

U.S. NUCLEAR REGULATORY COMMISSION

DIRECTIVE TRANSMITTAL

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To: NRC Management Directives Custodians

Subject: Transmittal of Directive 10.138, "Reduction in Force in the Senior Executive Service"

Purpose: Directive and Handbook 10.138 are being revised to change the competitive area and the service credit for performance, expand the definition of competitive level, and make minor changes in records retention.

Office and Division of Origin: Office of Human Resources

Contact: Carolyn Swanson, 415-7530

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Volume: 10 Personnel Management

Part: 6 Senior Executive Service, Senior Level Positions, and Judges

Directive: 10.138 Reduction in Force in the Senior Executive Service

Availability: Rules and Directives Branch
Office of Administration
(301) 415-7164 or (301) 415-7086

Reduction in Force in the Senior Executive Service

***Directive
10.138***

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U. S. Nuclear Regulatory Commission

Volume: 10 Personnel Management

Part: 6 Senior Executive Service, Senior Level
Positions, and Judges

HR

Reduction in Force in the Senior Executive Service

Directive 10.138

Policy

(10.138-01)

It is the policy of the U.S. Nuclear Regulatory Commission to ensure that reductions in force (RIFs) and furloughs in the Senior Executive Service (SES) are administered in accordance with the policies and procedures contained in this directive.

Objectives

(10.138-02)

- o To institute RIF proceedings only when necessary to ensure continued efficient and effective operations. (021)
- o To monitor conditions that may require a RIF, including but not limited to-- (022)
 - Reduction in personnel ceiling or funding (a)
 - Lack of funds (b)
 - Reorganization of the NRC or any of its components (c)
 - Adjustment in workload or mission requirements (d)
 - Elimination or modification of a position as a result of reorganization (e)
 - Curtailment of work (f)

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Objectives

(10.138-02) (continued)

- Withdrawal of SES spaces by the Office of Personnel Management (OPM) (g)
- o To make a concerted effort to reassign career executives in surplus positions to vacant SES positions or to implement other appropriate actions before formal RIF procedures are initiated. (023)
- o To inform SES incumbents in surplus positions and any other affected employees at the earliest practical time of an impending RIF. (024)
- o To advise affected individuals of the regulations under which the RIF action is being taken and of their rights and benefits. (025)
- o To accord all SES members their rights, consistent with governing law, regulations, and procedures. (026)
- To provide reasonable placement assistance to affected individuals to minimize personal impact. (027)

Organizational Responsibilities and Delegations of Authority

(10.138-03)

Executive Resources Board (ERB)

(031)

Recommends to the EDO–

- o Assignment of an executive in a surplus position to any vacant position for which the ERB considers the executive qualified. (a)
- o Initiation of a RIF when it is not possible to reassign the incumbent of a surplus position to a vacant position for which the executive is qualified. (b)

Executive Director for Operations (EDO)

(032)

- o In consultation with the Chairman, when senior executives in Commission-level offices are affected, and in other cases as deemed necessary—(a)

Executive Director for Operations (EDO)

(032) (continued)

- Directs the assignment of the executive in a surplus position to a vacant position for which the executive is qualified, or to an occupied position if the executive can displace the incumbent (see Handbook 10.138). (i)
- Directs the initiation of a RIF in the SES. (ii)
- Decides whether a reemployed annuitant should be terminated at the will of the agency or whether the annuitant should be placed on the retention register and compete in a RIF for job retention. (iii)
- o Certifies in writing to OPM, when appropriate, that: (b)
 - The agency has no vacant position to which an **NRC** executive about to be removed from the SES through RIF can be appointed. (i)
 - An employee of another agency who is to be removed from the SES by a RIF and who was recommended for placement by OPM for a specific vacant **SES** position in an NRC office reporting to the EDO is not technically qualified. (ii)

Inspector General (IG)

(033)

Initiates a RIF in the SES for the Office of the Inspector General.

