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DIRECTIVE TRANSMITTAL

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To: NRC Management Directives Custodians

Subject: Transmittal of Management Directive 10.103, "Reduction in Force for Non-SES Employees"

Purpose: Directive and Handbook 10.103 replace Manual Chapter 4170, "Non-SES Reduction in Force." The new directive and handbook incorporate changes to reduction in force regulations enacted since the last publication of the Manual Chapter.

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Directive: 10.103 Reduction in Force for NON-SES Employees

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Reduction in Force for Non-SES Employees

Directive

(Formerly
MC 4170) 10.103

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Volume: 10 Personnel Management

Part: 4 Labor Relations, Discipline, Grievances, HR
Appeals, RIFs

Reduction in Force for Non-SES Employees Directive 10.103

Policy

(10.103-01)

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

Objectives

(10.103-02)

- To institute RIF proceedings only when necessary to ensure continued efficient and effective operations. (021)
- To minimize the personal impact of a RIF on employees. (022)
- To monitor conditions that may require a RIF, including but not limited to (023)
 - Reduction in personnel ceiling or funding (a)
 - Lack of funds (b)

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Objectives

(10.103-02) (continued)

- 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)
- To allow the maximum feasible lead time to minimize the effect on morale and disruption of NRC operations and the workforce. (024)
- To advise affected individuals of the regulations under which the RIF action is being taken and of their rights and benefits. (025)
- To provide reasonable placement assistance to affected individuals. (026)

Organizational Responsibilities and Delegations of Authority

(10.103-03)

Executive Director for Operations (EDO)

(031)

- Directs the initiation of a RIF in the NRC. (a)
- Determines whether vacancies should be frozen during any RIF. (b)

Organizational Responsibilities and
Delegations of Authority
(10.103-03) (continued)

Executive Director for Operations (EDO)
(031) (continued)

- Approves authorized exceptions from the regular retention order in a competitive level (see Part III(C)(4) of Handbook 10.103). (c)

Inspector General (IG)
(032)

- Directs the initiation of a RIF in the OIG. (a)
- Approves any action that involves the use of RIF procedures for non-SES employees reporting to him or her. (b)
- Approves exceptions from the regular retention order in a competitive level. (c)

Deputy Executive Director for
Management Services (DEDM)
(033)

Gives prior approval to any action involving the use of RIF procedures that affects only one employee.

Director, Office of Human Resources (HR)
(034)

- Develops agency procedures for implementing a RIF, consistent with appropriate laws and regulations of the Office of Personnel Management (OPM). (a)

Organizational Responsibilities and
Delegations of Authority
(10.103-03) (continued)

Director, Office of Human Resources (HR)
(034) (continued)

- Maintains liaison with OPM on RIF policy. (b)
- Reviews plans to conduct a RIF, provides staff advice and recommendations, and provides support for program implementation. (c)
- Provides final interpretations regarding the intent and applicability of this directive and handbook. (d)

Office Directors and
Regional Administrators
(035)

- Identify situations calling for application of RIF procedures and, after obtaining the recommendation of the Director of HR, request the prior written approval of the EDO or the DEDM, as appropriate, for any action that involves the use of RIF procedures. (a)
- Issue RIF notices, with the approval of the EDO or the DEDM, as appropriate, and with the prior concurrence of the Director of HR, to employees under their jurisdiction who are reached for any RIF action. This authority may not be redelegated. (b)
- Keep employees informed concerning any RIF and, in conjunction with the Director of HR, concerning the procedures to be followed. (c)

Applicability

(10.103-04)

The policy and guidance in this directive and handbook apply to all NRC employees, except Presidential appointees and Senior Executive Service (SES) employees (see Management Directive and Handbook 10.138, "Reduction in Force in the Senior Executive Service"), who are affected by a personnel action for which the RIF procedure is proper.

Handbook

(10.103-05)

Handbook 10.103 contains the requirements, practices, guidelines, and procedures relating to a non-SES RIF in the NRC.

