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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 211, 230, 300, 301, 307, 310, 316, 330, 333, 339, 340, 351, 353, and 930

RIN 3206–AG18

Federal Staffing Provisions Supporting Sunset of the Federal Personnel Manual

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This rule places into regulation a limited number of Federal staffing provisions that were formerly in the Federal Personnel Manual (FPM). The remaining ''provisionally retained'' portions of the FPM were abolished on December 31, 1994. This rule deletes or replaces regulatory language which references the FPM. Its provisions also define or clarify terms and describe procedures used in veterans' preference, reductions in force, veterans' readjustment appointments, term appointments, seasonal and intermittent employment, noncompetitive term appointments based on Peace Corps service, exemption of certain employees from coverage of the Part-time Career Employment Act, physical requirements for employment, and actions taken during a national emergency (including the possible appointment of relatives). They extend delegations to agencies for assigning persons serving under excepted appointments to the work of positions in the competitive service; making temporary appointments of worker trainees pending establishment of a register (TAPER); and extending time limits for overseas temporary appointments. The provisions also delete requirements for a number of regular reports. In the case of part 351, Reduction in Force, and part 353, Restoration to Duty From Military Service or Compensable Injury, sections are reworded for clarity and consistency with decisions of the Merit Systems Protection Board.

EFFECTIVE DATE: January 13, 1995.

FOR FURTHER INFORMATION CONTACT: Diane Bohling, (202) 606–0960 with questions concerning the changes in 5 CFR 330; Thomas Glennon, (202) 606–0960 concerning the changes in 5 CFR 351; Raleigh Neville, (202) 606–0830 concerning the changes in 5 CFR 340, 5 CFR 353 and 5 CFR 930; and Mike Carmichael or Karen Jacobs, (202) 606–0830, concerning the other changes.

SUPPLEMENTARY INFORMATION: The Vice President's National Performance Review (NPR) recommended that the Office of Personnel Management (OPM) ''phase out the entire 10,000 page Federal Personnel Manual (FPM).'' The President endorsed the NPR recommendations.

In planning to abolish the FPM, OPM met over an extended period with representatives of agencies and employee unions to identify which FPM policies should be dropped, which should be continued in regulation, and which should be available as a helpful reference in an alternative format. The resulting recommendations were reviewed and endorsed by the Interagency Advisory Group of agency personnel directors and by the National Partnership Council.

This rule carries out the recommendations of those groups to retain selected current policies in the area of staffing. Regulations to establish new policies, including implementation of P.L. 103–353 (veterans' reemployment rights), will be proposed separately.

The proposed rule was published in the **Federal Register** at 59 FR 55212 on November 4, 1994, with a request for comments on or before December 5, 1994. A copy of the proposed rule (including a line that was inadvertently dropped in printing) was posted on November 3, 1994, on OPM's computer bulletin board, Mainstreet. At the same time, all personnel directors of departments and agencies were notified by fax of the posting on Mainstreet and of the pending **Federal Register** publication. The publication of the proposed rule was also announced in a meeting of the Interagency Advisory Group of personnel directors.

Comments on the proposed rule were received from three departments, two components of departments that had commented separately, one independent agency, and one employee union.

We did not adopt suggestions for new policies not previously in regulation or in the Federal Personnel Manual. Specifically, that included suggestions to drop excepted service temporary employees from reduction-in-force tenure group III and to deregulate the reemployment priority list program. Although such suggestions will be considered for future program improvements, they would have violated the consensus gained for this particular rule from the long, collaborative review process with agencies and unions. The consensus was to continue, through this rule, a limited number of existing staffing policies that would have ended with the sunset of the FPM. There was particular agreement not to change current policies in the sensitive area of reductions-in-force (RIF) and related reemployment priority lists (RPL). That consensus was also likely the reason that few made comments on the proposed rule and that comments sought clarification rather than change

We also did not adopt recommendations to delete references to the FPM in sections of the Code of Federal Regulations outside the scope of this rule. Those deletions will be proposed with other regulatory changes.

A department recommended amending § 301.203 to delegate authority directly to agencies to approve time-limit exceptions for overseas limited appointments. We prefer to maintain OPM's role in approving such delegations until agencies have more experience with the recent regulatory changes for temporary employment.

We also did not conclude that epidemics warrant emergency-indefinite appointment authority in § 230.402(b).

Questions about terminology in the proposed rule are addressed here: ''Equivalent grades in the Federal Wage System'' are mentioned in § 316.201(b) because there technically could be grades in the Federal Wage System other than just ''WG.'' Subpart D of $340 eliminates reference to ''on-call'' employment as redundant; there is no substantive difference between seasonal and on-call. The change in terms from ''physically qualified'' to ''medically

qualified'' in § 930.105(a)(4) conforms to appropriate terminology in part 339 of this chapter; it has nothing to do with drug testing.

Comments did lead us to change wording in 12 places in this final rule, either to clarify provisions or to adhere more closely to existing policy.

In redesignated § 230.402(d)(1) a reference to the Federal Personnel Manual (FPM) is deleted.

Since paragraphs were re-lettered in § 230.402, redesignated § 230.402(h)(2) is amended to refer to previous paragraph (c), not paragraph (b).

A reference to the FPM is deleted from § 300.104(b).

Added wording in § 307.104 clarifies the second year appeal rights of persons holding veterans readjustment appointments.

A line is restored to § 316.201. It inadvertently had been dropped from the proposed rule. It does not change the thrust of the section, but clarifies how long a position should last for there to be a TAPER appointment.

In § 330.202, paragraph (c) is revised for clarity.

In § 330.203, paragraph (d)(2)(iv) is revised to clarify that a person is ineligible for RPL if that person separates for a reason other than RIF on the date scheduled for a RIF separation.

Paragraph (d)(3) of § 330.203 is also reworded to more faithfully reflect existing policy and to avoid adding a new requirement for agencies.

In § 330.208, paragraph (a)(1) is revised to recognize single agency qualification standards.

Section 333.102 is revised to use terms consistently.

In § 353.301, paragraph (a) is corrected so the title and content agree.

Executive Order 12866, Regulatory Review

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

Regulatory Flexibility Act

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

List of Subjects

5 CFR Part 211

Government employees, Veterans.

5 CFR Part 230

Civil defense, Government employees.

5 CFR Part 300

Freedom of information, Government employees, Reporting and recordkeeping requirements, Selective Service System.

5 CFR Part 301

Government employees.

5 CFR Part 307

Government employees, Veterans.

5 CFR Part 310

Government employees.

5 CFR Part 316

Government employees.

5 CFR Part 330

Armed forces reserves, Government employees.

5 CFR Part 333

Government employees.

5 CFR Part 339

Equal employment opportunity, Government employees, Health, Individuals with disabilities.

5 CFR Part 340

Government employees.

5 CFR Part 351

Administrative practice and procedure, Government employees.

5 CFR Part 353

Administrative practice and procedure, Government employees.

5 CFR Part 930

Administrative practice and procedure, Computer technology, Government employees, Motor vehicles.

Office of Personnel Management.

James B. King,

Director.

Accordingly, 5 CFR parts 211, 230, 300, 301, 307, 310, 316, 330, 333, 339, 340, 351, 353, and 930 are amended as set forth below.

PART 211—VETERAN PREFERENCE

1. Part 211 is revised to read as follows:

PART 211—VETERAN PREFERENCE

Sec.

Authority: 5 U.S.C. 1302.

§ 211.101 Purpose.

The purpose of this part is to define veterans' preference and the administration of preference in Federal employment. (5 U.S.C. 2108)

§ 211.102 Definitions.

For purposes of preference in Federal employment the following definitions apply:

(a) *Veteran* means a person who was separated with an honorable discharge or under honorable conditions from active duty in the armed forces performed—

(1) In a war; or,

(2) In a campaign or expedition for which a campaign badge has been authorized; or

(3) During the period beginning April 28, 1952, and ending July 1, 1995; or,

(4) For more than 180 consecutive days, other than for training, any part of which occurred during the period beginning February 1, 1955, and ending October 14, 1976.

(b) *Disabled veteran* means a person who was separated under honorable conditions from active duty in the armed forces performed at any time and who has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pensions because of a public statute administered by the Department of Veterans Affairs or a military department.

