



Office of the Secretary

32 CFR Part 44

[Docket ID: DOD-2020-OS-0041]

RIN 0790-AL00

Screening the Ready Reserve

AGENCY: Office of the Under Secretary of Defense, Personnel & Readiness (Manpower and Reserve Affairs), Department of Defense (DoD).

ACTION: Interim final rule.

SUMMARY: In light of the Administration's continuing response to COVID-19, DoD is amending the CFR to aid civilian employers in more quickly identifying key employees so the Department can better understand the capacity and capability available to support the response to the current pandemic and to avoid military-civilian manpower conflicts in future Declarations of National Emergency or in military mobilizations.

DATES: This rule is effective [insert date of publication in the Federal Register]. Comments must be received by [insert 60 days from the date of publication in the Federal Register].

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) number and title, through the Federal Rulemaking Portal at <http://www.regulations.gov>. Follow the instructions for submitting comments. DoD cannot receive written comments at this time due to the COVID-19 pandemic. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing as they are received, without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: CAPT Daryl P. Schaffer, 703-697-3837.

SUPPLEMENTARY INFORMATION:

DoD's internal policy, DoD Directive 1200.7, Screening the Ready Reserve, at

<https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/120007p.pdf>) establishes requirements for federal government employers and this rule parallels those requirements for application to non-federal employers, *i.e.*, all employers not of the federal government (state, local, non-profit, private, self-employed, etc.), hereafter referred to as “employer.”

Legal Authority

10 U.S. Code 12302 authorizes the President to recall up to one million reservists for up to two years in times of national emergency 10 U.S.C. 10149, “Ready Reserve: continuous screening” requires the Secretary to provide a system of continuous screening of units and members of the Ready Reserve to ensure:

- (1) no significant attrition of those members or units during a mobilization.
- (2) a proper balance of military skills.
- (3) those with military skills for which there is an overriding requirement, members having critical civilian skills are not retained in numbers beyond the need for those skills.
- (4) recognition will be given to participation in combat and national security and military requirements.
- (5) members whose mobilization in an emergency would result in an extreme personal or community hardship are not retained in the Ready Reserve.

Background

The Ready Reserve is the category of reservists most often called to active duty. It consists of three subcategories: Selected Reserve, Individual Ready Reserve, and Inactive National Guard.

The Selected Reserve are the first to be activated. Most reservists are in this category.

The Individual Ready Reserve (IRR) is made up mainly of those who have had training and served in an active component.

The Inactive National Guard are those who leave active drilling status in the Army National Guard before completing their enlistment and will be put in this category unless they specifically request a transfer to the IRR. Only the Army maintains an Inactive National Guard.

If a reservist is unable to meet the requirements to be recalled, the respective Military Service shall discharge, retire, or transfer the member to the Standby Reserve. The Standby Reserve are reservists who maintain their military affiliation but are not members of the Ready Reserve. This may include reservists who fill key federal positions as well as members whose civilian employers designate their job as crucial to national security.

Recall consideration will include length and nature of previous service, family responsibilities, and necessary national interest employment.

For example, if a health care professional can do society more good as a civilian, that individual may be exempted from recall. If reservists has serious family responsibilities, they may be exempted. The law may also exempt veterans with some disabilities, medical conditions, or certain separation codes from any involuntary recall.

On March 27, 2020, the Administration issued EO 13912, *National Emergency Authority To Order the Selected Reserve and Certain Members of the Individual Ready Reserve of the Armed Forces to Active Duty* at <https://www.federalregister.gov/documents/2020/04/01/2020-06985/national-emergency-authority-to-order-the-selected-reserve-and-certain-members-of-the-individual>. While other authorizations are available for recall of the Ready Reserve, this EO was required to allow the Secretary of Defense the maximum flexibility for this national emergency to call up Ready Reserve members to help in the country's response to COVID-19. On April 2, 2020, the Secretary of Defense issued *Guidance on Activating the National Guard, Reserve, and Individual Ready Reserve for Coronavirus Disease Response*, at <https://prhome.defense.gov/Portals/52/Guidance%20on%20Activating%20the%20National%20Guard%20Reserve%20and%20IRR%20for%20COVID-19%20OSD003539-20%20RES%20Final%201.pdf> describing how the Military Services can activate the National Guard and the Ready Reserve to support the domestic response to COVID-19.

