

CIVILIAN MARINE PERSONNEL INSTRUCTION

CMPI 351

COVER SHEET - 320

REDUCTION IN FORCE

Date: 4 April 1996

Attached is a complete revision of CMPI 351, Reduction In Force. This revision replaces CMPI 351 in its entirety. The "Record of CMPI Cover Sheets Received" should be initialed and this cover sheet filed.

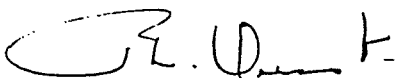
Reason for Revision

CMPI 351 has been revised to bring it into compliance with laws and regulations on Reduction In Force that have changed over the last several years. Federal Personnel Manual references were replaced with citations from the CFR, US Code, or OPM's Guide to Processing Personnel Actions. Employee notice requirements were updated. References to separation incentives and voluntary early retirement authority were added, in view of the linkage of these two authorities with requests for reduction in force authority.

Effective Date

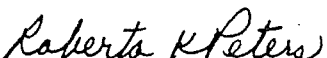
The above revision is effective upon receipt. Collective bargaining obligations with recognized labor organizations must be satisfied.

Authorized for MSC:



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MAR 5 1996

By direction of the Secretary of the Navy

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INSTRUCTION 351

REDUCTION IN FORCE

- Section 1. General Provisions
2. Competitive levels and retention preference records
 3. Retention registers, selecting employees for reduction in force action, and notices to employees
 4. Recall from furlough and reemployment rights
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Section 1. General Provisions

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1-1. **SCOPE AND COVERAGE.** This instruction assigns responsibility and provides guidance on reductions in force of civil service marine (CIVMAR) personnel. It outlines reduction in force policies and procedures for use by the subordinate MSC commanders and gives general information for shipboard personnel. It is applicable to all CIVMARs who are serving under authority of Schedule A, Rule VI, of the Rules and Regulations of the Office of Personnel Management (OPM). (Schedule A includes all civil service civilian marine employees appointed directly by MSC).

1-2. **AUTHORITY.** This instruction is based on the following authorities:

- a. 5 USC 1302(c), 2108, 3308-3320, 3505-3503, 5596, 5597, 7511, 7512, 7701, 8336, and 8414.
- b. OPM letter of 24 February 1981, exempting CIVMARs from the performance appraisal requirements of 5 USC 43.
- c. OPM letter of 7 October 1985, confirming that the MSC's reduction in force procedures for its Schedule A mariners conform to the provision of 5 CFR, part 351, other than those relating to specific application of performance appraisals and grade-level limitations on assignments, and MSC provisions for consideration of performance in determining retention and for limiting assignments to those that will require the least reduction in pay, carry out the intent of the reduction in force regulation. MSC's procedures are sufficiently similar to those required in the competitive service to satisfy the intent of 5 CFR 351.705.
- d. OASD (FM&P) memorandum of 12 June 1989, providing for the exclusion of Military Sealift Command CIVMARs from the DOD Program for Stability of Civilian Employment (DOD 1400.20-1-M).

e. 5 USC 5597, authorizing the Secretary of Defense to offer separation pay incentives to minimize the need for involuntary separations due to reduction in force, base closure, reorganization, transfer of function, or other similar action. In downsizing actions involving not more than 49 involuntary separations, this authority has been delegated to commanders of Echelon 2 commands (COMSC).

f. 5 USC 8336 and 8414, permitting OPM to authorize voluntary early retirements for employees during a major reduction in force, when certain conditions are present. ^{THE APMC} ~~Area commands~~ will submit request for such authority through the chain of command.

1-3. DEFINITIONS. For purposes of this instruction, the following definitions will control:

a. Competitive area. The organizational part of an agency, under single administrative authority, usually within a local commuting distance, in which employees compete for retention. "The APMC will establish and ~~port-constitute~~ publish the appropriate competitive areas for the CIVMAR employment workforce.

b. Competitive levels. A competitive level consists of all the positions in a competitive area that are in the same occupational level and that are so alike in qualifications, requirements, duties, responsibilities, pay schedule and working conditions that an employee may readily be assigned from one position to any of the other positions without changing the terms of the employee's appointment and without unduly interrupting the agency's work program. Separate competitive levels are established for positions:

1. under different pay schedules
2. filled on a seasonal basis
3. filled on a part-time basis
4. filled on an intermittent basis
5. filled by a supervisor or management official as defined in 5 USC 7103(a)(10) and (11); and
6. filled under different appointment authorities.

c. Continuing position. A position which is expected to continue for at least three months after the effective date of the proposed separation, furlough, or reduction in pay rate level of an employee qualified for such position.

d. Effective date. The effective dates of reduction in force actions are:

1. Separation. The date the employee's name is removed from the rolls of the agency.
2. Furlough. The date following the employee's last day in a pay status.
3. Position Change. The date the employee is officially assigned to his/her new position.

e. Function. All or a clearly identifiable segment of an agency's mission (including all integral parts of that mission) regardless of how it is performed. The following terms have a specific meaning in this definition:

1. An agency may be an organizational entity, e.g., bureau, division, field installation, etc.
2. Segment generally excludes an individual job or task.
3. Parts means that any agency activity may be a function.

f. Furlough. In a reduction in force, furlough means retention on the rolls in a non-pay status pending recall to duty. The minimum reduction in force furlough period is 31 calendar days and the maximum furlough is one year from the day after the end of the notice period. Employees may be furloughed only when the command is certain that it will be able to recall employees within a year to the positions from which furloughed. CMPI 352, Section 7 describes command policy on furloughs of 30 days or less.

g. Government service. The total of all periods of civilian service in the executive, legislative, and judicial branches of the Federal Government and of all creditable military service. Government service may include employment with the District of Columbia Government if it meets certain criteria; refer to OPM's Guide for Processing Personnel Actions for details.

h. Home port. The port to which the employee reports for work assignments, training, discipline, and employee services.

i. Interchangeability. Similarity between two or more positions to the extent that the incumbents can be shifted to any of these positions without an unreasonable period of training or adjustment.

j. Noncompeting employees. Those employees serving under temporary appointments with specific time limitations who have not completed one year of current continuous service.

k. Official position. The employee's permanent position. For example, the official position of a third officer on temporary promotion to second officer is third officer.

l. Preference employee. An employee entitled to preference on the basis of service with the armed forces of the United States in accordance with provisions of 5 USC 35 and 5 USC 2108.

