

ORNG TPR 351

Human Resources

Reorganization, Realignment, and Reduction in Force of Technicians

**Joint Force Headquarters
Oregon National Guard
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UNCLASSIFIED

Human Resources

Reorganization, Realignment, and Reduction in Force of Technicians

By Order of the Governor:

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History. This publication replaces the Oregon Army National Guard Regulation (ORARNGR) 690-3 Reorganization, Realignment & RIF of Technicians, and Oregon Air National Guard Instruction (ORANGI) 36-200, Reorganization, Realignment, and Reduction in Force of Technicians.

Summary. This regulation contains procedures and information used when dealing with reorganization, realignment, and reduction in force of the technicians workforce. It supplements information contained in National Guard Bureau Technician Personnel Regulation (NGB TPR) 300(351)title of dated 22 Nov 93.

Applicability. This regulation applies to all Oregon National Guard Federal Technicians. Additional information about reductions as they apply to bargaining unit members is contained in the agency's Collective Bargaining Agreement

Proponent and exception authority. The proponent for this regulation is the Director of Manpower and Personnel (J1).

The Director has authority to approve exceptions to this regulation that are consistent with controlling law and regulation. The Director may delegate this approval authority in writing, to a branch chief or specialist in the proponent office.

Suggested Improvements. Users are invited to send comments and suggested improvements to: Joint Force Headquarters - Oregon, ATTN: J1/HR, PO Box 14350, 1776 Militia Way, Salem, OR 97309-5047.

Distribution. This publication is available through links on several Oregon National Guard (ORNG) web sites or in print media, through the JFHQ-OR J1-Human Resources Office (HRO) at 503-584-3975.

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Section 1 Introduction

1-1. Purpose

a. This regulation discusses management options in response to realignments, reorganizations and the formal Reduction In Force (RIF) process. It establishes procedures and requirements for implementing these actions.

b. All instructions necessary to address the possibility of reducing the force are contained in this regulation and apply to both dual and non-dual status technicians. Formal Reduction-in-Force procedures are unique for the National Guard since Title 32 United States Code (USC) Sections 709 (f) excludes National Guard technicians from the provisions of Title 5 USC 3502 (Order of Retention) and 5 USC 2108 (Veterans Preference).

1-2. References

Required and related publications and prescribed and referenced forms are listed in appendix A

1-3 Explanation of abbreviations and terms

Abbreviations and special terms used in the regulation are referenced in the glossary.

1-4 Responsibilities

The leadership should ensure that all actions are implemented in a uniform, consistent and nondiscriminatory manner. When action is deemed necessary, management should consider the alternatives listed in paragraph 2-2 to eliminate or lessen the impact to full time ORNG technician personnel.

1-5. Policy

a. Equal Employment Opportunity Policy:

(1) Position may not be assigned to competitive levels on the basis of the sex of the incumbents, unless the positions are in combat units and prohibit the assignment of women.

(2) When placement actions involve technicians with disabilities, Section 501 of the Rehabilitation Act of 1972 (As Amended) and Title 29 Code of Federal Regulations (CFR) Section 1613 require management to provide reasonable accommodation for identified disabilities

b. Reduction in Force Policy:

(1) Reorganizations, realignments, and reduction in force (RIF) may require the movement or displacement of technicians. In most cases reduction of spaces does not necessarily result in a technician's separation.

(2) Oregon Air National Guard (ORANG) leaders will make every effort to avoid a formal RIF by considering management directed reassignments, employee requested down grades, furloughs, or voluntary retirements. A formal RIF should be implemented only as a final solution.

Section 2

Leadership Actions and Options Prior to Implementing a RIF

2-1. Informing the Workforce

a. The Human Resources Office (HRO) will notify the labor organization concerning changes to the work force as soon as reliable information is received and follow any guidelines contained in the collective agreement.

b. The HRO will publish General and Specific Notices when appropriate in accordance with 5 CFR Sections 351-801 through 351-807.

c. To alleviate anxiety and control rumors, the HRO staff and effected leaders may conduct briefings, publish information about proposed changes and distribute information about regulations and where they may be reviewed.

2-2. Leadership Options

Prior to any formal RIF, management should consider the following alternatives to eliminate or lessen the impact:

a. **Management Directed Reassignments.** Management may reassign technicians at any time to any location in the state. Reassignments to locations outside of the commuting area are subject to laws and regulations governing permanent change of station (PCS), discontinued service retirements and severance pay.

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 and such actions are not based on performance, they may be entitled to grade and/or pay retention in accordance with National Guard Bureau 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 non-pay status. For furloughs of 30 calendar days or less (or 22 workdays or less when furloughs are not continuous) refer to NGB TPR 715, Voluntary and Non-disciplinary Actions, para 2-7.

(1) 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 standing will return to duty first.

