

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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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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[FR Doc. 98-30328 Filed 11-13-98; 8:45 am]

BILLING CODE 6325-01-P

## 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

stationed in Ocean County, NJ, excluding the portion occupied by the Fort Dix Military Reservation, will be moved from the Philadelphia, PA, wage schedule to the New York, NY, wage schedule on the first day of the first applicable pay period beginning on or after this date.

**FOR FURTHER INFORMATION CONTACT:**

Mark Allen at (202) 606-2848, or send an email message to [maallen@opm.gov](mailto:maallen@opm.gov).

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management (OPM) is engaged in an ongoing project to review the geographic definitions of selected Federal Wage System (FWS) appropriated fund wage areas. On June 23, 1998, OPM published a proposed 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 FWS wage area to the area of application of the New York, NY, wage area (63 FR 34134). The proposed rule provided a 30-day period for public comment, during which OPM received several comments requesting that Lakehurst Naval Air Station, the main employer of FWS workers in Ocean County, remain in the Philadelphia FWS wage area. The comments we received are addressed below, following an introduction to this issue.

The Federal Prevailing Rate Advisory Committee (FPRAC), the statutory national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, recommended by majority vote that OPM 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 FWS wage area to the area of application of the New York, NY, wage area. FPRAC is composed of representatives from the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, the Department of Veterans Affairs, OPM, the American Federation of Government Employees, the Metal Trades Department, the National Association of Government Employees, and the National Federation of Federal Employees.

Section 532.211 of title 5, Code of Federal Regulations, lists the following criteria that OPM uses to determine appropriate FWS wage area boundaries:

- (i) Distance, transportation facilities, and geographic features;
- (ii) Commuting patterns; and

(iii) Similarities in overall population, employment, and the kinds and sizes of private industrial establishments.

Ocean County is located in central New Jersey and is bordered by Burlington County to the West and Monmouth County to the North. FPRAC studied the appropriate wage area definition of Ocean County exhaustively. Based on their analysis of the regulatory criteria, the management members of FPRAC found no compelling reason to change the wage area designation of Ocean County. The labor members of the Committee argued that the transportation facilities and commuting patterns criteria favor placing Ocean County in the New York wage area. After failing to reach consensus, the Committee voted to accept the labor recommendation, with the Chairman of the Committee casting the tie-breaking vote in support of the labor position. The management members of FPRAC filed a minority report in opposition to the FPRAC majority recommendation.

After careful consideration, OPM finds it appropriate to accept the FPRAC recommendation in this case. OPM has not overruled an FPRAC recommendation concerning the definition of an FWS wage area since the Committee was established in 1972. The distance, geographic features, and overall population, employment, and the kinds and sizes of private industrial establishments criteria do not clearly favor defining Ocean County to one wage area more than another. However, we find that the transportation facilities and commuting patterns criteria clearly favor defining Ocean County to the New York wage area rather than to the Philadelphia wage area.

The largest employer of FWS workers in Ocean County is Lakehurst Naval Air Station, although several other smaller employment sites will be affected by the redefinition of Ocean County to the New York wage area. Employees with official duty stations in the Fort Dix Military Reservation portion of Ocean County will remain in the Philadelphia wage area. Employees with official duty stations at Lakehurst Naval Air Station and other facilities in Ocean County will be moved from the Philadelphia wage schedule to the New York wage schedule on the first day of the first applicable pay period beginning on or after 30 days after the issuance of this final regulation.

The comments received in response to the proposed rule raised issues that had been considered and discussed exhaustively during the deliberations of the Federal Prevailing Rate Advisory Committee on this matter. Commenters

suggested that there is no clear demonstration of need to cause a change in the definitions of the Philadelphia and New York wage areas. FPRAC found that a demonstrated need exists to make this change. We find that this change is necessary so that the wage area definition of Ocean County will be in line with the regulatory criteria for defining FWS wage areas. This change will enable the wage area definition of Ocean County to be more reflective of the transportation and commuting patterns in central New Jersey.

Commenters suggested that the use of commuting patterns and transportation facilities to justify a change is not supportable, citing the fact that 14 percent of the resident workforce of Ocean County commutes to work in the New York survey area, and citing anecdotal evidence that few blue-collar workers are included in this percentage. FPRAC found that the percentage of the Ocean County resident workforce commuting to New York is significant enough to favor removing the county from the Philadelphia wage area and redefining it to the New York wage area. Also, FPRAC received additional anecdotal evidence from local employees in Ocean County that significant numbers of blue-collar workers commute from Ocean County to jobs in New York, and that transportation facilities between Ocean County and New York are far better than between Ocean County and Philadelphia. We find that the commuting pattern and transportation facility information fully supports defining Ocean County to the New York wage area.