(c) *Preference eligible* means veterans, spouses, widows, or mothers who meet the definition of ''preference eligible'' in 5 U.S.C. 2108. Preference eligibles are entitled to have 5 or 10 points added to their earned score on a civil service examination (see 5 U.S.C. 3309). They are also accorded a higher retention standing in the event of a reduction in force (see 5 U.S.C. 3502). Preference does not apply, however, to inservice placement actions such as promotions.

(d) *Armed forces* means the United States Army, Navy, Air Force, Marine Corps, and Coast Guard.

(e) *Uniformed services* means the armed forces, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration.

(f) *Active duty or active military duty* means full-time duty with military pay and allowances in the armed forces, except for training or for determining physical fitness and except for service in the Reserves or National Guard.

(g) *Separated under honorable conditions* means either an honorable or a general discharge from the armed forces. The Department of Defense is responsible for administering and defining military discharges.

§ 211.103 Administration of preference.

Agencies are responsible for making all preference determinations except for

preference based on a common law marriage. Such a claim should be referred to OPM's General Counsel for decision.

PART 230—ORGANIZATION OF THE GOVERNMENT FOR PERSONNEL MANAGEMENT

2. The authority citation for part 230 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577; 3 CFR 1954—1958 Comp., p. 218; sec. 230.402 also issued under 5 U.S.C. 1104.

3. In § 230.402, paragraphs (a) through (h) are redesignated as paragraphs (b) through (i), respectively; a new paragraph (a) is added; and newly redesignated paragraphs (b), (d)(1), and (h)(2) are revised to read as follows:

§ 230.402 Agency authority to make emergency-indefinite appointments in a national emergency.

(a) *When a national emergency exists*—(1) *Definition.* A national emergency must meet *all* of the following conditions:

(i) It was declared by the President or Congress.

(ii) It involves a danger to the United States' safety, security, or stability that results from specified circumstances or conditions and that is national in scope.

(iii) It requires a national program specifically intended to combat the threat to national safety, security, or stability.

(2) *Termination of a national emergency.* A national emergency no longer exists if it is officially terminated by the President or Congress, or if the *specific* circumstances, conditions, or program cited in the original declaration are terminated or corrected.

(b) *Basic authority.* Agencies may make emergency-indefinite appointments without OPM approval during any national emergency as defined in paragraph (a) of this section. The head of an agency with a defense-related mission may request OPM's approval to make emergency-indefinite appointments without a declared national emergency when the President has authorized the call-up of some portion of the military reserves for some military purpose. The request must demonstrate that normal hiring procedures cannot meet surge employment requirements and that use of emergency-indefinite appointments is necessary for economy and efficiency. Except as provided by paragraphs (c) and (d) of this section, agencies must make emergency-indefinite appointments from appropriate registers of eligibles as long as there are available eligibles.

* * * * *

(d)(1) Persons who were recruited on a standby basis prior to the national emergency;

* * * * *

(h) * * *

(2) The selection procedures of part 333 of this chapter apply to emergency-indefinite employees appointed outside the register under paragraph (c) of this section.

* * * * *

PART 300—EMPLOYMENT (GENERAL)

4. The authority citation for part 300 is revised to read as follows:

Authority: 5 U.S.C. 552, 3301, and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., page 218, unless otherwise noted.

Secs. 300.101 through 300.104 also issued under 5 U.S.C. 7201, 7204, and 7701; E.O. 11478, 3 CFR 1966–1970 Comp., page 803.

Sec. 300.301 also issued under 5 U.S.C. 1104 and 3341.

Secs. 300.401 through 300.408 also issued under 5 U.S.C. 1302(c), 2301, and 2302.

Secs. 300.501 through 300.507 also issued under 5 U.S.C. 1103(a)(5).

Sec. 300.603 also issued under 5 U.S.C. 1104.

5. In § 300.104, paragraph (b) is revised to read as follows:

§ 300.104 Appeals, grievances and complaints.

(b) *Examination ratings.* A candidate may file an appeal with the Office from his or her examination rating or the rejection of his or her application, except that, where the Office has delegated examining authority to an agency, the candidate should appeal directly to that agency. The appeal and supporting documents shall be filed with the agency office that determined the rating.

* * * * *

6. In § 300.201, paragraphs (b) through (e) are redesignated as paragraphs (c) through (f), respectively and a new paragraph (b) is added to read as follows:

§ 300.201 Examinations.

* * * * *

(b) The Office maintains control over the security and release of testing and examination materials which it has developed and made available to agencies for initial competitive appointment or inservice use unless the materials were developed specifically for an agency through a reimbursable contractual agreement. These testing and examination materials include, and are subject to the same controls as, those described in paragraphs (a)(1) and (a)(2) of this section.

7. A new subpart C, consisting of § 300.301, is added to read as follows:

Subpart C—Details of Employees

Sec.
300.301 Authority.

§ 300.301 Authority.

(a) In accordance with 5 U.S.C. 3341, an agency may detail an employee in the competitive service to a position in either the competitive or excepted service.

(b) In accordance with 5 U.S.C. 3341, an agency may detail an employee in the excepted service to a position in the excepted service and may also detail an excepted service employee serving under Schedule A, Schedule B, or the Veterans Readjustment Act, to a position in the competitive service.

(c) Any other detail of an employee in the excepted service to a position in the competitive service may be made only with the prior approval of the Office of Personnel Management or under a delegated agreement between the agency and OPM.

8. In § 300.407, paragraph (b) is revised to read as follows:

§ 300.407 Documentation.

* * * * *

(b) When requested by OPM, agencies will provide reports on the use of commercial recruiting firms, based on the records required in paragraph (a) of this section.

PART 301—OVERSEAS EMPLOYMENT

9. The authority citation for part 301 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218, as amended by E.O. 10641, 3 CFR, 1954–1958 Comp., p. 274, unless otherwise noted.

10. In § 301.203, paragraph (c) is revised and paragraph (d) is added to read as follows:

§ 301.203 Duration of appointment.

* * * * *

(c) An agency may make an overseas limited appointment for 1 year or less to meet administrative needs for temporary employment. An agency may extend such an appointment for up to a maximum of 1 additional year.

(d) Upon request from the headquarters level of a Department or agency, OPM may approve, or delegate to agencies the authority to approve, exceptions to the time limits set out in paragraph (c) of this section.

PART 307—VETERANS READJUSTMENT APPOINTMENTS

11. The authority citation for part 307 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302; E.O. 11521, 3 CFR, 1970 Comp., p. 912; 38 U.S.C. 4214.

§ 307.102 [Amended]

12. In § 307.102, paragraph (c) is removed.

13. Section 307.103 is revised to read as follows:

§ 307.103 Appointing authority.

(a) An agency may appoint any veteran who served on active duty after August 4, 1964, who meets the basic veterans readjustment eligibility provided by law.

(b) Appointments are subject to investigation by OPM. A law, Executive order, or regulation which disqualifies a person for appointment in the competitive service also disqualifies a person for a veterans readjustment appointment.

14. Section 307.104 is added to read as follows:

§ 307.104 Appeal rights.

A veterans readjustment appointment (VRA) is an excepted appointment to a position otherwise in the competitive service. Veterans readjustment appointees have the same appeal rights as excepted service employees under parts 432 and 752 of this chapter, except the appointees are also entitled to limited appeal protection during their 1st year of service as set forth in § 315.806 of this chapter. This means that a VRA appointee with more than 1 year of current continuous service, who is also a preference eligible, can appeal an adverse action to the Merit Systems Protection Board. Nonpreference eligibles serving under VRA appointments do not get such protection until they are converted to the competitive service.

PART 310—EMPLOYMENT OF RELATIVES

15. The authority citation for part 310 continues to read as follows:

Authority: 5 U.S.C. 3302, 7301; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218; E.O. 11222, 3 CFR 1964–1965 Comp., p. 306.

16. Section 310.202 is revised to read as follows:

§ 310.202 Exceptions.

When necessary to meet urgent needs resulting from an emergency posing an immediate threat to life or property, or a national emergency as defined in § 230.402(a)(1) of this title, a public official may employ relatives to meet those needs without regard to the restrictions in section 3110 of title 5, United States Code, and this part. Appointments under these conditions are temporary not to exceed 1 month, but may be extended for a 2nd month if the emergency need still exists.

