

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 351

RIN 3206–AL64

### Competitive Area

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The U.S. Office of Personnel Management (OPM) is issuing proposed regulations that provide agencies with the option of establishing a reduction in force (RIF) competitive area comprised only of pay band positions. An agency would have this option only when the competitive area would otherwise include pay band positions and other positions not covered by a pay band system.

**DATES:** We will consider comments received on or before May 15, 2008.

**ADDRESSES:** You may submit comments, identified by RIN 3206–AL64, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- E-mail: [employ@opm.gov](mailto:employ@opm.gov). Include “RIN 3206–AL64” in the subject line of the message.

- Fax: (202) 606–2329.

- Mail: Angela Bailey, Deputy Associate Director for Talent and Capacity Policy, U.S. Office of Personnel Management, Room 6551, 1900 E Street, NW., Washington, DC 20415–9700.

- Hand Delivery/Courier: OPM, Room 6551, 1900 E Street, NW., Washington, DC, 20415.

#### FOR FURTHER INFORMATION CONTACT:

Michael J. Mahoney by telephone on 202–606–0960, by FAX on 202–606–2329, by TDD on 202–418–3134, or by e-mail at [employ@opm.gov](mailto:employ@opm.gov).

**SUPPLEMENTARY INFORMATION:** Section 351.402(b) of OPM’s regulations presently provides that an agency must define a RIF competitive area solely on

the basis of the agency’s organizational unit(s) and geographical location. Once defined, the competitive area includes all employees covered by that definition.

OPM is adding new section 351.402(e) to provide that when a competitive area defined under section 351.402(b) includes both pay band positions and positions not covered by a pay band, the agency may, at its discretion, define a competitive area, that is otherwise consistent with section 351.402(b), to include either only pay band positions or only positions not covered by a pay band system. In a related change, OPM is revising section 351.403(a)(2) to clarify how an agency establishes RIF competitive levels for pay band positions and for other positions.

### Explanation

OPM’s regulations cover RIF competition involving positions under different pay schedules. For example, section 351.203 includes the RIF definition of “Representative Rate” for traditional General Schedule (GS) and Federal Wage System (FWS) positions, and for alternative pay schedule positions (e.g., pay band, unclassified, and negotiated rate positions). The RIF regulations also cover how an agency determines the retention standing of employees in GS/FWS positions and in positions with an alternative pay schedule.

In a recent review of the RIF regulations, and as more and more agencies move portions of their workforces into alternative systems, OPM found that significant inconsistencies may result when a RIF competitive area includes pay band positions and positions covered by the General Schedule (GS) or Federal Wage System (FWS). For example, a pay band personnel system may also include specific staffing, classification, pay, and performance management provisions that differ significantly from the GS and/or FWS system. These distinctions between pay band and other positions could be magnified when all of the positions are included in the same RIF competitive area.

To establish a RIF competitive level to determine which employee is released from the present position, section 351.403(a)(2) provides that the agency use the official position description that documents the duties, responsibilities, and qualifications tied to each

competing employee’s official position of record. Consistent with the regulations, a RIF competitive level for GS or FWS employees only includes interchangeable positions having the same grade, classification series, work schedule, type of service (e.g., competitive or excepted), and additional criteria covered in section 5 CFR 351.403. However, in a pay band system a single pay band may combine multiple grades and classification series that are documented on a single generic official position description. In operation, the agency may, and in some cases does, supplement this position description with other documentation to distinguish actual work assignments among the pay band positions. A separate competitive area for pay band positions eliminates the requirement to create position descriptions that must conform to those in another personnel system (e.g., GS and/or FWS).

Sections 351.701(b) and (c) provide that a GS or FWS competitive service employee has potential “bump” and “retreat” rights to positions in the competitive area that are no more than three grades or grade-intervals below the employee’s official position of record. Section 351.701(c) also provides a preference eligible with a compensable service-connected disability of 30% or more with a potential retreat right of up to five grades or grade-intervals from the employee’s official position of record. However, the compensation architecture of a pay band system does not equate efficiently to the grade/grade-interval structure used to determine the assignment rights of GS or FWS employees. These differences may make it difficult for an agency to determine equivalent assignment rights from pay band to GS/FWS positions or vice versa. A separate competitive area for pay band positions eliminates these difficulties in determining the potential assignment rights of pay band and GS/FWS employees who are released from a retention register by RIF and makes it easier to make comparisons.

