

RESERVES

Duty Status Compatibilities

You have asked whether more than one section of title 10 of the United States Code (U.S.C.) may be cited on active duty orders for a member of the Ready Reserve. More specifically, may orders cite both 10 U.S.C. § 10211 and 10 U.S.C. § 12310 as the authoritative duty status provisions?¹ We conclude generally that there are circumstances in which more than one section of title 10 may be cited on a set of orders. We also conclude that while there is no legal prohibition to including both Sections 10211 and 12310² on one set of orders, it will be difficult and somewhat rare for any particular position to simultaneously satisfy the statutory requirements of both sections.

More Than One Section: Generally, more than one section may be cited on a single set of orders if the sections provide different yet compatible information and authorities. We begin by establishing common terminology: the Secretaries of the military departments (and their delegates) have authority to order Air Reserve Component (ARC) members to active duty via mobilization or activation (10 U.S.C. Chapter 1209). This opinion will focus only on activation authorities applicable to the Ready Reserve.³

Activation authorities are either “voluntary” (i.e. with the member’s consent) or “involuntary” (i.e. the member’s consent is not required). Some activation authorities explicitly state that the activation is for a particular purpose or limit the scope of duties an activated airman can perform; others are silent on the permissible scope of duties. For example, the Secretary of the Air Force may activate a Ready Reserve member voluntarily under Section 12301:

(d) at any time;

* * *

(h)(1)(A) to receive medical care;

(h)(1)(B) to be medically evaluated for disability or other purposes; or

(h)(1)(C) to complete a Department of Defense health care study.

The last three quoted subsections specifically identify the purpose for and appropriate duties to be performed during the activation: medical care, disability evaluation, and to complete a health care study. The first quoted subsection, “(d)”, however, is silent on the scope of duties and the purpose of the activation. Given this silence, it would be entirely appropriate for a set of orders to couple Section 12301(d) (a voluntary activation authority) with a scope of duty authority (such as Section 10211), to call an ARC airman to active duty at headquarters and seats of government

¹ In OpJAGAF 2013/14, footnote 6, we preserved the question of whether an airman may lawfully perform duty simultaneously under both Section 10211 and 12310, or should perform such duty as a matter of policy, for another day. This opinion now addresses that question.

² All statutory references are to title 10 of the U.S.C., unless otherwise indicated.

³ Section 12306 provides that units and members of the Standby Reserve may be ordered to active duty (other than for training) only as provided in Section 12301. Retired Reserve activation is governed by Section 12307.

“to participate in preparing and administering the policies and regulations affecting those reserve components.”⁴

The analysis becomes more complicated, however, when the activation authority to be used contains scope of duty or purpose limitations.⁵ For example, it would likely be inappropriate to couple Section 12301(h)(1)(A) – an activation authority with scope of duty/purpose limitations (to receive medical care) – on a set of orders with Section 10211 – which requires the airman to be located at headquarters or seats of government (not a hospital) and to prepare and administer policies and regulations affecting the ARC (not receiving medical care). Either the airman is a patient or the airman is performing headquarters duties; it is unlikely that the airman can simultaneously do both. If the airman can separately perform each duty on different days, then to satisfy duty status statutory requirements and the Purpose Statute,⁶ we recommend cutting separate sets of orders for each distinct purpose.

A similar problem would arise if Section 12304b were coupled with Section 10211 or other scope of duty statute on a set of orders. Under Section 12304b, the Secretary may involuntarily activate ARC airmen for not more than 365 days whenever the Secretary determines it is necessary to augment the active forces for a preplanned mission in support of a combatant command (CCMD). That airman must augment a preplanned mission in support of a CCMD; thus, it typically would be inappropriate to simultaneously require the airman to be located at headquarters or seat of government to prepare and administer policies and regulations affecting the ARC. While an airman *might* hypothetically be able to simultaneously do both (e.g. remain

⁴ Section 10211

⁵ The following activation authorities place varying degrees of limitations on the activated airman’s scope of duties. Section 12301 empowers the Secretary of the Air Force to activate an ARC member, without the member’s consent (i.e. “involuntarily”):

- (a) in times of war or national emergency, or when otherwise authorized by law, for the duration of the war/emergency, plus 6 months;
 - (b) for up to 15 days;
 - (c) for any expansion of the active armed forces; and
- * * *
- (g) if the member is in captive status.