Expected Impact of the Changes by this Interim Rule

DoD's revisions are meant to support military mobilization without diminishing the civilian national coronavirus response. The publication of this rule is meant to enhance civilian employer

awareness of the need to provide early identification of critical civilian positions within their organizations and, in coordination with the Military Services, allow the service member to be considered for service not as a Ready Reserve member who is factored into military mobilization planning.

This rule only discusses employee and employer actions before a mobilization. After a mobilization is ordered, no deferment, delay, or exemption from mobilization will be granted because of civilian employment. The Uniformed Services Employment and Reemployment Rights Act (USERRA), 1994 PL 103-353, as amended at 38 U.S.C. 4301-4335, affords reservists and employers various rights and responsibilities regarding reemployment of their civilian position. Employers must ensure key position determinations are not undertaken in a manner that would violate USERRA, its implementing regulations at 20 CFR part 1002, or other federal statutes and regulations.

Civilian employers, usually through their onboarding programs, identify key employees to ensure the Military Services have an accurate assessment of Ready Reserve members. This assessment of employees who have a Ready Reserve affiliation is meant to preclude conflicts between a member's mobilization requirements and non-Federal civilian employment obligations during times of war or national emergency. Ready Reserve members with critical civilian skills should work with their employer before mobilization. The efforts of civilian employers and their employees pre-mobilization will help identify employees who are required for the ongoing civilian response to the pandemic. While Ready Reserve members are already required to be screened by their respective Military Service per 10 U.S.C. 10149 and to work with their employer to ensure those with critical civilian skills are identified, these updates to the CFR will ensure a more accurate accounting of capability and capacity of the specialties required for COVID-19 response.

This rule updates the naming of current offices within the Office of the Secretary of Defense (OSD), provides current information on service points of contact, and removes previous language

pertaining to federal government employers to more succinctly clarify employer responsibilities to petition the respective Military Service of Ready Reserve members that may have a conflict with their employment prior to a military mobilization. These changes highlight how a civilian employer, based on their capability and capacity during either normal or extenuating circumstances such as the ongoing COVID-19 response, petitions a Military Service on behalf of a Ready Reserve employee who occupies a key position within a company or occupies a position where military mobilization would create an extreme personal or community hardship. Employers are encouraged to assess the internal capabilities of their own positions and the organic capacity to sustain emergency manpower needs prior to a military mobilization which can produce an accurate listing of what they consider key positions to their organization.

DoD last modified this section of the CFR, *Screening the Ready Reserve* on December 23, 1999 (64 FR 72027). Many of the changes support a recommendation of the DoD Regulatory Reform Task Force to redact parts related to Federal Employers as the current rule contains the entire content of DoD's internal Directive which is unnecessary for civilian employers. The revisions remove all text not applicable to the public and the retained text was updated or edited for clarity.

The following is a summary of changes by section:

Section 44.1 Purpose. Updated U.S. Code.

Section 44.2 Applicability. Removed all text and replaced with non-Federal employers statement.

Section 44.3 Definitions. Removed "Extreme personal hardship" as this request is submitted by the member, not the employer. Added "Inactive National Guard." Removed all Federal implications in "Key position" and retained only the first statement for non-Federal applicability. Removed internal process text from "Mobilization." Removed internal process text from "Selected Reserve." Removed "Standby Reserve" as non-applicable to the public.

Section 44.4 Policy. Retained (a), merged (a)(1) and (a)(2), renumbered (a)(3) to (a)(2).

Renumbered (b) to (d) and removed internal process text. Renumbered (f) to (b). Renumbered (g) to (c). Removed (c), (d), (e), (h), (i), (j), and (k) as internal processes text and non-applicable to the public.

