

**U.S. NUCLEAR REGULATORY COMMISSION MANAGEMENT DIRECTIVE (MD)**

**MD 10.103      REDUCTION IN FORCE FOR  
NON-SES EMPLOYEES**

**DT-17-209**

*Volume 10,  
Part 4:*            Personnel Management,  
Labor Relations, Discipline, Grievances, Appeals, RIFs

*Approved By:*    Victor M. McCree  
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*Issuing Office:*    Office of the Chief Human Capital Officer  
Policy, Labor and Employee Relations Branch

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(names and phone numbers are listed [here](#))

**EXECUTIVE SUMMARY**

Management Directive 10.103, “Reduction in Force for Non-SES Employees,” is revised to—

- Clarify that approving modification of competitive areas can occur only after the Commission has been kept fully and currently informed about the changes under consideration;
- Provide updated competitive areas that include changes from prior competitive areas;
- Confirm the Executive Director for Operations must approve any action that involves the use of reduction in force procedures;
- Remove the responsibility formerly assigned to the Deputy Director for Management Services.
- Clarify procedures for providing additional service credit for performance ratings earned under various rating level patterns.
- Update language pertaining to performance ratings of record to conform to current regulations; and
- Clarify appeal/grievance rights to conform to current regulations.

## TABLE OF CONTENTS

<b>I. POLICY</b> .....	<b>2</b>
<b>II. OBJECTIVES</b> .....	<b>2</b>
<b>III. ORGANIZATIONAL RESPONSIBILITIES AND DELEGATIONS OF AUTHORITY</b> .....	<b>3</b>
A. Executive Director for Operations (EDO) .....	3
B. Inspector General (IG).....	3
C. Chief Human Capital Officer (CHCO) .....	3
D. Office Directors and Regional Administrators .....	4
<b>IV. APPLICABILITY</b> .....	<b>4</b>
<b>V. HANDBOOK</b> .....	<b>4</b>
<b>VI. REFERENCES</b> .....	<b>4</b>

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### **I. POLICY**

It is the policy of the U.S. Nuclear Regulatory Commission to ensure that reductions in force (RIFs) are administered in accordance with law, applicable regulations, and the policies and procedures contained in this management directive (MD).

### **II. OBJECTIVES**

- Institute RIF proceedings when necessary to ensure continued efficient and effective operations.
- Minimize the personal impact of a RIF on employees.
- Monitor conditions that may require a RIF, including but not limited to—
  - Reduction in personnel ceiling or funding;
  - Lack of funds;
  - Reorganization of the NRC or any of its components;
  - Adjustment in workload or mission requirements;
  - Elimination or modification of one or more positions as a result of reorganization; and
  - Curtailment of work.
- Allow the maximum feasible lead time to minimize the effect on morale and disruption of NRC operations and the workforce.
- Advise affected individuals of the regulations under which the RIF action is being taken and of their rights and benefits.
- Provide reasonable placement assistance to affected individuals.

### **III. ORGANIZATIONAL RESPONSIBILITIES AND DELEGATIONS OF AUTHORITY**

#### **A. Executive Director for Operations (EDO)**

1. Establishes and modifies competitive areas that would apply to RIFs.
2. Prior to changing existing competitive areas, keeps the Commission fully and currently informed.
3. Approves any action that involves the use of RIF procedures.
4. Determines whether vacancies should be frozen during a RIF.
5. Approves authorized exceptions from the regular retention order in a competitive level under Section III.C.4 or Section III.C.5 of the handbook of this directive.

#### **B. Inspector General (IG)**

1. Approves any action that involves the use of RIF procedures for non-Senior Executive Service (SES) employees reporting to the Inspector General.
2. Approves authorized exceptions from the regular retention order in a competitive level for Office of the Inspector General (OIG) employees under Section III.C.4 or Section III.C.5 of the handbook of this directive.

#### **C. Chief Human Capital Officer (CHCO)**

1. Reviews plans to conduct a RIF, provides staff advice and recommendations, and provides support for program implementation.
2. Recommends whether the Executive Director for Operations (EDO) should approve or disapprove an office director's or regional administrator's request to take any involuntary action involving the use of RIF procedures.
3. Develops agency procedures for implementing a RIF, consistent with appropriate laws, Office of Personnel Management (OPM) regulations, and published guidance.
4. Maintains liaison with OPM on RIF policy.
5. Makes final determinations on establishment of competitive levels and retention registers (except for OIG), and maintains appropriate records.
6. Provides final interpretations regarding the intent and applicability of this MD.
7. Approves modifications or waivers, in consultation with the gaining office director, of qualifications requirements in reassignment and change to lower grade actions when there is reasonable likelihood that employees who have the capacity, adaptability, and any special skills needed to perform the duties of vacant positions will successfully transition to those new positions.

#### **D. Office Directors and Regional Administrators**

1. Identify situations calling for application of RIF procedures and, after obtaining the recommendation of the Chief Human Capital Officer (CHCO), request the prior written approval of the EDO for any action that involves the use of RIF procedures.
2. Issue RIF notices, after approval of the EDO to employees under their jurisdiction who are reached for any RIF action. This authority may not be redelegated.
3. Keep employees informed concerning any RIF and, in conjunction with the CHCO, the procedures to be followed.

#### **IV. APPLICABILITY**

- A.** The policy and guidance in this directive and handbook apply to all NRC employees, except Presidential appointees and SES employees (see MD 10.138, "Reduction in Force in the Senior Executive Service") who are affected by a personnel action for which the RIF procedure is proper.
- B.** When provisions of the Collective Bargaining Agreement with the employees' exclusive representative are in conflict with the provisions of this MD with regard to bargaining unit employees and bargaining unit positions, the provisions of the agreement will govern.

#### **V. HANDBOOK**

Handbook 10.103, "Reduction in Force for Non-SES Employees," contains the requirements, practices, guidelines, and procedures relating to a non-SES RIF in the NRC.

#### **VI. REFERENCES**

##### ***Code of Federal Regulations***

- 5 CFR Part 334, "Temporary Assignments Under the Intergovernmental Personnel Act (IPA)."
- 5 CFR Part 351, "Reduction in Force."
- 5 CFR Part 353, "Restoration to Duty From Uniformed Service or Compensable Injury."
- 5 CFR Part 430, "Performance Management."
- 5 CFR Part 432, "Performance Based Reduction in Grade and Removal Actions."
- 5 CFR Part 630, Subpart I, "Voluntary Leave Transfer Program."
- 5 CFR Part 752, "Adverse Actions."
- 5 CFR Part 831, "Retirement."
- 5 CFR Part 842, "Federal Employees' Retirement System – Basic Annuity."

