

Subsec. (j). Pub. L. 108-375, §594(a)(2), (3), substituted "Program" for "National Guard Challenge Program" after "To carry out the" in first sentence and before period at end of second sentence and substituted "Program" for "program" before "out of other resources" in first sentence.

Subsec. (k). Pub. L. 108-375, §594(a)(2), (3), substituted "Program" for "National Guard Challenge Program" after "effectiveness of the" in first sentence and after "State in which the" in second sentence and substituted "Program" for "program" before "is carried out in the District of Columbia" in second sentence.

Subsec. (l)(3). Pub. L. 108-375, §594(a)(4), added par. (3).

Subsec. (m). Pub. L. 108-375, §594(a)(2), substituted "Program" for "National Guard Challenge Program" in introductory provisions.

Subsec. (m)(1) to (7). Pub. L. 108-375, §594(a)(3), substituted "Program" for "program" wherever appearing. 2002—Subsec. (b). Pub. L. 107-314 amended Pub. L. 106-398, §577(b)(2). See 2000 Amendment note below.

2001—Subsec. (b)(2)(A). Pub. L. 107-107, §596(a)(1), substituted "in fiscal year 2001 or 2002" for "in a fiscal year".

Subsec. (b)(4). Pub. L. 107-107, §596(a)(2), added par. (4).

2000—Subsec. (a). Pub. L. 106-398, §1 [[div. A], title V, §577(a)], struck out " , acting through the Chief of the National Guard Bureau," after "The Secretary of Defense".

Subsec. (b). Pub. L. 106-398, §1 [[div. A], title V, §577(b)(1), (3)], inserted "(1)" before "The Secretary of Defense" and added pars. (2) and (3).

Pub. L. 106-398, §1 [[div. A], title V, §577(b)(2)], as amended by Pub. L. 107-314, struck out " , except that Department of Defense expenditures under the program may not exceed \$62,500,000 for any fiscal year" before period at end.

Pub. L. 106-246 substituted "Department of Defense" for "Federal".

Subsec. (m). Pub. L. 106-398, §1 [[div. A], title V, §577(c)], added subsec. (m).

1999—Subsec. (a). Pub. L. 106-65, §579(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: "The Secretary of Defense, acting through the Chief of the National Guard Bureau, may conduct a National Guard civilian youth opportunities program (to be known as the 'National Guard Challenge Program') to use the National Guard to provide military-based training, including supervised work experience in community service and conservation projects, to civilian youth who cease to attend secondary school before graduating so as to improve the life skills and employment potential of such youth."

Subsec. (b). Pub. L. 106-65, §579(b), substituted "\$62,500,000" for "\$50,000,000".

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-314, div. A, title X, §1062(g), Dec. 2, 2002, 116 Stat. 2651, provided that the amendment made by section 1062(g)(1) of Pub. L. 107-314 is effective as of Oct. 30, 2000, and as if included in Pub. L. 106-398 as enacted.

CHAPTER 7—SERVICE, SUPPLY, AND PROCUREMENT

- Sec. 701. Uniforms, arms, and equipment to be same as Army or Air Force.
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712. Disposition of proceeds of condemned stores issued to National Guard.
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714. Final settlement of accounts: deceased members.
715. Property loss; personal injury or death: activities under certain sections of this title.
716. Claims for overpayment of pay and allowances, and travel and transportation allowances.
[717. Repealed.]

AMENDMENTS

2006—Pub. L. 109-163, div. A, title V, §589(b)(2), Jan. 6, 2006, 119 Stat. 3279, struck out item 717 "Presentation of recognition items for retention purposes".

2004—Pub. L. 108-375, div. A, title V, §520(b)(2), Oct. 28, 2004, 118 Stat. 1887, added item 717.

1985—Pub. L. 99-224, §3(b), Dec. 28, 1985, 99 Stat. 1742, substituted "and travel" for "other than travel" in item 716.

1980—Pub. L. 96-328, §1(b)(2), Aug. 8, 1980, 94 Stat. 1027, substituted "Accountability for property issued to the National Guard" for "Reports of survey" in item 710.

1972—Pub. L. 92-453, §2(2), Oct. 2, 1972, 86 Stat. 759, added item 716.

1968—Pub. L. 90-486, §2(2), Aug. 13, 1968, 82 Stat. 756, substituted "Technicians: employment, use status" for "Caretakers and clerks" in item 709.

1960—Pub. L. 86-740, §1(2), Sept. 13, 1960, 74 Stat. 879, added item 715.

1958—Pub. L. 85-861, §2(13), Sept. 2, 1958, 72 Stat. 1546, added item 714.

§ 701. Uniforms, arms, and equipment to be same as Army or Air Force

So far as practicable, the same types of uniforms, arms, and equipment as are issued to the Army shall be issued to the Army National Guard, and the same types of uniforms, arms, and equipment as are issued to the Air Force shall be issued to the Air National Guard.

(Aug. 10, 1956, ch. 1041, 70A Stat. 612.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised section, Source (U.S. Code), Source (Statutes at Large). Row 1: 701, 32:31, June 3, 1916, ch. 134, §82; restated June 15, 1933, ch. 87, §17, 48 Stat. 160.

