

regardless of the employees' relative retention standing for up to 90 days before closure of an activity. The 90 day liquidation provision was implemented when the minimum specific RIF notice period was 30 days rather than the present standard of 60 days notice (i.e., the liquidation provision was three times the basic RIF notice period).

We proposed revision of 5 CFR 351.605 to provide that the liquidation provision is applicable in a closure situation when an agency will abolish all positions in a competitive area within 120 days. After considering the agency's comments, 5 CFR 351.605 is revised to provide that the liquidation provision is applicable when an agency will abolish all positions in a competitive area within 180 days (i.e., three times the basic RIF notice period of 60 days). The new 180 day standard for the liquidation provision will also provide the Department of Defense with needed flexibility in carrying out large scale closures in which a Defense activity must provide its employees with a minimum of 120 days RIF notice because of a significant RIF. An employee released from a competitive level under the liquidation provision found in 5 CFR 351.605 may still have assignment rights to a position in a different competitive level, as provided in subpart G of part 351.

RIF Notices

On June 8, 1993, OPM published interim RIF notice regulations in the **Federal Register** at 58 FR 32047, effective upon publication with a 60 day comment period. These regulations implement section 4433 of Public Law 102-484 (the National Defense Authorization Act for Fiscal Year 1993), which revised 5 U.S.C. 3502 by adding new sections (d) and (e) containing new notice requirements for RIF actions.

OPM received five written comments on these interim regulations: Three from agencies and two from local offices of national unions.

All three agencies favored the proposal. However, one agency requested that OPM expand 5 CFR 351.802(b) to affirm that an agency must provide an employee who receives a specific RIF notice with a copy of OPM's retention regulations, upon the employee's request. We have reviewed the proposed language and believe that 5 CFR 351.802(b) as written specifically covers this requirement.

A second agency requested that OPM revise 5 CFR 351.803(b) to provide that the agency must meet special notice requirements only when 50 or more employees are actually separated from a competitive area. In the interim

regulations, 5 CFR 351.803(b) provides that an agency must provide additional notice when 50 or more employees in a competitive area receive specific RIF separation notices. The agency must send this additional notice of a large RIF to (1) the appropriate State dislocated worker unit under the Job Training Partnership Act, (2) the chief elected local government official where the separations will take place, and (3) OPM. We retained the language in 5 CFR 351.803(b) without revision because we believe that an employee who receives a specific notice of separation in a large RIF is entitled to the same benefits as an employee who is actually separated.

The two union locals were concerned that OPM could approve a shortened RIF notice period that would be detrimental to their members. Both locals are in Department of Defense (DoD) activities. 5 CFR 351.801(a)(2) provides that DoD components must provide their employees with a minimum of 120 days specific notice when a significant number of employees will be separated by RIF.

5 U.S.C. 3502(e)(1) provides that the President of the United States may approve a RIF notice period of less than, as appropriate, 60 or 120 days, based on unforeseeable circumstances. However, 5 U.S.C. 3503(e)(3) provides that a shortened RIF notice period must always cover at least 30 days. E.O. 12828, approved on January 5, 1993 (58 FR 2965), authorizes OPM to shorten the applicable mandatory 60 or 120 day specific written RIF notice requirement to a minimum of 30 days. 5 CFR 351.801(b) implements E.O. 12828 and authorizes the Director of OPM to approve a shortened notice period at the request of an agency head or designee.

We have adopted 5 CFR 351.801(b) without revision because OPM is limited by law and Executive Order in granting exceptions to the minimum RIF notice period.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects Federal employees.

List of Subjects in 5 CFR Part 351

Government employees.
Office of Personnel Management.
James B. King,
Director.

Accordingly, OPM is adopting as final its interim and proposed rules published under 5 CFR part 351 on May 26, 1992, at 57 FR 21890 (as corrected

on June 27, 1994, at 59 FR 32871), on June 8, 1993, at 58 FR 32047, and on May 27, 1994, at 59 FR 27509, with the following changes:

PART 351—REDUCTION IN FORCE

1. The authority citation for part 351 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3502, 3503; S351.801 also issued under E.O. 12828, 58 FR 2965.

2. Section 351.605 is revised to read as follows:

§ 351.605 Liquidation provisions.

When an agency will abolish all positions in a competitive area within 180 days, it must release employees in group and subgroup order consistent with § 351.601(a). At its discretion, the agency may release the employees in group order without regard to retention standing within a subgroup, except as provided in § 351.606. When an agency releases an employee under this section, the notice to the employee must cite this authority and give the date the liquidation will be completed. An agency may also apply §§ 351.607 and 351.608 in a liquidation.

3. In § 351.608, paragraphs (c) and (d) are redesignated as paragraphs (d) and (e) respectively, paragraph (b) is revised, and paragraph (c) is added, to read as follows:

§ 351.608 Permissive temporary exceptions.

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(b) *Exception not to exceed 90 days.* An agency may make a temporary exception for not more than 90 days when needed to continue an activity without undue interruption.

(c) *Government obligation.* An agency may make a temporary exception to satisfy a Government obligation to the retained employee.

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4. Subpart H, consisting of §§ 351.801 through 351.806, is revised to read as follows:

Subpart H—Notice to Employee

- Sec.
- 351.801 Notice period.
- 351.802 Content of notice.
- 351.803 Notice of eligibility for reemployment and other placement assistance.
- 351.804 Expiration of notice.
- 351.805 New notice required.
- 351.806 Status during notice period.
- 351.807 Certification of Expected Separation.