5 CFR Part 1201, "Practices and Procedures."

29 CFR Part 1614, "Federal Sector Equal Employment Opportunity."

### ***Nuclear Regulatory Commission***

Management Directive—

4.5, "Contingency Plan for Periods of Lapsed Appropriations."

10.1, "Recruitment, Appointments, and Merit Staffing."

10.41, "Pay Administration."

10.67, "General Grade Performance Management System."

10.99, "Discipline, Adverse Actions, and Separations."

10.101, "Employee Grievances."

10.148, "Senior Level Performance Appraisal System."

### ***Office of Personnel Management***

Guide to Processing Personnel Actions available at <https://www.opm.gov/policy-data-oversight/data-analysis-documentation/personnel-documentation/#url=Processing-Personnel-Actions>.

Workforce Reshaping Operations Handbook available at [https://www.opm.gov/policy-data-oversight/workforce-restructuring/reductions-in-force/workforce\\_reshaping.pdf](https://www.opm.gov/policy-data-oversight/workforce-restructuring/reductions-in-force/workforce_reshaping.pdf).

### ***United States Code***

5 U.S.C. 2302, "Prohibited Personnel Practices."

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

5 U.S.C. 3501, "Definitions; Application."

5 U.S.C. 3502, "Order of Retention."

5 U.S.C. 6302, "General Provisions."

5 U.S.C. 7103(a)(10), "Definitions; Application."

5 U.S.C. 7121, "Grievance Procedures."

5 U.S.C. 7511, "Definitions, Application."

5 U.S.C. 7543, "Cause and Procedure."

5 U.S.C. 7701, "Appellate Procedures."

5 U.S.C. 8336, "Immediate Retirement."

5 U.S.C. 8412, "Immediate Retirement."

5 U.S.C. 8414, "Early Retirement."

5 U.S.C. 8905, "Election of Coverage."

Inspector General Act of 1978, as amended (5 U.S.C. App. 3).

Intergovernmental Personnel Act of 1970 (5 U.S.C. 3371-3375).

Veterans' Preference Act of 1944, as amended (5 U.S.C. 2108).

Workforce Innovation and Opportunity Act, Pub. L. 113-128 (repealing the Workforce Investment Act of 1998, Pub. L. 105-220, 29 U.S.C. 2801 et seq.).

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## TABLE OF CONTENTS

<b>I. PRE-REDUCTION IN FORCE CONSIDERATIONS AND PLANNING.....</b>	<b>2</b>
A. Legal Requirements and Authorities.....	2
B. Planning.....	3
<b>II. RETENTION FACTORS.....</b>	<b>4</b>
A. Competitive Areas.....	4
B. Competitive Levels.....	4
C. Tenure Groups, Subgroups, and Service Dates.....	5
<b>III. CONDUCTING A REDUCTION IN FORCE.....</b>	<b>10</b>
A. RIF Action Approvals.....	10
B. Proper Documentation of Staffing and Position Evaluation.....	10
C. Order of Release From Retention Registers.....	11
D. Provision on Liquidation.....	13
E. RIF Actions.....	14
F. Related Actions and Entitlements.....	14
G. Notices of RIF Actions.....	17
H. Records.....	18
I. Special Provisions on Transfer of Function.....	19
<b>IV. APPEALS AND GRIEVANCES.....</b>	<b>20</b>
A. Right To Appeal or Grieve.....	20
B. Time Limits for Filing Appeals and Grievances.....	20
<b>V. PLACEMENT, PRIORITY REEMPLOYMENT, AND TRAINING.....</b>	<b>20</b>
A. Positive Outplacement.....	20
B. Reemployment Priority List.....	21
<b>VI. GLOSSARY.....</b>	<b>22</b>

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### **I. PRE-REDUCTION IN FORCE CONSIDERATIONS AND PLANNING**

#### **A. Legal Requirements and Authorities**

A reduction in force (RIF) is a management action taken to release a competing employee from his or her competitive level by separation or downgrade action because of an organizational reason such as a reorganization, lack of work, lack of funds, insufficient personnel ceiling, transfer of function, or the exercise of certain

reemployment or restoration rights. A furlough of more than 30 consecutive calendar days or 22 discontinuous work days is also a RIF action.

1. The Veterans' Preference Act of 1944, as amended, established requirements that must be observed by the NRC in the release of competing employees in a RIF and authorizes the Office of Personnel Management (OPM) to prescribe implementing regulations. These OPM regulations, contained in Title 5 of the Code of Federal Regulations (CFR) Part 351, cover the NRC with regard to RIF actions.
2. OPM RIF regulations permit, but do not require, excepted service agencies to provide for a second round of competition ("bumping" and "retreat" rights) in a RIF. The NRC does not provide for a second round of competition, therefore, those areas of OPM RIF regulations are not applicable to the NRC.
3. All other aspects of RIF regulations in 5 CFR Part 351 should be consulted, as needed, for clarification or amplification of guidance in this handbook.

## **B. Planning**

After considering mitigating strategies and alternative actions and before any RIF is initiated, the following actions should be taken:

1. The office director or the regional administrator who anticipates the likelihood of separating or downgrading one or more competing employees must submit a written statement to the Chief Human Capital Officer (CHCO) as far in advance of the anticipated effective date of the RIF as possible. The statement must include the following information:
  - (a) The specific reasons for the anticipated RIF action(s), such as a reorganization or abolishment of functions; and
  - (b) The number of positions likely to be affected, the names of the incumbents likely to be affected, and any specific reassignment action proposed for each affected employee, if appropriate.
2. The CHCO will—
  - (a) Review the statement described in Section I.B.1 of this handbook and ensure that all appropriate reassignments within the office have been made before referring the matter for approval by the Executive Director for Operations (EDO) to initiate any formal RIF or alternative action; and
  - (b) Identify any appropriate vacant positions elsewhere in the agency for which incumbents of the surplus positions are qualified or for whom a modification or waiver of qualifications would be approved.

3. The EDO will render a final decision whether to make specific directed reassignments or placement offers before a formal RIF. Employees in surplus positions may be reassigned at the EDO's discretion to vacant positions for which they are qualified without a formal RIF being conducted. The EDO will keep the Commission fully and currently informed of proposed reassignments or placement offers that will affect employees of Commission offices or offices reporting to the Chairman because of a planned RIF.