**Deputy Executive Director for Management
Services (DEDM)**

(034)

- o Provides oversight and direction on issues involving a RIF in the SES. (a)
- o Provides advice and guidance to the EDO and the ERB on areas of significance and concern in the administration of a RIF in the SES. (b)

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Director, Office of Human Resources (HR)

(035)

- o Develops agency procedures for implementing a RIF in the SES, consistent with appropriate laws and OPM regulations. (a)
- o Maintains liaison with OPM on RIF policy and placement offers for affected employees. (b)
- o Reviews plans to conduct a RIF in the SES, provides staff advice and recommendations, and provides support for program implementation. (c)
- o Advises the DEDM and the EDO on whether an employee of another agency who OPM has offered placement at NRC meets the technical qualification requirements of the vacant SES position. The Director, HR, also will request the office director or the regional administrator with the SES vacancy to review the employee's technical qualifications and to concur on the recommendation, if deemed appropriate. (d)
- Provides final interpretations regarding the intent and applicability of this directive and handbook. (e)
- o Maintains all records necessary to determine the retention standing of NRC's competing SES employees. After the date of issuance of specific notice to SES employees, all records pertaining to the RIF will be preserved intact for at least 2 years from the date of separation. These records will be open to the affected SES employees and OPM representatives to an extent sufficient to settle all of their questions about the RIF. (f)

**Office Directors and
Regional Administrators**

(036)

- o Identify those SES positions that are or will become surplus because of program curtailments, reduction in monetary or staffing allocations, or any other causes. (a)
- o Recommend placement actions within their organizations for surplus SES appointees. (b)
- o Prepare requests for personnel action and provide appropriate data in connection with RIF actions affecting subordinate SES appointees. (c)

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**Office Directors and
Regional Administrators**
(036) (continued)

- o Concur in or disapprove the recommendation of the Director, HR, to the EDO on the qualifications of an employee referred by OPM to NRC for any vacant SES position in their organization. (d)

Applicability
(10.138-04)

This directive and handbook apply to all positions filled by career and probationary SES appointments. Noncareer and limited SES appointments are not covered.

Handbook
(10.138-05)

The handbook contains the guidelines and procedures for implementing a RIF in the SES.

References
(10.138-06)

Antideficiency Act (31 U.S.C. 665a).

Civil Service Reform Act (CSRA) of 1978, Pub. L. 95-454, October 13, 1978.

Civil Service Retirement Spouse Equity Act, Pub. L. 98-615, November 8, 1984.

Code of Federal Regulations-

5 CFR 317, Subpart G, "SES Career Appointment by Reinstatement."

5 CFR 359, Subpart D, "Removal of Career Appointees During Probation."

5 CFR 359, Subpart F, "Removal of Career Appointees as a Result of Reduction in Force."

5 CFR 359, Subpart G, "Guaranteed Placement."

5 CFR 359, Subpart H, "Furloughs in the Senior Executive Service."

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References

(10.138-06) (continued)

5 CFR 752, “Adverse Actions.”

5 CFR 831, “Retirement.”

5 CFR 842, “Federal Employees Retirement System—Basic Annuity.”

Management Directive 10.41, “Pay Administration.”

— 10.137, “Senior Executive Service Performance Appraisal System.”

— 10.145, “Senior Level System.”

Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35, August 13, 1981, as amended by Pub. L. 97-346 of October 15, 1982 and Pub. L. 98-615 of November 8, 1984.

