

Approved: 5-15-03

This directive was reviewed and certified as current and necessary by James T. Campbell, Acting Director, Office of Management, Budget and Evaluation/Acting Chief Financial Officer, 5-15-03.

SUBJECT: FURLOUGH OR REDUCTION IN FORCE IN THE SENIOR EXECUTIVE SERVICE

1. OBJECTIVE. To establish requirements and assign responsibilities for furlough and reduction in force (RIF) of the Senior Executive Service (SES) in the Department of Energy (DOE) and the National Nuclear Security Administration (NNSA).
2. CANCELLATIONS. DOE 3350.1, *Furlough in the Senior Executive Service*, dated 9-13-82, and DOE 3351.2, *Reduction in Force in the Senior Executive Service*, dated 11-27-81.
3. APPLICABILITY.
 - a. DOE Elements. This Order applies to DOE employees in the SES, including those within NNSA (see Attachment 1).
 - b. Contractors. This Order does not apply to contractors.
4. REQUIREMENTS.
 - a. Furloughs.
 - (1) Furloughs of 30 or Fewer Calendar Days (22 or Fewer Workdays if Furlough Does Not Cover Consecutive Days).
 - (a) Selection of which SES member(s) must be furloughed will be based on sound management reasons that relate to lack of work or funds or other work interruptions beyond DOE control.
 - (b) Determination of who will be furloughed and length of such furlough will be made by the Secretary or chairman of the Executive Personnel Board.
 - (c) Appointees chosen for furlough are entitled to a written notice 30 calendar days in advance of the effective date of the furlough. The full notice period may be waived only in the event of unforeseeable circumstances such as the failure of Congress to pass a continuing budget resolution. The written notice must advise the appointee of the—
 - 1 reason for the furlough action;
 - 2 expected duration of the furlough and effective dates;
 - 3 basis for selecting the appointee for furlough when some but not all of the SES appointees in a given organizational unit are being furloughed;

- 4 reason, if the notice period is less than 30 calendar days;
- 5 place where the appointee may inspect the regulations and records pertinent to the action; and
- 6 appeal rights to the Merit Systems Protection Board (MSPB), including the time limit for an appeal and the location of the MSPB office to which an appeal should be sent.

(2) Furloughs Over 30 Calendar Days (Over 22 Workdays if Furlough Does Not Cover Consecutive Days).

- (a) Determination that SES furloughs of over 30 calendar days or over 22 workdays are necessary to enable DOE to meet prescribed budget levels, or for other appropriate reasons, must be made by the Secretary as the Chairman of the DOE Executive Resources Board (ERB). The determination will include the competitive area affected and the number of appointees to be furloughed.
- (b) Competition. Appointees will be selected for furlough on the basis of retention competition. Within their respective competitive areas, employees will be released for furlough in ascending order as they appear on the retention register.
- (c) Retention Register. A list of all career appointees within a competitive area, by group and subgroup, will be prepared to determine who will be retained and who will be furloughed. Appointees will compete for retention by virtue of their performance rating, tenure, and length of creditable service.
 - 1 Group I. All career and probationary appointees with “exceeds expectations” performance ratings.
 - a Subgroup A. Career appointees listed in descending order of service computation dates.
 - b Subgroup B. Probationary appointees listed in descending order of service computation dates.
 - 2 Group II. All career and probationary appointees with “meets expectations” performance ratings.
 - a Subgroup A. Career appointees listed in descending order of service computation dates.
 - b Subgroup B. Probationary appointees listed in descending order of service computation dates.
 - 3 Group III. All career and probationary appointees with “needs improvement” performance ratings.