## **II. RETENTION FACTORS**

### **A. Competitive Areas**

Employees in a competitive area compete for retention only with other employees in the same competitive area. There is no minimum or maximum number of employees in a competitive area (5 CFR 351.402(b)).

1. Headquarters Offices

Each office in the Washington, D.C. area, including all organizational components within an office, regardless of physical location of the component, constitutes a separate competitive area.

The Office of the Inspector General (OIG) constitutes its own separate competitive area (5 CFR 351.402(d)).

2. Regional Offices

Each regional office, including all organizational components reporting directly to it, regardless of physical location, constitutes a separate competitive area.

3. Changing Competitive Areas

The EDO may modify competitive areas after keeping the Commission fully and currently informed of proposed changes. However, approval by OPM is required for any changes to existing competitive areas that are made less than 90 days before the effective date of a RIF.

### **B. Competitive Levels**

1. Within each competitive area, the NRC establishes competitive levels that include a group of interchangeable positions (5 CFR 351.403(a)).
2. A competitive level consists of positions in the competitive area that—
  - (a) Are in the same grade or occupational level;
  - (b) Are in the same classification series;
  - (c) Are similar enough in duties, qualifications requirements, pay schedules, work schedules, and working conditions so that the incumbent of one position can

successfully perform the duties and responsibilities of any other position in the level, without any loss of productivity beyond that normally expected in the orientation of any new but fully qualified employee; and

- (d) Have the same security clearance requirements.
- 3. When the four retention factors (tenure, veterans' preference, length of service, and performance ratings) are applied, the competitive level becomes a retention register that lists employees in the order of their relative retention standing.
- 4. The CHCO, or the Inspector General (IG) for OIG positions, makes the final determination as to which NRC positions are in the same competitive level on the basis of each employee's official position of record.
- 5. Separate competitive levels are required for positions that have differences in—
  - (a) Pay schedules (e.g., General Grade (GG), Wage Grade (WG), Senior Level (SN), Consultant (EG), Advisory Committee Member (EI));
  - (b) Work schedules (i.e., full-time vs. part-time vs. intermittent), except that separate competitive levels may not be established only on the basis of differences among part-time employees in the number of hours per week scheduled to be worked;
  - (c) Supervisory status (i.e., positions filled by supervisors or management officials, including team leaders who serve as full supervisors, as defined in 5 U.S.C. 7103(a)(10) and (11), will be in separate levels from those filled by nonsupervisors); and
  - (d) Formal designation as a trainee or developmental program.
- 6. Competitive levels are determined by the qualifications required by the duties and responsibilities of the position, not by the qualifications of particular incumbents.
- 7. All positions in the competitive area that meet the interchangeability criteria noted in Section II.B.2(c) in this handbook, and are not required to be in separate competitive levels, 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.

### **C. Tenure Groups, Subgroups, and Service Dates**

- 1. Four Retention Factors
  - (a) Relative retention preference of competing employees occupying positions within a competitive level is based on four retention factors:
    - (i) Tenure group;
    - (ii) Veterans' preference under RIF regulations;

- (iii) Length of creditable Federal service (including creditable time spent in military service); and
  - (iv) Credit for performance, which most often augments length of service.
- (b) A retention register includes competing employees within a competitive level, but excludes the following:
- (i) An employee on a temporary appointment limited to 1 year or less and who has not completed 1 year of current continuous service;
  - (ii) An employee in the competitive level on the basis of a temporary promotion. (The temporary promotion must be terminated before any competing employee is released from that competitive level. The employee is then a competing employee in the competitive level of the position in which placed upon termination of the temporary promotion.); and
  - (iii) An employee with a written decision to remove or demote him or her for “Unacceptable” performance (under 5 CFR Part 432) or because of an adverse action (under 5 CFR Part 752).

## 2. Tenure Groups

### (a) Group I

Employees with permanent NRC Regular (Excepted) appointments who are not serving a probationary or trial period.

### (b) Group II

Employees with permanent NRC Regular (Excepted) (Conditional) appointments and employees with permanent NRC Regular (Excepted) appointments who are serving a probationary or trial period.

### (c) Group III Employees with—

- (i) Term Noncareer (Excepted) appointments (i.e., time-limited appointments of more than 1 year);
- (ii) Temporary Noncareer (Excepted) appointments (i.e., time-limited appointments of 1 year or less that are extendable in increments of 1 year or less, where employees have completed 1 year of current continuous employment); or
- (iii) NRC Limited (Excepted) appointments (i.e., appointments without specific time limitations but which are not permanent).

### 3. Veterans' Preference Subgroups

Within each tenure group, employees are further grouped as follows:

#### (a) Subgroup AD

Includes each employee eligible for veterans' preference under RIF regulations who has a compensable service-connected disability of 30 percent or more.

#### (b) Subgroup A

Includes each employee eligible for veterans' preference under RIF regulations not included in Subgroup AD.

#### (c) Subgroup B

Includes each eligible employee without veterans' preference under RIF regulations.

### 4. Length of Service

(a) Within each subgroup, employees are ranked according to their service dates.

(b) OCHCO is responsible for establishing both the service computation date (SCD) for RIF purposes, which is a date representing the employee's total creditable Federal service (both civilian and military service, but not including any non-Federal service credit included in an employee's SCD for leave purposes), and the adjusted service computation date, which is the SCD augmented by credit for performance, applicable to each employee competing for retention (see Section II.C.5 of this handbook).

(c) The employee with the most (augmented) service ranks highest and the one with the least (augmented) service ranks lowest. Criteria for determining creditable civilian and military service are contained in OPM's "Guide to Processing Personnel Actions" (<https://www.opm.gov/policy-data-oversight/data-analysis-documentation/personnel-documentation/#url=Processing-Personnel-Actions>).

### 5. Service Credit for Performance

(a) Additional service credit for performance is allowed for ratings established under 5 CFR Part 430. In the NRC, these ratings are described in Management Directive (MD) 10.67, "General Grade Performance Management System," and MD 10.148, "Senior Level Performance Appraisal System," and approved by OPM in accordance with 5 CFR Part 430.

(b) In a competitive area where all ratings of record being credited are under a single pattern of summary levels, the additional credit is computed in accordance with Section II.C.5(d) of this handbook. In a competitive area where there are ratings of record under more than one pattern of summary levels, the NRC must establish values for summary levels at and above "Fully Successful" or equivalent within 12 to 20 years.

