

§ 10215. Officers of Army National Guard of the United States and Air National Guard of the United States: authority with respect to Federal status

(a)(1) Officers of the Army National Guard of the United States who are not on active duty—

(A) may order members of the Army National Guard of the United States to active duty for training under section 12301(d) of this title; and

(B) with the approval of the Secretary of the Air Force, may order members of the Air National Guard of the United States to active duty for training under that section.

(2) Officers of the Air National Guard of the United States who are not on active duty—

(A) may order members of the Air National Guard of the United States to active duty for training under section 12301(d) of this title; and

(B) with the approval of the Secretary of the Army, may order members of the Army National Guard of the United States to active duty for training under that section.

(b) Officers of the Army National Guard of the United States or the Air National Guard of the United States who are not on active duty—

(1) may enlist, reenlist, or extend the enlistments of persons as Reserves of the Army or Reserves of the Air Force for service in the Army National Guard of the United States or the Air National Guard of the United States, as the case may be; and

(2) with respect to their Federal status, may promote or discharge persons enlisted or reenlisted as Reserves of the Army or Reserves of the Air Force for that service.

(c) This section shall be carried out under regulations prescribed by the Secretary of the Army, with respect to matters concerning the Army, and by the Secretary of the Air Force, with respect to matters concerning the Air Force.

(Added Pub. L. 103-337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2979.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3080 and 8080 of this title, prior to repeal by Pub. L. 103-337, § 1661(a)(3)(A).

EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as a note under section 10001 of this title.

§ 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 the organizing, administering, instructing, or training of the Selected Re-

serve or in the maintenance and repair of supplies or equipment issued to the Selected Reserve or the armed forces.

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

(3) 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):

(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;

(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) **PRIORITY FOR MANAGEMENT OF MILITARY TECHNICIANS (DUAL STATUS).**—(1) As a basis for making the annual request to Congress pursuant to section 115(d) of this title for authorization of end strengths for military technicians (dual status) of the Army and Air Force reserve components, the Secretary of Defense shall give priority to supporting authorizations for military technicians (dual status) in the following high-priority units and organizations:

(A) Units of the Selected Reserve that are scheduled to deploy no later than 90 days after mobilization.

(B) Units of the Selected Reserve that are or will deploy to relieve active duty peacetime operations tempo.

(C) Those organizations with the primary mission of providing direct support surface and aviation maintenance for the reserve components of the Army and Air Force, to the extent that the military technicians (dual status) in such units would mobilize and deploy in a skill that is compatible with their civilian position skill.

(2) For each fiscal year, the Secretary of Defense shall, for the high-priority units and organizations referred to in paragraph (1), seek to achieve a programmed manning level for military technicians (dual status) that is not less

than 90 percent of the programmed manpower structure for those units and organizations for military technicians (dual status) for that fiscal year.

(3) Military technician (dual status) authorizations and personnel shall be exempt from any requirement (imposed by law or otherwise) for reductions in Department of Defense civilian personnel and shall only be reduced as part of military force structure reductions.

(c) INFORMATION REQUIRED TO BE SUBMITTED WITH ANNUAL END STRENGTH AUTHORIZATION REQUEST.—(1) The Secretary of Defense shall include as part of the budget justification documents submitted to Congress with the budget of the Department of Defense for any fiscal year the following information with respect to the end strengths for military technicians (dual status) requested in that budget pursuant to section 115(d) of this title, shown separately for each of the Army and Air Force reserve components:

(A) The number of military technicians (dual status) in the high priority units and organizations specified in subsection (b)(1).

(B) The number of technicians other than military technicians (dual status) in the high priority units and organizations specified in subsection (b)(1).

(C) The number of military technicians (dual status) in other than high priority units and organizations specified in subsection (b)(1).

(D) The number of technicians other than military technicians (dual status) in other than high priority units and organizations specified in subsection (b)(1).

(2)(A) If the budget submitted to Congress for any fiscal year requests authorization for that fiscal year under section 115(d) of this title of a military technician (dual status) end strength for a reserve component of the Army or Air Force in a number that constitutes a reduction from the end strength minimum established by law for that reserve component for the fiscal year during which the budget is submitted, the Secretary of Defense shall submit to the congressional defense committees with that budget a justification providing the basis for that requested reduction in technician end strength.