United States Code –

5 U.S.C. Chapter 75, Subchapter V, “Senior Executive Service.”

5 U.S.C. 3132(a), “Definitions and Exclusions.”

5 U.S.C. 3395, “Reassignment and Transfer Within the Senior Executive Service.”

5 U.S.C. 3594, “Guaranteed Placement in Other Personnel Systems.”

5 U.S.C. 3595, “Reduction in Force in the Senior Executive Service.”

5 U.S.C. 3595(a), “Furlough in the Senior Executive Service.”

5 U.S.C. 7511, “Definitions, Application.”

5 U.S.C. 7543, “Cause and Procedure.”

5 U.S.C. 7701, “Appellate Procedures.”

Reduction in Force in the Senior Executive Service

***Handbook
10.138***

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Part I

Planning for a Reduction in Force (RIF) in the Senior Executive Service (SES)

Planning (A)

Before any RIF in the SES is initiated, the following actions should be taken--

- o The office director or regional administrator who anticipates a surplus of one or more filled SES positions must submit a written statement to the Director, Office of Human Resources (HR), as far in advance of the anticipated effective date of the RIF as possible. The statement must include the following information—(1)
 - The specific reasons for the surplus, such as a reorganization, abolishment of function, and so forth (a)
 - The number of positions affected, the names of the incumbents affected, and any specific internal reassignment action proposed for each affected appointee (b)
 - The names of those for whom proposed internal reassignment offers were unavailable or were not accepted and who, therefore, must be placed elsewhere in the NRC or must be removed from their positions using formal RIF procedures or alternative action (c)
- o The Director, HR, will—(2)
 - Review the statement and ensure that all appropriate reassignments within the office have been made before referring the matter to the Executive Resources Board (ERB) for recommendation to the Executive Director for Operations (EDO) to initiate any formal RIF or alternative action. (a)

Planning (A) (continued)

- Identify any vacant SES positions for which incumbents of the surplus positions are qualified. (b)
- Provide a staff analysis on which the EDO can base a decision and approval for placement action, as appropriate. This analysis will incorporate the office's statement and supporting data and will assess the appropriateness of a formal RIF when proposed placement offers are unavailable or are not accepted. (c)
- The EDO will render a final decision on whether to make specific directed reassignments or placement offers before a formal RIF or, alternatively, on the need for any RIF affecting SES appointees. See Section (032) of the directive. (3)

Reassignment Actions Before Implementing a Formal RIF (B)

Career and probationary appointees in surplus positions may be reassigned at the EDO's discretion to vacant SES positions for which they are qualified without a formal RIF being conducted. A career appointee who would otherwise be removed from the SES has an absolute right to this placement under 5 U.S.C. 3595(b)(3)(A). Reassignments are at the EDO's discretion in other cases. A formal RIF that is based on competition for retention must be conducted when no such positions are available. (1)

The Director, HR, will prepare a retention register and provide staff support for the RIF process. (2)

There is a 120-day restriction under 5 U.S.C. 3395 on involuntary reassignments of career and probationary appointees following the appointment of a new agency head or a noncareer supervisor. This restriction allows time for the new agency management to become familiar with the capabilities of career and probationary executives before taking action on a particular individual. RIF situations are not directly related to individual SES members, and there may be no alternative to reassigning an SES member under a RIF during the 120 days. Therefore, **NRC** may—(3)

- o Offer a reassignment and make it effective during the 120 days if it is voluntarily accepted. (a)

Reassignment Actions Before Implementing a Formal RIF (B) (continued)

- o Issue a RIF notice that would result in an involuntary reassignment to be effective after the 120 days. (b)
- o Involuntarily reassign a career or probationary appointee during the 120 days if the failure to do so would violate a law; for example, funding for the function where the appointee is located has terminated and continuing the person in the position would violate the Antideficiency Act. (c)

Implementing a Formal RIF (c)

Career and probationary appointees who occupy surplus positions within NRC and who are not given directed reassignments to vacant positions are entitled to compete for job retention. Accordingly, a retention register will be compiled of the incumbents of all SES positions in the same competitive area and the same competitive level. (1)