- (c) An employee's entitlement to additional service credit for performance will be based on the employee's last three annual performance ratings of record received during the 4-year period before the date of issuance of specific RIF notices. "Annual performance ratings of record" means the prescheduled ratings given normally once a year in accordance with 5 CFR Part 430.
- (d) The additional service credit an employee receives for performance will be expressed in additional years of service and will consist of the mathematical average (rounded in the case of a fraction to the next higher whole number) of the employee's last three annual performance ratings of record computed on the following basis:
  - (i) For each performance rating of "Outstanding" or equivalent, the employee will receive 20 additional years of service credit.
  - (ii) For each performance rating of "Exceeds Fully Successful" or equivalent, the employee will receive 16 additional years of service credit.
  - (iii) For each performance rating of "Fully Successful" or equivalent, the employee will receive 12 additional years of service credit.
- (e) Service credit for employees who do not have three actual annual ratings of record during the 4-year period before the date of issuance of specific RIF notices will be determined as follows:
  - (i) An employee who has not received any ratings of record for the 4-year period will receive credit for performance on the basis of the modal rating for the summary-level pattern that applies to the employee's official position of record at the time of the RIF (see Section VI of this handbook for definition of modal rating).
  - (ii) An employee who has received at least one but fewer than three previous ratings of record during the 4-year period will receive ratings of record on the basis of the value of the actual ratings of record divided by the number of actual ratings received. For example, if an employee has received only two actual ratings of record during the period, the value of the ratings will be added together and divided by 2 and rounded, in the case of a fraction, to the next higher whole number to determine the amount of additional retention service credit provided.

#### 6. Effective Date of Retention Standing

The factors, other than performance, that determine an employee's retention standing may change after the date of issuance of a RIF notice (e.g., movement from an NRC Regular [Excepted] [Conditional] appointment [Tenure Group II] to an NRC Regular [Excepted] appointment [Tenure Group I]). Any changes that will occur in these factors during the period of advance notice must be anticipated in determining the employee's retention standing. Normally, the determination of

retention standing on the basis of these factors is made as of the date of release from the competitive level.

#### 7. Retention Register

- (a) The retention register is a current record of all competing employees in the order of their relative retention standing in a single competitive level. The CHCO arranges the competing employees by tenure group, subgroup, and augmented service date, in the following descending order:
  - (i) By groups, the order is Group I, Group II, Group III.
  - (ii) Within each group, the order is Subgroup AD, Subgroup A, Subgroup B.
  - (iii) Within each subgroup, retention standing begins with the employee having the earliest (augmented) service date.
- (b) Except for employees on military duty with restoration rights, the retention register includes the name of each competing employee officially assigned to a position in the competitive level, regardless of whether the individual is—
  - (i) In a work status;
  - (ii) On paid or unpaid leave;
  - (iii) On nonmilitary furlough (see Section II.C.7(c) of this handbook for treatment of employees absent to perform military duty);
  - (iv) On detail to a position in another competitive level or another agency; or
  - (v) On temporary promotion to a position in another competitive level. (For this purpose, the employee's official position is the position from which he or she has been promoted on a temporary basis.)
- (c) An employee who is absent to perform military duty and has restoration rights is not included because such an employee has an absolute right to be restored to a position in the NRC upon completion of the military duty (5 CFR Part 353). See Section III.C.3(a) of this handbook for mandatory exceptions to retention order.
- (d) Employees who are not competing employees, as reflected in Section II.C.7(d)(i)-(iv) of this handbook, but who are officially assigned to positions in a competitive level for which a retention register is prepared, are listed apart from the retention register but on the same document. All these employees are separated through means other than a RIF (removal, termination of appointment, or change to a lower grade) from positions in the competitive level before any competing employees are released from the level through a RIF. These noncompeting employees are listed as follows:
  - (i) Name and expiration date of the appointment of each employee serving in the competitive level under a temporary appointment limited to 1 year or less who has not completed 1 year of current continuous service.

- (ii) Name and expiration date of the promotion of each employee serving in the competitive level under a specifically limited temporary promotion.
  - (iii) Name of each employee serving in the competitive level with a written decision under MD 10.67 or the Collective Bargaining Agreement (CBA), as appropriate, or MD 10.148, to demote him or her because of “Unacceptable” performance, or under 5 CFR Part 752 because of an adverse action. (Such an employee competes from the position to which he or she will be demoted.)
  - (iv) At the bottom of the list, the name of each employee serving in the competitive level with a written decision under MD 10.67 or the CBA, as appropriate, or MD 10.148, to remove him or her because of “Unacceptable” performance, or under 5 CFR Part 752 because of an adverse action.
- (e) A reemployed civil service annuitant serves at the will of the NRC and may be terminated at any time. However, if the NRC does not otherwise terminate the reemployed annuitant, his or her name is listed on the retention register, and he or she is a competing employee for RIF purposes.

### **III. CONDUCTING A REDUCTION IN FORCE**

#### **A. RIF Action Approvals**

1. If an office director or a regional administrator plans to take any action for which the use of RIF procedures is proposed, he or she must discuss the situation with the CHCO. The office director or the regional administrator will forward a request to apply RIF procedures through the CHCO for his or her recommendation to the EDO for approval.
2. The office director or the regional administrator will recommend which position(s) under his or her jurisdiction are to be abolished or modified using RIF procedures; the EDO will make the final determination. Prior to making such determination, the EDO will keep the Commission fully and currently informed about his or her planned decision. Once that determination has been made, the CHCO determines which employee(s) will be affected by applying the procedures below to the competitive level(s) of the position(s) to be abolished or modified.

#### **B. Proper Documentation of Staffing and Position Evaluation**

Before the initiation of any action using RIF procedures, the CHCO will ensure that each employee's placement in his or her position in the affected competitive area is properly documented.

### **C. Order of Release From Retention Registers**

#### **1. Removal of Noncompeting Employees From Competitive Level**

Before releasing any employee from his or her competitive level through RIF action (i.e., separation, downgrade, transfer of function, or furlough for more than 30 days), noncompeting employees must be removed from the competitive level by appropriate means other than RIF action (i.e., removal, termination of appointment, or change to a lower grade).

#### **2. Release of Competing Employees**

After all noncompeting employees have been removed from the competitive level, competing employees will be selected for release from the competitive level in the inverse order of their retention standing, starting with the employee with the lowest standing on the retention register as follows:

- (a) All employees in Group III are released before any in Group II, and all employees in Group II are released before any in Group I (see Section II.C.2 of this handbook for tenure groups).
- (b) Within each group, all employees in Subgroup B are released before any in Subgroup A, and all employees in Subgroup A are released before any in Subgroup AD (see Section II.C.3 of this handbook).
- (c) Within each subgroup, employees are released in the order of their (augmented) service dates, beginning with the most recent (augmented) service date. When employees in the same subgroup have identical (augmented) service dates and are thus tied for release, the NRC will break ties on the following bases:
  - (i) Length of NRC service, and if a tie remains;
  - (ii) Time within grade, and if a tie remains;
  - (iii) By lottery.

