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NRC MANUAL

BULLETIN

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SUBJECT: REVISION IN DELEGATIONS OF AUTHORITY

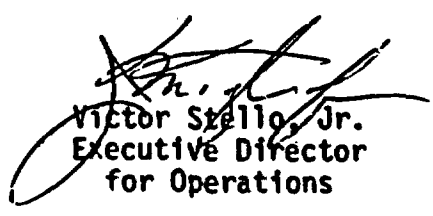
1. Purpose: This Bulletin revises responsibilities and delegations of authority to conform with the NRC reorganization, effective April 12, 1987. These changes will be reflected in the next revision of Chapter 4171.

2. Generic Changes: In 034 and throughout, references to the Executive Legal Director should be construed as references to the General Counsel.

In 035 and throughout, references to the Director, Division Organization and Personnel, should be construed as references to the Director, Office of Personnel. References to the Chief, Labor Relations Branch, should be construed as references to Chief, Policy and Labor Relations.

3. Specific change: Revised responsibilities are listed below.

<u>Citation</u>	<u>Function</u>	<u>From</u>	<u>To</u>
033	Coordinates and make recommendations in the event of disagreements on disciplinary actions.	Director, Office of Administration	Director, Office of Personnel

  
Victor Stello, Jr.  
Executive Director  
for Operations

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CHAPTER NRC-4171 DISCIPLINE, ADVERSE ACTIONS AND SEPARATIONS

SUPERSEDED:

	Number	Date
Chapter	<u>NRC-4171</u>	<u>9/6/84</u>
Page	<u>                    </u>	<u>                    </u>
	<u>                    </u>	<u>                    </u>
Appendix	<u>                    </u>	<u>                    </u>

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TN	<u>4100- 88</u>	<u>                    </u>
Chapter	<u>NRC-4171</u>	<u>4/11/85</u>
Page	<u>                    </u>	<u>                    </u>
	<u>                    </u>	<u>                    </u>
Appendix	<u>                    </u>	<u>                    </u>

REMARKS:

Section 4171-03 is revised due to the following delegations of authority by the Executive Director for Operations:

1. The Director, Division of Organization and Personnel (O&P), reviews the appropriateness of proposed disciplinary actions and letters of decision. His/her concurrence must be based on the facts in the case, with due consideration for equity and other appropriate factors. (4171-035 c.)
2. The Director, Office of Administration, coordinates efforts to resolve any disagreement between the Director of O&P and proposing or deciding officials regarding appropriateness of disciplinary actions. If agreement cannot be reached at the Office Director/Regional Administrator level, the Director, Office of Administration, provides the Deputy Executive Director for Operations with a recommendation on how to proceed with the disciplinary action. (4171-033)
3. The Deputy Executive Director for Operations resolves disagreements on disciplinary actions referred to him/her by the Director, Office of Administration. (4171-031)

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CHAPTER 4171 DISCIPLINE, ADVERSE ACTIONS AND SEPARATIONS

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**4171-01 COVERAGE**

011 This chapter and appendix cover certain actions to separate; suspend; involuntarily reduce in grade or pay; furlough for 30 days or less; reprimand or admonish NRC employees. Included are actions initiated by NRC based on conduct or combined conduct/performance reasons, and voluntary separations.

012 Excluded from coverage of this chapter are:

- a. actions based on unacceptable performance under Chapter 43 of 5 U.S. Code [see NRC 4151 (Non-SES), NRC 4152 (SES) or the collective bargaining agreement, as appropriate].
- b. withholding within-grade increases (see NRC 4130).
- c. The following actions against members of the Senior Executive Service (SES):
  - (1) removal or suspension for more than 14 calendar days (see 5 CFR 752, subparts E and F).
  - (2) reduction in force, furlough, directed reassignment, and transfer of function (see NRC 4169).
  - (3) reduction in pay or rate (see 5 CFR 534, subpart D and 5 U.S.C. 5383).
- d. actions affecting non-SES employees due to reduction in force or furlough over 30 days (see NRC 4170).
- e. separation during a trial or probationary period (see NRC 4108).
- f. actions taken to implement the NRC personnel security program, except for instructions at Appendix 4171, Part VI, B. (see NRC 2101).
- g. change to lower grade at the employee's request; after a temporary promotion (see NRC 4108 in either case); due to a reorganization (see NRC 4170); or when the employee has been granted grade retention (see NRC 4130).

Approved: April 11, 1985

- h. the return of an employee on an NRC Limited (Excepted) appointment to a position to which he or she has return rights. That is not an adverse action even if the return right is to a lower-graded position than the one held under the Limited appointment (see NRC 4108).
- i. adverse actions due to political activity (see NRC 4122).
- j. adverse actions affecting Administrative Law Judges appointed under 5 U.S.C. 3105 (see 5 U.S.C. 7521).
- k. furloughs for military service (see NRC 4116).

013 Bargaining Unit Employees. Where provisions of the collective bargaining agreement with the employees' exclusive representative with reference to bargaining unit employees are in conflict with this chapter and appendix, the provisions of the agreement shall govern.

#### 4171-02 OBJECTIVES

021 To provide for the orderly processing of the actions covered by this chapter, including the appropriate procedural protections.

022 To take appropriate action to correct or to separate any employee whose conduct is not acceptable or whose conduct and performance in combination are not acceptable.

023 To assure that disciplinary and adverse actions are taken only for such cause as will promote the efficiency of the service, assuring that each such action is warranted and reasonable in terms of the circumstances by which it is prompted and that:

- a. they are not based on discrimination because of race, color, religion, sex, national origin, age, political affiliation, marital status, or for a physical or mental handicap if the duties of the position may be performed satisfactorily by a person with the handicap.
- b. they are not taken for the reason of reprisal (e.g., for legitimate whistleblowing activity, differing professional opinions; or exercise of any collective bargaining or appeal right granted by law or regulation).

#### 4171-03 RESPONSIBILITIES AND AUTHORITIES

031 The Deputy Executive Director for Operations resolves disagreements on proposed/final disciplinary actions referred to him/her for decision under provisions of 033 b., below.

032 Directors of Offices and Regional Administrators or their designees:

- a. after obtaining the concurrence of the Division of Organization and Personnel (O&P) and the Office of the Executive Legal Director (ELD), issue to employees under their jurisdictions, as necessary and appropriate, advance notices of proposed actions covered by this chapter and decisions on such notices. Unless otherwise indicated in writing by the Office Director or Regional Administrator, an employee's immediate supervisor is designated and authorized to issue advance notices of proposed actions and, if appropriate, decisions on such notices. (Only in the case of suspensions for 14 days or less, may the same official who issued a notice of proposed action render a decision on the proposal.)
- b. after obtaining O&P concurrence, issue memoranda of admonition and letters of reprimand as appropriate.
- c. may deny timely requests to withdraw resignations with concurrence of the Director, O&P (see Appendix, Part II, C, 3).

033 The Director, Office of Administration, in addition to functions at 032, above:

- a. coordinates efforts to resolve any disagreement between the Director, O&P, and proposing or deciding officials regarding disciplinary action.
- b. makes recommendations to the Deputy Executive Director for Operations in the event agreement on proposed/final disciplinary actions cannot be resolved at the Office Director/Regional Administrator level.

034 The Executive Legal Director, in addition to functions at 032, above, provides for review of all notices of proposed adverse actions and decision letters prior to issuance to assure compliance with legal requirements.

035 The Director, Division of Organization and Personnel:

- a. prescribes instructions for the appropriate use and orderly processing of disciplinary and adverse actions.
- b. through the Chief, Labor Relations Branch, provides for review of all notices of proposed actions and decisions prior to issuance and provides staff assistance and advice on matters covered by this chapter and appendix throughout the NRC.
- c. reviews proposed disciplinary actions and subsequent decisions for appropriateness. Concurrence is based on the facts in each case, with due consideration for equity and other appropriate factors.
- d. may disallow an individual as an employee representative if acting as a representative might cause a conflict of interest or position,

conflict with the priority needs of the NRC or incur unreasonable costs to the Government. The decision of the Director, O&P, is final on such issues.

- e. provides final interpretations regarding the intent and applicability of this chapter and appendix.

036 Managers and Supervisors:

- a. maintain a climate of employee-supervisor relationships in which questions of employee conduct and performance can be discussed and resolved at the lowest practical supervisory level in an informal constructive manner.
- b. maintain order and discipline within the framework of established procedures, including issuing admonitions and reprimands as appropriate.
- c. gather, analyze, and consider carefully the facts and circumstances before taking or recommending corrective or adverse action.
- d. issue advance notices of proposed actions under this chapter to employees under their immediate supervision, unless the delegation in Subsection 032 a., above, to issue such notices is specifically restricted in writing by the appropriate Office Director or Regional Administrator. As appropriate, they issue decisions on such actions.

037 Regional Office Personnel. In each situation in which this chapter and appendix require or suggest contact with or concurrence of O&P or ELD, personnel in Regional Offices shall contact their Regional Personnel Officer (RPO). The RPO shall be responsible for coordinating all appropriate actions and assuring O&P and ELD concurrence.