(B) Any justification submitted under subparagraph (A) shall clearly delineate the specific force structure reductions forming the basis for such requested technician reduction (and the numbers related to those reductions).

(d) UNIT MEMBERSHIP REQUIREMENT.—(1) Unless specifically exempted by law, each individual who is hired as a military technician (dual status) after December 1, 1995, shall be required as a condition of that employment to maintain membership in—

(A) the unit of the Selected Reserve by which the individual is employed as a military technician; or

(B) a unit of the Selected Reserve that the individual is employed as a military technician to support.

(2) Paragraph (1) does not apply to a military technician (dual status) who is employed by the Army Reserve in an area other than Army Reserve troop program units.

(3) Paragraph (1) does not apply to a military technician (dual status) who is employed by the Air Force Reserve in an area other than the Air Force Reserve unit program, except that not more than 50 of such technicians may be assigned outside of the unit program at the same time.

(e) DUAL STATUS REQUIREMENT.—(1) Funds appropriated for the Department of Defense may not (except as provided in paragraph (2)) be used for compensation as a military technician of any individual hired as a military technician (dual status) after February 10, 1996, who is no longer a member of the Selected Reserve.

(2) Except as otherwise provided by law, the Secretary concerned may pay compensation described in paragraph (1) to an individual described in that paragraph who is no longer a member of the Selected Reserve for a period up to 12 months following the individual's loss of membership in the Selected Reserve if the Secretary determines that such loss of membership was not due to the failure of that individual to meet military standards.

(f) AUTHORITY FOR DEFERRAL OF MANDATORY SEPARATION.—The Secretary of the Army and the Secretary of the Air Force may each implement personnel policies so as to allow, at the discretion of the Secretary concerned, a military technician (dual status) who continues to meet the requirements of this section for dual status to continue to serve beyond a mandatory removal date, and any applicable maximum years of service limitation, until the military technician (dual status) reaches age 60 and attains eligibility for an unreduced annuity (as defined in section 10218(c) of this title).

(g) RETENTION OF MILITARY TECHNICIANS WHO LOSE DUAL STATUS DUE TO COMBAT-RELATED DISABILITY.—(1) Notwithstanding subsection (d) of this section or subsections (a)(3) and (b) of section 10218 of this title, if a military technician (dual status) loses such dual status as the result of a combat-related disability (as defined in section 1413a of this title), the person may be retained as a non-dual status technician so long as—

(A) the combat-related disability does not prevent the person from performing the non-dual status functions or position; and

(B) the person, while a non-dual status technician, is not disqualified from performing the non-dual status functions or position because of performance, medical, or other reasons.

(2) A person so retained shall be removed not later than 30 days after becoming eligible for an unreduced annuity and becoming 60 years of age.

(3) Persons retained under the authority of this subsection do not count against the limitations of section 10217(c) of this title.

(Added Pub. L. 104-106, div. A, title V, § 513(c)(1), Feb. 10, 1996, 110 Stat. 306; amended Pub. L. 104-201, div. A, title IV, § 413(b), (c), title XII, § 1214, Sept. 23, 1996, 110 Stat. 2507, 2508, 2695; Pub. L. 105-85, div. A, title V, § 522(a), (b), (f)-(h)(1), Nov. 18, 1997, 111 Stat. 1734-1736; Pub. L. 106-65, div. A, title V, § 521, Oct. 5, 1999, 113 Stat. 595; Pub. L. 108-136, div. A, title IV, § 403(c), Nov. 24, 2003, 117 Stat. 1452; Pub. L. 109-163, div. A, title V, § 513(a), Jan. 6, 2006, 119 Stat. 3232;

Pub. L. 109–364, div. A, title V, § 525(b), Oct. 17, 2006, 120 Stat. 2194; Pub. L. 110–181, div. A, title V, § 511, Jan. 28, 2008, 122 Stat. 98; Pub. L. 110–417, [div. A], title V, § 511, Oct. 14, 2008, 122 Stat. 4439; Pub. L. 111–383, div. A, title V, § 512, title X, § 1075(b)(52), Jan. 7, 2011, 124 Stat. 4210, 4372; Pub. L. 112–81, div. A, title V, § 514(a), Dec. 31, 2011, 125 Stat. 1394.)