#### **3. Mandatory Exceptions to Retention Order**

- (a) Each Group I or II employee restored after active military duty is entitled to retention as specified in 5 CFR Part 353 (i.e., retention for 6 months following restoration from active duty for training in the case of a Reserve member, or for 1 year following restoration from active duty for other purposes). Therefore, each of these employees will be retained over all others in the same subgroup until the completion of the retention period. Such an employee may be given a RIF notice, the effective date of which corresponds with the expiration of the retention period; however, the notice may not be issued more than 90 days before the effective date of the RIF without prior approval from OPM. Reasons for this deviation from the regular order of selection must be recorded on the retention register and be available for inspection by all other affected employees.

(b) An employee entitled to retention after military restoration may not be retained over any employee in a higher retention subgroup but must be released from the competitive level before any employees in any higher subgroup are released. However, if an employee entitled to retention after restoration is thus released from his or her competitive level in a RIF during his or her statutory retention period, the NRC has the same obligation to find him or her another position as it has when acting on an application for restoration from an employee whose position at the time of entry on military duty is no longer available (5 CFR Part 353).

#### 4. Continuing Exceptions to Retention Order

(a) As authorized by the EDO, the NRC may retain a lower-standing employee reached for release from a competitive level in a position that no higher-standing employee in the competitive level can take over within 90 days and without undue interruption to the activities (5 CFR Part 351.607). In these circumstances, the EDO may authorize a permanent exception to the normal retention order.

(b) When this authority is used, the exception and the reasons for it must be reported in writing to each higher-standing employee reached for release. "Undue interruption" might be shown, for example, when at the time of the RIF some special project or assignment has reached a stage so critical that replacement of the employee would delay the completion more than 3 months. A continuing exception also may be justifiable to avoid interruption or untimely termination of an assignment that has more than 90 days to run to a State, local government, or institution of higher learning under authority of the Intergovernmental Personnel Act.

(c) If the EDO authority, described in Section III.C.4(a) and (b) of this handbook, would affect employee(s) in offices reporting to the Commission or Chairman, prior to exercising this authority the EDO will keep the Commission fully and currently informed.

#### 5. Discretionary Temporary Exceptions to Retention Order

The EDO may, under the following circumstances, authorize temporary exceptions to the retention order for up to 90 days (or for a longer period only as described below) after the effective date of a RIF, when needed to retain an employee.

##### (a) Undue Interruption

The NRC may use a temporary exception to retain a lower-standing employee reached for release from a competitive level in a position that no higher-standing employee in the competitive level can take over without undue interruption to the activity; or to avoid interruption or untimely termination of an assignment that will terminate within 90 days to a State, local government, or institution of higher education under authority of the Intergovernmental Personnel Act.

(b) Government Obligation

The NRC also may use a temporary exception to retention order when temporary retention is the only way the NRC can satisfy a Government obligation to the retained employee. For example—

- (i) Delaying the effective date of the employee's release long enough to allow a full 30-day notice period as when the employee is absent from the regular duty station on official business, annual leave, or sick leave and cannot receive the notice the same day as higher standing employees.
- (ii) For an employee on travel, delaying the effective date of the employee's release because return travel cannot be provided as soon as for a higher standing employee or because the employee is incapacitated and cannot travel.

(c) Employee Assistance

The NRC also may use a temporary exception to help an employee administratively when the exception does not affect the rights of any higher standing employee who is released ahead of the excepted employee. For example, such an exception may be used when an employee is on approved sick leave on the scheduled effective date of separation by a RIF. Under these circumstances, the ill employee may be retained until the sick leave is exhausted or until the individual has recovered sufficiently to be no longer entitled to sick leave, and the temporary exception may extend beyond 90 days but may not exceed the date the employee exhausts his or her sick leave.

(d) Notice of Exception

When the NRC retains an employee under a temporary exception for more than 30 days after the effective release date of a higher standing employee in the same competitive level, higher standing employees must receive a written notice explaining why the exception is made and when the lower standing employee's retention will end. Additionally, the NRC must list opposite the retained employee's name on the retention register the reasons for the exception and the date the employee's retention will end. When the lower standing employee is retained for 30 days or less, individual notices to higher standing employees are not required, but the same information must be posted on the retention register.

**D. Provision on Liquidation**

When the NRC is liquidating an entire competitive area and no position will last longer than 180 days, it releases the employees in subgroup order, but may release them regardless of their retention standing within a subgroup, except in the case of an employee retained under a mandatory exception (see Section III.C.3 of this handbook). The NRC may use both continuing exceptions and temporary exceptions in taking actions under the liquidation provision (5 CFR 351.605).

## **E. RIF Actions**

At the NRC's option, a competing employee reached for release from a competitive level may be furloughed, separated, or offered placement in a vacant position at the same or a lower grade in lieu of separation.

### **1. Furlough**

A competing employee may be furloughed only if the NRC intends to recall the individual to duty within 1 year. A furlough may not extend beyond 1 year. When it is necessary to furlough an employee for no more than 30 days because of lack of work or funds, the furlough is not a RIF action but is processed in accordance with MD 10.99, "Discipline, Adverse Actions, and Separations." Nevertheless, in these cases the retention standing of the employees may, at the discretion of the NRC, be used as the basis for selecting employees when some but not all in a competitive level must be furloughed for no more than 30 days (5 CFR 351.604). For information on situations in which the NRC experiences a funding lapse, see MD 4.5, "Contingency Plan for Periods of Lapsed Appropriations."

### **2. Use of Vacancies**

- (a) The NRC is not required by law or regulation to fill vacancies in a RIF; it may fill all the vacancies in a competitive area, or only those it chooses to fill, or none. This is true even if not filling a vacancy means that an employee reached for release from his or her competitive level must be separated by a RIF (5 CFR 351.201).
- (b) When the NRC chooses to fill a vacant position with an employee released from a competitive area, the NRC must make the offer consistent with OPM's RIF regulations (5 CFR 351.201(c)).