The Secretary of Defense may involuntarily order an ARC member to active duty under:

- Section 12304 – whenever the President has determined that it is necessary to augment the active forces for any operational mission. ARC members activated under this authority may not perform any of the functions authorized by Chapter 15 or Section 12406, or to provide assistance to the federal government or a state in time of a serious natural or manmade disaster, accident, or catastrophe; or
- Section 12304a – for not more than 120 days, to respond to a governor’s request for federal assistance in responding to a major disaster or emergency.

⁶ The Purpose Statute (31 U.S.C. § 1301) requires the Air Force to spend appropriations only for the purpose intended by Congress. Congressional appropriations for Section 12301(h)(1)(A) (medical care) activations, therefore, cannot be spent on salaries for airmen performing headquarters policy work (Section 10211).

at the Pentagon in direct support of deployed ARC policies and regulations in the combatant commander's area of responsibility), such circumstance would be very rare and there is no immediately obvious benefit from citing both authorities. Each authority individually would be sufficient. Thus, as a general rule, we recommend against citing both authorities on one set of orders.⁷

Other activation authorities are less prescriptive, leaving some room for “doubling” or “coupling” with other scope of duty statutes. For example, the Secretary of the Air Force may involuntarily activate an ARC member under:

- Section 12302 – during a national emergency declared by the President after January 1, 1953, or when otherwise authorized by law, for not more than 24 consecutive months; or
- Section 12303 – if a member has not fulfilled his or her statutory reserve obligation, is not participating satisfactorily, and has not served on active duty for a total of 24 months, the member may be ordered to active duty until s/he completes 24 months of active duty service.

These activation authorities specify the length of time an ARC member can serve and the circumstances required for the authority to be exercised (during a national emergency; unsatisfactory service), but do not specify the duties the airman is supposed to perform. These activation authorities, therefore, could be coupled with an appropriate second scope of duty statute, such as Section 12314, which would allow the ARC member to perform any duty authorized by law for a member of the Regular Component. Section 12303 could also be coupled with Section 10211, which would require the activated member to be assigned to a headquarters or seat of government to prepare and administer policies and regulations affecting the ARC.⁸

It is less likely that Section 12302 and Sections 10211 could be lawfully coupled on a set of orders, because service during a national emergency declared by the President is likely to be in support of an operational or Regular Component mission – not a policy development or administration position in support of the ARC at headquarters or seats of government. While it is possible to construct a hypothetical where this might occur, like the CCMD example above, such a circumstance would be very rare and there is no immediately obvious benefit from citing both authorities.⁹ Section 12302 and Section 12314 (involuntary activation + any lawful duty) or Section 12301(d) and Section 10211 (voluntary activation + ARC policy at HQ) would more clearly satisfy statutory and Purpose Statute requirements without legal or fiscal complications.

⁷ *But see* OpJAGAF 2006/15 (outlining circumstances under which Section 10211 personnel may deploy).

⁸ Section 10211 duties are typically funded by the ARC because they support and administer to the ARC. Section 12303 would be an appropriate authority to activate someone with ARC funds because it can only be used if the member has not fulfilled his or her statutory reserve obligation.

⁹ Section 12318(b), which authorizes Section 12310 funds to be used for pay and allowances of ARC members performing duties under Section 12302 and 12304, is consistent with this policy because Section 12318(b), authorizes a funds transfer from a Section 12310 account to Sections 12302/12304 accounts; it does not authorize orders to be issued under both Section 12310 and Sections 12302 or 12304.

It is also important to note that while Section 12318(a) authorizes “members of reserve components serving on active duty” to perform duties in connection with Sections 12302 and 12304 under certain circumstances, we do not interpret this language as authorizing Section 12302 or 12304 to be combined on the ARC member’s orders with any other activation statute. Instead, we interpret this section as authorizing active duty ARC personnel to perform Section 12302 and 12304 duties in these circumstances, regardless of the duty statutes specified in the ARC personnel’s orders.