PART 316—TEMPORARY AND TERM EMPLOYMENT

17. The authority citation for part 316 is revised to read as follows:

Authority: 5 U.S.C. 3301, 3302 and E.O. 10577 (3 CFR 1954–1958 Comp. p. 218); § 316.302 also issued under 5 U.S.C. 3304(c), 22 U.S.C. 2506 (94 Stat. 2158); 38 U.S.C. 2014, and E.O. 12362, as revised by E.O. 12585; § 316.402 also issued under 5 U.S.C. 3304(c) and 3312, 22 U.S.C. 2506 (93 Stat. 371), E.O. 12137, 38 U.S.C. 2014, and E.O. 12362, as revised by E.O. 12585 and E.O. 12721.

18. Section 316.201 is revised to read as follows:

§ 316.201 Purpose and duration.

(a) *General.* OPM may authorize an agency to fill a vacancy by temporary appointment pending establishment of a register (TAPER appointment) when there are insufficient eligibles on a register appropriate for filling the vacancy in a position that will last for a period of more than 1 year and the public interest requires that the vacancy be filled before eligibles can be certified. The agency must follow the provisions of part 333 of this chapter when making a TAPER appointment.

(b) *Specific authority for Worker-Trainee positions.* Agencies may make TAPER appointments to positions at GS–1, WG–1, and WG–2 and may reassign or promote the appointees to other positions through grade GS–3, WG–4, or equivalent grades in the Federal Wage System.

19. Section 316.301 is revised to read as follows:

§ 316.301 Purpose and duration.

An agency may make a term appointment for a period of more than 1 year but not more than 4 years when the need for an employee's services is not permanent. Reasons for making a term appointment include, but are not limited to: project work, extraordinary workload, scheduled abolishment, reorganization, or contracting out of the function, uncertainty of future funding, or the need to maintain permanent positions for placement of employees who would otherwise be displaced from other parts of the organization.

20. In § 316.302, paragraph (c)(3) is revised to read as follows:

§ 316.302 Selection of term employees.

* * * * *

(c) * * *

(3) A person eligible for career or career-conditional employment under §§ 315.601, 315.605, 315.606, 315.607, 316.608, 315.609, or 315.703 of this chapter.

* * * * *

PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

21. The authority citation for part 330 continues to read as follows:

Authority: 5 U.S. C. 1302, 3301, 3302; E.O. 10577; 3 CFR, 1954–58 Comp., p. 218; § 330.102 also issued under 5 U.S.C. 3327; subpart B also issued under 5 U.S.C. 3315 and 8151; § 330.401 also issued under 5 U.S.C. 3310; subpart H also issued under 5 U.S.C. 8337(h) and 8457(b); subpart I also issued under sec. 4432 of Pub. Law 102–484.

22. Section 330.201 is revised to read as follows:

§ 330.201 Establishment and maintenance of RPL.

(a) The reemployment priority list (RPL) is the mechanism agencies use to give reemployment consideration to their former competitive service employees separated by reduction in force (RIF) or fully recovered from a compensable injury after more than 1 year. The RPL is a required component of agency positive placement programs. In filling vacancies, the agency must give RPL registrants priority consideration over certain outside job applicants and, if it chooses, also may consider RPL registrants before considering internal candidates.

(b) Each agency is required to establish and maintain a reemployment priority list for each commuting area in which it separates eligible competitive service employess by RIF or when a former employee recovers from a compensable injury after more than 1 year, except as provided in paragraph (c) of this section. For purposes of this subpart, *agency* means *Executive agency* as defined in 5 U.S.C. 105. All components of an agency within the commuting area utilize a single RPL and are responsible for giving priority consideration to the RPL registrants.

(c) An agency need not maintain a distinct RPL for employees separated by reduction in force if the agency operates a placement program for its employees and obtains OPM concurrence that the program satisfies the basic requirements of this subpart. The intent of this provision is to allow agencies to adopt different placement strategies that are effective for their particular programs

yet satisfy legal entitlements to priority consideration in reemployment.

23. In § 330.202, paragraph (a)(1) is revised and paragraph (c) is added to read as follows:

§ 330.202 Application.

(a)(1) To be entered on the RPL, an eligible employee under § 330.203 must complete an application prescribed by the employing agency and inform the agency of any significant changes in the information provided. This application must provide for the employee to specify the conditions under which he or she will accept employment, including grade, occupation, and minimum hours or work per week, in addition to positions at the same representative rate and type of work schedule (e.g., full-time, part-time, seasonal, intermittent, on-call, etc.) as the position from which the employee was or will be separated. Registration may take place as soon as a specific notice of separation under part 351 of this chapter, or a Certification of Expected Separation as provided in § 351.807 of this chapter, has been issued. The employee must submit the application within 30 calendar days after the RIF separation date. An employee who fails to submit a timely application is not entitled to be placed on the RPL. If an agency has components scattered throughout a large commuting area, the agency may allow eligibles to indicate their availability only for certain sub-areas within the commuting area. However, the agency cannot deny consideration throughout the entire commuting area if the eligible wants it.

* * * * *

(c) Agencies should be prepared to assist employees, when requested, in identifying and listing on the reemployment priority list (RPL) application those positions within the agency for which the employee qualifies and is interested.

24. In § 330.203, paragraphs (a)(4) and (c) are revised and paragraph (d), (e), (f), and (g) are added to read as follows:

§ 330.203 Eligibility due to reduction in force.

(a) * * *

(4) Have not declined an offer under subpart G of part 351 of this chapter of a position with the same type of work schedule and a representative rate at least as high as that of the position from which the employee was or will be separated.

* * * * *

(c) A tenure group I employee is eligible for the RPL for 2 years, and a tenure group II employee is eligible for 1 year, from the date the employee is entered on the RPL.

(d)(1) When an individual declines an offer of career, career-conditional, or excepted appointment without time limit or fails to reply to an inquiry, under this subpart, and the position meets the acceptable conditions shown in his or her application, he or she loses RPL consideration for all positions with a representative rate at or below that grade. However, subject to paragraph (d)(2)(iii) of this section, the individual retains eligibility for positions with a higher representative rate up to the last grade held.

(2) Also, an individual is taken off the RPL before the period of eligibility expires when the individual:

(i) Requests removal;

(ii) Receives a career, career-conditional, or excepted appointment without time limit in any agency;

(iii) Declines an offer of career, career-conditional, or excepted appointment without time limit or fails to reply to an inquiry, under this subpart, by the employee's former agency, concerning a specific position having a representative rate at least as high, and with the same type of work schedule, as that of the position from which the person was or will be separated.

(iv) Separates for some other reason (such as retirement, resignation, etc.) before the date the RIF separation would take effect. An employee who retires on or after the date of separation by RIF does not lose RPL eligibility.

(v) Declines an interview or fails to appear for a scheduled interview only if notified in advance of this requirement and the subsequent consequences.

(vi) In the case of an individual enrolled on an RPL for Alaska or overseas, leaves the area covered by that RPL or becomes disqualified for overseas employment because of previous service or residence.

(3) When an agency removes an individual from the RPL because of failure to reply to a specific permanent job offer or an inquiry of availability for a specific permanent vacancy, the agency must have evidence to show that a written offer or inquiry was made (e.g., a Postal Service ''return receipt signed by addressee only''). The written offer or inquiry to the individual must clearly state that failure to respond will result in loss of RPL consideration for that grade or higher grades, if eligible.

(e) Declination of nonpermanent employment has no effect on RPL eligibility or continuation of RPL consideration.

(f) Consideration for all jobs (whether permanent or nonpermanent) is suspended for any individual who cannot be reached by the agency. Submission of an updated application can reinstate consideration, but the period of eligibility is not extended beyond the original time set in paragraph (c) of this section.

(g) Eligibles who had agreed to transfer with their function but were separated by RIF from the gaining competitive area are registered on the RPL of the gaining competitive area.

25. In § 330.204, paragraphs (a) and (b)(3) are revised and paragraph (c) is added to read as follows:

§ 330.204 Eligibility due to compensable injury.

