

## HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
708(a) .....	32:49 (last sentence; and 2d sentence, less last 24 words).	June 3, 1916, ch. 134, §67 (last par.); 39 Stat. 200; July 9, 1918, ch. 143, subch. III (last par.); restated July 6, 1954, ch. 462, 58 Stat. 451.
708(b) .....	32:49 (3d and 4th sentences).	June 3, 1924, ch. 244, §5, 43 Stat. 365; July 6, 1954, ch. 462, 68 Stat. 451.
708(c) .....	32:49 (last 24 words of 2d sentence).	
708(d) .....	32:49 (5th and 6th sentences).	
708(e) .....	32:49 (last sentence, less 1st 18 words).	
708(f) .....	32:49 (1st 18 words of last sentence).	
708(g) .....	32:50.	

In subsection (b)(1), the words “the duties of that assignment” are substituted for the words “his duties as property and fiscal officer”. The words “be required to” are omitted as surplusage.

In subsection (b)(2), the words “of the National Guard for which he is property and fiscal officer” are substituted for the words “of the National Guard or Air National Guard of the State, Territory, or District of Columbia”.

In subsection (c), 32:49 (5th sentence) is omitted, since the officer concerned would be entitled, under section 201 of the Career Compensation Act of 1949 (37 U.S.C. 232), to the pay and allowances of the grade in which he is serving.

In subsection (e), the words “The Secretaries shall prescribe” are substituted for the words “which rules and regulations shall establish”. The word “duties” is omitted as surplusage.

In subsection (f), the words “rules and” and “the provisions of” are omitted as surplusage.

In subsection (g), the words “Under such regulations as may be prescribed by the Secretary of the Army” are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions. The words “an officer” are substituted for the words “other officers”, since, under revised subsection (a), the property and fiscal officer is not required to be an officer of the National Guard. The words “accountable for public moneys” and “as agent” are omitted as surplusage.

## AMENDMENTS

2019—Subsec. (a). Pub. L. 116-92 inserted “, in consultation with the Chief of the National Guard Bureau,” after “shall”.

2006—Subsec. (a). Pub. L. 109-163, §1057(b)(4), substituted “State, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands” for “State or Territory and Puerto Rico”.

Subsec. (d). Pub. L. 109-163, §1057(b)(2), substituted “State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, and the Virgin Islands” for “State or Territory, Puerto Rico, and the District of Columbia”.

1989—Subsec. (a). Pub. L. 101-189 substituted “The Governor of each State or Territory and Puerto Rico” for “The governor of each State and Territory, Puerto Rico, and the Canal Zone”.

1988—Subsec. (d). Pub. L. 100-456 struck out “the Canal Zone,” after “Puerto Rico,”.

1980—Subsec. (b). Pub. L. 96-513 redesignated pars. (2) and (3) as (1) and (2), respectively.

1977—Subsec. (d). Pub. L. 95-79, §804(b)(1), (2), redesignated subsec. (e) as (d). Former subsec. (d), which authorized inspections at least once a year by Inspectors General of the departments concerned, was struck out.

Subsec. (e). Pub. L. 95-79, §804(b)(2), (3), redesignated subsec. (f) as (e) and substituted “(d)” for “(e)”. Former subsec. (e) redesignated (d).

Subsecs. (f), (g). Pub. L. 95-79, §804(b)(2), redesignated subsec. (f) and (g) as (e) and (f), respectively.

1972—Subsec. (b)(1). Pub. L. 92-310 repealed provisions which related to the bond required of property and fiscal officers.

## EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96-513, set out as a note under section 101 of Title 10, Armed Forces.

## § 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<sup>1</sup> (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.

(Aug. 10, 1956, ch. 1041, 70A Stat. 614; Pub. L. 87-224, §2, Sept. 13, 1961, 75 Stat. 496; Pub. L. 90-486, §2(1), Aug. 13, 1968, 82 Stat. 755; Pub. L. 92-119, §2, Aug. 13, 1971, 85 Stat. 340; Pub. L. 96-513, title V, §515(5)-(7), Dec. 12, 1980, 94 Stat. 2937; Pub. L. 103-160, div. A, title V, §§523(a), 524(c), (d), Nov. 30, 1993, 107 Stat. 1656, 1657; Pub. L. 103-337, div. A, title X, §1070(b)(2), (d)(5), Oct. 5, 1994, 108 Stat. 2856, 2858; Pub. L. 104-106, div. A, title X, §1038(a), Feb. 10, 1996, 110 Stat. 432; Pub. L. 105-85, div. A, title V, §522(c), Nov. 18, 1997, 111 Stat. 1735; Pub. L. 106-65, div. A, title V, §524, Oct. 5, 1999, 113 Stat. 599; Pub. L. 109-364, div. A, title V, §525(d), Oct. 17, 2006, 120 Stat. 2195; Pub. L. 114-328, div. A, title V, §§512(a), (b), 513, Dec. 23, 2016, 130 Stat. 2112, 2113.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
709(a) .....	32:42 (1st par.). 32:42a (less 28 words before 1st proviso).	June 3, 1916, ch. 134, §90; restated June 4, 1920, ch. 227, subch. I, §46; restated Mar. 1, 1922, ch. 90; restated June 6, 1924, ch. 275, §5; restated May 28, 1926, ch. 417, §1; Apr. 21, 1928, ch. 397; June 19, 1935, ch. 277, §6; June 13, 1940, ch. 343 (1st proviso under “National Guard”); restated Oct. 14, 1940, ch. 875, §1, 54 Stat. 1134. June 25, 1938, ch. 688, 52 Stat. 1173.
709(b) .....	32:42 (2d par., and last sentence of 4th par.).	
709(c) .....	32:42 (3d par.).	
709(d) .....	32:42 (4th par., less last sentence).	
709(e) .....	32:42 (last par., less proviso).	
709(f) .....	32:42a (28 words before 1st proviso). 32:42 (proviso of last par.).	