Commenters pointed out that Ocean County is contiguous to the Philadelphia survey area but not contiguous to the New York survey area. While this is true, the distance criteria for defining FWS wage areas shows that Ocean County is about the same distance by road from the center of the New York survey area as it is from the center of the Philadelphia survey area. Therefore, OPM finds that the distance criterion does not clearly favor defining Ocean County to one wage area more than another.

Commenters stated that placing adjacent Department of Defense installations (Fort Dix, McGuire Air Force Base, and Lakehurst Naval Air Station) in separate wage areas would unnecessarily force the installations to compete for the same employees to fill positions in skilled aircraft maintenance occupations, thereby increasing the potential for disruptions in accomplishing mission critical work at the installations. Although not part of

the regulatory criteria for defining FWS wage areas, FPRAC considered this issue carefully before making its recommendation to OPM. Should agencies experience recruitment or retention problems in particular occupations at an installation, OPM would consider the approval of requests for special rates to address those problems.

Commenters stated that Lakehurst Naval Air Station is conducting cost comparisons with private industry to consider contracting out certain work, and that certain FWS employees at the installation will be placed at a competitive disadvantage during these studies if paid from the higher New York wage schedule. Although not among the regulatory criteria for defining FWS wage areas, FPRAC considered this issue carefully before making its recommendation to OPM. OPM finds that it is not appropriate to preclude the appropriate redefinition of an FWS wage area on the basis that the redefinition may increase the likelihood that it may be possible for private sector companies to more easily win contracts to provide services to Federal agencies.

Commenters requested that OPM redefine Ocean County to the New York wage area, while leaving both the Fort Dix Military Reservation and Lakehurst Naval Air Station portions of Ocean County in the Philadelphia wage area. Under the regulatory criteria for defining FWS wage areas, a county may not be split between two wage areas except in unusual circumstances and as an exception to the regulatory criteria. The Fort Dix Military Reservation portion of Ocean County will continue to be defined to the Philadelphia wage area because the activity would otherwise be split between two wage areas. With most of the Fort Dix Military Reservation in Burlington County, and a lesser portion of the installation in Ocean County, we believe this represents an example of an appropriate exception to the regulatory criteria. OPM defines several counties in a similar manner, using exceptions to the regulatory criteria in certain wage areas to avoid splitting individual installations among two or more wage areas. Although Lakehurst Naval Air Station is adjacent to the Fort Dix Military Reservation portion of Ocean County, Lakehurst Naval Air Station is a separate installation. We do not believe it is appropriate to recognize that Ocean County is linked more closely to New York than to Philadelphia under the regulatory criteria for defining FWS wage areas, but then refuse to acknowledge that the major FWS employer in the county

should be treated in accordance with the appropriate wage area definition of the county.

### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

### List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management,  
**Janice R. Lachance,**  
*Director.*

Accordingly, OPM is amending 5 CFR part 532 as follows:

### PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

**Authority:** 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

### Appendix C to Subpart B of Part 532 [Amended]

2. Appendix C to subpart B is amended by revising the wage area listings for the New York, New York, and Philadelphia, Pennsylvania, wage areas to read as follows:

### Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

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#### New York

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#### New York

##### Survey Area

New York:  
Bronx  
Kings  
Nassau  
New York  
Queens  
Suffolk  
Westchester  
New Jersey:  
Bergen  
Essex  
Hudson  
Middlesex  
Morris  
Passaic  
Somerset  
Union

##### Area of Application. Survey area plus:

New York:  
Putnam  
Richmond  
Rockland  
New Jersey:

Monmouth  
Ocean (excluding the Fort Dix Military Reservation)  
Sussex

\* \* \* \* \*

#### Pennsylvania

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#### Philadelphia

##### Survey Area:

Pennsylvania:  
Bucks  
Chester  
Delaware  
Montgomery  
Philadelphia  
New Jersey:  
Burlington  
Camden  
Gloucester

##### Area of Application. Survey area plus:

Pennsylvania:  
Lehigh  
Northampton  
New Jersey:  
Atlantic  
Cape May  
Cumberland  
Hunterdon  
Mercer  
Ocean (Fort Dix Military Reservation only)  
Warren

\* \* \* \* \*

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## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### 8 CFR Parts 103, 244, 274a, and 299

[INS No. 1608-93]

RIN 1115-AC30

### Temporary Protected Status, Exception to Registration Deadlines

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Immigration and Naturalization Service (Service) regulations by providing additional exceptions to the deadlines for initial registration for Temporary Protected Status (TPS). Eligible persons who did not register for TPS because they are or were in a status or a condition that made it unnecessary or discouraged registration during the initial registration period may now apply for late registration. This rule also makes conforming changes to reflect the redesignation by the Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) of section 240 of