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**FIGHTER PILOTS ACCUSED OF EARNING “DUAL
COMPENSATION,” GETTING “3 FOR 1” PAY, AND
VIOLATING CREW REST**

by

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PREFACE

I selected this research topic after witnessing a severe injustice experienced by pilots in the Air National Guard (ANG) fighter community between 2010 and 2017. A series of National Guard Bureau (NGB) Internal Review (IR) audits claimed that pilots had unlawfully earned compensation in the course of performing the alert mission, necessitating the recoupment of those payments back to the government. In the Hawaii Air National Guard's 154th Wing, one pilot's debt was \$126,034.28, representing four years of pay for alert duty, allegedly performed contrary to federal appropriations law and National Guard Bureau guidance. While the debt amount for that pilot was eventually reduced to \$19,518 in 2018, the lower sum still represents payments received during the lawful performance of alert duty.

I hope this research report provides the reader with the necessary background to understand the problem experienced by pilots in ANG squadrons across the country. I also hope that the National Guard Bureau will accept and implement the recommendations resulting from this research effort. The affected pilots still need NGB's leadership to remedy this situation.

I want to thank my family for their support while I conducted this research over the past four years. For helping to address the improper findings of debt in these audits, I am grateful for the efforts of Maj Gen James Eifert, Lt Col John Hyatt, and the Hawaii State Attorney General, Clare Connors. Thank you for sharing your clear and logical thoughts in our discussions, and for supporting me with your time and attention. I would also like to extend my appreciation to the Fresno and Hawaii pilots who shared their stories with me. Their discussions and documentation helped me understand the scope of this problem. Finally, thanks to the men and women who are performing the alert mission for us every day.

ABSTRACT

A series of National Guard Bureau-Internal Review (NGB-IR) audits investigated the scheduling and compensation practices employed by Air National Guard (ANG) wings who perform the Aerospace Control Alert (ACA) mission. Their published findings indicated that pilots had allegedly: violated “dual compensation” laws, received compensation on days for which no duty was expected, and failed to obtain proper crew rest. These audits exposed the conflicting, incomplete, and incorrect guidance provided by the National Guard while also burdening individual pilots with debt for duty previously performed.

Because the currently available guidance from NGB is not clear, this research answered the question: what rule changes are required to compensate ANG fighter pilots who perform 24/7 alert duty? A problem/solution framework was used to help determine the appropriate compensation. Discussions include ACA performance, scheduling, and the controversies regarding “dual compensation,” “3 for 1,” and crew rest. Costs and scheduling flexibility for the different pay statuses of ANG pilots were analyzed.

This research resulted in nine recommendations for NGB implementation. Seven recommendations include allowing “3 for 1” scheduling, improving “incompatible service” guidance, and NGB’s acceptance of Air Force alert crew rest guidance. Two recommendations provide a method for NGB to remedy some of the resulting harm from these audits by reversing debt findings and apologizing to the affected military officers.

Section I - Introduction

An explosive news report published in 2010 described audit findings of a systematic practice of alleged illegal behavior by Air National Guard (ANG) fighter pilots based in Fresno, California.¹ The Sacramento Bee article detailed an arrangement uncovered through a National Guard Bureau (NGB) Internal Review (IR) audit revealing a common practice in which pilots were alleged to have violated U.S. law and military regulations to enrich themselves unjustly while on alert duty.² NGB auditors accused ANG pilots of violating federal law and ANG policies, specifically citing:

1. “dual compensation” violations by dual-status military technicians,
2. “3 for 1” military pay in which there was no expectation to report for duty, and
3. violations of crew rest policies.

The practice of compensating pilots in the way described by the audit had been occurring for at least 30 years at ANG alert sites around the country.³ NGB-IR audited six units in all, resulting in similar allegations of wrong-doing. How was it possible that pilots at all six audited units violated laws regarding dual compensation, crew rest, or the earning of pay for work not performed? It was not possible unless NGB had previously provided poor guidance and direction, or NGB-IR misunderstood the application of rules and laws for alert duty.

Many of the affected pilots have been successful in arguing the lawfulness of their actions, and NGB has subsequently reversed their earlier stance on some of NGB-IR’s previous incorrect interpretations of the law.⁴ However, many guardsmen are still confused about several of the applicable laws in this matter. Because the currently available guidance from NGB is not clear, this research answers the question: what rule changes are required to compensate Air National Guard fighter pilots who perform 24/7 alert duty? To remedy the widespread

misunderstanding of the law, the NGB needs to promulgate clear guidance in accordance with federal appropriations law and the United States Code because fighter pilots should receive appropriate compensation for the performance of 24/7 alert duty.

Research Methodology/Framework

A problem/solution framework was used to help determine the appropriate way to compensate ANG pilots who perform alert duty. After providing background information to understand the problem, this research provides the reader with information about the performance and scheduling of Aerospace Control Alert (ACA), the method used to compensate ANG pilots who perform ACA duty, and the controversies regarding “3 for 1” scheduling, “dual compensation,” and crew rest. Next, this research sets criteria for appropriate compensation by reviewing costs and scheduling flexibility for the different pay statuses of ANG pilots and then analyzes alternatives to meet those criteria. Finally, this research selects the best alternative as the solution and makes recommendations for implementation.

Section II - Description of the Problem and Key Issues

Audit Background and Outcome

The alleged scheme in Fresno uncovered by NGB-IR involved seven pilots, including the commander of the 144th Fighter Wing, who was relieved of command over this issue before the auditors had finalized their report.⁵ Their report indicated that during the audit period of October 2006 to September 2010, Fresno pilots received payments which, when extrapolated over a future six-year period of time, were estimated at “approximately \$3,306,390 in dual/improper compensation and/or authority violations.”⁶ The alleged impropriety was so egregious that the Office of Special Investigations (OSI) opened a criminal investigation to determine the extent of the illegal activities in the unit.⁷ During the year-long OSI investigation, all of the implicated Fresno pilots were grounded from flying duties while under the scrutiny of the investigating officers and the public.⁸

Not mentioned in news reports at that time was a similar audit of ANG wings in Florida (125th Fighter Wing), Oklahoma (138th Fighter Wing), Louisiana (159th Fighter Wing), and Arizona (162^d Fighter Wing) which uncovered the same pay and work rule violations as were discovered in California. Using the methodology of auditing three months of work and pay of twenty-four pilots from January to March 2010, the auditors extrapolated “back six years for recoupment of funds and six years ahead for POM [Program Objective Memorandum] savings.”⁹ They declared that \$6,469,032 could be recouped from 60 military technician pilots and that a savings of \$6,583,720 would be realized in potential future losses attributable to this scheme.¹⁰ NGB-IR declared that their auditing efforts “saved” over 13 million dollars in wasted funds in the review of those five ANG wings.¹¹

And finally, in an audit conducted of the fighter alert mission at the Hawaii Air National Guard's 154th Wing four years later, NGB-IR published findings of similar pay violations occurring there. Their review of pay records from June 2010 to September 2014 for eight technician pilots in Hawaii uncovered alleged "improper dual compensation hour violations" valued at \$364,094.33.¹² When extrapolated over a future six-year POM period, the audit report listed potential savings of \$1,053,319.50.¹³ Furthermore, auditors noted observations of potential crew rest violations and "3 for 1" problems and recommended separate audit work to determine the scope of the problem.¹⁴

Because NGB-IR only audited 6 of the ANG's 16 ACA sites, they further extrapolated their figures to all wings and declared that "the six-year recoupment benefit figure is more likely closer to 18-21 million" and when "combined with six years of POM savings, the estimated monetary benefit amount approaches 40 million dollars (base pay alone)."¹⁵ Unfortunately, many of NGB-IR's interpretations of regulations in force during the audit timeframe were wrong. In judging scheduling and compensation practices in Hawaii, auditors relied upon emails and expired policy memos as guidance, misapplied the rules for crew rest, and failed to follow the Comptroller General's clear explanation of the law.¹⁶

Some pilots began various efforts to fight the recoupments while some others paid their assigned debts. As a result of this NGB-IR audit process, several accused pilots were temporarily grounded, commanders were relieved of their duties, and the debts of several pilots were referred to collection agencies with corresponding reductions of the pilots' credit scores.^{17,18}

During the audit, senior officers from affected wings and the ANG Readiness Center submitted rebuttal arguments to NGB-IR to stem-the-tide of recoupment of funds earned for the

lawful performance of work.¹⁹ The audit report included their arguments, but the auditors summarily dismissed their rebuttals.²⁰

However, after seven years of fighting NGB-IR's interpretation, the first California ANG pilot finally won his legal battle through the Defense Office of Hearings and Appeals (DOHA), which overturned his original debt amount of \$55,454.99.²¹ A year later, in 2018, members of the Hawaii ANG (with the invaluable help of Maj Gen James Eifert and Lt Col John Hyatt) successfully argued to senior ANG leadership that NGB-IR used a flawed methodology and interpretation of applicable rules and federal laws. After thoroughly reviewing the circumstances, the Air National Guard reversed most of the Hawaii debt created by NGB-IR's faulty methodology.²² While many of the original debt claims have been overturned, several guardsmen have debts remaining and are still struggling through the appeal process. In addition to their goal of overturning the debt claims, the affected pilots are also interested in correcting the record to reflect that they had dutifully followed the rules in their performance of alert duty.

Aerospace Control Alert

The Air National Guard is responsible for the performance of ACA at 13 of 14 ACA sites across the country. All personnel who perform fighter alert duty do so on Title 32 or Title 10 military orders. The standard construct of ACA at each site includes maintenance personnel, two pilots, and armed fighter aircraft on status, available to respond to an immediate launch tasking at any time, 24-hours a day. A typical ACA facility includes provisions for work, rest, leisure, sleep, exercise, and meal preparation. The ACA sites are usually co-located with a fighter squadron equipped with F-22, F-15C, or F-16 aircraft. In addition to performing the ACA mission, pilots maintain their flying currencies through continuation flying training over approximately six to eight days a month. Generally, each fighter squadron employs pilots who

are either active duty, Active Guard and Reserve (AGR), military technicians, or drill status guardsmen (DSG).

ACA duty is a separate duty from daily fighter squadron training duty and includes specific funding for the alert mission. Not all fighter squadrons are tasked to support an alert mission, but when tasked, units provide aircraft and personnel to meet the task. Each unit handles the scheduling of pilots for the alert mission at the local level, and the hours of alert changeover vary based on unit needs. The scheduling of alert duty was the core issue in past audits, necessitating a brief explanation here.

When a fighter squadron tasked with ACA schedules their pilots to the alert mission, the unit distributes the additional alert duty among all their assigned pilots. The unit scheduler attempts to do so equitably based on their pilots' availability, volunteerism, and pay status. A typical fighter squadron employs approximately 30 pilots who are available for alert duty. Because two alert pilots are needed on duty continuously throughout the year, if every pilot performed an equal share, they would each be responsible for approximately six, eight-hour shifts of alert duty per month, in addition to their regular flying-training duty. Not all pilots are available for 48 hours of extra work per month, while some pilots are willing to volunteer for the additional duty with a corresponding increase in compensation.

Immediate response alert duty (proximity to the alert aircraft with the ability to be airborne within moments of notification) is typically scheduled in increments of 8, 16, or 24-hour shifts. A shift of alert duty usually begins at 0800 and ends at 1600 in the case of an eight-hour shift, or begins at 1600 and ends the following day at 0800 in the case of a 16-hour shift. A 24-hour shift could start at 0800 or 1600 and would end at 0800 or 1600 the next day. When

employing these increments, continuous shifts of alert duty between eight hours and seven days are possible.²³

Crew Rest and Flight Duty Periods

As a general rule, crew rest for pilots is 12 hours of mandatory duty-free time before performing duties involving aircraft operations and must include an opportunity for 8 hours of uninterrupted sleep.²⁴ Maximum flight duty periods (FDP) for pilots are defined based on aircraft crew compositions and are limited to 12 hours for single-seat fighter aircraft.²⁵ Major Commands (MAJCOM) are directed to supplement these Air Force rules for the alert missions under their control.²⁶ Air Combat Command (ACC) is responsible for ACA in the continental U.S., while Pacific Command (PACAF) is responsible for ACA in Hawaii and Alaska. In their nearly identical supplements to the parent regulation, ACC and PACAF published crew rest and FDP rules specifically written for the alert mission.²⁷

Rather than considering the start of the 12-hour FDP as the moment a pilot assumes their role at the start of an alert shift of duty, the authors of the supplemental rules for alert duty rightly considered the beginning of the FDP as “the first squadron duty, alert changeover or ANG civilian work, whichever occurs first.”²⁸ MAJCOM-supplemented crew rest rules include the ability to perform the alert mission after exceeding an FDP and provisions for earning crew rest while on alert duty.²⁹ In other words, when a pilot leaves the alert facility in the morning after obtaining crew rest, they begin a new FDP and are permitted to work or participate in flying training for the remainder of their new 12-hour flight duty period.³⁰ See Appendix A, *Air Combat Command Alert Crew Rest Rules*, on page 63, to read the ACC supplemented crew rest rules for alert duty.

Military Technician Status

Military technicians comprise most of the full-time positions in the ANG. They are federal civilian employees who are required to maintain military membership in their unit as a condition of employment. The statutory authority for the military technician program is set out at 32 U.S. Code § 709. Military technicians average 40 hours of work per week in their civilian status while wearing their military uniform and, when performing ACA, must do so on military status separate from their civilian technician employment. Technicians do not earn overtime but may earn compensatory time off for additional civilian hours worked. For civilian pay purposes, military technicians generally fall under Title 5 of the U.S. Code.³¹ For military pay purposes, technicians are mainly bound by the same rules as DSGs.

While shift times differed slightly at other fighter squadrons around the country, using the Hawaii unit as an example, the typical duty day for a dual-status technician began at 0700 and ended at 1630, with a 30-minute unpaid lunch period. Those technicians worked on a 5/4-9 compressed schedule whereby civilian employees were scheduled to work for 80 hours in every two-week period. Rather than working ten eight-hour shifts in a two-week period, technicians on the 5/4-9 compressed schedule worked eight nine-hour days and one eight-hour day for a total of nine workdays in each pay period. When technicians performed occasional overnight alert duty after a typical 5/4-9 weekday, they would take leave from their civilian job for any hours that conflicted with their alert commitment. Because the Hawaii unit regularly performed alert pilot changeover at 0700 and 1500, a technician pilot would generally work their civilian day until 1500 and, when occasionally scheduled for alert, would then start a period of overnight alert military duty until 0700 the following morning. They would record 1.5 hours of leave (or 0.5 hours on an eight-hour day) from their civilian employment from 1500 to 1630 on the first day.

If the second day of alert duty was a civilian technician day, the pilot was released from military control on the final day of orders at 0700 and would return to civilian status and work in their civilian capacity from 0700 to 1630 without charge to leave on the second day. On a midweek overnight alert shift, a civilian technician pilot would earn compensation for two civilian workdays (0700 to 1500 on day one and 0700 to 1630 on day two) in addition to payment for two military workdays (1500 to 2400 on day one and 0000 to 0700 on day two) for their 33 hours of civilian and military duty. Technicians in Hawaii generally supported the alert mission approximately once or twice a week. The scheduling practice described above led to allegations of violations of dual compensation laws and crew rest.

Active Guard and Reserve Status

AGR pilots essentially earn the same pay and benefits as their active-duty counterparts. The Air National Guard Instruction (ANGI) for scheduling of AGR Airmen declares that they will work for a minimum of 40 hours per week and will match the schedule of the military technicians assigned to the unit.³² An AGR pilot could also be scheduled to work on alert duty following a typical office or flying workday using the same hours described for technicians above. AGRs in Hawaii typically supported the alert mission approximately two to four times a week. There are no dual compensation concerns with AGRs performing the alert mission following their typical workday; however, AGRs are affected by crew rest and compensatory time-off rules.

Drill Status Guardsmen

DSG positions account for most of the manpower in the National Guard. When DSGs perform a day of military duty, they earn 1/30th of one month of the basic pay of a military member on active duty.³³ In general, one day of work garners one day of military pay. Provisions

in the law allow for two days of payment for two four-hour periods of inactive duty training as would occur on each day of a drill weekend.³⁴ In other words, in Air and Army National Guard units across the country, DSGs (and military technicians) earn four days of military pay on the two days of a drill weekend for their 16 hours of duty. DSGs in Hawaii typically volunteered for and performed alert duty approximately one to three times a week. Dual compensation is not a factor for DSGs; however, both crew rest and “3 for 1” compensation are concerns when scheduling drill status guardsmen for alert.