- o **Competitive Area.** Employees in a competitive area compete for retention with other employees in the same competitive area. In the NRC, competitive areas are as follows: (a)
 - Each of the four major program offices (Office for Analysis and Evaluation of Operational Data, Office of Nuclear Regulatory Research, Office of Nuclear Material Safety and Safeguards, and Office of Nuclear Reactor Regulation) constitutes a separate competitive area. (i)
 - The Office of the Chief Financial Officer constitutes a separate competitive area. (ii)
 - The Office of the Chief Information Officer constitutes a separate competitive area. (iii)
 - The Office of the Inspector General constitutes a separate competitive area. (iv)
 - All other offices (or positions), except the EDO, which report directly to either the full five-member Commission or to the Chairman collectively constitute a separate competitive area. (v)

Implementing a Formal RIF (c)(continued)

- All offices (except the four major program offices) and positions which report directly to the EDO, and the EDO's office, collectively constitute a separate competitive area. (vi)
- Each regional office, including all organizational components reporting directly to it, regardless of physical location, constitutes a separate competitive area. (vii)
- o **Competitive Level.** All employees in the same competitive area are grouped into competitive levels. For SES employees, a competitive level is all SES positions normally in the same occupational series, with essentially the same qualification requirements (including legal requirements, if any, related to appointment), duties, responsibilities, and working conditions, from which NRC may readily reassign an employee to any other position within the level without unduly interrupting the agency's work program. All positions in the competitive area that meet the interchangeability criterion are in the same competitive level. A level may consist of only one position when that position is so clearly unique that it is not interchangeable with any other position in the competitive area. (b)
- o **Retention Register.** All employees in the same competitive level are grouped into retention registers. (c)

Persons on the retention register within NRC are listed by performance groups and subgroups on the basis of the last summary rating of record (last appraisal), with performance given primary consideration as required by the Omnibus Budget Reconciliation Act of 1981, as amended. The performance groups are—(2)

- o **Group I.** All career and probationary appointees with “fully successful” summary ratings (a)
- o **Group II.** All career and probationary appointees with “minimally satisfactory” summary ratings (b)
- o **Group III.** All career and probationary appointees with “unsatisfactory” summary ratings (c)

Each of these groups is further divided into either Subgroup A, career appointees, or Subgroup B, probationary appointees, both of which are listed in descending order of augmented service dates. (3)

Implementing a Formal RIF (c) (continued)

Within each retention subgroup, the order begins with the earliest service date, augmented by performance awards, if applicable. Additional years of service are credited for awards as follows—(4)

- o Distinguished Rank Award (within last 5 years)—12 years service credit (a)
- o Meritorious Rank Award or NRC Distinguished Service Award (within last 5 years)—6 years service credit (b)
- o NRC Meritorious Service Award in the immediately preceding year or any SES performance award within the past 5 years—3 years service credit each (c)

In computing additional service credit, all awards received as stated above will be used regardless of whether the award was granted by NRC. Any problems concerning additional service credit for career or probationary appointees may be handled on a case-by-case basis. (5)

Employees on a retention register will be released from their competitive level in inverse order of their standing. (6)

A reemployed civil service annuitant serves at the will of the agency and may be terminated at any time. However, if the EDO so decides, the reemployed annuitant's name shall be listed on the retention register and the annuitant may compete for job retention in a RIF. (7)

For new NRC employees from other Federal agencies, their last SES appraisal of record will be used if they do not have an NRC SES appraisal. For other new NRC employees who have been in their positions for more than 120 days, a performance appraisal final rating will be assigned through application of the performance appraisal process described in NRC Management Directive 10.137, "Senior Executive Service Performance Appraisal System," Handbook Part III (8)

Part II

Competitive Procedures

Displacement (A)

If there are appointees in positions in the same competitive level as the employee in the surplus position who have a lower retention standing as determined in Part I of this handbook, the appointee in the surplus position will displace (take over the position **of**) the appointee with the lowest retention standing, unless the Executive Director for Operations (EDO) decides to reassign the incumbent of the surplus position to a vacant position. See Part III (A) of this handbook. These displacement actions will be performed in accordance with Section (032)(a) of the directive, that is, the EDO will direct the reassignment of the employee in the surplus position. The required EDO decision may be based on information or recommendation from the Executive Resources Board, the gaining supervisor, or the Director, Office of Human Resources, as appropriate.