(a) A competitive service employee in tenure group I or II who is separated (or who accepts a lower graded position in lieu of separation) because of a compensable injury of disability (as defined in part 353 of this chapter) who has fully recovered more than 1 year after compensation began is entitled to be placed on the RPL provided the individual applies within the timeframes addressed in § 330.202. Part 353 of this chapter contains information on eligibility.

* * * * *

(b) * * *

(3) Declines an offer or fails to respond to an inquiry of availability about a specific position that is the same as or equivalent to the position from which separated.

(c) A former employee must request reemployment consideration with the time limits set in § 330.202.

26. Section 330.205 is revised to read as follows:

§ 330.205 Employment restrictions.

(a) The restrictions in paragraph (b) of this section apply to the filling of all competitive service vacancies, regardless of whether an agency plans to make a temporary, term, or permanent appointment. This means an agency must consider RPL registrants for nonpermanent as well as permanent positions when they have indicated such interest on their RPL application.

(b) When a qualified individual is available on an agency's RPL, the agency may not make a final commitment to an individual not on the RPL to fill a permanent or temporary competitive service position by:

(1) A new appointment, unless the individual appointed is a qualified 10-point preference eligible; or

(2) Transfer or reemployment, unless the individual appointed is a preference eligible, is exercising restoration rights under part 353 of this chapter based on return from military service or recovery from a compensable injury or disability

within 1 year, or is exercising other statutory or regulatory reemployment rights.

(c) Paragraph (b) of this section does not apply to actions involving employees on an agency's rolls, as authorized in paragraphs (c) (1), (2), and (3) of this section, or in filling a specific position:

(1) When all qualified individuals on the RPL decline an offer of a specific position or fail to respond to an official agency inquiry about their availability for it; or

(2) By a current, qualified employee of the agency through:

(i) Detail or position change (promotion, demotion, reassignment); or

(ii) Conversion to competitive appointment of employees currently serving under appointments that carry a noncompetitive conversion eligibility (e.g., Veterans Readjustment Appointee, 30 percent disabled veterans, disabled employees under Schedule A appointment, Presidential Management Interns, cooperative education students under Schedule B appointment, and TAPERS); or

(iii) Reappointment without a break in service to the same position currently held by an employee serving under a temporary appointment of 1 year or less (only to another temporary appointment not to exceed 1 year or less and not to a permanent appointment); or

(iv) Extension of an employee's temporary appointment up to the maximum permitted by the appointment authority or as authorized by OPM.

(3) By a 30-day special needs appointment or 700 hour temporary appointment of a severely disabled or mentally restored individual, when the agency's staffing policies provide for these exceptions.

(d) An agency must clear the RPL at the grade level at which it fills a position (regardless of the full performance level). Similarly, if an agency advertises a position at multiple grade levels, it must clear the RPL only at the grade level at which the position is ultimately filled.

(e) Once an agency has cleared its RPL and made a final employment commitment to an individual, the later registration of another employee on the RPL does not prevent the fulfillment of the original commitment, regardless of when the individual actually enters on duty.

(f) An agency may make an exception to this section and appoint an individual not on the RPL as authorized by § 330.207(d).

(g) When submitting a request for referral of eligibles, an agency is required to indicate that no qualified RPL registrant is available for the vacancy and therefore the agency may make a new appointment. Similarly, an agency must clear its RPL before making appointments under a direct-hire authority, which includes the Outstanding Scholar provision, or delegated examining authority.

27. In § 330.206, paragraphs (a)(1), (a)(2), and (b) are revised to read as follows:

§ 330.206 Job consideration.

(a)(1) An eligible employee under § 330.203 is entitled to consideration for positions in the commuting area for which qualified and available that are at no higher grade (or equivalent), have no greater promotion potential than the position from which the employee was or will be separated, and have the same type of work schedule. In addition, an employee is entitled to consideration for any higher grade previously held on a nontemporary basis in the competitive service from which the employee was demoted under part 351 of this chapter.

(2) An employee is considered for positions having the same type of work schedule as the position from which separated except that the agency, at its discretion, may adopt provisions permitting employees to request consideration for other work schedules in addition to that formerly held.

* * * * *

(b)(1) An eligible employee under § 330.205 is placed on the RPL for reemployment consideration for his or her former position or an equivalent one. If the individual cannot be placed in such a position in the former commuting area, he or she is entitled to priority consideration for an equivalent position elsewhere in the agency at the time and in a manner as the agency determines will provide the individual with maximum opportunities for consideration.

(2) In lieu of expanded consideration in other locations, an individual who cannot be placed in his or her former or equivalent position in the former commuting area may elect to be considered for the next best available position in the former commuting area.

28. In § 330.207, paragraphs (a), (b), (c)(1), and (d) are revised to read as follows:

§ 330.207 Selection from RPL.

(a) *Options.* An agency must adopt one of the selection methods in paragraphs (b) and (c) of this section for use in operating a single RPL. The agency may adopt the same method for each RPL it establishes or may vary the method by location, but it must adopt a written policy for each RPL it establishes and maintains. After a method is adopted, the agency uses that method in filling all positions. While an agency may not vary the method used by individual vacancy, it may at any time switch selection methods for employees enrolled on the RPL.

(b) *Retention standing order.* For each vacancy to be filled, the agency shall place qualified individuals in group and subgroup order in accordance with part 351 of this chapter. In making a selection, an agency may not pass over an individual in group I to select from group II and, within a group, may not pass over an individual in a higher subgroup to select from a lower subgroup. Within a subgroup, an agency may select an individual without regard to order of retention standing. A person has no greater priority for the grade or position from which separated than any other person on the list who is qualified for the vacancy. An agency may make an exception to this selection order only in accordance with paragraph (d) of this section.

(c)(1) *Rating and ranking.* For each vacancy to be filled, the agency rates qualified individuals according to their job experience and education. To do this, an agency shall develop job-related evaluation procedures capable of distinguishing differences in qualifications measured, which shall be applied in a fair and consistent manner. Based on these procedures, the agency shall assign qualified individuals a numerical score of at least 70 on a scale of 100. The agency shall grant 5 additional points to preference eligibles under section 2108(3)(A) and (B) of title 5, United States Code, and 10 additional points to preference eligibles under section 2108(3) (C) through (G) of that title.

* * * * *

(d) *Exceptions.* An agency may make an exception to this subpart and appoint an individual who is not on the RPL or has lower standing than others on the RPL. The exception may be granted only when necessary to obtain an employee for duties that cannot be taken over without undue interruption (as defined in § 351.203 of this chapter) to the agency by an individual who is on the RPL or has higher standing than the one appointed. The agency shall notify, in writing, each individual on the RPL who is adversely affected by an appointment under this paragraph of the reasons for the exception and of the right of appeal to the Merit Systems Protection Board.

29. In § 330.208, paragraphs (a)(1) and (b) introductory text are revised and

paragraph (a)(4) is added to read as follows:

§ 330.208 Qualification requirements.

(a) * * *

(1) Meets OPM-established or approved qualification standards and requirements for the position, including any minimum educational requirements, and any selection placement factors established by the agency;

* * * * *

(4) Meets any other applicable requirement for appointment to the competitive service.

(b) An agency may make an exception to the qualification standard and adopt an alternative standard under the following conditions (this provision does not authorize waiver of the selection order required by § 330.207):

* * * * *

PART 333—RECRUITMENT AND SELECTION FOR TEMPORARY AND TERM APPOINTMENTS OUTSIDE THE REGISTER

30. The authority citation for part 333 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; section 333.203 also issued under 5 U.S.C. 1104, Pub. L. 95–454, sec. 3(5).

31. Section 333.101 is revised to read as follows:

§ 333.101 Standards for temporary and term appointments outside the register.

Except as OPM may otherwise specify, an agency, in making a temporary or term appointment outside the register, shall determine that the applicant meets the qualification standards issued by OPM and that he or she is not disqualified for any of the reasons listed in § 339.101 and § 731.201 of this chapter. Candidates found to be qualified shall be assigned either an eligible rating or a numerical score of at least 70 on a scale of 100.

32. Section 333.102 is revised to read as follows:

§ 333.102 Public notice for temporary and term appointments outside the register.

An agency recruiting outside the register must send a vacancy announcement to the OPM job information center(s) and place an order with the State Employment Service office(s) that have geographic jurisdiction over the position(s). The notices must describe the qualifications required and application deadline; must include equal opportunity and veterans preference provisions; and must follow other OPM instructions for preparing vacancy announcements.