The words "shall be issued" are substituted for the words "shall * * * be uniformed, armed, and equipped with". The words "as are issued" are substituted for the words "as are or shall be provided". The word "Army" is substituted for the words "Regular Army", since the Army is the category to which uniforms, arms, and equipment are issued, and the Regular Army is a personnel category only. Similarly, the words "Air Force" are used instead of the words "Regular Air Force".

§ 702. Issue of supplies

(a) Under such regulations as the President may prescribe, the Secretary of the Army and the Secretary of the Air Force may buy or manufacture and, upon requisition of the governor of any State, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands or the com-

manding general of the National Guard of the District of Columbia, issue to its Army National Guard and Air National Guard, respectively, the supplies necessary to uniform, arm, and equip that Army National Guard or Air National Guard for field duty.

(b) Whenever the Secretary concerned is satisfied that the Army National Guard or the Air National Guard, as the case may be, of any State or Territory, Puerto Rico, or the District of Columbia is properly organized, armed, and equipped for field duty, funds allotted to that jurisdiction for its Army National Guard or Air National Guard may be used to buy any article issued by the Army or the Air Force, as the case may be.

(c) Under such regulations as the President may prescribe, the issue of new types of equipment, small arms, or field guns to the National Guard of any State or Territory, Puerto Rico, or the District of Columbia shall be without charge against appropriations for the National Guard.

(d) No property may be issued to the National Guard of a State or Territory, Puerto Rico, or the District of Columbia, unless that jurisdiction makes provision, satisfactory to the Secretary concerned, for its protection and care.

(Aug. 10, 1956, ch. 1041, 70A Stat. 612; Pub. L. 100-456, div. A, title XII, §1234(b)(1), (4), Sept. 29, 1988, 102 Stat. 2059; Pub. L. 109-163, div. A, title X, §1057(b)(4), Jan. 6, 2006, 119 Stat. 3441.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
702(a)	32:33 (less provisos).	June 3, 1916, ch. 134, §§83, 84, 39 Stat. 203, 204.
702(b)	32:33 (last proviso).	
702(c)	32:35.	
702(d)	32:33 (1st proviso).	

In subsection (a), the word “supplies” is substituted for the detailed description of stores, material, and equipment, since under section 101(12) of this title, “supplies” includes stores, material, and equipment. The words “may buy or manufacture” are substituted for the words “is authorized to procure * * * by purchase or manufacture”. The words “within the limits of available appropriations made by Congress” and “from time to time” are omitted as surplusage.

In subsection (b), the words “the Secretary concerned is satisfied” are substituted for the words “it shall be shown to the satisfaction of the Secretary of the Army”. The words “buy any article issued by the Army or the Air Force” are substituted for the words “purchase, from the Department of the Army, of any article issued by any of the supply departments of the Army”.

In subsection (c), the words “the issue of” are substituted for the words “whenever * * * shall have been issued * * * shall be furnished”. The words “shall be without charge” are substituted for the words “without charging the cost or value thereof or any expense connected therewith”. The words “provided for the support” are omitted as surplusage.

In subsection (d), the words “No property may be issued to * * * unless that jurisdiction” are substituted for the words “Provided, That as a condition precedent to the issue of any property as provided for by this title” and “desiring such issue”.

AMENDMENTS

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

1988—Subsec. (a). Pub. L. 100-456, §1234(b)(4), substituted “Territory or Puerto Rico” for “Territory, Puerto Rico, or the Canal Zone,”.

Subsecs. (b) to (d). Pub. L. 100-456, §1234(b)(1), struck out “the Canal Zone,” after “Puerto Rico,”.

§ 703. Purchases of supplies by States from Army or Air Force

(a) Subject to the approval of the Secretary of the Army, any State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands may buy from the Department of the Army, for its National Guard or the officers thereof, supplies and military publications furnished to the Army, in addition to other supplies issued to its Army National Guard. On the same basis, it may buy similar property from the Department of the Air Force. A purchase under this subsection shall be for cash, at cost plus transportation.

(b) In time of actual or threatened war, the United States may requisition for military use any property bought under subsection (a). Credit for the return in kind of property so requisitioned shall be given to the State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands from which it is received.

(c) Proceeds of sales by the Department of the Army and the Department of the Air Force under this section shall be credited to the appropriations from which the property was purchased, shall not be covered into the Treasury, and may be used to replace property sold under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 613; Pub. L. 100-456, div. A, title XII, §1234(b)(1), Sept. 29, 1988, 102 Stat. 2059; Pub. L. 109-163, div. A, title X, §1057(b)(3), Jan. 6, 2006, 119 Stat. 3441.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
703(a)	32:39 (1st sentence).	June 3, 1916, ch. 134, §86, 39 Stat. 204.
703(b)	32:39 (proviso of last sentence).	June 23, 1910, ch. 370, 36 Stat. 603.
703(c)	32:39a. 32:39 (less 1st sentence, and less proviso of last sentence).	

In subsection (a), the words “stores * * * materiel” are omitted as covered by the word “supplies”. The words “other supplies issued” are substituted for the words “those issued under the provisions of this title”. The words “at cost plus transportation” are substituted for the words “at the price at which they shall be listed to the Army, with cost of transportation added”.