m. Reassignment. A position change action of an employee to a position with a different title, but with the same base rate of pay. Reassignment includes movement to a position with the same title, but with a change in salary that is the result of different local prevailing wage rates.

n. Reduction in force. The release of an employee from a competitive level by means of separation from the rolls, furlough for more than 30 days, and reassignment involving change to lower pay rate level when such actions are caused by lack of work, shortage of funds, reorganization, or exercise of regulatory reassignment or reemployment rights. Reduction in force does not apply to termination of temporary appointments, retirements, reassignment to vacancies, return of a temporarily promoted employee to his/her

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permanent pay rate, or to adverse actions based upon deficiency in conduct or performance or upon other reasons which will promote the efficiency of the service. (See CMPI 352, Separations (Non-disciplinary), Furlough, and Change to Lower Grade, for furloughs of 30 days or less).

o. Reemployment list. A list containing the names of former CIVMARs who have been separated as a result of reduction in force and who apply for reemployment. (This is not the same as the Reemployment Priority List used in the competitive service).

p. Reorganization. The planned elimination, addition, or redistribution of functions or duties in an organization.

q. Retention register. A written or printed record of all employees occupying positions in a competitive level, arranged by retention groups and subgroups and by service date within any subgroups where one or more employees are reached for action and one or more are retained. Employees temporarily promoted from positions in one competitive level to positions in another competitive level are listed on the register of their permanent position.

r. Retention right. A right accorded by law or Executive Order for an employee to be retained in employment after mandatory restoration to a position on completion of active military duty for such time and under such conditions as the law or Executive Order specifies.

s. Retention standing. The precise rank order among employees competing for a position which is expected to last at least three months after the effective date of the reduction in force action. It is determined by tenure groups and subgroups and by service date within each subgroup.

t. Separation pay incentive. A lump sum incentive equivalent to severance pay, up to a maximum of \$25,000, paid upon the voluntary resignation, early retirement, or optional retirement of designated eligible CIVMARs. When authorized, such payments must show aggregate net savings over two years and avoid involuntary separations.

u. Service date. A date established to determine length of service creditable for reduction in force purposes. Since CIVMARs are excluded from coverage under Chapter 43 of Title 5, US Code, additional service is not added to the service date for performance ratings. (See 2-4d for method of computing).

v. Tenure groups. Competing employees are grouped according to the tenure of their employment. There are three tenure groups which are further divided into three subgroups. (See 2-3b and 2-3c).

w. Transfer of function. (1) The transfer of the performance of a continuing function from one competitive area to one or more other competitive areas, **except** when the function involved is virtually identical to functions already being performed in the other competitive area(s), or (2) the movement of the competitive area in which the function is performed to another commuting area.

1-4. DELEGATION OF AUTHORITY. ^{The APMC is} ~~Subordinate MSC commanders are~~ authorized to establish competitive levels in accordance with Section 2 of this instruction, to prepare retention registers required by the Office of Personnel Management to be used in connection with reduction in force, and to effect

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placements as provided by this instruction. COMSC letter 12351 Serial N12/002134 of 7 September 1993 delegates reduction in force authority to COMSCLANT and COMSCPAC if the actions involve fewer than 50 employees in a competitive area.

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Section 2. COMPETITIVE LEVELS AND RETENTION PREFERENCE RECORDS

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2-1. **GENERAL.** To determine the employees who will compete with one another for retention, competitive levels must be established. The next step is to determine the order in which employees will be separated or furloughed. Three factors; tenure, veteran preference, and length of service, must be considered. To make these determinations, it is necessary to maintain certain records. The basic information needed is described in this section.

2-2. **COMPETITIVE LEVELS.** Within an established competitive area, competitive levels shall be established for all CIVMAR positions.

a. **Normal competitive level.** A normal competitive level consists of all CIVMAR positions within the competitive area of the same pay rate which are sufficiently alike in duties and responsibilities so that the incumbent of any one of the CIVMAR positions could readily be shifted to any of the other marine positions without undue interruption to the work program.

b. **Factors to consider in determining interchangeability.** In deciding whether the duties and responsibilities of various CIVMAR positions of the same pay rate are sufficiently similar to constitute a single competitive level, the following factors should be considered:

1. Do the positions require the same Coast Guard documents? Differences in Coast Guard certification requirements for different positions show that the occupants for these positions are not interchangeable. However, the fact that two positions may require the same Coast Guard documents does not necessarily mean that both positions are in the same competitive level.

2. Do the positions require the same skills, aptitudes, basic experience, and training? From this standpoint, interchangeability is based on the qualification required for the actual duties and responsibilities of the job and not on the qualifications of the incumbent.

3. How long would it take an employee with experience in one position to be able to serve satisfactorily in another? Would this period of time cause serious harm to ships' operations?

4. Similarity of job titles is an indication that the positions may be in the same competitive levels. However, it is not conclusive in determining competitive levels. There may be marine positions with the same job title which are not interchangeable.

c. **Positions requiring separate competitive levels.** Separate competitive levels should be established for full-time employees, part-time employees, and employees serving on a when-actually-employed basis.

2-3. RETENTION GROUPS AND SUBGROUPS

a. General. For the purpose of determining relative retention in reduction in force, competing employees are placed in groups and subgroups on the basis of tenure of employment and veteran preference. The descending order of retention standing is as follows:

1. By tenure groups: I, II and III.
2. By veteran preference subgroup within each group: AD, A and B.
3. By earliest service computation date ranking within each subgroup.

b. Tenure Groups. CIVMAR retention groups are defined as follows:

1. Group I. Employees serving under excepted appointments that carry no restrictions or conditions such as conditional, indefinite, specific time limit, or trial period.
2. Group II. Employees serving under excepted appointments during trial periods or whose tenure is equivalent to a career conditional appointment in the competitive service.
3. Group III. Employees serving under (a) indefinite excepted appointments, (b) excepted appointments with a specific time limitation of more than one year, or (c) temporary excepted appointments limited to one year or less, but who have completed one year of current continuous service under a temporary appointment. Employees serving under temporary appointments who do not have one year of current continuous service are not in Group III and would be separated prior to personnel in Groups I, II, and III.

