

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comments on the proposed amendments to the Pennsylvania program that were submitted on May 22, 1998. Comments should address whether the proposed amendments satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Pennsylvania program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this notice, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the OSM Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by the close of business on September 14, 1998. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that

existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 21, 1998.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 98-23242 Filed 8-27-98; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 44

RIN 0790-AF57

Screening the Ready Reserve

AGENCY: Department of Defense.

ACTION: Proposed rule.

SUMMARY: This proposed rule codified guidance governing the screening of Reserve component members of the United States Military Departments relative to their civilian employment. The requirement for screening the Ready Reserve is established in 10 U.S.C. 10149. The purpose of the screening program is to ensure the availability of Ready Reserve members for military mobilization purposes. The intended effect of the screening is to preclude conflicts between Reserve mobilization obligations and Federal civilian employment requirements during times of war or national emergency.

DATES: Comments must be received by October 27, 1998.

ADDRESSES: Forward comments to Assistant Secretary of Defense for Reserve Affairs, Attn: Manpower and Personnel (Mr. Dan Kohner), 1500 Defense Pentagon, Room 2D517, Washington, DC 20301-1500.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Kohner, 703-693-7479.

SUPPLEMENTARY INFORMATION:

Public Law 104-121

It has been certified that this is not a major rule under the Congressional Review of Agency Rulemaking (Public Law 104-121).

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action. This rule indicates that it does not:

1. Have an annual effect on the economy of \$100 million or more, or otherwise have material adverse economic effects.
2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.
3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or,
4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act

It has been certified that this rule is not subject to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601). The Department of Defense is not subject to the RFA when making rules related to a "military or foreign affairs function of the United States" or to Executive Order 12866 for those regulations that "pertain to a military or foreign affairs function of the United States [other than procurement functions or import-export of non-defense articles]."

Paperwork Reduction Act

It has been certified that this rule does not impose reporting and recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35). Interagency Report Control Number 0192-DOD-AN remains in effect, with a current expiration date of September 30, 1998.

List of Subjects in 32 CFR Part 44

Armed forces reserves.

Accordingly, 32 CFR part 44 is proposed to be revised 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

Authority: 10 U.S.C. 10145.

§ 44.1 Purpose.

This part updates DoD policy and responsibilities for the screening of Ready Reservists under 10 U.S.C. 10145 and E.O. 11190.

§ 44.2 Applicability.

This part applies to the Office of the Secretary of Defense and the Military Departments (including the Coast Guard when it is not operating as a Military Service in the Navy by agreement with the Department of Transportation). The term "Military Departments," as used herein, refers to the Departments of the Army, the Navy, and the Air Force. The term "Secretary concerned" refers to the Secretaries of the Military Departments (including the Secretary of Transportation for the Coast Guard when it is not operating as a Military Service in the Navy). The term "Military Services," addressed herein, refers to the Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard.

§ 44.3 Definitions.

Extreme community hardship. A situation that, because of a Reservist'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 shall be made by the Reservist and must be supported by documentation, as required by the Secretary concerned.

Extreme personal hardship. An adverse impact on a Reservist's dependents resulting from his and/or her mobilization. Any request for a determination of such hardship shall be made by the Reservist and must be supported by documentation, as required by the Secretary concerned.

Key employee. Any Federal employee occupying a key position.

Key position. A Federal position that shall not be vacated during a national emergency or mobilization without seriously impairing the capability of the parent Federal Agency or office to function effectively. There are four categories of Federal key positions. The first three categories are, by definition, key positions. However, the third category, Article III Judges, provides for exceptions on a case-by-case basis. The fourth category requires a case-by-case determination and designation as described in the following:

(a) The Vice President of the United States or any official specified in the order of presidential succession as in 3 U.S.C. 19.

(b) The members of the Congress and the heads of the Federal Agencies appointed by the President with the consent of the Senate. For this part, the term "the heads of the Federal

Agencies" does not include any person appointed by the President with the consent of the Senate to a Federal Agency as a member of a multimember board or commission. Such positions may be designated as key positions only in accordance with paragraph (d) of this section.

(c) *Article III Judges.* However, each Article III Judge, who is a member of the Ready Reserve, and desires to remain in the Ready Reserve, must have his or her position reviewed by the Chief Judge of the affected Judge's Circuit. If the Chief Judge determines that mobilization of the Article III Judge concerned will not seriously impair the capability of the Judge's court to function effectively, the Chief Judge will provide a certification to that effect to the Secretary of the Military Department concerned. Concurrently, the affected Judge will provide a statement to the Secretary concerned requesting continued service in the Ready Reserve and acknowledging that he or she may be involuntarily called to active duty (AD) under the laws of the United States and the Directives and Regulations of the Department of Defense and pledging not to seek to be excused from such orders based upon his or her judicial duties.