In subsection (b), 32:39a (less last 23 words) is omitted as obsolete and superseded by 32:39 (proviso of last sentence). The Act of June 23, 1910, ch. 370 (less proviso), not contained in 32:39a, is omitted from the revised section as executed. The words “bought under subsection (a)” are substituted for the words “so purchased”. The words “for military use” are substituted for the words “for use in the military service thereof”. The words “and when so requisitioned by the United States and delivered” and “ultimate” are omitted as surplusage.

In subsection (c), the words “Proceeds of sales by the Department of the Army and the Department of the Air Force under this section” are substituted for the words “The funds received from such sale”. The words “from which the property was purchased” are substituted for the words “to which they shall belong”. The words “may be used to replace property sold under this section” are substituted for the words “shall be available until expended to replace therewith the supplies sold to the States in the manner herein authorized”.

AMENDMENTS

2006—Subsecs. (a), (b). Pub. L. 109-163 substituted “State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands” for “State or Territory, Puerto Rico, or the District of Columbia”.

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

§ 704. Accountability: relief from upon order to active duty

Upon ordering any part of the Army National Guard of the United States or the Air National Guard of the United States to active duty, the President may, upon such terms as he may prescribe, relieve the State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands, whichever is concerned, of accountability for property of the United States previously issued to it for the use of that part.

(Aug. 10, 1956, ch. 1041, 70A Stat. 613; Pub. L. 100-456, div. A, title XII, §1234(b)(1), Sept. 29, 1988, 102 Stat. 2059; Pub. L. 109-163, div. A, title X, §1057(b)(3), Jan. 6, 2006, 119 Stat. 3441.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
704	50:1121.	July 9, 1952, ch. 608, §711, 66 Stat. 504.

The words “to active duty” are substituted for the words “into the active military service of the United States”. The word “conditions” is omitted as covered by the word “terms”. The word “previously” is substituted for the word “theretofore”. The word “liability” is omitted as covered by the word “accountability”. The words “that part” are substituted for the words “such portion of the National Guard of the United States or of the Air National Guard of the United States”.

AMENDMENTS

2006—Pub. L. 109-163 substituted “State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands” for “State or Territory, Puerto Rico, or the District of Columbia”.

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

§ 705. Purchase of uniforms and equipment by officers of National Guard from Army or Air Force

Officers of the Army National Guard not in Federal service may buy articles of individual clothing and equipment from the Department of the Army, under such regulations as the Secretary of the Army may prescribe. On the same basis, officers of the Air National Guard not in Federal service may buy those items from the Department of the Air Force. Purchases under this section shall be for cash, at average current costs, including overhead, as determined by the Secretary concerned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 613.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
705	32:156.	June 3, 1916, ch. 134, §109; restated June 4, 1920, ch. 227, subch. 1, §47; restated June 3, 1924, ch. 244, §3; restated Oct. 14, 1940, ch. 875, §3, 54 Stat. 1136; Mar. 25, 1948, ch. 157, §5(b), 62 Stat. 91; Oct. 12, 1949, ch. 681, §501(f)(2) and (3) (as applicable to §109 of the Act of June 3, 1916, ch. 134), 63 Stat. 827; July 9, 1952, ch. 608, §803 (12th par.), 66 Stat. 505.

The reference to 10:1106 is omitted, since that section related only to sales of uniforms and equipment to cadets at the United States Military Academy. The reference to 10:904 is omitted as covered by the language of the revised section. The words “at average current costs, including overhead, as determined by the Secretary concerned” are inserted to reflect sections 4621 and 9621 of title 10, which apply to all sales of individual clothing and equipment. The words “articles of individual clothing and equipment” are substituted for the words “uniforms, accouterments, and equipment”. The words “active and inactive”, “on proper identification”, and “rules and” are omitted as surplusage.

§ 706. Return of arms and equipment upon relief from Federal service

So far as practicable, whenever units, organizations, or members of the National Guard are returned to their National Guard status under section 325(b) of this title, arms and equipment that the Secretary concerned determines are sufficient to accomplish their peacetime mission shall be returned with them.

(Aug. 10, 1956, ch. 1041, 70A Stat. 613.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
706	50:1122(b) (last 17 words.)	July 9, 1952, ch. 608, §712(b) (last 17 words), 66 Stat. 504.

The words “So far as practicable” are inserted, since sufficient arms and equipment might not be available.

§ 707. Use of public buildings for offices by instructors

Whenever practicable, instructors of the National Guard shall use State armories or other public buildings for offices.

(Aug. 10, 1956, ch. 1041, 70A Stat. 614.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
707	32:74.	May 12, 1917, ch. 12 (10th proviso under “National Guard”), 40 Stat. 68.

The word “instructors” is substituted for the words “inspector-instructors”, since there are no longer any “inspector-instructors”.

§ 708. Property and fiscal officers

(a) The Governor of each State, the Commonwealth of Puerto Rico, Guam, and the Virgin Is-

lands, and the commanding general of the National Guard of the District of Columbia, shall appoint, designate or detail, subject to the approval of the Secretary of the Army and the Secretary of the Air Force, a qualified commissioned officer of the National Guard of that jurisdiction who is also a commissioned officer of the Army National Guard of the United States or the Air National Guard of the United States, as the case may be, to be the property and fiscal officer of that jurisdiction. If the officer is not on active duty, the President may order him to active duty, with his consent, to serve as a property and fiscal officer.