References

(10.103-06)

Code of Federal Regulations—

5 CFR Part 351, "Reduction in Force."

5 CFR Part 353 on restoration after military duty.

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

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."

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References

(10.103-06) (continued)

5 CFR Part 752, "Adverse Actions."

5 CFR Part 831, "Retirement."

5 CFR Part 842, "Federal Employees' Retirement System."

5 CFR Part 1201, "Practices and Procedures."

NRC Management Directives—

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

10.1, "Appointments, General Employment Issues, Details, and Position Changes."

10.41, "Pay Administration."

10.67, "Non-SES Performance Appraisal System."

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

10.101, "Employee Grievances and Appeals of Adverse Actions."

Office of Personnel Management, "Guide to Processing Personnel Actions," June 1994.

United States Code—

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

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

References

(10.103-06) (continued)

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

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

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

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

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 (Pub. L. 95-452, as amended).

Veterans' Preference Act of 1944.

Reduction in Force for Non-SES Employees

Handbook

(Formerly
Appendix
4170)

10.103

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Part I Preliminary Actions

Legal Requirements and Authorities (A)

The Veterans' Preference Act of 1944, as amended, establishes requirements that must be observed by the NRC in the release of competing employees in a reduction in force (RIF) and authorizes the Office of Personnel Management (OPM) to prescribe implementing regulations. These OPM regulations (contained in 5 CFR Part 351) cover NRC with regard to RIF actions. (1)

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. Since the NRC has decided not to provide for a second round of competition, those areas of OPM RIF regulations that pertain to these rights are not applicable to the NRC. (2)

In all other aspects of RIF regulations, 5 CFR Part 351 should be consulted, as needed, for clarification or amplification of guidance in this handbook. (3)

Collective Bargaining Agreement (B)

When provisions of the Collective Bargaining Agreement with the employees' exclusive representative are in conflict with the provisions of this handbook with regard to bargaining unit employees and bargaining unit positions, the provisions of the agreement will govern.

Planning (C)

Before any RIF is initiated, the following actions should be taken:

- The office director or the regional administrator (except for the Inspector General) who anticipates a surplus of one or more filled positions must submit a written statement to the Director of the 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 or abolishment of functions. (a)
 - The number of positions affected, the names of the incumbents affected, and any specific internal reassignment action proposed for each affected employee. (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)
- The Director of HR will— (2)
 - Review the statement described in Section (C)(1) of this part and ensure that all appropriate reassignments within the office have been made before referring the matter to the Deputy Executive Director for Management Services (DEDM) for approval by the Executive Director for Operations (EDO) to initiate any formal RIF or alternative action. (a)

Planning (C) (continued)

- Identify any vacant positions elsewhere in the agency for which incumbents of the surplus positions are qualified. (b)
- The EDO will render a final decision whether to make specific directed reassignments or placement offers before a formal RIF. Career and trial period 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. (3)

Part II

Retention Factors

Competitive Areas (A)

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)).

Headquarters Commuting Area (1)

The following competitive areas are established for all organizational components located in the Washington, D.C., commuting area:

- The three major program offices (Nuclear Reactor Regulation, Nuclear Material Safety and Safeguards, and Nuclear Regulatory Research) each constitute a separate competitive area. (a)
- The Office of the Inspector General and the Office of the Chief Financial Officer each constitute a separate competitive area. (b)
- All other offices (or positions), except the Executive Director for Operations (EDO), that report directly to either the full five-member Commission or to the Chairman collectively constitute a separate competitive area. (c)
- All offices (except the three major program offices) and positions that report directly to the EDO, and the EDO's office, collectively constitute a separate competitive area. (d)

Competitive Areas (A) (continued)

Regional Offices (2)

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

Changing Competitive Areas (3)

Approval by the Office of Personnel Management (OPM) is required for any changes to these competitive areas that are made less than 90 days before the effective date of a reduction in force (RIF).