OPM's Guide to Processing Personnel Actions, Chapter 35, contains additional information on tenure groups.

c. Veteran Preference Subgroups. Retention subgroups are defined as follows:

1. Subgroup AD. Preference eligible employees who have compensable service connected disabilities of 30% or more.
2. Subgroup A. Preference eligible employees not included in subgroup AD.
3. Subgroup B. Non-preference eligible employees (including employees who retired at or above the rank of major or its equivalent).

2-4. SERVICE DATE. To determine relative standing within a subgroup, a service date indicating length of service is computed for government service, both civilian and military, and for certain merchant marine service. To determine whether service is creditable and the method of computing the service date, the following apply:

a. Creditable civilian service. Civilian service is creditable if it may be counted toward civil service retirement regardless of whether the employee is eligible or will be eligible to actually receive retirement benefits. OPM's Guide to Processing Personnel Actions, Chapter 6, explains when civilian service is creditable.

b. Creditable military service. Credit is given for all active military service, except as described in OPM's Guide to Processing Personnel Actions, Chapter 6, without regard to veteran preference or restoration or retention rights. It is given even though the discharge may have been dishonorable. Merchant marine service and service in the Coast Guard Reserve (Temporary) are not military service.

c. Other creditable service for non-pay status.

1. Full credit is given for a period of leave with pay during civilian service and for leave without pay for which the employee received compensation under Chapter 81, Title 5, U.S. Code. Credit is also given for other leave without pay or non-pay status not exceeding six months in the aggregate in any calendar year and for other absences or service as indicated below:

2. Merchant marine service is counted in the same way as military service when:

(a) it began between 1 May 1940 and 25 July 1947; and

(b) it interrupted non-temporary employment with the Federal Government or the District of Columbia Government; and

(c) the employee was restored to civilian duty under P.L. 79-660.

3. Where employees are restored following active service in the armed forces or merchant marine, as provided by law, the rule governing creditability of leave without pay, indicated above in subparagraph 2-4c1 above, is applicable to the out-of-service periods immediately following the period of military or merchant marine service.

4. Service under war transfer to public or private enterprise is creditable only as leave without pay of which not more than six months in a calendar year can be counted.

5. Persons reinstated or restored to duty under the provisions of 5 USC 5596, on the grounds that they were unwarrantedly separated, suspended, or furloughed without pay in a reduction in force, will be given service credit in full for such period of non-duty status.

d. Non-creditable service.

1. Periods of time between separation by reduction in force action and reemployment are not creditable.

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2. Service as a temporary Coast Guard reservist is creditable only where such service was full time with pay and allowances and was not rendered simultaneously with a period of creditable civilian service.

d. Computing length of service. When an employee begins duty with MSC, his/her "service date" should be established. In the case of an appointee with no prior Federal civilian or military service, or service with the District of Columbia Government, the service date is the date of entrance on duty. In all other cases, the service date is an artificial date obtained by subtracting the employee's total creditable prior service from the date of his/her entrance on duty. (Any break in service or leave without pay for more than six months in one calendar year requires recomputation of the service date). See OPM's Guide to Processing Personnel Actions for the method of computing service date.

2-5. VETERAN PREFERENCE. Information concerning the adjudication of veteran preference is contained in OPM's Guide to Processing Personnel Actions, Chapter 7. Appointing officers have a positive duty to ascertain which employees are entitled to veteran preference and to accord them the preference to which they are entitled. The percentage of disability of veterans possibly entitled to be placed in subgroup AD may be verified with the Veteran Services Officer at the appropriate VA Regional Office.

Note: Merchant marine service, including World War II service which qualifies for veterans' benefits under Public Law 95-202, does not create entitlement to veteran preference.

2-6. STATUTORY RETENTION RIGHTS. An employee who has a retention right under the law for six months or one year after return from military service would be the last to be separated by reduction in force during the period of his/her retention right. See paragraph 3-2c, below, concerning employees with statutory retention rights.

2-7. FORM OF RETENTION RECORDS. Retention records may be maintained by computer programs or by record cards. When record cards are kept in files, it is usually best to arrange them according to competitive levels. Within competitive levels, they can be arranged by retention groups and subgroups. Within subgroups, it may be preferable to maintain them alphabetically and any necessary ranking within a subgroup according to service date can be done at the time a retention register is compiled.

2-8. CURRENCY OF RECORDS. Because of the limited time permitted for placement in a reduction in force, the retention records should be kept current.

a. Sources of information. To obtain the record information needed, it may be necessary to request information from other naval activities or other Federal agencies and, in some instances, to supplement available records by statements from employees.

b. Obtaining information from employees. When it is necessary to supplement the official records by a statement from a CIVMAR, he or she should be requested to fill out Standard Form 144, STATEMENT OF PRIOR FEDERAL AND MILITARY SERVICE. CIVMARs may also submit an updated MSC Form 12310/1, APPLICATION FOR AFLOAT EMPLOYMENT, to bring experience and education records up-to-date. The Office of Personnel Management cannot process inquiries from employees and employees should be advised not to contact the Office of Personnel Management concerning their prior service.

Section 3. RETENTION REGISTERS, SELECTING EMPLOYEES FOR REDUCTION IN FORCE ACTION AND NOTICES TO EMPLOYEES

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3-1. **RETENTION REGISTERS.** To select employees for action in reduction in force, they must be placed in retention order in their respective competitive levels. This order is shown for a particular competitive level which is to be affected by a reduction in force. A new retention register is compiled for each reduction in force.

a. Compilation of retention registers

1. **Employees included in the register.** Every employee who is officially assigned to a position in the particular competitive level must be included in the register. This is true whether the employee is on paid or unpaid leave, or on furlough (except LWOP-MIL, formerly known as military furlough). Employees who are absent on active duty with the armed forces are excluded. The position in which an employee is carried on the rolls and paid is his or her official position.

2. **Separate registers.** Separate registers must be compiled for positions which require separate competitive levels. See paragraph 2-2 for regulations concerning competitive levels.

3. **Arrangement of register.** The retention register for each competitive level will be prepared in such form that it can be readily inspected. It will be arranged in sequence according to retention groups and subgroups and according to service date within the subgroups. In addition:

(a) Employees with statutory retention rights as a result of restoration after service in the armed forces will be listed with other employees in regular order of service date. However, they have special rights when reached for action in reduction in force. See paragraph 3-2c.

(b) If there are temporary employees in any competitive level who have not completed one year of current continuous service, their names and the expiration dates of their appointments will be listed apart from the retention register.