Finally, it is generally inappropriate – if not illegal – to cite more than one activation authority on a single set of orders unless expressly authorized to do so by statute (such as Section 315 and 32 U.S.C. § 325) or other delegation of legal authority. For example, unless a specific statute or delegation of authority applies, it would not be appropriate to cite an activation authority of the Secretary of the Air Force on the same set of orders as an activation authority of the Secretary of Defense. Absent statutory authorization or express delegation of authority, neither office can exercise the authority of the other, so at least one of the activation authorities would be invalid.

We also would discourage citing more than one activation authority within the Secretary of the Air Force’s power. While not illegal per se, we see no benefit and significant policy complications from doing so. For example, Sections 12301(a) or (b)¹⁰ and Section 12302¹¹ place different limits on the duration of the Secretary’s activation authority. If more than one of these sections were cited on a single set of orders, the Air Force would be required to limit the orders to the shortest lawful limitation in order to ensure compliance. In addition, any time spent serving under the order would accrue (and be reportable) under all cited sections. As a result, the number of days an airman could serve would be unnecessarily limited; the number of days served under each authority might be artificially inflated; or the airman’s ability to serve under each authority would be artificially limited. While none of these effects are illegal they are negative consequences of an inefficient policy.

There is also no legal prohibition against using both involuntary and voluntary activation authorities on the same order, but as a matter of policy, there may be reasons for not doing so. For example, if the member has consented to serve on active duty, there is no apparent benefit from or need to exercise the Secretary’s involuntary activation authorities which will activate the member’s mobilize-dwell ratio protections, require more advance notice of the mobilization/activation, and inaccurately reduce the ARC’s reported volunteerism ratios. Conversely, if the member has not consented, then citing the Secretary’s voluntary activation authorities would be inappropriate. One or the other authority should be sufficient alone.

¹⁰ The Secretary of the Air Force may involuntarily activate ARC members under Section 12301(a) in times of war or national emergency, or when otherwise authorized by law, for the duration of the war/emergency, plus 6 months; and (b) for up to 15 days.

¹¹ The Secretary of the Air Force may involuntarily activate ARC members under Section 12302 during a national emergency declared by the President after January 1, 1953, or when otherwise authorized by law, for not more than 24 consecutive months.

Including more than one activation authority on any order may also create fiscal complications. For example, Section 12301(d) is used to voluntarily activate ARC members to support both the Regular and Reserve Components; Sections 12304 and 12304a, in contrast, are funded exclusively by the Regular Component. If more than one of these activation authorities is cited on the orders, it will be more difficult to ensure the proper component funds the orders and more systemic checks and balances will need to be implemented to avoid Purpose Statute and Antideficiency Act¹² violations. These administrative oversight expenses could be avoided by accurately citing only the necessary activation authority on each set of orders.

Including more than one activation authority may also cause end strength accounting complications. Congress has excluded airmen serving under certain specified activation authorities from active duty end strength accounting requirements.¹³ Citing both included and excluded activation authorities on one set of orders will complicate the end strength reporting process. Including such an airmen in active duty end strength numbers may improperly inflate the report, while excluding the airmen may be perceived as an intentional failure to accurately report as required by law. Neither outcome is desirable. We recommend that an accurate determination of proper activation authority be made at the outset to avoid such conundrums.

In addition to careful and selective citation to activation authorities, we recommend that orders carefully and selectively cite to no more than one scope of duty statute.¹⁴ While there is no legal prohibition against citing more than one scope of duty authority on a set of orders, there are functional and policy reasons why such a practice should be discouraged.

More Than One Scope of Duty Authority: Section 12310 requires an activated ARC to organize, administer, recruit, instruct, and/or train (OARIT) members of the ARC as his/her primary duty. As we have previously opined, this requirement (and the requirements for service under Section 10211 discussed above) is inconsistent with a variety of other possible duties: such as, commanding an active duty unit (OpJAGAF 2005/14); serving as a world class athlete (OpJAGAF 2010/10); or deploying – other than in very limited circumstances – (OpJAGAF 2006/15 (analyzing only Section 10211)).¹⁵ Citing Sections 10211 or 12310 with any other duty status authority on a member's orders, therefore, will significantly complicate and severely limit the scope of that member's duties.