(b) Each property and fiscal officer shall—

(1) receipt and account for all funds and property of the United States in the possession of the National Guard for which he is property and fiscal officer; and

(2) make returns and reports concerning those funds and that property, as required by the Secretary concerned.

(c) When he ceases to hold that assignment, a property and fiscal officer resumes his status as an officer of the National Guard.

(d) The Secretaries shall prescribe a maximum grade, commensurate with the functions and responsibilities of the office, but not above colonel, for the property and fiscal officer of the United States for the National Guard of each State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, and the Virgin Islands.

(e) The Secretary of the Army and the Secretary of the Air Force shall prescribe joint regulations necessary to carry out subsections (a)–(d).

(f) A property and fiscal officer may intrust money to an officer of the National Guard to make disbursements as his agent. Both the officer to whom money is intrusted, and the property and disbursing officer intrusting the money to him, are pecuniarily responsible for that money to the United States. The agent officer is subject, for misconduct as an agent, to the liabilities and penalties prescribed by law in like cases for the property and fiscal officer for whom he is acting.

(Aug. 10, 1956, ch. 1041, 70A Stat. 614; Pub. L. 92–310, title II, §207, June 6, 1972, 86 Stat. 203; Pub. L. 95–79, title VIII, §804(b), July 30, 1977, 91 Stat. 333; Pub. L. 96–513, title V, §515(4), Dec. 12, 1980, 94 Stat. 2937; Pub. L. 100–456, div. A, title XII, §1234(b)(1), Sept. 29, 1988, 102 Stat. 2059; Pub. L. 101–189, div. A, title VI, §653(g), Nov. 29, 1989, 103 Stat. 1463; Pub. L. 109–163, div. A, title X, §1057(b)(2), (4), Jan. 6, 2006, 119 Stat. 3441.)

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).	

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	Source (U.S. Code)	Source (Statutes at Large)
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

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 subsecs. (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 administration and training of the National Guard; and

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

(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; and

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

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

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

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

(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.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
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.
709(b)	32:42 (2d par., and last sentence of 4th par.).	June 25, 1938, ch. 688, 52 Stat. 1173.
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 author-

ized 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 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.

AMENDMENTS

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

Section 1070(b) of Pub. L. 103-337 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

Section 11 of Pub. L. 90-486 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

Section 1 of Pub. L. 90-486 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 subsection (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

Section 3 of Pub. L. 90-486, 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

Section 5(d) of Pub. L. 90-486 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

Section 6 of Pub. L. 90-486, 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

Section 8 of Pub. L. 90-486 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

Section 10 of Pub. L. 90-486 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 commis-

sioned 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.)

HISTORICAL AND REVISION NOTES
1956 ACT

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
710(a)	32:47 (1st sentence).	June 3, 1916, ch. 134, §87;
710(b)	32:47 (2d sentence).	June 3, 1924, ch. 244, §1;
710(c)	32:47 (3d sentence).	restituted Feb. 28, 1925,
	32:154 (last proviso of 2d par.).	ch. 371, §4; restated Aug. 27, 1954, ch. 1014, 68 Stat. 880.
710(d)	32:47 (last sentence, less proviso).	June 3, 1916, ch. 134, §110 (last proviso of 2d par.); restated Sept. 22, 1922, ch. 423, §6 (last proviso of 2d par.); restated Apr. 6, 1928, ch. 322 (last proviso), 45 Stat. 408.
710(e)	32:47 (1st proviso of last sentence).	
710(f)	32:47 (last proviso of last sentence).	

In subsection (a), the words "as herein provided" are omitted as surplusage.

In subsections (b) and (f), the word "commissioned" is inserted, since 32:47 historically applied only to commissioned officers (see opinion of the Judge Advocate General of the Army (JAGA 1953/4078, 6 May 1953)).

In subsection (b), the words "by use in service or from any other cause" and "surveying" are omitted as surplusage. The words "a survey of the circumstances thereof" are substituted for the word "it".

In subsection (c), the first 12 words of the second sentence are substituted for 32:47 (38th through 77th words of 2d sentence). Clause (2) is substituted for 32:154 (last proviso of 2d par.).

In subsection (d), the last sentence is substituted for 32:47 (words between semicolon and 1st colon of last sentence).

In subsection (e), the words "charged against it under subsection (c)" are substituted for the words "changed against such State, Territory, or the District of Columbia by the Secretary of the Army after survey by a disinterested officer appointed as hereinbefore provided". The words "may bar it from receiving" are substituted for the words "is authorized to debar such State, Territory, or the District of Columbia from further participation in any and all".

In subsection (f), the words "Instead of the procedure prescribed by subsections (b)-(d)" are substituted for

the words “and to constitute as to such property a discretionary substitute for the examination, report, and disposition provided for elsewhere in this section”. The words “a finding of unserviceability because of that wear and tear” are substituted for the words “finding to that effect”.

1958 ACT

This change corrects a typographical error.

