

(ii) Whose work requires the consistent exercise of discretion and judgment in its performance; and

(iii) Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.

(2) *Licensed, professional employee.* If an employee is a licensed, professional employee, then that further suggests the service aspect of the employee's relationship with the employer is predominant. An employee is a licensed, professional employee if the employee is required to be licensed under state or local law to work in the field in which the employee performs services and the employee is a professional employee within the meaning of paragraph (d)(3)(v)(B)(1) of this section.

(C) *Employment Benefits.* Whether an employee is eligible to receive employment benefits is a relevant factor in evaluating the service aspect of an employee's relationship with the employer. For example, eligibility to receive vacation, paid holiday, and paid sick leave benefits; eligibility to participate in a retirement plan described in section 401(a); or eligibility to receive employment benefits such as reduced tuition, or benefits under section 79 (life insurance), 127 (qualified educational assistance), 129 (dependent care assistance programs), or 137 (adoption assistance) suggest that the service aspect of an employee's relationship with the employer is predominant. Eligibility to receive health insurance employment benefits is not considered in determining whether the service aspect of an employee's relationship with the employer is predominant. The weight to be given the fact that an employee is eligible for a particular benefit may vary depending on the type of employment benefit. For example, eligibility to participate in a retirement plan is generally more significant than eligibility to receive a dependent care employment benefit. Additional weight is given to the fact that an employee is eligible to receive an employment benefit if the benefit is generally provided by the employer to employees in positions generally held by non-students.

(e) *Effective date.* Paragraphs (c) and (d) of this section apply to services performed on or after April 1, 2005.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: December 15, 2004.

Gregory F. Jenner,

Acting Assistant Secretary of the Treasury.

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DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 630

RIN 0702-AA47

Absentee Deserter Apprehension Program and Surrender of Military Personnel to Civilian Authorities

AGENCY: Department of the Army, DoD.

ACTION: Final rule, removal.

SUMMARY: This action removes 32 CFR part 630 published in the **Federal Register** July 26, 1996 (61 FR 39073). The rule is being removed because it is now obsolete and does not affect the general public.

DATES: Effective December 21, 2004.

ADDRESSES: Headquarters, Department of the Army, Office of the Provost Marshal General, ATTN: DAPM-MPD-LE, 2800 Army Pentagon, Washington, DC 20310-2800.

FOR FURTHER INFORMATION CONTACT: Mr. Nate Evans, (703) 693-2126.

SUPPLEMENTARY INFORMATION: The Office of the Provost Marshal General (DAPM-MPD-LE), is the proponent for regulations in 32 CFR part 630, and has concluded this regulation is obsolete. This regulation has been extensively revised, and the revised regulation does not affect the general public. Therefore, it would be helpful in avoiding confusion with the public if 32 CFR part 630, is removed.

List of Subjects in 31 CFR Part 630

Absentee deserter apprehension program and surrender of military personnel to civilian authorities.

PART 630—[REMOVED]

■ Accordingly, for reasons stated in the preamble, under the authority of 10 U.S.C. 801 through 940; Manual for Courts-Martial, U.S. 2002 revised addition as amended; sec 709, Pub L. 96-154, Defense Appropriation Act. 93 Stat. 1153, 32 CFR Part 630, *Absentee Deserter Apprehension Program and Surrender of Military Personnel to Civilian Authorities*, is removed in its entirety.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

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List of Subjects in 32 CFR Part 503

Apprehension and restraint.

PART 503—[REMOVED]

■ Accordingly, for reasons stated in the preamble, under the authority of Sec. 3012, 70A Stat. 157; 10 U.S.C. 3012, 32 CFR part 503, *Apprehension and Restraint*, is removed in its entirety.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

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