We also caution against coupling Sections 10211 and 12310 with any other active duty scope of duty authorities on a set of orders because members serving under these sections do not count against active duty end strength, while other duty status sections are required be counted.¹⁶

¹² 31 U.S.C. § 1341

¹³ Section 115

¹⁴ As discussed above, some activation authorities have inherent scope of duty limitations, and thus a separate scope of duty statute may not be required.

¹⁵ Notwithstanding these limitations, we have previously opined in OpJAGAF 2006/15 that temporary detailing of a Section 10211 AGR away from headquarters or seats of government is permissible, given the broad authorities of Section 12314.

¹⁶ Section 115

The Air Force is also limited in the number of personnel it can place on active duty in active guard & reserve (AGR) status under Sections 10211 and 12310 each year.¹⁷ Including Sections 10211 and 12310 on orders for airman that are not intended to perform Section 10211 or Section 12310 duties, therefore, could result in unintentional violation of these AGR caps (if such airmen are not reported as AGRs) or inadvertent under-staffing of actual AGR requirements (if such airmen are counted as AGRs, even though they are not performing such duties).

In short, given the significant limitations on the scope of duties an airman can perform and the limited number of AGRs authorized by Congress each year, we recommend that the Air Force establish a policy against citing Sections 10211 and 12310 on orders with other scope of duty authorities, allowing such a practice only by exception.

Sections 10211 and 12310 on the Same Order? Finally, we turn to the specific question of whether Sections 10211 and 12310 may be cited together on the same set of orders. Some have opined that because both statuses apply to AGRs, it is not important to specify which section applies to which AGR. We disagree. As established above, each statute has its own duty limitations. If both statutes are cited on an airman's orders, the airman must comply with both statutes. In most circumstances, this will not be possible.

Section 10211 requires an airman to work at the "seat of government" and "headquarters responsible for reserve affairs." When construing these requirements, we must start with the plain language of the statute, giving effect, if possible to every clause and word provided.¹⁸

A "seat of government," interpreted plainly, would include those offices that run, direct, or control the decisions and policies of government. In the United States, this most likely would include offices of the executive, legislative, and potentially judicial branches of the federal and state governments. Legislative history confirms such an interpretation. In 1956, Congress explained that it created a standalone definition for "executive part" of government to provide clarity of meaning and specifically to identify department leadership apart from the enterprise as a whole. It used the phrase "at the seat of government" to communicate that distinction.¹⁹

We conclude, therefore, that executive, legislative, and potentially, judicial branch offices that run, direct, or control the decisions and policies of the federal or of each state governments, and provide leadership to those governments qualify as "seats of government" under Section 10211.

¹⁷ In the Fiscal Year 2014 National Defense Authorization Act, Congress authorized the Air National Guard (ANG) to have only 21,875 members (13.98% of its force) in AGR status. The Air Force Reserve (AFR) was authorized 10,429 AGRs, which is 4.13% of its force.

¹⁸ *Hughes Aircraft Co. v. Jacobson*, 515 U.S. 432 (1999); *Moskal v. United States*, 498 U.S. 103, 109 (1990). There is a strong presumption that the plain language of the statute expresses Congressional intent and this presumption is rebutted only in "rare and exceptional circumstances when a contrary legislative intent is expressed." *Chevron, Inc. v. National Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984).

¹⁹ See SAF/GC Memo to SAF/MRB, *Membership Requirements: Board of Correction of Military Records*, 28 Nov 12, pgs.4-5.

Using a plain language interpretation, we also conclude that the phrase “headquarters responsible for reserve affairs” in Section 10211 applies to Headquarters Air Force Reserve Command (HQ AFRC), the National Guard Bureau (NGB), Headquarters Air Force (HQ USAF), and various headquarters units within AFRC.