(c) It is not necessary to establish a ranking by service date for employees in any retention subgroup which will not be affected by the reduction in force.

4. **Date of retention register.** The date of the retention register should be determined in advance. This date should be placed on all retention registers.

5. **Effective date of reduction in force.** The effective date of a reduction in force is the date the first reduction in force action (separation, furlough, or position change) becomes effective. The date of the retention register is not the effective date of the reduction in force.

6. Retention standing. Normally, the retention standing (see paragraph (1-3s)) of an employee is determined as of the date he or she is released from his or her competitive level, per 5 CFR 351.506(a). However, if an employee is temporarily retained in his or her competitive level under the exception provisions of paragraph 3-4b, his or her retention standing for the reduction in force at hand is determined as of the date he or she normally would have been released had the temporary exception not been granted, per 5 CFR 351.506(b).

7. Changes in retention standing during notice period. The retention register and actions proposed on the basis thereof will be adjusted to give effect to the following:

- (a) Correction of error in service date, or any other error.
- (b) Change in tenure.
- (c) Allowance or withdrawal of veteran preference.
- (d) Addition to the competitive level below any employee who has been issued a notice.
- (e) Any action in the competitive area which is not consistent with the action proposed in the notice.

Any of the above changes may result in cancellation or amendment of notices as appropriate.

EXCEPTION: If an employee is temporarily retained in his or her competitive level under the exception provisions of paragraph 3-4b, the only change in the employee's retention standing that can be made during the period of temporary retention is the correction of an administrative error which affected his or her retention standing on or before the date he or she normally would have been released.

b. Inspection of the registers. Employees notified of proposed adverse action in reduction in force must be permitted to inspect the retention register of their own competitive level, per 5 CFR 351.505(b).

c. Preservation of register. All retention registers and records affected by reduction in force must be preserved intact for at least one year from the date that specific RIF notices are issued to employees, for Office of Personnel Management and Merit Systems Protection Board inspection purposes. This is consistent with 5 CFR 351.505(a) and (b).

3-2. ORDER OF SELECTION

a. Noncompeting employees. Within each competitive level, action must be taken to remove all temporary employees who have not completed one year of current continuous service before any employee within a retention group (competing employee) is affected. 5 CFR 351.502 and 351.602 refer. The order of selection among temporary employees is at the discretion of the subordinate commander.

b. Competing employees. After all noncompeting employees have been eliminated, the selection of competing employees for reduction in force action must be made in reverse order of their standing on the

retention register, per 5 CFR 351.601. No competing employee may be separated in a reduction in force while an employee with lower retention standing is on furlough from the same competitive level, per 5 CFR 351.604. Ties will be broken as provided in paragraph 3-3.

c. Employees with statutory restoration rights. When an employee with statutory restoration rights under 38 USC 2021 is reached on the register, he/she will be passed over and an employee in the same subgroup next above him/her will be selected unless the effective date of the proposed action would fall on or after the date of expiration of the one year or six month mandatory retention period. This is consistent with 5 CFR 351.606.

d. Within retention groups. Within each subgroup of each retention group, action must be taken concerning all employees with a lower retention standing before an employee with a higher retention standing is reached, except as provided in paragraphs 3-2c and 3-4.

3-3. BREAKING TIES. When two or more employees are tied with identical service dates in any retention subgroup, the ties shall be broken by administrative decision which may take into account such matters as qualifications, merit, or official conduct. Such administrative policy must be applied uniformly within the competitive area during any single reduction in force.

3-4. EXCEPTIONS TO ORDER OF SELECTION

a. Continuing retention.

1. An exception to the regular order of selection may be made only when it is necessary to keep an employee on essential duties which cannot be taken over within 90 calendar days, and without undue interruption to the work program, by an employee with higher standing on the retention register. When an exception is made, each employee affected adversely by the exception (that is, the one who would not have been reached otherwise) must be notified, in writing, of the reasons for the exception. An employee in a bargaining unit covered by a negotiated grievance procedure that **does not exclude RIF** may grieve the exception using the negotiated grievance procedure. Other adversely affected employees must be notified of their right to appeal to the Merit Systems Protection Board for a review of such reasons.

2. The requirement of prior security clearance for sensitive positions is not, in itself, regarded as an "undue interruption" to the work program. An exception may not, therefore, be made on this basis in favor of an employee who has been cleared for security while an employee above him/her has not been cleared, or has been denied clearance, if the higher ranking employee is otherwise entitled to the position. The exception would apply only if, regardless of security clearance, the employee could not take over the duties of the sensitive position within 90 calendar days and without undue interruption. See paragraph 3-6e for procedures governing security requirements. See paragraph 3-2c for retention of employees with statutory restoration rights.

b. Temporary retention out of retention order.

1. An employee who is within reach may be retained after the effective date of reduction in force actions for higher ranking employees in the same competitive level:

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(a) For up to 90 days, if necessary to continue an activity without undue interruption.

(b) To satisfy a Government obligation to the retained employee.

(c) When temporary retention of the lower standing employee does not adversely effect the right of any higher-standing employee who is released ahead of the lower standing employee.

2. If the temporary retention is for **30 days or less**, reasons for retention and the date it will end shall be recorded opposite the employee's name on the retention register.

3. If the temporary retention is for **more than 30 days** after the effective date of RIF actions of higher employees, the register will be annotated as stated above and in addition, each higher ranking employee in the same competitive level who is adversely affected by the reduction in force must be furnished an individual notice in writing of the reasons for, and the duration of, the retention. An employee in a bargaining unit covered by a negotiated grievance procedure that **does not exclude RIF** may grieve the temporary retention using the negotiated grievance procedure. Other adversely affected employees must be notified of their right to appeal to the Merit Systems Protection Board for a review of such action.

4. The following are examples of situations in which temporary extensions may be used:

(a) To permit the granting of accrued shore leave.

(b) To allow each employee a full advance notice when he or she cannot receive his or her advance notice on the same date as higher ranking employees.

(c) When return travel for overseas employees cannot be provided as soon as for higher ranking employees.

(d) When the ship in which the lower ranking employee is performing duty is returning to the home port after the effective date of the reduction in force action of the higher ranking employee.

(e) When a lower-standing employee has a bona fide illness, regardless of when the illness commences, and is on approved sick leave on the effective date of the RIF, not to exceed the date the employee exhausts his/her sick leave.