Rights of the Incumbent of the Surplus Position (B)

If there are no appointees in positions in the same competitive level with a lower retention standing, no displacement can take place. The appointee of the surplus position is given an opportunity to exercise any assignment right or is certified to the Office of Personnel Management for placement assistance if the probationary period has been completed. Barring placement in the Senior Executive Service (SES), the appointee is entitled to be placed in a civil service position (other than an SES position) in any agency. The position at which the career appointee is placed must be a continuing General Schedule position at the Grade-15 level or above, or an equivalent position. However, a reemployed annuitant who has been allowed to compete for job retention is not entitled to OPM placement assistance or to guaranteed placement in a position outside the SES.

Rights of the Displaced Employee (c)

The appointee who is displaced by the action described in Section (A) of this part is given the same assignment and placement opportunities as the surplus employee, as applicable and as cited in Section (B) of this part.

Part III

Placement

Offer of Vacant Positions (A)

Senior Executive Service (SES) career and probationary appointees who can displace other appointees through the formal reduction in force (RIF) process may be offered vacant SES positions in NRC for which they are qualified in lieu of exercising their displacement rights. The Executive Director for Operations (EDO) will determine placement in these cases in accordance with Section (032) of the directive.

Placement Rights of the Probationary Appointee (B)

SES probationary appointees whose positions are affected by a RIF and who cannot displace another appointee are not entitled to further placement considerations for SES positions. A probationary appointee may not be retained over a non-probationary appointee with the same retention standing. Employees who were appointed to the SES from a civil service position held under a career or a career-conditional or an equivalent tenure appointment (an NRC Regular Excepted or a Regular Excepted Conditional appointment) are entitled to be placed in a continuing General Grade position in NRC or any agency at the GG-15 level or above. However, this placement may not cause the separation or reduction in grade of any other employee (see 5 U.S.C. 3594). Any probationary appointee placed under this provision is entitled to receive the highest rate of basic pay as follows –

- o The rate of basic pay in effect for the position in which the appointee is placed (1)
- o The rate of basic pay in effect at the time of the placement for the civil service position the probationary appointee held immediately before being appointed to the SES (2)

Placement Rights of the Probationary Appointee (B) (continued)

- o The rate of basic pay in effect for the probationary appointee immediately before being placed under this provision (3)

Placement Rights of the Career Appointee (c)

A career appointee who has completed the probationary period and who is removed from the SES through a RIF shall be entitled to be placed in a civil service position, other than an SES position, in NRC or in any agency. The position in which the career appointee is placed shall be a continuing General Schedule position at the Grade-15 level or above, or an equivalent position. (1)

A career appointee in NRC who is to be removed from the SES because of a RIF is entitled to be assigned by the head of the agency to a vacant SES position within NRC for which the career appointee is qualified. If the EDO certifies in writing to the Office of Personnel Management (OPM) that no such position is available in NRC, OPM will, upon receipt of an application from the employee, place the individual in any agency in any vacant SES position unless the head of that agency determines that the career appointee is not qualified for that position. (2)

A career appointee who is not assigned to a vacant SES position in NRC and who declines a reasonable offer for placement in a vacant SES position in another agency may be removed from the SES by a RIF and placed in accordance with paragraph (1) of this section. (3)

A career appointee who is not assigned to a vacant SES position in NRC and who OPM does not place in a vacant SES position in another agency within 45 days of notification may be removed from the SES by a RIF and placed in accordance with paragraph (1) of this section. (4)

Any career appointee placed under this provision is entitled to SES saved pay in accordance with 5 U.S.C. 3954. (5)