AMENDMENTS

2011—Subsecs. (b)(1), (c)(1), (2)(A). Pub. L. 111–383, § 1075(b)(52), substituted “section 115(d)” for “section 115(c)”.

Subsec. (d)(3). Pub. L. 111–383, § 512, added par. (3).
Subsec. (f). Pub. L. 112–81 inserted “Authority for” before “Deferral of Mandatory Separation” in heading, and in text, substituted “may each implement” for “shall implement”, inserted “, at the discretion of the Secretary concerned,” after “so as to allow”, and struck out “for officers” after “mandatory removal date”.

2008—Subsec. (f). Pub. L. 110–417 inserted “and the Secretary of the Air Force” after “Secretary of the Army”.

Subsec. (g). Pub. L. 110–181 added subsec. (g).
2006—Subsec. (a)(1)(C). Pub. L. 109–364, § 525(b)(1), substituted “organizing, administering, instructing, or” for “administration and”.

Subsec. (a)(3). Pub. L. 109–364, § 525(b)(2), added par. (3).

Subsec. (f). Pub. L. 109–163 added subsec. (f).
2003—Subsecs. (b)(1), (c)(1), (2)(A). Pub. L. 108–136 substituted “section 115(c)” for “115(g)”.

1999—Subsec. (a)(1)(A). Pub. L. 106–65, § 521(a)(1), substituted “section 709(b)” for “section 709”.

Subsec. (a)(1)(C). Pub. L. 106–65, § 521(a)(2), inserted “civilian” after “is assigned to a”.

Subsec. (e)(1). Pub. L. 106–65, § 521(b)(1), inserted “(dual status)” after “military technician” the second place it appeared.

Subsec. (e)(2). Pub. L. 106–65, § 521(b)(2), substituted “Except as otherwise provided by law, the Secretary” for “The Secretary” and “up to 12 months” for “not to exceed six months”.

1997—Pub. L. 105–85, § 522(h), inserted “(dual status)” after “military technicians” in section catchline.

Subsec. (a). Pub. L. 105–85, § 522(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows:

“(a) IN GENERAL.—Military technicians are Federal civilian employees hired under title 5 and title 32 who are required to maintain dual-status as drilling reserve component members as a condition of their Federal civilian employment. Such employees shall be authorized and accounted for as a separate category of dual-status civilian employees, exempt as specified in subsection (b)(3) from any general or regulatory requirement for adjustments in Department of Defense civilian personnel.”

Subsec. (b). Pub. L. 105–85, § 522(g)(1), inserted “(DUAL STATUS)” after “MILITARY TECHNICIANS” in heading.

Subsec. (b)(1). Pub. L. 105–85, § 522(g)(2)(A), (B), in introductory provisions, inserted “(dual status)” after “for military technicians” and substituted “military technicians (dual status)” for “dual status military technicians”.

Subsec. (b)(1)(C). Pub. L. 105–85, § 522(g)(2)(C), inserted “(dual status)” after “military technicians”.

Subsec. (b)(2). Pub. L. 105–85, § 522(g)(3), inserted “(dual status)” after “military technicians” in two places.

Subsec. (b)(3). Pub. L. 105–85, § 522(g)(4), inserted “(dual status)” after “Military technician”.

Subsec. (c). Pub. L. 105–85, § 522(g)(5)(A), inserted “(dual status)” after “military technicians” in introductory provisions.

Subsec. (c)(1)(A) to (D). Pub. L. 105–85, § 522(f), (g)(5)(B), substituted “subsection (b)(1)” for “subsection (a)(1)” and “military technicians (dual status)” for “dual-status technicians”.

Subsec. (c)(2)(A). Pub. L. 105–85, § 522(g)(5)(C), inserted “(dual status)” after “military technician”.

