

# Rules and Regulations

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR PART 351

RIN 3206-AH95

#### Reduction in Force Offers of Vacant Positions

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rulemaking.

**SUMMARY:** The Office of Personnel Management is issuing final regulations that clarify existing policy on reduction in force offers of vacant positions.

**DATES:** These regulations are effective December 16, 1998.

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Glennon, or Jacqueline R. Yeatman, 202-606-0960, FAX 202-606-2329.

#### SUPPLEMENTARY INFORMATION:

#### Background

On May 13, 1998, OPM published proposed regulations (63 FR 26531) to clarify OPM policy on offers of vacant positions to employees under authority of OPM's part 351 reduction in force regulations.

#### Comments

OPM received three comments on these proposed rules: one from an agency, and two from employees' union. The agency supported the regulation as proposed.

One union local suggested that the final regulation specifically provide that agencies may also make voluntary offers of positions under authority other than the part 351 reduction in force regulations.

This suggestion was not adopted as unnecessary because an agency always has the right to make offers of vacant positions apart from the reduction in force regulations (e.g., reassignment to positions at the same grade). In

addition, agencies may make voluntary offers of lower-graded positions in lieu of reduction in force actions. This option was referenced in the Supplementary Information section of the proposed regulations. Also, agencies may make offers of vacant positions that would not be permissible under the reduction in force regulations (e.g., offers of vacant positions in different competitive areas, or below the applicable grade limits for reduction in force offers of assignment).

The second employees' union noted that its employees are not covered by title 5, United States Code, and asked whether its employees are administratively covered by OPM's part 351 reduction in force regulations.

In a separate letter, OPM explained that coverage of these employees was at the option of the employing agency rather than a right provided to the employees under title 5, United States Code.

#### Final Regulations

These final regulations revise § 351.704(a)(1) to clarify longstanding OPM policy that an offer of assignment to a vacant position under authority of part 351 must be consistent with §§ 351.201(b) and 351.701, including the grade limits applicable to bump and retreat set forth in §§ 351.701(b)(2) and 351.701(c)(2).

These final regulations also revise § 351.704(a)(1) to clarify longstanding OPM policy that an agency may offer an employee assignment to a vacant position in lieu of separation by reduction in force under part 351.

These final regulations do not affect the agency's right to make offers of vacant positions under other authority.

#### Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

#### List of Subjects in 5 CFR Part 351

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

**Janice R. Lachance,**  
*Director.*

Accordingly, OPM is amending part 351 of title 5, Code of Federal Regulations, as follows:

## PART 351—REDUCTION IN FORCE

1. The authority citation for part 351 continues to read as follows:

**Authority:** 5 U.S.C. 1302, 3502, 3503, Section 351.801 also issued under E.O. 12828, 58 FR 2965.

2. In § 351.704, paragraph (a)(1) is revised to read as follows:

#### § 351.704 Rights and prohibitions.

(a)(1) An agency may satisfy an employee's right to assignment under § 351.701 by assignment to a vacant position under § 351.201(b), or by assignment under any applicable administrative assignment provisions of § 351.705, to a position having a representative rate equal to that the employee would be entitled under § 351.701. An agency may also offer an employee assignment under § 351.201(b) to a vacant position in lieu of separation by reduction in force under 5 CFR part 351. Any offer of assignment under § 351.201(b) to a vacant position must meet the requirements set forth under § 351.701.

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## Office of Personnel Management

### 5 CFR Part 532

RIN 3206-AI30

#### Prevailing Rate Systems; Redefinition of Philadelphia, PA, and New York, NY, Appropriated Fund Wage Areas

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing a final rule to redefine Ocean County, NJ, excluding the portion occupied by the Fort Dix Military Reservation, from the area of application of the Philadelphia, PA, appropriated fund Federal Wage System (FWS) wage area to the area of application of the New York, NY, wage area. This change is being made so that the wage area definition of Ocean County will be more reflective of the transportation and commuting patterns in central New Jersey.

**DATES:** Effective: December 16, 1998. Federal Wage System employees