4171-04 BASIC REQUIREMENTS

041 Applicability. Provisions of this chapter and appendix apply to all NRC employees except as stated at 012 or 042. Applicability to bargaining unit members is limited as stated at 013, above.

042 Legal Requirements and Authorities.

a. Veterans' Preference Eligibles

- (1) 5 U.S.C. 7511 et seq. establishes requirements that must be observed in the removal; suspension for more than 14 days; furlough of 30 days or less; or reduction in grade or pay of NRC employees with veterans' preference (as defined in Appendix 4171, Part I, R.) unless an exception in d., below, applies.

- (2) In the circumstances at (1) above, NRC must also apply the regulations established under the above authority by the Office of Personnel Management (OPM) in 5 CFR 752 and in Federal Personnel Manual (FPM) Chapter 752.
- b. Nonpreference Employees. The NRC grants its employees without veterans' preference the same general procedural rights and privileges in adverse action cases as it does to its veterans' preference eligibles, with the exception of separation of temporary appointment employees and those matters over which the NRC has no control, e.g., the Merit Systems Protection Board has appellate jurisdiction regarding only those NRC employees with veterans' preference (as defined at Appendix 4171, Part I, R).
- c. Administrative Review. Section 161.d. of the Atomic Energy Act of 1954, as amended provides, "The Commission shall make adequate provision for administrative review of any determination to dismiss any employee." This insures that all employees, except those whose appointments can be terminated at will (e.g., those in d.(2) below), can request some form of administrative review of removals for personal cause. This requirement can be satisfied by the grievance procedure in the collective bargaining agreement, or the appeals procedure in NRC 4156, "Appeals from Adverse Actions." For example, temporary employees without veterans' preference are advised in writing of their right to request administrative review of a proposed removal for cause under one of the above procedures, depending on their bargaining unit status.
- d. Excluded from coverage by all the above-cited statutes and regulations are the following actions:
- (1) termination of appointment on the expiration date specified as a basic condition of employment at the time the appointment was made (5 CFR 752.401(c)(6)); and
  - (2) adverse actions affecting employees holding NRC Limited (Excepted) Appointments (5 U.S.C. 7511(b)(2)), or reemployed annuitants (5 U.S.C. 3323(b) and 5 CFR 752.401(c)(12)).
- e. Correction of Unjustified or Unwarranted Action. 5 U.S.C. 5596 and Office of Personnel Management (OPM) regulations provide the means to make whole an employee (with or without veterans' preference) if, on the basis of an administrative determination or appeal, it is found by appropriate authority that the employee has been affected by an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction of all or part of the pay, allowances or differentials of the employee. OPM regulations prescribe the computation, payment, and restoration of pay and other employment benefits. The NRC is subject to both the law and regulations described above. For further information see NRC 4156, "Appeals from Adverse Actions."

043 Appendix 4171. Procedures, requirements and guidance are furnished in Appendix 4171 for effecting the disciplinary and other actions covered by this chapter. Definitions are provided in Part I.

044 References.

Title 5 of United States Code, Chapter 75 and Section 3323(b)

Title 42 of United States Code, Section 2201 (Atomic Energy Act of 1954, Section 161 d.)

Title 5 of Code of Federal Regulations, Parts 339 and 752

FPM Chapter 751 "Discipline"

FPM Bulletin 751-2 "Taking Action on the Problem Employee" (reprinted as Personnel Management Series pamphlet 751-A).

FPM Chapter 752 "Adverse Actions"

NRC Manual:

Chapter 1301, "Shutdown Plan"

Chapter 2101, "NRC Security Program"

Chapter 4108, "Employment"

Chapter 4122, "Political Activity"

Chapter 4130, "Position Evaluation and Pay Administration"

Chapter 4140, "Equal Opportunity in Government Employment" (To be issued)

Chapter 4145, "Leave Administration"

Chapter 4151, "Performance Appraisal System - Non-SES"

Chapter 4152, "Senior Executive Service Performance Appraisal"

Chapter 4156, "Appeals from Adverse Actions"

Chapter 4157, "Employee Grievances"

Chapter 4169, "Reduction in Force in the SES"

Chapter 4170, "Reduction in Force"



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CHAPTER NRC-4171 DISCIPLINE, ADVERSE ACTIONS AND SEPARATIONS

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	Number	Date
Chapter	<u>NRC-4171</u>	<u>8/17/78</u>
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	<u>                    </u>	<u>                    </u>
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Page	<u>                    </u>	<u>                    </u>
	<u>                    </u>	<u>                    </u>
Appendix	<u>NRC-4171</u>	<u>9/6/84</u>

**REMARKS:**

This Chapter and Appendix 4171 incorporate changes resulting from regionalization within NRC and from new civil service laws and regulations. Thus, employees whose suspension is proposed for more than 14 days are given the rights previously granted regarding suspension over 30 days. Also added to this chapter are actions based on a combination of conduct and performance reasons and a statement on the effect of the collective bargaining agreement regarding members of the bargaining unit. However, reduction in rank is eliminated as an adverse action, as is reduction in grade when the employee is granted grade retention benefits. The appendix provides additional explanatory material on discipline for the guidance of supervisors.

Outlined below are the most significant changes/or additions. In addition, many other minor and editorial changes have been made.

Chapter 4171 - Title changed.

4171-01. Actions affecting members of the Senior Executive Service are covered by this chapter except for removals, furloughs, and suspensions over 14 days.

4171-02. Includes non-discrimination and non-reprisal.

4171-03. Managers and supervisors are delegated authority to issue advance notices and decisions, as appropriate, on actions proposed under this chapter. The Director, Division of Organization and Personnel, may disallow employee representatives. Added to this section are functions of Regional Administrators, Regional Personnel Officers, and all managers and supervisors.

4171-04. Definitions have been moved to Appendix, Part I, instead of "Legal Requirements and Authorities," which is moved here.

#### Appendix 4171

Part II reflects instructions from the Office of Personnel Management (OPM) on disability retirement (e.g. FPM letter 831-78). Material is added on additional termination actions, furloughs and reduction in grade or pay from Part IV. Immediate supervisors may approve a request for withdrawal of a resignation. Revised material on physical examinations complies with new regulations.

Part III provides new material on taking disciplinary actions, including their order of progression.

Part IV advises some documentation of repeated oral admonitions and eliminates oral reprimands. Letters of reprimand may be filed in Official Personnel Folders for a minimum of 6 rather than 12 months.

Part V provides additional details for advance notices and letters of decision. For clarity, each adverse action shall be proposed in a separate document. Added are new Federal Regulations on employee status during the advance notice period. Emergency suspensions are dropped in compliance with the regulations. Deciding officials need not be at a higher level than the proposing officials.

Part V and Exhibit 2 are revised to clarify that employees may only submit a grievance if they are members of the bargaining unit; if excluded from the bargaining unit they may only submit an appeal under NRC 4156.

This part and Exhibit 3 include material on appeals required by MSPB regulations. In accordance with OPM guidance, obsolete material on suitability determinations is deleted.

Part VI provides instructions on use of Standard Form 50 and security cases (from Part I ) and abandonment of position (moved from old Part III).

CONTENTS

	<u>Page</u>
<b>PART I</b> <b>DEFINITIONS</b> .....	1
A.    Admonition .....	1
B.    Adverse Action .....	1
C.    Days .....	1
D.    Deciding Official .....	1
E.    Directors of Offices and Regional Administrators .....	1
F.    Furlough .....	1
G.    Proposing Official .....	1
H.    Reassignment .....	1
I.    Reduction in Grade .....	1
J.    Reduction in Pay .....	1
K.    Removal, Resignation, and Termination .....	2
L.    Reprimand .....	2
M.    Revocation of Security Clearance (Access Authorization) ....	2
N.    Resignation .....	2
O.    Separation .....	2
P.    Suspension .....	2
Q.    Termination .....	2
R.    Veterans' Preference Eligible .....	2
<b>PART II</b> <b>NONDISCIPLINARY SEPARATION, FURLOUGH AND REDUCTION IN                   GRADE OR PAY</b> .....	3
A.    Coverage .....	3
B.    Determining Cause for Separation .....	3
C.    Resignation .....	3
1.    General Principles Concerning Resignation .....	3
2.    Notice from Employee .....	4
3.    Withdrawal of Resignation .....	4
4.    Advice to Employees in Special Circumstances .....	4
a.    Physical Disability .....	4
b.    Reduction-in-Force .....	4
c.    Military Service .....	5
d.    Option to Resign .....	5
D.    Retirement .....	5
E.    Termination .....	5
1.    Applicability .....	5
2.    Temporary Appointment .....	5
3.    Reemployed Annuitants .....	6
4.    NRC Limited (Excepted) Appointments .....	6
5.    Termination - Disability .....	6
6.    Declined Assignment or Relocation .....	7

CONTENTS (Continued)