## **F. Related Actions and Entitlements**

### **1. Use of Annual Leave To Establish Initial Eligibility for Retirement or Continuation of Health Benefits**

- (a) An employee with a notice of involuntary separation who would be separated by RIF procedures or by adverse action procedures after declining an offer of relocation (including transfer of function) may elect to use annual leave and remain on the agency's rolls in order to establish initial eligibility for immediate retirement and/or to meet the threshold requirement for the continuation of health benefits coverage into retirement.
- (b) Annual leave that may be used for the purposes described above includes all accumulated, accrued, and restored annual leave to the employee's credit before the effective date of the RIF or relocation (including transfer of function) and annual leave earned by an employee while in a paid leave status after the effective date of the RIF or relocation (including transfer of function).

(c) Annual leave advanced to an employee that is credited to an employee's annual leave account after the effective date of the RIF or relocation (including transfer of function) may not be used for this purpose.

(d) The NRC may approve the use of any or all annual leave donated to an employee through the Voluntary Leave Transfer Program up through the effective date of the RIF or relocation (5 CFR Part 630, Subpart I).

## 2. Retained Grade and Pay, and Severance Pay

MD 10.41, "Pay Administration," contains information concerning retained grade and pay for employees accepting a change to a lower grade in lieu of separation in a RIF and information concerning severance pay for employees who are separated in a RIF.

## 3. Discontinued Service Retirement and Voluntary Retirement During a RIF

### (a) Discontinued Service Retirement

An employee under the Civil Service Retirement System (CSRS) or Federal Employees Retirement System (FERS) who is separated from the NRC by a RIF is eligible for an immediate annuity if all of the following conditions are met:

- (i) The employee has not declined a reasonable offer of a position in the NRC for which he or she is qualified. (A "reasonable offer" means a position in the employee's same commuting area [unless the employee is under a "mobility agreement"], with the same tenure and work schedule, and not lower than two grades below the employee's current position. For these purposes, "mobility agreement" means a written agreement or statement in the employee's position description or other document that requires mobility.)
- (ii) An employee covered under CSRS has been employed under the retirement system for at least 1 year within the 2-year period immediately preceding the separation on which the annuity is based. (The "1 out of 2" requirement does not apply to employees covered under FERS.)
- (iii) The employee meets either of the following minimum requirements (applicable to both the CSRS and the FERS employees):
  - Age 50 and completion of 20 years of creditable service, including 5 years of civilian service, or
  - Regardless of age, completion of 25 years of civilian service.

### (b) Early Voluntary Retirement During a Major RIF

#### (i) Applicability

An employee under the retirement system who meets all of the conditions for discontinued service retirement is eligible for an immediate early voluntary

(i.e., optional) retirement if OPM has designated the NRC as an agency undergoing a major RIF, reorganization, or transfer of function.

(ii) Purpose of Major RIF Early Retirement Option

Permitting employees to exercise the major RIF early retirement option can assist the agency in carrying out a major RIF with less than usual disruption to the workforce. This goal is accomplished by allowing eligible employees over a large part of the organization to volunteer for retirement before a RIF is actually effected, thereby permitting the NRC to determine in advance the overall effect of retrenchment in a particular geographic or occupational area. These voluntary retirements will thus reduce the number of involuntary separations that must be made.

(c) Distinctions Between Major RIF Early Voluntary Retirements and Discontinued Service Retirements

- (i) Employees who meet the age and service requirements are eligible for a discontinued service annuity only if their own position was abolished or they are reached for separation by a RIF. In contrast, under early voluntary authority these employees have the option of retiring voluntarily even though they are not reached in the RIF if they are serving in any position for which the major RIF early retirement option has been authorized.
- (ii) If an employee retires on a discontinued service annuity after involuntary separation and is later reemployed, a new retirement right is acquired if the reemployment is not excluded from retirement coverage. On the other hand, when an employee exercises the major RIF early retirement option, retirement will be treated as optional; and if the employee is later reemployed, the pay on reemployment is reduced by the amount of the annuity. Note: An employee, when advised of the major RIF early retirement option, should be informed of the difference in future retirement rights if later reemployed.
- (iii) Whether the retirement is voluntary (major RIF) or involuntary (discontinued service) will affect individuals who are later reemployed in the civil service. If the retirement was voluntary (e.g., major RIF), upon reemployment the annuity continues but the employee's pay is reduced by the amount of the annuity unless otherwise provided by law or appropriate administrative authority such as OPM. If the annuity was based on discontinued service, upon reemployment the annuity would stop and the employee would receive normal retirement credit for any additional service time and the salary as a reemployed annuitant could be used in computing the annuity when the person retires for a second time. In contrast, a recalculated annuity is provided to voluntary retirees only if they are reemployed for a minimum of 5 years, unless otherwise provided by law or an appropriate administrative authority, such as OPM.

## **G. Notices of RIF Actions**

### **1. Issuances of Notices**

- (a) Employees to be released from a competitive level by means of separation, change to a lower grade, or furlough in excess of 30 calendar days, must be given advance written notice of the proposed action and pertinent information concerning the rights set forth in Section III.G.3 and G.4 of this handbook.
- (b) A RIF notice is an official communication addressed to the employee and issued by an authorized NRC official.
- (c) The employee must receive the notice at least 60 calendar days before the date of release; there is no maximum RIF notice period under OPM's notice regulations. In counting the 60-day minimum notice period, the NRC omits the day the employee receives the notice and the effective date of the RIF action. A Saturday, Sunday, or Federal legal holiday may not count as the last day of the period.
- (d) The NRC will comply with the requirement that it make diligent efforts to ensure that the employee receives the notice.

### **2. Expiration of Notice**

- (a) A RIF notice expires when it is followed by the action it specifies, or an action less severe than it specifies, or an action less severe than specified in an amendment made to the notice before the action is taken. (See Section III.G.4 of this handbook for requirements if the action to be taken is more severe than that stated in the notice.)
- (b) The NRC will give an employee an amended notice if the RIF is changed to a later date. However, a RIF action taken after the date specified in the notice is not invalid for that reason, except when it is challenged by a higher standing employee in the competitive level who is reached out of order for a RIF action as a result of the change in dates.
- (c) The NRC will not take a RIF action before the effective date in the notice given to the employee.

### **3. Contents of Notice**

Before the NRC releases an employee from a competitive level, a notice must be given that states specifically what action the NRC intends to take, the effective date of that action, the reasons for the action, and the employee's subgroup, service date, and annual performance ratings of record received during the last 4 years. The notice must describe the employee's competitive area and competitive level, where regulations and records pertinent to the case may be inspected, why any lower standing employee is retained in the competitive level for more than 30 days, and information on repromotion or reemployment rights, as appropriate. (See Section V

of this handbook for placement, priority reemployment, and training.) The notice must also advise the employee about any applicable appeal rights.