- a Subgroup A. Career appointees listed in descending order of service computation dates.
 - b Subgroup B. Probationary appointees listed in descending order of service computation dates.
 - 4 Group IV. All career and probationary appointees with “fails to meet” ratings.
 - a Subgroup A. Career appointees listed in descending order of service computation dates.
 - b Subgroup B. Probationary appointees listed in descending order of service computation dates.
 - (d) Discretionary Exception. The ERB may alter the general order of release for furlough to continue an appointee in a duty and pay status when the appointee’s duties are such that they cannot be interrupted at the time of furlough. Appointees who perform phase-down work which is necessitated by an imminent threat to the safety of human life or the protection of property in the absence of appropriations may similarly be excepted from furlough and will be considered to be in a delayed pay and duty status; that is, they remain in duty status to accomplish the closedown of their activities, but are not paid for those services until a new continuing resolution or appropriation legislation is passed.
 - (e) Return from Furlough. When DOE recalls appointees to duty in the same competitive area from which they were furloughed, it normally will recall them in the order of their retention standing, beginning with the highest-standing employee, if all are not recalled to duty at the same time. An exception may be made to provide appropriate supervision, if preparation for resumption of operations requires that certain individuals be recalled out of order.
- (3) Noncareer, limited term, limited emergency, and reemployed annuitant appointees serve at the pleasure of the appointing authority and may be furloughed at any time without regard to competitive selection procedures. The appointee should be given a written notice, delivered at least 1 day prior to the beginning of the furlough. The notice should indicate the reasons for, duration of, and effective dates of the furlough. Noncareer, limited appointees, and reemployed annuitants cannot appeal a furlough to MSPB.
- (4) Entitlement Under Furlough.
- (a) Annual Leave.
 - 1 Appointees cannot elect to use paid leave during a furlough.
 - 2 Accrued annual leave granted prior to furlough may be completed consistent with governing DOE leave policies.

- a An employee who is on annual leave that was approved and begun prior to the effective date of the furlough will be placed on furlough automatically when the approved period of leave expires.
 - b An employee who is on emergency annual leave on the day preceding the effective date of the furlough will be placed on furlough automatically on the effective date of the furlough.
 - c Any leave that had been approved, but which had not begun as of the effective date of the furlough, will be canceled.
 - 3 Leave may not be granted during a furlough or upon selection of an appointee to be furloughed.
- (b) Sick Leave.
- 1 Paid leave cannot be granted for an illness that occurs during a furlough.
 - 2 Paid leave may be granted for an illness that began prior to a furlough, to the extent of the appointee's accrued leave and to the extent the appointee remains sick.
 - 3 If annual or compensatory time is being used in lieu of sick leave, the employee will be placed on furlough automatically when he or she recovers.
- (c) Leave Accrual.
- 1 Employees do not accrue annual or sick leave if they are furloughed for one or more entire pay periods; for example, if an employee is furloughed for all 10 workdays in pay period 4, no leave is earned for that pay period.
 - 2 If employees are furloughed for an entire pay period and the furlough extends into part of the preceding or subsequent pay period, leave is earned on a pro rata basis for that previous and/or subsequent pay period. For example, if an employee is furloughed for the last 2 days of pay period 4 and the entire pay period 5, no leave is earned for pay period 5, but for pay period 4, the employee earns 80 percent of normal sick and annual leave accrual (10 workdays in a pay status equal 100 percent leave accrual; 8 workdays in a pay status equal 80 percent leave accrual).
 - 3 If the duration of a furlough is less than one full continuous pay period, full leave is earned for the affected pay period(s), rather than on a pro rata basis. For example, if

an employee is furloughed for the last 5 days of pay period 4 and the first 5 days of pay period 5, there is no reduction of leave accrual by reason of furlough for either pay period.

- 4 If an employee's aggregate furlough time totals the hours in one pay period (i.e., an aggregate of 80 hours during a leave year in a nonpay status), his or her sick leave credit is reduced by one-half day and his or her annual leave credit is reduced by either one-half, three-fourths, or a full day, depending on the individual's leave-earning category. For purposes of determining reduction in leave credits, the only hours counted toward the 80-hour aggregate will be those in a nonpay status for each pay period of service during the leave year in which annual leave accrued. For example, an employee who normally earns 6 hours of annual leave and 4 hours of sick leave per pay period and is initially furloughed for 4 days (32 hours) in one pay period and 5 days (40 hours) in the next pay period is credited with 6 hours of annual leave and 4 hours of sick leave for each of these two pay periods. If the employee is then furloughed for as much as 1 day (8 hours) in the next pay period, the aggregate time in a nonpay status would total or exceed 80 hours and a deduction would be made from the employee's leave balance for that period of three-fourths of a day of annual leave (6 hours) and one-half day (4 hours) of sick leave.