REFERENCES IN TEXT

Section 4(b)(22) of the Permanent Appropriation Repeal Act, 1934, referred to in subsec. (d), is section 4(b)(22) of act June 26, 1934, ch. 756, 48 Stat. 1228, which was classified to section 725c(b)(22) of former Title 31, and was omitted from the Code in the general revision and reenactment of Title 31, Money and Finance, by Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 877.

AMENDMENTS

2006—Subsecs. (c), (d)(3), (e), (f)(1). Pub. L. 109-163 substituted “State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands” for “State or Territory, Puerto Rico, or the District of Columbia” wherever appearing.

1993—Subsec. (f). Pub. L. 103-160 designated existing provisions as par. (1), substituted “subsections (b), (c), and (d)” for “subsections (b)-(d)”, struck out “of the Regular Army or the Regular Air Force, as the case may be,” after “commissioned officer”, and added par. (2).

1988—Subsecs. (c), (d)(3), (e), (f). Pub. L. 100-456 struck out “the Canal Zone,” after “Puerto Rico,”.

1982—Subsec. (d). Pub. L. 97-258 struck out “(31 U.S.C. 725c(b)(22))” after “1934”.

1980—Pub. L. 96-328, §1(b)(1), substituted “Accountability for property issued to the National Guard” for “Reports of survey” in section catchline.

Subsec. (b). Pub. L. 96-328, §1(a), substituted provisions authorizing the Secretary of the Army, regarding the Army National Guard, and the Secretary of the Air Force, regarding the Air National Guard, to prescribe regulations for accounting for property issued by the United States to each service and for fixing responsibility for that property and requiring, as far as practicable, that the regulations prescribed be uniform among the components of each service for provisions authorizing, that if property issued to the National Guard is lost, damaged, or destroyed, or becomes un-serviceable or unsuitable, a survey of the circumstances involved be conducted by a disinterested commissioned officer of the Regular Army, Army National Guard, Regular Air Force, or Air National Guard, as the case may be, and a report of the survey sent to the Secretary concerned or an officer designated by that Secretary to receive those reports.

Subsec. (c). Pub. L. 96-328, §1(a), substituted provisions authorizing the Secretary concerned to charge liability for property lost, damaged, or destroyed to a member of the Army National Guard or Air National Guard when in similar circumstances a member of the Army or Air Force serving on active duty would be charged, to remit or cancel the liability of a member for good cause, and to charge a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia when such loss is incident to duty directed pursuant to the laws of, and in support of the authorities of, such jurisdiction for provisions authorizing the Secretary concerned to relieve a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia of liability for loss, damage, or destruction of property unless such loss occurred through negligence.

Subsec. (d). Pub. L. 96-513 substituted “4(b)(22) of the Permanent Appropriation Repeal Act, 1934 (31 U.S.C. 725c(b)(22))” for “725c(b)(22) of title 31”.

1958—Subsec. (c). Pub. L. 85-861 substituted “of further” for “or further”.

EFFECTIVE DATE OF 1980 AMENDMENTS

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.

Section 2 of Pub. L. 96-328 provided that: “The amendment made by subsection (a) of the first section of this Act [amending subsecs. (b) and (c) of this section] shall apply to liability for property issued by the United States to the National Guard that is lost, damaged, or destroyed on or after October 1, 1980. Liability for such property that is lost, damaged, or destroyed before such date shall be governed by the provisions of section 710 of title 32, United States Code, as in effect on the day before the date of the enactment of this Act [Aug. 8, 1980].”

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85-861, set out as a note under section 101 of Title 10, Armed Forces.

§ 711. Disposition of obsolete or condemned property

Each State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, and the Virgin Islands shall, upon receiving new property issued to its National Guard to replace obsolete or condemned issues of property, return the replaced property to the Department of the Army or the Department of the Air Force, as the case may be, or otherwise dispose of it, as the Secretary concerned directs. No money credit may be allowed for property disposed of under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 616; Pub. L. 100-456, div. A, title XII, §1234(b)(1), Sept. 29, 1988, 102 Stat. 2059; Pub. L. 109-163, div. A, title X, § 1057(b)(2), Jan. 6, 2006, 119 Stat. 3441.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
711	32:46.	June 3, 1916, ch. 134, §85, 39 Stat. 204.

The words “to its National Guard” are inserted for clarity. The word “it” is substituted for the words “all property so replaced or condemned”. The last sentence is substituted for 32:46 (last 8 words).

AMENDMENTS

2006—Pub. L. 109-163 substituted “State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, and the Virgin Islands” for “State and Territory, Puerto Rico, and the District of Columbia”.

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

§ 712. Disposition of proceeds of condemned stores issued to National Guard

The following shall be covered into the Treasury:

(1) The proceeds from sales of condemned stores issued to the National Guard of a State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands, and not charged against its allotment.

(2) The net proceeds from collections made from any person to reimburse the United States for the loss or destruction of, or damage to, property described in clause (1).

(3) Stoppage against members of the National Guard for the loss or destruction of, or damage to, property described in clause (1).

(Aug. 10, 1956, ch. 1041, 70A Stat. 616; Pub. L. 100-456, div. A, title XII, §1234(b)(1), Sept. 29, 1988, 102 Stat. 2059; Pub. L. 109-163, div. A, title X, §1057(b)(3), Jan. 6, 2006, 119 Stat. 3441.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
712	32:45.	June 3, 1916, ch. 134, §88, 39 Stat. 205; Oct. 31, 1951, ch. 654, §3(5), 65 Stat. 708.