In subsection (a), the words “may be spent” are substituted for the words “shall be available”. The reference to animals for military purposes and forage, bedding, and other supplies and services for them, is omitted as obsolete, since animals are not now authorized for the National Guard. The word “persons” is substituted for the word “help”. The words “Army National Guard” and “Air National Guard” are substituted for the words “organizations of all kinds”. The

<sup>1</sup> See References in Text note below.

words "the support of" are omitted as surplusage. The words "A caretaker employed under this subsection" are substituted for the words "Moneys hereafter appropriated under the provisions of this title for compensation of help for care of material, animals, armament, and equipment, in the hands of the National Guard of the several States, Territories, and the District of Columbia shall be available for the hire of caretakers". The words "and other duties that do not interfere with the performance of his duties as caretaker" are substituted for 32:42a (1st proviso). 32:42a (2d and 3d provisos) is omitted as executed.

In subsection (b), the words "However, if a unit has more than one caretaker" are substituted for the words "but if there are as many as two caretakers in any unit". The words "under this section", in the first sentence of the revised subsection, are inserted for clarity. The words "under this section", in the second sentence of the revised subsection, are substituted for the words "paid to caretakers who belong to the National Guard, as herein authorized". The words "under any of the provisions of this title" are omitted as surplusage.

In subsection (c), the words "or organizations thereof" are omitted as surplusage.

In subsection (d), the words "one commissioned officer \* \* \* in a grade below major \* \* \* for each pool set up under subsection (c) and for each squadron of the Air National Guard" are substituted for the words "one such officer not above the grade of captain for each heavier-than-air squadron; and one such officer not above the grade of captain for each pool".

In subsection (e), the words "Funds appropriated by Congress" are substituted for the words "Funds hereafter appropriated under the provisions of this title for the support of", in 32:42, and "such moneys", in 32:42a. The words "are in addition to" are substituted for the words "shall be supplemental to", in 32:42, and "may be used as supplemental to", in 32:42a.

In subsection (f), the words "authorized to be employed under this section" are substituted for the words "authorized to be employed". The words "person to employ them" are substituted for the words "by whom they shall be employed". The words "by regulations" are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions.

#### REFERENCES IN TEXT

Section 717 of the Civil Rights Act of 1991, referred to in subsec. (f)(5), probably means section 717 of the Civil Rights Act of 1964, Pub. L. 88-352, title VII, as added Pub. L. 92-261, §11, Mar. 24, 1972, 86 Stat. 111, which is classified to section 2000e-16 of Title 42, The Public Health and Welfare. The Civil Rights Act of 1991 does not contain a section 717.

#### AMENDMENTS

2016—Subsec. (f)(4). Pub. L. 114-328, §512(a)(1)(A), substituted "when the appeal concerns activity occurring while the member is in a military pay status, or concerns fitness for duty in the reserve components;" for ";; and".

Subsec. (f)(5), (6). Pub. L. 114-328, §512(a)(1)(B), (C), added par. (5) and redesignated former par. (5) as (6).

Subsec. (g). Pub. L. 114-328, §§512(a)(2), 513, designated existing provisions as par. (1), substituted "Except as provided in subsection (f), sections" for "Sections", and added par. (2).

Subsec. (j). Pub. L. 114-328, §512(b), added subsec. (j). 2006—Subsec. (a)(1). Pub. L. 109-364, §525(d)(1)(A), substituted "organizing, administering, instructing, or" for "administration and".

Subsec. (a)(3). Pub. L. 109-364, §525(d)(1)(B)-(3), added par. (3).

1999—Pub. L. 106-65 amended section catchline and text generally, revising and restating provisions relating to employment, use, and status of technicians.

1997—Subsec. (b). Pub. L. 105-85 substituted "A technician" for "Except as prescribed by the Secretary concerned, a technician".