(2) 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 will be informed of: (a) reason (s) , (b) estimated length, (c) appeal rights, (d) the obligation to return to duty on the date specified, and (e) separation for failure to return to duty when recalled.

d. **Retirement.** Survey the work force to identify technicians who qualify and wish to retire. Their projected vacancies will create placement opportunities for surplus technicians. Retirement can be optional retirement, voluntary early retirement, or discontinued service retirement and is contingent upon meeting age and service requirements. Federal Employees Retirement System (FERS) employees also may retire at their minimum retirement age (MRA) with at least 10 years of service. Qualification and penalty for early or discontinued retirement will be determined by HRO based on current statute.

e. **Optional Retirement.** An employee's decision to retire after on meeting age and service requirements.

f. Voluntary Early Retirement. When a reorganization or reduction causes a significant number of separations (5%) or demotions (20%), HRO may request relief in the form of voluntary 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 may be eligible for voluntary early retirement.

g. 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. or (4) abolishment of position.

h. Other Options. These include curtailing normal recruitment, stopping promotion and placement actions, separating temporary technicians and encouraging use of leave without pay.

Section 3

Reduction In Force (RIF)

3-1. Reduction in Force Process

a. Preparation. 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 areas as soon as possible. Technicians will compete for positions within their designated competitive area. Those who cannot be placed within the competitive area may be placed in vacant positions outside of their competitive area through merit placement procedures.

c. Competitive Level. The HRO in conjunction with the functional area supervisor will establish the competitive level of each position far in advance of RIF. Separate competitive levels will be established for part-time and full-time positions, excepted and competitive positions, and supervisory and non-supervisory positions.

d. Retention Registers. Separate retention registers will be established by HRO for the different competitive levels. Technician names will be arranged on the register in descending order within each competitive level by retention standing.

e. Tie-Breakers. Technician service date (TSD) will be used as a tie-breaker in the event that two or more technicians have the same retention standing.

f. Status of Technicians Who Are Restored After Active Duty. In accordance with the Uniformed Service and Reemployment Rights Act (USERRA), title 38 USC Chapter 43, permanent personnel restored following a covered period of military service are protected from separation except for cause. This protection is 180 days following periods of covered service up to 180 days and one year for periods of covered service of 181 days or more. While the law states 31-180 days for the 180 day protection, court case of Bottger v. Doss Aeronautical Services, Inc., D.C.Ala.1985, 609 F.Supp. 583, upheld a period of 26 days. Indefinite and temporary employees are not covered by separation protection.

g. Competitive/Excepted Positions. Certain Organizations (e.g. USPFO, HRO) 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.

h. Order of Release. Technicians will be released beginning with the least tenured employee.

i. 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, higher standing technicians will be informed in writing of the reasons for the change in the 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.

j. 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, a new notice will be issued. As a minimum, the following information will be included in the notice:

- (1) Reason(s) for the action.
- (2) Specific action that will be taken (reassignment, demotion, separation, etc.), and the 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 the 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 benefits due such as grade and pay retention, severance pay entitlement, and retirement eligibility.
- (9) Information on re-employment rights.
- (10) Requirement for the individual to acknowledge receipt of the notice by signature, if delivered in person, or by return receipt, if mailed.

3-2. Placement Efforts

a. Review of Qualifications. A review of each technician's qualifications will be made in conjunction with available vacancies.

b. Placement Actions. Placement offers will occur in the following order based on retention standing:

- (1) Placement in vacant positions at the same grade or pay.
- (2) Placement in vacant positions at lower grade levels or pay. There is no bump or retreat privilege to an occupied position of lower grade.
- (3) Displaced technicians who meet minimum qualifications will be placed in vacant positions. When placed, technicians must meet all military/compatibility requirements.
- (4) The HRO in coordination with the functional area supervisor may waive minimum qualification standards except mandatory education and military/compatibility requirements (unless waived by NGB) for placement in vacant positions at the same or lower grade.
- (5) Competitive, merit placement procedures must be used for placement in higher graded positions.
- (6) If the order of release process identifies more than one technician for release, the HRO will place technicians with higher standings before those with lower standings. Technicians unable to be placed must be separated.

c. Re-employment Priority Lists (RPL). A re-employment 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.

- (1) 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 in other commuting areas; however, their entitlement to re-employment is at the grade of the former position and in the same commuting area. Therefore, declination of re-employment opportunities at lower grades or outside the commuting area will not result in removal from the RPL.

(2) If vacancies become available, qualified technicians in tenure group I will be referred before those in tenure group II. All qualified technicians within the tenure group will be referred for consideration by the selecting official. Names of individuals who decline an offer at the same grade or representative rate, will be removed from the RPL. Technicians entitled to grade retention will receive priority placement before RPL registrants.

d. Information on Reemployment Rights. The Human Resources Office (HRO) will provide separated technicians with information on reemployment rights.

Section 4

Records and Files

The HRO will maintain and dispose of all files and records associated with any action in accordance with applicable regulations. Files will contain all records necessary to reconstruct any action, including rationale for establishment of the competitive area; official authorization for the reduction in force or reorganization; copies of all retention registers; RIF notices; placement actions; and other pertinent documents.