Subsec. (c)(2)(B). Pub. L. 105–85, § 522(g)(5)(D), substituted “delineate the specific force structure reductions” for “delineate—

“(i) in the case of a reduction that includes a reduction in technicians described in subparagraph (A) or (C) of paragraph (1), the specific force structure reductions forming the basis for such requested technician reduction (and the numbers related to those force structure reductions); and

“(ii) in the case of a reduction that includes reductions in technicians described in subparagraphs (B) or (D) of paragraph (1), the specific force structure reductions, Department of Defense civilian personnel reductions, or other reasons”.

Subsecs. (d), (e). Pub. L. 105–85, § 522(b), added subsecs. (d) and (e) and struck out former subsec. (d) which read as follows:

“(d) DUAL-STATUS REQUIREMENT.—The Secretary of Defense shall require the Secretary of the Army and the Secretary of the Air Force to establish as a condition of employment for each individual who is hired after February 10, 1996, as a military technician that the individual maintain membership in the Selected Reserve (so as to be a so-called ‘dual-status’ technician) and shall require that the civilian and military position skill requirements of dual-status military technicians be compatible. No Department of Defense funds may be spent for compensation for any military technician hired after February 10, 1996, who is not a member of the Selected Reserve, except that compensation may be paid for up to six months following loss of membership in the Selected Reserve if such loss of membership was not due to the failure to meet military standards.”

1996—Subsec. (a). Pub. L. 104–201, § 1214(2), added subsec. (a). Former subsec. (a) redesignated (b).

Subsec. (a)(1). Pub. L. 104–201, § 413(c)(1), substituted “section 115(g)” for “section 115” in introductory provisions.

Subsec. (b). Pub. L. 104–201, § 1214(1), (3), redesignated subsec. (a) as (b) and struck out “in high-priority units and organizations specified in paragraph (1)” after “authorizations and personnel” in par. (3). Former subsec. (b) redesignated (c).

Pub. L. 104–201, § 413(b)(2), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 104–201, § 1214(1), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Pub. L. 104–201, § 413(b)(1), (c)(2), redesignated subsec. (b) as (c) and substituted “after February 10, 1996,” for “after the date of the enactment of this section” in two places.

Subsec. (d). Pub. L. 104–201, § 1214(1), redesignated subsec. (c) as (d).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–163, div. A, title V, § 513(b), Jan. 6, 2006, 119 Stat. 3232, provided that: “The Secretary of the Army shall implement subsection (f) of section 10216 of title 10, United States Code, as added by subsection (a), not later than 90 days after the date of the enactment of this Act [Jan. 6, 2006].”

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsec. (c) of this section requiring submittal of annual report to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

CONVERSION OF CERTAIN MILITARY TECHNICIAN (DUAL STATUS) POSITIONS TO CIVILIAN POSITIONS

Pub. L. 114–92, div. A, title X, § 1053(a), Nov. 25, 2015, 129 Stat. 981, as amended by Pub. L. 114–328, div. A, title X, § 1084(a), Dec. 23, 2016, 130 Stat. 2421; Pub. L. 115–91, div. A, title X, § 1083, Dec. 12, 2017, 131 Stat. 1602, provided that:

“(1) IN GENERAL.—By not later than October 1, 2017, the Secretary of Defense shall convert not fewer than

12.6 percent of all military technician positions to positions filled by individuals who are employed under section 3101 of title 5, United States Code, or section 1601 of title 10, United States Code, and are not military technicians. The positions to be converted are described in paragraph (2).

“(2) COVERED POSITIONS.—The positions described in this paragraph are military technician (dual status) positions as follows:

“(A) Military technician (dual status) positions identified as general administration, clerical, finance, and office service occupations by the Army Reserve, the Air Force Reserve, the National Guard Bureau, State adjutants general, and the Secretary of Defense in the course of reviewing all military technician positions for purposes of implementing this section.

“(B) Such other military technician (dual status) positions as the Secretary shall specify for purposes of this subsection.

“(3) TREATMENT OF INCUMBENTS.—In the case of a position converted under paragraph (1) for which there is an incumbent employee, the Secretary shall fill that position, as converted, with the incumbent employee without regard to any requirement concerning competition or competitive hiring procedures.”