PART 339—MEDICAL QUALIFICATION DETERMINATIONS

33. The authority citation for part 339 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302, 5112; E.O. 9830, February 24, 1947.

34. In § 339.102, paragraph (b) is revised to read as follows:

§ 339.102 Purpose and effect.

* * * * *

(b) Personnel decisions based wholly or in part on the review of medical documentation and the results of medical examinations and evaluations shall be made in accordance with appropriate parts of this title.

* * * * *

PART 340—OTHER THAN FULL-TIME CAREER EMPLOYMENT (PART-TIME, SEASONAL, AND INTERMITTENT)

35. The authority citation for part 340 continues to read as follows:

Authority: 5 U.S.C. 3401 et seq., unless otherwise noted.

36. In § 340.202, paragraph (c) is revised to read as follows:

§ 340.202 General.

* * * * *

(c) *Mixed Tours of Duty.* The provisions of this subpart and the term ''part-time career employment'' do not apply to employees with appointments in tenure groups I or II who work under mixed tours of duty. For this purpose, a mixed tour of duty consists of annually recurring periods of full-time, part-time, or intermittent service as long as the employee does not work part-time more than 6 pay periods per calendar year.

37. Subpart D of part 340 is revised to read as follows:

Subpart D—Seasonal and Intermittent Employment

Sec.

Authority: 5 U.S.C. 3401 et seq., unless otherwise noted.

Subpart D—Seasonal and intermittent Employment

§ 340.401 Definitions.

(a) *Seasonal employment* means annually recurring periods of work of less than 12 months each year. Seasonal employees are permanent employees who are placed in nonduty/nonpay status and recalled to duty in accordance with preestablished conditions of employment.

(b) *Intermittent employment* means employment without a regularly scheduled tour of duty.

§ 340.402 Seasonal employment.

(a) *Appropriate use.* Seasonal employment allows an agency to develop an experienced cadre of employees under career appointment to perform work which recurs predictably year-to-year. Consistent with the career nature of the appointments, seasonal employees receive the full benefits authorized to attract and retain a stable workforce. As a result, seasonal employment is appropriate when the work is expected to last at least 6 months during a calendar year. Recurring work that lasts less than 6 months each year is normally best performed by temporary employees. Seasonal employment may not be used as a substitute for full-time employment or as a buffer for the full-time workforce.

(b) *Length of the season.* Agencies determine the length of the season, subject to the condition that it be clearly tied to nature of the work. The season must be defined as closely as practicable so that an employee will have a reasonably clear idea of how much work he or she can expect during the year. To minimize the adverse impact of seasonal layoffs, an agency may assign seasonal employees to other work during the projected layoff period. While in nonpay status, a seasonal employee may accept other employment, Federal or non-Federal, subject to the regulations on political activity (part 733 of this title) and on employee responsibilities and conduct (part 735), as well as applicable agency policies. Subject to the limitation on pay from more than one position (5 U.S.C. 5533), a seasonal employee may hold more than one appointment.

(c) *Employment agreement.* An employment agreement must be executed between the agency and the seasonal employee prior to the employee's entering on duty. At a minimum, the agreement must inform the employee:

(1) That he or she is subject to periodic release and recall as a condition of employment,

(2) The minimum and maximum period the employee can expect to work,

(3) The basis on which release and recall procedures will be effected, and

(4) The benefits to which the employee will be entitled while in a nonpay status.

(d) *Release and recall procedures.* A seasonal employee is released to nonpay status at the end of a season and recalled to duty the next season. Release and recall procedures must be

established in advance and uniformly applied. They may be based on performance, seniority, veterans' preference, other appropriate indices, or a combination of factors. A seasonal layoff is not subject to the procedures for furlough prescribed in parts 351 and 752 of this title. Reduction in force or adverse action procedures, as applicable, are required for a seasonal layoff that is not in accordance with the employment agreement, for example, if an agency intends to have an employee work less than the minimum amount of time specified in the employment agreement. However, an agency may develop a new employment agreement to reflect changing circumstances.

(e) *Noncompetitive movement.* Seasonal employees serving under career appointment may move to other positions in the same way as other regular career employees.

§ 340.403 Intermittent employment.

(a) *Appropriate use.* An intermittent work schedule is appropriate only when the nature of the work is sporadic and unpredictable so that a tour of duty cannot be regularly scheduled in advance. When an agency is able to schedule work in advance on a regular basis, it has an obligation to document the change in work schedule from intermittent to part-time or full-time to ensure proper service credit.

(b) *Noncompetitive movement.* Intermittent employees serving under career appointment may move to other positions in the same way as other regular career employees.

PART 351—REDUCTION IN FORCE

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

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

39. In § 351.202, paragraph (c)(7) is added to read as follows:

§ 351.202 Coverage.

* * * * *

(c) * * *

(7) A change in an employee's work schedule from other-than-full-time to full-time. (A change from full-time to other than full-time for a reason covered in § 351.201(A)(2) is covered by this part.)

40. Section 351.203 is amended by adding alphabetically the definitions of ''Furlough'' and ''Undue Interruption'' to read as follows:

§ 351.203 Definitions.

* * * * *

Furlough under this part means the placement of an employee in a temporary nonduty and nonpay status for more than 30 consecutive calendar days, or more than 22 workdays if done on a discontinuous basis, but not more than 1 year.

* * * * *

Undue interruption means a degree of interruption that would prevent the completion of required work by the employee 90 days after the employee has been placed in a different position under this part. The 90-day standard should be considered within the allowable limits of time and quality, taking into account the pressures of priorities, deadlines, and other demands. However, a work program would generally not be unduly interrupted even if an employee needed more than 90 days after the reduction in force to perform the optimum quality or quantity of work. The 90-day standard may be extended if placement is made under this part to a low priority program or to a vacant position.

41. In § 351.301, the current paragraph is redesignated as paragraph (a) and paragraph (b) is added to read as follows:

§ 351.301 Applicability.

* * * * *

(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).

42. In § 351.302, paragraphs (f) and (g) are added to read as follows:

§ 351.302 Transfer of employees.

* * * * *

(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.

43. In § 351.303, paragraph (a) is revised and paragraph (c)(3) is added to read as follows:

§ 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.

* * * * *

(c) * * *

(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 official position description by the use of appropriate records (e.g., work reports, organizational time logs, work schedules, etc.).

* * * * *

44. In § 351.403, paragraph (a) is revised, paragraph (b)(5) is removed, and paragraph (b)(6) is redesignated as (b)(5) to read as follows:

§ 351.403 Competitive level.

(a)(1) Each agency shall establish competitive levels consisting of all positions in a competitive area which are in the same grade (or occupational level) and classification series, and which are similar enough in duties, qualification requirements, pay schedules, and working conditions so that an agency may reassign the incumbent of one position to any of the other positions in the level without undue interruption.

(2) Competitive level determinations are based on each employee's official position, not the employee's personal qualifications.

(3) Sex may not be the basis for a competitive level determination, except for a position OPM designates that certification of eligibles by sex is justified.

(4) A probationary period required by subpart I of part 315 of this chapter for initial appointment to a supervisory or managerial position is not a basis for establishing a separate competitive level.

* * * * *

45. In § 351.501, paragraphs (b)(1) and (b)(2) are revised to read as follows:

§ 351.501 Order of retention—competitive service.

* * * * *

(b) * * *

(1) Group I includes each career employee who is not serving a probationary period. (A supervisory or managerial employee serving a probationary period required by subpart I of part 315 of this title is in group I if the employee is otherwise eligible to be included in this group.) The following employees are in group I as soon as the employee completes any required probationary period for initial appointment:

(i) An employee for whom substantial evidence exists of eligibility to immediately acquire status and career tenure, and whose case is pending final resolution by OPM (including cases under Executive Order 10826 to correct certain administrative errors);

(ii) An employee who acquires competitive status and satisfies the service requirement for career tenure when the employee's position is brought into the competitive service;

(iii) An administrative law judge;

(iv) An employee appointed under 5 U.S.C. 3104, which provides for the employment of specially qualified scientific or professional personnel, or a similar authority; and

(v) An employee who acquires status under 5 U.S.C. 3304(c) on transfer to the competitive service from the legislative or judicial branches of the Federal Government.

