

§ 351.301

5 CFR Ch. I (1–1–01 Edition)

§ 351.301 Applicability.

(a) This subpart is applicable when the work of one or more employees is moved from one competitive area to another as a transfer of function regardless of whether or not the movement is made under authority of a statute, Executive order, reorganization plan, or other authority.

(b) In a transfer of function, the function must cease in the losing competitive area and continue in an identical form in the gaining competitive area (i.e., in the gaining competitive area, the function continues to be carried out by competing employees rather than by noncompeting employees).

[52 FR 10024, Mar. 30, 1987, as amended at 60 FR 3062, Jan. 13, 1995]

§ 351.302 Transfer of employees.

(a) Before a reduction in force is made in connection with the transfer of any or all of the functions of a competitive area to another continuing competitive area, each competing employee in a position identified with the transferring function or functions shall be transferred to the continuing competitive area without any change in the tenure of his or her employment.

(b) An employee whose position is transferred under this subpart solely for liquidation, and who is not identified with an operating function specifically authorized at the time of transfer to continue in operation more than 60 days, is not a competing employee for other positions in the competitive area gaining the function.

(c) Regardless of an employee's personal preference, an employee has no right to transfer with his or her function, unless the alternative in the competitive area losing the function is separation or demotion.

(d) Except as permitted in paragraph (e) of this section, the losing competitive area must use the adverse action procedures found in 5 CFR part 752 if it chooses to separate an employee who declines to transfer with his or her function.

(e) The losing competitive area may, at its discretion, include employees who decline to transfer with their function as part of a concurrent reduction in force.

(f) An agency may not separate an employee who declines to transfer with the function any sooner than it transfers employees who chose to transfer with the function to the gaining competitive area.

(g) Agencies may ask employees in a canvass letter whether the employee wishes to transfer with the function when the function transfers to a different local commuting area. The canvass letter must give the employee information concerning entitlements available to the employee if the employee accepts the offer to transfer, and if the employee declines the offer to transfer. An employee may later change and initial acceptance offer without penalty. However, an employee may not later change an initial declination of the offer to transfer.

[52 FR 10024, Mar. 30, 1987, as amended at 60 FR 3062, Jan. 13, 1995]

§ 351.303 Identification of positions with a transferring function.

(a) The competitive area losing the function is responsible for identifying the positions of competing employees with the transferring function. A competing employee is identified with the transferring function on the basis of the employee's official position. Two methods are provided to identify employees with the transferring function:

- (1) Identification Method One; and
- (2) Identification Method Two.

(b) Identification Method One must be used to identify each position to which it is applicable. Identification Method Two is used only to identify positions to which Identification Method One is not applicable.

(c) Under Identification Method One, a competing employee is identified with a transferring function if—

- (1) The employee performs the function during at least half of his or her work time; or
- (2) Regardless of the amount of time the employee performs the function during his or her work time, the function performed by the employee includes the duties controlling his or her grade or rate of pay.

(3) In determining what percentage of time an employee performs a function in the employee's official position, the agency may supplement the employee's