The Air Force is made up of establishments, units, and nonunits.²⁰ An establishment is: [a]n organizational entity consisting of a headquarters unit and its subordinate units. The name of the establishment is in the name of the headquarters unit. For example, Air Mobility Command (AMC) is an establishment; HQ AMC is its headquarters. Subordinate units are assigned to the establishment and not to the headquarters unit.²¹ Chapter 1006 establishes each Service’s reserve component commands, including AFRC (Section 10174). As a Major Command, AFRC, an establishment, is directly subordinate to HQ USAF.²² HQ AFRC is a management headquarters unit, and has the full range of functional staff.²³ By law, the Chief of the Reserve is the Commander of AFRC and is responsible for organizing, training, and equipping all AFR personnel.²⁴ HQ AFRC’s mission is to “[d]irect Air Force Reserve efforts to ensure sustained combat readiness and full-spectrum capability.”²⁵ Thus, we conclude that HQ AFRC at Robins Air Force Base is a “headquarters responsible for reserve affairs,” within the scope of Section 10211.²⁶

Section 10503 and the National Guard Bureau (NGB) Charter outline the functions and responsibilities of the NGB, including planning and administering the budget for the Air National Guard; establishing policies and programs for the employment and use of military technicians; supervising and administering the AGR program; and issuing directives, regulations, and publications consistent with Air Force policies, etc. The ANG is a reserve component of the Air Force.²⁷ Therefore, we conclude that the NGB, located in Arlington, Virginia, is also a “headquarters responsible for reserve affairs” within the meaning of Section 10211.

HQ USAF is “[t]he senior headquarters of the Air Force, consisting of two major entities: the Secretariat (including the Secretary of the Air Force and the Secretary’s principal staff) and the Air Staff, headed by the Chief of Staff.”²⁸ Section 8016 provides that there shall be an Assistant

²⁰ AFI 38-101, *Air Force Organization*, 16 Mar 11, including AFGM2.1, 2 May 13, para 2.1.

²¹ *Id.*, para 2.1.1.

²² *Id.*, para 2.2.2.

²³ *Id.*

²⁴ Section 10174(b) & (c) (all AFR personnel except special operations shall be assigned to AFRC).

²⁵ AFRCMD 1124, *Organization and Functions of Headquarters Air Force Reserve Command*, 31 Aug 11, para 4.

²⁶ AFRC is the only MAJCOM responsible for reserve affairs. Thus, no other MAJCOM headquarters meets the statutory requirements for Section 10211 orders. *Accord* OpJAGAF 2000/43 (concluding an assignment to HQ AFSPC to perform AFSPC work does not meet the requirements of Section 10211); OpJAGAF 1981/34 (concluding an assignment to the reserve wing at Norton did not meet the requirements of Section 10211).

²⁷ Section 10101

²⁸ AFI 38-101, para. 2.2.1.

Secretary of the Air Force for Manpower and Reserve Affairs (SAF/MR). This person is principally responsible for the overall supervision of manpower and reserve component affairs of the Department of the Air Force. Per Sections 8031 and 8038, Air Staff includes an Office of the Air Force Reserve and the Chief of that office is the adviser to the Chief of Staff on AFR matters (AF/RE). This office controls the preparation, justification, and execution of the budget of and the full-time support program of the AFR.

Given these express statutory references to and responsibilities for reserve component affairs, we conclude that HQ USAF, located at the Pentagon, is a “headquarters responsible for reserve affairs” to which ARC members on orders under Section 10211 may be assigned. Some have argued that Section 10211 does not allow assignment to the entire headquarters, that ARC members may only be assigned to those offices within HQ USAF that are directly responsible for reserve affairs, such as SAF/MR and AF/RE. We disagree. Section 10211 does not require this level of specificity. The language of Section 10211 requires assignment to “headquarters responsible for reserve affairs,” not assignment to “headquarters in an office responsible for reserve affairs.” Thus, the entirety of HQ USAF qualifies.²⁹ Within HQ USAF (as with all seats of government and/or headquarters responsible for reserve affairs), however, the duties of the position to which the member is assigned must be to “participate in preparing and administering the policies and regulations affecting those reserve components.”³⁰