(2) Group II includes each career-conditional employee, and each employee serving a probationary period under subpart H of part 315 of this chapter. (A supervisory or managerial employee serving a probationary period required by subpart I of part 315 of this title is in group II if the employee has not completed a probationary period under subpart H of part 315 of this title.) Group II also includes an employee when substantial evidence exists of the employee's eligibility to immediately acquire status and career-conditional tenure, and the employee's case is pending final resolution by OPM (including cases under Executive Order 10826 to correct certain administrative errors).

* * * * *

46. Section 351.502 is revised to read as follows:

§ 351.502 Order of retention—excepted service.

(a) Competing employees shall be classified on a retention register in tenure groups on the basis of their tenure of employment, veteran preference, length of service, and performance in descending order as set forth under § 351.501(a) for competing employees in the competitive service.

(b) Groups are defined as follows:

(1) Group I includes each permanent employee whose appointment carries no restriction or condition such as conditional, indefinite, specific time limit, or trial period.

(2) Group II includes each employee:

(i) Serving a trial period; or

(ii) Whose tenure is equivalent to a career-conditional appointment in the competitive service in agencies having such excepted appointments.

(3) Group III includes each employee:

(i) Whose tenure is indefinite (i.e., without specific time limit), but not actually or potentially permanent;

(ii) Whose appointment has a specific time limitation of more than 1 year; or

(iii) Who is currently employed under a temporary appointment limited to 1 year or less, but who has completed 1 year of current continuous service under a temporary appointment with no break in service of 1 workday or more.

47. In § 351.506, paragraph (b) is revised to read as follows:

§ 351.506 Effective date of retention standing.

* * * * *

(b) The retention standing of each employee retained in a competitive level as an exception under § 351.607 or § 351.608 is determined as of the date the employee would have been released from the competitive level had the exception not been used. The retention standing of each employee retained under either exception remains fixed until completion of the reduction in force action which resulted in the temporary retention.

* * * * *

48. In § 351.701, paragraph (a) is revised to read as follows:

§ 351.701 Assignment involving displacement.

(a) *General.* When a group I or II competitive service employee with a current annual performance rating of record of minimally successful (Level 2) or equivalent, or higher, is released from a competitive level, an agency shall offer assignment, rather than furlough or separate, in accordance with paragraphs (b), (c), and (d) of this section to another competitive position which requires no reduction, or the lease possible reduction, in representative rate. The employee must be qualified for the offered position. The offered position shall be in the same competitive area, last at least 3 months, and have the same type of work schedule (e.g., full-time, part-time, intermittent, or seasonal) as the position from which the employee is released. Upon accepting an offer of assignment, or displacing another employee under this part, an employee retains the same status and tenure in the new position. The promotion potential of the offered position is not a consideration in determining an employee's right of assignment.

* * * * *

49. In § 351.702, paragraph (a)(4) is revised to read as follows:

§ 351.702 Qualifications for assignment.

(a) * * *

(4) Has the capacity, adaptability, and special skills needed to satisfactorily perform the duties of the position without undue interruption. This determination includes recency of experience, when appropriate.

* * * * *

50. In § 351.704, paragraph (b)(5) is added to read as follows:

§ 351.704 Rights and prohibitions.

* * * * *

(b) * * *

(5) Authorize or permit an agency to displace an employee or to satisfy a competing employee's right to assignment by assigning the employee to a position with a different type of work schedule (e.g., full-time, part-time, intermittent, or seasonal) than the position from which the employee is released.

PART 353—RESTORATION TO DUTY FROM MILITARY SERVICE OR COMPENSABLE INJURY

51. Part 353 is revised to read as follows:

PART 353—RESTORATION TO DUTY FROM MILITARY SERVICE OR COMPENSABLE INJURY

Subpart A—General Provisions

Sec.

Subpart B—Military Service

Authority: 38 U.S.C. 4301, et seq., and 5 U.S.C. 8151.

Subpart A—General Provisions

§ 353.101 Scope.

The rights and obligations of employees and agencies in connection with leaves of absence or restoration to duty following military service under 38 U.S.C. 4301 et seq., and restoration under 5 U.S.C. 8151 for employees who sustain compensable injuries, are subject to the provisions of this part. Subpart A covers those provisions that are common to both of the above groups of employees. Subpart B deals with provisions that apply just to military duty and subpart C covers provisions that pertain just to injured employees. Subpart D covers the appeal rights of both groups.

§ 353.102 Definitions.

In this part:

Agency means:

(1) With respect to restoration following a compensable injury, any department, independent establishment, agency, or corporation in the executive branch, including the U.S. Postal Service and the Postal Rate Commission, and any agency in the legislative or judicial branch; and

(2) With respect to military duty, all of the foregoing except for any agency in the legislative or judicial branch, but including the Government of the District of Columbia.

Fully recovered means compensation payments have been terminated on the basis that the employee is able to perform all the duties of the position he or she left or an equivalent one.

Injury means a compensable injury sustained under the provisions of 5 U.S.C. chapter 81, subchapter I, and includes, in addition to accidental injury, a disease proximately caused by the employment.

Leave of absence means military leave, annual leave, leave without pay (LWOP), furlough, continuation of pay, or any combination of these.

Military duty means a period of:

(1) Active duty for training or for service in the Armed Forces of the United States;

(2) Inactive duty training in the Armed Forces of the United States; and

(3) Active duty in the Public Health Service that is covered by 38 U.S.C. 4304 (b). For the purpose of coverage under 38 U.S.C. 4304 (c) and (d), full-time training or other full-time duty performed by a member of the National Guard under 32 U.S.C. 316, 502, 503, 504, or 505 is considered active duty for training in the Armed Forces of the United States. For the purpose of 38 U.S.C. 4304 (d), inactive duty training performed by that member under 32 U.S.C. 502 or 37 U.S.C. 206, 301, 309, 402, or 1002 is considered inactive duty training.

Partially recovered means an injured employee, though not yet able to resume the full range of his or her regular duties, has recovered sufficiently to return to part-time or light duty or to another position with less demanding physical requirements. Ordinarily, it is expected that a partially recovered employee will fully recover eventually.

Physically disqualified means that:

(1) (i) For medical reasons the employee is unable to perform the duties of the position formerly held or an equivalent one, or

(ii) There is a medical reason to restrict the individual from some or all essential duties because of possible incapacitation (for example, a seizure) or because of risk of health impairment (such as further exposure to a toxic substance for an individual who has already shown the effects of such exposure).

(2) The condition is considered permanent without little likelihood for improvement or recovery.

§ 353.103 Persons covered.

(a) The provisions of this part concerned with military duty cover each employee of an agency who enters on military duty from:

(1) A career or career-conditional appointment in the competitive service; or

(2) An appointment with time limitation in a position outside the competitive service.

(b) The provisions of this part concerning employee injury cover a civil officer or employee in any branch of the Government of the United States, including an officer or employee of an instrumentality wholly owned by the United States, who was separated or furloughed from an appointment without time limitation as a result of a compensable injury; but do not include—

(1) A commissioned officer of the Regular Corps of the Public Health Service;

(2) A commissioned officer of the Reserve Corps of the Public Health Service on active duty; or

(3) A commissioned officer of the National Oceanic and Atmospheric Administration.

(c) Section 353.111 covers the restoration rights of employees serving under temporary appointments pending establishment of a register (TAPER).

§ 353.104 Notification of rights and obligations.

When an agency separates, places on leave of absence, restores or fails to restore an employee because of military duty or compensable injury, it shall notify the employee his or her rights, obligations, and benefits relating to Government employment, including any appeal rights to the Merit Systems Protection Board (MSPB) as required by § 1201.21 of this title, or where appropriate, the right to grieve under a negotiated grievance procedure. However, regardless of notification, an employee is still obligated to exercise due diligence in ascertaining his or her rights, and to seek reemployment within the time limits provided by chapter 43 of title 38 of the U.S. Code, for reemployment after military service or as soon as he or she is able after a compensable injury.

§ 353.105 Maintenance of records.

Each agency shall identify the position vacated by an employee who is injured or leaves to enter on military duty. It shall also maintain the necessary records to assure that all such employees are preserved the rights and benefits granted by this law and this part.

