TN 08-03

DEPARTMENTS OF THE ARMY AND THE AIR FORCE
NATIONAL GUARD BUREAU
1411 JEFFERSON DAVIS HIGHWAY
ARLINGTON, VA 22202-3231

NGB-J1-TN-L

4 February 2008

MEMORANDUM FOR THE HUMAN RESOURCES OFFICERS OF ALL STATES, PUERTO RICO, THE VIRGIN ISLANDS, GUAM AND THE DISTRICT OF COLUMBIA

SUBJECT: Assignment of Military Training Duties to Title 32 National Guard Technicians (TN-08-03)

1. The references are:

   a. TPR 400 publication date
   b. 5 U.S.C. 7901
   c. Federal Service Labor Management Relations Statute Section 7106(a)
   d. DoD Directive Number 5210.56

2. NGB-J1-TN-LR Memorandum (TN-07-48), dated 8 June 2007, subject as above, is hereby rescinded.

3. The purpose of this memorandum is to provide updated implementing guidance regarding assignment of military training duties to National Guard Technicians.

4. National Guard Technicians may not attend military technical training schools in technician status. These schools have the intent of training personnel in military occupational specialties and require mandatory physical training standards and other military training incidental to, but part of, the overall academic experience over and above the enhancement of technician job performance. In accordance with TPR 400, The Technician Human Resources Development Program, technicians will attend training in military status when training: Leads to the award of an AFSC or MOS, is a prerequisite for a military assignment, includes mandatory physical fitness assessment, drug testing, weigh-ins, or requires other military standards for the completion of the training or course.

5. National Guard Technicians cannot be weighed, nor have urinalyses or drug testing performed for medical mobility processing purposes while in a technician status. Medical mobility processing or any other procedure requiring weigh-ins, urinalysis or drug testing must be completed in an inactive duty or active duty military status. If drug testing must be accomplished due to the result of a ground or aircraft accident, or observation of erratic behavior, place technicians immediately, in an inactive duty status or active duty military status for such purposes. For National Guard medical authorities to conduct urinalysis or drug testing, they must have authority over the technician, authority to conduct the test, and authority to expend substance abuse funds. Since Technicians are not under proper military authority during the Technician workweek, and not in military status, there is no authority to drug test them and/or expend substance abuse funds.

6. National Guard Technicians cannot be required to receive immunizations in technician status (either by directive or voluntarily) to maintain worldwide medical qualifications for active military duty assignments or deployments. Immunizations should be administered in an inactive duty or active duty military status, in accordance with Surgeon General policy letters and military regulations for both ARNG and ANG.

7. National Guard Dual-Status and Non-Dual Status Technicians may be authorized excused absence of short duration to participate in voluntary Physical Fitness Programs (PFPs). While not mandatory, technicians are encouraged to participate in PFPs authorized under 5 U.S.C. 7901 health service programs. Dual status and non-dual status technicians cannot be required to undergo an annual military physical fitness test in technician status, either voluntarily or involuntarily.

8. National Guard Dual-Status Technicians may be assigned to train in the wear and use of chemical warfare equipment while in technician status. Case law makes the implementation of this assignment "an agency right to assign work" and outside the duty to bargain. Union proposals that excessively interfere with the right to assign work, regarding when and to whom the duty is assigned, are not negotiable proposals within Section 7106 (a) of the Federal Service Labor Management Relations Statute.

9. National Guard Dual-Status Technicians may be required to fire a weapon for range firing and weapons qualification while in technician status. They may also be required to carry firearms when the duties of their technician position require such. Department of Defense Directive, Number 5210.56, governs the carrying of firearms by DoD military and civilian personnel performing law enforcement and security duties.

10. Point of contact for this memorandum is Ms. Lynn Crouse, Acting Chief, Labor Relations, at DSN 327-5981, or commercial 703-607-5981.

WILLIAM F. KOLBINGER
Colonel, USAF
Chief, Office of Technician Personnel

*Note that not all union proposals regarding the assignment of work are outside the duty to bargain, including proposals regarding CWE training and weapons firing. If a union proposal "excessively interferes" with the right to assign work, causes undue delay, or is within the duty to bargain at the election of the agency," the agency may initially make the determination that the proposal excessively interferes with the right to assign work or bargaining is elective with the agency. If this decision is challenged, the Federal Labor Relations Authority will make the determination based on the positions/facts presented by the parties. Check with your JAG prior to citing these authorities.