Section 5

Transfer of Function

5-1. Definition clarification

a. A transfer of function occurs when:

- (1) A continuing function moves from one competitive area to another; or
- (2) The competitive area in which the function is performed moves to another commuting area.

b. The movement of a function within the same commuting 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 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 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. Will notify the gaining state about affected technicians as far in advance as possible to determine who will transfer with the unit.

(1) As soon as this information becomes available HRO will issue a written notice to technicians within the function concerned, a minimum of 90 days before the effective date which states:

- Reasons for the transfer.
- Effective date.
- If applicable the maximum amount of time (at least 10 calendar days) to either accept or reject the transfer offer; and
- If the transfer offer is rejected, the notification letter contains a notice of termination of employment which is effective on the date of transfer.
- Eligibility for severance pay, optional retirement, and discontinued service retirement. 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.

(2) The losing HRO will advise technicians who do not transfer with their unit about placement assistance available, including Department of Defense and Office of Personnel Management (OPM) Placement programs. Management has the option to reassign individuals to a 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.

b. Gaining State. After determination is made as to the effective date of the transfer and which technicians will transfer with their unit, the gaining HRO will provide information on housing, schools, employment site, and other amenities.

Section 6 Appeals and Corrective Action

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 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 required procedures or regulations.

b. The 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.

Appendix A
References

Section I – Required Publications

None required

Section II – Referenced Publications

Title 5 CFR

Administrative Personnel

Title 5 USC

Government Organization and Employees

Title 32 USC

National Guard

NGB TPR 715

Voluntary and Non-disciplinary Actions

Section III – Prescribed Forms

None prescribed.

Section IV – Referenced Forms

None referenced

Glossary

Section I – Abbreviations

CFR

Code of Federal Regulations

FERS

Federal Employees Retirement System

HRO

Human Resources Office

MRA

Minimum retirement age

OPM

Office of Personnel Management

ORANG

Oregon Air National Guard

PCS

Permanent Change of Station

RIF

Reduction In Force

RPL

Re-employment Priority List

SCD

Service Computation Date

TSD

Technician Service Date

USC

United States Code

USERRA

Uniformed Service and Reemployment Rights Act

USPFO

United States Property & Fiscal Officer

Section II – Terms Used

Advance Notices. Written notices that inform technicians about actions (e.g. . reorganization, realignment, or RIF) that will occur and their affect upon the work force.

(1) **General Notice.** A written notice with an expiration date, that informs the work force 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 actions will occur and their affect on each technician. The technician must receive the specific notice a minimum of 60 days before the effective date.

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 Adjutant General.

Code of Federal Regulations

The Code of Federal Regulations (CFR) is the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government

Commuting Area. A commuting area is any geographical area and surrounding localities where people live and can reasonably 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.

Competitive Area. The boundary within which employees compete for retention and receive placement offers. A competitive area may be defined in terms of organizational and/or geographical location. It may be restricted to the commuting area for 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. Management, in conjunction with the HRO, determines the competitive area for the reduction in force.

Competitive Level. A group of identical or similar positions for which technicians compete for retention. Like positions are grouped by competitive levels within each competitive area.

(1) Generally each competitive level consists of positions which have the same grade and occupational series, or 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. Some positions in the same occupational series may be in different competitive levels because of major differences in functions and qualifications.

(2) 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 position if it is too unique to be grouped with other positions.

(3) The position to which a technician is permanently and officially assigned is used to establish competitive levels. Temporary promotions, temporary reassignments, and details will not be used.

Grade Retention. Retention of grade for a period not to exceed two years when demoted by RIF or reclassification.

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 the technician is reassigned to another position 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 reclassification 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 Adjutant General.

Retention Register. A list of competing technicians within a competitive level grouped by tenure groups I, II, III in descending order. Within each tenure group, technicians are listed in order of their retention standing. Separate registers are maintained for competitive and excepted employees.

Retention Standing. The technician's ranking on a retention register is determined by tenure grouping and SCD-Leave.

Service Computation Date Leave (SCD-Leave). 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. This date is the one that is shown on your SF-50 actions.

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.

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 non-dual-status technicians with career status, who have successfully completed their probationary period, and permanent dual-status technicians who have successfully completed a trial period.
- (2) Tenure Group II - Permanent technicians, including non-dual-status technicians with career-conditional status, dual-status technicians, and non-dual-status technicians under career appointment, who are serving a trial or probationary period.
- (3) Tenure Group III – Dual-status Technicians who serve under indefinite appointments.

Order of Release. Determines the order in which technicians on the retention register will be released based upon their retention standing.

Pay Retention. Entitlement to current pay when it exceeds the maximum rate of the grade of the position in which placed.

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

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 areas. The representative rate for a general schedule position is step four. The representative rate for a federal wage system position is step two.

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.

United States Code

United States Code (USC) is the consolidation and codification by subject matter of the general and permanent laws of the United States

Section III – Special Abbreviations and Terms

None used.