The introductory clause is substituted for the words "shall be covered into the Treasury of the United States" and "as shall also". The words "United States" are substituted for the word "Government". The words "members of the National Guard" are substituted for the words "officers and enlisted men".

AMENDMENTS

2006—Par. (1). Pub. L. 109-163 substituted "State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands" for "State or Territory, Puerto Rico, or the District of Columbia".

1988—Par. (1). Pub. L. 100-456 struck out "the Canal Zone," after "Puerto Rico,".

§ 713. Official mail: free transmission

Units and headquarters of the National Guard, whether or not in Federal service, have the same privilege of free mailing of official matter as the Department of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 617.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
713	32:196.	Aug. 1, 1953, ch. 305, §643, 67 Stat. 357.

The word "Hereafter" is omitted as executed. The words "and the Air National Guard" are omitted, since "National Guard", as defined in section 101(2) of this title, includes the Army National Guard and the Air National Guard. The words "Federal service" are substituted for the words "active service of the United States". The words "mailing of official matter" are substituted for the words "transmission of official mail matter".

§ 714. Final settlement of accounts: deceased members

(a) In the settlement of the accounts of a member of the National Guard who dies after December 31, 1955, an amount due from the armed force of which he was a member shall be paid to the person highest on the following list living on the date of death:

- (1) Beneficiary designated by him in writing to receive such an amount, if the designation is received, before the deceased member's death, at the place named in regulations to be prescribed by the Secretary concerned.
- (2) Surviving spouse.
- (3) Children and their descendants, by representation.
- (4) Father and mother in equal parts or, if either is dead, the survivor.
- (5) Legal representative.
- (6) Person entitled under the law of the domicile of the deceased member.

(b) Designations and changes of designation of beneficiaries under subsection (a)(1) are subject

to regulations to be prescribed by the Secretary concerned. So far as practicable, these regulations shall be uniform with those prescribed for the armed forces under section 2771(b) of title 10.

(c) Under such regulations as the Secretary concerned may prescribe, payments under subsection (a) shall be made by the Department of the Army or the Department of the Air Force, as the case may be.

(d) A payment under this section bars recovery by any other person of the amount paid.

(Added Pub. L. 85-861, §2(12), Sept. 2, 1958, 72 Stat. 1546; amended Pub. L. 87-46, June 16, 1961, 75 Stat. 92; Pub. L. 104-316, title II, §202(q), Oct. 19, 1996, 110 Stat. 3844.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
714(a)	37:361. 37:362. 37:365.	July 12, 1955, ch. 328, §§1-3, 4 (less proviso), 5 (1st sentence), 69 Stat. 295, 296.
714(b)	37:364 (less proviso).	
714(c)	37:363 (less last sentence).	
714(d)	37:363 (last sentence).	

In subsection (a), the definition of the term "Department", in 37:361, is omitted as unnecessary, since the particular departments referred to are spelled out in the revised text. The definition of the term "uniformed services", in 37:361, is omitted as covered by the word "member" in this revised section. Clauses (1)-(6) are substituted for the last 5 clauses of 37:362. The words "regulations to be prescribed by the Secretary concerned" are substituted for the words "regulations of the Department concerned", since the "Department", as such, cannot issue regulations.

In subsection (a)(2), the words "Surviving spouse" are substituted for the words "widow or widower". As defined in section 101(18) of this title, "spouse" includes a widower.

In subsection (b), the words "are subject to" are substituted for the words "shall be made under".

In subsection (c), the word "Under" is substituted for the words "Subject to". The words "rules and" are omitted as surplusage.

AMENDMENTS

1996—Subsec. (c). Pub. L. 104-316, in first sentence, substituted "Secretary concerned" for "Comptroller General" and struck out at end "Payment under clause (6) of subsection (a) shall be made—

"(1) upon settlement by the General Accounting Office; or

"(2) as otherwise authorized by the Comptroller General."

1961—Subsec. (c). Pub. L. 87-46 substituted "Payment under clause (6) of subsection (a) shall be made—

"(1) upon settlement by the General Accounting Office; or

"(2) as otherwise authorized by the Comptroller General."

for "Payments under clauses (2)-(6) of subsection (a) may be paid only after settlement by the General Accounting Office."

DESIGNATION OF BENEFICIARY MADE BEFORE
JANUARY 1, 1956

Designation of beneficiary made before Jan. 1, 1956, considered as the designation of a beneficiary for the purposes of this section, see note set out under section 2771 of Title 10, Armed Forces.

§ 715. Property loss; personal injury or death: activities under certain sections of this title

(a) Under such regulations as the Secretary of the Army or Secretary of the Air Force may

prescribe, he or, subject to appeal to him, the Judge Advocate General of the armed force under his jurisdiction, if designated by him, may settle and pay in an amount not more than \$100,000 a claim against the United States for—

(1) damage to, or loss of, real property, including damage or loss incident to use and occupancy;

(2) damage to, or loss of, personal property, including property bailed to the United States or the National Guard and including registered or insured mail damaged, lost, or destroyed by a criminal act while in the possession of the National Guard; or

(3) personal injury or death; either caused by a member of the Army National Guard or the Air National Guard, as the case may be, while engaged in training or duty under section 316, 502, 503, 504, or 505 of this title or any other provision of law for which he is entitled to pay under section 206 of title 37, or for which he has waived that pay, and acting within the scope of his employment; or otherwise incident to noncombat activities of the Army National Guard or the Air National Guard, as the case may be, under one of those sections.