	<u>Page</u>
F. Furloughs of 30 Days or Less .....	8
G. Reduction in Grade or Pay .....	8
1. General .....	8
2. Change to Lower Grade .....	9
a. Job Evaluation .....	9
b. Disability .....	9
c. Exclusions .....	9
3. Reduction in Pay .....	9
<b>PART III TAKING CORRECTIVE ACTION .....</b>	<b>11</b>
A. General .....	11
B. Progressive Discipline .....	11
C. Using Adverse Actions .....	11
D. Change to Lower Grade for Cause .....	12
E. Timeliness .....	12
F. Considering Action .....	12
G. Privacy .....	13
H. Discussion With Employee .....	14
<b>PART IV ADMONITIONS AND REPRIMANDS .....</b>	<b>15</b>
A. General .....	15
B. Oral and Written Admonitions .....	15
C. Letters of Reprimand .....	16
D. Contents of Written Admonitions and Reprimands .....	16
<b>PART V PROCEDURES FOR ADVERSE ACTIONS .....</b>	<b>19</b>
A. Actions Covered .....	19
B. Exclusions .....	19
C. Failure to Observe a Procedural Requirement .....	20
D. Advance Notice of Proposed Adverse Action .....	20
E. Status During Advance Notice Period .....	23
F. Delivery of Advance Notice .....	24
G. Consideration of Answer .....	24
1. Scope .....	24
2. Personal Answer .....	24
3. Transcript .....	24
4. Discrimination Complaints .....	25
H. Written Notice of Decision .....	25

CONTENTS (Continued)

	<u>Page</u>
EXHIBITS	
1 REMOVALS, REDUCTIONS IN GRADE/PAY, OR SUSPENSIONS OVER 14 DAYS .....	28
2 SAMPLE NOTICE OF PROPOSED REMOVAL .....	29
3 SAMPLE NOTICE OF DECISION TO REMOVE .....	31
PART VI EFFECTING ACTIONS .....	33
A. Standard Form 50 .....	33
B. Security Cases .....	33
C. Abandonment of Position .....	34

## PART I

## DEFINITIONS

- A. Admonition. A memorandum or discussion which expresses warning and disapproval regarding misconduct or a combination of misconduct and poor performance, but which is not recorded in the employee's official Personnel Folder (unlike a reprimand or adverse action).
- B. Adverse Action. A personnel action by which an employee is removed; suspended; furloughed for 30 calendar days or less; or reduced in grade or pay. (Adverse actions not covered by this chapter are noted at NRC 4171-012.)
- C. Days. A period of consecutive calendar days including weekends. Days of suspension cannot be chosen to include only workdays for the purpose of avoiding the procedures for suspensions for more than 14 days.
- D. Deciding Official. The management official authorized to make decisions concerning adverse actions.
- E. Directors of Offices and Regional Administrators. Directors of all program and staff offices and Regional Administrators. Included, for the purposes of this chapter and appendix are Commissioners, the Executive Director for Operations, and the heads of boards, panels, and committees with reference to employees under their supervision.
- F. Furlough. A nondisciplinary adverse action which places an employee temporarily in a nonpay and nonduty status due to lack of work or funds.
- G. Proposing Official. A management official authorized to propose an adverse action.
- H. Reassignment. The change of an employee from one position to another within the same agency without change in grade or basic pay. Such a reassignment is not processed as a disciplinary or adverse action even if it forces the employee to relocate.
- I. Reduction in Grade. An action to place an employee in another position with a lower grade level in the same pay system, or to a position under a different pay system with a lower representative rate, i.e., the fourth step of the grade for GG employees; the prevailing rate for wage grade employees; the established rate of the position for ungraded positions and positions with only one rate.
- J. Reduction in Pay. Reduction in basic pay.

- K. Removal, Resignation, and Termination are among the standard terms required by the Office of Personnel Management (OPM) to specify the "Nature of Action" when recording separations on Standard Form 50, "Notification of Personnel Action." (See Federal Personnel Manual Supplement 296-33 for the OPM definitions.) A "removal" is an involuntary separation. (For SF-50's, OPM reserves the term for disciplinary separations.) A "resignation" is a voluntary separation initiated by the employee for his or her personal desires. "Termination" is used for nondisciplinary separations initiated by the agency.
- L. Reprimand. A letter or other writing which formally censures an employee for misconduct or a combination of misconduct and poor performance and which is filed on the left-hand side of the Official Personnel Folder in accordance with Part IV below.
- M. Revocation of Security Clearance (Access Authorization). Ultimate withdrawal of such clearance (access authorization) pursuant to section 10.33 or 10.34 of 10 CFR Part 10.
- N. Resignation. See K., above.
- O. Separation. An action that ends an individual's status as an employee for any reason.
- P. Suspension. An action which places an employee in a temporary nonpay, nonduty status for disciplinary reasons or pending an inquiry.
- Q. Termination. See K., above.
- R. Veterans' Preference Eligible. As used in this chapter and appendix, an employee who meets the requirements for veterans' preference of Chapter 211 of the Federal Personnel Manual, and who either:
1. has completed at least one year of current, continuous service in the same or similar positions in NRC; or
  2. is serving in NRC under an appointment which was given without a break in service and the previous appointment was in the same or similar positions, provided the employee served in the previous employment under a nontemporary appointment in a competitive position, or under any type of appointment in an excepted position, and has completed in both positions a combined service equivalent to one year of current, continuous employment.

## PART II

NONDISCIPLINARY SEPARATION, FURLOUGH  
AND REDUCTION IN GRADE OR PAY

- A. Coverage The actions described in this part are nondisciplinary since they are voluntary or are caused by established fact or circumstance, such as:
1. an employee's request to be separated or assigned to a lower-graded position, or an employee's situation, such as physical disability, which results in such action being taken on a nondisciplinary basis;
  2. the effect of a condition of employment, such as expiration of a temporary appointment;
  3. lack of work or funds;
  4. the employee's entry into military service; or
  5. reevaluation of the grade of an employee's position.
- B. Determining Cause for Separation. As soon as a supervisor learns an employee is planning to leave, he or she should determine the cause for leaving NRC employment. Causal factors may be modified to such an extent that desirable employees are retained.
- C. Resignation.
1. General Principles Concerning Resignation.
    - a. An employee's resignation may not be refused nor any action taken to compel the employee to remain beyond the date specified by the employee.
    - b. NRC must follow the instructions in FPM Supplement 296-33 in documenting the resignations of employees who resign in lieu of formal adverse action.
    - c. The employee's reasons for resigning shall be documented in Block 37, "Remarks," of the SF-50 in accordance with the instructions in FPM Supplement 296-33.
    - d. No employee shall be coerced to submit a resignation in lieu of another type of separation, nor shall any resignation be secured by duress, intimidation or deception. However, the employee may be informed of the various types of separation actions which may be possible in a specific case and of the effect of each type.



**2. Notice from Employee.**

- a. An employee who is resigning should be requested to give a minimum of 2 weeks' notice before the last day of duty.
- b. An employee proposing to resign should be requested to specify an effective date and to submit a signed notice of resignation on a Standard Form 52, "Request for Personnel Action" (SF-52).
- c. If an employee submits only a memorandum or letter of resignation, it should be attached to an SF-52 submitted to O&P or the RPO on the employee's behalf.
- d. If the employee declines or is unable to submit a written resignation, an oral resignation must be accepted, preferably in the presence of witnesses. The facts of an oral resignation should be recorded (in accordance with the instructions in FPM Supplement 296-33) on an SF-52 and processed in the same manner as a written resignation.

**3. Withdrawal of Resignation.** A resignation may not be withdrawn after its effective date under any circumstances. Before the effective date, a written request for withdrawal of a resignation may be approved by the immediate supervisor; denying the request requires the approval of the Office Director with concurrence of the Director, O&P. An agency may decline to permit an employee to withdraw a resignation before it has become effective only when the declination is based on a valid reason and that reason is explained to the employee. A valid reason includes, but is not limited to, administrative disruption, or the hiring or commitment to hire a replacement. Avoidance of adverse action proceedings is not a valid reason for declining to permit an employee to withdraw a resignation.**4. Advice to Employees in Special Circumstances.**

- a. Physical Disability. An employee who submits a resignation because of ill health or physical disability and who meets the service requirements for disability retirement should be counseled by the supervisor [with assistance as needed from the Labor Relations Branch (LRB), or the Regional Personnel Officer (RPO)] on the pros and cons of applying for disability retirement before action is taken on his or her resignation.
- b. Reduction-in-Force. An employee who submits a resignation after receipt of a reduction-in-force notice should be informed by the supervisor that resignation during the notice period forfeits the employee's reemployment benefits, and the employee should be counseled (with assistance as needed from a member of the LRB staff or the RPO) as to alternatives, e.g., use of leave during the notice period. (See also NRC 4170.)