- (d) Service Credit. For retirement, leave, RIF, and severance pay, up to 6 months in the aggregate in any calendar year in a nonpay status is creditable.
- (e) Probationary Period. Absence in nonpay status during periods of furlough is creditable for up to a total of 22 workdays toward the fulfillment of the 1-year SES probationary period. Any nonpay time in excess of the total of 22 workdays will extend the 1-year period of SES probation by an equal amount. For example, if an employee's 1-year probationary period would normally end on July 12 and he or she accumulated 24 days in a nonpay status, the probationary period ending date would be extended to July 14.
- (f) Unemployment Compensation. Depending upon laws of the State in which the appointee is employed, unemployment compensation is usually payable for each week in which income paid by the Government does not exceed that state's prescribed ceiling or percentage. Normally 5 consecutive days in nonpay status is qualifying.
- (g) Retirement.

- 1 Consecutive Furlough. No withholdings will be taken while the appointee is in nonpay status for up to 12 months. Service credit will be given for time spent in a nonpay status that does not exceed 6 months in the aggregate in any

calendar year. However, if withholding deposits are not made to cover this period of service, the annuity otherwise payable is reduced by an amount equal to 10 percent of the balance due and unpaid, unless the employee elects to eliminate the service credited during nonpay status entirely for annuity computation purposes.

- 2 Discontinuous Furlough. Contributions are adjusted each pay period in proportion to the basic salary received.

(h) Life Insurance.

- 1 Consecutive Furlough. Coverage continues without cost while the appointee is in a nonpay status for up to 12 months.
- 2 Discontinuous Furlough. Coverage continues and the balance of the appointee's pay during a pay period (after deduction for retirement, Federal income tax, and health benefits) is applied toward the appointee's withholding for life insurance.

(i) Health Benefits.

- 1 Enrollment continues for up to 365 days of nonpay status (or periods of nonpay status interrupted by less than an aggregate of 4 months of pay status).
- 2 The enrollee is responsible for payment of his or her share of the cost of health insurance for each pay period during which the health insurance continues. If the employee's available salary in any pay period is insufficient to cover the full employee share, the employee is still responsible for paying the full amount due. If the employee does not make payments to DOE during nonpay status, he or she will be subject to withholdings from future salary upon return to duty to cover the amount due as an indebtedness to the Government. If the indebtedness cannot be withheld in full from salary, it may be recovered from a lump sum payment of accrued annual leave or other sources available to DOE for recovery of an indebtedness due the United States.
- 3 Employees may only avoid the requirement to pay their share of health benefits insurance by canceling the insurance prospectively.

b. Reductions in Force.

- (1) Placement. Before formal RIF procedures are initiated, DOE will make a concerted effort to place employees who occupy surplus positions by means of directed reassignment to vacant SES positions or other appropriate action.

- (2) Equitable Treatment. If a RIF becomes necessary, appointees of surplus positions and displaced appointees must be informed at the earliest possible time and advised of the regulations under which the RIF action is being taken and their rights and benefits. All members must be accorded fair and equitable treatment, consistent with governing regulations and Departmental procedures.
- (3) General Schedule Reinstatement. For career appointees of surplus positions and career appointees displaced by someone of higher retention standing for whom no SES vacancies exist for which they are qualified, offers to exercise any reinstatement eligibility to a General Schedule vacancy must be extended, as feasible, to afford eligible career appointees the same opportunities extended by statute to eligible probationary appointees.
- (4) Proposal. To ensure coordination with interested organizations and compliance with applicable laws, regulations, and directives, an organization anticipating a surplus of encumbered SES positions must submit a written request to the attention of the Executive Resources Management Division of the Office of Human Resources Management as far in advance of the anticipated effective date as possible. The following specific information must be included in proposal requests:
 - (a) specific reason(s) for the RIF (e.g., reorganization, abolishment of functions, etc.);
 - (b) number of positions affected, number and names of incumbents affected, and specific internal reassignment action proposed for each affected appointee; and
 - (c) names of persons for whom proposed reassignment offers were not available or accepted and who, therefore, must be placed using formal RIF procedures.
- (5) Review. The Executive Resources Management Division will review the proposals and ensure that all appropriate reassignments within the organization have been implemented prior to initiating any formal RIF or alternative action. The Executive Resources Management Division will identify vacant SES positions outside of the organization having the surplus for which the incumbents of the surplus positions are qualified and will provide a staff analysis upon which a decision can be based and approval given for placement action as appropriate. The analysis will incorporate the organizational request and supporting data and assess the appropriateness of a formal RIF when proposed placement offers are unavailable or not accepted.
- (6) Approval. The Secretary as chairperson of the Departmental ERB, will render a final decision on the need for all RIFs affecting SES appointees in DOE, including specific directed reassignments or placement offers prior to a formal RIF.
- (7) Implementation of a Formal RIF. Career and probationary appointees who occupy surplus positions and have not been placed by directed