Dual Compensation

Congress enacted the Dual Compensation Act of 1964, later codified into law as 5 U.S. Code, Subchapter IV – Dual Pay and Dual Employment.³⁵ When the Office of Personnel Management (OPM) and all other federal agencies use the term *dual compensation*, they are referring to this subchapter. This provision of the law essentially states that a civilian government employee is not entitled to basic pay from more than one position for more than a total of 40 hours in one calendar week.³⁶ “Position” means a civilian office, including a temporary, part-time, or intermittent position, whether appointive or elective, in any branch of the government.³⁷ Additionally, this section of the U.S. Code continues by clearly stating that a federal civilian employee is entitled to their civilian pay in addition to their military pay:

A Reserve of the armed forces or member of the National Guard may accept a civilian office or position under the Government of the United States or the government of the District of Columbia, and he is entitled to receive the pay of that office or position in addition to pay and allowances as a Reserve or member of the National Guard.³⁸

While some critics argue that a pilot earning government civilian and military compensation on the same calendar day is unlawful dual compensation, they fail to recognize the federal law has been settled by the Comptroller General in 1973 and further upheld in 1983 and

1987.^{39,40,41} Additionally, while some may suggest that civilian and military pay on the same day is unethical enrichment, the concept of a civilian earning military pay for additional hours of military duty is well established in regulation and guidance.

The use of the term *dual compensation* is often misunderstood and conflated with other concepts to which it does not apply. In the case of the previously described audits of alert compensation, the use of the term by NGB-IR auditors to describe government civilians who also earn military pay was erroneous and contributed to their misinterpretation of the lawfulness of the circumstances. The correct name for the violation they attempted to uncover was that of *incompatible service*.

While 5 U.S. Code § 5534 is clear in describing that a civilian government employee is entitled to pay as a member of the National Guard, federal appropriations law provides additional guidance to the limits of earning both forms of pay, detailed below. In other words, dual compensation violations are not a factor when discussing ACA because military members in the Reserve and National Guard are authorized government civilian and military pay. There are several uncontentious instances whereby a civilian government employee may be compensated with civilian and military pay on the same day, including the case in which the employee is on a paid civilian leave status while performing military duty, or when the employee earns inactive duty military pay after-hours on a civilian workday. In these cases, the civilian government employee is receiving two forms of compensation on the same day. This fact should nullify any advancement of the claim that auditors were simply intending the plain meaning of the words “dual compensation,” rather than the actual case that auditors were attempting to cite the prohibitions of the Dual Compensation Act. Because members of the National Guard commonly misuse the term, it is included here and leads to a suggested change as a result of this research.

Incompatible Service

Where NGB-IR auditors claim to find examples of dual compensation violations, they instead perceived violations of rules prohibiting incompatible service. This distinction may seem pedantic, but it points to the root of a common misunderstanding on this topic. While there are no specific statutes that address incompatible service, federal appropriations case law decided in the past 81 years have long and consistently upheld the prohibition of simultaneous employment in a government civilian and military capacity. In other words, a person may not simultaneously be regarded as present for work in both civilian government and military duty because the two services are incompatible.⁴² However, beginning with a decision in 1969 and further solidified in 1973, federal fiscal law allows compensation for both forms of service on the first day or last day of military duty, which is discussed in detail later in this research, when describing the role of the Comptroller General.

“3 for 1” Scheduling System

The term “3 for 1” is used to describe a practice in which one person earns three days of pay for performing 24 hours of immediate-response alert duty. “Hard Alert” or “Response Posture Immediate” duty are two other ways to refer to the duty appropriate for the “3 for 1” concept whereby a crewmember is required to remain at the alert facility with the ability to launch immediately.⁴³ Some critics contend that military members are on duty 24 hours a day and should only earn one day of pay for each 24-hours. However, they fail to extend their logic to real-life examples of office workers, mechanics, and firefighters who would not possibly be expected to work 24 hours for a day of pay, five days a week, 52 weeks a year over a 20-year career. It may be correct to say that military *service* encompasses 24 hours of the day, or that a military member may be available for duty at any time of the day. However, it does not follow

that a member is expected to work for 24 hours a day without appropriate compensation in pay or time off.

When a salaried employee is required to work for extended duty hours, they are generally provided compensatory time off in acknowledgment of work performed. Scheduling practices for 24-hour duty in another profession may be instructive here. “3 for 1” is another way to describe a 24/48 schedule in use at most fire stations in the U.S. in which 24 hours of duty are followed by 48 hours off.⁴⁴ Under this system, a firefighter typically works ten days a month for 30 days of pay, essentially “3 for 1.” Another variation in use is the 48/96 schedule in which 48 hours of duty are followed by 96 hours off, again, with only ten days of work and 20 days off a month.⁴⁵ In these two scenarios, the firefighter is performing roughly 240 hours of duty at the fire station per month, while a worker on a standard 40-hour workweek is providing approximately 160 hours of duty (four, 40-hour workweeks) at their worksite per month.

At face value, it may seem counterintuitive that someone in the military earns anything more than one day of pay for 24 hours of work. Due to wake and rest cycle concerns related to pilot scheduling, there are no ACA units which execute personnel shift changes at midnight as a standard scheduling practice. Because the military workday system awards pay on a per-calendar-day basis, pilots who perform duty across midnight (e.g., 1600 on one day to 0800 the following day) uncontroversially earn two days of orders and military pay for their 16 hours of duty. The Air Force Instruction describing Military Personnel Appropriation (MPA) workdays indicates that MPA days are based on calendar days and further provides the example that four hours of duty on two consecutive days (i.e., 2000 to 0400) requires two workdays of payment to the guardsman.⁴⁶ The ANG instruction for alert duty specifically included guidance that every eight hours of duty earns one workday of pay.⁴⁷

“2 for 1” Scheduling System

This term describes a situation in which a technician or DSG is paid one day of pay for 12-hours of work. When alert duty does not require an immediate response or allows for freedom of movement while still being available for recall, units use the “2 for 1” pay system. “Soft Alert” or “Response Posture Tailored” duty are two other ways to describe the alert period associated with “2 for 1.”⁴⁸ The 2012 version of the Alert Duty instruction defined *Response Posture Tailored* as “an alert mission that does not require an immediate response and/or the alert crew is not required to remain at the alert duty location (pager/telephone alert) after reporting for duty.”⁴⁹ When assigned 24 hours of non-immediate response alert duty in the local area from 0800 on the first day until 0800 the following day, a technician or DSG earns two military days of pay for those 24 hours. Examples of appropriate uses of soft alert duty could include a general officer on pager-alert in the role of Area Air Defense Commander (AADC), an air refueling tanker crew with a six-hour response, or two additional alert fighter pilots with a longer response expectation providing an additional capability to the alert mission.

Normal Workweek

Most jobs in the Air Force do not routinely allow any person to remain on duty for extended periods of 16 or 24 hours as is permitted in the case of ACA duty, which could be a source of difficulty in contemplating scenarios of 24-hour duty. The Air Force Instruction (AFI) that governs planning for manpower management and authorizations defines a standard workweek under normal conditions for an individual on active duty as 40 hours per week.⁵⁰ The AFI continues by defining weekly hours for “wartime emergency” (6 days x 10 hours per day = 60 hours per week) and for “wartime surge” (6 days x 12 hours per day = 72 hours per week).⁵¹ Regardless of the times one may recall being required to occasionally work 12 hours per day, it

should be clear that military planners recognize the 40-hour workweek as standard in the United States.

Pay Comparison

Because a military member on orders for fewer than 30 days in a row earns 1/30th of one month of active duty pay for each day worked, in theory, a DSG would be required to work all 30 days to earn a month of basic active duty pay. Planning factors for active-duty Airmen include a period of non-availability for work, including hours attributed to the following categories: leave, permanent change of station (PCS)-related, medical, organizational duties, and education and training for a total of 16.5436 unavailable duty hours per month.⁵² A normal 40-hour workweek equates to 167.2624 hours, or roughly 20.9 days (five days a week for approximately four weeks); however, after applying planning for hours of non-availability, an active duty Airman is expected to be available for duty on 18.8 days of the month for their 30 days of pay.⁵³ The table in Appendix B, *Air Force Workweeks and Man-Hour Availability Factors*, found on page 65, provides additional information detailing the factors used for these calculations. A DSG who worked for 19 days would earn only 19 days of compensation. In this case, a DSG would be required to work for 11 more days a month to receive the same pay as their active-duty counterpart, revealing that equal work is far from equal pay.

Federal Appropriations Law and Comptroller General Decisions

Federal Appropriations Law or *Federal Fiscal Law* refers to the body of law that governs the availability and use of federal funds. The authoritative source for guidance on these matters is the Government Accountability Office's (GAO) *Principles of Federal Appropriations Law*, commonly referred to as the "Red Book." The *Red Book* primarily concerns the decisions and

opinions of the accounting officers of the government – the Comptroller General of the United States and the GAO.⁵⁴

The authority of the Comptroller General to decide on matters related to the proper use of federal funds is found in 31 U.S. Code Subchapter III.⁵⁵ The Comptroller General provides decisions on issues of congressional appropriations and has previously decided on the matter of incompatible service (alleged dual compensation violations in NGB-IR audit reports).

Several rulings of the Comptroller General addressed the incompatibility of civilian and military service. The first instance of such a ruling discovered through this research began with a decision on 1 September 1938, declaring that government civilian employment is incompatible with service in a military capacity.⁵⁶ Later Comptroller General rulings upheld prior decisions on the concept of service incompatibility until a 1969 decision ruled that civilian compensation was allowable before reporting for duty on the first day of military orders.⁵⁷

The 1969 decision was later solidified in a 1973 decision, whereby the Comptroller General included a provision for earning both forms of pay when civilian service is performed before reporting to military duty on the *first day* of military duty or when civilian service is performed after release from military service on the *last day* of military duty.⁵⁸ A 1983 decision reaffirmed the 1973 decision when the Comptroller General decision succinctly declared:

We have long and consistently held that the following principles and procedures are to be followed:

During the period that an employee is subject to military control under active duty orders, the employee may not simultaneously be regarded as present for work in his civilian position, since civilian service is incompatible with military active duty status. However, the employee may be credited for civilian work performed before he becomes subject to military control on the first day of the active duty period, and for civilian work performed after release from military control on the last day of the active duty period. See 52 Comp. Gen. 471 (1973); 49 Comp. Gen. 233, 243-244 (1969)⁵⁹

Later, in a 1987 Comptroller General decision discussing service incompatibility, similar language was used to declare the allowance of civilian compensation on the first day and last day of a period of military service:

During a period that an employee such as Mr. Ford, is subject to military control under active duty orders, the employee may not simultaneously be regarded as present for work in his civilian position, since civilian service is incompatible with military duty status. See George McMillian, B-211249, September 20, 1983. However, the employee may be credited for civilian work performed before he becomes subject to military control on the first day of the active duty period, and for civilian work performed after release from military control on the last day of the active duty period. See 52 Comp. Gen. 471 (1973).⁶⁰

It should be clear from the 1983 and 1987 references above, that federal fiscal law allows for civilian and military compensation on the first and last days of military control.

Alert Program Workday Funding and Allocation

In their report to the Chief of the National Guard Bureau, NGB-IR auditors advanced the view that each workday allocated to the alert mission was intended for one person for 24 hours of duty and that no days were programmed for compensated days off in recognition of an extended shift of alert.⁶¹ In their view, as few as 1,460 workdays are sufficient for a two-pilot alert requirement.⁶² Their calculation considered two pilots ending a shift of alert duty each day and being replaced by two other pilots for the next 24-hours. Therefore, only four workdays are required for each day of the year, resulting in 1,460 workdays needed to cover alert duty adequately. Those calculations are woefully inadequate when compared with the previous 27 years of alert funding described below.

The first instance of a regulation describing alert workday funding discovered through this research was published in 1983.⁶³ The Air Force regulation defined “aircraft alert manday requirements” of seven workdays per day, for two single-pilot aircraft on alert duty.⁶⁴ This

formula resulted in 2,555 workdays per year, fully accounting for three eight-hour workdays per pilot per day, plus an extra 365 workdays for administrative use. Reference the blue highlighted section in Appendix C, *Excerpt of Tactical Regulation 55-61*, on page 67, to read the workday text in the 1983 regulation.

Later, in a 1989 Air Force regulation for the National Guard, alert workdays were funded to the unit at the rate of three workdays per crew position per day (one workday per pilot per eight-hour shift).⁶⁵ In the case of two pilots on 24/7 alert duty, a unit supporting an alert mission would be provided 2,190 workdays (365 days x 3 workdays x 2 pilots) to cover alert duty. In other words, every eight-hour period of duty was funded by a military workday. All units supporting alert were provided additional “management contingency funding” workdays calculated by an additional 0.25 workdays per crew position, per aircraft, per day (183 workdays in the case of two pilots). Units supporting a detached alert site were funded with an additional 0.25 workdays per crew position per aircraft per day (an additional 183 workdays), which helped account for travel time to and from the alert detachment, among other potential contingencies.⁶⁶ Reference the blue highlighted section in Appendix D, *Excerpt of National Guard Regulation 55-1*, on page 69, to read the workday text in the 1989 regulation. Using the programming logic described above, an alert unit, with two aircraft on alert, would be allocated 6.5 workdays per day (2,373 workdays) in the case of a home-station alert site or seven workdays per day (2,555 workdays) in the case of a detached alert site.

In the 1997 revision of the ANG Alert Resource Management instruction, the regulation again declared that units performing immediate-response alert would “be allocated 3.25 alert workdays per alert crew member per alert duty day” in the case of home-station alert sites, and “3.50 alert workdays per alert crew member per alert duty day” for detached alert sites.⁶⁷ The

September 2001 revision of the ANG Alert Resource Management instruction provided identical guidance for workday allocations at the rate of 3.25 and 3.5 workdays as described above.⁶⁸

However, after the attacks on the World Trade Center and the Pentagon in 2001 on September 11th, funding levels for alert duty were increased to address the increased alert posture around the country. Air Force planners funded the alert mission using AFI 38-series manpower models at the rate of five fulltime authorizations for each 24-hour position, per year. That calculation was derived by accepting that an Airman, under normal workweek requirements, is available for duty for 150.7 hours in each month.⁶⁹ A 30-day month consists of 720 hours of duty for each duty position; therefore, each duty position requires five fulltime authorizations to cover the requirement adequately. In the case of two pilots on alert, this calculation (1,440 hours divided by 150.7 hours per person) resulted in ten AGR-equivalent positions allocated to the unit (3,650 workdays per year). Units assigned a detached alert site were provided twelve AGR-equivalent resources, accounting for travel costs to the detached alert site. In the case of home-station alert, ANG planners offered six AGR authorizations and four years of workdays to each of the units but allowed them to tailor the ratio of AGR and workdays to suit their specific needs.

Section III – Analysis

Analysis of “3 for 1” Scheduling and Standby Duty Guidance

News reports at the time of the 2010 audit vilified Fresno pilots by suggesting criminal and unethical “3 for 1” compensation had been occurring. An example of a “3 for 1” compensation could happen on a five-day tour of continuous military duty at the alert facility in which the military member is provided 15 days of orders for performing 120 hours of alert duty. Another example of “3 for 1” scheduling could occur with a pilot on a 24-hour shift starting on Saturday and ending on Sunday. Under guidance existing at the time of the 2010 audit, the pilot on a 24-hour shift of alert duty would have earned a set of orders lasting three days.

When describing alleged “3 for 1” violations in the nationwide audit, the report declared that the cause of pilots earning improper pay was due to their “non-adherence to applicable law, guidance, and regulations.”⁷⁰ The pilots *were* following applicable law, guidance, and regulations in their employment of the “3 for 1” and standby day scheduling method for alert duty. The following paragraphs describe the direction available to the pilots, as well as the history leading to the guidance as written at the time of the audit.

The oldest guidance for the alert mission discovered during this research existed in Tactical Regulation (TACR) 55-61, *Air National Guard Air Defense Alert*, dated 7 October 1983 and National Guard Regulation (NGR) 55-1, *Air National Guard Alert Management*, dated 1 October 1989. These documents were published by the Department of the Air Force to regulate the National Guard in their performance of the alert mission. Neither TACR 55-61 nor NGR 55-1 directed “3 for 1” compensation for an individual as succinctly as described in later alert guidance published in 1997, 2001, 2005, and 2010. However, by understanding the 13 years of clear direction found in following publications, glimpses of the allowance for “3 for 1”

compensation and standby days may be observed as regulatory guidance during the six years in which TACR 55-61 was in force and the eight years in which NGR 55-1 was applicable. See the highlighted sections in Appendix C, *Excerpt of Tactical Regulation 55-61*, on page 67, and Appendix D, *Excerpt of National Guard Regulation 55-1*, on page 69, to view the relevant guidance in context.