1996—Subsec. (b). Pub. L. 104-106 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "Except as prescribed by the Secretary concerned, a technician employed under subsection (a) shall, while so employed, be a member of the National Guard and hold the military grade specified by the Secretary concerned for that position."

1994—Subsec. (e)(6). Pub. L. 103-337, §1070(d)(5)(A), substituted "30 days before" for "thirty days prior to".

Pub. L. 103-337, §1070(b)(2), made technical correction to directory language of Pub. L. 103-160, §524(c). See 1993 Amendment note below.

Subsec. (g)(2). Pub. L. 103-337, §1070(d)(5)(B), substituted "paragraph (1)" for "clause (1) of this subsection".

1993—Subsec. (e)(6). Pub. L. 103-160, §524(c), as amended by Pub. L. 103-337, §1070(b)(2), inserted ", 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," after "termination of his employment as a technician and".

Subsec. (h). Pub. L. 103-160, §524(d), struck out subsec. (h) which read as follows: "In no event shall the number of technicians employed under this section at any one time exceed 53,100."

Subsec. (i). Pub. L. 103-160, §523(a), added subsec. (i).

1980—Subsec. (f). Pub. L. 96-513, §515(5), struck out "United States Code," after "title 5".

Subsec. (g). Pub. L. 96-513, §515(6), substituted "6101(a) of title 5" for "6102 of title 5, United States Code," in two places, "5332 of title 5" for "5332 of title 5, United States Code" and "5543 of title 5" for "5543 of title 5, United States Code,".

Subsec. (h). Pub. L. 96-513, §515(7), struck out limitation of 49,200 technicians employed during the fiscal year beginning July 1, 1971.

1971—Subsec. (h). Pub. L. 92-119 increased number of technicians employable under section from 42,500 to 53,100 with exception that such number is fixed at 49,200 for fiscal year beginning July 1, 1971.

1968—Pub. L. 90-486 substituted "Technicians: employment, use, status" for "Caretakers and clerks" in section catchline.

Subsec. (a). Pub. L. 90-486 substituted provisions that persons may be employed as technicians in administration and training of National Guard and maintenance and repair of supplies issued to National Guard or armed forces for provisions that authorized the Secretaries of the Army and the Air Force to hire, out of funds allotted to them for the Army National Guard and the Air National Guard, respectively competent persons to care for material, armament, and equipment of the Army National Guard and Air National Guard, and provisions that a caretaker so employed may also perform clerical duties incidental to his employment and other duties that do not interfere with performance of his duties as caretaker.

Subsec. (b). Pub. L. 90-486 substituted provisions requiring, except as prescribed by the Secretary concerned, any technician employed to be a member of the National Guard and hold the military grade specified by the Secretary concerned for that position for provisions permitting civilians as well as enlisted men to be employed as caretakers, provided that if a unit has more than one caretaker, one of them must be an enlisted member, and provisions that any compensation under this section is in addition to compensation otherwise provided for a member of the National Guard.

Subsec. (c). Pub. L. 90-486 substituted provisions authorizing the Secretary concerned to designate adjutants general to employ and administer the technicians authorized by this section for provisions authorizing the Secretary concerned to place in a common pool for care, maintenance, and storage the material, armament, and equipment of the Army National Guard or Air National Guard, with proviso that not more than 15 caretakers be employed for each pool.

Subsec. (d). Pub. L. 90-486 substituted provisions that a technician employed under subsec. (a) is an employee

of the particular department concerned, and an employee of the United States, with proviso that a position authorized by this section is outside competitive service if technician so employed is required under subsec. (b) to be a member of the National Guard, for provisions that one commissioned officer of the National Guard in a grade below major may be employed for each pool set up and for each squadron of the Air National Guard.

Subsec. (e). Pub. L. 90-486 substituted provisions authorizing the adjutant general of the jurisdiction concerned to separate from technicians employment any technician for the specified grounds, provisions requiring the technician concerned to be notified in writing of the termination of his employment at least 30 days prior to the termination date of such employment, and provisions granting a limited right of appeal from such termination, for provisions appropriating funds by Congress for the National Guard as additional to funds appropriated by the several states and territories, etc., and provisions making such funds available for the hire of caretakers and clerks.

Subsec. (f). Pub. L. 90-486 substituted provisions making inapplicable sections 2108, 3502, 7511, and 7512 of Title 5 to any person employed under this section for provisions authorizing the Secretary concerned to fix the salaries of clerks and caretakers and to designate the person to employ them, and provisions authorizing compensation to include the amounts of the employer's contributions to retirement systems.

Subsecs. (g), (h). Pub. L. 90-486 added subsecs. (g) and (h).

1961—Subsec. (f). Pub. L. 87-224 provided that the authorized compensation may include employer's contributions to retirement systems, and that such contributions shall not exceed 6½ per centum of the compensation upon which based.

#### EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-65 effective 180 days after the date of receipt by Congress of the plan required by section 523(d) of Pub. L. 105-85, set out as a note under section 10217 of Title 10, Armed Forces, or a report by the Secretary of Defense providing an alternative proposal to the plan required by section 523(d), see section 525 of Pub. L. 106-65, set out as a note under section 10217 of Title 10.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103-337, div. A, title X, §1070(b), Oct. 5, 1994, 108 Stat. 2856, provided that the amendment made by that section is effective as of Nov. 30, 1993, and as if included in the National Defense Authorization Act for Fiscal Year 1994, Pub. L. 103-160, as enacted.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96-513, set out as a note under section 101 of Title 10, Armed Forces.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90-486, §11, Aug. 13, 1968, 82 Stat. 760, provided that: "This Act [see Short Title note below] becomes effective January 1, 1969, except that no deductions or withholding from salary which result therefrom shall commence before the first day of the first pay period that begins on or after January 1, 1969."

#### SHORT TITLE

Pub. L. 90-486, §1, Aug. 13, 1968, 82 Stat. 755, provided: "That this Act [amending this section and section 715 of this title, sections 2105, 8332, 8334, and 8339 of Title 5, Government Organization and Employees, sections 3848, 3851, 8848, and 8851 of Title 10, Armed Forces, and section 418 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under this section] may be cited as the 'National Guard Technicians Act of 1968'."

#### MILITARY EDUCATION FOR ARMY NATIONAL GUARD CIVILIAN TECHNICIANS

Pub. L. 101-189, div. A, title V, §506(a)-(c), Nov. 29, 1989, 103 Stat. 1438, 1439, which related to attendance by civilian technicians of Army National Guard in Battle Skills Course and military promotions, courses and training meeting requirements of reserve component noncommissioned officers education program, and submission by Secretary of the Army to committees of Congress of a plan to use State and National Guard Bureau regional academies to provide portion of Reserve Component Noncommissioned Officers Education System specifically related to military occupational specialties, was repealed by Pub. L. 103-160, div. A, title V, §523(b)(2), Nov. 30, 1993, 107 Stat. 1656.

Pub. L. 100-456, div. A, title V, §523, Sept. 29, 1988, 102 Stat. 1974, as amended by Pub. L. 101-189, div. A, title V, §506(d), Nov. 29, 1989, 103 Stat. 1439; Pub. L. 101-510, div. A, title XIV, §1484(l)(2), Nov. 5, 1990, 104 Stat. 1719, which related to training of civilian technicians of Army National Guard at National Guard schools, was repealed by Pub. L. 103-160, div. A, title V, §523(b)(1), Nov. 30, 1993, 107 Stat. 1656.

[Pub. L. 103-160, div. A, title V, §523(c), Nov. 30, 1993, 107 Stat. 1656, provided that: "A civilian technician of the Army National Guard serving in an active status on the date of the enactment of this Act [Nov. 30, 1993] who under the provisions of law repealed by subsection (b) [repealing section 523 of Pub. L. 100-456 and section 506(a)-(c) of Pub. L. 101-189, formerly set out as notes above] (or under other Department of the Army policy in effect on the day before such date of enactment) was granted credit on the technician's military record for the completion of certain education and training courses shall retain such credit, notwithstanding the provisions of subsections (a) [amending this section] and (b), for a period determined by the Secretary of the Army. Such a period may not terminate, in the case of any such civilian technician, before the effective date of such civilian technician's next military [sic] promotion."]

#### RETIREMENT CREDIT FOR CERTAIN FORMER NATIONAL GUARD TECHNICIANS

Pub. L. 99-661, div. A, title VI, §654, Nov. 14, 1986, 100 Stat. 3890, provided that:

"(a) CIVIL SERVICE RETIREMENT CREDIT.—A period of service performed under section 709 of title 32, United States Code (or under a prior corresponding provision of law), before January 1, 1969, which would not otherwise be creditable under subchapter III of chapter 83 of title 5, United States Code, because of the antepenultimate sentence of section 8332(b) of such title, shall be considered creditable service under such subchapter, notwithstanding such sentence, in the case of an individual described in subsection (b).

"(b) COVERED INDIVIDUALS.—Subsection (a) applies in the case of an individual who—

"(1) before the end of the 14-month period beginning on the date of the enactment of this Act [Nov. 14, 1986], files appropriate written application with the Office of Personnel Management in accordance with regulations under subsection (c);

"(2) at the time of filing application under paragraph (1), is employed by the United States and is subject to subchapter III of chapter 83 of title 5, United States Code (other than under section 8344 of such title); and

"(3) before the date of the separation on which entitlement to an annuity under subchapter III of chapter 83 of title 5, United States Code, is based, makes an appropriate deposit under section 8334(c) of such title with respect to the period of service involved, based on the percentage of basic pay for such service which would be required under such section if such service had been performed as an employee under such subchapter.