reassignment into vacant SES positions will be subject to a formal RIF, conducted on the basis of retention competition. The Executive Resources Management Division staff, upon DOE ERB determination of a RIF situation, will prepare a retention register and provide staff support for the formal implementation process.

(a) Retention Register. Career and probationary appointees who occupy surplus positions are entitled to compete for job retention. A list, called a retention register, will be compiled of the incumbents of all SES positions within DOE for which the incumbent of the surplus position is qualified. These persons, along with the incumbent of the surplus position, will be listed on the retention register in accordance with the retention groups and subgroups defined under paragraph 4b(7)(b).

(b) Retention Standing. Persons on the retention register are listed by group and subgroup, with performance given primary consideration. Employees with unacceptable performance ratings are not listed on the retention register and must be removed for unacceptable performance prior to the removal of any other employee under RIF action.

1 Group I. All career and probationary appointees with “exceeds expectations” performance ratings or no ratings.

a Subgroup A. Career appointees listed in descending order of service computation dates.

b Subgroup B. Probationary appointees listed in descending order of service computation dates.

2 Group II. All career and probationary appointees with “meets expectations” performance ratings or no ratings.

a Subgroup A. Career appointees listed in descending order of service computation dates.

b Subgroup B. Probationary appointees listed in descending order of service computation dates.

3 Group III. All career and probationary appointees with “needs improvement” performance ratings.

a Subgroup A. Career appointees listed in descending order of service computation dates.

b Subgroup B. Probationary appointees listed in descending order of service computation dates.

(c) Displacement and Consequence of Competition. If appointees who are in a lower retention subgroup, as determined through the competitive process, occupy positions for which the surplus appointee is qualified, the appointee of the surplus position will displace—take over the position of—the appointee with the lowest retention standing. If no appointees who have a lower retention standing are in such positions, there is no displacement and the appointee of the surplus position is given an opportunity to exercise any assignment right, is certified to the Office of Personnel Management (OPM) for placement assistance, or may be offered an opportunity to exercise reinstatement eligibility to a vacant position in the General Schedule. The displaced appointee may in turn displace anyone on a subsequent retention register who is in a lower retention subgroup and who occupies a position for which the displaced appointee is qualified. If there are no such appointees, the displaced appointee is given the same assignment and placement opportunities as applicable and as cited in this paragraph for the surplus employee. No displacement will be effected until the DOE ERB or the Secretary approves the technical qualifications of the surplus appointee for the position in which he or she is displacing another appointee. Such approval must be based on input from the gaining supervisor and the staff recommendation of the Executive Resources Management Division.

(d) Assignment Rights.

1 SES career appointees who can displace other appointees through the formal RIF process may be offered vacant SES positions in DOE for which they meet the technical qualifications. If there are fewer vacancies than appointees with assignment rights, the appointee with the highest retention standing will be entitled to the first vacancy offer. If, for example, four vacant positions exist and there are five appointees with assignment rights qualified for such vacancies, the appointee with the lowest retention standing would not receive an SES assignment if the other four were reassigned. The Secretary will determine the placement to be made for those appointees with assignment rights.

