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REORGANIZATIONS, REALIGNMENTS, AND REDUCTION IN FORCE

This regulation contains National Guard Bureau policy and procedures when reorganization, realignment, or reduction of the technician work force becomes necessary. The enclosed guidance applies to both excepted service and competitive service technicians.

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CHAPTER 1. GENERAL

1-1. INTRODUCTION AND PURPOSE

Reorganizations, realignments, and work force reductions may require the movement or displacement of technicians. In most cases, reduction of spaces does not necessarily result in the technician's separation. Management should make every effort to avoid involuntary separations by considering management-directed reassignments, separation pay incentives, employee-requested downgrades, furloughs, voluntary retirements, elimination of temporary employment, and hiring restrictions. This regulation discusses management options in response to realignment, reorganization and reduction in force and establishes procedures and requirements for implementing these actions.

Reduction in force (RIF) should be implemented only as a final solution. All policy and instructions necessary to conduct a reduction in force are contained in Chapter 3. The reduction in force procedures in FPM Supplement 351-1 do not apply since 32 USC 709(f) excludes National Guard technicians from the provisions of 5 USC 3502 (Order of Retention) and 5 USC 2108 (Veterans Preference).

1-2. EQUAL EMPLOYMENT OPPORTUNITY POLICY

Management should ensure that all actions are implemented in a uniform, consistent, and nondiscriminatory manner. Positions may not be assigned to competitive levels on the basis of the sex of the incumbents, unless the positions are in combat units which prohibit the assignment of women.

When placement actions involve technicians with disabilities, Section 501 of the Rehabilitation Act of 1973 (as amended) and 29 CFR 1613 require management to provide reasonable accommodation for identified disabilities.

CHAPTER 2. MANAGEMENT ACTIONS

2-1. INFORMING THE WORK FORCE

The first step is to notify the labor organization concerning any changes and, upon request, bargain on negotiable proposals. To alleviate anxiety and control rumors, the Support Personnel Management Office (SPMO) staff and managers should also conduct briefings, publish information about proposed changes, and distribute information about regulations and where they may be reviewed.

2-2. MANAGEMENT OPTIONS

Prior to any personnel reductions, management should consider the following alternatives to eliminate or lessen the impact:

a. Management Directed Reassignments. Management may reassign technicians at any time and to any location in the state. Reassignments to locations outside of the commuting area are subject to laws and regulations governing severance pay (Refer to FPM Supplement 990-2, Book 550, and FPM Chapter 550); permanent change of station (Joint Travel Regulation); and discontinued service retirement (FPM Supplement 830-1).

b. Change to Lower Grade. Technicians may voluntarily accept a change to lower grade to avoid or lessen the adverse impact of a reduction in force. If they choose to accept a change to lower grade, advise them:

(1) That such actions are not based on performance.
(2) Of their entitlement to grade and/or pay retention in accordance with TPR 990-2 (B536.S3).

c. Furlough. When budget reductions occur, management may avoid reduction in force actions and save payroll costs by using furloughs to place technicians temporarily in a nonpay status. For furloughs of 30 calendar days or less (or 22 workdays or less when furlough days are not continuous) refer to TPR 700 (715).

Reduction in force procedures described in Chapter 3 should be used for furloughs which exceed 30 calendar days (or more than 22 workdays when furlough days are continuous). A furlough is appropriate when management expects to recall technicians back to work within twelve months. If technicians are recalled to duty before the specified date, those with higher retention scores will return to duty first.