Air National Guard Instruction (ANGI) 10-203, *ANG Alert Resource Management*, guides Air National Guard pilots who perform the alert mission. The first publication of ANGI 10-203 (replacing NGR 55-1, 1 October 1989) occurred in 1997. In this version, “3 for 1” compensation was directed:

Individual Compensation. An individual performing a 24-hour period of hard alert, with at least 8 hours on each calendar day, will be compensated 1 alert workday for each calendar day and will accrue 1 standby alert workday. For extended alert periods, beyond 24 hours, which start at 0001L, an individual will be compensated 1 alert workday for each calendar day and will accrue 2 standby alert workdays.⁷¹

Stand-by Alert Workday. An alert workday earned during alert duty where the individual is not required to be on duty but must be available for recall at any duty location within 12 hours.⁷²

ANGI 10-203, *ANG Alert Resource Management*, 1 July 1997

While the wording in the 2001 revision changed slightly from the 1997 version, the intent directing the purposeful scheduling of a pilot using “3 for 1” compensation and standby days remained intact:

For hard alert periods (either one day or extended periods) an individual will be compensated 1 alert workday (one 8 hour period) for each calendar day and will accrue 1 standby workday for each 8 hour period not covered by the compensated alert workday, (i.e. each 24 hour period results in 3 pay days).⁷³

Standby Alert Workday is an alert workday earned during alert duty where the individual is not required to be on duty but must be available for recall at any duty location within 12 hours.⁷⁴

ANGI 10-203, *ANG Alert Resource Management*, 28 September 2001

In the 2005 revision of the same instruction, the direction to guardsmen was essentially unchanged:

For hard alert periods (either one day or extended periods) an individual will be compensated one alert workday (one eight-hour period) for each calendar day and will accrue one standby workday for each eight-hour period not covered by the compensated alert workday, (i.e., each 24 hour period results in three pay days).⁷⁵

Standby Alert Workday—An alert workday earned during alert duty where the individual is not required to be on duty but must be available for recall at any duty location within 12 hours.⁷⁶

ANGI 10-203, *ANG Alert Resource Management*, 30 March 2005

Pilots who were accused of unlawful “3 for 1” and standby duty compensation during the 2006 to 2010 audit period had been relying on the guidance listed above. The 2010 revision of the same Air National Guard Instruction also directed “3 for 1” and standby workday compensation as a tool for alert scheduling:

A hard alert (Response Posture Immediate) duty period is 8 hours. An individual may be compensated a workday for each 8 hour duty period. Compensated days that do not fall on the calendar days of the alert duty will be standby workdays.⁷⁷

Standby Alert Workday— An alert workday earned during alert duty where the individual is not required to be on duty but must be available for recall at any duty location within 12 hours.⁷⁸

ANGI 10-203, *ANG Alert Resource Management*, 9 March 2010

To be clear, each of the Air National Guard publications above began with the statement “By order of the Chief, National Guard Bureau” because they were fully-vetted, regulatory guidance for guardsmen. Readers familiar with the staffing process used for publishing official guidance by Air Force major commands and the National Guard Bureau will recognize that these rules were not published by ill-informed staff members. Various staff entities, including the National Guard Bureau legal office, would have exercised their opportunity to comment on the

lawfulness of the guidance before the original ANGI 10-203 publication in 1997 and its three revisions in 2001, 2005, and 2010. Following the 2010 audits, the 2012 revision of the alert management instruction removed all references to “3 for 1” scheduling and standby alert workdays.⁷⁹ The 2012 version of ANGI 10-203 is the current guidance for the ACA mission and is now over seven years old.

Despite the overwhelming evidence of at least 13 years of explicit guidance directing the employment of “3 for 1” compensation and standby duty as the scheduling tool for alert operations, NGB-IR auditors recommended that a select group of fighter pilots be *individually* levied debts for all standby duty pay earned during the audited timeframe.⁸⁰ However, senior ANG leadership countered that the pilots were acting in good faith and were following the guidance provided in Air National Guard instructions, and therefore, recommended no recoupments of funds against individual pilots.⁸¹

Because NGB-IR maintained the view that “3 for 1” compensation was unlawful, they recommended the initiation of recoupment actions against individual ANG pilots rather than suggesting that NGB leadership provide a group solution using the full weight of the National Guard Bureau to fight on behalf of their military members.⁸² As a direct result of NGB-IR’s recommendations, the Chief of the National Guard Bureau directed the initiation of recoupment actions against individual pilots for standby duty pay earned, although the pilots had followed the guidance published in an Air National Guard Instruction.⁸³ The audit team should have accepted that the accused pilots were following directions “by order of the Chief, National Guard Bureau” and offered other solutions to this perceived problem.⁸⁴

Critics of this analysis argue that there is no way for a military member on a short-tour (fewer than 31 days) of orders to lawfully earn compensation on a day in which their presence

was neither required nor expected, as would be the case on a standby duty day. However, the next section of the analysis will address their potential criticism.

Analysis of Compensation on Days in Which the Member Does Not Report for Duty

Much of NGB-IR's discussion of "3 for 1" and standby duty in the audit report centered on their claim that pilots were often paid with no expectation to report for duty. A useful example of "3 for 1" in practice may be found during an alert shift over the weekend in which a pilot performs 24-hour alert duty from Saturday to Sunday and receives a third day of orders with no expectation to report for duty on Monday. In this regard, pilots relied upon published Air National Guard Instructions (described above) as guidance, which detailed the use of the standby day as a method to compensate pilots for extended shifts of immediate-response alert duty. NGB-IR's claim prompts one to ask the question: besides the explicit approval in the 13 years of ANGI 10-203 direction detailed above, are non-report days ever compensated as paid workdays for short-duration orders in the National Guard or the Department of Defense? Several examples below indicate that the answer is yes.

Besides the Alert Management regulations previously discussed, the oldest evidence authorizing pay on non-workdays uncovered through this research was found in a 1997 version of an Air National Guard Instruction (ANGI), which regulated the performance of military workdays in the Air National Guard. In describing the use of Special Training (ST) active duty workdays, the instruction declared that "extended orders may be required for particular missions (e.g., ADSW [Active Duty for Special Work], counter-drug support) allowing individuals to remain on orders during nonworking days, such as weekends and holidays."⁸⁵ Using the guidance provided, a commander could place a member on a three-week tour of duty (as an example) while affording the member reasonable time away from the worksite, likely in the form

of weekends off. The follow-on revision of the same ANGI in 2009 and later certified as current in 2014 retained identical language supporting compensation for non-duty days of the week.⁸⁶

Also in the 1997 version of the ANGI, a description of expected duty performance for Annual Training (AT) days was provided which implied that duty could be compensated on non-duty days: “If home station active service is performed after completion of the member’s required 15 days, the member will perform duty on each day of the active service tour.”⁸⁷ Logically interpreted, the sentence indicated that during the first 15 days, weekends could be compensated, non-report workdays.

The 2009 revision of the ANGI was slightly more explicit: “If home station active service is performed after completion of the member’s required 15 days, the member will perform duty on each day of the active service tour. Upon completion of the required 15 active duty days, the member will no longer be authorized to perform duty on a non-duty day unless the member is actually present for an 8-hour period.”⁸⁸ Clearly, the authors of this instruction contemplated periods of compensated non-duty. The 2009 version of this ANGI was certified as current in 2014.⁸⁹

Critics may argue that this is simply another example of the National Guard Bureau publishing guidance not in compliance with the law, and for which any compensation earned under this guidance should be recouped from the member. If true, where are the calls from NGB-IR, seeking to saddle thousands of ANG members with debt for compensation earned on non-report days authorized under the guidance described above?

In their audit report, while discussing the recoupment of pay from military technician pilots, NGB-IR declared that NGB must now take the “difficult steps of initiating the process and establishing any debts for monies that were erroneously paid, whether these were dual

compensation or the authority/stand-by pay in nature. As fiduciaries of the National Guard Bureau this step must be taken. The National Guard Bureau does not have the authority to absolve or waive these debts. However, it is our responsibility to initiate the recoupment process.”⁹⁰ It is unconscionable to impose a debt on individual members who performed work following the guidance provided by their leaders. Additionally, it is equally troublesome to fail to support them in their efforts to overturn their debts when the proximate cause of their alleged “unlawful” behavior was due to their following of published guidance.

The non-duty day compensation language is no longer present in the AT section of the 2019 revision of the ANGI described above. However, the underlying Department of Defense (DoD) Instruction describes the proper non-duty day compensation of AT orders for one category of military members. The example in current DoD guidance below illustrates that it is not unreasonable to expect periods of compensated non-report duty, even on a short-duration order.

(a) AT [Annual Training] for IMAs [Individual Mobility Assistants] or other Selected Reserve members not assigned to a unit organized to serve as a unit, and in training categories ordered to AD [active duty] for AT at headquarters, support organizations, or to activities not operating on Saturday, Sunday, or federal holidays, normally is limited to 12 days excluding travel time (i.e., from Monday of the first week through Friday of the second week). Such training may begin on any day of the week to maximize training opportunities or to support a training event or activity.⁹¹

In the case above, the member on AT orders over the weekend is compensated with a paid workday for each day in which there is no expectation to report for duty.

Are non-report days ever allowed for the type of orders in which ACA pilots are ordered to duty? The answer to this question is yes. ACA military orders are currently issued under 32 U.S. Code § 502(f). Recent guidance published by the ANG and NGB includes allowances for

compensation on days for which there is no expectation to report for duty. The Air National Guard Instruction for the management of training resources in the Air National Guard states:

Commanders will not amend/curtail or divide for multiple periods for any 32 U.S. Code § 502(f)-type order for the purpose of avoiding pay for typical non-duty days as per Chief National Guard Bureau Instruction (CNGBI) 1302.01, Guidance for Members Performing Duty Under the Authority of 32 USC§ 502(f).⁹²

This guidance reasonably compensates military members during their downtime on non-duty days of the week. The cited Chief National Guard Bureau Instruction, certified current in 2017, directs the same method of allowing compensation on non-duty days:

Commanders will not amend/curtail or divide for multiple periods for any 32 U.S.C. 502(f) order for the purpose of avoiding pay for typical non-duty days.⁹³

When pilots were provided standby days as compensation for extended shifts of duty performed, was it reasonable for military leaders to include paid downtime in the form of standby duty? This research indicates that it was fair to compensate them in their off-time. Of course, reasonable guidance and restrictions should be imposed on commanders who exercise this method of scheduling. That reasonable guidance was provided clearly in ANG instructions for alert management, detailed in the “3 for 1” and standby duty section above.

Another look is warranted here of the example of a five-day tour of continuous military duty at the alert facility in which the military member is provided 15 days of orders under the “3 for 1” construct. When evaluating the five-day tour, one realizes that military workdays are only provided for the 120 hours (5 days x 24 hours) of actual duty performed. Compare the period of orders required for a DSG shift-worker who follows a 40-hour workweek for three weeks, amounting to 120 hours of duty performed. In the DSG shift-worker case, three weeks of orders would likely start on a Monday, continue through two weekends, and end on a Friday of the third

week. The order duration for 120 hours of work and two paid weekends would be 19 paid workdays; four days more than the compensation received by an alert pilot performing an equivalent amount of actual duty.

The examples and analysis above should provide the reader with enough evidence to agree that the “3 for 1” scheduling and compensation method was a fair and reasonable method of compensation for immediate-response alert duty. This research recommends the reinstatement of “3 for 1” scheduling and standby duty status for extended shifts of alert.

Analysis of NGB’s “Dual Compensation” Interpretation

Because the term *dual compensation* was used extensively in the NGB-IR audit reports, this section includes their use of the term when applicable. However, as this research previously described, *incompatible service* is the appropriate term for the violation they intended to describe, while a dual compensation violation refers to a breach of the provisions in the Dual Compensation Act of 1964, found in 5 U.S. Code, Subchapter IV.

In their audit report of the Hawaii unit, published in 2015, auditors used the term “dual compensation” 95 times and included the word “incompatible” 13 times. Every one of those 13 “incompatible” usages occurred as a result of directly quoting the 1973 Comptroller General decision. To be clear, no dual-status military technicians were accused of violating the prohibitions found in 5 U.S. Code, Subchapter IV (Dual Compensation Act of 1964) during the timeframe covered by these audits.

Besides the Comptroller General decisions previously described in this research, several other National Guard Bureau documents addressed the concept of incompatible service after the landmark 1973 decision. Nine days after the February 1973 Comptroller General Decision B-133972 (also referred to as 52 Comp. Gen. 471) was published, the Chief of the National Guard

Bureau sent a message to the Adjutants General of all the states, Puerto Rico and the District of Columbia directing their adherence and uniform application of this new decision in all instances.⁹⁴

Later, in Change 1 to Technician Personnel Regulation (TPR) 990-2, dated 9 July 1984, the National Guard Bureau published a change known as B630.S9, directing the proper application of 52 Comp Gen 471.⁹⁵ See Appendix E, *B630.S9 Amendment to TPR 990-2*, found on page 72, to read the following text of the 1985 supplement allowing “first day” and “last day” allowances in context:

However, a technician may be granted a partial day of annual leave, leave without pay, or compensatory time off at the beginning or end of a period of absence for military duty to avoid being charged a full day of military leave for just partial day’s absence from technician duties (52 CG 471).⁹⁶

The B630.S9 change to TPR 990-2, above, was in force for 25 years until the first publication of TPR 630, *Absence and Leave*, 27 August 2010.⁹⁷ During the applicability period of TPR 990-2 and B630.S9 allowing civilian compensation before entering military control on the first day of an active duty period and payment for civilian service performed after release from military duty, the National Guard also published other guidance on this topic. The most explicit guidance for alert duty was published in 1990 as a permanent waiver to a restriction included in NGR 55-1, *Air National Guard Alert Management*, dated 1 October 1989. See Appendix F, *Permanent Waiver to NGR 55-1, Paragraph 1-10A*, found on page 73, to read the entire waiver message in its original Automatic Digital Network (AUTODIN) format. The message directed the purposeful scheduling of technicians with the following statements:

Commanders will utilize the following guidance in scheduling technicians for the performance of alert:

A period of air technician duty and an alert workday may be credited to an individual on the same calendar day under the following provisions:

Alert duty periods will be a minimum of eight hours in duration.

Technician duty periods may only be before and/or after alert duty periods. Technician duty periods may not [be] between alert duty periods performed on the same calendar day. Example – a technician may perform his/her technician duty until 1600 hours, then perform a period of alert duty from 1600 to 2400 hours. The technician may then perform another period of alert duty from 0000 to 0800 hours, and then perform technician duty starting at 0800 hours. Another period of alert duty may not be performed after 1600 hours on the second day without the technician being in an appropriate leave status for the technician duty period.⁹⁸

The guidance above was quite clear regarding the approved method for the proper scheduling of technicians on the first day and last day of a period of overnight alert military duty. When TPR 630 was published in 2010, replacing TPR 990-2, all references to the B630.S9 allowance for the first day and last day compensation were omitted except in disallowing its application toward state active duty.⁹⁹ The omission may seem problematic to advocates of first day and last day allowances. However, the federal fiscal law, in the form of three Comptroller General Decisions (1973, 1983, and 1987), remained the controlling guidance on this subject.

As of the date of this research project, the 1990 statement above was the last issuance of durable guidance, published in either an NGB regulation or ANG instruction, addressing civilian and military compatibility. After the 1990 change to NGR 55-1, all further guidance on this topic was promulgated through a series of policy memos, and in one case, through an email in 2010 purporting to be official guidance.¹⁰⁰ Several policy memos on this topic were issued over the last 15 years from the Technician Policy branch of NGB. These NGB-J1-TN memorandums, as they were called, were created on an irregular basis and often included conflicting guidance when compared with the underlying federal fiscal law they were attempting to describe.