2 SES probationary appointees who are removed from their positions because of a RIF are not entitled to further placement consideration for SES positions. Such employees who were appointed to the SES from a civil service position held under a career or career-conditional or equivalent tenure appointment are entitled to be placed in a continuing civil service position at grade GS-15 or above of the General Schedule as long as such placement would not cause the separation or reduction in grade of any other employee. The probationary employee so placed is entitled to receive basic pay at the highest of the following rates of basic pay (the payable rate is the legal rate of basic pay):

- a the rate of basic pay in effect for the General Schedule position in which placed,
 - b the rate of basic pay in effect at the time of the placement for the civil service position held immediately before being appointed to the SES, or
 - c the rate of basic pay in effect for the probationary appointee immediately before being placed in the General Schedule position upon separation from the SES.
- (e) Departmental Certification. If DOE is unable to place a RIFed career appointee in a vacant SES position for which he or she is qualified, this fact must be certified in writing to the OPM Director under the signature of the Secretary.
- (f) OPM Placement Offer. OPM has 45 calendar days from the date the Agency certifies receipt of the appointee's application for assistance to locate and offer an SES vacancy somewhere in the Federal Government to the RIFed career appointee. RIFed career appointees remain on Departmental rolls during this process.
- (g) Separation.
 - 1 Probationary appointees are considered involuntarily separated from Departmental rolls and entitled to discontinued service annuities [provided they meet the eligibility requirements of Title 5 Code of Federal Regulations (CFR), part 831] when—
 - a they decline an offer of reassignment to another SES position in the Department that is outside of the commuting area or
 - b they decline an offer of a continuing GS-15 position in the Department upon separation from the SES or
 - c they resign upon receiving a specific notice that their position will be abolished and that they face involuntary separation from such position.
 - 2 Career appointees are considered involuntarily separated from Departmental rolls and entitled to discontinued service annuities (provided they meet the eligibility requirements of 5 CFR 831) when—
 - a they decline an offer of reassignment or fail to accept a directed reassignment to another SES

position in the Department that is outside of the commuting area or

- b they decline a reasonable offer of another SES position somewhere in the Federal Government made by OPM or
- c they are not placed by OPM in an SES position in another Agency within 45 days after OPM received written certification that DOE could not place them or
- d they resign upon receiving a specific notice that they face involuntary separation from their position because of job abolishment or from the Federal service for nondisciplinary reasons.

3 Appointees who refuse a directed reassignment in the Department within their commuting area are removed from the Department under 5 U.S.C. 7543(a) for failure to accept the reassignment. Such removal is considered a voluntary separation and does not qualify as a basis for discontinued service retirement.

4 If noncareer and limited appointees and reemployed annuitants occupy positions that are due to be abolished, they may be removed at any time from the SES and the Department. They have no entitlement to placement in any other position in the Department except in instances of entitlement to “fallback” rights.

(h) Appointees with Unsatisfactory Performance Ratings.

1 While career appointees with current unsatisfactory performance ratings may be separated from the SES at any time by reason of unacceptable performance, once such appointees are identified as occupying a surplus position they must be removed before any other SES appointee is removed in the RIF action.

2 Career appointees who are separated from the SES for unacceptable performance at the time of a RIF are entitled to an offer of a continuing position at GS-15 or above of the General Schedule, or an equivalent position, as long as the placement would not cause the separation or reduction in grade of any other employee.

3 If placement cannot be effected or if the appointee declines a placement offer, the affected appointee will be separated from the Department. Such separation is considered

involuntary for purposes of discontinued service retirement annuities.

- 4 Guidance on separations from the SES for unacceptable performance is provided by the Department's *Senior Executive Service Performance Management Plan*.

(8) Notice.