§ 10217. Non-dual status technicians

(a) DEFINITION.—For the purposes of this section and any other provision of law, a non-dual status technician is a civilian employee of the Department of Defense serving in a military technician position who—

(1) was hired as a technician before November 18, 1997, under any of the authorities specified in subsection (b) and as of that date is not a member of the Selected Reserve or after such date has ceased to be a member of the Selected Reserve;

(2) is employed under section 709 of title 32 in a position designated under subsection (c) of that section and when hired was not required to maintain membership in the Selected Reserve; or

(3) is hired as a temporary employee pursuant to the exception for temporary employment provided by subsection (d) and subject to the terms and conditions of such subsection.

(b) EMPLOYMENT AUTHORITIES.—The authorities referred to in subsection (a) are the following:

(1) Section 10216 of this title.

(2) Section 709 of title 32.

(3) The requirements referred to in section 8401 of title 5.

(4) Section 8016 of the Department of Defense Appropriations Act, 1996 (Public Law 104-61; 109 Stat. 654), and any comparable provision of law enacted on an annual basis in the Department of Defense Appropriations Acts for fiscal years 1984 through 1995.

(5) Any memorandum of agreement between the Department of Defense and the Office of Personnel Management providing for the hiring of military technicians.

(c) PERMANENT LIMITATIONS ON NUMBER.—(1) The total number of non-dual status technicians employed by the Army Reserve may not exceed 595 and by the Air Force Reserve may not exceed 90. If at any time the number of non-dual status technicians employed by the Army Reserve and Air Force Reserve exceeds the number specified in the limitation in the preceding sentence, the

Secretary of Defense shall require that the Secretary of the Army or the Secretary of the Air Force, or both, take immediate steps to reduce the number of such technicians in order to comply with such limitation.

(2) The total number of non-dual status technicians employed by the National Guard may not exceed 1,950. If at any time the number of non-dual status technicians employed by the National Guard exceeds the number specified in the limitation in the preceding sentence, the Secretary of Defense shall require that the Secretary of the Army or the Secretary of the Air Force, or both, take immediate steps to reduce the number of such technicians in order to comply with such limitation.

(3) An individual employed as a non-dual status technician as described in subsection (a)(3) shall not be considered a non-dual status technician for purposes of paragraphs (1) and (2).

(d) EXCEPTION FOR TEMPORARY EMPLOYMENT.—(1) Notwithstanding section 10218 of this title, the Secretary of the Army or the Secretary of the Air Force may employ, for a period not to exceed two years, a person to fill a vacancy created by the mobilization of a military technician (dual status) occupying a position under section 10216 of this title.

(2) The duration of the temporary employment of a person in a military technician position under this subsection may not exceed the shorter of the following:

(A) The period of mobilization of the military technician (dual status) whose vacancy is being filled by the temporary employee.

(B) Two years.

(3) No person may be hired under the authority of this subsection after January 6, 2013.

(e) CONVERSION OF POSITIONS.—(1) No individual may be newly hired or employed, or rehired or reemployed, as a non-dual status technician for purposes of this section after September 30, 2017.

(2) By not later than October 1, 2017, the Secretary of Defense shall convert all non-dual status technicians to positions filled by individuals who are employed under section 3101 of title 5 or section 1601 of this title and are not military technicians.

(3) In the case of a position converted under paragraph (2) for which there is an incumbent employee on October 1, 2017, the Secretary shall fill that position, as converted, with the incumbent employee without regard to any requirement concerning competition or competitive hiring procedures.

(4) Any individual newly hired or employed, or rehired or employed, to a position required to be filled by reason of paragraph (1) shall¹ an individual employed in such position under section 3101 of title 5 or section 1601 of this title.

(Added Pub. L. 105-85, div. A, title V, § 523(a)(1), Nov. 18, 1997, 111 Stat. 1736; amended Pub. L. 106-65, div. A, title V, § 523, Oct. 5, 1999, 113 Stat. 598; Pub. L. 106-398, § 1 [[div. A], title IV, § 414(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A-94; Pub. L. 107-314, div. A, title IV, § 414(d), Dec. 2, 2002, 116 Stat. 2527; Pub. L. 108-136, div. A, title IV, § 415,

¹ So in original. The word “be” probably should appear.