Below HQ AFRC, NGB, and HQ USAF there could be headquarters units responsible for reserve affairs.³¹ In fact, however, NGB does not have any subordinate units and the only subordinate unit of HQ USAF responsible for reserve affairs is AFRC.³²

AFRC has three subordinate numbered air forces (NAFs),³³ each of which is “a command echelon...focused on ensuring the readiness of assigned forces. It prepares forces for deployment and employment.”³⁴ These NAFs do not have “complete functional staffs. They are not management headquarters (unless specifically directed by a DoD authority).”³⁵ Section

²⁹ Interestingly, HAF offices in the Pentagon would also likely qualify as a “seat of government.” HAF offices run, direct, and control the decisions and policies of the Department of the Air Force, within the Executive Branch of the federal government. See SAF/GC Memo to SAF/MRB, p. 4-5 (“seats of government” refers to those organizations and/or individuals providing control and supervision directly on behalf of the Secretary (such as government offices on Capitol Hill, the White House, or other executive branch offices)).

³⁰ Section 10211

³¹ AFI 38-101, para 2.1.2.2.8. (The purpose of primary subordinate units (PSUs) of an establishment “is to perform...[the]...mission and not to provide support functions for [the] parent headquarters.”)

³² In the future, if NGB or HQ USAF establishes additional subordinate units responsible for reserve affairs, then a separate analysis will need to be conducted to determine if the headquarters of those units qualify for Section 10211 orders.

³³ AFI 38-101, para 2.1.2.2.8. (NAFs are MAJCOM PSUs); AFRC Mission Brief, Jun 14, Slide 7, available at <http://www.afrc.af.mil/shared/media/document/AFD-140606-018.pdf>.

³⁴ *Id.*, para 3.2.

³⁵ *Id.*, para 2.2.5.

10211, however, does not require that a member be assigned to a full management headquarters; it only requires assignment to a headquarters responsible for reserve affairs. We conclude, therefore, that AFRC's NAF headquarters units are "responsible for reserve affairs" and may warrant Section 10211 orders.

In addition to its NAFs, AFRC has recently had the following direct reporting units (DRUs):³⁶

- AFRC Recruiting Service;
- Individual Mobilization Augmentee Readiness Management Group (RMG);
- Air Force Reserve Command Force Generation Center (FGC); and
- Air Reserve Personnel Center (ARPC).³⁷

Each of these DRUs is an establishment and has a headquarters unit³⁸ with "many of the same administrative and organizational responsibilities" as a MAJCOM PSU headquarters.³⁹

These headquarters units are responsible for the following AFR affairs:

- HQ AFRC Recruiting Service "implement[s] policies and procedures to effectively manage" the Recruiting Service and to obtain "sufficient numbers of qualified persons to fill programmed positions in the Air Force Reserve Command;"⁴⁰
- HQ RMG's mission was "to ensure Individual Mobilization Augmentees (IMAs) and Participating Individual Ready Reservists (PIRR) [were] ready to be mobilized to meet the requirements of combatant commanders;"⁴¹
- HQ AFRC FGC is designed to "enable a standardized and streamlined management process for the activation of AFR forces, while providing AFRC the ability to manage accountability for these forces. The FGC...respond[s] to the full range of military operations for AFR forces, regardless of activation status (Title 10 [U.S.C.], Section 12301(a), 12301(d), 12302, 12304), in support of combatant commanders, MAJCOMs, and AF Agencies;"⁴² and
- HQ ARPC is responsible for providing "personnel support to Air National Guard, Air Force Reserve and retired members, ensuring they are ready to deliver strategic Total Force war fighting capability for the Air Force. From initial entry to retirement, the center provides world-class support for "Generations of Airmen" throughout their military careers."⁴³

³⁶ AFI 38-101, para 2.2.3.1. (DRUs perform missions that do not fit into a PSU.)

³⁷ Although ARPC and the FGC both have the word "center" in their names, organizationally they were not created as "centers"; they are DRUs of AFRC. See Robert Harrison, Subject Matter Expert, AF/A1MO, email dated 30 Jun 14. Similarly, the RMG was not a "group"; it was an AFRC DRU. *Id.*

³⁸ AFI 38-101, paras 2.1.1. and 2.2.3.1.