Competitive Levels (B)

After establishing the competitive area, NRC establishes competitive levels that include a group of interchangeable positions (5 CFR 351.403(a)). (1)

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. (2)

The Director of the Office of Human Resources (HR), 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. (3)

Separate competitive levels are required for positions in the competitive service. In NRC, only Administrative Law Judge positions, filled under 5 U.S.C. 3105, are in the competitive service.

Competitive Levels (B) (continued)

Separate competitive levels also are required for positions that otherwise would be interchangeable except for differences in— (4)

- Pay schedules (e.g., General Grade [GG] and Wage Grade [WG]). (a)
- 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. (b)
- Supervisory status (i.e., positions filled by supervisors or management officials as defined in 5 U.S.C. 7103(a)(10) and (11) will be in separate levels from those filled by nonsupervisors). (c)
- Formal designation as a trainee or developmental program. (d)

Competitive levels are determined by the qualifications required by the duties and responsibilities of the position description, not by the qualifications of particular incumbents. (5)

All positions in the competitive area that meet the interchangeability criteria noted above, 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. (6)

Establishing Competitive Levels (C)

A competitive level consists of positions in the competitive area that are—

Establishing Competitive Levels (C) (continued)

- In the same grade or occupational level. (1)
- In the same classification series. (2)
- Similar enough in duties, qualifications requirements, pay 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. (3)

Tenure Groups, Subgroups, and Service Dates (D)

Four Retention Factors (1)

Relative retention preference of competing employees occupying positions within a competitive level is based on the four retention factors: (a)

- Type of appointment (i)
- Veterans' preference (ii)
- Length of creditable Federal service (including creditable time spent in military service) (iii)
- Credit for performance, which augments length of service (iv)

Competing employees within a competitive level are all covered employees other than the following: (b)

Tenure Groups, Subgroups, and
Service Dates (D) (continued)

Four Retention Factors (1) (continued)

- An Administrative Law Judge appointed under 5 U.S.C. 3105 whose appointment has a definite time limitation. (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.) (iii)
- An employee with a written decision to remove him or her for Unacceptable performance. (iv)
- An employee with a written decision to demote him or her because of Unacceptable performance. (Such an employee competes from the position to which he or she will be demoted.) (v)

Tenure Groups (2)

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

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

Tenure Groups, Subgroups, and Service Dates (D) (continued)

Tenure Groups (2) (continued)

Group III. Employees with Temporary, Term, or Noncareer (Excepted) appointments not limited to 1 year or less, **or** who have completed 1 year of current continuous employment and employees with NRC Limited (Excepted) appointments (c)

Veterans' Preference Subgroups (3)

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

- **Subgroup AD** includes each employee eligible for veterans' preference who has a compensable service-connected disability of 30 percent or more. (a)
- **Subgroup A** includes each employee eligible for veterans' preference not included in Subgroup AD. (b)
- **Subgroup B** includes each eligible employee without veterans' preference. (c)

Length of Service (4)

Within each subgroup, employees are ranked according to their service dates. HR is responsible for establishing both the service computation date (SCD), which is a date representing the employee's total creditable Federal service (both civilian and military service), and the adjusted service computation date, which is the SCD augmented by credit for performance, applicable to each employee competing for retention (see item 5 below). The

Tenure Groups, Subgroups, and
Service Dates (D) (continued)

Length of Service (4) (continued)

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."