(f) When a lower standing employee is retained on annual leave and will attain first eligibility for an immediate retirement benefit or establish eligibility to carry health benefits coverage into retirement during the period represented by the amount of the employee's annual leave. Length of retention cannot exceed retirement and health benefit eligibility dates.

5. 5 CFR 351.608 refers.

3-5. NOTICES TO EMPLOYEES

a. Specific notice. Each employee who is to be separated, furloughed, or reduced in pay rate in a reduction in force will be given a specific notice in writing.

1. Consistent with 5 CFR 351.801, the employee must normally receive a specific written notice at least 60 days before reduction in force action is taken against him or her.

2. Under Public Law 102-484, subsequent DOD and Navy implementing directives, and 5 CFR 351.801, the employee must receive a specific written notice at least 120 days before the action if 50 or more employees in a competitive area would receive notices of separation. The CFR currently requires such notice through 31 January 2000.

3. If circumstances not reasonably foreseeable merit a shorter notice period, area commands shall submit requests for a shorter notice period to COMSC. COMSC will review and forward such requests to higher authority for consideration, as appropriate.

4. The exclusive labor representative of each affected employee under 5 USC 7103(a)(16) must also receive notification when the employee is notified.

5. The first day of the notice period begins the day after the employee receives the notice (for example, if a notice dated 29 May is received by the employee 31 May, the 30-day notice period starts on 1 June and ends at 2400, 30 June). 5 CFR 351.804 defines when a notice period expires.

b. Certificate of Expected Separation. Under certain circumstances, an agency may issue a Certificate of Expected Separation to a competing employee who the agency believes, with a reasonable degree of certainty, will be separated by reduction in force procedures.

1. A certificate may be issued up to 6 months prior to the effective date of the reduction in force. The intent in issuing a certificate is to enable an otherwise eligible employee to be considered for participation in dislocated worker programs under the Job Training Partnership Act, administered by the Department of Labor.

2. If a certificate has been issued, the specific notice described in paragraph 3-5a should be issued as soon as a decision of final action is reached and must allow for the required notice period before the final action is effected.

3. 5 CFR 351.807 details restrictions and requirements related to issuance of the certificate.

c. Contents of specific notice. The employee must be given the following information in, or as an attachment to, the specific notice:

1. Name, title of current official position, retention group and subgroup, competitive level and competitive area, and service date.

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2. Nature of proposed action (separation, furlough, demotion, or other position change).
 3. Clear statement that the action is due to, or is in lieu of, reduction in force.
 4. Date of proposed action.
 5. Last day of active duty in current position.
 6. Reasons for the action.
 7. Place where the employee may inspect regulations and records pertinent to his/her case, including CMPI 351, 5 CFR, OPM's "Guide to Processing Personnel Actions," retention registers, where information may be obtained regarding possible changes to other positions, and where the proposed action may be discussed.
 8. Reason for any exception to the regular order of selection due to permissive continuing exception (5 CFR 351.607), permissive temporary exception (5 CFR 351.608), or mandatory exception (5 CFR 351.606).
 9. The employee's right to appeal to the Merit Systems Protection Board (MSPB) or grieve under a negotiated grievance procedure; how, where, and the time within which to file appeals with the MSPB; emphasize that in appealing to the MSPB, the employee must give specific reasons for his/her appeal.
 10. Disposition of accrued annual leave by use during the notice period or by payment in lump sum.
 11. How to apply for restoration if the employee has restoration rights in another naval activity or another agency and is being separated or reduced in grade or level.
 12. How and where to file applications for reemployment with MSC (see paragraph 4-2) or other employment with the Navy, the Office of Personnel Management, or governmental employment services.
- Note: Under 5 USC 51 and 53, grade and pay retention are not applicable to Wage Marine (WM) positions.
- d. Notice period extensions. Except as provided in paragraphs 3-4a (continuing retention) and 3-4b (temporary retention), if an employee's notice period is extended, the same should be done for other employees in the same competitive level with higher retention standing who have been given similar reduction in force notices.
 - e. Status during notice period. The employee will be retained on active duty during the notice period, if possible. In an emergency when there is lack of work or lack of funds for all or part of the notice period, the employee may be placed on annual leave with or without his or her consent, or leave without pay with his or her consent, or in a nonpay status without his or her consent.

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1. When the position to which a person is entitled under the reduction in force regulations is not immediately available (the ship is at sea) and there is no position to which the employee can be properly assigned to duty during the notice period, the employee may be placed in a leave with pay or non-pay status for all or part of the notice period.

2. When an employee is placed in a non-pay status during his/her notice period, he/she must be given a statement of the reasons for doing so. These reasons are subject to review by the Merit Systems Protection Board if the employee appeals, or using the negotiated grievance procedure if the bargaining unit files a grievance on the employee's behalf.

3. An employee may be recalled from a non-duty status for temporary duty and returned to the non-duty status. This does not invalidate the reduction in force notice.

f. Expiration of notice and new notice. A notice expires when it is followed by the action it specifies, an action less severe than it specifies, or less severe than specified in an amendment made to the notice before the action is taken. The action specified will not be taken before the effective date in the notice. An action taken after the date specified shall not be ruled invalid unless it is challenged by an employee with higher retention standing in the competitive level who is reached for reduction in force action out of order as a result of the action. A new notice of at least 60 or 120 days, as appropriate (paragraph 3-5a refers), is required when the action to be taken is more severe than that first specified.

3-6. REASSIGNMENT RIGHTS. The Office of Personnel Management's regulations provide for reassignment rights of employees within a competitive level. Additional reassignment rights have been administratively extended to CIVMARs in paragraph 3-6b.

a. Within competitive level. An employee may not be separated, furloughed, or reduced in pay rate in a reduction in force if a competing employee with lower retention standing is retained in the same competitive level. Exceptions to this provision are contained in paragraph 3-2c, "Employees with statutory restoration rights," and 3-4, "Exceptions to order of selection."

b. Across competitive levels. Any employee in Group I who is reached for action within his or her competitive level must be reassigned to a different marine position if:

1. He or she is willing to accept a reasonable change to a position for which he or she is qualified. A reasonable change is one that is made without any reduction in pay rate, or, if this is not possible, with the least possible reduction.