The Department of Defense, Department of the Air Force, and NGB are consistent in their policies on the method used for the promulgation of guidance to their service members. Memos (referred to as notices by NGB) are to be used only for time-sensitive information, which

will be incorporated into an NGB Instruction or Manual.¹⁰¹ Memos at all levels of the DoD are to be effective for no longer than one year.¹⁰² The use of NGB-J1-TN memorandums (notices) as the accepted method for the promulgation of guidance directly led to NGB-IR's confusion on this issue. The coordination process involved in the publishing of guidance memorandums is limited, resulting in an increased potential for error, conflicting guidance, or unintended consequences.¹⁰³

Several memos regarding technician and military service were created by the Technician branch of the NGB to explain the effects of the underlying law on guardsmen. The earliest NGB memo addressing the subject of civilian technician and military service on the same calendar day uncovered during this research was dated 28 July 2004.¹⁰⁴ This memo and each of its superseding revisions on 23 March 2005, 21 March 2006, 16 May 2007, 24 May 2010, and 27 February 2015, referenced the underlying federal appropriations law, but at times, provided unclear direction for the application of the Comptroller General's clear guidance.^{105,106,107,108,109} The 2010 memo was so confusing in its description of the underlying law, that a "clarification email" was sent to a limited audience a few months later, further restricting the application of the underlying law.¹¹⁰ Auditors accepted the expired May 2010 memo and August 2010 "clarification email" as legitimate NGB guidance when they audited the Hawaii unit in 2014.¹¹¹

The confusion created by the disorganized way in which incompatible service guidance was promulgated to the field led to the following statement, written by auditors in their audit of the Hawaii unit, which included a complete misrepresentation of the federal fiscal law:

In summary, dual compensation, based upon the circumstances and provided proper leave is utilized, is allowable under certain conditions for military technicians performing active duty. However, allowable dual compensation is almost entirely tied to military technicians using proper civilian (technician) leave to receive their technician pay, not the performance of said technician duties (some first day exceptions noted by

the 1973 Comptroller General Decision). Specifically, the 1973 Comptroller General Decision states:

“... active duty ... is incompatible with civilian service, there is no entitlement ... to civilian pay without charge to the appropriate leave – military, annual, or LWOP [leave without pay] – for days subsequent to coming under military control, even though the duties of the military assignment were such that the member was able to perform civilian duty on those days.”¹¹²

Because the authors of the NGB audit report misrepresented the Comptroller General’s long and consistently held interpretation of the law, while simultaneously citing the landmark decision, one must assume that the audit team was confused by the ephemeral nature of NGB-J1-TN guidance. The auditors acknowledged the potential for as much in their report, and declared that “unfortunately, at times, conflicting, vague and/or ambiguous guidance has been issued by NGB-J1-TN.”¹¹³ In explaining their interpretation of the Comptroller General’s guidance, NGB-IR auditors attempted to nullify last day allowances (described in Section II of this research) in three pages of discussion.¹¹⁴ The following rebuttal to NGB-IR’s last day interpretation was included in an attachment to the Hawaii audit report, but was discounted by the auditors:¹¹⁵

The purpose of Internal Review’s discussion is to contend military technicians may not be compensated for civilian work performed after they exit military control on the last day of military orders. The entire discussion by Internal Review on this point is legally indefensible. Internal Review is attempting to find hidden meaning apart from the Comptroller General’s plain words and use this meaning to create a new legal standard. Trying to find hidden meaning in a legal opinion is risky in any case, but is especially pointless when the Comptroller General itself has interpreted 52 Comp. Gen 471 in several subsequent opinions and fully upheld the intent and active legal standard embodied in its plain words. See Comp. Gen. Opinion B-222967 (1987) and Comp. Gen Opinion B-211249 (1983)¹¹⁶

Despite the clear statement above seeking to correct their misinterpretation on this topic, NGB-IR was successful in advocating their position to the Chief of the National Guard Bureau,

that “dual compensation” violations had occurred at ACA sites around the country and erroneous payments must be recouped from the military officers.¹¹⁷

At the state level, the National Guard Bureau directs each of the individual state Human Resource Offices (HRO) to “issue regulatory guidance and administer and publicize the Absence and Leave Program IAW [in accordance with] all applicable Federal laws, regulations, and guidance.”¹¹⁸ When state HROs attempt to create local guidance on a topic with a history of confusing national-level direction, they are likely to publish conflicting advice to their employees and military members. See Appendix G, *Ohio National Guard HRO Policy Memo*, on page 74 to view an example of state-issued guidance on this topic. The new HRO guidance for Ohio guardsmen, published in July 2019, declares that the underlying federal law prohibits any civilian compensation for work performed after release of military control on the last day of military orders.¹¹⁹ The new Ohio policy misinterprets the federal appropriations law regarding last day compensation, described at length in this research report.

Because NGB’s incompatible service guidance was often conflicting and ambiguous, this research sought to determine the method used by other services to promulgate the application of federal fiscal law. Both the Air Force and Air Force Reserve guide their civilian employees on this subject in their respective personnel instructions. In the Air Force instruction for absence and leave, the direction for civilian employees clearly states the underlying federal fiscal law:

In addition, no leave is charged for the first day of the active duty tour if the employee is not required to report for military duty until after the civilian duty day ends, and no leave is charged for the last day of the active duty tour if the employee is completely released from active duty prior to the start of the next civilian duty day.¹²⁰

An Air Force Reserve Component Instruction provides similar guidance for civilian Reserve technicians, with additional helpful direction for the correct application of the law:

If on the first day of active duty, the member is not required to report for military duty until after the civilian duty day ends, no leave is charged for that first day of active duty. If the member is required to report for military duty on the first day of the period of active duty before the end of the civilian duty day, leave must be charged to cover the period of overlap with the civilian duty day.

If the member is completely released from active duty on the last of the consecutive days of active duty prior to the start of the civilian duty day, no leave is charged for the last day of active duty. If the member is released from active duty on the last day after the start of the civilian duty day, leave must be charged to cover the period of overlap with the civilian duty day.¹²¹

These two examples of clear and thoughtful interpretation and promulgation of the underlying federal appropriations law are models for implementation by the National Guard Bureau and are incorporated in the recommendation section of this research report.

Analysis of NGB's "Intervening Days" Interpretation

The federal law is clear that no civilian compensation may be earned for civilian work performed on days which are not the first or last days of an order to military duty.¹²² After reviewing the 2018 results of a working group created to evaluate the 2015 findings of dual compensation against Hawaii Air National Guardsmen, the Director of the Air National Guard invalidated NGB-IR's previous erroneous finding of violations regarding civilian payment for work performed on first and last days of alert military duty.¹²³ However, the working group results indicated that the operations branch of the ANG "could not discern an operational reason for scheduling back-to-back sets of two-day orders when the technician pilots could have been placed on a single, four-day military order."¹²⁴ Therefore, the working group recommended that the pilots should be required to return payments for civilian work performed between alternating nights on alert duty. To be clear, the nights of alert duty referenced were not back-to-back nights

of alert duty, such as might occur on a Monday and Tuesday night. The new “intervening days” interpretation addressed overnight alert duty, which would have occurred on a Monday and Wednesday night alert, for example. Fortunately, as represented by the Director’s actions described above, the National Guard Bureau now recognizes the lawfulness of civilian work on the first and last days on a set of military orders. However, this new “intervening days” interpretation by the ANG requires some analysis here before evaluating the effects of this interpretation later in this research.

Considering the dreadful effect caused by NGB-IR’s original improper interpretations, it would have been helpful if someone in the working group had asked the Hawaii unit to explain their “operational reason for scheduling back-to-back sets of two-day orders.” As discussed previously, *individual* members were indebted because of the scheduling decisions made by their military unit.

For an example of this schedule in practice, when technician pilots were ordered to overnight alert duty on a Monday night, and Wednesday night, they would perform their civilian technician duties on Monday, then work a period of alert duty starting at 1500 and would be completely released from military control at 0700 on Tuesday. They would then work in their civilian technician job for the remainder of Tuesday. On Wednesday, the technician would perform another day of civilian work until starting alert duty on a separate set of orders at 1500 on Wednesday. The pilot would be completely released from military alert duty at 0700 and would perform a full civilian workday on Thursday.

In the working group’s view, compensation for civilian work performed on Tuesday and Wednesday when overnight alert duty was performed on Monday and Wednesday nights would violate the spirit of the Comptroller General’s clear guidance that both forms of compensation

could only occur on first or last days of military orders. Presumably, the working group would have been satisfied with scheduled overnight alert duty on a Monday and Thursday night because there would have been a one-day break between the two sets of orders. But what benefit did the individual member achieve by *not* separating their orders by a day with no military obligation?

Recall from the Analysis of “Dual Compensation” section above that the last, durable guidance published by the National Guard on this subject occurred in 1990 as a permanent waiver to NGR 55-1. Refer to Appendix F on page 73 to review the guidance in context. The direction expressly prohibited civilian compensation on the second day if military duty was resumed after the civilian workday. On the second day:

The technician may then perform another period of alert duty from 0000 to 0800 hours, and then perform technician duty starting at 0800 hours. Another period of alert duty may not be performed after 1600 hours on the second day without the technician being in an appropriate leave status for the technician duty period.¹²⁵

The logical extension of this statement is that reentering military control on the third day did not affect second-day civilian employment. Because of the statement above and the historical practice of scheduling alert, schedulers knew to avoid scheduling technician pilots on back-to-back overnight alert duty.

Technician pilots did not schedule themselves for alert. Before the start of each month, each pilot provided the scheduler with their available periods for alert duty. When the technician indicated a willingness to perform up to two overnight periods of alert duty each week, the alert scheduler chose the best nights to maximize scheduling flexibility, while avoiding any back-to-back nights. The operational reason for scheduling back-to-back sets of two-day orders was to optimize the scheduling of all available pilots for the alert and flying training missions. The technician received no increased benefit by performing Monday and Wednesday overnight alert

duty (for example) when compared against Monday and Thursday overnight alert duty. The scheduler and the alert mission benefitted from the technicians' flexible availability. If there were any prior indications that civilian work on Tuesday and Wednesday (in this example) required two full days of leave, the technician would not have come in to perform the civilian workdays, or would not have provided the alert scheduler with the flexibility of as many periods of voluntary alert availability.

The Air Force Reserve Command instruction for Reserve technicians includes a sensible provision which allows for the creation of consecutive orders: "Multiple orders authorizing consecutive days of active duty must be approved at the Group Commander level or higher. Appropriate documentation certifying this approval must be maintained and available for review."¹²⁶

As stated previously, the decision to retroactively impose debt on members who were complying with the law is disappointing. The law allows compensation for both forms of employment on the first day and last day of military duty. In the example above, these were separate sets of orders published for distinct sets of alert duty for the benefit of the alert scheduler. Imposing a debt for the *appearance* of unlawful behavior should never be recommended to senior leaders. Allowing separate sets of alert orders for different shifts of overnight duty benefits the mission and adheres to the Comptroller General's incompatible service guidance.

Analysis of Crew Rest

In the NGB-IR audit reports, any civilian technician duty followed by military alert duty was deemed to be a violation of crew rest and flight duty period (FDP) rules because pilots would inevitably reach the end of their 12-hour FDP before the end of their military alert shift.¹²⁷

Alleged violations of crew rest and FDP rules were often a factor when technician pilots worked their typical eight to nine-hour civilian shift, followed by overnight military duty in the alert facility. Provisions in the alert crew rest supplements provide an opportunity to earn a new FDP after an eight-hour rest period in the alert facility. If unable to obtain enough crew rest before the end of the FDP, a pilot would declare “MSO” or mandatory scramble option as a method to manage risk on any potential fighter scramble.¹²⁸ See Appendix A, *Air Combat Command Alert Crew Rest Rules*, on page 63, to review the complete guidance on this subject. Declaring MSO would ensure higher-echelon authorities understood that pilots did not meet typical rest requirements or that the weather at the alert facility was worse than would usually be required for a training mission, for example.¹²⁹ However, pilots were still in a valid status on alert and able to respond to an actual alert launch order. Furthermore, because the immediate-response alert mission is performed in a designated crew-rest facility, appropriately rested pilots end their alert shift with a new 12-hour FDP available for flying training or other required taskings.¹³⁰

In 2010, when auditors assumed they detected violations of pay and crew rest rules at the five audited alert sites, the Director of the Air National Guard published an *All States Memo*, creating additional rules including limits on normal alert crew rest requirements.¹³¹ Lieutenant General Wyatt’s memo directed 12 hours of mandatory crew rest before starting a scheduled alert duty period and required 12 hours of rest following alert periods lasting at least 48 hours.¹³² Alert pilots across the country interpreted this policy as a legal maneuver to prevent earning both civilian and military pay on the same calendar day rather than as a necessary response to ensure flying safety. This temporary policy significantly disrupted the scheduling of pilots in their regular flying training and their additional ACA mission. Under these restrictions, pilots could no longer perform their typically assigned AGR, technician, or DSG training duties before

starting alert duty. Schedulers could no longer employ technicians during the week unless they voluntarily agreed to use civilian leave for the entire day. AGRs could not be used for an overnight shift of alert during the week unless they were excused from duty during their regular workday. DSGs would not be able to study, fly, or perform simulator training before the start of alert duty. The temporary policy prevented even an hour of work at the squadron before starting alert duty. When compared against previous and current Air Force MAJCOM guidance, which incorporates all official duty into the 12-hour flight duty period, defects in the temporary guidance instantly appear.

Critics may claim that all the arguments listed above are solved when members start their day with alert duty as their first activity in the morning. However, if members are assumed to end alert duty eight hours later, the crew rest problem remains for pilots assigned to evening alert. When critics declare that all alert shifts should be scheduled as 24-hour shifts to alleviate the crew rest problem while disallowing “3 for 1” compensation, DSG and technician volunteerism for alert duty declines because it is unreasonable to require 24 hours of work for what can reasonably be described as 16 hours of pay (two calendar days of orders).

These crew rest and FDP interpretations were more restrictive than the MAJCOM policy in force at the time, or the guidance of today. While Lieutenant General Wyatt’s 2010 *All States Memo* expired on its own terms “one year from the date of publication unless sooner rescinded or superseded,” in 2015, NGB-IR based their accusations of crew rest violations in Hawaii on that expired policy.¹³³ Nine years after publishing Lieutenant General Wyatt’s *All States Memo* in 2010, the misguided NGB crew rest policy continues to have a deleterious effect on ACA operations throughout the country. In one example in July 2019, the Human Resource Office of the Ohio National Guard published crew rest rules for alert duty for Ohio Air Guardsmen, which

closely resemble the restrictive and expired policy from NGB in 2010.¹³⁴ In an attempt to provide clarity and guidance, the Ohio policy creates unnecessary restrictions on Ohio guardsmen who perform alert duty and who would otherwise be bound by clearly-crafted Air Combat Command (ACC) alert crew rest policies.¹³⁵

Analysis of Compensatory Time Off for AGRs

While not specifically addressed in the dual compensation audits, guidance regarding compensatory time should be discussed to help clarify all factors associated with alert duty scheduling. The ANG instruction which governs AGR scheduling includes a statement regarding compensatory time, which is unsupported by the Air Force or Department of Defense guidance. The statement claims that “AGR Airmen are available for duty 24 hours a day, seven days a week and therefore, compensatory time off for duties performed in excess of established working hours is not authorized.”¹³⁶ Using the words “and therefore” alters the meaning of the first part of the sentence to imply that AGR Airmen could be ordinarily employed for 24 hours rather than a more logical connotation that Airmen may be assigned duties during irregular hours on any day of the week.

The ANG Instruction continues by stating that “However, Airmen who earn the privilege may be granted a special pass IAW [in accordance with] AFI 36-3003, *Military Leave Program*.”¹³⁷ In reviewing AFI 36-3003, the instruction explicitly declares that military members may earn a special pass for “compensatory time off” which should, therefore, lead the reader to question whether the ANG intends to place additional restrictions on compensatory time off for extra work.¹³⁸ The conflicting ANG statement that compensatory time is “unauthorized” rather than “not automatic” is either in error or is misguided.

Section IV - Discussion of Alternatives

A typical fighter squadron conducting home-station alert, consisting of approximately 30 pilots, attempts to employ all available pilots in the performance of their unit's assigned alert mission. Squadron-level schedulers seek methods to maximize the equitable distribution of the alert mission burden on all available pilots. Before the start of each month, fighter squadrons solicit pilots' periods of availability for the alert missions through a bid-sheet or another similar scheduling tool.

Generally, DSGs and military technicians are scheduled first, to the maximum extent of their availability or their desires because they provide additional, funded manpower to the alert mission with minimal degradation to the regular flying training mission. Next, because AGRs and active duty Airmen "are available for duty 24 hours a day, seven days a week," they are scheduled to fill any remaining periods of alert duty not covered by DSGs or technicians. When utilizing AGRs and active duty Airmen for alert duty outside of regular duty hours such as could occur over a weekend, they are generally provided compensatory time off in acknowledgment of their additional service.

Additional restrictions placed on unit-level commanders significantly impact the scheduling of pilots to the ACA mission and should be minimized when feasible. The adverse effects of added restrictions were amplified at the Fresno unit because they were responsible for the simultaneous execution of the ACA mission at two separate alert locations. Selectively implementing rule changes will affect members in different duty statuses, and therefore, this necessitates a discussion of the impacts realized by various scheduling restrictions.

Scheduling Effects of “3 for 1” and Standby Day Allowance or Prohibition

This research considered the scheduling effects of either allowing or prohibiting the “3 for 1” and standby day method of scheduling. Fully compensated pilots provide their maximum availability. When reducing compensation to levels below what is considered “normal” by the Air Force, volunteerism is reduced accordingly. Use of “3 for 1” and standby day compensation maximizes DSG and technician volunteerism for long shifts of alert. Although not investigated in this research, failing to provide adequate compensation while requiring extended shifts of duty is a likely contributor to job dissatisfaction and a decline in pilot retention.

Under the “3 for 1” method, workday costs are identical whether one, two, or three pilots are used to cover a 24-hour shift of alert duty. For example, on weekend alert duty, one person could fill one of the two pilot assignments for the 48 hours of weekend duty, earning six workdays of orders and pay under “3 for 1” scheduling. Alternately, four people could be used to cover the same duty with six workdays: one pilot on for 8 hours on Saturday, one pilot on for the 16-hour Saturday overnight shift, one pilot on for 8 hours on Sunday, and another pilot on the 16-hour Sunday overnight shift. However, when considering that ACA alert duty requires two pilots continuously, preventing “3 for 1” scheduling requires up to eight pilots to cover duty that could be filled by two, appropriately compensated DSG or technician pilots for the same workday cost.

Allowing “3 for 1” scheduling and standby duty is cost-neutral and increases scheduling flexibility and efficiency. Therefore, this research recommends its reimplementation as a scheduling tool for fair compensation of DSG and technician pilots.