(d) Other Federal positions determined by the Federal Agency Heads, or their designees, to be key positions in accordance with the guidelines in Appendix A to this part.

Mobilization. Involuntary activation of Reserve component members in accordance with 10 U.S.C. 12301, 12302, or 12304. That includes selective mobilization (Presidential Selected Reserve Call-Up Authority), partial mobilization, and full mobilization.

Ready reserve. Reserve unit members or individual Reserve and Guard members, or both, liable for AD, as provided in 10 U.S.C. 12301, 12302, and, for some members, 10 U.S.C. 12304. It consists of the Selected Reserve, the Individual Ready Reserve, and the Inactive National Guard.

Selected reserve. A category of the Ready Reserve in each of the Reserve components. The Selected Reserve consists of units, and, as designed by the Secretary concerned, of individual Reserve members, trained as prescribed in 10 U.S.C. 10147(a)(1) or 32 U.S.C. 502(a), as appropriate.

Standby reserve. The Standby Reserve consists of those units or members, or both, of the Reserve components, other than those in the Ready Reserve or the Retired Reserve, who are liable for active duty only as provided for in 10 U.S.C. 12301 and 12306. The Standby Reserve consists of personnel who are maintaining their military affiliation

without being in the Ready Reserve, but have been designated "key civilian employees," or have a temporary hardship or disability. Those individuals are not required to perform training and are not part of units. The Standby Reserve is a pool of trained individuals who may be mobilized as needed to fill manpower needs in specific skills. The Standby Reserve consists of the active status list and the inactive status list categories.

§ 44.4 Policy.

It is DoD policy that:

(a) Members of the Ready Reserve shall be screened at least annually to provide a Ready Reserve force composed of members who:

(1) Meet Military Service wartime standards of mental, moral, professional, and physical fitness.

(2) Possess the military qualifications required in the various ranks, ratings, and specialties.

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

(b) On mobilization under 10 U.S.C. 12301(a) or 12302, all personnel actions relating to the screening program shall be held in abeyance, and all members remaining in the Ready Reserve shall be considered immediately available for AD service. After such a mobilization is ordered, no deferment, delay, or exemption from mobilization shall be granted to Ready Reservists because of their civilian employment. On involuntary activation of Reserve members under 10 U.S.C. 12304 (Presidential Selected Reserve Call-Up Authority), the Secretary of Defense, or designee, shall make a determination regarding the continuation or cessation of the screening program.

(c) All Ready Reservists shall be retained in the Ready Reserve for the entire period of their statutory obligation or voluntary contract. Exceptions to that policy are made in paragraphs (f), (g), and (h) of this section, or may be made by the Secretaries concerned, in accordance with 10 U.S.C. 10145 and 10146.

(d) A member of the Army National Guard of the United States or the Air National Guard of the United States may be transferred to the Standby Reserve only with the consent of the governor or other applicable authority of the State, commonwealth, or territory concerned (including the District of Columbia) in accordance with 10 U.S.C. 10146.

(e) Any eligible member of the Standby Reserve may be transferred back to the Ready Reserve when the reason for the member's transfer to the Standby Reserve no longer exists in

accordance with 10 U.S.C. 10150 and DoD Instruction 1200.15.¹

(f) Ready Reservists 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.

(g) Ready Reservists who are designated key employees or who occupy key positions, as defined in this part, shall be transferred to the Standby Reserve or the Retired Reserve, or shall be discharged, as appropriate.

(h) Ready Reservists who are also DoD civilian employees may not hold a mobilization assignment to the same positions that they fill as civilian employees. Those Ready Reservists shall be reassigned or transferred, as applicable. Reserve component military technicians (dual status), as members of Reserve units, are excluded from that position.

(i) Ready Reservists who are preparing for the ministry in an accredited theology or divinity school cannot be involuntarily called to AD or required to participate in inactive duty training (IDT) in accordance with 10 U.S.C. 12317. Accordingly, such Ready Reservists (other than those participating in a military Chaplain Candidate or Theology Student Program) shall be transferred to the Standby Reserve (active status list) for the duration of their ministerial studies and duties at accredited theology or divinity schools. Ready Reservists participating in a military Chaplain Candidate or Theology Student Program may continue their Ready Reserve affiliation and engage in AD and IDT.