2. The position may reasonably be expected to continue for at least 3 months after the effective date of the proposed action and the position is held by:

(a) An employee in a lower subgroup (commonly referred to as "bumping right") or

(b) An employee within the same subgroup who has a lower retention standing if the position is the same as one from which the employee affected by the reduction in force has been promoted (commonly referred to as "retreat right").

1. The position from which the employee has been promoted must have been in MSC or its predecessor agencies. It must have been the identical position or an essentially identical position (one with similar duties and the same pay rate and qualifications as the position from which promoted). The employee will have the opportunity to "retreat" to a position through which he/she has been promoted if he/she skipped the position by a double or multiple promotion in the same line of work. (Example: A 3rd Officer, Class B, Steam, promoted to 1st Officer, Class A-1, Steam (non-watch), may retreat to all intervening deck officer positions in steam ships).

2. An employee who has a break in service of one or more days is only entitled to "retreat" to positions from which promoted after the break in service.

c. Reasonable change. The reasonable change referred to in paragraph 3-6b(1) is one that is made without any reduction in pay rate or, if this is not possible, with the least possible reduction. Also, the reasonable change never includes a promotion. For this purpose, a promotion is a reassignment to a position which has a higher pay rate as of the date of issuance of the specific notice. The pay rates for all positions in effect on the date of issuance of a specific notice are controlling throughout the notice period. Changes in pay rates for any position during the notice period (including retroactive pay adjustments) do not affect the reduction in force action. (An upward change in pay rate during the notice period may result in a promotion).

d. Determining employee's qualifications. Employees must be qualified for reassignment in reduction in force actions. There is no question as to qualifications with respect to positions within the employee's competitive level because the interchangeability of such positions is proof that each employee in the level is qualified for all positions in it. When an employee can be retained only by shifting him/her to a position in another competitive level under the provisions of paragraph 3-6b, a determination of his or her qualifications must be made. In making this determination, the following will be considered:

1. The employee's training, experience, education, and merchant marine document;
2. The knowledges, skills, techniques, and adaptability required to perform the duties of the position;
3. The employee's capability of assuming the duties of the position without training in basic fundamentals (it must be recognized, however, that a reasonable amount of instruction may be necessary to familiarize the employee with the work environment); and
4. The physical requirements of the position. It will normally be assumed that the employee is physically qualified and a physical examination will not be required. If, in the opinion of the appointing officer, the assignment is to a different type work with arduous duties and it is believed the employee has physical deficiencies which may endanger his/her life or that of others, a physical examination may be required. If the appointing officer determines that a preference eligible having a compensable service-

connected disability of 30% or more is not able to fulfill the physical requirements of a position to which the employee would otherwise have been assigned, the employee must receive advance notice, an opportunity to respond, and a final decision from the Office of Personnel Management as required in 5 CFR 351.702(d).

e. Security requirements. When an employee affected by reduction in force is otherwise eligible for reassignment, any required investigation and security determination must be made as expeditiously as possible. If an employee is otherwise eligible for reassignment under this section, the offer of reassignment shall be made and actual reassignment effected even though the employee has not been granted a security clearance. Upon his/her reassignment, he/she will be treated as any incumbent employee in accordance with the provisions of OPNAVINST 5510.1, Department of the Navy Civilian Personnel Security Program, or CMPI 750, DISCIPLINARY ACTIONS, as appropriate.

f. Record of reassignment. An offer of reassignment shall be in writing and shall inform the employee that failure to accept the offer not later than a specified date (usually not more than five days from date of such offer) will be considered a declination of offer. When the employee is not physically present to accept the offer of reassignment, it shall be forwarded by electronic and/or non-electronic mail, as appropriate, with the five day limitation on acceptance extended to provide for normal time for non-electronic mail delivery.

Section 4. RECALL FROM FURLOUGH AND REEMPLOYMENT RIGHTS

	Paragraph No.
Recall to duty from furlough	4-1
Reemployment rights and priorities.....	4-2

4-1. RECALL TO DUTY FROM FURLOUGH. Recall from reduction in force furloughs must be in order of standing on the retention register. Recall for a temporary period and return to non-duty status does not require another reduction in force action.

4-2. REEMPLOYMENT RIGHTS AND PRIORITIES. The names of Group I and II employees will be placed on reemployment lists of marine positions for which they apply and are qualified. Employees must apply within six months of their separation by reduction in force. Their names will be listed on the Reemployment List for a period of one year from the date of separation. Priority consideration for employment shall be given consistent with the provisions of CMPIs 330.2-10 (REEMPLOYMENT LIST) and 330.2-11 (ORDER FOR CONSIDERATION AND SELECTION). Also see CMPI 352.2-6, RESIGNATION-REDUCTION IN FORCE. Employees with status in the competitive service may also be eligible for registration in the Department of Defense Priority Placement Program (see DOD 1400.20-1-M) and the Displaced Employee Program (see 5 CFR 330 - Subpart B).

Section 5. TRANSFER OF FUNCTION

	Paragraph No.
General	5-1
Personnel management implications of transfer of function.....	5-2
Preparing employees for transfer	5-3

5-1. GENERAL. Consistent with 5 CFR 351 - Subpart C, transfer of function regulations apply to any movement of work from one competitive area to another which meets the requirements of the definition given in paragraph 1-3w. Transfer of function provisions are applicable whether the movement of work is authorized by a statute, reorganization plan, Executive Order, or other authority. When an employee's work transfers, he or she is entitled to transfer with it if lack of an opportunity to do so would result in his or her demotion or separation. See COMSCINST 3110.2D, ACQUISITION AND TRANSFER OF USNS SHIPS, for further information on transfer of personnel.

a. Explanation

1. Movement to a different competitive area. Under the transfer of function provisions, the operation of the function must cease in one competitive area and must be carried on in an identifiable form in another competitive area.

2. Movement within a competitive area. The movement of activities or assignments within a competitive area does not meet the requirements of the definition and is not a transfer of function.

3. A transfer of function does not suspend management's inherent authority to assign its work force to meet its needs. ~~MSC commanders~~ ^{APMC} may move employees, regardless of a transfer of function, to different jobs and different duty stations where needed so long as their statutory/regulatory rights to protection against improper adverse actions are not violated.

5-2. PERSONNEL MANAGEMENT IMPLICATIONS OF TRANSFER OF FUNCTION

a. Identification of employees with a function. The losing competitive area identifies employees for transfer with a function. The employee is identified through one of the following methods:

1. Method 1. The employee performs the function during at least half of his/her work time; or regardless of the amount of time, the function performed by the employee controls the grade of his/her position or rate of pay.

