

regard to interest, unless interest is a contested issue in the proceeding), as provided in paragraphs (c)(1)(ii) and (c)(3) of this section. Therefore, a qualified offer generally may only include an offer to compromise tax, penalties, additions to the tax, and additional amounts. Interest may only be included in a qualified offer if interest is a contested issue in the proceeding. For purposes of this section, interest is a contested issue in the proceeding only if the court in which the proceeding could be brought would have jurisdiction to determine the amount of interest due on the underlying tax, penalties, additions to the tax, and additional amounts. Examples of proceedings in which interest might be a contested issue include proceedings in which the increased interest rate for large corporate underpayments under section 6621(c) is imposed by the Internal Revenue Service and interest abatement proceedings brought under section 6404. Interest is not a contested issue in the proceeding if the court that would have jurisdiction over the proceeding would not have jurisdiction to determine the amount or rate of interest, regardless of whether the taxpayer attempts to raise interest as an issue in the proceeding. Consequently, interest

will not be a contested issue in the vast majority of tax cases because they merely involve the straightforward application of statutory interest under section 6601. Accordingly, in those cases, interest may not be included in the offer.

\* \* \* \* \*

(e) \* \* \*

*Example 16. Qualified offer may not compromise interest unless it is a contested issue.* Taxpayer J receives a notice of deficiency making an adjustment resulting in a deficiency in tax of \$6,500 plus a penalty of \$500. Interest is not a contested issue in the proceeding. Within the qualified offer period, J submits a written offer to settle the case for a deficiency of \$1,000, including all taxes, penalties, and interest. The offer states that it is a qualified offer for purposes of section 7430(g) and that it will remain open for acceptance by the Internal Revenue Service for a period of 90 days. Section 7430(g)(2)(B) and paragraph (c)(3) of this section state that the amount of a qualified offer must be without regard to interest unless interest is at issue in the proceeding. Since J's offer attempts to compromise interest, which is not a contested issue in the proceeding, it is not a qualified offer.

*Example 17. Qualified offer based on new defense or legal theory.* Taxpayers K and L received a statutory notice of deficiency for tax year 2005, a tax year when they were married and filed a joint income tax return. Taxpayer K files a separate petition claiming innocent spouse relief and simultaneously

submits an offer purporting to be a qualified offer. The offer states that K is entitled to innocent spouse relief and offers to settle the 2005 deficiency as to K. K's innocent spouse claim was not raised during K and L's audit, nor was it raised during their appeals conference. Additionally, at no time prior to or contemporaneously with submitting the offer did K file with the Internal Revenue Service a Form 8857, Request for Innocent Spouse Relief, or otherwise provide the information specified in § 1.6015-5(a) of this chapter. K's offer is not a qualified offer because K did not file a Form 8857 or otherwise provide substantiation or legal and factual arguments necessary to allow for informed consideration of the merits of the innocent spouse claim as required by paragraph (c)(4) of this section, contemporaneously with the offer or prior to making the offer.

(f) *Effective/applicability date.* This section is applicable with respect to qualified offers made in administrative or court proceedings described in section 7430 after December 24, 2003, except that paragraph (c)(8) is effective as of *March 1, 2016*.

**§§ 301.7430-1, 301.7430-2, 301.7430-4, and 301.7430-5 [Amended]**

■ **Par. 10.** For each section listed in the table, remove the language in the "Remove" column and add in its place the language in the "Add" column as set forth below:

Section	Remove	Add
§ 301.7430-1(f)(2)(i) .....	district director .....	Internal Revenue Service office
§ 301.7430-1(f)(3)(ii) .....	district director .....	Internal Revenue Service office
§ 301.7430-1(f)(3)(iii) .....	district director .....	Internal Revenue Service office
§ 301.7430-1(f)(4)(i) .....	district director .....	Internal Revenue Service office
§ 301.7430-1(g) <i>Example 6</i> third and fourth sentences .....	district director .....	Internal Revenue Service office
§ 301.7430-1(g) <i>Example 7</i> third and fourth sentences .....	district director .....	Internal Revenue Service office
§ 301.7430-1(g) <i>Example 8</i> second and fourth sentences ....	district director .....	Internal Revenue Service office
§ 301.7430-1(g) <i>Example 9</i> second sentence .....	such .....	these
§ 301.7430-2(b)(2) fourth and fifth sentences .....	such .....	these
§ 301.7430-2(c)(4) first sentence .....	which .....	that
§ 301.7430-2(c)(6) second sentence .....	such .....	the
§ 301.7430-4(b)(3)(ii) first and second sentences .....	\$110 .....	\$125
§ 301.7430-4(c)(2)(i) third sentence .....	Such .....	These
§ 301.7430-4(c)(2)(i) fourth sentence .....	which .....	that
§ 301.7430-4(c)(2)(ii) second and third sentences .....	\$110 .....	\$125
§ 301.7430-5(h) first sentence .....	such .....	an

**John Dalrymple,**

*Deputy Commissioner for Services and Enforcement.*

Approved: January 19, 2016.