- c. Military Service. An employee who submits a resignation to enter the military service should be advised by the supervisor that:
1. the NRC will process a "Termination-Military" or "Furlough-Military" action (in accordance with instructions in FPM Supplement 296-33).
  2. the employee is entitled to be carried on the rolls until he or she passes the physical examination and actually enters on active duty.
  3. delaying the separation until the employee actually enters on active duty will avoid a break in service or the necessity to refund any lump-sum leave payment on return to duty if the employee is rejected for military service.
- d. Option to Resign. If, after receiving information regarding his or her available options, the employee still prefers to resign, he or she is entitled to do so and to set the date.
- D. Retirement. This action is used when an employee will be entitled to annuity benefits directly after separation. See NRC 4160, "Employee Benefits," FPM Chapter 831 and FPM Supplement 831-1. When a proposed retirement is due to disability, NRC is governed by the requirements stated below at E.5., "Termination - Disability".
- E. Termination.
1. Applicability. Termination is used for nondisciplinary separation actions that are initiated by the NRC in a variety of situations such as the following.
  2. Temporary Appointment.
    - a. For an employee (either with or without veterans' preference) separated on the date his or her temporary appointment expires, the only notice of termination required is the SF-50, "Notification of Personnel Action," because the expiration date of the temporary appointment was specified at the time of appointment as a basic condition of employment. The employee's separation on that date simply carries out the terms of the appointment and is not, therefore, an adverse action that may be appealed or grieved (5 CFR 752.401(c)(6)). The SF-50 should normally be delivered before the effective date of the termination.
    - b. If an employee with a temporary appointment is terminated early because of lack of ceiling, lack of work, or lack of funds:
      - (1) Termination is used if the employee has not completed 1 year of current continuous employment. The employee

should be given as much advance notice as feasible, usually two weeks, and must receive such advance notice in writing before the date of termination. However, this is not considered an adverse action and may not be appealed or grieved because the temporary nature of the work was specified at the time of appointment as a basic condition of employment.

- (2) The procedures in NRC 4170, "Reduction in Force," must be used if the employee has completed 1 year of current continuous employment, because such an employee is subject to 5 CFR 351.

3. Reemployed Annuitants.

- a. Termination is used if it is necessary to separate a reemployed annuitant for any reason.
- b. The notice in 2.b.(1) is provided.
- c. Because reemployed annuitants serve "at the will of the appointing authority," their termination may not be appealed or grieved. [5 U.S.C. 3323(b)]

4. NRC Limited (Excepted) Appointments.

- a. Termination is used when it is necessary for any reason to separate an employee with an NRC Limited (Excepted) Appointment. See NRC 4108, "Employment," for circumstances in which an employee may be reassigned to another position following a limited appointment.
- b. A written notice of termination shall be delivered at least 30 calendar days in advance of the termination (see Appendix 4108). This is the only notice required. [5 U.S.C 7511 (b)(2)].
- c. Termination from an NRC Limited (Excepted) Appointment may not be appealed or grieved.

5. Termination - Disability.

- a. This is an action used to separate an employee who is physically or mentally incapacitated for continued service but disability retirement is not applicable. Although "termination-disability" is a nondisciplinary separation, it is an adverse action and the procedural requirements in Part V must be followed, with the addition of reference to the medical evidence in the notices.
- b. Determination of Condition. 5 CFR Part 339 provides guidance on medical documentation. In general, it is the obligation of the employee to provide acceptable evidence about his or her

medical condition when he or she is requesting a benefit or special treatment for medical reasons or mitigation of an adverse or disciplinary action for unsatisfactory performance or conduct. As explained in 5 CFR 339, an agency's authority to order medical examinations is restricted to very limited circumstances. However, NRC may offer a medical examination when needed to verify the medical information furnished by the employee.

- c. Possibility of Accommodation or Reassignment. It is the policy of the NRC to utilize handicapped employees insofar as practicable. Accordingly, the NRC shall make reasonable accommodations to enable a handicapped employee or one who becomes incapacitated to perform his/her position or to reassign the employee to a less-demanding position. Under OPM regulations, termination-disability or disability retirement may not be processed until these alternatives have been considered.
- d. Workers' Compensation. If the disability was incurred in the performance of the employee's duties, action is taken to preserve all rights of the employee under the Federal Employees' Compensation Act. See NRC 4160, "Employee Benefits," and FPM Chapters 810 and 353.

6. Declined Assignment or Relocation.

- a. A reassignment to another position with the same grade and basic pay is not an adverse action, even if it requires a move to another duty station. However, an employee may be terminated due to:
  - (1) refusal to accept a directed reassignment outside the commuting area, or
  - (2) refusal to accompany the employee's function or activity when it was moved outside the employee's commuting area.
- b. The above two separations are processed using the adverse action procedures at Part V, but they are not considered disciplinary in nature. (But refusal to accept a reassignment within the same commuting area is grounds for disciplinary action up to and including removal.)
- c. If the employee indicates he or she is not relocating, the employee may be considered for placement in vacant positions in accordance with the provisions of NRC 4108, "Employment."
- d. If eligible, the employee may apply for discontinued service retirement if he or she does not accept the new assignment. Final decision on retirement is subject to OPM approval. (See FPM Supplement 831-1, Subchapter S11.)

- e. The employee may be entitled to severance pay upon separation if he/she is not eligible to retire and the other conditions are met (see Appendix 4130-C).

F. Furloughs for 30 Days or Less.

1. Coverage. This section covers nondisciplinary actions to place an employee temporarily in a nonduty and nonpay status due to lack of funds or work. The furlough period does not have to be one continuous period (i.e., it may be intermittent) as long as the advance notice is specific as to the dates on which furlough days are to occur. This chapter covers furloughs of 30 or fewer calendar days if one continuous period; and for 22 work days or fewer if not a continuous period. If such a furlough extends for more than 30 calendar days, or 22 work days, it is processed in accordance with NRC 4170, "Reduction in Force," or NRC 4169 (for members of the Senior Executive Service).
2. If practicable, employees will be treated equitably by placing them on furlough (a) by organizational segments, and (b) equally as to the number of days required in a nonpay status. Relative standing on a retention register may be used at management's option to select employees for furloughs covered by this chapter. If certain individuals are selected for furlough in a manner other than that noted above, but for such cause as will promote the efficiency of the service, the basis for their selection, as well as the reasons for the furlough, will be stated in the advance notice. When furlough is necessary due to temporary lack of funds, employees in an organizational segment performing work which can be curtailed for a short period may be selected. In cases where there is temporary lack of work, but not temporary lack of funds, employees may request annual leave in lieu of furlough.
3. Adverse actions procedures in Part V shall be used; except that advance written notice and opportunity to answer are not required in unforeseeable circumstances, such as sudden breakdowns of equipment, acts of God, lapse of funding or other emergencies requiring immediate curtailment of activities. (See NRC 1302, "Shutdown Plan.") When an advance notice is given, the furlough action is not to be effected before the end of the notice period.

G. Reduction In Grade Or Pay.

1. General. NRC management has the authority to assign new duties and responsibilities and to place an employee in a new position and location based on the needs of the agency. Such changes are not processed as adverse actions using procedures in Part V unless a reduction in grade or basic pay is required under conditions described in 2. and 3.a. below. In any case, an employee may be separated for refusal to accept the new assignment or position (see E.6. above).

2. Change to Lower Grade.

- a. Job Evaluation. A change to lower grade required by a job evaluation decision is processed as an adverse action using the procedures in Part V only if the position had been evaluated at a higher grade for less than one year, making the incumbent ineligible for grade retention under provisions of NRC 4130, "Position Evaluation and Pay Administration." The personnel action affecting the incumbent may be processed only after approval of the lower grade of his or her position on the applicable Form NRC 772-A, "Position Action and Evaluation." The notice of proposed adverse action (see Part V) must distinguish between the downgrading of the position and the change to lower grade of the individual in explaining why the action is necessary. See NRC 4130 on grade and pay retention benefits and an employee's right to request a review of the evaluation of his or her position.
- b. Disability. Where failure to perform duties satisfactorily as stated in the employee's position description is due to physical or mental disability, the employee's condition is considered as provided above in E.5., "Termination-Disability." However, if the assignment is feasible and the employee can perform the duties of a position at a lower grade, and is otherwise qualified, he or she may voluntarily accept a change to lower grade, which would not be an adverse action.
- c. Exclusions.
  - (1) Voluntary changes to lower grade are not covered by this chapter, but are processed in accordance with Appendix 4108.
  - (2) Changes to lower grade that result from reorganization (including a change in duties assigned an employee) as defined in NRC 4170, "Reduction in Force," are not covered by this chapter but are processed using the reduction in force procedures in NRC 4170.
  - (3) Changes to lower grade after a temporary promotion are not covered by this chapter, but are processed in accordance with Appendix 4108.

3. Reduction in Pay.

- a. Except as noted at c.(2) below, an adverse action may occur if a directed reassignment reduces the amount of basic pay an employee regularly receives; for example, when a locality rate employee is shifted to a new locality with a lower wage schedule, or when a fulltime employee is changed to part-time, or hours of work are reduced for a part-time employee. "Basic

pay" does not include premium pay for any employee or night and environmental differentials for locality rate employees.

b. A directed reassignment that causes a reduction in pay as defined above is subject to the adverse action procedures in Part V.

c. Exclusions. The following are not processed as adverse actions:

(1) The termination of pay retention benefits.