§ 353.106 Personnel actions during employee's absence.

(a) Agency promotion plans must provide a mechanism by which employees who are absent because of military duty or compensable injury can be considered for promotion.

(b) An employee whose position is reclassified while he or she is absent because of military duty or compensable injury shall be considered for that position in accordance with the provisions in part 335 of this chapter.

§ 353.107 Status upon reemployment.

Upon reemployment, an employee who was absent on military duty or because of compensable injury is generally entitled to be treated as though he or she had never left. This means the entire period from the time the employee entered military service or was injured until he or she was reemployed is creditable for purposes of rights and benefits based upon seniority and length of service, including within-grade increases, career tenure,

completion of probation, and leave rate accrual.

§ 353.108 Effect of performance and conduct on restoration rights.

The laws covered by this part do not permit an agency to circumvent the protections afforded by other laws to employees who face the involuntary loss of their positions. Thus, an employee may not be denied restoration rights because of poor performance or conduct that occurred prior to the employee's departure for compensable injury or military duty. However, separation for cause that is substantially unrelated to the injury or to the performance of military duty negates restoration rights. If during the period of injury or military duty the employee's conduct is such that it would disqualify him or her for employment under OPM or agency regulations, restoration rights may be denied.

§ 353.109 Transfer of function to another agency.

If the function of an employee absent on military duty or compensable injury is transferred to another agency, and if the employee would have been transferred with the function under part 351 of this chapter had he or she not been absent, the employee is entitled to be reinstated to a position in the gaining agency that is equivalent to the one he or she left. It shall also assume the obligation to restore the employee in accordance with law and this part.

§ 353.110 OPM placement assistance.

(a) *Employee returning from military duty.*

(1) OPM will provide placement assistance to an employee with restoration rights in the executive or legislative branch, who either has competitive status, or if in the legislative branch is able to acquire competitive status under 5 U.S.C. 3304(c), provided—

(i) The employee's executive branch agency is abolished and its functions are not transferred, or it is not possible for the agency to restore the employee, or

(ii) It is not possible for a legislative branch employee to be restored in the legislative branch.

(2) If OPM determines the individual is qualified for a position in the executive branch which is either vacant or filled under temporary appointment, the returning employee will be offered the position.

(b) *Employee returning from compensable injury.* OPM will provide placement assistance to an employee with restoration rights in the executive, legislative, or judicial branches who cannot be placed in his or her former agency and who either has competitive status or is eligible to acquire it under 5 U.S.C. 3304(c). If the employee's agency is abolished and its functions are not transferred, or it is not possible for the employee to be restored in his or her former agency, OPM will provide placement assistance by enrolling the employee in OPM's Priority Placement Program under part 330 of this chapter.

(c) This section does not apply to employees serving under a temporary appointment pending establishment of a register (TAPER).

§ 353.111 Restoration rights of TAPER employees.

An employee serving in the competitive service under a temporary appointment pending establishment of a register (TAPER) under § 316.201 of this chapter (other than an employee serving in a position classified above GS–15), is entitled to be restored to the position he or she left or an equivalent one in the same commuting area.

Subpart B—Military Service

§ 353.201 Leaves of absence.

(a) *Entitlement.*

(1) The following employees are entitled under 38 U.S.C. 4304 to a leave of absence in connection with military duty:

(i) A member of a Reserve component (Reserve or National Guard) who performs active duty for training or inactive duty (38 U.S.C. 4304(d)), or

(ii) An employee who reports for enlistment, induction or physical examination (38 U.S.C. 4304(e)).

(2) There is no limitation in law as to the timing or duration of leaves of absence, nor is there any authority for an agency to deny a leave of absence. If an agency has concerns about the timing, frequency, or length of an employee's requests for a leave of absence, it should contact the commander of the military unit to determine if the duty can be changed.

(b) *Authorization required.* To be eligible for a leave of absence, the employee must be under military orders. Any of the following is acceptable evidence of orders:

(1) Written military orders,

(2) An inactive duty training or ''drill schedule'' published by the employee's military command or unit, or

(3) Verbal confirmation of such orders from the employee's military command or unit or military superior.

(c) *Work schedules.* An agency is not required to reschedule an employee's work in order to accommodate his or her Reserve obligation, and may not require the employee to reschedule his or her work in order to perform military duty on his or her own time.

(d) *Return to duty.*

(1) An employee on a leave of absence for military duty is required to report for work at the beginning of the first regularly scheduled workday following release, rejection for service or completion of physical examination. If hospitalized incident to training or examination, the employee is required to report at the beginning of the first regularly scheduled workday following discharge from hospitalization, or within 1 year or release from military duty, whichever is earlier. In all cases, necessary travel time or other delays beyond the individual's control may extend the reporting date. An employee who fails to report within these time limits is subject to normal agency disciplinary procedures related to absences from work.

(2) An employee on a leave of absence returns to the position he or she left, or if applicable, to the position to which reassigned or promoted while absent. The employee is entitled to the same seniority, status, pay and vacation he or she would have had if not absent on military duty.

(3) An employee returning from a leave of absence has no special protections against discharge without cause. However, the employee may not be disadvantaged where vacation leave is concerned. Thus, insofar as possible, the employee is entitled to have an annual vacation period of extended leave for rest and recreation approved for the same time as it would ordinarily have been granted.

§ 353.202 Mandatory restoration.

(a) *Basic entitlement.* An individual returning from military duty who is entitled to restoration rights under 38 U.S.C. 4301 (inducted) or 4304 (a), (b), or (c) (enlisted, called to active duty, Reservist entered on active duty, or Reservist serving basic training), must be restored as soon as possible after making application, but in no event later than 30 days after the individual's release from military duty.

(b) *Conditions.* To be eligible for restoration, the employee must have left his or her employment for the purpose of entering the military, must satisfactorily complete his or her period of service, and apply for restoration—

(1) Within 90 days of release from active duty (or from hospitalization continuing after discharge for a period of no more than 1 year) in the case of employees returning under 38 U.S.C. 4304 (a) or (b); and

(2) Within 31 days of release from active duty (or from hospitalization incident to the military service, or 1 year after the employee's scheduled release from military training, whichever is earlier), in the case of employees returning under 38 U.S.C. 4304(c).

(c) *Length of military duty.* Each time an employee leaves his or her employment to enter military service, he or she is subject to the time limits prescribed in 38 U.S.C. 4304 (a) and (b) for purposes of restoration rights. Generally, these are as follows:

(1) *Regular active duty* soldiers have 4 years plus 1 additional year if the additional duty was ''at the request and for the convenience of the Federal Government.'' (Their orders or DD Form 214 must so state.) Also, in the event of a Presidential call-up such as Operation Desert Storm, numerous active duty troops in key positions may be held over beyond their enlistments. This additional duty is covered because it is ''additional service imposed pursuant to law.''

(2) *Reserves and National Guard* are covered under 38 U.S.C. 4304(b)(2). Normally, their restoration rights are limited to 4 years. (They do not get the extra 5th year ''at the request and for the convenience of the Federal Government.'') To go beyond 4 years, their service has to be other than for training, it is limited by the time period that the President is authorized to call up troops (currently 180 days), and, if voluntary, their orders or DD Form 214 must say that the additional duty was at the request and for the convenience of the Government.

(3) *Mobilization authority.*

(i) Since 1978, 10 U.S.C. 673b has authorized the President to call up as many as 200,000 members of the Selected Reserve for up to 90 days. In 1986, this authority was broadened to allow the President to extend the call-up for an additional 90 days, if necessary, without regard to a state of national emergency or war, for the purpose of augmenting the active component forces for an operational mission.

(ii) The President is also authorized by 10 U.S.C. 673a to call up as many as one million members of the Ready Reserves for not longer than 24 months in a national emergency.

(iii) Under 10 U.S.C. 672, with a declaration of war or national emergency by the Congress, all Reserve components, including Standby and Retired, could be ordered to active duty for the duration of the war, plus 6 months.

§ 353.203 Physical disqualification.

An individual who is physically disqualified for the former position or an equivalent one because of disability sustained during military service shall be placed in the agency in another position for which qualified that will provide the employee with the same seniority, status, and pay, or the nearest approximation consistent with the circumstances in each case.

§ 353.204 Retention protection.

