurisdiction concerned. A technician who is involuntarily separated from technician employment under this paragraph, not as a result of misconduct or personal failure to maintain military fitness for duty standards and is certified in writing by the adjutant general as not pending investigation nor awaiting action for misconduct, shall, at the election of the technician concerned, be granted highest priority consideration then available for priority placement under Federal law.

(3) Notwithstanding any other provision of law, a military technician (dual status) who fails to meet the military security standards established for a member of a reserve component may be removed from employment as a technician and concurrently discharged from the National Guard by the adjutant general of the jurisdiction concerned.

(4) A military technician (dual status) may, at any time, be separated from technician employment for cause by the adjutant general of the jurisdiction concerned. For cause includes conduct, committed at any time, that is prejudicial to the efficiency of the service or military good order and discipline.

(5)(A) all personnel actions, discipline, or conditions of employment, including adverse actions pertaining to a military technician (dual status) shall be accomplished by the adjutant general of the jurisdiction concerned in accordance with the authorities and conditions set forth in section 10508(b)(3) of title 10.

(B) A right of appeal by a military technician (dual-status), which may exist with respect to actions, including separations, based upon laws or regulations relating to military membership as a member of the National Guard of the jurisdiction concerned or relating to service as a member of the reserve component of the Army or Air Force, shall not extend beyond the adjutant general concerned.

(C) Notwithstanding any other provision of law, no appeal, complaint, grievance, claim, or action arising under the provisions of sections 2302, 7511, 7512, and 7513 of title 5; section 717 of the Civil Rights Act of 1991 (42 U.S.C. 2000e-16); or sections 7116 or 7121 of title 5; or under any other provision of law, shall extend to activity occurring while the member is in a military pay status or to actions, including separations, based upon laws or regulations relating to military membership as a member of the National Guard of the jurisdiction concerned or relating to service as a reserve of the Army or Air Force, or pertaining to actions undertaken under paragraphs (2) or (3).

(D) No appeal, complaint, grievance, claim, or action shall be instituted, filed, or proceed until the adjutant general is first provided written notice by the technician. Such notice shall be provided within 45 calendar days after the action or term of employment giving rise to the appeal, complaint, grievance, or claim. If final written notice of disposition is not provided by

the adjutant general to the technician within 90 calendar days after receipt of notice by the technician, the appeal, complaint, grievance, claim, or action may proceed.

(6) A technician shall be notified in writing of the termination of the technician's 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.

(7) Any administratively imposed civilian hiring controls or restrictions, including personnel ceilings, hiring freezes, administrative furloughs, grade restrictions, or reductions shall not apply to military technicians (dual status) unless such hiring controls are determined by the Chief of the National Guard Bureau to be a direct result of a reduction in military force structure. For the purposes of a furlough due to a lapse in appropriations, technicians shall be treated as uniformed members of the armed forces.

(e) Sections 2108, 3502, 4303, 5102, 7511, and 7512 of title 5; the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621-634); the Rehabilitation Act of 1973 (29 U.S.C. 701-796l); and section 1076d(a)(2) of title 10 do not apply to a person employed under this section. A person employed under this section who is performing Active Guard and Reserve duty (as that term is defined in section 101(d)(6) of title 10) may not use civilian employee leave under sections 6307 or 6323(a)(1) of title 5 during such duty.

(f) Notwithstanding sections 5544(a) and 6101(a) of title 5 or any other provision of law, the Chief of the National Guard Bureau shall establish the hours of duties for military technicians (dual status). Notwithstanding sections 5542 and 5543 of title 5 or any other provision of law, 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.

(g) The Chief of the National Guard Bureau 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.

(h) Notwithstanding the provisions of section 14506, 14507, or 14508 of title 10, the Chief of the National Guard Bureau may, at the request of the adjutant general of the jurisdiction concerned, and with the officer's consent, retain on the reserve active-status list an officer in the grade of major, lieutenant colonel, colonel, or brigadier general who is a reserve officer of the Army or Air Force and who, as a condition of continued employment as a National Guard military technician (dual status) is required to maintain membership in a Selected Reserve unit or organization.

(i) In this section:

(1) The term 'military pay status' means a period of military service under titles 10 or 32 with respect to which the amount of pay payable to a technician for that service is based on rates of military pay provided for under title 37.

(2) The term ‘fitness for duty in the reserve components’ refers only to military-unique requirements that attend to requirements for military service as a member of the Army National Guard or Air National Guard or as a reserve of the Army or Air Force or service on active duty, that are established by the Secretary of the Army or the Secretary of the Air Force and that pertain to requirements of law or policy relating to military membership as a member of the National Guard of the jurisdiction concerned.

(j) For purposes of any administrative complaint, grievance, claim, or action arising from, or relating to, such a personnel action or condition of employment:

(1) The adjutant general of the jurisdiction concerned shall be considered the head of the agency and the National Guard of the jurisdiction concerned shall be considered the employing agency of the individual and the sole defendant or respondent in any administrative action.

(2) The National Guard of the jurisdiction concerned shall defend any administrative appeal, complaint, grievance, claim, or action, and shall promptly implement all aspects of any final administrative or judicial order, judgment, or decision that does not involve or concern any military aspect of the performance of technician duties under this section.

(3) In any civil action or proceeding brought in any court arising from an action under this section, the United States shall be the sole defendant or respondent.

(4) The Attorney General of the United States shall defend the United States in actions arising under this section.

(5) Any settlement, judgment, or costs arising from an action described in paragraph (1), (2), or (3) shall be paid from appropriated funds allocated to the National Guard of the jurisdiction concerned.