Service Credit for Performance (5)

Additional service credit for performance is allowed for ratings established under 5 CFR Part 430. In the NRC, these ratings are described in NRC's non-SES performance appraisal system (Management Directive (MD) 10.67) and approved by OPM in accordance with 5 CFR Part 430. (a)

An employee's entitlement to additional service credit for performance will be based on the employee's last three annual performance ratings of record (actual and/or assumed) 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. (b)

The current annual performance rating of record will be the last annual rating except that— (c)

- An employee who has received an improved rating following an opportunity to demonstrate acceptable performance as provided under authority of 5 CFR Part 432 (MD 10.67 or the Collective Bargaining Agreement, as applicable) will have the improved rating considered as the current annual rating of record. (i)

Tenure Groups, Subgroups, and
Service Dates (D) (continued)

Service Credit for Performance (5) (continued)

- An employee's current annual rating of record will be presumed to be Fully Successful when the employee had been demoted or reassigned under authority of 5 CFR Part 432 because of unacceptable performance and as of the date of issuance of specific RIF notices has not received a rating for performance in the position to which demoted or reassigned. (ii)

Service credit for employees who do not have three previous actual annual ratings of record during the 4-year period before the date of issuance of specific RIF notices will be determined as follows: (d)

- An employee who has not received any rating 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. (i)
- 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. (ii)

Tenure Groups, Subgroups, and
Service Dates (D) (continued)

Service Credit for Performance (5) (continued)

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 (actual and/or assumed) annual performance ratings of record computed on the following basis: (e)

- For each performance rating of Outstanding or equivalent, 20 additional years of service. (i)
- For each performance rating of Exceeds Fully Successful or equivalent, 16 additional years of service. (ii)
- For each performance rating of Fully Successful or equivalent, 12 additional years of service. (iii)

Effective Date of Retention Standing (6)

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.

Tenure Groups, Subgroups, and Service Dates (D) (continued)

Retention Register (7)

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 Director of HR arranges the competing employees by tenure group, subgroup, and augmented service date, in the following descending order: (a)

- By groups, the order is Group I, Group II, Group III. (i)
- Within each group, the order is Subgroup AD, Subgroup A, Subgroup B. (ii)
- Within each subgroup, retention standing begins with the employee having the earliest (augmented) service date. (iii)

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— (b)

- In a work status. (i)
- On paid or unpaid leave. (ii)
- On nonmilitary furlough (see below for treatment of employees on military furlough). (iii)
- On detail to a position in another competitive level or another agency. (iv)

Tenure Groups, Subgroups, and
Service Dates (D) (continued)

Retention Register (7) (continued)

- 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.) (v)

An employee who is on military duty and has a restoration right 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). (c)

Employees who are not competing employees 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: (d)

- 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 and who has not completed 1 year of current continuous service. (i)
- Name and expiration date of the promotion of each employee serving in the competitive level under a specifically limited temporary promotion. (ii)

Tenure Groups, Subgroups, and
Service Dates (D) (continued)

Retention Register (7) (continued)

- Name of each employee serving in the competitive level with a written decision under MD 10.67 or the Collective Bargaining Agreement, as appropriate, to demote him or her because of Unacceptable performance. (Such an employee competes from the position to which he or she will be demoted.) (iii)
- 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 Collective Bargaining Agreement, as appropriate, to remove him or her because of “Unacceptable” performance. (iv)

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. (e)

Part III

Conducting a Reduction in Force (RIF)

RIF Action Approvals (A)

If an office director or a regional administrator, other than the Inspector General, plans to take any action for which the use of RIF procedures is proposed, he or she must discuss the situation with the Director of the Office of Human Resources (HR). If the Director of HR concurs that RIF procedures are appropriate, the office director or the regional administrator will forward a request to apply RIF procedures through the Director of HR for his or her recommendation to the Executive Director for Operations (EDO) or the Deputy Executive Director for Management Services (DEDM), as appropriate, for approval. (1)

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 or the DEDM, as appropriate, will make the final determination. Once that determination has been made, the Director of HR 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. (2)

Ensuring Proper Documentation of Staffing and Position Evaluation (B)

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

Order of Selection From Retention Registers (C)

Removal of Noncompeting Employees From Competitive Level (1)

Before releasing any employee from his or her competitive level through RIF action, 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).