Section 44.5 Responsibilities. Adjusted responsibilities based on OSD restructure. Renamed (a) to USD(P&R) and retained text with edits for clarity. Renamed (b) to ASD(M&RA), retained (b)(5) text with edits for clarity, and removed (b)(1-4) as internal processes text and non-applicable to the public. Retained (c), added USCG, retained (c)(2-4) text with edits for clarity, removed (c)(1, 5-10) as internal processes text and non-applicable to the public.

Appendix A to Part 44 – Guidance. Adjusted title for public applicability. Removed Deputy Secretary of Defense as internal processes text and non-applicable to the public. Merged and renamed with edits (a) and (b) to (a). Retained with edits for clarity and text non-applicable to the public (a)(1) to (b). Retained (a)(1)(i) to (b)(3) with edits for clarity and text non-applicable to the public. Removed (a)(1)(ii) as internal processes and text non-applicable to the public. Retained (a)(1)(iii) to (b)(1) with edits for clarity and text non-applicable to the public. Retained (a)(1)(iv)(A-F) to (b)(2)(i-vi). Removed (2). Retained (b) to (a). Retained (c) and merged “List of...” into (c). Updated contact information and added website.

When this rule is published, DoD will also update and publish its internal instruction - DoD Instruction 1200.07, “Screening the Ready Reserve” - for all applicable changes.

Costs

As this is an administrative update to an existing Rule, DoD believes the economic impact to civilian employers is de minimis, estimating a cumulative total of \$11K across all employers nationwide. Under the existing Rule, employers are already required to identify employees who are Ready Reserve members and this rulemaking does not alter that requirement. The cost to employers of screening is already imbedded in their HR processes. The estimated costs if an employer submits a petition to a Military Service is calculated below and will vary based on the automation of human resource processes and the number of employees of an organization who are

Ready Reserve members with critical skills. Ready Reserve members are already required to be screened by their respective Military Service per 10 U.S.C. 10149 and to work with their employers to address any concerns. The benefit of screening to the employer is to ensure those with critical civilian skills are identified in order to prevent conflicts between the emergency manpower needs of civilian and military activities during a mobilization.

The following describes how the estimated sum total of \$11K was derived using existing costs to project costs of a petition. Using data from the U.S. Bureau of Labor Statistics, U.S. Census, DoD Total Military Strength report, and the DoD Status of Forces survey, less than 0.3% of the U.S. population is in the Reserve, including the National Guard, with 51% employed by the public [Federal (36%), State (9%), or Local (6%)]. There were 1,020,156 Military Service members in the Ready Reserve as of March 2020 and over 782,000 of those members are estimated to have civilian employment. Approximately 0.3% of the 782,000, or 2,346 members, may be identified as key civilian employees and may require a petition. The 2019 median hourly wage for an HR professional or manager is \$34.92 an hour. The cost to screen one employee as part of an onboarding process questionnaire or through an annual recertification process, which is estimated at less than 10 minutes or \$5.82, is already imbedded in their HR processes and thus not included here. The cost to prepare a petition on one employee is estimated at 2 hours, or \$69.84. Applying a more appropriate and realistic planning factor of 0.3% to reflect key positions in civilian organizations reflects a projected annual cost, collectively from all employers, of \$11,095.

Cost Benefit Analysis Assumptions and Sources

It should be noted, not every Ready Reserve member in a company would be considered in a “key position” and therefore, a petition would not be needed on every member. The estimated cost presented encompasses all 1,020,156 Ready Reserve members and a 0.3% planning factor. Assumptions in cost calculation include: U.S. population: 329,648,880 (as of May 14, 2020, source: <https://www.census.gov/>); Ready Reserve: 1,020,156 (as of March 31, 2020, source:

Total Military Strength report obtained from the Defense Manpower Data Center (DMDC) from each Military Service HR system of record); Percent of U.S. population in the Ready Reserve (Reserve/US population): 0.0030947 or 0.3%. Based on these data points, a projected 0.3% of employers in the country employ a Ready Reserve member. The Bureau of Labor Statistics at the end of March 2020 reported a U.S. working population of 155,167,000 with 16,294,000 working office/admin (human resources/HR). Applying the projected 0.3% of employers with Ready Reserve members (HR*0.3%) reflects 48,882 HR employees to address Ready Reserve members for their employer. With a median salary for HR Manager/Specialist of \$34.92/hour, an annual screening is estimated to take 10 min (Rate/6) or \$5.82 and to prepare a petition package to take 2 hours (Rate*2) or \$69.84. Only the petition calculation is include as the annual screening is already imbedded in HR processes.