Scheduling Effects of NGB-Imposed Restrictions to Alert Crew Rest Rules

This section of research considered the scheduling effects of NGB-imposed restrictions to established MAJCOM-level rules. Imposing additional restrictions on established MAJCOM-supplemented crew rest guidance (such as were published by Lieutenant General Wyatt in 2010 or by the Human Resource Office of the Ohio National Guard in 2019) reduces the ability for pilots to volunteer for alert or squadron duty.

Declaring that “aircrews require at least 12 hours of official duty crew rest immediately prior to the scheduled alert duty period” is overly restrictive.¹³⁹ That statement prevents AGRs, technicians, and DSGs from performing any work before starting the alert duty period. Critics argue that someone should, without exception, begin alert duty fully rested. However, a simple analysis between two examples should clear any confusion raised by this criticism:

Pilot one starts 24-hour alert duty at 0700 after obtaining a 12-hour rest period. The pilot performs duty at the alert facility, including studying, responding to work emails, and preparing for a meeting scheduled for the following day. At 1500, pilot one has been on duty for eight hours and will be on alert duty for 16 more hours.

Pilot two starts squadron duty at 0700 after obtaining a 12-hour rest period. The pilot performs duty at the squadron, including studying, responding to work emails, and preparing for a meeting scheduled for the following day. The squadron pilot then begins overnight alert duty at 1500. At 1500, pilot two has been on duty for eight hours and will be on alert duty for 16 more hours.

The physical readiness of both pilots for the remainder of their overnight shift of alert duty at 1500 is identical and should be treated as such. The temporary Ohio Human Resource Office policy described previously would declare that pilot two was unfit and ineligible for

overnight alert duty while the current MAJCOM supplements include reasonable provisions to employ pilot two on alert duty at 1500 after having started their day in the squadron at 0700.

The Air Force supplements for alert duty crew rest account for the duty schedules uncovered through this research and do not require further supplements. This analysis resulted in a recommendation that NGB and the various states should accept current Air Force MAJCOM alert crew rest guidance as proper and controlling for the ACA mission.

Scheduling Effects of NGB-Imposed Restrictions to “Incompatible Service” Laws

This section of research considered the scheduling effects of NGB-imposed restrictions to “incompatible service” laws. As discussed in Sections II and III above, the federal fiscal law is clear that both civilian and military compensation may be earned for civilian work performed before entering military control and for civilian work performed after being released from military control on the first and last days of a set of military orders. Agencies, such as the National Guard Bureau do not have the authority to reduce the entitlement provided by law but may impose restrictions on the scheduling of both forms of duty, effectively preventing the receipt of both types of compensation.

When NGB prevents the scheduling of civilian work before entering military control on the first day or after release from military control on the last day of a set of military orders, they significantly hinder technician volunteerism for duty. The technician has two distressing options in this case: the technician will not volunteer for the required additional military duty, or the technician will be forced to use a full day of civilian leave before and after the alert duty. In the second case of being required to use leave, the technician will not perform their civilian work for the day because they are on leave, or they will come in and work their civilian day while

forfeiting leave they would otherwise use for actual time away from work. The result here is that technicians will refrain from maximally participating in the alert mission.

After NGB-IR revealed their restrictive interpretation of incompatible service rules in 2014, the technicians in the Hawaii Air National Guard ceased volunteering for overnight alert duty during the week. This scheduling restriction led to a corresponding burden on others to perform the mission in their place. Neither the unit nor the National Guard realized any benefit from the imposition of unnecessary scheduling restrictions on established incompatible service laws. Technicians no longer volunteered for a Sunday night alert shift ending at 0700 on Monday morning, because that schedule would require a full day of civilian leave on Monday. If a technician did perform the Sunday overnight alert duty, the technician would return home on Monday morning on leave status. The unit would experience a corresponding loss of productivity and degradation of the regular flying training mission because of the technician's absence.

When NGB allows the purposeful scheduling of civilian work before entering military control on the first day or after release from military control on the last day of military orders, they increase scheduling flexibility for the alert mission and ensure fair compensation as the federal appropriations law provides. The unit benefits by the increased availability of technician pilots for the alert mission, and the technician's continued performance in their civilian capacity during the day. This research recommends promulgating incompatible service guidance allowing technicians to fully participate in their unit's ACA mission as the federal appropriations law allows.

Scheduling Effects of NGB-Imposed Restrictions on Back-to-Back Sets of Orders

The NGB has the authority to regulate the scheduling of alert duty. They also have the power to prohibit the purposeful creation of separate sets of orders for different periods of alert

duty as were previously done at the Hawaii unit until their audit in 2014. In a memo to the Director of the Air National Guard, Brigadier General Meyeraan stated that her working group “could not discern an operational reason for scheduling back-to-back sets of two-day orders when the technician pilots could have been placed on a single, four-day military order.”¹⁴⁰ Admittedly, the working group shared the Air Force Office of the Judge Advocate General's opinion that although there was no particular legal objection to a scheduling practice such as this, it created a “strong appearance of an improper attempt to circumvent the general principle of incompatibility.”¹⁴¹ However, this research revealed an operational reason for the purposeful scheduling in this manner, which benefited the alert and flying training missions of the unit.

Recall that overnight alert duty from 1500 on the first day until 0700 on the second day requires a military order lasting two days. When a technician performs their civilian work and overnight alert duty on a weekday, they are required to use leave from their civilian work for any period of overlap with their military orders. Without NGB's prohibition of back-to-back orders, if the technician performed overnight alert duty on a Monday night and Wednesday night, they would be issued two sets of orders, each lasting two days. One set would cover Monday to Tuesday; the other would cover Wednesday to Thursday. The technician would be released entirely from the first period of military control at 0700 on Tuesday morning and would not reenter military control until the second period of orders at 1500 on Wednesday afternoon, 32 hours later. The civilian technician would be fully compensated for their civilian work as well as their military duty and would provide their maximum availability to the alert mission and unit training mission.

Under the same schedule above, but with the back-to-back order interpretation requiring a single 4-day order, the unit training mission ultimately suffers a loss in capability. Consider

that the technician would be required by law to expend two full days of civilian leave (or leave without pay) for the Tuesday and Wednesday civilian workdays because they would be “intervening days” as described by the Comptroller General.¹⁴² Under this forced-leave scenario, the civilian technician would take those two civilian days off from work, resulting in the technician not performing their daily technician duties, and a corresponding degradation to the unit’s regular flying training mission. Critics argue that the civilian technician described would be legally allowed to perform their civilian duties on Tuesday and Wednesday between their alert duty periods. However, it is unreasonable to require someone to perform extra work while also requiring their expenditure of leave. The effects caused by requiring a single, continuous order for two separate periods of overnight alert duty results in the technician not providing their maximum availability as frequently as the law would otherwise allow.

NGB performs a vital role in ensuring their employees’ compliance with federal appropriations law. Allowing commanders the authority to create separate sets of orders does not violate the law. It allows for maximum flexibility and efficiency for the unit scheduler at no additional cost to the unit. Separate sets of orders for entirely different periods of duty permit technicians to fully participate in the alert mission, with a corresponding reduced burden on other members in the squadron.

Section V - Conclusions

Each unit responsible for the performance of Aerospace Control Alert (ACA) has a finite number of pilots qualified to perform this critical, no-fail mission. Making use of all available pilot resources while complying with the law should be the overall scheduling goal of military and civilian leaders. Therefore, the National Guard Bureau (NGB) should eliminate unnecessary scheduling restrictions on squadron commanders who are responsible for scheduling ACA duty in their units.

The following nine recommendations will help allow all available pilots to participate in alert duty in accordance with the law and will help remedy the suffering experienced by pilots who were accused of wrongdoing while lawfully performing the mission.

Recommendations to Address Technician and Military Duty on the Same Day

The NGB should clearly promulgate guidance to all states regarding the lawfulness of civilian and military service on the first and last days of a set of military orders.

Recommendation 1. The NGB should cease using the misleading term “dual compensation” unless addressing any of the prohibitions found in 5 U.S. Code Subchapter IV, §§ 5531-5538. In its place, NGB should use the term “incompatible service” when describing conflicting civilian and military service as the Comptroller General has consistently done since 1938. None of the 5 U.S. Code subsections listed pertain to civilian and military incompatibility. Instead, the *Dual Compensation Act* applies restrictions to earning pay from more than one civilian government position beyond 40 hours per week.

Recommendation 2. The NGB should clearly inform all technicians (not only pilots in the performance of ACA) of their entitlement to compensation for civilian work

performed on the first day and last day on a set of military orders as has been described in this research. Incorporate this guidance in existing NGB-level instructions rather than through emails, NGB policy memos, or individual state memos. As an option, include the wording in Chief National Guard Bureau Instruction (CNGBI) 1400.25, Vol. 630, *National Guard Technician Absence and Leave Program*, by matching the phrasing found in Air Force Instruction (AFI) 36-815, *Absence and Leave*:

How Military Leave Is Charged... In addition, no leave is charged for the first day of the active duty tour if the employee is not required to report for military duty until after the civilian duty day ends, and no leave is charged for the last day of the active duty tour if the employee is completely released from active duty prior to the start of the next civilian duty day.¹⁴³

Alternately, NGB could use the wording employed by the Reserves in Air Force Reserve Command Instruction (AFRCI) 36-803, *Air Reserve Technician Time and Attendance Procedures and Audits*:

If on the first day of active duty, the member is not required to report for military duty until after the civilian duty day ends, no leave is charged for that first day of active duty. If the member is required to report for military duty on the first day of the period of active duty before the end of the civilian duty day, leave must be charged to cover the period of overlap with the civilian duty day.

If the member is completely released from active duty on the last of the consecutive days of active duty prior to the start of the civilian duty day, no leave is charged for the last day of active duty. If the member is released from active duty on the last day after the start of the civilian duty day, leave must be charged to cover the period of overlap with the civilian duty day.¹⁴⁴

Recommendation 3. The NGB should provide group commanders the authority to allow multiple orders for consecutive days of active duty as the Air Force Reserve has done.¹⁴⁵ This sensible provision, when used for the best interests of the unit, will

improve technician availability for military and civilian duty while complying with federal fiscal law.

Recommendations to Address “3 for 1” and Compensatory Time

The NGB and Air National Guard (ANG) should acknowledge that military members are not expected to work without appropriate compensation. Compensation should be in the form of compensatory time-off or additional pay for work beyond regular duty hours. For AGR members, compensation for duty exceeding an average of 40 hours in a week should be in the form of compensatory time-off. For drill status guardsmen (DSG) and technicians, the NGB should strive to provide proper compensation for tours of alert duty longer than 16 hours in duration.

Recommendation 4. The NGB should revise Air National Guard Instruction (ANGI) 36-101 to remove the statement that “compensatory time is not authorized” for Active Guard and Reserve (AGR) members.¹⁴⁶ The statement that “AGR Airmen are available for duty 24 hours a day, seven days a week” should not imply that a member can or should work for 24 hours a day without limitation.¹⁴⁷

Recommendation 5. The NGB should reinstate the allowance of “3 for 1” scheduling and standby duty compensation. This research demonstrates that providing three workdays for 24 hours of duty is appropriate, with scheduling management at the lowest level of command. As an example, when a DSG member is required to perform five days of 24-hour alert duty at a deployed site, the local commander should be authorized to provide an appropriate level of compensation to that member, likely as a set of orders lasting approximately 15 days plus any workdays to account for required travel. The method described in alert policies

since 1983, and later in 1989, 1997, 2001, 2005, and 2010 using standby workdays is reasonable and should be reimplemented.

Recommendation 6. If the NGB is dissatisfied with the historical method used to pay for 24-hour ACA duty periods, they should convene a working group incorporating the views of all ACA units to determine another way to provide just and lawful compensation to DSGs, technicians, and AGRs on extended alert duty.

Recommendations to Address Crew Rest

Crew rest rules for ACA pilots should be clear and unambiguous. Air Force and Major Command (MAJCOM) Instructions provide clear and thoughtful guidance in this area and do not require additional supplements.¹⁴⁸ Rules generated by the human resource offices of NGB or the various states create confusion and fail to consider the thoughtful evolution of Air Force guidance found in Air Combat Command (ACC) and Pacific Air Forces (PACAF) supplements to AFI 11-202, Volume 3, *General Flight Rules*. The following recommendation should be implemented to address crew rest guidance problems experienced by fighter pilots who perform the ACA mission:

Recommendation 7. The NGB should rescind NGB, ANG, and state-issued human resource office (HRO) supplemental rules for crew rest for alert duty. The guidance provided by ACC and PACAF is appropriate for the ACA mission.

Recommendations to Assist Pilots Accused of Wrongdoing

NGB Internal Review's (NGB-IR) findings of wrongdoing against Fresno and other ACA pilots in their lawful performance of alert duty was disappointing and harmful. As this research revealed, ACA pilots were following the laws and rules published for their mission. Fortunately, after eight years of effort, every NGB-directed debt against Fresno pilots for "dual

compensation,” earning “3 for 1” pay, or for violating crew rest rules was overturned by the Defense Office of Hearings and Appeals (DOHA). Unfortunately, several of those pilots have already been issued career-ending Letters of Reprimand or Letters of Admonishment as a result of these audits. The Fresno wing commander was fired as a direct result of NGB-IR’s flawed logic and recommendations during the audit. As of October 2019, fighter pilots in Hawaii are still paying audit-derived debts for work lawfully performed, but which were counter to NGB-IR’s interpretation of the law. An Air National Guard pilot in Hawaii continues to receive calls from a collection agency attempting to recover a debt nine times greater than the value NGB recently declared was appropriate. What should be done to try to correct the wrongs in these matters?

Recommendation 8. The NGB should, without delay, support and assist pilots by coordinating with the Defense Finance and Accounting Service (DFAS) to invalidate and reverse all debts created for duty performed according to the law and ANG instructions, as this research described.

Recommendation 9. The National Guard Bureau should issue formal letters of apology to each pilot accused of wrong-doing by NGB-IR auditors in these circumstances. NGB-IR has a list of the names of the affected pilots stationed across the country. These affected Air National Guard officers would certainly appreciate any acknowledgment of NGB-IR’s contrition in these matters.

Implementing these recommendations will be a vital first step in regaining the full faith and confidence of the Air National Guard fighter pilots who perform the critical ACA mission in defense of their country.

Notes

¹ Charles Piller, “‘Double-dipping’ probe targets Air National Guard pilots in Fresno,” *Sacramento Bee*, 19 December 2010, <http://www.sacbee.com/news/investigations/article2573148.html>.

² Ibid.

³ Brig Gen Jessica Meyeraan, vice director, National Guard Bureau/J1, to Lt Gen L. Scott Rice, director, Air National Guard, memorandum, subject: Review of Recoupments of Technician Pay for Eight Hawaii Air National Guard Pilots Pursuant to NGB-IR Report Number 2014-021, 21 February 2018.

⁴ Ibid.

⁵ Jed Portman, “Investigating corruption in the California National Guard,” *Public Broadcasting Service (PBS)*, 25 February 2011, <http://www.pbs.org/wnet/need-to-know/the-daily-need/investigating-corruption-in-the-california-national-guard/7624/>.

⁶ Director, internal review to the adjutant general (TAG), California National Guard and United States property and fiscal officer, California National Guard, memorandum, subject: Quick Response Audit of ANG Compensation, California Air National Guard, 144th FW, Report Number 2010-004, 30 March 2012. (Obtained under the Freedom of Information Act from National Guard Bureau Office of Information and Privacy; author’s name redacted under FOIA, 5 U.S.C. § 552 (b)(6); requested 12 August 2017; received 2 August 2019).

⁷ Portman, “Investigating corruption in California.”

⁸ Charles Piller, “Grounded pilots raised to key posts in California National Guard,” *Sacramento Bee*, 11 March 2011, <http://www.sacbee.com/news/investigations/article2573222.html>.

⁹ Director, internal review to Lt Gen Harry M. Wyatt, III, director, Air National Guard, memorandum, subject: Quick Response Audit of ANG Compensation, Air National Guard, Report Number 2012-006, 14 December 2012. (Obtained under the Freedom of Information Act from National Guard Bureau Office of Information and Privacy; author’s name redacted under FOIA, 5 U.S.C. § 552 (b)(6); requested 12 August 2017; received 2 August 2019).

¹⁰ Ibid.

¹¹ Ibid.

¹² Director, internal review to Lt Gen Harry M. Wyatt, III, director, Air National Guard, memorandum, subject: Audit of ANG Compensation, Hawaii Air National Guard, Report Number 2014-021, September 2015. (Obtained under the Freedom of Information Act from National Guard Bureau Office of Information and Privacy; author's name redacted under FOIA, 5 U.S.C. § 552 (b)(6); requested 12 August 2017; received 2 August 2019).

¹³ Ibid.

¹⁴ Ibid.