Selection of Competing Employees (2)

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, except as provided below—

- 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 Part II(D)(2) of this handbook for tenure groups). (a)
- 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 Part II(D)(3) of this handbook). (b)
- 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

Order of Selection From Retention Registers (C) (continued)

Selection of Competing Employees (2) (continued)

are thus tied for release, the NRC may release any tied employee. (c)

Mandatory Exceptions to Retention Order (3)

Each Group I or II employee restored after active military duty is entitled to retention as specified in 38 U.S.C. 2021 and 2024 and 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 the Office of Personnel Management (OPM) (see below). 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. (a)

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

Order of Selection From
Retention Registers (C) (continued)

Mandatory Exceptions to Retention Order (3) (continued)

from an employee whose position at the time of entry on military duty is no longer available (5 CFR Part 353). (b)

Continuing Exceptions to Retention Order (4)

As authorized by the EDO, NRC may retain an employee reached for release from a competitive level when none of the higher standing employees in the competitive level can take over the duties 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. (a)

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. (b)

Discretionary Temporary Exceptions to Retention Order (5)

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:

Order of Selection From
Retention Registers (C) (continued)

Discretionary Temporary Exceptions to Retention Order (5)
(continued)

- **Undue Interruption (a)**

NRC may use a temporary exception to retain an employee reached for release from a competitive level when none of the higher standing employees can take over the duties 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.

- **Government Obligation (b)**

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

- 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. (i)
- 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. (ii)

Order of Selection From
Retention Registers (C) (continued)

Discretionary Temporary Exceptions to Retention Order (5)
(continued)

- **Employee Assistance (c)**

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.

- **Notice of Exception (d)**

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, the higher standing employee is entitled to an individual notice explaining why the exception is made and when it 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.

Provision on Liquidation (D)

When 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 (C)(3) of this part). The NRC may use both continuing exceptions and temporary exceptions in taking actions under the liquidation provision (5 CFR 351.605).

RIF Actions (E)

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.

Furlough (1)

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 Management Directive (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 NRC experiences a funding lapse, see MD 4.5, "Contingency Plan for Periods of Lapsed Appropriations."

RIF Actions (E) (continued)

Use of Vacancies (2)

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). (a)

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)). (b)

Related Actions and Entitlements (F)

Use of Annual Leave To Establish Initial Eligibility for Retirement or Continuation of Health Benefits (1)

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. (a)

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). (b)

Related Actions and Entitlements (F) (continued)

Use of Annual Leave To Establish Initial Eligibility for Retirement or Continuation of Health Benefits (1) (continued)

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. (c)

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

Retained Grade and Pay, and Severance Pay (2)

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.

Discontinued Service Retirement and Voluntary Retirement During a RIF (3)

Discontinued Service Retirement (a)

An employee under the retirement system who is separated from the NRC by a RIF is eligible for an immediate annuity if all of the following conditions are met:

- 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

Related Actions and Entitlements (F) (continued)

Discontinued Service Retirement and Voluntary Retirement During a RIF (3) (continued)

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 as a condition of employment.) (i)

- The employee 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. (ii)
- The employee meets either of the following minimum requirements (applicable to both the Civil Service Retirement System and the Federal Employees’ Retirement System employees): (iii)
 - Age 50 and completion of 20 years of creditable service, including 5 years of civilian service (a)
 - Regardless of age, completion of 25 years of civilian service (b)

Voluntary Retirement During a Major RIF (b)

Applicability. An employee under the retirement system who meets all of the conditions for discontinued service retirement is eligible for an immediate voluntary (i.e., optional) retirement if OPM has designated the NRC as an agency undergoing a major

Related Actions and Entitlements (F) (continued)

Discontinued Service Retirement and Voluntary Retirement During a RIF (3) (continued)

RIF, reorganization, or transfer of function. (See 5 CFR Part 351 for a discussion of OPM's criteria for such designation.) (i)

Purpose of Major RIF Retirement Option. By permitting employees to exercise the major RIF retirement option, NRC would be assisted 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 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. (ii)

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

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, 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 retirement option has been authorized. (i)