Data from 2018 DoD Status of Forces Survey reflects the following breakdown of principal civilian employment before most recent activation: Federal Government 36%; State government 9%; Local government 6%; Private/public company 43%; Non-profit 3%; Self-employed 2%; and Family business/farm/unemployed 1%. The below table reflects the costs of the 48,882 HR employees who would be preparing petitions on the Ready Reserve members in their organization.

Screening Ready Reserve/National Guard Cost Analysis			
	%	# Employees	2-hr at 0.3% planning factor
Private	49%	23,952	\$5,018.46
Federal	36%	17,598	\$3,687.03
State	9%	4,399	\$921.76
Local	6%	2,933	\$614.51
Grand Total	100%	48,882	\$11,095.24

Cost to the DoD. These estimates (0.3% of 782,000 Ready Reserve members fill key positions) indicate the Military Services would adjudicate approximately 2,346 members, a

number well within the normal processing by all Military Service Reserve centers and therefore would not add additional costs.

Interim Final Rule Justification

DoD is issuing this rulemaking as an interim final rule and has determined that, under the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), it would be impracticable and contrary to the public interest to delay a final regulation until a public notice and comment process has been completed.

Since March 2020, DoD's response to the pandemic has grown from a few thousand Ready Reserve members deployed primarily to states in the northwest and northeast to currently over 40,000 members deployed throughout the United States. The conclusion of a public notice and comment period before the rule is finalized would be impracticable because it would impede agile and timely execution of DoD's response to current pandemic and ongoing natural disaster support. Requests for DoD support to all states has evolved and grown over the last 7 months and the Department anticipates it will continue through the development and deployment of a vaccine over the next two years. Additionally, the Military Services continue to support other domestic response actions such as providing local protection during civil disturbances throughout the country, supporting disaster response for wildfires and hurricanes and continuing to support election requirements. Given these competing requests and the length of time required for pandemic response involving DoD personnel, the Department needs to continue to consider the proper balance of a civilian employees responsibilities within their communities for pandemic and disaster response and increasing requests from States for additional DoD resources. Given the pandemic's evolution and increasing request for DoD resources over the last seven months, the effort to begin rulemaking in this area was delayed at the start of the pandemic. The current requirements and the need to support both the military and civilian response for the pandemic, natural disasters, and social unrest has left DoD with insufficient time to prepare and complete a full public notice and comment rulemaking proceeding to timely complete a final rule.

Early in the response to pandemic, limited information from employers regarding Ready Reserve members in key positions created an initial delay in understanding true capacity and capability of civilian medical providers who are also Ready Reserve members and could be factored into military mobilization planning. The publication of the rule will encourage the early identification of critical civilian employees and, in coordination with the Military Services, allow the service member to be counted in the Ready Reserve. Given the nature of the COVID-19 pandemic and an anticipated requests for resources through vaccine deployment, delaying this notice to employers through a proposed rule may hinder DoD's ability to determine the size of medical personnel available for deployment which would impede immediate action to protect the public health.

For these reasons, DoD has determined that the public notice and participation that the APA ordinarily requires would, in this case, be impracticable, unnecessary, and contrary to the public interest and that good cause exists for waiving proposed rulemaking and delaying its solicitation of comments from the public until after it issues an interim final rule. DoD will consider those comments received upon its interim final rulemaking in a subsequent final rule. Additionally, and for the same reasons discussed above, DoD has determined there is good cause to make the rule effective immediately, pursuant to 5 U.S.C. 553(d)(3).