Give as much advance notice as possible, at least 14 calendar days before the effective date. Emergencies, e.g., shutdown of total facility because of natural disasters or lapse of Governmental funding, may require furloughs with no advance notice. In such situations, affected technicians will receive written notification as soon as possible. The technician should be informed of:

(1) The reason(s).
(2) Estimated length.
(3) Appeal rights.
(4) The obligation to return to duty on the date specified.
(5) Separation for failure to return to duty when recalled.

d. Optional Retirement. Survey the work force to identify technicians who qualify and wish to retire. Their projected vacancies will create placement opportunities for surplus technicians. (See FPM Supplement 830-1.)

e. Voluntary Early Retirement. When a reorganization or reduction causes a significant number of separations or demotions, SPMOs may request relief in the form of early retirement provisions. (See Appendix B, FPM Supplement 351-1.) Voluntary early retirement permits the early retirement of a technician who is not facing involuntary separation or demotion because of RIF, thus creating vacancies for placement of those who otherwise would be separated or demoted. Technicians who will be separated or demoted because of refusal to transfer outside the commuting area are also eligible for voluntary early retirement.

f. Discontinued Service Retirement. Eligible technicians, who do not qualify for optional retirement, may elect discontinued service retirement if they face separation because of:

(1) RIF.
(2) Failure to transfer to a different commuting area.
(3) Loss of military membership.
(4) Abolishment of position.

Minimum requirements for discontinued service retirement are 25 years of creditable service at any age and 20 years at age 50. (See FPM Supplement 830-1.)

g. Other Options. Give consideration to curtailing normal recruitment, offering separation pay incentives, stopping promotion and placement actions, separating temporary technicians, and encouraging use of leave without pay. Recommend use of ideas described in the RIF planning section of FPM Supplement 351-1 as additional options.

h. Reduction in Force. Every effort should be made to avoid a reduction in force by using the above options. However, if a reduction in force becomes necessary, follow the procedures described in Chapter 3.

CHAPTER 3. REDUCTION IN FORCE

3-1. TERMS AND DEFINITIONS

This section defines the terms in reduction in force and provides clarifying instructions.

a. Reduction in Force (RIF). A reduction in force occurs when a technician is released from his/her competitive level by separation, change to lower grade, furlough for more than 30 calendar days, or reassignment of technicians to other positions which involve the displacement of the incumbent. Reductions may occur because of lack of work or funds, reorganization, abolishment of positions, transfer of function, or the need to provide a job placement for a former technician exercising restoration rights. Termination of temporary appointments or temporary promotions; furloughs for less than 30 calendar days; or reclassifiction actions (unless part of reorganization) are not considered reduction in force actions. Unless directed by the National Guard Bureau, the decision to implement a reduction in force will be made by the state Adjutant General.

b. Tenure Groups. Tenure groups are the categories in which technicians are grouped based on length of employment and completion of probationary/trial periods.

(1) Tenure Group I. Permanent, competitive service technicians with career status, who have successfully completed their probationary period, and permanent, excepted service technicians who have successfully completed a trial period.

(2) Tenure Group II. Permanent technicians who are serving a trial or probationary period. This category includes competitive service technicians with career-conditional status and excepted service technicians who have not completed their trial period. Competitive service technicians under career appointments who must serve a probationary period are also in tenure II.

(3) Tenure Group III. Technicians who serve under indefinite appointments in the excepted service.

c. Service Computation Date (SCD). The date used to determine a technician's seniority or retention standing during a reduction in force based upon creditable Federal civilian and military service.

d. Technician Service Date (TSD). The service date based on the total service as a technician with the National Guard under permanent, indefinite, and temporary appointments, including technician service in other states.

e. Commuting Area. A commuting area is any geographical area and surrounding localities where people live and can reasonable be expected to travel back and forth daily to their employment site. There is no set mileage standard which can be used to determine the commuting area. Commuting areas will be determined locally. Refer to local labor agreements, if appropriate, for definition of commuting area.

f. Competitive Area. The boundary within which employees compete for retention and receive placement offers. A competitive area may be defined in terms of organizations and/or geographical location. It may be restricted to the commuting area or one organization or expanded to cover the entire state. The area may also include both the ARNG and ANG or be restricted to one service. The competitive area should be identified during advance planning for RIF.

g. Competitive Level. A group of identical or similar positions for which technicians compete for retention. Group like positions by competitive levels within each competitive area. Generally, each competitive level consists of positions which:

(1) Have the same grade and occupational series, or

(2) Are similar enough in qualification requirements, working conditions, duties, and pay so that the incumbent of one position can perform the duties of another position without significant training or interruption of work operations.