"(c) REGULATIONS.—The Office of Personnel Management shall prescribe regulations to carry out sub-

section (a). Such regulations shall be prescribed not later than 60 days after the date of the enactment of this Act [Nov. 14, 1986].”

**SAVINGS PROVISION FOR ACCRUED CLAIMS; CONVERSION TO FEDERAL EMPLOYEE STATUS; CREDIT FOR PAST SERVICE; LEAVE CREDIT**

Pub. L. 90-486, § 3, Aug. 13, 1968, 82 Stat. 756, as amended by Pub. L. 101-530, § 2, Nov. 6, 1990, 104 Stat. 2338, provided that:

“(a) A claim accrued under section 715 of title 32, United States Code, before the effective date of this Act [see effective date note above] by reason of the act or omission of a person employed under section 709 of title 32, United States Code, may, if otherwise allowable, be settled and paid under section 715 of title 32, United States Code.

“(b) Except as provided in this Act and in the amendments made by this Act [see Short Title note above] and notwithstanding any law, rule, regulation, or decision to the contrary, the positions of persons employed under section 709 of title 32, United States Code, existing on the day before the effective date of this Act, and the persons holding those positions on that day, shall, on and after that effective date, be considered to be positions in and employees of the Department of the Army or the Department of the Air Force, as the case may be, and employees of the United States to the same extent as other positions in and employees of the Department of the Army or the Department of the Air Force. Such positions shall be outside the competitive service, if, as a condition of employment, the persons employed therein were, on the day before the effective date of this Act, required to be members of the Army National Guard or the Air National Guard.

“(c) All service under section 709 of title 32, United States Code, or prior corresponding provision of law, performed before the effective date of this Act shall be included and credited in the determination of length of service for the purposes of leave, Federal employees death and disability compensation, group life and health insurance, severance pay, tenure, and status.

“(d) Annual leave and sick leave to which a technician was entitled on the day before the conversion of his position, as provided in subsection (b) of this section, shall be credited to him in his new position.”

[Pub. L. 101-530, § 3(b), Nov. 6, 1990, 104 Stat. 2339, provided that:

[“(1) GENERAL RULE.—Except as provided in paragraph (2), the amendment made by section 2 [amending section 3 of Pub. L. 90-486, set out above] applies only with respect to an individual performing service as an officer or employee of the Government on or after the date of enactment of this Act [Nov. 6, 1990] and only to determine—

[“(A) any annual leave accruing under section 6303 of title 5, United States Code, to the individual on or after such date; and

[“(B) the individual’s length of service for the purposes of entitlement to Federal employee death and disability compensation, group life insurance and health benefits, severance pay, tenure, and status.

[“(2) EXCEPTION.—

[“(A) RULE FOR INDIVIDUALS SEPARATING AFTER DECEMBER 31, 1968, AND BEFORE THE ENACTMENT OF THIS ACT.—The amendment made by section 2 of this Act applies with respect to any individual who separated from Government employment after December 31, 1968, and before the date of the enactment of this Act [Nov. 6, 1990], for the purpose of determining whether such individual satisfies the length of service requirement under section 8901(3)(A) of title 5, United States Code (relating to the definition of the term ‘annuitant’, as in effect at the time of such individual’s separation) for the purposes of chapter 89 of such title.

[“(B) CONDITIONS FOR ENROLLING IN A HEALTH BENEFITS PLAN.—Any individual who satisfies the length of service requirement referred to in subparagraph (A) as a result of the application of the amendment made

by section 2 shall be enrolled in a health benefits plan (described in section 8903 of such title) of such individual’s choice, if—

[“(i) application for enrollment is received by the Office of Personnel Management within one year after the date of the enactment of this Act; and

[“(ii) such individual would have qualified under section 8905(b)(1) of such title at the time of such individual’s separation.”]

**PERSONS EMPLOYED PRIOR TO JANUARY 1, 1969, WHOSE EMPLOYMENT WAS COVERED BY CIVIL SERVICE RETIREMENT PROVISIONS**

Pub. L. 90-486, § 5(d), Aug. 13, 1968, 82 Stat. 758, provided that: “Clause (4) of subsection (a) of this section [amending section 8332(b) of Title 5, Government Organization and Employees] and subsections (b) and (c) of this section [amending section 8334(c) and adding section 8339(l) of title 5] do not apply to any person employed prior to the effective date of this Act [see Effective Date note above] under section 709 of title 32, United States Code, whose employment under that section was covered by subchapter III of chapter 83 of title 5, United States Code.”