(2) The transfer of an employee from the Resident Inspector or similar program pursuant to provisions of a special salary schedule and/or Employee Compensation Acknowledgement.

For both (1) and (2) above, refer to NRC 4130 and related Bulletins.

## PART III

## TAKING CORRECTIVE ACTION

A. General. Disciplinary measures covered in this chapter are, in order of increasing severity:

1. Oral admonition.
2. Written admonition.
3. Letter of reprimand.
4. Adverse Actions:
  - a. Suspension
    - (1) 14 days or less
    - (2) More than 14 days
  - b. Change to lower grade for cause (See D., below)
  - c. Removal

The terms above are defined in Part I. Usage and procedures for admonitions and reprimands are covered in Part IV below. The measures listed under 4. affect the pay of the employee and thus are among the "adverse actions."

The procedures in Part V must be followed when covered employees are subject to adverse actions. Unlike other adverse actions, suspensions of 14 days or less are not covered by Subchapter II of 5 U.S.C. Chapter 75 and therefore have different requirements in Part V.

B. Progressive Discipline. When feasible, disciplinary actions are intended to correct and rehabilitate the employee. They should normally be progressive in nature (of increasing severity) to encourage the employee to accept responsibility and forestall the development of situations in which there is no alternative to suspension or removal. Repeated infractions are prima facie evidence that the previous disciplinary action was insufficient to bring about correction and more severe corrective actions shall normally be assessed as the employee continues to breach the employment relationship. However, significant offenses may be cause for severe action, including removal, without regard to whether previous discipline has been taken against the offending employee.

C. Using Adverse Actions.

1. Suspension or removal thus may be appropriate for repeated minor offenses or even a single serious breach against the employer-employee relationship. Such offenses may include, but are not limited to, the following examples: absence without leave (AWOL); misuse of a government vehicle; actual or attempted theft or fraud; false statements; infractions of security regulations;



engaging in a prohibited personnel practice (see 5 U.S.C. 2302); strike activity; offenses related to intoxicants; and a pattern of discourteous conduct. Certain forms of off-duty misconduct may be grounds for disciplinary action if a nexus (connection) exists between the off-duty conduct and the individual's on-the-job responsibilities or authorities. Misconduct on or off the job may also lead to suspension or revocation of an employee's access authorization (see Part VI, B. below).

2. A suspension or removal places an employee in an involuntary nonpay and nonduty status. This not only penalizes the employee, it may also harm NRC operations due to the employee's absence. Any consideration of suspension or another adverse action demands the exercise of responsible judgment to insure there is sufficient evidence that the offense(s) actually occurred and that an offending employee is not penalized out of proportion to the character of the offense(s).
- D. Change to Lower Grade for Cause. In lieu of a removal action for cause, a supervisor may propose that an employee be reassigned to a lower-graded position using the procedures in Part V. This may be done, for example, if there is misconduct that suggests the employee should not continue in his or her present position due to fiduciary or other reasons, but there is sufficient reason to believe the individual would perform satisfactorily in an available lower-graded position. Such a proposal would require coordination with Division of Security as soon as possible to insure the employee would be eligible for access authorization for the new position.
- E. Timeliness. Investigation of situations that could lead to disciplinary actions should be initiated while information is fresh and readily available. In order to have the maximum corrective effect, an action should be initiated as soon as practical after the facts have been ascertained.
- F. Considering Action.
1. The statutory requirement that adverse actions "promote the efficiency of the service" means disciplinary actions may not be based on conduct which does not adversely affect the efficient accomplishment of the NRC mission, except that in certain circumstances the NRC may take into account in determining the employee's fitness for duty the conviction of that employee for any crime under the laws of any State, of the District of Columbia, or of the United States.
  2. Management should evaluate each situation on the basis of its own factual circumstances to assure that the action proposed and taken is reasonable under those circumstances. Illustrative of factor(s) which may be considered as appropriate are:
    - a. The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including

DISCIPLINE, ADVERSE ACTIONS AND SEPARATIONS

whether the offense was intentional, technical, or inadvertent, or was committed maliciously or for gain, or was frequently repeated.

- b. The employee's past disciplinary record.
  - c. The employee's past work record, including length of service, and performance on the job.
  - d. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon management's confidence in the employee's ability to perform assigned.
  - e. Whether the employee was on notice of any rules that were violated in committing the breach, or had been warned about the conduct in question, or should have known that the conduct was not acceptable.
  - f. Potential for the employee's rehabilitation.
  - g. Mitigating circumstances, if any.
  - h. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.
3. In considering problems of employee conduct, or combined performance/conduct, management also should consider addressing any factors that may have contributed to the problem, e.g., poor organization, faulty supervision, insufficient training, improper placement, lack of clarity in duty assignments or possible physical or mental impairments of the employee.
4. Preliminary Action. Before actual processing is begun of any of the corrective measures covered in this chapter, the supervisor should consult with a specialist in the Labor Relations Branch (through the Regional Personnel Officer if in a Region) to discuss the reasons for the impending action in terms of the factors in this part. Although the Labor Relations Specialist is not authorized to direct a resolution of the problem, he or she will be able to assist in a resolution of the problem by providing advice regarding correct procedures to be followed, and advice as to the appropriate actions to be taken.
- G. Privacy. Disciplinary actions are personal matters and, to the maximum extent feasible under the circumstances, should be accomplished in private. The minimum number of persons practicable, consistent with the need for fact gathering, internal coordination, and labor-management relations obligations should be involved in, or made party to, the action.

H. Discussion with Employee.

1. When consideration of the facts indicates that action should be taken, the supervisor should, if appropriate, hold an informal discussion with the employee. At the outset of the discussion, the employee should be advised of the contemplated action, the specific instances of misconduct, or other reasons for the contemplated action.
2. If a bargaining unit employee requests union representation during the discussion: before responding the supervisor should consult with the Labor Relations Branch (through the RPO if at a Region). Note that it is not the supervisor's responsibility to advise any employees of the possibility of union representation.

## PART IV

## ADMONITIONS AND REPRIMANDS

- A. General. Both admonitions and reprimands are disciplinary actions. As with other disciplinary actions, before initiating any written actions the supervisor should consult with the Labor Relations Branch (through the Regional Personnel Officer if at a Region.) An admonition or reprimand may be appropriate when affecting the pay of the employee through an adverse action is considered too severe. See Part III for further guidance on disciplinary situations.
- B. Oral and Written Admonitions.
1. Use. An employee may be admonished concerning a deficiency in conduct or a combined performance and conduct deficiency. An admonition may be appropriate for first offenses and minor violations. It is particularly suitable in situations which appear to be easily correctable by the employee.
  2. Ordinarily, an oral or written admonition follows a discussion of the deficiency between the supervisor and the employee. See Part III, H.
  3. Oral.
    - a. A supervisor may administer an admonition orally when, in his or her judgment, an oral admonition will correct the deficiency. The supervisor should state clearly that the admonition may be cited later in the context of progressive discipline. Note D., below for other suggestions as to content.
    - b. Record. If repeated oral admonitions are necessary the supervisor should make at least a personal note of any oral admonition or counseling given on a particular deficiency, so that it may be cited in the event of repetition. See 4.b., below on retention of such notes.
  4. Written.
    - a. Content. See D, below.
    - b. Retention. Because admonitions may be cited in the context of further discipline, the supervisor should retain a copy of a written admonition or notes on oral admonitions for one year, unless there are further offenses of any nature. In that case, such records should be kept until a year following the latest instance of misconduct or combination of poor performance and misconduct. Under this chapter, a memorandum

of admonition is not filed in the employee's Official Personnel Folder. See the collective bargaining agreement in the case of bargaining unit employees.

C. Letters of Reprimand.

1. Reprimands shall be in writing and should include the materials at D, below.
2. Use. A letter of reprimand may be used to rebuke an employee for misconduct or a combination of poor performance and conduct in cases which are not so serious as to warrant an adverse action, but are sufficiently serious to warrant a reprimand that will be a matter of temporary record in the employee's Official Personnel Folder. A letter of reprimand can affect the employee's future career and should be used only after careful consideration. A letter of reprimand may be appropriate, for example, in the case of repeated violations of a similar nature for which the employee has been admonished but little or no corrective action on the part of the employee has resulted.
3. Retention. The letter of reprimand is filed on the left-hand side of the Official Personnel Folder (OPF) for a minimum retention period of 6 months and a maximum retention period of 3 years. It may be withdrawn from the OPF prior to the end of the minimum retention period only upon a finding by the official who issued it or other authorized authority that the issuance of the letter was unjustified, unwarranted or otherwise improper. A subsequent decision by authorized authority that an employee has corrected the deficiency and that current conduct/performance warrants such action, can serve as the basis for removing the letter of reprimand from the OPF prior to the date initially set for retention but after the minimum retention period.