However, some positions in the same occupational series should be in different competitive levels because of major differences in functions and qualifications.

There is no limit on the number of positions that may be assigned to a particular competitive level. The competitive level may consist of only one positon if it is too unique to be grouped with other positions.

Use the position to which the technician is permanently and officially assigned to establish competitive levels (do not use the position to which the technician is temporarily promoted, temporarily reassigned, or detailed).

h. Retention Register. A list of competing technicians within a competitive level grouped by tenure groups I, II, and III in descending order. Within each tenure group, technicians are listed in order of their retention standing; those with the highest score will be listed first followed by those with lower scores.

i. Retention Standing. The technicians' ranking on a retention register determined by type of appointment, performance appraisal score, and tenure group. The retention standing determines the order of release from the competitive level. The service computation date and technician service computation date are used to further determine retention standing when all other factors are equal.

j. Order of Release. The order in which technicians on the retention register will be released from their competitive level based upon their retention standing.

k. Placement Offer. Efforts to place technicians who are released from their competitive level in positions at the same or lower grade.

l. Representative Rate. A rate used to determine the nature of the job change (promotion, demotion, etc.) when different types of pay schedules are involved, whether in the same or different wage area. The fourth step of the grade of a position under the General Schedule or the second rate of the grade for a Federal Wage System position under a regular prevailing rate schedule established IAW subchapter IV of chapter 53, title 5, U.S. Code.

m. Grade Retention. Retention of an eligible technician's grade for a period not to exceed two years when demoted by RIF or reclassification (Refer to FPM Chapter 536; FPM Supplement 990-2, Book 536; and TPR 990-2 (B536.S3)).

n. Pay Retention. Entitlement of eligible technicians to currrent pay when it exceeds the maximum rate of the grade of the position in which placed. (Refer to FPM Chapter 536; FPM Supplement 990-2, Book 536; and TPR 990-2 (B536).)

o. Severance Pay. Payment to an eligible technician who has been involuntarily separated from the Federal Government. Severance pay reduces the financial effect of job loss, thereby assisting technicians as they seek employment. (Refere to FPM Chapter 550; FPM Supplement 990-2, Book 550; and TPR 990-2 (B550.S7).)

p. Advance Notices. Written notices which inform technicians about actions (e.g., reorganization, realignment, or RIF) which will occur and the affect upon the workforce.

(1) General Notice. A written notice, with an expiration date, that informs the workforce about anticipated organizational changes when specific information about how each technician will be affected is unknown. The general notice discusses any changes in the organization that may involve the mission, function, location, and number/types of positions and employees. A general notice is unnecessary when sufficient information is available to issue a specific notice. The general notice does not count toward the 60 day notice period for the specific notice.

(2) Specific Notice. A written notice, addressed to each technician involved, which describes what specific action will occur and its affect on each technician. The technician must receive the specific notice a minimum of 60 days before the effective date.

q. Appeal. A technician's request for review of procedures and actions taken, regarding a reduction in force. The right of appeal does not extend beyond the state Adjutant General. (See Chapter 6.)

3-2. REDUCTION IN FORCE PROCESS

a. Preparation. Long before a RIF is anticipated, it is essential that all personnel records pertaining to service computation date, technician service date, technician performance appraisals, position classification, tenure group, and competitive levels are complete and accurate. Identification of eligible technicians who may choose optional retirement at the time of RIF would help management plan for placement of surplus technicians.

b. Competitive Area. When the extent of the RIF is known, establish the competitive area as far in advance as possible. Technicians will compete for positions within their designated competitive area. Those who cannot be placed within their competitive area may be placed in vacant positions outside of their competitive area through merit placement procedures.

c. Competitive Level. The Position Classification Specialist, with assistance from the Personnel Staffing Specialist, will establish the competitive level of each position far in advance of RIF, preferably at the time that the position description is written. Establish separate competitive levels for:

(1) Part-time and full-time positions.
(2) Excepted and competitive service positions.
(3) Supervisory and nonsupervisory positions.