**ELECTION TO REMAIN UNDER STATE RETIREMENT SYSTEM; REEMPLOYED TECHNICIANS; CONTINUATION OF FEDERAL CONTRIBUTIONS**

Pub. L. 90-486, § 6, Aug. 13, 1968, 82 Stat. 758, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(a) Notwithstanding section 709(d) of title 32, United States Code, a person who, on the date of enactment of this Act [Aug. 13, 1968], is employed under section 709 of title 32, United States Code, and is covered by an employee retirement system of, or plan sponsored by, a State or the Commonwealth of Puerto Rico, may elect, not later than the effective date of this Act [see Effective Date note above], not to be covered by subchapter III of chapter 83 of title 5, United States Code, and with the consent of the State concerned or Commonwealth of Puerto Rico, to remain covered by the employee retirement system of, or plan sponsored by, that State or the Commonwealth of Puerto Rico. Unless such an election, together with a statement of approval by the State concerned or the Commonwealth of Puerto Rico, is filed with the Secretary of the Army or the Secretary of the Air Force, as appropriate, on or before the effective date of this Act, the person concerned is covered by subchapter III of chapter 83 of title 5, United States Code, as of that date.

“(b) A member of the National Guard of a State or the Commonwealth of Puerto Rico who was employed as a technician under section 709 of title 32, United States Code, or prior corresponding provision of law, who—

“(1) was involuntarily ordered to active duty after January 1, 1968, from that employment and has not been released from that duty prior to the effective date of this Act [see Effective Date note above]; or

“(2) is on active duty under section 265 [see 10211], 3015, 3033, 3496 [see 12402], 8033 or 8496 [see 12402] of title 10, United States Code, on the effective date of this Act;

and was covered by a retirement system or plan of a State or the Commonwealth of Puerto Rico, may, if he is reemployed within sixty days under section 709 of title 32, United States Code, make the election described in subsection (a) of this section, within thirty days following the date of his reemployment.

“(c) In the case of any person who files a valid election under this section to remain covered by an employee retirement system of, or plan sponsored by, a State or the Commonwealth of Puerto Rico, the United States may pay the amount of the employer’s contributions to that system or plan that become due for periods beginning on or after the effective date of this Act [see Effective Date note above]. However, the payment by the United States, including any contribution that

may be made by the United States toward the employer's tax imposed by section 3111 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as amended (26 U.S.C. 3111), may not exceed the amount which the employing agency would otherwise contribute on behalf of the person to the Civil Service Retirement and Disability Fund under section 8334(a) of title 5, United States Code. Notwithstanding section 8332(b) of title 5, United States Code, as amended by section 5 of this Act, the service under section 709 of title 32, United States Code, or prior corresponding provision of law, of a person who has made an election to remain covered by the employee retirement system of, or plan sponsored by, a State or the Commonwealth of Puerto Rico, shall not be creditable toward eligibility for or amount of annuity under subchapter III of chapter 83 of title 5, United States Code. A person who retires pursuant to his valid election shall not be eligible for any rights, benefits, or privileges to which retired civilian employees of the United States may be entitled."

COMPENSATION RATES; CONVERSION AND ADJUSTMENT  
OF COMPENSATION TO THE GENERAL SCHEDULE

Pub. L. 90-486, § 8, Aug. 13, 1968, 82 Stat. 759, provided that:

"(a) Except as provided in section 709(g) of title 32, United States Code, the Secretary concerned shall fix the rate of basic compensation of positions existing on the date of enactment of this Act [Aug. 13, 1968] in accordance with the General Schedule set forth in section 5332, or under the appropriate prevailing rate schedule in accordance with section 5341 of title 5, United States Code, as applicable. In fixing such rate—

"(1) If the technician is receiving a rate of basic compensation which is less than the minimum rate of the appropriate grade of the General Schedule, or which is less than the minimum rate of the appropriate grade or compensation level of the appropriate prevailing rate schedule, as applicable, in which his position is placed, his basic compensation shall be increased to that minimum rate.

"(2) If the technician is receiving a rate of basic compensation which is equal to a rate of the appropriate grade of the General Schedule, or which is equal to a rate of the appropriate grade or compensation level under the appropriate prevailing rate schedule, as applicable, in which his position is placed, he shall receive basic compensation at that rate of the General Schedule, or at that rate under the prevailing rate schedule, as applicable.

"(3) If the technician is receiving a rate of basic compensation which is between two rates of the appropriate grade of the General Schedule, or which is between two rates of the appropriate grade or compensation level under the appropriate prevailing rate schedule, as applicable, in which his position is placed, he shall receive basic compensation at the higher of those two rates under the General Schedule or appropriate prevailing rate schedule, as applicable.

"(4) If the technician is receiving a rate of basic compensation which is in excess of the maximum rate of the appropriate grade of the General Schedule, or which is in excess of the maximum rate of the appropriate grade or compensation level of the appropriate prevailing rate schedule, as applicable, in which his position is placed, he shall continue to receive basic compensation without change in rate until—

"(A) he leaves that position, or

"(B) he is entitled to receive basic compensation at a higher rate, but, when any such position becomes vacant, the rate of basic compensation of any subsequent appointee thereto shall be fixed in the manner provided by applicable law and regulation.

