

## § 44.5

## 32 CFR Ch. I (7–1–13 Edition)

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.<sup>1</sup>

(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, except as specified in paragraph (b) of this section.

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

(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 this provision.

(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 partici-

pating 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 medical 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 *Deputy Secretary of Defense* shall 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.

(b) The *Assistant Secretary of Defense for Reserve Affairs*, under the *Under Secretary of Defense for Personnel and Readiness*, shall:

(1) Provide oversight and policy support to the overall Ready Reserve screening program, and manage and control the Federal sector screening program in accordance with 10 U.S.C. 10149, Executive Order 11190, and pp. 63–66 of House Appropriations Committee Report 95–451, which is available from the Government Printing Office, Washington, DC 20401.

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

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

(4) Employ the guidance in appendix A of this part in coordinating the screening program with employers of Ready Reservists.

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

(5) Coordinate conflicts between the mobilization manpower needs of the civilian sector and the military identified but not resolved through the Ready Reserve Screening process.

(c) The *Secretaries of the Military Departments* shall:

(1) Screen, at least annually, all Ready Reservists under their jurisdiction to ensure their immediate availability for active duty (AD) and to ensure compliance with 10 U.S.C. 10149.

(2) Ensure coordination with the Assistant Secretary of Defense for Reserve Affairs 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/her employer.

(5) Transfer Ready Reservists 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 1332.18.<sup>2</sup>

(7) Process members of the Ready Reserve who do not participate satisfactorily in accordance with DoD Instruction 1200.15 and DoD Directive 1215.13.<sup>3</sup>

(8) Ensure that all Ready Reservists have a favorably completed background check for military service suitability on file (*e.g.*, Entrance National Agency Check (ENTNAC), NAC).

(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.

<sup>2</sup>See footnote 1 to § 44.4(e).

<sup>3</sup>See footnote 1 to § 44.4(e).

#### APPENDIX A TO PART 44—GUIDANCE

##### DEPUTY SECRETARY OF DEFENSE

The Deputy Secretary of Defense shall 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.

##### EMPLOYERS OF READY RESERVISTS

###### (a) Federal Employers

(1) 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:

(i) Conduct annual screening program as provided for by the Assistant Secretary of Defense for Reserve Affairs.

(ii) Responses from Federal Agencies shall be reported under Interagency Report Control Number 0912-DoD-AN, "Ready Reservists in the Federal Government," in accordance with DoD 8910.1-M.<sup>4</sup>

(iii) Federal Agency heads, or their designees, concerned shall designate those positions that are of essential nature to, and within, the organization 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. Upon request from Federal Agencies, Secretaries of the Military Departments shall verify the essential nature of the positions being designated as "key," and 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, except as specified in § 44.4 (b).

(iv) 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:

(A) Can the position be filled in a reasonable time after mobilization?

(B) Does the position require technical or managerial skills that are possessed uniquely by the incumbent employee?

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

(D) Does the position include a mobilization or relocation assignment in an Agency having emergency functions, as designated by Executive Order 12656?

(E) Is the position directly associated with industrial or manpower mobilization, as designated in Executive Orders 12656 and 12919?

(F) Are there other factors related to the national defense, health, or safety that will make the incumbent of the position unavailable for mobilization?

<sup>4</sup>See footnote 1 to § 44.4(e).