(b) A claim may be allowed under subsection (a) only if—

(1) it is presented in writing within two years after it accrues, except that if the claim accrues in time of war or armed conflict or if such a war or armed conflict intervenes within two years after it accrues, and if good cause is shown, the claim may be presented not later than two years after the war or armed conflict is terminated;

(2) it is not covered by section 2734 of title 10 or section 2672 of title 28;

(3) it is not for personal injury or death of such a member or a person employed under section 709 of this title, whose injury or death is incident to his service;

(4) the damage to, or loss of, property, or the personal injury or death, was not caused wholly or partly by a negligent or wrongful act of the claimant, his agent, or his employee, or, if so caused, allowed only to the extent that the law of the place where the act or omission complained of occurred would permit recovery from a private individual under like circumstances; and

(5) it is substantiated as prescribed in regulations of the Secretary concerned.

For the purposes of clause (1), the dates of the beginning and end of an armed conflict are the dates established by concurrent resolution of Congress or by a determination of the President.

(c) Payment may not be made under this section for reimbursement for medical, hospital, or burial services furnished at the expense of the United States or of any State or the District of Columbia or Puerto Rico.

(d) If the Secretary concerned considers that a claim in excess of \$100,000 is meritorious, and the claim otherwise is payable under this section, the Secretary may pay the claimant \$100,000 and report any meritorious amount in excess of \$100,000 to the Secretary of the Treasury for payment under section 1304 of title 31.

(e) Except as provided in subsection (d), no claim may be paid under this section unless the

amount tendered is accepted by the claimant in full satisfaction.

(f) Under regulations prescribed by the Secretary concerned, an officer or employee under the jurisdiction of the Secretary may settle a claim that otherwise would be payable under this section in an amount not to exceed \$25,000. A decision of the officer or employee who makes a final settlement decision under this section may be appealed by the claimant to the Secretary concerned or an officer or employee designated by the Secretary for that purpose.

(g) Notwithstanding any other provision of law, the settlement of a claim under this section is final and conclusive.

(h) In this section, “settle” means consider, ascertain, adjust, determine, and dispose of a claim, whether by full or partial allowance or disallowance.

(Added Pub. L. 86-740, §1(1), Sept. 13, 1960, 74 Stat. 878; amended Pub. L. 87-649, §8(b), Sept. 7, 1962, 76 Stat. 495; Pub. L. 90-486, §2(3), Aug. 13, 1968, 82 Stat. 756; Pub. L. 90-525, §6, Sept. 26, 1968, 82 Stat. 878; Pub. L. 91-312, §3, July 8, 1970, 84 Stat. 412; Pub. L. 92-445, Sept. 29, 1972, 86 Stat. 745; Pub. L. 93-336, §3, July 8, 1974, 88 Stat. 292; Pub. L. 98-564, §4, Oct. 30, 1984, 98 Stat. 2919; Pub. L. 104-316, title II, §202(r), Oct. 19, 1996, 110 Stat. 3844.)

AMENDMENTS

1996—Subsec. (d). Pub. L. 104-316 substituted “Secretary of the Treasury” for “Comptroller General”.

1984—Subsec. (a). Pub. L. 98-564, §4(1), substituted “\$100,000” for “\$25,000”.

Subsec. (d). Pub. L. 98-564, §4(2), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “If the Secretary of the military department concerned considers that a claim in excess of \$25,000 is meritorious and would otherwise be covered by this section, he may pay the claimant \$25,000 and report the excess to Congress for its consideration”.

Subsec. (f). Pub. L. 98-564, §4(3), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: “In any case where the amount to be paid is not more than \$5,000, the authority contained in subsection (a) may be delegated to any officer of the Army or the Air Force, as the case may be, who has been delegated authority under section 2733(g) of title 10, to settle similar claims, subject to appeal to the Secretary concerned, or his designee for that purpose”.

1974—Subsecs. (a), (d). Pub. L. 93-336, §3(1), (2), substituted “\$25,000” for “\$15,000”.

Subsec. (f). Pub. L. 93-336, §3(3), substituted “\$5,000” for “\$2,500”.

1972—Subsec. (b)(4). Pub. L. 92-445 inserted provision that claim may be allowed to extent that law of place where act or omission complained of occurred would permit recovery from a private individual under similar circumstances, when damage to or loss of property, or personal injury or death was caused wholly or partly by a negligent or wrongful act of claimant, his agent, or his employee.

1970—Subsecs. (a), (d). Pub. L. 91-312 substituted “\$15,000” for “\$5,000”.

1968—Subsec. (a). Pub. L. 90-486 struck out “caused by a person employed under section 709 of this title acting within the scope of his employment;” after “acting within the scope of his employment;”.