D. Contents of Written Admonitions and Reprimands. If the decision is to issue a written admonition or reprimand the document should include:

1. reference to the discussion held, if appropriate (See Part III, H).
2. the specific reasons for the action, including a clear description of the deficiency in conduct or combined performance/conduct and, as appropriate, the time, place and circumstances that required disciplinary action to be taken.
3. reference to any previous counseling or discipline, oral or written, related to the present offense. Include, if applicable, any failure of the employee to take remedial action previously agreed to.
4. as appropriate, a statement advising the employee of the importance of correcting the deficiency and how the deficiency may be corrected. If appropriate, a time frame in which to accomplish the

correction should be included, along with any written references applicable to the situation and any special attention or assistance that will be provided.

5. a warning that any future offenses of the same nature may result in a more severe disciplinary action.
6. a statement that this action is subject to the grievance procedures of NRC 4157, or the collective bargaining agreement, as appropriate, but not both.
7. if a letter of reprimand, a statement on the period of retention in the Official Personnel Folder.

## PART V

## PROCEDURES FOR ADVERSE ACTIONS

- A. Actions Covered. This part provides procedural guidance applicable generally to actions within the scope of this chapter in which a covered employee is to be removed, suspended, furloughed, or reduced in grade or pay. As indicated within sections below, separate procedures apply to suspensions of 14 days or less and, for other adverse actions, to employees with veterans' preference (as defined in Part I, R. above). Exhibit 1, which follows this part, is a flow chart to provide an overview of the adverse action process; it should not be used as a definitive guide.

Supplemental information on disciplinary measures, including reduction in grade for personal cause, is provided in Part III above. See Part II above regarding:

1. separation for disability (at Section D. and E. 5.).
2. refusal to relocate (at Section E. 6.).
3. furloughs (at Section F.).
4. grade or pay reduction for nondisciplinary reasons (at Section G.).

- B. Exclusions. These procedures do not apply to:

1. abandonment of position (see Part VI, C.).
2. employees whose access authorization is suspended or revoked (see Part VI, B.).
3. employees with temporary appointments who are not entitled to veterans' preference (as defined in Part I, R) (see NRC 4171-042c.).
4. reemployed civil service annuitants (see Part II, E.3.).
5. employees with NRC Limited (Excepted) appointments (see Part II, E.4.).
6. members of the Senior Executive Service, except for suspensions of 14 days or less (see NRC 4171-012.c.).
7. transfers from the Resident Inspector or similar programs as described at Part II, G.3.c.(2).

- C. Failure to Observe a Procedural Requirement. Adverse action procedures require meticulous attention to detail in terms of specificity of notice, delivery of notice, length of the notice period, and consideration of the employee's answer. Failure to observe a procedural requirement in either agency, applicable OPM, or negotiated procedures may constitute harmful error that may result in a reversal upon an appeal, judicial review or arbitration, notwithstanding the fact that the action may have been warranted on the merits of the case. The courts have ruled that the OPM's and agency's regulations have the force and effect of law, provided the procedures are not contrary to law.
- D. Advance Notice of Proposed Adverse Action.
1. The official who has been delegated authority to propose the adverse action and who determines that a proposed adverse action is proper and warranted in terms of the facts and circumstances, issues over his or her signature, an advance notice of the proposed adverse action to the employee. However, the notice of proposed adverse action shall be reviewed in advance by the Labor Relations Branch (LRB) and the Executive Legal Director (ELD) prior to issuance. For information purposes only, a sample advance notice is included as Exhibit 2.
  2. Each advance notice should state:
    - a. the name of the employee and his/her organizational location or residential address.
    - b. the nature of the proposed adverse action. The notice shall state specifically what adverse action is proposed. The notice should make clear that it concerns only a proposed action and not a matter already decided.
    - c. the notice period.
      - (1) The advance notice shall state that the proposed adverse action will take place not earlier than 30 calendar days after the date the notice is delivered (not counting the date of delivery), unless one of the following exceptions is applicable:
        - (a) Suspensions of 14 days or less require that the employee be given a written notice of the proposed suspension at least 24 hours in advance of the proposed effective date. Normally the employee is granted a longer notice period, e.g., 7 days.
        - (b) Furlough due to unforeseeable circumstances does not require advance written notice and opportunity to answer (see Part II, F., 3., above).



- (c) Crime. If there is reasonable cause to believe the employee is guilty of a crime for which a sentence of imprisonment can be imposed, the full 30 days' notice of a proposed adverse action is not required. The employee shall be given such fewer number of days advance notice and opportunity to answer as is reasonable under the circumstances and can be justified, but not fewer than 7 calendar days. In these cases, when the circumstances require immediate action, the employee may be placed in a non-duty status with pay for such time as is necessary to effect the action(s), i.e., up to 10 calendar days in nonduty status with pay when the notice period is 7 days.
- (2) If the full 30 days' notice is not given for one of the reasons at (1)(b) or (c) above, the notice shall refer to that fact and state specifically the time given.
- (3) A Saturday, a Sunday, or a legal holiday may not be designated as the last day of a minimum advance notice period.
- d. any and all reasons for the proposed adverse action, specifically and in detail. Numbering the reasons may be desirable to facilitate reference to them in the decision letter.
- (1) The notice shall provide a statement of specific and detailed reasons for the proposed adverse action. Specific reasons are given by a factual description of deficient conduct or combined performance/conduct and events with references to dates, times, places, names of persons involved (including witnesses), and circumstances. The statement of reasons should not include conclusions or opinions concerning an employee's intent or purpose. In all cases the statement of reasons shall be sufficiently specific to give the employee a fair and reasonable opportunity to refute the reasons.
- (2) The notice shall state all reasons which are relied upon to initiate the adverse action. Reasons not pertinent to the action and not relied upon shall not be included in the notice. The notice must include any aggravating factors relied upon in proposing the penalty.
- e. that the employee can review the material relied upon for the proposed adverse action. The material on which the notice is based and which is relied on to support the reasons in the notice, including statements therefrom, shall be assembled and made available to the employee for review. However, the proposing official is not precluded from developing additional evidence pertinent to the basic reasons after issuance of the

proposed notice. For example, if an adverse action is proposed on the basis of a statement secured from one witness, statements may later be secured from additional witnesses. However, additional documents pertinent to the reasons may not be relied upon by the deciding official unless they are made available to the employee for review. The notice shall inform the employee where the material may be reviewed. Material which cannot be disclosed to the employee, or to a designated physician under 5 CFR 294.401 shall not be used to support the reasons in the notice.

f. the time allowed to answer.

(1) Amount. The time allowed to answer the notice and for furnishing affidavits must be a reasonable but minimum period, in keeping with the facts and circumstances surrounding the case. It should be sufficient to afford the employee ample opportunity to review the material relied on to support the reasons in the notice, to prepare an answer and secure affidavits. Except as stated at c., above, 15 calendar days normally should be allowed; and never less than 7 days, even in exceptional circumstances. The date the notice is received is not counted because it is not a full calendar day.

(2) Official Time. The employee should be provided a reasonable amount of official time for the above purposes if he or she is otherwise in an active duty status. The amount of official time allowed for preparation of the response should be stated in the notice as well as the person to request it from (the immediate supervisor). An employee's representative is not entitled to any official time to help an employee prepare an answer to the proposal but may be granted official time to attend the presentation of an oral reply. (See the collective bargaining agreement for representatives who are union stewards). The notice may also include a provision for extending the time to answer and increasing the amount of official time upon request by the employee. In any case, the immediate supervisor may grant requests for additional time, but shall consult with LRB before replying. Requests for and approval of additional time should be confirmed in writing.

g. that the employee has the right to answer the notice personally or in writing, or both, and to present affidavits in support of the answer, but that the employee is not entitled to a formal hearing or examination of witnesses at this time.

h. that the employee may be represented by an attorney or other representative. However, the Director, O&P, may disallow someone as an employee's representative due to a conflict of

interest or position. In addition, an NRC employee may be disallowed as a representative if release from his or her official position would give rise to unreasonable costs or if priority work assignments preclude his or her release. (See f.(2) above regarding official time for a representative who is an NRC employee.)

- i. that the employee's answer, if any, will be considered before a final decision is made.
- j. the person to whom an answer may be presented. The notice should identify the person to receive a written reply and/or an oral reply. The person to whom a reply may be made must be a person with authority to recommend the final decision or must be the official delegated authority to make the final decision on the proposed action. Except for suspensions of 14 days or less, the individual who issued the notice of proposed adverse action shall not be identified as receiving the reply.
- k. the employee's status during the notice period, i.e., active duty, annual leave, etc. See Section E., below.
- l. as appropriate, that the notice of proposed action is under the provisions of 5 U.S.C. 7511 et seq. regarding veterans' preference. This citation should be shown if the employee is a veterans' preference eligible as defined in Part I, R., above, and if the action is a suspension for more than 14 days, removal, reduction in grade or pay, or furlough.
- m. that a decision on the notice will be rendered in writing at or before the time the action is effective, regardless of whether the employee replies.