³⁹ *Id.*, paras 2.2.3. and 2.2.3.1.

⁴⁰ AFRCMD 1157, *Air Force Reserve Command Recruiting Service*, 31 Oct 02, para 1.0.

⁴¹ Readiness Management Group Fact Sheet, 22 Mar 10. The RMG was inactivated on 1 Jul 14. Capt Candace Allen, *Readiness Management Group Inactivates*, 1 Jul 14, available at <http://www.afrc.af.mil/news/story.asp?id=123416563&source=GovD>.

⁴² Air Force Reserve Force Generation Center Enabling Concept, 11 Jan 11, para 2.4.1.

⁴³ AFRCMD 1155, *Headquarters Air Reserve Personnel Center*, [pending publication], para 1.0.

Because all of these missions are focused on and specific to the needs of the ARC, we conclude that the headquarters of these AFRC DRUs are “responsible for reserve affairs” within the scope of Section 10211.

Based on the above, we conclude that Section 10211 orders may only be used at seats of government, HQ AFRC, NGB, HQ USAF, and at headquarters echelons within AFRC that are responsible for reserve affairs, such as HQ AFRC Recruiting Service, HQ RMG, HQ AFRC FGC, and HQ ARPC. At each of these locations, Section 10211 orders would only be appropriate for positions that “participate in preparing and administering the policies and regulations affecting those reserve components.”⁴⁴

Section 12310 orders, in contrast, do not have a geographic or location restriction. Instead, Section 12310 restricts only the type and amount of work an ARC member can perform. Airmen on Section 12310 orders must OARIT the reserve components as a primary duty and may:

1. Support operations or missions assigned in whole or in part to the reserve components;
2. Support operations or missions to be performed by elements from more than one component of the Air Force or a joint forces unit with reserve component units or personnel;
3. Advise the Secretary of Defense, Service Secretaries, the Joint Chiefs of Staff, and the combatant commanders on reserve component matters; and
4. Instruct or train active duty, foreign military, defense civilians, and/or defense contractors in the United States and its territories.

These additional duties, however, may not interfere with the AGR’s “primary” OARIT duties.

If Section 10211 and Section 12310 are cited on the same set of orders, then the disparate location and primary duty requirements of each statute must be reconciled. The airman can only be at headquarters or a seat of government (Section 10211), must participate in preparing and administering the policies and regulations affecting the ARC (Section 10211) and must OARIT the ARC as a primary duty (Section 12310). It is possible that preparing and administering ARC policies and regulations might be considered “organizing or administering” to the ARC, and thus Section 10211 duties might qualify as a primary duty under Section 12310; but if one or the other statutory authority is sufficient, what is to be gained by citing both?

Alternatively, to justify having both sections cited on a set of orders, the airman could OARIT as a primary duty and then only perform Section 10211 policy duties on a limited basis as one of the first three additional duties authorized by Section 12310 (listed above). A definitive answer, however, could only be reached on a case-by-case analysis, after reviewing the position description and anticipated duties to be assigned to the airman.

After such an analysis is completed, if Sections 10211 and 12310 were coupled on an airman’s orders, the Air Force would be required to monitor the airman’s actual level of effort to ensure compliance with each statute’s requirements, the Purpose Statute, and the Antideficiency Act.

⁴⁴ Section 10211

In addition to this administrative burden, coupling Sections 10211 and 12310 has a negative impact on the airman's benefits. In OpJAGAF 2013/14, we opined that a Section 10211 AGR, whose orders also cite Section 12301(d), qualifies for advance Reserve retirement age while an AGR serving under Section 12310 does not. This is true even if the Section 12310 orders contain other statutory authorities that would otherwise qualify for reduced retirement age because Section 12731(f)(2)(B)(i) explicitly excludes any "call or order to active duty under section 12310" from retirement age advancement.

Given the compliance risks, administrative burdens, negative impact on airman, and lack of any perceived benefit from coupling Sections 10211 and 12310 on a single set of orders, we recommend that the Air Force establish a policy against citing Sections 10211 and 12310 on a single set of orders, allowing such a practice only by exception.

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