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 retirement option, retirement will be

Related Actions and Entitlements (F) (continued)

Discontinued Service Retirement and Voluntary Retirement During a RIF (3) (continued)

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 retirement option, should be informed of the difference in future retirement rights if later reemployed. (ii)

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. (iii)

Notices of RIF Actions (G)

Issuances of Notices (1)

Employees to be released from a competitive level by means of separation, change to a lower grade, or furlough in excess of 30 days, must be given advance written notice of the proposed action and pertinent information concerning the rights set forth below. A RIF notice is an official, personal communication addressed to the

Notices of RIF Actions (G) (continued)

Issuances of Notices (1) (continued)

employee and issued by an authorized NRC official. The employee must receive the notice at least 60 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, 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.

Expiration of Notice (2)

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 (G)(4) of this part for requirements if the action to be taken is more severe than that stated in the notice.) (a)

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. (b)

The NRC will not take a RIF action before the effective date in the notice given to the employee. (c)

Contents of Notice (3)

Before NRC releases an employee from a competitive level, a notice must be given that states specifically what action NRC

Notices of RIF Actions (G) (continued)

Contents of Notice (3) (continued)

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 60 days, and information on repromotion or reemployment rights, as appropriate (see Part V of this handbook for placement, priority reemployment, and training). The notice must also advise the employee about any applicable appeal rights.

New Notice Period Required (4)

A new notice of at least 60 full days (or 30 days if 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.

Additional Information for Employee With Competitive Civil Service Status (5)

An NRC employee in Group I or II who has competitive civil service status will receive, in addition to the information addressed in Section (G)(3) of this part, information that includes the following:

- Title, grade, salary, and location of any position offered the employee that was declined or the fact that no offer was made. (a)

Notices of RIF Actions (G) (continued)

Additional Information for Employee With Competitive Civil Service Status (5) (continued)

- Where and when applications may be filed with OPM for referral under the Career Transition Assistance Program. (b)

Status During Notice Period (6)

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.

Records (H)

Period of Retention (1)

The Director of HR 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 Director of HR for at least 1 year.

Basic Information for Retention Standing (2)

The following is the basic information needed to determine retention standing in a RIF: (a)

- Identity of employee: name (i)
- Date of birth (ii)

Records (H) (continued)

Basic Information for Retention Standing (2) (continued)

- Identity of official position, including title, series, grade, and pay (iii)
- Position description (iv)
- Organizational location of position (v)
- Status of the position, whether it is in the competitive or excepted service (vi)
- Status of the employee, whether the employee has competitive civil service status, and if so, how it was obtained (vii)
- Basis on which employed: full-time or other than full-time (viii)
- Tenure of employment (ix)
- Veterans' preference (x)
- Record of creditable service (xi)
- Employee's last three annual performance ratings of record (within 4 years) (xii)
- Retention right, if any, to be retained after mandatory restoration on completion of military duty (xiii)

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 Director of HR shall

Records (H) (continued)

Basic Information for Retention Standing (2) (continued)

maintain copies of any RIF notices issued and of any background information deemed appropriate. (b)

Availability of Information to OPM (3)

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

Availability of Information to NRC Employees (4)

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 any completed 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 competitive employees.

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.

Special Provisions on Transfer of Function (I)

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 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 as long as their statutory and regulatory rights are not violated.

Part IV

Appeals and Grievances

Right To Appeal or Grieve (A)

Right To Appeal (1)

An employee who has been affected by a reduction-in-force (RIF) action may appeal to the Merit Systems Protection Board (MSPB). The appeal may be filed at any time during the period beginning with the day after the effective date of the action until not later than 30 days after the effective date, or 30 days after the date of the employee's receipt of the agency's decision, whichever is later. In advising employees of their right to file a RIF appeal, agency officials should refer to MSPB's regulations (5 CFR Part 1201) and the applicable Collective Bargaining Agreement.