Subsec. (f). Pub. L. 90-525 increased limitation on amount of settlement from \$1,000 to \$2,500 and provided for appeals to Secretary concerned, or his designee, from determinations delegating authority to settle claims to an officer of the Army or the Air Force.

1962—Subsec. (a)(3). Pub. L. 87-649 substituted “section 206 of title 37” for “section 301 of title 37”.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-486 effective Jan. 1, 1968, 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 Jan. 1, 1968, see section 11 of Pub. L. 90-486, set out as a note under section 709 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-649 effective Nov. 1, 1962, see section 15 of Pub. L. 87-649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

SAVINGS PROVISION FOR CLAIMS ARISING BEFORE
JANUARY 1, 1969

Settlement and payment of claims arising under this section before January 1, 1969, see section 3(a) of Pub. L. 90-486, set out as a note under section 709 of this title.

§ 716. Claims for overpayment of pay and allowances, and travel and transportation allowances

(a) A claim of the United States against a person arising out of an erroneous payment of any pay or allowances made before, on, or after October 2, 1972, or arising out of an erroneous payment of travel and transportation allowances, to or on behalf of a member or former member of the National Guard, the collection of which would be against equity and good conscience and not in the best interest of the United States, may be waived in whole or in part by—

(1) the Director of the Office of Management and Budget; or

(2) the Secretary concerned, as defined in section 101(5) of title 37, when—

(A) the claim is in an amount aggregating not more than \$1,500; and

(B) the waiver is made in accordance with standards which the Director of the Office of Management and Budget shall prescribe.

(b) The Director of the Office of Management and Budget or the Secretary concerned, as the case may be, may not exercise his authority under this section to waive any claim—

(1) if, in his opinion, there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the member or any other person having an interest in obtaining a waiver of the claim; or

(2) if application for waiver is received in his office after the expiration of three years immediately following the date on which the erroneous payment was discovered.

(c) A person who has repaid to the United States all or part of the amount of a claim, with respect to which a waiver is granted under this section, is entitled, to the extent of the waiver, to refund, by the department concerned at the time of the erroneous payment, of the amount repaid to the United States, if he applies to that department for that refund within two years following the effective date of the waiver. The Secretary concerned shall pay from current applicable appropriations that refund in accordance with this section.

(d) In the audit and settlement of accounts of any accountable officer or official, full credit

shall be given for any amounts with respect to which collection by the United States is waived under this section.

(e) An erroneous payment, the collection of which is waived under this section, is considered a valid payment for all purposes.

(f) This section does not affect any authority under any other law to litigate, settle, compromise, or waive any claim of the United States.

(Added Pub. L. 92-453, §2(1), Oct. 2, 1972, 86 Stat. 759; amended Pub. L. 96-513, title V, §515(9), Dec. 12, 1980, 94 Stat. 2937; Pub. L. 99-224, §3(a), Dec. 28, 1985, 99 Stat. 1742; Pub. L. 102-190, div. A, title VI, §657(c), Dec. 5, 1991, 105 Stat. 1393; Pub. L. 104-316, title I, §116, Oct. 19, 1996, 110 Stat. 3835.)

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104-316, §116(1)(A), substituted “Director of the Office of Management and Budget” for “Comptroller General”.

Subsec. (a)(2). Pub. L. 104-316, §116(1)(B), inserted “and” at end of subpar. (A), redesignated subpar. (C) as (B) and substituted “Director of the Office of Management and Budget” for “Comptroller General”, and struck out former subpar. (B) which read as follows: “the claim is not the subject of an exception made by the Comptroller General in the account of any accountable officer or official; and”.

Subsec. (b). Pub. L. 104-316, §116(2), substituted “The Director of the Office of Management and Budget” for “Comptroller General” in introductory provisions.

1991—Subsec. (a)(2)(A). Pub. L. 102-190 substituted “\$1,500” for “\$500”.

1985—Pub. L. 99-224, §3(a)(1), substituted “and travel” for “other than travel” in section catchline.

Subsec. (a). Pub. L. 99-224, §3(a)(2), substituted “made before, on, or after October 2, 1972, or arising out of an erroneous payment of travel and transportation allowances” for “, other than travel and transportation allowances, made before or after October 2, 1972”.

Subsec. (b)(2). Pub. L. 99-224, §3(a)(3), struck out “of pay or allowances, other than travel and transportation allowances,” before “was discovered”.

1980—Subsec. (a). Pub. L. 96-513 substituted “October 2, 1972” for “the effective date of this section”.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-316 effective 60 days after Oct. 19, 1996, see section 101(e) of Pub. L. 104-316, set out as a note under section 130c of Title 2, The Congress.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-224 applicable to any claim arising out of an erroneous payment of travel and transportation allowances made on or after Dec. 28, 1985, see section 4 of Pub. L. 99-224, set out as a note under section 5584 of Title 5, Government Organization and Employees.

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.

[§ 717. Repealed. Pub. L. 109-163, div. A, title V, § 589(b)(2), Jan. 6, 2006, 119 Stat. 3279]

Section, added Pub. L. 108-375, div. A, title V, §520(b)(1), Oct. 28, 2004, 118 Stat. 1886, related to presentation of recognition items for retention purposes.

**CHAPTER 9—HOMELAND DEFENSE
ACTIVITIES**

Sec.
901. Definitions.