¹⁵ National Guard Bureau, *Audit of Air National Guard Compensation Air National Guard*. Final Report Number 2010-006 (Washington, D.C.: National Guard Bureau, Internal Review, 14 December 2012), 48. (Obtained under the Freedom of Information Act from National Guard Bureau Office of Information and Privacy; requested 12 August 2017; received 2 August 2019).

¹⁶ LTC John Hyatt, deputy staff judge advocate, Hawaii Army National Guard, to Brig Gen Braden K. Sakai, commander, 154th Wing, memorandum, subject: Review of National Guard Bureau (NGB), Internal Review, Draft Report 2014-021, 30 July 2015. (Obtained under the Freedom of Information Act from National Guard Bureau Office of Information and Privacy; requested 12 August 2017; received 2 August 2019).

¹⁷ Gary Taylor v. 144th Fighter Wing; David S Baldwin; California Air National Guard; California Military Department; California National Guard; Defense Finance and Accounting Service; Mark Groves; Teresa McKay; Sami D Said; United States of America; Harry M Wyatt, in *United States Court Opinions*, Case 2:12-cv-02466-WBS-DAD, Document 62, (US District Court, California, 2013), 5-7.

¹⁸ Defense Finance and Accounting Service, memorandum, subject: FINAL NOTICE RE: Indebtedness to the United States Government, Account No. DEPKL08K7, 7 January 2019.

¹⁹ Brig Gen James C. Witham, deputy director, Air National Guard, to NGB-IR audit team, memorandum, subject: ANG Response (Recap) to NGB-IR Report 2012-006, 2 December 2012. (Obtained under the Freedom of Information Act from National Guard Bureau Office of Information and Privacy; audit team chief's name redacted under FOIA, 5 U.S.C. § 552 (b)(6); requested 12 August 2017; received 2 August 2019).

²⁰ National Guard Bureau, *Audit of ANG Compensation*, 87.

²¹ Defense Office of Hearings and Appeals, *Appeal Decision, DOHA Claim No. 2017-WV-01304*, (Arlington, VA: Department of Defense, 17 April 2017).

²² Lt Gen L. Scott Rice, director, Air National Guard, to director, DFAS-IN, memorandum, subject: New Validated Debt Amounts for Eight Hawaii Air National Guard Pilots Pursuant to NGB Audit Number 2014-021, 29 March 2018.

²³ Air Force Instruction (AFI) 11-202, Volume 3, Air Combat Command (ACC) Supplement, *General Flight Rules*, 3 October 2019, 15-16.

²⁴ Air Force Instruction (AFI) 11-202, Volume 3, *General Flight Rules*, 10 August 2016, 12.

²⁵ *Ibid.*, 12-13.

²⁶ *Ibid.*, 13.

²⁷ AFI 11-202V3_ACC Supplement, *General Flight Rules*, 15-19.

²⁸ *Ibid.*, 18.

²⁹ *Ibid.*, 18-19.

³⁰ *Ibid.*, 17.

³¹ Meyeraan to Rice, memorandum, 4.

³² Air National Guard Instruction (ANGI) 36-101, *Air National Guard Active Guard Reserve (AGR) Program*, 14 August 2014, 29.

³³ 37 U.S. Code § 1004 (1962).

³⁴ Department of Defense Instruction (DoDI) 1215.06, *Uniform Reserve, Training, and Retirement Categories for the Reserve Components*, 19 May 2015, 12.

³⁵ Dual Compensation Act of 1964, Public Law 448, 88th Cong., 2nd sess. (19 August 1964), 484-496.

³⁶ 5 U.S. Code § 5533 (2010).

³⁷ 5 U.S. Code § 5531 (2014).

³⁸ 5 U.S. Code § 5534 (1966).

³⁹ Comptroller General of the United States, *Decision B-133972, 52 Comp Gen 471, Matter of: Compensation and Leave Status as a National Guard Technician*, (Washington, D.C.: General Accounting Office, 5 February 1973).

⁴⁰ Comptroller General of the United States, *Decision B-211249, Matter of: George McMillan, Incompatible Service*, (Washington, D.C.: General Accounting Office, 20 September 1983).

⁴¹ Comptroller General of the United States, *Decision B-222967, Matter of: Schofield C. Ford - Military Leave - Pay for Civilian Services Performed*, (Washington, D.C.: General Accounting Office, 2 June 1987).

⁴² Comptroller General, *Decision B-222967*.

⁴³ Air National Guard Instruction (ANGI) 10-203, *Air National Guard (ANG) Alert Resource Management*, 9 March 2010, 3.

⁴⁴ Jeffrey Payne, “Optimizing Fire Department Operations Through Work Schedule Analysis, Alternative Staffing, and Nonproductive Time Reduction,” Naval Postgraduate School, Monterey, CA, September 2014, 3.

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⁴⁶ Air Force Instruction (AFI) 36-2619, *Military Personnel Appropriation Manday Program*, 18 July 2014, 11.

⁴⁷ ANGI 10-203, *ANG Alert Resource Management*, 9 March 2010, 3.

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⁵⁰ Air Force Instruction (AFI) 38-201, *Management of Manpower Requirements and Authorizations*, 30 January 2014, 97.

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⁵³ *Ibid.*

⁵⁴ Office of the General Counsel, *Principles of Federal Appropriations Law*, 4th ed., (Washington, D.C.: General Accounting Office, 2016).

⁵⁵ 31 U.S. Code § 3526 (1982).

⁵⁶ Comptroller General of the United States, *Decision A-51624*, 18 Comp. Gen. 213, (Washington, D.C.: General Accounting Office, 1 September 1938).

⁵⁷ Comptroller General of the United States, *Decision B-133972*, 49 Comp. Gen. 233, (Washington, D.C.: General Accounting Office, 14 October 1969).

⁵⁸ Comptroller General, *Decision B-133972*.

⁵⁹ Comptroller General, *Decision B-211249*.

⁶⁰ Comptroller General, *Decision B-222967*.

⁶¹ National Guard Bureau, *Audit of ANG Compensation*, 81.

⁶² Chief, military entitlement and compensation policy, National Guard Bureau, to National Guard Bureau Internal Review, memorandum, subject: NGB-IR ACA Recommendations Audit Report No. 2012-006, 19 November 2012. (Obtained under the Freedom of Information Act from National Guard Bureau Office of Information and Privacy; author's name redacted under FOIA, 5 U.S.C. § 552 (b)(6); requested 12 August 2017; received 2 August 2019).

⁶³ Tactical Regulation (TACR) 55-61, *Air National Guard Air Defense Alert*, 7 October 1983, 1-1.

⁶⁴ *Ibid.*

⁶⁵ National Guard (NG) Regulation 55-1, *Air National Guard Alert Management*, 1 October 1989, 4.

⁶⁶ *Ibid.*

⁶⁷ Air National Guard Instruction (ANGI) 10-203, *Air National Guard (ANG) Alert Resource Management*, 1 July 1997, 3.

⁶⁸ Air National Guard Instruction (ANGI) 10-203, *Air National Guard (ANG) Alert Resource Management*, 28 September 2001, 3.

⁶⁹ AFI 38-201, *Management of Manpower Requirements*, 98.

⁷⁰ National Guard Bureau, *Audit of ANG Compensation*, 24.

⁷¹ ANGI 10-203, *ANG Alert Resource Management*, 1 July 1997, 3.

⁷² *Ibid.*, 2.

⁷³ ANGI 10-203, *ANG Alert Resource Management*, 28 September 2001, 3.

⁷⁴ *Ibid.*, 2.

⁷⁵ Air National Guard Instruction (ANGI) 10-203, *Air National Guard (ANG) Alert Resource Management*, 30 March 2005, 3.

⁷⁶ Ibid., 5.

⁷⁷ ANGI 10-203, *ANG Alert Resource Management*, 9 March 2010, 3.

⁷⁸ Ibid., 6.

⁷⁹ ANGI 10-203, *ANG Alert Resource Management*, 22 February 2012.

⁸⁰ National Guard Bureau, *Audit of ANG Compensation*, 30-31.

⁸¹ Witham to NGB-IR audit team, memorandum.

⁸² National Guard Bureau, *Audit of ANG Compensation*, 30-31.

⁸³ Gen Frank J. Grass, chief, National Guard Bureau, to United States property and fiscal officers, memorandum, subject: Adjudication of Internal Audit of Aerospace Control Alert Mission, Air National Guard Compensation 2012-006, 12 December 2012, 11 August 2015.

⁸⁴ ANGI 10-203, *ANG Alert Resource Management*, 9 March 2010, 1.

⁸⁵ Air National Guard Instruction (ANGI) 36-2001, *Management of Training and Operational Support Within the Air National Guard*, 15 January 1997, 10.

⁸⁶ Air National Guard Instruction (ANGI) 36-2001, *Management of Training and Operational Support Within the Air National Guard*, 28 April 2014, 17.

⁸⁷ ANGI 36-2001, *Management of Operational Support*, 15 January 1997, 9.

⁸⁸ Air National Guard Instruction (ANGI) 36-2001, *Management of Training and Operational Support Within the Air National Guard*, 19 October 2009, 16.

⁸⁹ ANGI 36-2001, *Management of Operational Support*, 28 April 2014, 17.

⁹⁰ National Guard Bureau, *Audit of ANG Compensation*, 81.

⁹¹ Department of Defense Instruction (DoDI) 1215.06, *Uniform Reserve, Training, and Retirement Categories for the Reserve Components*, 11 March 2014, 35.

⁹² Air National Guard Instruction (ANGI) 36-2001, *Management of Training and Operational Support Within the Air National Guard*, 30 April 2019, 24.

⁹³ Chief National Guard Bureau Instruction (CNGBI) 1302.01, *Guidance for Members Performing Duty Under the Authority of 32 USC § 502(f)*, 12 July 2017, 2-3.

⁹⁴ Wayne A. Robertson, chief, office of technician personnel, for the chief, National Guard Bureau, to the adjutants general of all states, Puerto Rico and the District of Columbia, memorandum, subject: Comptroller General Decision B-133972, 14 February 1973.

⁹⁵ Technician Personnel Regulation (TPR) 990-2, Change 1, B630.S9, *Hours of Duty, Pay, and Leave*, 26 December 1985.

⁹⁶ Ibid.

⁹⁷ Technician Personnel Regulation (TPR) 630, *Absence and Leave Program*, 27 August 2010.

⁹⁸ Message, 191855Z SEP 90, chief of plans and operations division, National Guard Bureau, to commanders and directors of operations in address indicator groups 7325 and 7317, 19 September 1990.

⁹⁹ TPR 630, *Absence and Leave Program*, 7.

¹⁰⁰ National Guard Bureau, *Audit of ANG Compensation*, 11.

¹⁰¹ Chief National Guard Bureau Instruction (CNGBI) 5000.01A, *Chief of the National Guard Bureau Issuances*, 26 April 2017, 2.

¹⁰² Department of Defense Instruction (DoDI) 5025.01, *DoD Issuances Program*, 22 May 2019, 22.

¹⁰³ Air Force Instruction (AFI) 33-360, *Publications and Forms Management*, 1 December 2015, 53.

¹⁰⁴ Paula Shipe, chief, employment and pay division, National Guard Bureau, to the human resource officers of all states, Puerto Rico, the U.S. Virgin Islands, and the District of Columbia, memorandum, subject: Performance of Alert Duty by Military Technicians, 28 July 2004.

¹⁰⁵ Col Jimmy L. Davis, Jr., chief, office of technician personnel, National Guard Bureau, to the human resource officers of all states, Puerto Rico, the U.S. Virgin Islands, and the District of Columbia, memorandum, subject: Performance of Alert Duty by Military Technicians (TN-04-56), 23 March 2005.

¹⁰⁶ Col Jimmy L. Davis, Jr., chief, office of technician personnel, National Guard Bureau, to the human resource officers of all states, Puerto Rico, the U.S. Virgin Islands, and the District of Columbia, memorandum, subject: Performance of Alert Duty by Military Technicians (TN-06-14), 21 March 2006.

¹⁰⁷ Col William F. Kolbinger, chief, office of technician personnel, National Guard Bureau, to the human resource officers of all states, Puerto Rico, the U.S. Virgin Islands, and the District of

Columbia, memorandum, subject: Performance of Alert Duty by Military Technicians (TN-07-39), 16 May 2007.

¹⁰⁸ Col William F. Kolbinger, chief, office of technician personnel, National Guard Bureau, to the human resource officers of all states, the commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, and the District of Columbia, memorandum, subject: Intermixing of Technician Duty and Military Status (TN-10-11), 24 May 2010.

¹⁰⁹ Robert W. Tetrault, acting chief, office of technician personnel, National Guard Bureau, to all National Guard human resource officers, memorandum, subject: Intermixing of Technician Duty and Military Status, 27 February 2015.

¹¹⁰ National Guard Bureau, *Audit of Compensation Hawaii*, 19.

¹¹¹ *Ibid.*, 19.

¹¹² *Ibid.*, 18.

¹¹³ *Ibid.*, 19.

¹¹⁴ *Ibid.*, 20.

¹¹⁵ *Ibid.*, 29.

¹¹⁶ Hyatt to Sakai, memorandum, 4.

¹¹⁷ Grass to USPFOs, memorandum.

¹¹⁸ Chief National Guard Bureau Instruction (CNGBI) 1400.25, Vol. 630, *National Guard Technician Absence and Leave Program*, 6 August 2018, A-1.

¹¹⁹ Maj Gen John C. Harris, Jr., adjutant general, state of Ohio, memorandum, subject: HRO Policy #19-003, Intermixing of Technician and Military Status, 1 July 2019.

¹²⁰ Air Force Instruction (AFI) 36-815, *Absence and Leave*, 8 July 2015, 30.

¹²¹ Air Force Reserve Command Instruction (AFRCI) 36-803, *Air Reserve Technician Time and Attendance Procedures and Audits*, 24 June 2015, 13.

¹²² Comptroller General, *Decision B-222967*.

¹²³ Rice to director, DFAS-IN, memorandum.

¹²⁴ Meyeraan to Rice, memorandum, 9.

¹²⁵ Message, 191855Z SEP 90.

¹²⁶ AFRCI 36-803, *Reserve Technician Attendance Procedures*, 14.

¹²⁷ National Guard Bureau, *Audit of Compensation Hawaii*, 26-27.

¹²⁸ AFI 11-202V3 ACC Supplement, *General Flight Rules*, 16-17.

¹²⁹ Ibid.

¹³⁰ Ibid.

¹³¹ Lt Gen Harry M. Wyatt, III, director, Air National Guard, to all states, memorandum, subject: Alert Duty Status Performance and Certification of Standby Workdays, and Immediate Stop Payment Action (P10-0013), 2 July 2010.

¹³² Ibid.

¹³³ National Guard Bureau, *Audit of Compensation Hawaii*, 26.

¹³⁴ Harris to Ohio guardsmen, memorandum.

¹³⁵ AFI 11-202V3 ACC Supplement, *General Flight Rules*, 15-17.

¹³⁶ ANGI 36-101, *Active Guard Reserve Program*, 29.

¹³⁷ Ibid.

¹³⁸ Air Force Instruction (AFI) 36-3003, *Military Leave Program*, 11 May 2016, 51.

¹³⁹ Wyatt to all states, memorandum.

¹⁴⁰ Meyeraan to Rice, memorandum, 9.

¹⁴¹ Ibid., 6.

¹⁴² Comptroller General, *Decision B-222967*.

¹⁴³ AFI 36-815, *Absence and Leave*, 29-30.

¹⁴⁴ AFRCI 36-803, *Reserve Technician Attendance Procedures*, 13.

¹⁴⁵ Ibid., 14.

¹⁴⁶ ANGI 36-101, *Active Guard Reserve Program*, 29

¹⁴⁷ Ibid.

¹⁴⁸ AFI 11-202V3 ACC Supplement, *General Flight Rules*, 15-17.

Appendix A

Air Combat Command Alert Crew Rest Rules¹

2.5. Alert Duty. MAJCOMs establish alert and compensatory periods in keeping with mission requirements and risk management (RM).

2.5.1. (Added-ACC) Alert Duty:

2.5.1.1. (Added-ACC) Alert Scheduling. Do not schedule an aircrew member for more than 7 days of continuous alert duty, exercises or training. Aircrews scheduled for a 7-day alert tour should be allowed a period of free time away from the alert facilities during their tour. Following a 7-day tour, an aircrew must have a minimum of 24 hours rest time away from the alert site before beginning a subsequent alert tour. If aircrew swap-out is delayed following a 7-day tour, an aircrew may extend for one 24 hour period with Sector/DO approval. Schedule aircrew as required to support actual OPLAN execution. Crew management during actual OPLAN execution should be based on continuing alert operations indefinitely.

2.5.1.2. (Added-ACC) Travel to Alert Site. The flight duty period for alert aircrews traveling to alert via commercial air begins one hour prior to scheduled commercial air takeoff. The flight duty period for alert aircrews traveling to alert via military air begins upon arrival at the squadron for mission preparation/briefing. Upon assuming alert duties, the aircrew enters crew rest (as defined in paragraph 2.5.1.3.3). For same day aircrew swap-outs at the end of the aircrews' 12-hour crew duty day, the units go on mandatory scramble order (MSO) status until aircrews have completed an 8-hour crew rest period. After obtaining required crew rest, aircrews may begin a duty period not to exceed 12 hours.