2. Method 2

(a) The employee performs the function during less than half of his/her work time and is not otherwise covered by method 1. Under this method, the losing competitive area must identify the number of positions needed to perform the transferring function and establish a retention register to determine which employees are identified for transfer. Competing employees listed on the retention register are identified for transfer in the inverse order of their retention standing. If for any retention register, this procedure would result in the separation or demotion by reduction in force at the losing competitive area of any employee with higher retention standing, the losing competitive area must identify competing employees on that register for transfer in the order of their retention standing.

(b) The competitive area losing the function may permit other employees not identified under methods 1 and 2 to volunteer for transfer with the function. However, this can be accomplished only if no competing employees under method 1 or 2 are demoted or separated as a result. If the number of volunteers exceeds the total number of employees required to perform the function in the gaining area, the losing area may give preference to the volunteers with the highest retention standing or make selections based on other appropriate criteria.

b. Right of employees to transfer with a function. A competing employee has no right to transfer with a function unless the alternative is separation or demotion.

c. Employees of the losing competitive area

1. When a function is transferred, the transfer of function provisions do not apply to employees of the losing competitive area if the command chooses not to separate, demote, or transfer them as a result of the loss of the function.

2. Separation of employees who refuse to transfer. The employees identified with a function may be required to transfer with it. An employee who refuses to transfer may be separated or placed in another position on which he/she and the losing competitive area can agree. Employees who refuse to transfer may be separated through adverse action procedures for their refusal.

3. Use of reduction in force regulations.

(a) The losing competitive area is not required to carry out a reduction in force solely for employees who decline to transfer with their functions. When a transfer of function occurs during a reduction in force in the losing competitive area, however, that area may determine through agreement with the gaining competitive area that the movement of employees with the function is not essential to the continuity and efficiency of the function. In this situation, the losing competitive area may use reduction in force procedures to release from their competitive levels the employees who decline to move with the function, thus treating any separations and displacements as part of the concurrent reduction in force.

(b) A similar arrangement is permissible when a function is to be transferred from one competitive area to another in the same department or agency and there is a resulting or concurrent reduction in force in either the gaining or losing competitive area. The use of reduction in force procedures would be improper, however, when there is no reduction in force in process on either the gaining or losing end. In that situation, the losing competitive area uses adverse action procedures to separate employees who decline to move with their function. Such employees have no reemployment priority rights.

d. Employees of the gaining competitive area

1. No separation of employees. The transfer of function regulations do not affect employees of the gaining competitive area if the transfer does not require a reduction in force on the gaining end.

2. Use of reduction in force regulations. If the losing competitive area identifies and transfers more employees than the gaining competitive area needs to carry on the function, the gaining competitive

area may follow reduction in force procedures to relieve the surplus. Competing employees identified by the losing competitive area have a right to:

- (a) transfer to the gaining competitive area before it conducts a reduction in force; and
- (b) compete among themselves and employees in the gaining competitive area for retention.

e. Rights of incoming employees

1. A determination of the rights of the incoming employees does not require a physical relocation or a paper transfer to the gaining competitive area. Their rights can be determined from a mingling of the retention registers of the segment being transferred with the appropriate registers of the competitive area receiving the function.

2. If any of the incoming employees compete unsuccessfully for retention in the gaining competitive area, they need not be transferred in order to be separated. They may be separated from the losing competitive area acting as an agent for the gaining competitive area if the necessary arrangements for lump-sum leave and severance payments can be worked out.

3. Employees who are unsuccessful in competing for positions in the gaining competitive area are placed on the reemployment list of the gaining competitive area.

f. Transfer of positions for liquidation. Employees whose positions are transferred solely for liquidation, and who are not identified with operating functions specifically authorized at the time of the transfer to continue in operation for more than 60 days, are not competing employees in the gaining competitive area.

5-3. PREPARING EMPLOYEES FOR TRANSFER

a. General. Commands are urged to undertake a variety of responsibilities in preparing for the transfer of employees along with a function. A transfer involving geographical relocation is effected more smoothly, employee morale and efficiency of operations are maintained at a higher pitch, and potential employee relations problems and adverse community reactions are more easily averted when employees are kept fully informed, community resources are mobilized at both the losing and gaining locations, preventive planning techniques are utilized, and aggressive outplacement programs are conducted for employees who will not accept transfer or who will be separated in a reduction in force resulting from the transfer.

b. Informing employees. The command should make the transfer as understandable and meaningful as it can to employees who are identified with the function. It can do this by sharing all appropriate available information with the employees as an expression of its continuing interest in them and to enable them to decide whether they will accompany the function.

c. Employee decision. When the command asks the employee for a decision on whether he/she will transfer with the function, it allows him/her sufficient time to consider everything that is involved and to give a responsible answer. The command should not demand an answer in less time than it can reasonably

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allow and still have adequate time to plan and prepare for the transfer. For example, when it is possible to announce the transfer of function 60 days in advance, it would appear to be unreasonable to ask for a decision from the employee in less than 30 days.

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Section 6. GRIEVANCES AND APPEALS

	Paragraph No.
Difference between grievances and appeals	6-1
Right to file a grievance.....	6-2
Right to file an appeal	6-3

6-1. **DIFFERENCE BETWEEN GRIEVANCES AND APPEALS.** Grievances may be filed on employees' behalf by a bargaining unit covered by a negotiated grievance procedure. Grievance filing requirements, review level, and decision authority vary according to the contents of the negotiated agreement. An employee may file an appeal or a grievance related to a RIF action; however, he or she cannot file both. **Appeals** may be filed with the Merit Systems Protection Board (MSPB), an independent Government agency that operates like a court to ensure agencies follow merit systems principles. It does this by hearing and settling federal employee appeals of personnel actions, including reductions in force.

6-2. **RIGHT TO FILE A GRIEVANCE.** A CIVMAR in a bargaining unit covered by a negotiated grievance procedure that was negotiated after the Civil Service Reform Act and that **does not exclude** reduction in force must use the negotiated grievance procedure; employees in this category may not appeal reduction in force actions to the MSPB.

a. When a personnel office issues a specific notice to a CIVMAR, it will also notify the CIVMAR of any right he or she has to file a grievance, including time limits and procedures.

b. Bargaining unit exclusive representatives are an additional source of assistance.