"(b) The conversion of positions and employees to appropriate grades of the General Schedule set forth in section 5332 of title 5, United States Code, and the initial adjustment of rates of basic compensation of those positions and technicians, provided for by this Act [see

Short Title note above], shall not be considered to be transfers or promotions within the meaning of section 5334(b) of title 5, United States Code, and the regulations issued thereunder.

"(c) Each technician on the effective date of this Act [see Effective Date note above], whose position is converted to the General Schedule set forth in section 5332 of title 5, United States Code, or to the appropriate prevailing rate schedule, as applicable, who prior to the initial adjustment of his rate of basic compensation under subsection (a) of this section, has earned, but has not been credited with, an increase in that rate, shall be granted credit for such increase before his rate of basic compensation is initially adjusted under that subsection.

"(d) Each technician on the effective date of this Act whose position is converted to the General Schedule set forth in section 5332 of title 5, United States Code, or to the appropriate prevailing rate schedule, as applicable, shall be granted credit, for purposes of his first step increase under the General Schedule or prevailing rate schedule, for all satisfactory service performed by him since his last increase in compensation prior to the initial adjustment of his rate of basic compensation under subsection (a) of this section.

"(e) An increase in rate of basic compensation by reason of the enactment of subsection (a) of this section shall not be considered to be an equivalent increase with respect to step increases for technicians whose positions are converted to the General Schedule set forth in section 5332 of title 5, United States Code, or the appropriate prevailing rate schedule under authority of this section."

REGULATIONS: APPROVAL BY SECRETARY OF DEFENSE;  
UNIFORMITY

Pub. L. 90-486, § 10, Aug. 13, 1968, 82 Stat. 760, provided that: "Regulations prescribed by the Secretary of the Army and Secretary of the Air Force under this Act [see Short Title note above] shall be approved by the Secretary of Defense and shall, so far as practicable, be uniform."

NUMBER OF CARETAKERS FOR AIR NATIONAL GUARD

Pub. L. 90-580, title II, Oct. 17, 1968, 82 Stat. 1124, provided that the number of caretakers authorized to be employed under this section may be such as is deemed necessary by the Secretary of the Air Force and that they may be employed without regard to their military rank as members of the Air National Guard.

Similar provisions were contained in the following prior acts:

Sept. 29, 1967, Pub. L. 90-96, title II, 81 Stat. 236.  
Oct. 15, 1966, Pub. L. 89-687, title II, 80 Stat. 985.  
Sept. 29, 1965, Pub. L. 89-213, title II, 79 Stat. 868.  
Aug. 19, 1964, Pub. L. 88-466, title II, 78 Stat. 469.  
Oct. 17, 1963, Pub. L. 88-149, title II, 77 Stat. 259.  
Aug. 9, 1962, Pub. L. 87-577, title II, 76 Stat. 323.  
Aug. 17, 1961, Pub. L. 87-144, title II, 75 Stat. 370.  
July 7, 1960, Pub. L. 86-601, title II, 74 Stat. 344.  
Aug. 18, 1959, Pub. L. 86-166, title II, 73 Stat. 372.  
Aug. 22, 1958, Pub. L. 85-724, title V, 72 Stat. 723.  
Aug. 2, 1957, Pub. L. 85-117, title V, 71 Stat. 322.  
July 2, 1956, ch. 488, title V, 70 Stat. 466.  
July 13, 1955, ch. 358, title V, 69 Stat. 313.  
June 30, 1954, ch. 432, title VI, 68 Stat. 349.  
Aug. 1, 1953, ch. 305, title V, 67 Stat. 349.  
July 10, 1952, ch. 630, title V, 66 Stat. 530.  
Oct. 18, 1951, ch. 512, title V, 65 Stat. 444.  
Sept. 6, 1950, ch. 896, Ch. X, title V, 64 Stat. 751.  
Oct. 29, 1949, ch. 787, title V, 63 Stat. 1017.

NUMBER OF CARETAKERS FOR ARMY NATIONAL GUARD

Pub. L. 90-580, title II, Oct. 17, 1968, 82 Stat. 1124, provided that the number of caretakers authorized to be employed under this section and those necessary to provide reimbursable services for the military departments, may be such as is deemed necessary by the Secretary of the Army.