A career appointee who is placed under this provision is not subject to the limitation on basic pay of Level V of the Executive Schedule, but is subject to the limitation of basic pay plus locality based comparability payments of Level IV of the Executive Schedule. (6)

Placement Rights of the Career Appointee (C)(continued)

Pay received under a guaranteed placement action is terminated if the appointee either — (7)

- o Has a break in service of 1workday or more (a)
- o Is demoted based on conduct or unacceptable performance, or at the appointee's request (b)

If the NRC is unable to place a career appointee who has no right to displace another appointee in a vacant SES position for which he or she is qualified, the EDO must certify this fact in writing to OPM. The certification will include a copy of the RIF notice (see Part IV (E) of this handbook), a statement that there is no vacant position in the agency for which the appointee is qualified, and a statement regarding the efforts made to place the appointee. (8)

OPM has 45 calendar days from the date of agency certification to take all reasonable steps to place the appointee in a vacant SES position for which he or she is qualified in another agency. OPM may require an agency to take any action that OPM considers necessary to place the appointee. The appointee is entitled to placement unless the head of that agency determines the appointee is not qualified for the position. Failing placement by OPM in a vacant SES position, the appointee is entitled to be placed in a continuing position at the GG-15 level or above, as specified in (B) and (C) of this part. Career appointees whose positions are affected by a RIF will remain on NRC rolls in the SES during this process. (9)

Part IV

Removal

Probationary Appointees (A)

Probationary appointees are considered involuntarily separated from NRC rolls under 5 CFR 359.405 and entitled to discontinued service annuities when they meet the eligibility requirements of 5 CFR 831 or 842. The following situations also are included:

- o Individuals who decline a directed reassignment to another Senior Executive Service (SES) position in NRC that is outside of the commuting area (1)
- o Individuals who decline an offer of a continuing General Schedule position at the GG-15 level or above in NRC upon separation from the SES (2)
- o Individuals who resign or retire upon receiving a specific notice that their position will be abolished and that they face involuntary separation from the SES by a certain date (3)

Career Appointees (B)

Career appointees are considered involuntarily separated from NRC rolls and entitled to discontinued service annuities when they meet the eligibility requirements of 5 CFR 831 or 842. This includes situations such as those cited in Section (A) of this part and also any of the following:

- o Career appointees not placed by the Office of Personnel Management (OPM) in an SES position in another agency within 45 days after OPM acknowledgement of receipt of written certification that NRC could not place them (1)
- o Career appointees who decline a reasonable offer of placement by OPM in another agency (2)

Appointees Who Refuse a Directed Reassignment (c)

Appointees who refuse a directed reassignment within NRC in the same commuting area and who resign or are removed from NRC for failure to accept the reassignment under 5 U.S.C. Chapter 75, Subchapter V, are not eligible for a discontinued service annuity. A directed reassignment of a career appointee between commuting areas requires that management consult with the employee before issuing the notice of reassignment regarding the reasons for the reassignment and the appointee's preferences with respect to the proposed reassignment. In addition, management shall give the career appointee written notice of the reassignment, including a statement of the reasons for the reassignment, at least 60 days before the effective date of the reassignment. A career appointee may waive the 60-day advance notice, and NRC may provide a longer notice period in cases of hardship. Career and probationary appointees are entitled to 15 calendar days advance written notice of a directed reassignment within the same commuting area. (1)

In a transfer of functions between agencies, a career appointee is entitled to accompany his or her function to the new agency if the alternative is removal from the **SES** in the current agency by a reduction in force (RIF). (2)

With regard to adverse actions, a career appointee who declines to accept a directed reassignment or to accompany a position in a transfer of a function may be removed from the civil service under the adverse action procedures of 5 U.S.C. 7543. (3)

With regard to discontinued service retirement, a career appointee who is removed from the civil service under adverse action procedures for failure to accept a directed reassignment between commuting areas or to accompany a position in a transfer of a function between commuting areas may still receive discontinued service retirement if otherwise eligible, unless serving under a mobility agreement. (4)

Severance Pay Entitlement (D)

Depending on the circumstances, separated **SES** members not entitled to discontinued service annuity may be entitled to severance pay. The Office of Human Resources (HR) will provide information on a case-by-case basis, when requested.