(j) Ready Reservists may not be transferred from the Ready Reserve solely because they are students, interns, residents, or fellows in the healthcare professions. On mobilization, they either shall be deferred or shall be mobilized in a student, intern, resident, or fellow status until qualified in the applicable military specialty, as prescribed by the Secretaries of the Military Departments.

(k) The Secretaries concerned, or their designees, shall make determinations for mobilization availability on a case-by-case basis, consistent with this part, and not by class or group determinations.

§ 44.5 Responsibilities.

(a) The Assistant Secretary of Defense for Reserve Affairs, under the Under

Secretary of Defense for Personnel and Readiness shall:

(1) Manage and control the overall Ready Reserve screening program in accordance with 10 U.S.C. 10149, E.O. 11190, and House Appropriations Committee Report 95-451.

(2) Annually, provide Federal Agencies with a listing of all Federal employee who are also Ready Reservists to assist them in conducting employer screening activities required in FPC 11.

(3) Prepare an annual report on the status of Ready Reservists employed by the Federal Government.

(4) Employ the guidance in enclosure 3 in coordinating the screening program with employers of Ready Reservists.

(b) The Secretaries of the Military Departments shall:

(1) Screen, at least annually, all Ready Reservists under their jurisdiction to ensure their immediate availability for AD.

(2) Ensure coordination with the Federal Emergency Management Agency (FEMA) 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.

(3) Review recommendations for removal of both federal and other civilian employees from the Ready Reserve submitted by employers and take applicable action.

(4) After making a removal determination in response to a petition for such action, promptly transmit the results of that determination to the Ready Reservist concerned and his and/or her employer.

(5) Transfer Ready Reservist identified as occupying key positions to the Standby Reserve or the Retired Reserve, or discharge them, as applicable.

(6) Ensure that Ready Reservists not on AD are examined as to physical fitness in accordance with DoD Directive 1332.18²

(7) Process members of the Ready Reserve who do not participate satisfactorily in accordance with DoD Instruction 1200.15 and DoD Directive 1215.13³

(8) Ensure that all Ready Reservists have a favorably completed National Agency Check on file.

(9) Ensure that personnel records systems incorporate information on any factors that limit the mobilization availability of a Ready Reservist.

(10) Develop and maintain current information pertaining to the mobilization availability of Ready Reservists.

¹ Copies may be obtained at <http://web7.whs.osd.mil/corres.htm>.

² See footnote 1 to § 44.4(e).

³ See footnote 1 to § 44.4(e).

Appendix A to Part 44—Guidance

E3.1. *FEMA* In accordance with 44 CFR 333, the FEMA has the authority to adjudicate, before mobilization, conflicts between the mobilization manpower needs of the civilian sector and the military that the Ready Reserve screening process has identified, but has not resolved.

E3.2. Employers of Ready Reservists**E3.2.1. Federal Employers**

E3.2.1.1. The FPC 11 promulgated policy for Ready Reserve screening activities that shall be accomplished by Federal sector employers. To ensure that Federal employees essential to the continuity of the Federal Government are not retained as members of the Ready Reserve, the following guidance is provided:

E3.2.1.1.1. Conduct annual screening program as provided for by the Assistant Secretary of Defense for Reserve Affairs.

E3.2.1.1.2. Responses from Federal Agencies shall be reported under Inter agency Report Control Number 0912–DoD–AN.

E3.2.1.1.3. Some Federal employees occupy key positions. Because of the essential nature of those positions, the Federal Agency head, or designee, concerned shall designate such positions as “key positions” and shall require that they shall NOT be filled by Ready Reservists to preclude such positions from being vacated during a mobilization. The Secretaries of the Military Departments shall transfer Ready Reservists occupying key positions to the Standby Reserve or the Retired Reserve or shall discharge them, as applicable, under 10 U.S.C. 10149. However, Reserve officers with a remaining Military Service obligation at the time of their removal from the Ready Reserve may be transferred only to the Standby Reserve, Active Status List, in accordance with 10 U.S.C. 12645.

E3.2.1.1.4. In determining whether or not a position should be designated as a “key position,” the following questions should be considered by the Federal Agency concerned:

E3.2.1.1.4.1. Can the position be filled in a reasonable time after mobilization?

E3.2.1.1.4.2. Does the position require technical or managerial skills that are possessed uniquely by the incumbent employee?

E3.2.1.1.4.3. Is the position associated directly with defense mobilization?