#### E. Status During Advance Notice Period.

1. Except as provided below, an employee against whom adverse action is proposed shall be retained in an active duty status during the advance notice period of such proposed adverse action.
2. In those rare circumstances where the employee's continued presence in the workplace may pose a threat to the employee or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests, the Office Director or designee shall consult with LRB or the RPO regarding use of the following alternatives:
  - a. Assigning or detailing the employee to other duties where the problem is avoided.
  - b. Placing the employee on leave with his or her consent.

- c. Placing the employee on involuntary sick or other leave when the agency has medical documentation demonstrating physical or mental incapacitation. (See Appendix 4145, Part X.)
- d. Carrying the employee in an appropriate leave category (annual, sick leave without pay, or absence without leave) if he or she is absent for reasons not originating with the NRC.
- e. Curtailing the notice period when the agency can invoke the "crime provision." (See D, 2, c. (1)(c) above.)
- f. If none of the above alternatives is available, the employee may be placed as necessary in a paid, nonduty status during all or part of the advance notice period.

F. Delivery of Advance Notice.

1. Unless good reasons exist for not doing so, notices should be delivered to the employee personally, preferably at the place of work. (FPM Chapter 752, Subchapter 3-3.)
2. If the mails are used, the notices should be sent both via registered mail, for delivery to and return receipt signed by the addressee only, and by first class mail. Use of first class mail should be witnessed by a second person for documentation purposes.

G. Consideration of Answer.

1. Scope. It is not proper to restrict an employee's answers to matters dealing solely with guilt or innocence of the factual circumstances underlying the reasons. The individual must be permitted to plead extenuating circumstances or make any other representation deemed reasonable and proper. All of the information or arguments offered by the employee in writing, in person, or both, should be given consideration in reaching a decision on what to do about the proposed action. When the answer raises doubt as to the validity of the reasons supporting the proposed action, the deciding official shall attempt to resolve the doubt before reaching a decision.
2. Personal Answer. The employee who makes a personal answer may be accompanied by a representative, if desired. The exercise of a personal right to answer does not affect the employee's additional right to reply in writing.
3. Transcript. When a personal response is made, NRC will make a verbatim transcript of the response unless the proposal is a suspension of 14 days or less. In that case, a summary statement may be prepared to record the response. The transcript or summary should be placed in the record of the action.

4. Discrimination Complaints. If the employee alleges discrimination because of race, color, mental or physical handicap, religion, sex, national origin or age, no action shall be taken on the allegation until after the decision on the proposed adverse action is made. After the decision is made and effected, any existing allegation will be resolved under NRC 4140 or the collective bargaining agreement.

H. Written Notice of Decision.

1. Except in the case of suspensions for 14 days or less, the final decision must be made by a different official than the one who proposed the action. LRB and ELD shall concur in the notice of decision prior to issuance.
2. The deciding official shall consider only those reasons for the adverse action that were given to the employee in the notice of proposed action unless new issues are raised in the employee's defense. The deciding official also can consider matters not charged in the proposal notice to determine if the charges in the proposal notice are true or if the penalty should be mitigated.
3. The deciding official should give the employee a written, dated notice of his or her decision promptly after such decision has been made. The notice shall indicate specifically which reasons have been rejected (if any) and which have been sustained (if any) and are being relied on to support the action. When feasible, the decision should be issued not more than 10 working days following receipt of the employee's answer.
4. If the employee does not respond to the proposal, the decision should be issued, if feasible, not more than 10 working days following the close of the period permitted for the response. In any event, the decision shall be delivered to the employee at or before the time the adverse action will be effective.
5. When appropriate, the deciding official may withdraw the proposed action or substitute a less severe action without making it necessary to issue a new notice of proposed action as long as the reasons remain the same. However, to make the action more severe than originally proposed, the entire procedure must be started anew.
6. The decision, (see Exhibit 3 for sample) should be in the form of a letter, be dated, and state:
  - a. the name of the employee and his/her organizational location or residential address.
  - b. the date of the advance notice of proposed action.

- c. the employee replied on (dates), orally and/or in writing, and that each reply was considered; or the employee did not answer, as the case may be.
- d. which of the reasons in the notice have been sustained and which have been found not sustained, if any. This may be accomplished by repeating or referencing the reasons appearing in the advance notice and, with respect to each such reason, stating whether it has been found to be sustained. The decision may not be reached by reliance upon reasons which were not in the original notice of proposed action, except as noted in Section H, 2. above.
- e. the decision. There shall be a precise statement of the action to be taken.
- f. effective date. The effective date must not be prior to the end of the notice period established in the advance notice, but may be later.
- g. If the decision is adverse to the employee, the individual shall be further informed:
  - (1) that he or she may submit one of the following as applicable, depending on the employee's bargaining unit status:
    - (a) a grievance under the provisions of the negotiated collective bargaining agreement.
    - (b) an appeal under the provisions of NRC 4156, "Appeals from Adverse Actions."
  - (2) where the employee may obtain information on how to pursue a grievance or appeal.
  - (3) that the adverse action is not stayed because of a grievance or appeal.
- h. Whenever a veterans' preference eligible (as defined in Part I, R. above) is subject to removal, reduction in grade or pay, suspension for more than 14 days, or furlough, that employee shall also be provided:
  - (1) Notice that he or she may submit an appeal to the Merit Systems Protection Board (MSPB).
  - (2) Advice that if the employee chooses to appeal this decision to the MSPB, the NRC will not accept, or continue to process, a grievance or appeal to NRC.

- (3) Notice of the time limits for appeal to MSPB and the address of the appropriate MSPB office for filing the appeal. (Petitions for appeal must be filed no later than 20 days after the effective date of the action being appealed.)
- (4) a copy of the MSPB regulations.
- (5) a copy of the MSPB appeal form.
- i. If the employee alleges that discrimination was involved in proposing the action, the allegation is processed under NRC 4140, "Equal Opportunity in Government Employment" (to be published), or, if the employee is a member of the bargaining unit, he or she has the option of pursuing the issue as provided in the grievance article of the collective bargaining agreement.
- j. Delivery of Notice of Final Decision. The requirements of F, above, concerning delivery of advance notices also apply to delivery of decision letters.

EXHIBIT 1

REMOVALS, REDUCTIONS IN GRADE/PAY, OR SUSPENSIONS OVER 14 DAYS

NOTE: This flow chart only highlights complex procedures; it is not definitive.

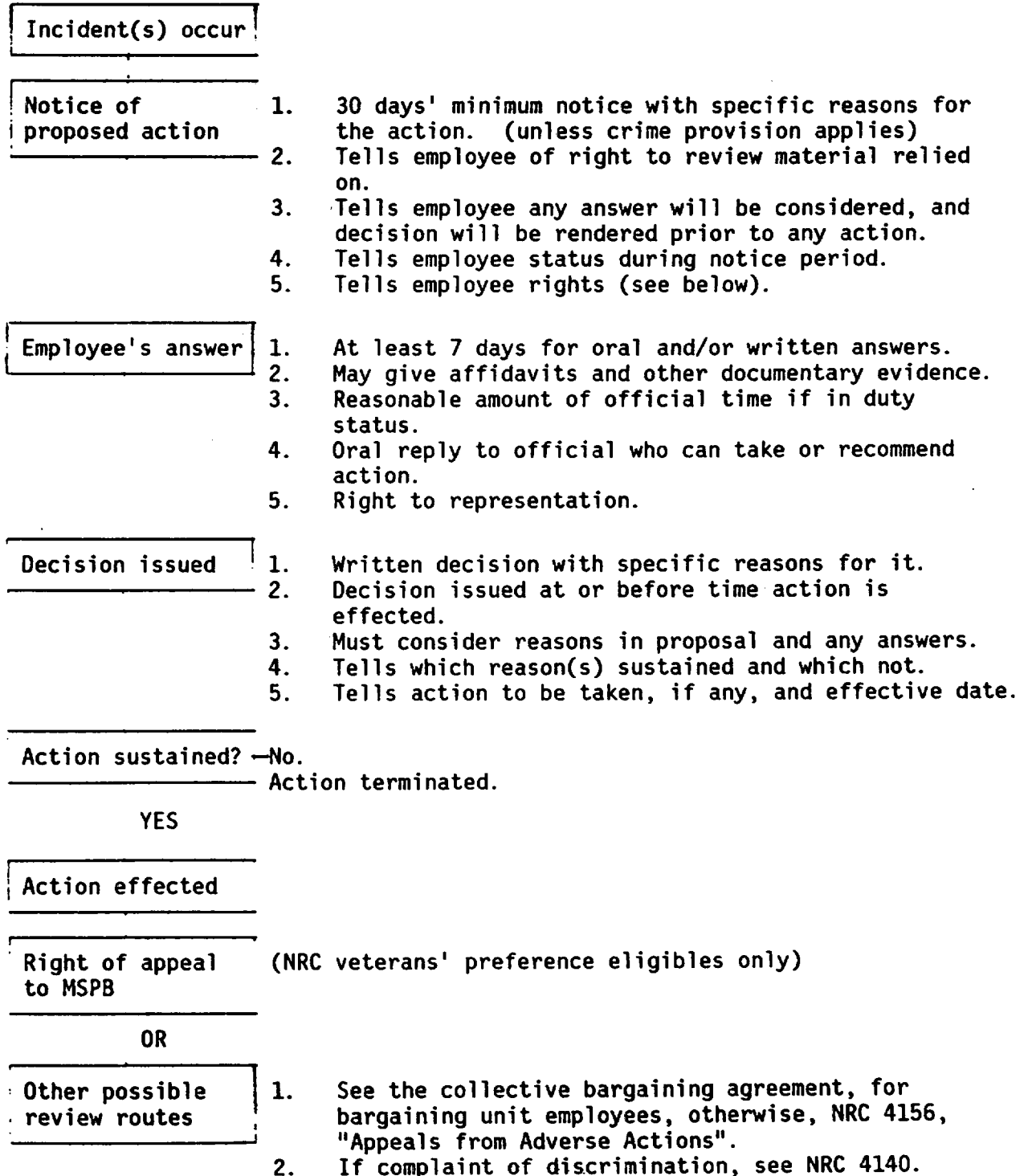




EXHIBIT 2

SAMPLE NOTICE OF PROPOSED REMOVAL

(Appropriate Letterhead)