Regulatory Analysis

Executive Order 12866, "Regulatory Planning and Review" and Executive Order 13563, "Improving Regulation and Regulatory Review"

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a significant regulatory action, although, not

determined to be economically significant, under section 3(f) of Executive Order 12866.

Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB) under the requirements of these Executive Orders.

Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs”

This interim final rule is not subject to the requirements of Executive Order 13771 as its costs to Non-federal civilian employers are de minimis.

Costs

Additional details on the cost of this rule are discussed in the costs section of this preamble.

Benefits

Civilian Employer processes and military screening actions ensure civilian employers and the Military Services have the appropriate balance of civilian and military skills required for both parties in case of a mobilization. The challenges faced today in communities as well as in the DoD require dynamic and timely employment of our service members while reducing the conflict of those members to meet both military and or civilian requirements. Ultimately, the response to military mobilization and civilian planning will be greatly enhanced when the essential projected response needs have been equitably calculated for a Ready Reserve member and employee.

Military Service annual screening provides a vital Ready Reserve force composed of members who meet Military Service readiness standards of mental, moral, professional, and physical fitness and possess the military qualifications required in the various grades, ratings, and specialties of their Military Service; and are available immediately for active duty during a mobilization or as otherwise required by law. The tasking of a Ready Reserve member who is known to be critical to civilian response in a key position that was not previously adjudicated through the Military Service could create a delay in the civilian response and in turn create potential harm to the local community. The benefit of this Rule fosters a partnership in the appropriate balance of civilian and military assessments to meet needed requirements for a

response while not decrementing each other's capacity and capability.

Alternatives

If no action were taken to update the current rule, the ability to identify medical employees with critical civilian skills needed for the COVID-19 response and to petition those critical employees to the Military Services for consideration would be reduced thus greatly impacting both military and civilian responses and creating inefficiencies in awareness and planning of medical capacity and capability. Additionally, if no action were taken, the current names of OSD officials with screening the Ready Reserve responsibilities would not be communicated to employers. This lack of action is not preferred as it would cause inefficiencies in providing medical capacity for COVID-19 response and cause confusion for employers because the list of offices to which petitions must be submitted is extremely outdated. The results of this alternative are not preferred. The preferred alternative is to publish this interim final rule for public comment.

Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601)

The Department of Defense certifies that this interim final rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact creating a substantial cost to a number of small entities. There are a small percentage of defined critical employees in the civilian sector, regardless of the national emergency, that are required to support their civilian employer. As the response to the pandemic evolved, the need for certain specialties in the response evolved. In the case of COVID-19, the immediate need was for medical providers and the situation evolved requiring additional specialties for support. In other non-federal employment areas, a critical employee may stay consistent, as in the example of a sole nuclear reactor chief within a plant who should not be in the Ready Reserve as he or she would be required to mobilize if called upon and not be able to perform the critical civilian skill. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The DoD will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the Federal Register. This interim final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

Sec. 202, Public Law 104-4, “Unfunded Mandates Reform Act”

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532) requires agencies to assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$167 million in 2019 dollars, updated annually for inflation. It is estimated this interim final rule will not substantially affect State, local, or tribal governments and private sector costs any more than the previous rule requirements.

Public Law 96-511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)

It has been determined that 32 CFR part 44 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, “Federalism”

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates an interim final rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Like the current rule, it is estimated this interim final rule will not have a substantial effect on State and local governments, where 9% and 6% respectively employ Ready Reserve, including the National Guard, members.

List of Subjects in 32 CFR Part 44

Armed forces reserves.

For the reasons stated in the preamble, the Department of Defense revises 32 CFR part 44 to read as follows:

PART 44—SCREENING THE READY RESERVE

Sec.

44.1 Purpose.

44.2 Applicability.

44.3 Definitions.

44.4 Policy.

44.5 Responsibilities.

Appendix A to Part 44—Guidance for Employers of Ready Reservists

Authority: 10 U.S.C. 10149.

§ 44.1 Purpose.

This rule updates Department of Defense (DoD) policy and responsibilities for the screening of Ready Reservists under 10 U.S.C. 10149.