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Notice (E)

Reemployed annuitants will be given written notice of termination of appointment when the position becomes surplus, unless the Executive Director for Operations (EDO) has decided that such annuitants shall compete for job retention in a RIF (see Section (032) of this directive). This process will be accomplished as far in advance of the effective date as feasible. (1)

a

Probationary appointees will receive written notification of their separation from the SES, removal from the NRC, or an offer of a position at the GG-15 level or above, as appropriate, at least 30 calendar days in advance of the effective date of the action to be taken, where feasible. (2)

A career appointee who is identified for removal from an SES position by a RIF and who cannot be placed in another SES position in NRC will be given a written notice in advance of the NRC certification to OPM. When feasible, this notice shall be given to the appointee at least 30 calendar days in advance of the certification to OPM. The notice will contain—(3)

- A statement of the specific RIF action to be taken and of the specific reason, such as abolishment of position, displacement, and so forth, for the action (a)
- The appointee's retention standing and the nature of the competition, including the appointee's competitive area (b)
- An offer to exercise reinstatement eligibility to a vacant non-SES position within the agency, as applicable and feasible (c)
- Any placement rights following separation from the SES (see Part III (C) of this handbook) (d)
- A brief description of the OPM placement efforts (e)
- The place where the appointee may inspect the regulations and records pertinent to the action **(f)**
- The name and telephone number of the personnel specialist who is available to provide counseling on the appointee's rights (g)

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Notice (E) (continued)

- o A brief description of the appointee's appeal rights, including the time limit for the appeal, the office address of the Merit Systems Protection Board to which any appeal should be sent, a copy of the board's regulations, and an appeals form (h)
- o The date of separation if no offer is made by OPM or if a reasonable offer is not accepted (i)

A career appointee who has received a written advance notice, as described in Section (E)(3)(a) through (i) of this part, is entitled to a second notice in writing at least 1 day before removal from the **SES**. The notice will contain, as a minimum—(4)

- o The basis for the removal (a)
- o The effective date of the removal (b)
- o Placement rights outside the SES and, when applicable, the appointee's eligibility for discontinued service retirement in lieu of placement (c)
- o Reminder of the appointee's appeal rights (d)

Part V

Furlough

General (A)

NRC may furlough a career or probationary appointee in the Senior Executive Service (SES) when it intends to recall the appointee to duty in the same position within 1 year. Furloughs of noncareer and limited **SES** appointees, and of reemployed annuitants, may be made without regard to these regulations.

Definition (B)

Furlough means the placing of an appointee in a temporary status without duties and pay because of a lack of work or funds, or for other nondisciplinary reasons.

Competition (C)

Furloughs of career or probationary appointees for 30 calendar days or less, or 22 work days or less if the furlough does not cover consecutive days, may be made without using the competitive procedures in this directive and handbook to determine who will be selected for furlough. Any furlough of career or probationary appointees for more than 30 calendar days, or 22 work days, shall be determined through use of the competitive procedures established by this directive and handbook, specifically Part II of this handbook.

Length of Furlough (D)

A furlough may not extend beyond 1 year. It may be made only when the agency intends to recall the appointee within a year.