d. Retention Registers. Establish separate registers for different competitive levels. Arrange the technicians' names on the register in descending order within each competitive level by tenure group, and technician performance appraisal score. Doing a "mock RIF" in advance of an actual RIF is recommended to enable management to determine who wou;ld be adversely affected and need placement assistance.

e. Technician Performance Appraisals. At the time the Adjutant General or NGB authorizes a reduction in force, the SPMO must establish a cut-off date for receipt of any new appraisals. Receipt of a new performance appraisal after a reduction in force has been authorized will not affect the technician's retention standing. However, if a decision on an appealed performance appraisal is issued before the effective date of the technician's release from the competitive level, use the appraisal rating and score which resulted from the appeal. The three most current performance appraisals on record will be used to determine retention standing. To compute the retention standing, use the average score of the last three official performance appraisals. For example, a technician may have received a performance rating score of 3 (1991), 3 (1990), and 2 (1989). Divide the total score of all three appraisals (8) by 3 which equates to 2.66. The technician's score of 2.66 is then placed on the retention register. Technicians who do not have three appraisals on file will be credited with a Fully Acceptable rating for any missing appraisals.

f. Tie-Breakers. The service computation date (SCD) will be used as a tie-breaker if two or more technicians in the same tenure group have the same retention score. Technician service date (TSD) will only be used as a second tie-breaker in the event that two or more technicians have the same retention standing and service computation date. For example, Technicians A and B both have a retention score of 2.66; however, the SCD is 06-01-73 and 09-10-86 for Technicians A and B respectively. Technician A would have a higher retention standing because of more years of Federal service.

g. Status of Technicians Who Are Restored After Active Duty. Technicians who have been restored after active duty under 38 U.S.C. 2024(a) and 38 U.S.C. 2024(b) may not be discharged for one year after restoration except for cause. Examples of military service in this category include 10 U.S.C. active duty in the Armed Forces (other than in a Reserve component) and 10 U.S.C. active duty during a war, national emergency, or callup by the President. If technicians in these categories are identified for release from a competitive level during their first year of restoration, they may not be separated, but are entitled to an equivalent position. Likewise, technicians restored after military service under 38 U.S.C. 2024(g), i.e., reservists ordered to active duty under section 673b of title 10, may not be separated for six months, except for cause. However, technicians restored after active duty under 38 U.S.C. 2024(d) (which includes 32 U.S.C. 502(f) active duty), receive no such protection against separation during a work force reduction and must compete for retention wich other technicians.

h. Status of Technicians Who are Restored After Fully Recovering From Injury (Within One Year). A fully recovered technician who is permanently reemployed in a position funded by the National Guard will compete with other onboard technicians for retention. Such employees may be separated because of reduction in force or personal cause. Those in positions which are not funded by the National Guard do not participate in the RIF process, but may be reassigned to other organizations because of lack of work.

i. Competitive/Excepted Positions. Certain organizations (e.g., USPFO, SPMO) have both excepted and competitive service technicians who occupy identical positions. In such cases, competitive and excepted service technicians will be on separate retention registers. The Adjutant General will decide whether to reduce the excepted or competitive work force.

k. Order of Release. Based upon tenure group and performance appraisal score, identify technicians for release from their competitive level. Release technicians in the order in which their name appears on the retention register i.e., beginning with the lowest score in tenure group III, and if necessary, continue with tenure groups II and I.

k. Adjustment in Order of Release. Adjustments in the order of release may be necessary for very unusual situations; e.g., to allow for completion of a special project impacting on the organization's mission. If lower standing technicians are retained while releasing those with a higher standing, inform the higher standing technicians in writing of the reasons for the change in order of release. After completion of the special project, the lower standing technician will be released and the higher standing technician will be reinstated to duty.

l. Preparation of Specific Notice. Before releasing technicians from their competitive level, they must receive a specific notice no later than 60 days prior to the effective date of the personnel action. The last day of the notice may not fall on a non-workday. The personnel action may not be effected, or the notice delivered, during the period 15 December through 3 January. If a more severe action than originally proposed becomes necessary, issue a new notice. As a minimum, include the following information in the notice:

(1) Reason(s) for the action.
(2) Specific action that will be taken (reassignment, demotion, separation, etc.) and effective date.
(3) Title, series, grade, and salary of new job offer.
(4) If applicable, compatibility information for the new position.
(5) If applicable, reasons for any exceptions to order of release.
(6) Location of retention registers, pertinent regulations and who to contact for additional information.
(7) Appeal rights (how to submit, to whom, and time limits).
(8) An explanation of all benefits due such as grade and pay retention, severance pay entitlement, and retirement eligibility.
(9) Eligibility for additional placement assistance e.g., OPM's IPP; DoD Priority Placement Program; Reemployment Priority List; Defense Outplacement Referral System; and Job Training Partnership Act Program.
(10) Requirement for the individual to acknowledge receipt of the notice by signature, if delivered in person, or by return receipt, if mailed.

3-3. PLACEMENT EFFORTS

a. Review of Qualifications. Review each technician's qualifications in conjunction with available vacancies.

b. Placement Actions. Placement offers and competition for occupied positions will occur in the following order:

(1) Placement in vacant positions at the same grade or pay.
(2) Competition for occupied positions at the same grade or pay.
(3) Placement in vacant positions at lower grade levels or pay.
(4) Competition for occupied positions at lower grade levels or pay.

When placed, technicians must meet all military/compatibility requirements and be able to perform the duties of the job. The SPMO may waive all technician qualification standards except mandatory education and military/compatibility requirements (unless waived by NGB) for placement in **vacant** positions at the same or lower grade. In order to displace other technicians in occupied positions at the same or lower grade level, management and the SPMO must determine that the excess technicians are well qualified **AND** can perform the duties without disruption of the work operations. Technicians who are displaced will receive job offers in accordance with paragraph 3-3(b). Competitive, merit placement procedures must be used for placement in higher graded positions.

c. Placement Actions. If the order of release process identifies more than one technician for release, the SPMO will place technicians with higher standings before those with lower standings. Technicians unable to be placed must be separated.

d. Reemployment Priority Lists. Establish reemployment priority lists (RPL) to document separation of individuals and to provide a tool for orderly reemployment consideration. A reemployment priority list contains names of individuals in tenure groups I and II who have been separated due to reorganization or reduction in force. The names are listed in order of tenure group and retention standing (highest to lowest) and will remain on the list for two years. Individuals will receive priority placement for all suitable vacancies at the same grade or representative pay rate of the former position. RPL registrants should also be queried about availability for positions at lower grades and in other commuting areas; however, their entitlement to reemployment is at the grade of the former position **and** in the same commuting area. Therefore, declination of reemployment opportunities at lower grades or outside the commuting area will not result in removal from the RPL.

If vacancies become available, refer qualified technicians in tenure group I before those in tenure group II. If no qualified technicians are in tenure group I, refer those in tenure group II. Refer all qualified technicians for consideration and selection by the selecting official if the tenure group has more than one qualified RPL registrant. Remove names of individuals who decline an offer at the same grade or representative rate, request removal, or when the period of consideration expires. Technicians entitled to grade retention in acordance with TPR 300 (335), will receive priority placement before RPL registrants.

e. DoD/OPM Priority Placement Program. Technicians who qualify may be registered for placement in other agencies through the DoD and OPM priority placement programs. Registration will be in accordance with DoD Manual 1400.20-1-M; and FPM Chapter 330, appendix A.

f. Job Training Partnership Act Program. Additional placement assistance may be obtained through the Job Training Partnership Act Program (JTPA) which is administered by each state government. Contact your state representative for information abaout training programs, employment services, and other benefits.

CHAPTER 4. RECORDS AND FILES

Maintenance and disposition of all files and records associated with any action will be in accordance with AR 25-400-2 or AFR 1250. Files must contain all records necessary to reconstruct any action, including:

a. Rationale for establishment of the competitive area;

b. Official authorization for the reduction in force or reorganization;

c. Copies of all retention registers;

d. RIF notices;

e. Placement actions;

f. Documentation of exceptions to order of release; and

g. Other pertinent documents.