**Mark J. Mazur,**

*Assistant Secretary of the Treasury (Tax Policy).*

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**DEPARTMENT OF LABOR**

**Occupational Safety and Health Administration**

**29 CFR Part 1910**

**Occupational Safety and Health Standards**

*CFR Correction*

In Title 29 of the Code of Federal Regulations, Parts 1900 to § 1910.999, revised as of July 1, 2015, on page 243,

in § 1910.106, paragraph (a)(14) introductory text is reinstated to read as follows:

**§ 1910.106 Flammable liquids.**

\* \* \* \* \*

(14) *Flashpoint* means the minimum temperature at which a liquid gives off vapor within a test vessel in sufficient concentration to form an ignitable mixture with air near the surface of the

liquid, and shall be determined as follows:

\* \* \* \* \*

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 104

[Docket ID: DOD-2013-OS-0091]

RIN 0790-AJ00

#### Civilian Employment and Reemployment Rights for Service Members, Former Service Members and Applicants of the Uniformed Services

**AGENCY:** Under Secretary of Defense for Personnel and Readiness, DoD.

**ACTION:** Final rule.

**SUMMARY:** The purpose of this rule is to establish policy, assign responsibilities, and promulgate procedures for informing current and former uniformed Service members of the Department of Defense (DoD) and individuals who apply for uniformed service with DoD of their rights, benefits, and obligations under USERRA and its implementing regulations. This rule does not apply to Service members who have served or applied to serve with the National Disaster Medical Response System or with the Commissioned Corps of the Public Health Service. Additionally, the rule establishes procedures for DOD components' responsibilities related to fulfilling their USERRA obligations.

**DATES:** This rule is effective on March 1, 2016.

**FOR FURTHER INFORMATION CONTACT:** Curtis Bell, 571-372-0695.

**SUPPLEMENTARY INFORMATION:** This final rule is part of DoD's retrospective plan, completed in August 2011, under Executive Order 13563, "Improving Regulation and Regulatory Review." DoD's full plan and updates can be accessed at: <http://www.regulations.gov/#!docketDetail;dt=FR+PR+N+O+SR;rpp=10;po=0;D=DOD-2011-OS-0036>.

#### Preamble Outline

- I. Authority
- II. Executive Summary
- III. Background
- IV. Summary of Significant Changes to the Final Rule
  - A. Purpose
  - B. Definitions
  - C. Policy
  - D. Procedures

#### V. Administrative Requirements

- A. Executive Order 12866, Regulatory Planning and Review and Executive Order 13563, Improving Regulation and Regulatory Review
- B. Section 202, Public Law 104-4, Unfunded Mandates Reform Act
- C. Public Law 96-354, Regulatory Flexibility Act (5 U.S.C. 601)
- D. Section 96-511, Paperwork Reduction Act (44 U.S.C. Chapter 35)
- E. Executive Order 13132, Federalism

#### I. Authority

This action is authorized by 38 U.S.C. 4312(b) and 38 U.S.C. 4333.

#### II. Executive Summary

##### A. Purpose

The purpose of this part is to establish policy, assign responsibilities, and promulgate procedures for informing current and former uniformed Service members of the Department of Defense (DoD) and individuals who apply for uniformed service with DoD of their rights, benefits, and obligations under USERRA and its implementing regulations at 20 CFR part 1002 (applicable to States, local governments, and private employers) and 5 CFR part 353 (applicable to the Federal Government). This part does not apply to Service members who have served or applied to serve with the National Disaster Medical Response System or with the Commissioned Corps of the Public Health Service. Additionally, the rule establishes procedures for DoD components' responsibilities related to fulfilling their USERRA obligations.

##### B. Legal Authority

38 U.S.C. chapter 43, specifically to 38 U.S.C. 4312(b) and 38 U.S.C. 4333.

The purposes of this chapter are:

- (1) To encourage non-career service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment which can result from such service;
- (2) to minimize the disruption to the lives of persons performing service in the uniformed services as well as to their employers, their fellow employees, and their communities, by providing for the prompt reemployment of such persons upon their completion of such service; and
- (3) to prohibit discrimination against persons because of their service in the uniformed services.

##### C. Summary of the Major Provisions of the Regulatory Action in Question

This regulatory action:

- a. Establishes procedures to maintain oversight of an effective program to ensure that uniformed Service members, former Service members, and

individuals who apply for uniformed service with DoD are aware of their rights, benefits, and obligations under USERRA.

b. Describes policies that serve to inform uniformed Service members, former Service members, and individuals who apply for uniformed service with DoD of their rights under USERRA.

##### D. Costs and Benefits

The average cost of \$2,475 for Federal agencies such as DOL and the Office of Special Counsel (OSC) to formally investigate has saved the Federal government over \$6.9 million dollars annually (GAO Highlights 15-77, November 2014). ESGR operates and maintains a Customer Service Center (CSC) that acts as the initial entry point for USERRA complaints, inquiries, and information requests. The CSC provides prompt, expert telephonic and email responses to Service members and employers on all USERRA related matters. During Fiscal Years 2012, 2013 and 2014 (FY (12, 13 and 14)), ESGR received 21,521; 19,938; 16,089 contacts by telephone and email, respectively. Of those contacts, 2,793 in FY 12; 2,544 in FY 13; and 2,374 in FY 14 resulted in actual USERRA cases for mediation purposes. ESGR mediators are unpaid volunteers whose services are accepted pursuant to 10 U.S.C. 1588. As such, the only cost to the general public is general administrative expenses in managing the mediation program. The approximate cost of \$3000 is the estimated cost for the DOL to investigate formal complaints if ESGR's mediation program was not in place. The benefits of using ESGR services are Service members receive a timely response without additional cost.

##### E. Background

This rule is designed to provide information about the USERRA consistent with its implementing regulations at 20 CFR part 1002 and 5 CFR part 353 to DoD Service members, former Service members, individuals who apply, and their employers, and about an informal mediation program run by the Employer Support of the Guard and Reserve (ESGR). Additionally, the rule establishes procedures for DOD components' responsibilities related to fulfilling their USERRA obligations.

ESGR is a DoD operational agency whose mission is to gain and maintain employer support for Guard and Reserve service by advocating relevant initiatives, recognizing outstanding support, increasing awareness of the law, and resolving conflict between