Right to a Grievance (2)

Section 1201.21 of MSPB's regulations specifies that the RIF notice must inform the employee that an employee in a bargaining unit covered by a negotiated grievance procedure that does not exclude a RIF may elect to use the negotiated grievance procedure in lieu of filing an appeal with the MSPB. Such employees may not appeal RIF actions to the NRC under MD 10.101, "Employee Grievances and Appeals of Adverse Actions."

Back Pay (B)

If, on the basis of an administrative determination or a timely grievance or appeal, it is found by appropriate authority that an employee has undergone an unjustified or unwarranted personnel action under the RIF process, the NRC will correct such personnel

Back Pay (B) (continued)

action and provide for the recomputation and payment of any lost pay, allowances and differentials, or restoration benefits for the purpose of making the employee whole. The restoration of an employee upon an administrative determination that the RIF action was unjustified or unwarranted is effective as of the date of the improper action

Part V

Placement, Priority Reemployment, and Training

Positive Outplacement (A)

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. In addition, as feasible and desirable, positive outplacement efforts will be made by the Director of the Office of Human Resources, who will contact other Federal agencies and State, local, and private employers to identify suitable vacancies. (1)

“Certification of Expected Separation” (CES) allows otherwise eligible employees to participate in dislocated worker programs under the Workforce Investment Act of 1998 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 reduction in force (RIF) only when the NRC determines the following: (2)

- There is a good likelihood that the employee will be separated by a RIF. (a)
- Employment opportunities in the same or similar position in the local commuting area are limited or nonexistent. (b)
- Placement opportunities within the employee's own or other Federal agencies in the local commuting area are limited or nonexistent. (c)

Positive Outplacement (A) (continued)

- If eligible for optional retirement, the employee has not filed a retirement application or otherwise indicated in writing an intent to retire. (d)

The CES must be addressed to each individual eligible employee, contain the expected date of the RIF, and a description of available Workforce Investment Act of 1998 programs, the NRC's reemployment priority list, and the interagency placement program of the Office of Personnel Management (OPM). The CES does not meet any of the notice requirements for a RIF covered in Part III of this directive. An employee may not appeal a CES to OPM or to the Merit Systems Protection Board. (3)

Reemployment Priority List (RPL) (B)

An employee in Group I or II, upon separation by a RIF, will be placed on the NRC's RPL for all positions covered by this directive 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 Management Directive (MD) 10.15, "Merit Staffing Program."

Reemployment Priority List (RPL) (B) (continued)

Deletion of an Employee's Name From the List (1)

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. (a)

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. (b)

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. (c)

Repromotion Priority List (2)

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 covered by this directive 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 10.15.

Glossary

Adjusted service computation date. An employee's service computation date (SCD) augmented by the addition of 20 years of service for an Outstanding rating, 16 years of service for an Excellent rating, or 12 years of service for a Fully Successful rating earned during the three appraisal periods (or the last 4 years) before the date of the reduction in force.

Annual performance rating of record. The official performance rating under the NRC's non-SES performance appraisal system (or the Collective Bargaining Agreement, as appropriate).

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 in which employees compete in reduction-in-force actions. (See Part 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.

Glossary (continued)

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

Days. Calendar days.

Furlough. 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 reduction-in-force reasons and is not in accordance with preestablished conditions of employment.

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

Noncompeting employees. Those employees not in Tenure Group I, II, or III.

Notice. A written communication from an agency official to an individual employee stating that the employee will be reached for a reduction-in-force action.

Reduction in force. The release of an employee from his or her competitive level by separation, demotion, 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.

Glossary (continued)

Reorganization. For reduction-in-force purposes, the planned elimination, addition, or redistribution of functions or duties in an organization (5 CFR 351.203).

Representative rate. The fourth step of the grade for a position under the General Schedule.

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.

Tenure. Relative retention preference of competing employees occupying positions within a competitive level (see Part II(D)(1) of this handbook for retention factors).

Transfer of function. The movement 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).