§ 44.2 Applicability.

This rule applies to non-Federal employers of Ready Reservists filling key positions.

§ 44.3 Definitions.

For purposes of this part, the following definitions apply:

Extreme community hardship. A situation that, because of a Reserve member's mobilization, may have a substantially adverse effect on the health, safety, or welfare of the community. Any request for a determination of such hardship will be made by the Reserve member and must be supported by documentation, as required by the Secretary of the Military Department concerned.

Inactive National Guard (ING). Members of the National Guard in an inactive status in the Ready Reserve and attached to a specific National Guard unit. These members do not participate in

training activities but mobilize with their unit of assignment or with other units within their State on partial or full mobilization. They are not subject to a call-up pursuant to 10 U.S.C. 12304.

Individual Ready Reserve (IRR). A manpower pool within the Ready Reserve of each of the RCs consisting of individuals who have had some training or who have served previously in the AC or in the Selected Reserve, and may have some period of their MSO remaining pursuant to 10 U.S.C. 651. The IRR consists of members of the Ready Reserve who are not in the Selected Reserve or the ING. Additionally, the IRR also includes some personnel who are participating in officer training programs or in the Armed Forces Health Professions Scholarship and Financial Assistance Programs.

Key employee. Any non-federal employee occupying a key position within an agency, company, local government, or organization.

Key position. A public or private civilian position, not a job series, designated by the employer and approved by the Secretary of the Military Department concerned) that cannot be vacated during war or national emergency.

Mobilization. The process by which the Armed Forces of the United States, or part of them, are brought to a state of readiness for war or other national emergency.

Ready Reserve. The Selected Reserve and Individual Ready Reserve liable for active duty as prescribed by law.

Selected Reserve. Those units and individuals within the Ready Reserve designated by their respective Military Service and approved by the Joint Chiefs of Staff as so essential to initial wartime missions that they have priority over all other reserves.

§ 44.4 Policy.

It is DoD policy that

(a) Members of the Ready Reserve shall be screened (see the appendix to this part for specific screening guidance) at least annually to meet the provisions of 10 U.S.C. 10149 and to provide a Ready Reserve force composed of members who:

(1) Meet Military Service readiness standards of mental, moral, professional, and physical fitness and possess the military qualifications required in the various ranks, ratings, and specialties.

(2) Are available immediately for active duty (AD) during a mobilization or as otherwise required by law.

(b) Ready Reserve members whose immediate recall to AD during an emergency would create an extreme personal or community hardship shall be transferred to the Standby Reserve or the Retired Reserve, or shall be discharged, as applicable.

(c) Ready Reserve members who occupy key positions shall be transferred to the Standby Reserve or the Retired Reserve, or shall be discharged, as appropriate.

(d) After a mobilization is ordered, no deferment, delay, or exemption from mobilization will be granted to Ready Reserve members because of their civilian employment.

§ 44.5 Responsibilities.

(a) The Under Secretary of Defense for Personnel and Readiness (USD(P&R)) adjudicates, before mobilization, conflicts the Ready Reserve screening process has identified, but has not resolved, between the mobilization manpower needs of the civilian sector and the Military Services

(b) The Assistant Secretary of Defense for Manpower and Reserve Affairs (ASD(M&RA)), under the USD(P&R), coordinates resolution of conflicts between the mobilization manpower needs of the civilian sector and the Military Services identified but not resolved through the Ready Reserve screening process.

(c) The Secretaries of the Military Departments and Commandant, United States Coast Guard, ensure coordination with the ASD(M&RA) to resolve conflicts (identified, but not resolved through the Ready Reserve screening process) between the mobilization manpower needs of the civilian sector and the military. They will review petitions submitted by employers, take

applicable action, and promptly transmit the results of that determination to the reservist concerned and their employer after making a determination in response to the petition. Materials provided or produced with regard to the petition will be retained by the Secretary Concerned.