CHAPTER 5. TRANSFER OF FUNCTION

5-1. DEFINITION

A transfer of function occurs when:

a. A continuing function moves from one competitive area to another; or

b. the competitive area in which the function is performed moves to another commuting area.

The movement of a function within the same competitive area does not meet the definition of a transfer of function. In a transfer of function, the operation of the function must stop in one area and continue in its identical form in another area. The movement of a function to a gaining competitive or commuting area where an identical function is already being performed, is not a transfer of function.

5-2. TYPES OF TRANSFERS

The transfer may occur within the same state or between different states.

a. Within the Same State. When the transfer of function occurs in the same state, every effort should be made to transfer technicians with the function. A written notice, containing information described in section 5-3(a), must be issued to affected individuals a minimum of 90 days before the effective date.

b. Between States. A transfer of function may involve the relocation of a military unit to another state. The decision as to who will be appointed as a technician rests with the Adjutant General of the gaining state or his designated appointing authority. The decision as to who will be assigned to the military unit rests with the unit commander. These decisions will determine whether technicians from the losing state meet legal and regulatory requirements for transfer with their unit. The gaining state is encouraged to accept technicians from the losing state who would otherwise be demoted or separated. The losing and gaining states should work together to effect the transfer and assist technicians who will face demotions or separations.

5-3. PERSONNEL MANAGEMENT IMPLICATIONS OF TRANSFER OF FUNCTION

a. Losing State. Notify the gaining state about affected technicians as far in advance as possible to determine who will transfer with the unit. As soon as this information becomes available, issue a written notice to technicians within the function concerned, a minimum of 90 days before the effective date which states:

(1) Reasons for the transfer.

(2) Effective date.

(3) If applicable, the maximum amount of time (at least 10 calendar days) to either accept or reject the transfer offer; and

(4) If the transfer offer is rejected, the notification letter constitutes a notice of termination of employment which is effective on the date of the transfer.

(5) Eligibility for severance pay, optional retirement, and discontinued service retirement as provided for in FPM Chapter 550; FPM Supplement 990-2, Book 550; and FPM Supplement 830-1. If eligible, other technicians may volunteer to transfer in place of the incumbents of positions assigned to the transferring unit. Volunteers must meet technician qualification and military compatibility requirements. The losing state should advise technicians who do not transfer with their unit about placement assistance available, including Department of Defense and Office of Personnel Management placement programs. Management has the option to reassign individuals to an organization that will not transfer to another area. However, the losing state is not obligated to conduct a reduction in force in order to place technicians who do not transfer with their unit. If placement opportunities do not exist, such technicians will be separated.

(2) ***Gaining State.*** After a determination is made as to the effective date of the transfer and which technicians will transfer with the unit, help the losing state or location ease the transfer by providing information on housing, schools, employment site, and other amenities. If the transfer would result in an excess number of technicians at the gaining work site, use RIF procedures before technicians are physically relocated to the new employment site.

CHAPTER 6. APPEALS AND CORRECTIVE ACTIONS

a. A technician or representative of the labor organization, who believes that the provisions of governing regulations were improperly applied, may appeal the action to the state Adjutant General. The appeal must be in writing and be submitted no later than 30 days after receipt of the specific notice. The appeal must specifically state how the action failed to comply with the procedures in NGB or local regulations.

b. The state Adjutant General will issue a written decision to all interested parties and, where appropriate, direct corrective action. The Adjutant General's decision is final, and no other appeal opportunity exists. If an appeal results in the finding of an error that does not change the results of a placement action, the error will be corrected without returning the incumbent to his or her former position. If the appeal results in a finding that an error caused an incorrect placement action, corrective action may require the incumbent to return to his or her former grade and pay level or to one with similar duties, status, grade, and pay. The technician may also be reimbursed for all pay lost as a result of any improper action.