### Revisions to Competitive Level

Section 351.403(a)(2) is renumbered as section 351.403(a)(2)(i) and revised to clarify that, except as provided in new section 351.403(a)(2)(ii) for pay band positions, competitive level determinations are based on each employee’s official position of record

(including the official position description), not the employee's personal qualifications.

New section 351.403(a)(2)(ii) provides that to establish a competitive level comprised of pay band positions, an agency may supplement an employee's official position description with other applicable records that document the employee's actual duties and responsibilities.

#### Revisions to Competitive Area

New section 351.402(e) provides that when a competitive area defined under section 351.402(b) includes pay band positions and positions not covered by a pay band, the agency may, at its discretion, define a competitive area otherwise consistent with section 351.402 to include only pay band positions. Section 351.402(b) is revised to include a reference to new section 351.402(e).

#### Examples of Separate Competitive Area for Pay Band Positions

##### Example 1

Under section 351.402(b) an agency defines its activities in Memphis and Vicksburg to be in the same competitive area. At present this competitive area would include GS, FWS, and pay band positions.

At its option the agency may apply new section 351.402(e) and define a separate competitive area that includes only its pay band positions in Memphis and Vicksburg. Under section 351.402(e), the competitive area for pay band positions must otherwise conform to section 351.402(b), that is, be based on the same organizational unit and geographical location as the remaining positions (i.e., the GS and FWS positions in the original competitive area).

##### Example 2

Under current regulations, an agency defines its headquarters to be one competitive area that includes GS, FWS, and pay band positions.

At its option the agency may apply new section 351.402(e) and define a separate competitive area that includes only its pay band positions in the headquarters. Under section 351.402(e) the competitive area for pay band positions must still be based on the same organizational unit and geographical location as the remaining positions, that is the GS and FWS positions that were in the original competitive area (the entire headquarters).

#### 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.

#### Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

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

Administrative practice and procedure, Government employees.

Office of Personnel Management.

Linda M. Springer,

Director.

Accordingly, OPM proposes to amend 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; sec. 351.801 also issued under E.O. 12828, 58 FR 2965.

2. In § 351.402, paragraph (b) is revised, and paragraph (e) is added, to read as follows:

##### § 351.402 Competitive area.

\* \* \* \* \*

(b) A competitive area must be defined solely in terms of the agency's organizational unit(s) and geographical location and, except as provided in paragraph (e) of this section, it must include all employees within the competitive area so defined. A competitive area may consist of all or part of an agency. The minimum competitive area is a subdivision of the agency under separate administration within the local commuting area.

\* \* \* \* \*

(e) When a competitive area defined under paragraph (b) of this section includes pay band positions and positions not covered by a pay band, the agency may, at its discretion, define a separate (and additional) competitive area, otherwise consistent with paragraph (b) of this section, to include only pay band positions. The original competitive area would then include only the remaining positions, i.e., those positions not covered by a pay band.

3. In § 351.403, paragraph (a)(2) is revised to read as follows:

##### § 351.403 Competitive level.

(a) \* \* \*

(2)(i) Except as provided in paragraph (a)(2)(ii) of this section for pay band

positions, competitive level determinations are based on each employee's official position of record (including the official position description), not the employee's personal qualifications.

(ii) To establish a competitive level comprised of pay band positions, an agency may supplement an employee's official position of record with other applicable records that document the employee's actual duties and responsibilities.

\* \* \* \* \*

[FR Doc. E8-7968 Filed 4-14-08; 8:45 am]

BILLING CODE 6325-39-P

#### DEPARTMENT OF TRANSPORTATION

#### Federal Aviation Administration

#### 14 CFR Parts 43, 61, 91, and 141

[Docket No. FAA-2007-29015; Notice No. 08-03]

RIN 2120-AJ10

#### Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft; Modifications to Rules for Sport Pilots and Flight Instructors With a Sport Pilot Rating

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to amend its rules for sport pilots and flight instructors with a sport pilot rating. The FAA believes these changes are necessary to address airman certification issues that have arisen since regulations for the operation of light-sport aircraft were implemented. These changes would align the certification requirements for sport pilots and flight instructors with a sport pilot rating with those requirements currently applicable to other airmen certificates.

**DATES:** Send your comments on or before August 13, 2008.

**ADDRESSES:** You may send comments identified by docket number FAA 2007-29015 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.