6-3. **RIGHT TO FILE AN APPEAL.** Except as provided in Section 6-2, an employee affected by a reduction in force action and who believes the controlling regulations have not been correctly applied may appeal to the MSPB under the provisions of MSPB's regulations.

a. **Matters which may be appealed.** A reduction in force appeal to the MSPB may be based on such matters as:

1. Violation of veteran preference rights.
2. Excessive narrowness of competitive area or competitive level.
3. Retention of an employee with lower retention standing.
4. Error in the retention group or subgroup or error in computing length of service.
5. Error in order of selection.
6. Denial of right to examine the regulations or to inspect the retention register and related records, including statements of exceptions.
7. Failure to give reasons in writing for any exception to the regulations, or inadequate reasons.

8. The reason for any time without pay during the notice period.

9. Inadequate notice.

10. Improper determination of physical unfitness for position change.

b. Matters which may not be appealed. Administrative reassignment rights authorized in paragraph 3-6b are not a basis for appeal to the MSPB.

c. Filing the appeal. 5 CFR 1201 discusses filing appeals with the MSPB. Also based on 5 CFR 1201, when a decision notice has been issued to an employee on a matter that is appealable to the MSPB, the respective personnel office must provide the following:

1. Notice of the time limit for appealing to the Board and the address of the appropriate MSPB Regional Office for filing the appeal.

2. Notice that untimely filing of an appeal is grounds for MSPB to dismiss it, unless good reason for the delay can be shown.

3. A copy of MSPB's regulations, as found in 5 CFR 1201.

4. A copy of the MSPB appeal form.

5. Notice of any applicable rights to a grievance procedure.

Employees may appeal reduction in force actions to MSPB any time during the period beginning the day after the effective date of the action being appealed, until not later than 30 days after the effective date.

d. MSPB action on appeals. 5 CFR 1201 discusses the action taken by MSPB on employee appeals and the effects of their decisions.

Section 7. REQUESTS AND REPORTS ON REDUCTION IN FORCE

	Paragraph No.
Requests Prior to Action.....	7-1
Reports Prior to Action	7-2
Reports Subsequent to Action.....	7-2.

7-1. REQUESTS PRIOR TO ACTION.

a. SECNAVINST 12351.5 delegates reduction in force authority to COMSC, as an Echelon 2 command, if actions involve fewer than 50 employees in a competitive area. ~~COMSC letter 12351 Serial N12/002134 of 7 September 1993 re delegates this authority to COMSCLANT and COMSCPAC, as permitted under SECNAVINST 12351.5.~~ COMSC will request authority from the Assistant Secretary of the Navy (Manpower and Reserve Affairs) if actions involve 50 or more employees.

b. Requests for separation pay incentive and voluntary early retirement authority, which may mitigate or eliminate the need for a reduction in force, will also be submitted to COMSC.

7-2. REPORTS PRIOR TO ACTION. Reporting requirements for actions involving 50 or more employees are contained in 5 CFR 351.803. ~~Area commands~~ ^{APMC} will assemble and submit reports to COMSC for consolidation and forwarding.

7-3. REPORTS SUBSEQUENT TO ACTION. ~~Area commands~~ ^{APMC} will assemble and submit reports to COMSC for consolidation and forwarding, as required. These may include a Separation Pay Report required by the DOD Civilian Personnel Manual and a Voluntary Early Retirement Authority Report required by the DOD Civilian Personnel Service, Navy Office of Civilian Personnel Management, and Office of Personnel Management.

Section 8. HOW TO PROCEED

	Paragraph No.
General	8-1
Action ashore	8-2
Action afloat	8-3

8-1. GENERAL. Almost all steps necessary to accomplish a reduction in force are taken by the ^{A PML} ~~area command's Civilian Personnel Office~~ ^{esignant}. Action afloat consists primarily of issuing reduction in force notices to affected personnel as directed by the home port.

8-2. ACTION ASHORE. When a reduction in force is required, the following steps will be taken:

a. Surplus positions. Determine positions to be abolished and their competitive levels. See paragraph 2-2 concerning establishment of competitive levels.

b. Advance reassignments. Reassign employees to existing vacancies to minimize need for reduction.

c. Requests and reports. Request reduction in force, separation pay incentive, and voluntary early retirement authority, as applicable. Make notifications as described in Section 7.

d. Retention registers. Prepare retention registers. See paragraphs 2-3, Retention Groups and Subgroups; 2-4, Service Date; 2-8, Currency of Records; and 3-1, Retention Registers.

e. Employees affected. Determine employees to be affected by the reduction in force and their reassignment rights. See paragraphs 3-2, Order of Selection; 3-3, Breaking Ties; 3-4, Exceptions to Order of Selection; and 3-6, Reassignment Rights.

f. Issue notices.

1. Prepare and deliver appropriate notice to affected employees who are "ashore, on leave, or whose ships are on a voyage and within a reasonable commuting distance". See paragraph 3-5c, Contents of Specific Notice. no

2. Direct ships' masters by message or electronic mail to issue appropriate reduction in force notices to crew members.

3. Extend notices as required. See paragraph 3-5d, Notice Period Extensions.

4. Inform eligible employees of procedures to be followed in applying for reemployment rights or under OPM's Displaced Employee Program. See paragraphs 3-5c(12) and 4-2.

g. Regulatory information. Make available for inspection registers and reduction-in-force regulations. See paragraphs 3-5c(7) and 3-1b.

h. Preparation of SF 50s. Accomplish reassignments, separations, and furloughs by preparation and delivery of SF 50s.

8-3. ACTION AFLOAT.

a. Issue notices. The Master will issue notices to affected employees as directed by the ^{APMC}home port. It is important that notices be issued expeditiously in view of the 60-120 day notification requirement. A copy of the notice will be signed and dated by the employee acknowledging receipt of the notice. See paragraph 3-5a.

b. ^{APMC}Notify area command. ~~Unless otherwise directed by the cognizant area command,~~ the copy of the notice signed by the employee will be submitted to the ^{APMC}Civilian Personnel Office.

c. Information to employees. The responsibility for informing employees of reduction in force regulations is vested in the ^{APMC}home port. General information on reduction in force regulations may be given to employees by the Master or Purser. Technical information or interpretation of regulations should be given only by the ^{APMC}Civilian Personnel Office. CMPI 351 should be made available to employees aboard ship and in the home port.