#### 4. Additional Notice Requirements for RIF Separations

The NRC must provide employees to be separated by RIF, either in or with the RIF notice or as a separate supplemental notice, with information on—

- (a) Severance pay, if eligible, including an estimate;
- (b) Benefits available through the State under the Workforce Innovation and Opportunity Act;
- (c) Authorizing the release of the employee's resume to potential employers;
- (d) Registration for the Reemployment Priority List; and
- (e) How to apply for unemployment compensation through the appropriate State office.

#### 5. New Notice Period Required

A new notice of at least 60 full days (or 30 days if the NRC has obtained OPM approval for a shorter notice period under 5 CFR 351.801(b)) is required whenever the action to be taken is more severe than specified in the prior notice to the employee.

#### 6. Status During Notice Period

When possible, the employee will be retained on active duty throughout the notice period. In an emergency, because of lack of work or funds for all or part of the notice period, the employee may be placed on annual leave with or without consent, on leave without pay with consent, or in a nonpay status without consent (e.g., furlough).

### H. Records

#### 1. Period of Retention

The CHCO maintains at all times the records necessary to determine the retention standing of NRC employees. After the date of issuance of a specific RIF notice to any employee(s), all records relating to the RIF are retained by the CHCO for at least 1 year.

#### 2. Basic Information for Retention Standing

- (a) The following is the basic information needed to determine retention standing in a RIF:
  - (i) Identity of employee (name);
  - (ii) Identity of official position, including title, series, grade, and pay, and competitive level designation;

- (iii) Position description;
- (iv) Organizational location of position;
- (v) Basis on which employed (full-time, part-time, or intermittent);
- (vi) Tenure group;
- (vii) Veterans' preference;
- (viii) Record of creditable service for RIF;
- (ix) Employee's last three annual performance ratings of record (within 4 years);  
and
- (x) Retention right, if any, to be retained after mandatory restoration on completion of military duty.

(b) The official personnel folder (or appropriate automated record) is the principal but not necessarily the only source of needed information. In addition to this information, the CHCO shall maintain copies of any RIF notices issued and of any background information deemed appropriate.

### 3. Availability of Information to OPM

Retention registers and related records are open to representatives of OPM at all times.

### 4. Availability of Information to NRC Employees

- (a) An employee who has received a specific RIF notice, and/or the employee's representative if the representative is acting on behalf of that employee, has the right to review agency records used by the agency in a RIF action that was taken or will be taken against the employee. These records should include the complete retention register with the released employee's name and other relevant retention information, including the names of all other employees listed on the register, their individual service computation dates (SCDs), and their adjusted SCDs. This information is necessary so that the employee may consider how the agency constructed the competitive level and how the agency determined the relative retention standing of the competing employees.
- (b) An employee's right to the information described (when the employee has not received a RIF notice) will be addressed on a case-by-case basis when the issue arises, consistent with applicable law.

## I. Special Provisions on Transfer of Function

Transfer of any or all of the NRC functions in a competitive area to one or more other continuing competitive areas (except when the function involved is virtually identical to functions already being performed in the other competitive area(s) affected), or the movement of the competitive area in which the function is performed to another

commuting area, requires that all employees in the losing area be identified with reference to the function in order to determine their rights and obligations. Note that a transfer of function does not limit the NRC's authority to assign employees to meet the needs of the agency. They may be reassigned to different jobs and different duty stations where they are needed.

## **IV. APPEALS AND GRIEVANCES**

### **A. Right To Appeal or Grieve**

1. An employee who is not in the bargaining unit at the NRC and has been affected by a RIF action may appeal to the Merit Systems Protection Board (MSPB).
2. Consistent with 5 U.S.C. 7121(d), if the employee is a member of the bargaining unit who is therefore covered by a grievance procedure in the CBA, a different appeal procedure applies. Specifically, if the grievance procedure in the CBA does not exclude RIF, the employee's appeal right is under the grievance procedure in the CBA, not MSPB.
3. An employee whose RIF appeal is based in whole or part on alleged equal employment opportunity (EEO) discrimination prohibited by 5 U.S.C. 2302(b)(1), has additional options. That employee may appeal or challenge the RIF action under the grievance procedure in the CBA or one of two processes established by statute. These statutory processes are—
  - (a) Appealing to MSPB, or
  - (b) Filing an EEO complaint under the NRC's EEO complaint process pursuant to 29 CFR Part 1614.
4. Appeals available to those affected by a RIF action are complex and will be explained in RIF notifications issued to employees.

### **B. Time Limits for Filing Appeals and Grievances**

Employees should refer to MSPB regulations or to the NRC's CBA or EEO complaint procedures for information on time limits for filing appeals and grievances.

## **V. PLACEMENT, PRIORITY REEMPLOYMENT, AND TRAINING**

### **A. Positive Outplacement**

1. Employees who face separation, furlough, or change to a lower grade may apply for and will be considered for all vacancies throughout the NRC to the extent that the individual indicates availability as to location and type of employment. To the extent practical, affected employees may receive assistance and information to help obtain other employment, including assistance in resume preparation and development of interviewing skills. In addition, as feasible and desirable, and to the extent permitted by legal requirements governing the use of appropriate funds, positive outplacement

efforts will be made by the CHCO, who will contact other Federal agencies and State, local, and private employers to identify suitable vacancies.

2. "Certification of Expected Separation" (CES) allows otherwise eligible employees to participate in dislocated worker programs under the Workforce Innovation and Opportunity Act administered by the U.S. Department of Labor (5 CFR 351.807(a)). The NRC may issue a CES to competing employees up to 6 months before the expected effective date of a RIF only when the NRC determines the following:
  - (a) There is a good likelihood that the employee will be separated by a RIF;
  - (b) Employment opportunities in the same or similar position in the local commuting area are limited or nonexistent;
  - (c) Placement opportunities within the employee's own or other Federal agencies in the local commuting area are limited or nonexistent; and
  - (d) If eligible for optional retirement, the employee has not filed a retirement application or otherwise indicated in writing an intent to retire.
3. The CES must be addressed to each individual eligible employee, contain the expected date of the RIF, and a description of Workforce Innovation and Opportunity Act programs, the NRC's reemployment priority list, and the interagency placement program of OPM. The CES does not meet any of the notice requirements for a RIF covered in Section III of this handbook. An employee may not appeal a CES to OPM or to the MSPB.