2.5.1.3. (Added-ACC) Flight Duty on Alert. Initial flight duty period is as displayed in **Table 2.1** and begins with the first squadron duty, alert changeover or ANG civilian work, whichever occurs first. After getting crew rest on alert (paragraph 2.5.1.3.3), subsequent flight duty periods begin with any official tasking and will not exceed respective times shown in **Table 2.1**. Aircrew will enter crew rest at expiration of the flight duty period (**T-3**).

2.5.1.3.1. (Added-ACC) Planned Tasking. Planned tasking (e.g., training sorties, aircraft swaps, etc.) will not exceed the flight duty period. If an actual alert tasking results in an aircrew member exceeding the flight duty period, replace or put the crewmember on MSO status until crew rest is obtained.

2.5.1.3.2. (Added-ACC) Normal Sleeping Hours. Except for actual alert or real-world tasking, do not disturb alert crews from 2200-0600L. For any planned missions (actual alert or training) that start during or extend into the period 2200-0600L, make all possible attempts to notify aircrew members in enough time for mission preparation and crew rest. Any tasking or duty accomplished by the aircrew during this period is considered official tasking and resets crew rest and crew duty day calculations. This includes those duties in paragraph 2.5.1.3.3 that do not normally affect crew rest and crew duty day calculations such as obtaining weather, NOTAMS, power-on checks and aircraft acceptance.

2.5.1.3.3. (Added-ACC) Crew Rest on Alert. Once provided the opportunity for at least 8 hours uninterrupted rest, an aircrew member may start a new alert flight duty period. The crew rest period for alert is defined as the period when "official alert duties" are not being

performed. Crew rest is free time, which includes time for meals and rest. "Official alert duties" are defined as alert crew response to include "scrambles", alert briefing, pre-daily flight, runway alert, cocking the aircraft or a suit-up call, aircraft/aircrew changeover, change to Combat Mission Folder material, change to maintenance that requires aircrew at aircraft. "Official alert duties" do not include checking weather, NOTAMS, power-on checks (oxygen/light checks) i.e., those checks accomplished without engine start or aircraft acceptance (walk around and forms check) if performed during normal waking hours (0600-2200L).

2.5.1.3.4. **(Added-ACC)** Restricted Status. If the air defense sector and the unit determine that they need to place an aircrew member into crew rest due to probable future tasking, they may place the unit on restricted status. When on restricted status, alert crews are in crew rest. This is distinct from MSO status and does not require up-channel reporting or prevent other HHQ tasking.

2.5.1.3.5. **(Added-ACC)** Sortie Limits. An aircrew member may fly up to three sorties during a flight duty period. Alert scrambles do not have a day/night combination limit. Upon reaching the sortie limit, replace the aircrew member or put on MSO status until crew rest is obtained.

2.5.1.3.6. **(Added-ACC)** Post-alert Status. An alert aircrew member may perform a normal flight duty period if crew rest requirements are met IAW paragraph 2.1. The post-alert duty day begins at changeover, daily alert briefing, scramble activity (including battle stations or a "suit-up" call) or other official tasking, whichever occurs first.

2.5.1.3.7. **(Added-ACC)** Squadron Supervision. Squadron supervisors recalled to perform supervisory/SOF duties during an actual scramble do not need to meet crew rest requirements for that duty. However, they must obtain required crew rest before returning to duty if scheduled to fly.

2.5.1.4. **(Added-ACC)** Alert Contingencies. Alert duty is a dynamic environment and as such all contingencies cannot be addressed. An alert aircrew or alert site commander may put the site on restricted or MSO status at any time due to crew rest considerations (actual/planned tasking, fatigue or other factors). The preservation of lives and assets should be the overriding factor in all crew rest decisions.

2.5.1.4.1. **(Added-ACC)** Wing Commanders will make all crew rest decisions balancing safety with mission accomplishment (**T-3**). For training, exercises, or inspections that are not linked to real-world events, wing leadership and/or Inspector General Team Chief will ensure schedules allow for adherence to crew rest and flight duty period restrictions (**T-3**). Wing leadership is responsible for notifying personnel if an exercise/training/inspection generation changes to a real world generation.

Notes

¹ Air Force Instruction (AFI) 11-202, Volume 3, Air Combat Command (ACC) Supplement, *General Flight Rules*, 3 October 2019, 15-16

Appendix B

Air Force Workweeks and Man-Hour Availability Factors¹

WARTIME EMERGENCY, WARTIME SURGE, SPECIAL AIR FORCE WORKWEEK AND OTHER MAN-HOUR AVAILABILITY FACTORS

Air Force Workweeks and MAF.

Standard Workweek ²	Normal 40-Hour CONUS/Overseas		Extended Overseas	Wartime Emergency		Wartime Surge	
Computation of Assigned Hours	5 Days 8 Hours/Day 40 Hr/Week		6 Days 8 Hrs/Day 48 Hr Wk	6 Days 10 Hrs/Day 60 Hr Wk		6 Days 12 Hrs/Day 72 Hr Wk	
Calendar Days/Month: 365.25 days/year 12 Months/year	30.4375		30.4375	30.4375		30.4375	
Less:							
Holidays/Month: <u>10 holidays</u> 12 months	-0.8333		-0.8333				
Weekend Days/Month ¹	-8.6964						
(2days/week)(4.3482 weeks/month)			-4.3482	-4.3482		-4.3482	
(1 day/wk)(4.3482 weeks/month)							
Assigned Days/Month Hours/Day	20.9078 X 8		25.2560 X 8	26.0893 X 10		26.0893 X 12	
Monthly Assigned Hours	167.2624		202.0480	260.89		313.07	
	MIL ²	CIV ³	MIL	MIL	CIV	MIL	CIV
		CONUS	OCONUS				
Non available Categories							
Leave	9.3006	14.67	10.49	10.3872	5.80	0.00	
PCS-related	0.8193			2.1612	0.72	0.00	

Medical	1.9052	6.97	4.45	1.3327	2.40		2.31	
Organizational Duties	0.5187			0.6923	5.82		2.39	
Education & Training	3.9998	1.47	1.58	1.7837	0.19		0.00	
Social Actions					0.03		0.00	
Total Non-available Hours	16.5436	23.93	17.41	16.3571	14.96		4.70	
Monthly Hours Available to Primary Duty (MAF) ⁵	150.70	143.48	148.59	185.70	246.0		308.0	

Notes:

¹ Saturday, Sunday, or compensatory weekday for weekend workday.

² Applies to all CONUS and overseas locations working a normal 40-hour workweek. This data is based on the July 2012 Peacetime Military MAF Update Study.

³ Alaska and Hawaii are included in the CONUS civilian computation. This data is based on the 2013 Peacetime Civilian MAF Update Study.

⁴ Monthly MAF to be used for manpower computations.

⁵ Overload factors for various workweeks are provided at **Chapter 2**.

Notes

¹ Air Force Instruction (AFI) 38-201, *Management of Manpower Requirements and Authorizations*, 30 January 2014, 97-98.

Appendix C

Excerpt of Tactical Regulation 55-61¹

TACR 55-61 7 October 1983

1-1

Chapter 1

AIR NATIONAL GUARD AUGMENTATION OF THE NORTH AMERICAN AEROSPACE DEFENSE COMMAND (NORAD)

1-1. General. Air National Guard (ANG) units equipped with fighter aircraft have the capability to operate as air defense alert operating locations (OLs). ANG units with a primary air defense mission have been classified as Category I augmentation units to the North American Air Defense Command/Aerospace Defense Command (CINCNOAD/CINCAD OPLAN 3000 (S)). Other ANG units will perform NORAD air sovereignty alert only. Designated personnel from these units will perform active air defense alert to insure a continuous and uninterrupted air defense posture. These units will normally operate from their home station or detached location; however, when unusual circumstances arise during performance of the air defense mission, controlling agencies are authorized to divert these aircraft for flying safety or air defense reasons. Active duty officer workdays are provided for the ANG alert program. These workdays are administered by the National Guard Bureau IAW ANGR 50-01.

1-2. Manning:

a. Aircraft alert space requirements have been designated for each unit performing alert duties. (NGB provides alert spaces.)

b. Commanders concerned will manage their aircrew resources to meet the daily alert commitment while remaining within these limits.

c. ANG (volunteer) aircrews made available for this program will be ordered to active duty by order of the Secretary of the Air Force in accordance with US Code, Title 10, Section 672(d). Active duty orders will be IAW ANGR 10-7.

d. Military technician mission support (MS) or mission ready (MR) aircrews in military technician status may man alert aircraft under some circumstances (see paragraphs 6-2c(8) and (9)). Military duty personnel (AGR) perform day-to-day duties in Title 32 status and change to Title 10 status while on alert.

e. Additional manpower, principally in maintenance and munitions, will be authorized.

1-3. Concept of Operations:

a. Certain ANG units designated as Category I augmentation participate as integral and permanent parts of the overall air defense system for the North American continent. In such a role, they will be operationally considered and employed as regular Air Force active air defense units. Other ANG units perform air sovereignty alert only.

b. The parent ANG unit will provide equipment and aircraft to operating locations (OLs) and schedule qualified replacement active duty aircrews to meet stipulated alert requirements. Aircrews will be scheduled to provide a continuous 24-hour air defense capability as stipulated in N/A/AR 55-3 (S).

c. Upon mobilization, Category I OLs will be absorbed into the parent ANG unit and the parent ANG unit gained by TAC for employment by CINCAD in accordance with AFR 45-1, AFR 28-5, and CINCAD WMP-1.

1-4. Command and Control:

a. Operational control of OLs will be vested in the appropriate NORAD/ADCOM controlling agency.

b. The ANG wing/group commander and/or air commander will retain supervisory control over active duty ANG aircrew personnel in respect to those matters necessary to carry out the normal functions of his unit.

c. Command of active duty personnel will not be given to an ANG officer who is not on active duty status.

1-5. Utilization of ANG Augmentation Forces. Prior to mobilization, ANG Category I augmentation units may be ordered to active duty for employment by CINCNOAD in accordance with ANG/CINCNOAD/CINCAD State Agreement (N/AR 55-37).

1-6. Aircrew Alert Manday Requirements. The following per-day aircrew alert spaces are required:

Alert Posture	Single Place Aircraft	Dual Place Aircraft
two aircraft	7 spaces	14 spaces

Chapter 3

OPERATIONS

3-1. General. ANG units performing alert duty will augment the regular ADTAC fighter forces to assist in fulfilling NORAD/ADCOM tactical requirements.

3-2. Alert Commitment:

a. The alert commitment of the alert location will be as scheduled by each NORAD/ADCOM region in accordance with N/A/AR 55-3 (S).

b. Alert locations will maintain a continuous 24-hour alert commitment until relieved by the NORAD Region Commander in accordance with para 3, N/A/AR 55-3 (S).

3-3. Relief from Alert:

a. ANG units requesting temporary or extended relief from the alert responsibility will contact parent NORAD Region/DO.

b. ANG units converting to new or different aircraft will be relieved of air defense alert responsibility as written in agreement (PPlan) or beddown plan.

3-4. Alert Tours:

a. ANG aircrews will be ordered to active duty alert tours by order of the Secretary of the Air Force in accordance with US Code Title 10.

☒ b. Aircrews will be available for alert duty and are subject to recall at any time during the period they are on active duty orders.

c. Alert tours for periods up to 139 days are authorized.

☒ d. Aircrews participating in extended tours will be provided reasonable duty-free periods based on normal aircrew workweek requirements.

e. Military technician alert aircrews may perform the functions of 5-minute alert crews in the same manner as active duty aircrews. Paragraph 6-2c(11) and (12) will apply.

3-5. Active Air Alert Procedures:

a. ANG active alert scrambles and intercepts will follow standard tactics and procedures as described in USAF, NORAD and TAC directives. After scrambling,

additional aircraft need not be placed on alert. Alert will be resumed IAW N/A 55-3.

b. Following an active air scramble and/or intercept, the aircraft may be released for training for the remainder of the flight, in accordance with joint FAA/TAC procedures for the control of air defense aircraft.

c. The alert aircraft will not be directed to operate from other than the home base or detachment base except for recovery necessitated by long-range active air intercepts, weather, dispersal or unusual conditions. This policy will preclude deployment for the purpose of training unless prior coordination has been received from the Group Commander, Wing Commander or Air Commander. TDY orders will be published by the appropriate air division if approved by the parent NORAD region.

d. Alert aircraft will be mission capable as prescribed by current TAC directives. The maximum time an aircraft will remain on non-flying alert is ten days.

e. The senior alert pilot will also ensure that each aircrew is properly clothed, equipped and briefed for his tour of alert duty.

3-6. Local Procedures:

a. Procedures pertaining to munitions storage, movement, handling and operation of aircraft in a loaded configuration will be arranged by the parent ANG unit commander in conjunction with the civil airfield authorities and/or the air base commander.

b. Alert aircraft will receive FAA traffic priority in accordance with FAA Manual 7610-4D, Special Military Operations.

c. When under OPGON of NORAD, weather minimums will be IAW AFR 60-16, TAC Sup I.

3-7. Aircrew Qualifications:

a. Aircrews scheduled for alert duty will be MR/MS in accordance with the USAF/TAC series manuals applicable to the type PAA aircraft possessed.

b. Individual aircrews previously qualified, found unfamiliar with current procedures, will not be ordered to alert duty until requalified.

Notes

¹ Tactical Regulation 55-61, *Air National Guard Air Defense Alert*, 7 October 1983, 1-1 – 3-1.

Appendix D

Excerpt of National Guard Regulation 55-1¹

NGR (AF) 55-1 1 October 1989

3

with an alert mission, through their state headquarters, at levels established by manning agreements.

c. ANGSC/TE provides alert workday resources to selected units tasked with an alert mission.

d. Commanders of units with the alert mission will ensure compliance with the provisions of this regulation.

1-5. Terms Explained:

a. Alert Duty is a specific form of active duty (AD), for a specified, limited period of time. The individual is voluntarily ordered to alert duty under the provisions of 10 USC 672(d), with pay and allowances the same as Extended Active Duty, except for allowances which depend upon length of tour.

b. An Alert Workday is 1 day of active duty pay and allowances, per calendar day, as pay for alert duty or stand-by duty periods.

c. An Alert Duty Period is time spent at the duty location in close proximity to an assigned aircraft dedicated to a specific short-notice mission for the USAF. The duty period includes travel to and from remote alert sites (DETs), briefing and debriefing, or any administrative requirements for the assumption or completion of an alert duty period.

d. A Stand-by Duty Period is one for which pay is authorized. These days may be scheduled as determined by the unit commander consistent with operational requirements. Individuals on stand-by duty will be available for recall and capable of reporting to his or her assigned unit within GMAJCOM aircraft generation timing requirements.

e. Detached Alert (DET) is defined for the purpose of this regulation as a geographically separated alert site outside a radius of fifty miles from the main operating base requiring a government transportation process to deliver relief alert aircrew.

1-6. Scheduling:

a. Unit commanders may schedule alert duty periods of any duration, within the definition above. Any number of qualified alert crew members may be used for an alert crew position on any given calendar day. It is understood that on any given calendar day a unit could have more than three individuals on orders for alert duty and stand-by duty per allocated alert position.

b. A precise and clear scheduling record will be developed and maintained, by the unit, to document alert duty, stand-by duty, and the corresponding workdays for an individual.

c. The unit commander is authorized to relieve individual alert personnel from presence at the duty location. At the commander's discretion, aircrews may be provided, reasonable duty-free periods based on normal aircrew workweek requirements.

d. Aircrew members may participate in other normal unit activities during alert duty or stand-by duty periods, at the discretion of the commander (flying training, ground training, extra duties, evaluations, etc.). There will be no compromise of the alert force response time without the concurrence of the respective controlling agency.

NGR (AF) 55-1 1 October 1989

-7. Resource Allocation and Contingency Management:

a. Alert workday resources are provided to the unit to support alert requirements only. Uses of those resources, for purposes other than those authorized by this regulation, are prohibited.

b. Three alert workdays will be allocated for every calendar day (365/366 days per year, as applicable), for each required alert position.

c. In keeping with the ANG decentralized management policy, additional workdays will be allocated to alert units to manage contingencies. Management contingency funding levels are determined as an additional 0.25 workday per crew position per alert aircraft per day. Units supporting a DET alert mission will be funded with an additional 0.25 workday per crew position per alert aircraft per day to support other contingency requirements.

(1) The following list of management contingencies for which workdays are provided is not meant to be all inclusive, but to give direction to unit commanders in utilizing the contingency resources.

(a) Military Leave.

Alert AGRs and those on alert duty orders of 30 days or longer are entitled to annual leave at the rate of 2.5 days per month. Individuals will apply, and commanders will authorize such leave using normal administrative procedures.