I Notice (E)

A career or probationary appointee is entitled to a 30-day advance written notice of a furlough. The full notice period may be shortened or waived only in the event of unforeseeable circumstances, such as sudden emergencies requiring immediate curtailment of activities. The written notice must advise the appointee of the—

- * Reason for the furlough (1)
- Expected duration of the furlough and the effective dates (2)
- Basis for selecting the appointee for furlough when not all SES appointees are being furloughed (3)
- Reason if the time of the notice is less than 30 days (4)
- Place where the appointee may inspect the regulations and records pertinent to the action (5)
- Appointee's appeal rights, including the time limit for the appeal and the office address of the MSPB to which the appeal should be sent (6)

I Records (F)

NRC shall maintain all records relating to an action under this part for at least 2 years from the effective date of the action.

Part VI

Appeals to the Merit Systems Protection Board

Appeals Regarding Reduction in Force (A)

A career appointee is entitled to appeal to the Merit Systems Protection Board (MSPB) under 5 U.S.C. 7701 for a decision on whether the RIF complies with the competitive procedures required under 5 U.S.C. 3595(a).

Appeals Regarding Furlough (B)

A career or probationary appointee who has been furloughed may appeal to MSPB for a decision on whether the NRC's procedures or the Office of Personnel Management's regulations have been correctly applied.

Glossary

Career Appointee. As used in this handbook, a career member of the Senior Executive Service (SES) who has completed or was not subject to the 1-year probationary period. Career SES employees who were not required to complete a probationary period because they converted to career SES appointments under Section 413 of the Civil Service Reform Act (CSRA) of 1978 shall be deemed to have successfully completed a probationary period.

Competitive Area. The geographic or organizational area within which employees compete for job retention in a reduction in force (RIF).

Competitive Level. All SES positions normally in the same occupational series, with essentially the same qualification requirements (including legal requirements, if any, related to appointment), duties, responsibilities, and working conditions, from which NRC may readily reassign an employee to any other position within the level without unduly interrupting the agency's work program.

Directed Reassignment. A management decision to reassign a career or probationary appointee to another SES position anywhere within the NRC, either within or outside the commuting area. A directed reassignment is not an offer of another position, and failure to accept a directed reassignment in the same commuting area is grounds for removal from the NRC under 5 U.S.C. Chapter 75. This removal is considered a voluntary separation and is not qualifying for discontinued service retirement or severance pay purposes. A career or probationary appointee who refuses a directed reassignment outside the commuting area also may be removed from NRC rolls under 5 U.S.C. Chapter 75. However, this removal is considered an involuntary separation and is qualifying for discontinued service retirement if the appointee is eligible, or for severance pay, provided there is no written mobility agreement.

Performance Group. Career and probationary appointees listed on the retention register according to the summary rating of record (last appraisal).

Glossary (continued)

Probationary Appointee. A career member of the SES who is subject to and has not completed the 1-year probationary period.

Reduction in Force. The release of a career or probationary appointee from a position in the SES because of a reorganization, lack of funds, curtailment of work, a determination that the position no longer meets the definition of an SES position in 5 U.S.C. 3132(a) because of a change in duties or responsibilities, a finding that the position was incorrectly designated an SES position, a withdrawal of SES spaces by the Office of Personnel Management, or other reasons that result in the elimination or modification of one or more SES positions.

Reinstatement. The noncompetitive reemployment as a career appointee in the SES of an individual who, under a previous career appointment, successfully completed the **SES** probationary period or did not have to serve one and is not otherwise barred under 5 CFR 317, Subpart G.

Retention Standing. An employee's relative position on a retention register based on his or her performance group, subgroup, and service date.

Service Date. For purposes of a RIF in the SES, the service date (SD) is the date used to identify an appointee's total creditable civilian service in the SES and Federal supergrade or equivalent appointments. In constructing the SD, additional credit is given for SES rank and performance awards and NRC Distinguished and Meritorious Service Awards as indicated in Part I (C)(4) of this handbook. In the event of a tie in service dates between two or more appointees, total creditable Federal service for leave purposes, military and civilian, as computed in accordance with the *Code of Federal Regulations* will be used as the tie-breaking mechanism.

Vacant Position. Any active established position that is not filled, whether or not formal recruitment for the position is underway.