E3.2.1.1.4.4. Does the position include a mobilization or relocation assignment in an Agency having emergency functions, as designated by E.O. 12656?

E3.2.1.1.4.5. Is the position directly associated with industrial or manpower mobilization, as designated in E.O. 12656 and 12919?

E3.2.1.1.4.6. Are there other factors related to the national defense, health, or safety that will make the incumbent of the position unavailable for mobilization?

E3.2.2. *Non-Federal Employers of Ready Reservists.* Under 44 CFR 333, non-Federal employers of Ready Reservists, particularly in the fields of public health and safety and defense support industries, are encouraged to adopt personnel management procedures designed to preclude conflicts between the

emergency manpower needs of civilian activities and the military during a mobilization. Employers also are encouraged to use the Federal key position guidelines contained in this enclosure for making their own key position designations and, when applicable, for recommending key employees for removal from the Ready Reserve.

E3.2.3. All employers who determine that a Ready Reservist is a key employee, in accordance with the guidelines in this Directive, should promptly report that determination, using the letter format in section E3.4., to the applicable Reserve personnel center, requesting the employee be removed from the Ready Reserve.

E3.3. Individual Ready Reservists

E3.3.1. Each Ready Reservist who is not a member of the Selected Reserve is obligated to notify the Secretary concerned of any change of address, marital status, number of dependents, or civilian employment and any other change that would prevent a member from meeting mobilization standards prescribed by the Military Service concerned (10 U.S.C. 10205).

E3.3.2. All Ready Reservists shall inform their employers of their Reserve military obligation.

E3.4. Letter FORMAT to Reserve Personnel Centers Requesting That Employee Be Removed From the Ready Reserve

From: (Employer-Agency or Company)
To: (Appropriate Reserve Personnel Center)
Subject: Request for Employee to Be Removed from the Ready Reserve

This is to certify that the employee identified below is vital to the nation's defense efforts in (his and/or her) civilian job and cannot be mobilized with the Military Services in an emergency for the following reasons:

Therefore, I request that (he/she) be removed from the Ready Reserve and that you advise me accordingly when this action has been completed.

The employee is:

1. Name of employee (last, first, M.I.):
2. Military grade and Reserve component:
3. Social security number:
4. Current home address (street, city, State, and ZIP code):
5. Military unit to which assigned (location and unit number):
6. Title of employee's civilian position:
7. Grade or salary level of civilian position:
8. Date (YYMMDD) hired or assigned to position:

Signature and Title of Agency or Company Official

E3.5. List of Reserve Personnel Centers to Which Reserve Screening Determination and Removal Requests Shall be Forwarded**Army Reserve**

Army Reserve Personnel Command, 9700 Page Ave., ATTN: ARPC–SFS–T, St. Louis, MO 63132

Naval Reserve

Department of the Navy, Navy Personnel Command (Pers 91), NSA Memphis, Millington, TN 38054

Marine Corps Reserve

Commanding General, Marine Corps Reserve Support Command, ATTN: IRR Division, 15303 Andrews Road, Kansas City, MO 64147–1207

Air Force Reserve

Commander, Air Reserve Personnel Center/DSFA, 6760 E. Irvington Pl. #4100, Denver, CO 80280–4100

Army and Air National Guard

Submit requests to the adjutant general of the applicable State, commonwealth, or territory (including the District of Columbia).

Coast Guard Reserve

Commander (CGPC–RPM), U.S. Coast Guard Personnel Command, 2100 Second St. SW., Washington, DC 20593

Dated: August 20, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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DEPARTMENT OF TRANSPORTATION**Coast Guard****33 CFR Part 117**

[CGD07–98–048]

RIN 2115–AE47

Drawbridge Regulations; Grand Canal, Florida

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulations governing the operation of the Tortoise Island drawbridge across the Grand Canal at Tortoise Island, Brevard County, Florida. The proposal will extend the 2 hours advance notice for opening on signal now authorized during evening hours Sunday through Thursday, to include Friday and Saturday nights and evenings preceding federal holidays. This action will reduce the requirement to maintain bridgetender service on the bridge during evening hours without unreasonably impacting navigation using the Grand Canal.

DATES: Comments must be received on or before October 27, 1998.

ADDRESSES: Comments may be mailed to Commander (oan) Seventh Coast Guard District, 909 SE 1st Avenue, Miami, Florida 33131–3050, or may be delivered to room 406 at the above address between 7:30 a.m. and 4:00 p.m. Monday through Friday, except federal holidays. The telephone number is (305) 536–6546. The Commander, Seventh