(a) *While on military duty.* An employee with restoration rights under 38 U.S.C. 4301 or 4304 (a), (b), or (c) may not be demoted or separated (other than military separation) while on military duty. He or she is not a ''competing employee'' under § 351.404 of this chapter. If the employee's position is abolished during such absence, the agency must reassign the employee to another position of like seniority, status, and pay. An employee on a leave of absence under 38 U.S.C. 4304 (d) or (e) has no special protections in a reduction in force.

(b) *Upon reemployment.* Upon reemployment, an employee with a restoration right under 38 U.S.C. 4301 or 4304 (a) or (b) may not be discharged for a period of 1 year except for cause. A member of a Reserve component returning from an initial period of active duty for training under 38 U.S.C. 4304(c) may not be discharged for a period of 6 months except for cause. (Reduction in force is not considered ''for cause.'') Employees returning from a leave of absence under 38 U.S.C. 4304 (d) or (e) have no special protections against discharge.

(c) *TAPER employees.* This section does not apply to employees serving under a temporary appointment pending establishment of a register.

§ 353.205 Prohibition against discrimination.

A person who seeks or holds a position in the Federal Government may not be denied hiring, retention in employment, or any promotion or other incident or advantage of employment because of any obligation as a member of a Reserve component of the Armed Forces.

Subpart C—Compensable Injury

§ 353.301 Restoration rights.

(a) *Fully recovered within 1 year.* An employee who fully recovers from a compensable injury within 1 year from the date eligibility for compensation began (or from the time compensable disability recurs if the recurrence begins after the employee resumes regular full-time employment with the United States), is entitled to be restored immediately and unconditionally to his or her former position or an equivalent one. Although these restoration rights are agencywide, the employee's basic entitlement is to the former position or equivalent in the local commuting area the employee left. If a suitable vacancy does not exist, the employee is entitled to displace an employee occupying a continuing position under temporary appointment or tenure group III. If there is no such position in the local commuting area, the agency may offer the employee a position (as described in this paragraph) in another location. This paragraph also applies when an injured employee accepts a lower-graded position in lieu of separation and subsequently fully recovers. A fully recovered employee is expected to return to work immediately upon the cessation of compensation.

(b) *Fully recovered after 1 year.* An employee who was separated because of a compensable injury and whose full recovery takes longer than 1 year from the date eligibility for compensation began (or from the time compensable disability recurs if the recurrence begins after the injured employee resumes regular full-time employment with the United States), is entitled to priority consideration, agencywide, for restoration to the position he or she left or an equivalent one provided he or she applies for reappointment within 30 days of cessation of compensation. Priority consideration is accorded by entering the individual on the agency's reemployment priority list for the competitive service or reemployment list for the excepted service. If the individual cannot be placed in the former commuting area, he or she is entitled to priority consideration for an equivalent position elsewhere in the agency. (See parts 302 and 330 of this chapter for more information on how this may be accomplished for the excepted and competitive services, respectively.) This subpart also applies when an injured employee accepts a lower-graded position in lieu of separation and subsequently fully recovers.

(c) *Physically disqualified.* An individual who is physically disqualified for the former position or equivalent because of a compensable injury is entitled to be placed in another position for which qualified that will provide the employee with the same seniority, status, and pay, or the nearest approximation thereof, consistent with the circumstances in each case. This right is agencywide and applies for a period of 1 year from the date eligibility

for compensation begins. After 1 year, the individual is entitled to the rights accorded individuals who fully or partially recover, as applicable.

(d) *Partially recovered.* Agencies must make every effort to restore, according to the circumstances in each case, an individual who has partially recovered from a compensable injury and who is able to return to limited duty. At a minimum, this would mean treating these employees substantially the same as other handicapped individuals under the Rehabilitation Act of 1973, as amended. (See 29 U.S.C. 791(b) and 794.) If the individual fully recovers, he or she is entitled to be considered for the position held at the time of injury, or an equivalent one. A partially recovered employee is expected to seek reemployment as soon as he or she is able.

§ 353.302 Status upon reemployment.

An individual who is restored following a compensable injury is generally entitled to be treated as though he or she had never left. This means that the entire period the employee was receiving compensation is creditable for purposes of rights and benefits based upon length of service, including within-grade increases, career tenure, leave rate accrual, and completion of probation. However, an injured employee enjoys no special protections in a reduction in force. Separation by reduction in force or for cause while on compensation terminates entitlement to credit for the subsequent period the individual continues to receive compensation, and also means the individual has no restoration rights.

Subpart D—Appeal Rights

§ 353.401 Appeals to the Merit Systems Protection Board.

(a) Except as provided in paragraphs (b) and (c) of this section, an employee or former employee of an agency in the executive branch (including the U.S. Postal Service and the Postal Rate Commission) who is covered by this part may appeal to the MSPB an agency's failure to restore, improper restoration, or failure to return an employee following a leave of absence. All appeals are to be submitted in accordance with MSPB's regulations.

(b) An individual who fully recovers from a compensable injury more than 1 year after compensation begins may appeal to MSPB as provided for in parts 302 and 330 of this chapter for excepted and competitive service employees, respectively.

(c) An individual who is partially recovered from a compensable injury may appeal to MSPB for a determination of whether the agency is acting arbitrarily and capriciously in denying restoration. Upon reemployment, a partially recovered employee may also appeal the agency's failure to credit time spent on compensation for purposes of rights and benefits based upon length of service.

PART 930—PROGRAMS FOR SPECIFIC POSITIONS AND EXAMINATION (MISCELLANEOUS)

Subpart A—Motor Vehicle Operators

52. The authority citation for subpart A of part 930 continues to read as follows:

Authority: 5 U.S.C. 3301, 3320, 7301; 40 U.S.C. 491; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218; E.O. 11222, 3 CFR, 1964–1965 Comp., p. 306. (Separate authority is listed under § 930.107).

52. In § 930.105, paragraph (a) is revised to read as follows:

§ 930.105 Minimum requirements for competitive and excepted service positions.

(a) An agency may fill motor vehicle operator positions in the competitive or excepted services by any of the methods normally authorized for filling positions. Applicants for motor vehicle operator positions and incidental operators must meet the following requirements for these positions:

(1) Possess a safe driving record;

(2) Possess a valid State license;

(3) Except as provided in § 930.107, pass a road test; and

(4) Demonstrate that they are medically qualified to operate the appropriate motor vehicle safely in accordance with the standards and procedures established in this part.

* * * * *

54. Section 930.106 is revised to read as follows:

§ 930.106 Details in the competitive service.

An agency may detail an employee to an operator position in the competitive service for 30 days or less when the employee possesses a State license. For details exceeding 30 days, the employee must meet all the requirements of § 930.105 and any applicable OPM and agency regulations governing such details.

55. Section 930.108 is revised to read as follows:

§ 930.108 Periodic medical evaluation.

At least once every 4 years, each agency will ensure that employees who operate Government-owned or leased vehicles are medically able to do so without undue risk to themselves or others. When there is a question about an employee's ability to operate a motor vehicle safely, the employee may be referred for a medical examination in accordance with the provisions of part 339 of this chapter.

56. In § 930.109 paragraph (b) is revised to read as follows:

§ 930.109 Periodic review and renewal of authorization.

* * * * *

(b) An agency may renew the employee's authorization only after the appropriate agency official has determined that the employee is medically qualified and continues to demonstrate competence to operate the type of motor vehicle to which assigned based on a continued safe driving record.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 89–154–2]

RIN 0579–AA21

Importation of Plants Established in Growing Media

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending ''Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products'' to allow the importation of four additional genera of plants established in growing media. These genera are *Alstroemeria, Ananas, Anthurium,* and *Nidularium.* We are deferring final action on importation of *Rhododendron* pending consultation under the Endangered Species Act on the potential impacts of importing *Rhododendron* established in growing media. We are also adopting the pest risk evaluation standards we proposed for evaluating pest risks associated with importing plants established in growing media. This final rule will affect persons interested in importing *Alstroemeria, Ananas, Anthurium,* and *Nidularium,* and domestic growers of these genera.

EFFECTIVE DATE: February 13, 1995.

FOR FURTHER INFORMATION CONTACT: Peter Grosser or Frank Cooper, Senior Operations Officers, Port Operations,