## **B. Reemployment Priority List**

An employee in Group I or II, upon separation by a RIF, will be placed on the NRC's Reemployment Priority List (RPL) for all positions covered by this MD for which he or she qualifies and is available in the commuting area of the position from which separated. The employee will be placed on the RPL as soon as the NRC knows the employee will be separated. Unless the employee's name is deleted, the former Group I employee will remain on the list for 2 years, and the former Group II employee will remain on the list for 1 year. Full-time employees are considered only for full-time positions; other than full-time employees are considered only for other than full-time positions. Individuals on RPLs receive priority consideration for reemployment in accordance with MD 10.1, "Recruitment, Appointments, and Merit Staffing."

1. Deletion of an Employee's Name From the List
  - (a) An employee's name is deleted from the RPL when the employee submits a written request to the NRC asking that his or her name be deleted.
  - (b) A full-time employee's name is also deleted from the RPL when the employee accepts a full-time NRC Regular (Excepted) or Regular (Excepted) (Conditional) position, or declines such a position with a representative rate the same as, or higher than, that of the position from which he or she was separated.

(c) An other than full-time employee's name is also deleted from the RPL when the employee accepts an NRC Regular (Excepted) or Regular (Excepted) (Conditional) position, or declines such a position with a representative rate and regularly scheduled administrative work week the same as, or more than, that of the position from which he or she was separated.

## 2. Repromotion Priority List

An employee in Group I or II who has accepted a change to a lower grade in lieu of separation by a RIF will be placed on an RPL for repromotion to vacant positions for which qualified at the individual's former grade level or an intervening grade level. The employee's name will be retained on that list for 1 or 2 years respectively for Groups II and I and deleted if applicable. Individuals on RPLs receive priority consideration for promotion in accordance with MD 10.1.

## VI. GLOSSARY

### **Adjusted Service Computation Date**

An employee's SCD, which includes all creditable military and civilian service, also referred to as "RIF SCD," augmented by the addition of up to a maximum of 20 years of service for performance ratings of record of "Fully Successful" (or equivalent) or higher earned during the three appraisal periods (or the last 4 years) before the date of the RIF.

### **Annual Performance Rating of Record**

The prescheduled rating given normally once a year in accordance with 5 CFR Part 430.

### **Certificate of Expected Separation (CES)**

May be issued to an employee when the NRC determines there is a likelihood that the employee will be separated by RIF within 6 months, and employment and placement opportunities in the employee's local commuting area are limited or nonexistent. While not a specific RIF notice, a CES allows an otherwise eligible employee to participate in some or all of the dislocated worker programs under the State Workforce Innovation and Opportunity Act programs administered by the U.S. Department of Labor.

### **Commuting Area**

The geographical area that usually constitutes one area for employment purposes as determined by the agency. It includes any population center (or two or more neighboring ones) and the surrounding localities in which people live and can reasonably be expected to travel back and forth daily to their normal employment.

### **Competing Employee**

An employee in tenure Group I, II, or III (5 CFR 351.203).

### **Competitive Area**

That part of the NRC, defined by organization and/or geographic location, in which employees compete in RIF actions. (See Section II of this handbook.)

### **Competitive Level**

The group of NRC positions in a competitive area in the same grade or occupational level and classification series that are similar enough in duties, qualification requirements, pay schedules, and working conditions that the incumbent of one position could successfully perform in any other position in the group without undue interruption of more than 90 days.

### **Current Rating of Record**

The rating of record for the most recently completed appraisal period.

### **Days**

Calendar days.

### **Furlough**

Under RIF regulations, the placement of an employee in a temporary nonduty and nonpay status for more than 30 consecutive calendar days, or more than 22 workdays if done on a noncontinuous basis, but not more than 1 year when the action is based on one of the RIF reasons and is not in accordance with preestablished conditions of employment.

“Furlough” under adverse actions regulations, typically used in a lapse in appropriations, means the placement of an employee in a temporary nonduty and nonpay status for 30 continuous days or less, or 22 discontinuous days or less.

### **Modal Rating**

The summary rating level assigned most frequently among the actual ratings of record that are assigned under the summary-level pattern that:

- applies to the employee's position of record on the date of the RIF;
- is given within the same competitive area, or at the agency's option, within a larger subdivision of the agency or agencywide; and
- is on record for the most recently completed appraisal period before the date of issuance of RIF notices, after which no new ratings will be put on the record.

### **Noncompeting Employees**

Those employees who:

- are not in Tenure Group I, II, or III;
- hold temporary or term promotions or temporary or term reassignments; and
- have received a written decision of removal or demotion from a position in the competitive level because of “Unacceptable” performance or because of adverse action.

An employee who has received a written decision of demotion because of “Unacceptable” performance or adverse action competes for retention for the position to which the employee will be, or has been, demoted.

### **Notice**

As used in this MD, a specific written communication from an agency official to an individual employee stating that the employee will be reached for a RIF action and providing the required information specified in Section III.G.3 of this handbook. Prior to effecting a RIF, the NRC may issue a general RIF notice to alert agency employees to the possibility of a RIF or a certificate of expected separation to an employee who is likely to be separated by RIF within 6 months.

### **Reduction in Force (RIF)**

The release of an employee from his or her competitive level by separation, demotion, transfer of function, or furlough for more than 30 days when lack of work or funds, reorganization, or reevaluation as a result of a change in duties, or the need to make a place for a person exercising reemployment or restoration rights requires the NRC to release the employee.

### **Reorganization**

For RIF purposes, the planned elimination, addition, or redistribution of functions or duties in or across an organization (5 CFR 351.203).

### **Retention Register**

A list of competing employees within a competitive level who are grouped by tenure, veterans’ preference, and length of service augmented by performance credit.

### **Retention Standing**

An employee's relative standing on a retention register based on tenure, veterans’ preference, and length of service augmented by performance credit.

**Service Computation Date (SCD)**

A date, either actual or constructed, that is used to determine benefits on the basis of the length of Federal service. The RIF SCD is used, along with the other retention factors, in determining an employee's retention standing.

**Tenure**

The period of time an employee may reasonably expect to serve under a current appointment.

**Transfer of Function**

The transfer of the performance of a continuing function from one competitive area and its addition 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 the movement of the competitive area in which the function is being performed to another commuting area (5 CFR 351.203).

**Undue Interruption**

A degree of interruption that would prevent the completion of required work by the employee 90 days after the employee has been placed in a different position. The 90-day standard should be considered within the allowable limits of time and quality, taking into account the pressures of priorities, deadlines, and other demands. However, a work program would generally not be unduly interrupted even if an employee needed more than 90 days after the RIF to perform the optimal quality or quantity of work. The 90-day standard may be extended if placement is made to a vacant position.