Similar provisions were contained in the following prior acts:

Sept. 29, 1967, Pub. L. 90-96, title II, 81 Stat. 236.  
 Oct. 15, 1966, Pub. L. 89-687, title II, 80 Stat. 984.  
 Sept. 29, 1965, Pub. L. 89-213, title II, 79 Stat. 867.  
 Aug. 19, 1964, Pub. L. 88-446, title II, 78 Stat. 469.  
 Oct. 17, 1963, Pub. L. 88-149, title II, 77 Stat. 258.  
 Aug. 9, 1962, Pub. L. 87-577, title II, 76 Stat. 322.  
 Aug. 17, 1961, Pub. L. 87-144, title II, 75 Stat. 369.  
 July 7, 1960, Pub. L. 86-601, title II, 74 Stat. 343.  
 Aug. 18, 1959, Pub. L. 86-166, title II, 73 Stat. 371.  
 Aug. 22, 1958, Pub. L. 85-724, title III, 72 Stat. 715.  
 Aug. 2, 1957, Pub. L. 85-117, title III, 71 Stat. 315.  
 July 2, 1956, ch. 488, title III, 70 Stat. 458.  
 July 13, 1955, ch. 358, title III, 69 Stat. 305.  
 June 30, 1954, ch. 432, title IV, 68 Stat. 340.  
 Aug. 1, 1953, ch. 305, title III, 67 Stat. 340.  
 July 10, 1952, ch. 630, title III, 66 Stat. 522.  
 Oct. 18, 1951, ch. 512, title III, 65 Stat. 435.  
 Sept. 6, 1950, ch. 896, Ch. X, title III, 64 Stat. 740.  
 Oct. 29, 1949, ch. 787, title III, 63 Stat. 1000.  
 June 24, 1948, ch. 632, 62 Stat. 662.  
 July 30, 1947, ch. 357, title I, 61 Stat. 564.  
 July 16, 1946, ch. 583, 60 Stat. 556.

### § 710. Accountability for property issued to the National Guard

(a) All military property issued by the United States to the National Guard remains the property of the United States.

(b) The Secretary of the Army shall prescribe regulations for accounting for property issued by the United States to the Army National Guard and for the fixing of responsibility for that property. The Secretary of the Air Force shall prescribe regulations for accounting for property issued by the United States to the Air National Guard and for the fixing of responsibility for that property. So far as practicable, regulations prescribed under this section shall be uniform among the components of each service.

(c) Under regulations prescribed by the Secretary concerned under subsection (b), liability for the value of property issued by the United States to the National Guard that is lost, damaged, or destroyed may be charged (1) to a member of the Army National Guard or the Air National Guard when in similar circumstances a member of the Army or Air Force serving on active duty would be so charged, or (2) to a State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands when the property is lost, damaged, or destroyed incident to duty directed pursuant to the laws of, and in support of the authorities of, such jurisdiction. Liability charged to a member of the Army National Guard or the Air National Guard shall be paid out of pay due to the member for duties performed as a member of the National Guard, unless the Secretary concerned shall for good cause remit or cancel that liability. Liability charged to a State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands shall be paid from its funds or from any other non-Federal funds.

(d) If property surveyed under this section is found to be unserviceable or unsuitable, the Secretary concerned or his designated representative shall direct its disposition by sale or otherwise. The proceeds of the following under this subsection shall be deposited in the Treasury under section 4(b)(22) of the Permanent Appropriation Repeal Act, 1934:

(1) A sale.

(2) A stoppage against a member of the National Guard.

(3) A collection from a person, or from a State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands, to reimburse the United States for the loss or destruction of, or damage to, the property.

(e) If a State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands, whichever is concerned, neglects or refuses to pay for the loss or destruction of, or damage to, property charged against it under subsection (c), the Secretary concerned may bar it from receiving any part of appropriations for the Army National Guard or the Air National Guard, as the case may be, until the payment is made.

(f)(1) Instead of the procedure prescribed by subsections (b), (c), and (d), property issued to the National Guard that becomes unserviceable through fair wear and tear in service may, under regulations to be prescribed by the Secretary concerned, be sold or otherwise disposed of after an inspection, and a finding of unserviceability because of that wear and tear, by a commissioned officer designated by the Secretary. The State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands, whichever is concerned, is relieved of accountability for that property.

(2) In designating an officer to conduct inspections and make findings for purposes of paragraph (1), the Secretary concerned shall designate—

(A) in the case of the Army National Guard, a commissioned officer of the Regular Army or a commissioned officer of the Army National Guard who is also a commissioned officer of the Army National Guard of the United States; and

(B) in the case of the Air National Guard, a commissioned officer of the Regular Air Force or a commissioned officer of the Air National Guard who is also a commissioned officer of the Air National Guard of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 615; Pub. L. 85-861, §33(c)(3), Sept. 2, 1958, 72 Stat. 1567; Pub. L. 96-328, §1(a), (b)(1), Aug. 8, 1980, 94 Stat. 1027; Pub. L. 96-513, title V, §515(8), Dec. 12, 1980, 94 Stat. 2937; Pub. L. 97-258, §3(h)(2), Sept. 13, 1982, 96 Stat. 1065; Pub. L. 100-456, div. A, title XII, §1234(b)(1), Sept. 29, 1988, 102 Stat. 2059; Pub. L. 103-160, div. A, title V, §524(e), Nov. 30, 1993, 107 Stat. 1657; Pub. L. 109-163, div. A, title X, §1057(b)(3), Jan. 6, 2006, 119 Stat. 3441.)