Mr. (Name)

Date:

Position Title

Address

OR

Organizational Location

City and State

RE: NOTICE OF PROPOSED REMOVAL

Dear Mr. \_\_\_\_\_

In order to promote the efficiency of the service, it is proposed to remove you from your position of (title) , (organizational location), with the Nuclear Regulatory Commission not earlier than 30 calendar days from the date of your receipt of this letter, not counting the date of receipt. The reasons for this proposed action are: (1) absence without leave, (2) insubordination, and (3) submitting false travel vouchers, and time and attendance records. The specific reasons are:

Reason No. 1--Absence Without Leave: You left the office at 10 o'clock on (date) , and you did not return until noon the following day. You had not requested leave, and no leave had been granted. Your official duty hours are \_\_\_\_\_ to \_\_\_\_\_. Therefore, you were charged with x hours of AWOL.

Reason No. 2--Insubordination: When your supervisor, Mr. \_\_\_\_\_ entered your office on (date) at 9:30 a.m., he observed that you were asleep.

He awakened you and asked that you meet him in his office in 5 minutes. When you arrived at his office he asked if you were feeling ill and wanted the rest of the day off on sick leave. You shouted, "Mind your own business. How would you like it if I told you what to do?" Mr. \_\_\_\_\_ told you clearly that if you wished to remain on duty you were to stay at your desk and complete the XYZ project that had been assigned and that was due that afternoon. Your reply to this was to stand up, shake your fist in his face, and shout: "Don't tell me what to do." At which point you returned to your work station. You failed to submit the project that afternoon as directed.

Reason No. 3--Falsification of travel vouchers and time and attendance cards. On (date) you were scheduled to begin a training conference in Cambridge, Massachusetts. This conference was scheduled to last through \_\_\_\_\_. Upon your return to the office, you submitted a time and attendance card indicating that you were in an official duty status for the entire 2-day period. In addition, you submitted a travel voucher claiming per diem and other travel related expenses for the same period.



EXHIBIT 3

SAMPLE NOTICE OF DECISION TO REMOVE

(Appropriate Letterhead)

Mr. (Name)

Date:

Position Title

Address

OR

Organizational Location

City and State

RE: DECISION TO REMOVE

Dear Mr. \_\_\_\_\_

By letter dated \_\_\_\_\_, Mr. \_\_\_\_\_ (proposing official) informed you of a proposal to remove you from your position of \_\_\_\_\_ (title), (organizational location), with the Nuclear Regulatory Commission.

I have carefully and fully considered your oral answer of \_\_\_\_\_ and your letter dated \_\_\_\_\_. I find that the reasons numbered 1, 2, and 3, in Mr. \_\_\_\_\_'s letter dated \_\_\_\_\_ are sustained because they are fully supported by the evidence and warrant your removal to promote the efficiency of the service.

I have considered in mitigation your previously satisfactory work record and your statements of regret. However, I believe a less severe penalty than removal would be inadequate. Therefore, it is my decision that you be removed effective (date).

[If employee is a member of the bargaining unit, state:] If you consider this action improper you may grieve this decision under the negotiated grievance procedure contained in the collective bargaining agreement. However, the decision in the above paragraph is not stayed by the filing of a grievance.

[If employee is outside the bargaining unit, state:] If you consider this action improper, you may appeal within NRC under the provisions of Chapter 4156, "Appeals from Adverse Actions," within fifteen (15) calendar days after delivery of this decision. However, the decision in the above paragraph is not stayed by the filing of an appeal.

[If applicable, add the following:]

As a veterans' preference employee, you have the right under 5 U.S.C. 7701 to appeal this action to the Merit Systems Protection Board (MSPB).

To appeal to MSPB, you must file a petition of appeal:

- (a) addressed to (address of MSPB Regional Office):

EXHIBIT 3 (cont'd)

- (b) during the 20 calendar days following the date of your removal, and
- (c) that includes the material required in Section 1201.24 of the attached MSPB regulations. You may use the attached appeal form if desired.

If you appeal this decision to the MSPB, (you may not grieve under the collective bargaining agreement.) or (no NRC appeal will be considered under the procedure of Chapter 4156, "Appeals from Adverse Actions.")

If you need information concerning your appeal rights and how to pursue an appeal, you may consult with Ms. \_\_\_\_\_ of the Division of Organization and Personnel, Room \_\_\_\_\_, telephone extension \_\_\_\_\_.

Sincerely,

(Signed)  
(Title)

Attachments: [If applicable]

- 1. MSPB Regulations
- 2. MSPB Appeal Form

## PART VI

## EFFECTING ACTIONS

A. Standard Form 50.

1. Every personnel action covered by this chapter that affects the pay or appointment status of an employee, e.g., separation, change to lower grade, suspension, or furlough of any length, shall be formally effected and documented by a Standard Form 50, "Notification of Personnel Action" (SF-50), or its equivalent as permitted by Federal Personnel Manual (FPM) Supplement 296-33.
2. To effect any of the above actions, the employing office submits an SF-52, "Request for Personnel Action," to the personnel office. In the case of adverse actions, a copy of the notice of decision shall be attached.
3. In preparing SF-50's, NRC personnel offices shall use the personnel action codes and terminology prescribed in FPM Supplement 296-33, without regard to the terms appearing in this chapter and appendix. FPM Supplement 296-33 distinguishes between different personnel actions by requiring agencies to use specific standard terms. It also provides instructions for information to be placed in the "Remarks" section of SF-50's.
4. In the case of adverse actions, the personnel office must insure:
  - a. that the "Remarks" section of SF-50 reflects the same information contained in the notice of decision, and
  - b. that the SF-50 is prepared in accordance with FPM Supplement 296-33.
5. A copy of SF-50 shall be furnished to the affected employee.
6. SF-50's are maintained as a permanent record in the employee's Official Personnel Folder (OPF). In the case of adverse actions, a copy of the letter of decision is filed on the left (temporary) side of the OPF.

- B. Security Cases. When an employee is suspended or separated because his or her access authorization is suspended or revoked, the advance notice and right to reply are provided in 10 CFR 10 and/or 5 U.S.C. 7532. (See NRC 2101, "NRC Security Program".) The "Remarks" section of the SF-50 shall refer to the authority under 10 CFR 10 and/or 5 U.S.C. 7532 and give the date of the decision to suspend or revoke access authorization. The action is effective concurrent with the action that suspends or revokes access authorization.

- C. Abandonment of Position. An employee who without written or oral resignation or other explanation, leaves work, or fails to appear for work at the designated place and time, or to return from leave or furlough, may subsequently be removed for abandonment of position if certain conditions are met.
1. Initial Action. During an employee's period of unauthorized absence, the supervisor should consult the Labor Relations Branch (LRB) or the Regional Personnel Officer (RPO) and promptly attempt to determine the employee's intentions by mail and telephone. A record should be made of all contacts and attempts to contact the absent employee. During this period, the employee should be carried in an absent without leave (AWOL) status. (See NRC 4145.)
  2. Conditions. Removal action should be taken only if, after 10 calendar days or more, the employee has failed to notify the supervisor whether he or she intends to return to duty and the NRC has not been able to determine the employee's intentions.
  3. Processing. When the conditions in 2., above, have been met, the supervisor should again consult with LRB or the RPO and with LRB concurrence, submit an SF-52, "Request for Personnel Action," requesting the employee's "Removal," effective on the last day of active duty or of approved leave or furlough, whichever is later. If it cannot otherwise be delivered, notice of this separation is mailed to the employee's last known address. (See Part V, F.2.)
  4. Restoration. If the employee asks to be restored to duty after being removed for abandonment of position, the employee should be restored to duty unless the agency can demonstrate that the employee intended to abandon the position. If the employee is restored, an appropriate charge is made to paid leave, leave without pay, or AWOL; and if appropriate, any disciplinary action, including removal, that appears to be warranted should be initiated. (FPM Chapter 751.)