(b) Sick Leave. Alert

AGRs or individuals on alert duty orders may not be able to perform alert duty due to medical reasons. Replacement during a tour of duty may be required.

(c) TDY. Alert AGRs or individuals on alert duty orders of 30 days or longer may be required to participate in unit training or mission activities away from the MOB.

(d) Miscellaneous.

Inclement weather, lengthy transportation time, crew rest, airborne divers, or other contingencies may create the obligation to compensate more than one crewmember for the same crew position for a particular alert compensation period.

(e) Scheduling and Management. The alert mission is activity beyond the normal training posture of ANG units. Additional scheduling or management assistance, specifically in support of the alert mission, is required.

(2) Commanders may use their contingency management allocation for any authorized alert purpose, in any proportion required, depending on unit requirements.

1-8. Administration:

a. If an individual is ordered to perform an alert duty period on any calendar day, he or she must be on alert duty orders for that calendar day, unless duty is IAW paragraph 1-12 or 3-3.

b. Non-continuous alert duty orders are authorized, if deemed necessary by the unit commander, to make more efficient use of an individual's alert duty and stand-by duty periods to meet unit requirements and taskings.

c. Alert duty orders, under the automated orders system, will indicate the time and date of the individual's active duty periods. Tour of duty statements for

compensation must be submitted by the individual and certified by the commander. Such statements will reflect the entire tour of alert duty, including alert and stand-by periods. Separate scheduling documentation to identify specific periods of alert and stand-by duty will be maintained.

d. Periods of alert duty orders will normally be 1 to 139 days. Alert duty orders will not exceed 139 days without the prior approval of the Director, ANG.

e. Alert duty orders will be published in accordance with AFR/ANGR 10-7, "Administrative Orders."

1-9. Pay and Allowances:

a. The base comptroller will provide the proper fund citations to the orders issuing activity for use in preparing alert orders. Pay and allowance transactions will be processed through the ANG base comptroller at the base where the alert member is assigned.

b. No ANG member will be scheduled for duty that will create the obligation for compensation in excess of 360 pay periods in any fiscal year.

c. Travel pay entitlements incidental to tours of alert duty are prescribed in Joint Federal Travel Regulations and AFR 177-103.

1-10. Air Technicians and Alert Duty:

1-10.a. Replaced by NGB/XO Message dated 19 September 1990

a. A period of air technician duty and an alert workday may not be credited to an individual on the same calendar day except in an emergency. This policy pertains to the scheduled technician duty day and requires that a technician in an alert duty status during any portion of a calendar day must be

~~in an appropriate leave status (annual leave, military leave, leave without pay) for that calendar day.~~

b. When an emergency mission occurs requiring utilization of a member in technician status to perform an alert duty period, or an air technician must scramble while on a temporary alert substitution, he or she will immediately be placed on alert duty. If entry on alert duty status occurs after the technician has begun a normal technician duty day, he or she will be in an appropriate leave status for the remainder of the normal technician duty day. Under these emergency conditions, the technician will not be charged leave for technician hours actually worked before going on alert duty unless he elects to take military leave which must be used in increments of an entire day and cannot be subdivided into hours.

1-11. AGRs, AF Advisors, Inactive Duty, and Alert Duty:

a. If so ordered, qualified AGR personnel may perform alert duty, temporary substitution, or periodic alert orientation.

b. Orders for personnel to full-time military duty under 32 USC 502(f) will contain instructions to convert to duty under 10 USC when performing alert duty.

c. Unit commanders may orient qualified staff AGRs to the alert mission. Alert workdays may be retained and used to provide a staff substitute for the AGR or retained in support of the unit alert program.

d. Air Force advisors may be used in the alert program in the

Notes

¹ National Guard Regulation (NGR) 55-1, *Air National Guard Alert Management*, 1 October 1989, 3-5.

Appendix E

B630.S9 Amendment to TPR 990-2¹

26 December 1985

C1
TPR 990-2
B630.S9

*SUBCHAPTER S9. MILITARY LEAVE

S9-2. LEGAL BASIS

a. Basic statute. Effective 1 October 1980, Public Law 96-431 amended section 6323 of title 5, U.S.C. to provide accrual of military leave on a fiscal year basis; carry-over of unused military leave for up to a maximum of 15 additional days; and entitlement to military leave for part-time employees. Part-time technicians are only entitled to a prorated share of military leave based on the number of hours in the regularly scheduled workweek. Full-time technicians have the potential of 30 days military leave during a fiscal year. (See FPM Letter 630-30, 23 April 1982, for application of the various provisions of Public Law 96-431).

S9-6. GRANTING MILITARY LEAVE

f(ADDED). Conditions for granting military leave. An eligible technician is granted any military leave that is available whenever ordered to active duty or active duty for training. Annual leave, leave without pay, or compensatory time off may not be granted for such military duty as long as the technician has military leave available, unless such military duty would result in forfeiture of annual leave in excess of 240 hours. However, a technician may be granted a partial day of annual leave, leave without pay, or compensatory time off at the beginning or end of a period of absence for military duty to avoid being charged a full day of military leave for just a partial day's absence from technician duties (52 CG 471). The technician, however, may not take annual leave, leave without pay, or compensatory time off solely to avoid the charging of nonworkdays against the allowable days of military leave.

g(ADDED). Chargeable on a calendar-day basis. No charge is made for non-workdays at the beginning and end of a period of absence on active military duty. However, all intervening nonworkdays falling within the period of absence for military duty must be charged to military leave, provided the technician is under military orders on the nonworkdays.*

NGB TECHNICIAN PERSONNEL PUBLICATION

Notes

¹ Technician Personnel Regulation (TPR) 990-2, Change 1, B630.S9, *Hours of Duty, Pay, and Leave*, 26 December 1985.

Appendix F

Permanent Waiver to NGR 55-1, Paragraph 1-10A¹

ITTUZYUW RUEAUSA3311 264124A-UUUU--RUMJBFA
ZNR UUUUU
Z 191855Z SEP 90
FM HCB WASHINGTON DC//XO//
TO AIG 7325//CC/DO//
AIG 7317//CC/DO//
RHDJGAA/HCB ANDREWS AFB MD//AC/DP/MO/LG/XOO//
RUEAUSA/HCB WASHINGTON DC//TH/XOX//
RUCUAAA/HQ SAC OFFUTT AFB NE//CG//
RUCVNAF/BAF BARKSDALE AFB LA//RF//
RHFIAAA/13AF MARCH AFB CA//RF//
RHDIAAA/1AF LANGLEY AFB VA//DO/CG//
BT
UNCLAS
SUBJ: WAIVER TO NGR 55-1, PARA 1-10A,
REFERENCES: HCB/XO MSG 161214 JUL 90; HCB/CF MSG 161930 AUG 90;
SAME SUBJECT

1. PENDING A FORMAL CHANGE TO NGR 55-1, THIS MESSAGE ESTABLISHES A PERMANENT WAIVER TO THE CURRENT STOP AND AIR DEFENSE ALERT RESTRICTION FOR UNIT AIR TECHNICIANS. EFFECTIVE IMMEDIATELY, AN ALERT WORKDAY AND A TECHNICIAN DUTY DAY MAY BE PERFORMED ON THE SAME CALENDAR DAY.

PAGE 02 RUEAUSA3311 UNCLAS

2. COMMANDERS WILL UTILIZE THE FOLLOWING GUIDANCE IN SCHEDULING TECHNICIANS FOR THE PERFORMANCE OF ALERT:
A PERIOD OF AIR TECHNICIAN DUTY AND AN ALERT WORKDAY MAY BE CREDITED TO AN INDIVIDUAL ON THE SAME CALENDAR DAY UNDER THE FOLLOWING PROVISIONS: ALERT DUTY PERIODS WILL BE A MINIMUM OF EIGHT HOURS IN DURATION. TECHNICIAN DUTY PERIODS MAY ONLY BE BEFORE AND/OR AFTER ALERT DUTY PERIODS. TECHNICIAN DUTY PERIODS MAY NOT BETWEEN ALERT DUTY PERIODS PERFORMED ON THE SAME CALENDAR DAY. EXAMPLE - A TECHNICIAN MAY PERFORM HIS/HER TECHNICIAN DUTY UNTIL 1600 HOURS, THEN PERFORM A PERIOD OF ALERT DUTY FROM 1600 TO 2400 HOURS. THE TECHNICIAN MAY THEN PERFORM ANOTHER PERIOD OF ALERT DUTY FROM 0000 TO 0800 HOURS, AND THEN PERFORM TECHNICIAN DUTY STARTING AT 0800 HOURS. ANOTHER PERIOD OF ALERT DUTY MAY NOT BE PERFORMED AFTER 1600 HOURS ON THE SECOND DAY WITHOUT THE TECHNICIAN BEING IN AN APPROPRIATE LEAVE STATUS FOR THE TECHNICIAN DUTY PERIOD.

3. STRICT ADHERENCE TO THE GUIDANCE LISTED IN PARA 2 IS REQUIRED.
HCB/XOX POC IS MAJ COOK, DSN 225-1531. HCB/XOO POC IS CAPT MILLER, DSN 858-8309.

BT
#3311 HNNH

Notes

¹ Message, 191855Z SEP 90, chief of plans and operations division, National Guard Bureau, to commanders and directors of operations in address indicator groups 7325 and 7317, 19 September 1990.

Appendix G

Ohio National Guard HRO Policy Memo¹



STATE OF OHIO
ADJUTANT GENERAL'S DEPARTMENT
2825 West Dublin Granville Road
Columbus, Ohio 43235-2789

NGOH-HRO-Z

- 1 JUL 2019

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: HRO Policy #19-003, Intermixing of Technician Duty and Military Status

I. References.

- a. 5 United States Code (USC) 6323, Military leave: Reserves and National Guardsmen.
- b. 32 United States Code (USC) 502 (a) Required Drills and Field Exercises (Drill and Annual Training).
- c. 32 United States Code (USC) 502 (d) Required Drills and Field Exercises (Minimum time to authorize military pay).
- d. 37 United States Code (USC) 206, Reserves, Member of National Guard: Inactive Duty Training.
- e. 38 United States Code (USC) 4312 (e)(1)(A)(i)(ii), Reemployment Rights of Persons who serve in the Uniformed Services.
- f. 5 Code of Federal Regulations (CFR) 353.208 Use of Paid Time Off during Uniformed Service.
- g. Department of Defense Instruction (DODI) 1205.18, Full-time Support (FTS) to the Reserve.
- h. Department of Defense Instruction (DODI) 1215.06, Uniform Reserve, Training and Retirement Categories for the Reserve Components.
- i. Air Force Instruction (AFI) 11-202V3_AFGM2018-01, General Flight Rules.
- j. Army Regulation (AR) 95-1 Flight Regulations.
- k. GAO Comptroller General Decision B-211249, Sep 20, 1983, Present for Work in Civilian Position while simultaneously on Active Duty.

l. GAO Comptroller General Decision B-133972, Feb 5, 1973, Civilian Pay without charge of Military or Civilian Leave for the Day of Departure.

m. Chief, National Guard Bureau Instruction (CNGBI) 1400.25 Vol 630, National Guard Technician Absence and Leave Program.

2. **Purpose.** To provide guidance and procedures that apply to instances where National Guard Technicians are performing duty in Technician status and in a full-time military status on the same day. The memorandum does not apply to military duty that is specified by law to be for less than 24 hours as detailed in references (b) and (g). The performance of paid full time military duty prohibits a technician from being in a paid technician status on the same day unless the paid status is a result of approved leave.

3. **Criteria.** In no instance can a technician be paid for regularly scheduled technician duty (not in a leave status) and full-time military duty on the same day for two consecutive days. Full-time military duty that is scheduled for more than one day must be scheduled for the needs of the service and done so in a manner that complies with the principles of fiscal responsibility. When military duty is scheduled for second and subsequent days, the military duty is scheduled in 24-hour increments.

4. **Approved Leave Status.** An employee performing service with the uniformed services must be permitted, upon request, to use any accrued annual leave under 5 USC 6304, military leave under 5 USC 6323, earned compensatory time for travel under 5 USC 5550b, or sick leave under 5 USC 6307, if appropriate, during such service. See reference (f). Technicians may also use Leave Without Pay (LWOP) or a received time-off award. For the minimum amount of time required for which military pay can be authorized, see references (c) and (d).

5. **Technician duty on the same day as beginning of full-time military duty.** In cases where military duty is scheduled to start after the completion of the regularly scheduled technician work day, no technician leave is required. The technician can complete their normal technician duty then report for their military duty. If the military duty is scheduled to start prior to or during the regularly scheduled technician work day, that time is considered "overlap" and the technician is required to be in an appropriate approved leave status for the period of overlap technician duty hours. When technicians must travel to report for military duty during their technician work day, they are required to be in an approved leave status for the remainder of their technician duty day. See Enclosure.

6. **Crew Rest for Alert Duty and Flight Duty Periods (Air Guard).** Crew rest is compulsory for aircrew members prior to performing any duties involving aircraft operations and is a minimum of 12 non-duty hours before Flight Duty begins. Crew rest period cannot

begin until after the completion of official duties. Crew rest may be waived by the Wing Commander when an Operational Risk Management (ORM) assessment determines that operational requirements justify the increased risk. See reference (i). When crew rest is taken during a technician's regularly scheduled work day, the technician must be in an approved leave status.

7. Crew Endurance (Army Guard). Crew endurance is an integral part of the overall risk management program. It is used to control risks due to sleep deprivation or fatigue. See reference (j). Each Flight Facility has a Crew Endurance Program (Guide) established to outline the proper procedures and guidelines for flight operations.

8. Rest Period under the Uniformed Services Employment and Reemployment Rights Act (USERRA). Reference (e).

a. Applies to a technician whose period of service in the uniformed services was less than 31 days.

b. A technician shall report for their regularly scheduled technician duty not later than the beginning of the first full regularly scheduled work period on the first full calendar day following the completion of the period of service, allowing for safe transportation to their residence, and the expiration of an 8 hour rest period.

9. Second Consecutive Military Duty Day. No regularly scheduled technician duty may be performed on the second day of full-time military duty. For every day beyond the initial day of full-time military orders, until the release date, all regularly scheduled technician duty must be accounted for by an authorized type of approved leave status.

10. Return to Technician Duty. At the completion of military duty, the technician must comply with the USERRA rest period rules. Once the rest period is completed, the technician can report for their next regularly scheduled work day. See enclosure. The exception for travel time that extends beyond 2400 hours following completion of military status that ends on the same day as a regularly scheduled technician duty day are as follows:

a. Travel time that lasts **less** than four hours:

(1) Required eight (8) hour rest period at completion of military status to include travel time (USERRA rule, reference e.)

(2) Technician may report and resume technician duty after completion of rest period.

(3) Technician will request appropriate leave to cover their technician duty hours prior to arrival at their duty location.

NGOH-HRO-Z

SUBJECT: HRO Policy # 19-003, Intermixing of Technician Duty and Military Status

b. Travel time that lasts **more** than four hours:


(1) Considered full-time military duty day.

(2) Technician will request appropriate leave to cover their technician duty hours for the entire day.

(3) Technician may return to their regularly scheduled technician duty on the next regularly scheduled duty day.

11. Questions related to this memorandum should be directed to
Deputy Director for HRO, at _____@mail.mil or (614) 336- /DSN
346-

Encl
as



JOHN C. HARRIS JR.
Major General
The Adjutant General

DISTRIBUTION:
A, D

Leave Status for Intermixing of Technician Duties and Military Status		
Military Status for Consecutive Days		
First Day of Military Status	Report for Military Duty on a Non-Technician Duty Day	No Technician Leave required
	Report for Military Status After Technician Duty Day	Performs regularly scheduled technician duties then reports for military duty later on the same day. No technician leave required.
	Report for Military Status during Technician Duty Day	Approved technician leave status required for overlap hours to cover all or balance of technician duty day. This includes leaving Technician Duty to travel to reporting location. NOTE: See Crew Rest paragraph 7 for approved technician leave status required prior to reporting for military duty.
Second and Subsequent Days of Military Status	Non-Technician Duty Day	No Technician Leave required
	Under Military Status/Control during Technician Duty Day	Military status is 24 hours in duration for the second through last day of military orders. Technician must be in approved leave status for those days that are also regularly scheduled technician duty days.
	Release from Military Status/Control NOT on regularly scheduled Technician Duty Day	Technicians will report to their regularly scheduled work period on the first full calendar day following the completion of the period of military service, safe transportation home and after an 8-hour period of rest. See Reference e. (USERRA rules).
	Release from Military Status/Control on regularly scheduled Technician Duty Day	Technicians will report to their regularly scheduled work period on the first full calendar day following the completion of the period of military service, safe transportation home and after an 8-hour period of rest. See Reference e. (USERRA rules). NOTE: See paragraph 10 a. and b. for travel time exception.

Notes

¹ Maj Gen John C. Harris, Jr., adjutant general, state of Ohio, memorandum, subject: HRO Policy #19-003, Intermixing of Technician and Military Status, 1 July 2019.

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