Appendix A to Part 44—Guidance for Employers of Ready Reservists

(a) Employers of Ready Reserve members. Prior to any mobilization action, employers of Ready Reserve members are encouraged to adopt personnel management procedures designed to prevent conflicts between the emergency manpower needs of civilian and military activities that may occur during a military mobilization requiring Ready Reserve participation.

Employers are encouraged to assess the internal capabilities of their own positions and the organic capacity to sustain emergency manpower needs prior to a military mobilization which can produce an accurate listing of what they consider key positions to their organization.

Employers, via the head of or suitable designee within an agency, company, local government, or organization, are encouraged to use the below key position guidelines as a reference for considering designations and, when applicable, petitioning the respective Military Service if a Ready Reserve member fills a key position. Nothing in this part shall reduce, limit, or eliminate in any manner any right or benefit provided by USERRA. Employers must ensure that key position determinations are not undertaken in a manner that would violate USERRA.

(b) Key position guidelines:

(1) Designate individual positions that are essential in nature to, and within, the organization as "key positions," and require they will not be filled by Ready Reserve members to prevent such positions from being vacated during a mobilization.

(2) Consider the following questions to determine whether an individual position should be designated as a key position:

(i) Can the position be filled in a reasonable time after mobilization? (Note that this factor must not be the sole factor relied on in making a key position determination.)

(ii) Does the position require technical or managerial skills that are possessed uniquely by the

incumbent employee?

(iii) Is the position associated directly with defense mobilization?

(iv) Does the position include a mobilization or relocation assignment in a federal agency that has emergency functions, as designated by E.O. 12656?

(v) Is the position directly associated with industrial or manpower mobilization, as designated in E.O.s 12656 and 12919?

(vi) Are there other factors related to the national defense, health, or safety that will make the incumbent of the position unavailable for mobilization? These factors should not be applied more broadly than intended as to encompass an entire class of workers, nor misapplied to conflict with USERRA, its implementing regulations at 20 CFR part 1002, or other federal statutes and regulations.

(3) Conduct an annual review of key positions and employees as noted herein.

(4) Petition to the respective Military Service any findings for adjudication of specific Ready Reserve members filling critical positions, as needed.

(5) When employers consider a Ready Reserve member as filling a key position within their organization, they should petition the applicable Reserve personnel center for discussion and adjudication. An employer may not take any employment action with regard to the position for which approval is sought based upon an employee or potential employee's military service until such time as the petition for approval has been approved by the relevant Service Secretary. Below is the list of Reserve personnel centers to which petitions shall be forwarded:

Army Reserve

U.S. Army Human Resources

Command 1600 Spearhead Division

Avenue ATTN: AHRC-ROR-PPA

Fort Knox, KY 40122-5100

<https://www.hrc.army.mil/>

Navy Reserve

Commander

Naval Military Personnel Command (Pers 91)

5720 Integrity Drive

Millington, TN 38055-9100

<https://www.public.navy.mil/bupers-npc/Pages/default.aspx>

Marine Corps Reserve

Director

Marine Corps Individual Reserve Support Activity (MCIRSA)

2000 Opelousas Ave

New Orleans, LA 70114

<https://www.marforres.marines.mil/Major-Subordinate-Commands/Force-Headquarters-Group/Marine-Corps-Individual-Reserve-Support-Activity/>

Air Force Reserve

Commander

Air Reserve Personnel Center/DPAM

18420 E. Silver Creek Ave, Bldg 390, MS 68

Buckley AFB, CO 80011

<https://www.arpc.afrc.af.mil/>

Coast Guard Reserve

Commander (PSC-RPM)

U. S. Coast Guard Personnel Service Center

2703 Martin Luther King Jr AVE SE Stop 7200

Washington, DC 20593-7200

<https://www.dcms.uscg.mil/Our-Organization/Assistant-Commandant-for-Human-Resources-CG-1/Personnel-Service-Center-PSC/Reserve-Personnel-Management-PSC-RPM/>

Army and Air National Guard

Submit petitions to the Adjutant General of the appropriate State, Territory, or the District of Columbia.

Dated: December 21, 2020.

Patricia L. Toppings,

OSD Federal Register Liaison Officer,

Department of Defense.

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