- (a) Removal of Noncareer and Limited Appointees and Reemployed Annuitants. Written notice of termination of appointment because the position the appointee occupies has become surplus will be issued to the appointee as soon as feasible in advance of the effective date of the action.
- (b) Removal of Probationary Appointees. Probationary appointees will receive written notification of their separation from the SES, removal from the Department including NNSA, or offer of a GS-15 position, as appropriate, 30 calendar days in advance of the effective date of the action to be taken, where feasible.
- (c) Removal for Unacceptable Performance. Career appointees who are removed for unacceptable performance are entitled to 30 calendar days' advance written notification; probationary appointees who are removed for unacceptable performance will be notified in writing prior to the effective date of the removal.
- (d) Directed Reassignment. Career and probationary appointees are entitled to written notice of a directed reassignment 15 calendar days in advance.
- (e) Removal for Failure to Accept a Directed Reassignment. Career and probationary appointees who were appointed from a civil service career, career-conditional, or equivalent tenure appointment who are removed for failure to accept a directed reassignment are entitled to 30 calendar days' written notice in advance of the effective date of such removal. Content of the notice and employees' rights are defined in 5 CFR 752.
- (f) Removal of Career Appointees. A career appointee who is removed from his or her SES position by a RIF and who cannot be placed in another SES position in the Department will be given a written notice in advance of Departmental certification to OPM. The notice will specify—
 - 1 the nature of the RIF competition, including the appointee's standing on the retention register;
 - 2 why the action is being taken;

- 3 the place where the appointee may inspect the regulations and records pertinent to the competition for the job retention;
- 4 efforts made to place the employee in a vacant SES position within the Agency;
- 5 any placement rights following separation from the SES;
- 6 the date on which the Agency certified the appointee to OPM for placement assistance;
- 7 information about OPM's placement assistance program, including what the appointee has to do to apply;
- 8 the name and telephone number of the personnel specialist who is available to provide counseling concerning the appointee's rights; and
- 9 the appointee's appeal rights, including the time limit for the appeal, the location of the MSPB office to which any appeal should be sent, a copy of the applicable MSPB regulations, and an appeals form.

- (9) Reemployment Entitlement. Career appointees who could not be placed by DOE or OPM are entitled to be selected for the first announced vacancy in the Department for which they apply and are found qualified. This entitlement is for 1 year, beginning with the date of DOE certification to OPM and ending with either their first such SES offer by DOE or the anniversary of the date of certification to OPM, whichever is earlier.

c. Appeals to the Merit Systems Protection Board.

- (1) Career appointees who believe the regulations or Departmental procedures governing SES furloughs have not been correctly applied may appeal to the MSPB within 20 calendar days of the effective date of the furlough action. Appeal rights apply to both short and extended furloughs.
- (2) All career appointees are entitled to appeal—
 - (a) alleged procedural error by the Department in implementing the RIF under Title 5 United States Code (U.S.C.), section 3593(c)(1);
 - (b) reasonableness of the OPM offer under 5 U.S.C. 3593(c)(1);
 - (c) separation resulting from failure to accept a reasonable offer in another Agency under 5 U.S.C. 3593(c)(2);
 - (d) lack of reasonable placement effort by OPM under 5 U.S.C. 3593(c)(3); or
 - (e) removal for declining directed reassignment under 5 U.S.C. 7543.

- (3) Noncareer and limited appointees and reemployed annuitants have no right of appeal for separation from the SES or the Department prior to or during a RIF.
- (4) Probationary appointees are entitled to appeal—
 - (a) competitive RIF procedures under 5 U.S.C. 3593(c)(1) and
 - (b) removal for declining a directed reassignment under 5 U.S.C. 7543, as applicable.

5. RESPONSIBILITIES.

- a. Secretary of Energy, as Chairperson of the Executive Resources Board.
 - (1) Approves the need for a furlough or RIF in the SES.
 - (2) Approves furlough actions for SES appointees.
 - (3) Approves placement offers or separation actions for surplus and displaced appointees.
- b. Director of Management, Budget, and Evaluation and Deputy Administrator, NNSA. Ensure that Departmental furloughs and RIFs in the SES are carried out in accordance with governing regulations and Departmental policies and procedures.
- c. Director for Human Resource Management and NNSA Personnel Officers.
 - (1) Develop, promulgate, and implement DOE procedures for implementing a furlough or RIF in the SES and related personnel functions, consistent with appropriate laws and regulations.
 - (2) Maintain liaison with OPM.
 - (3) Review plans to conduct a furlough or RIF in the SES, provide staff advice and recommendations, and provide technical support for program implementation.
 - (4) Ensure that furlough records are maintained for at least 1 year from the effective date of the action.
- d. Heads of Headquarters Elements, including NNSA.
 - (1) Provide requests for personnel action and appropriate data in support of furlough actions affecting subordinate SES appointees.
 - (2) Identify which SES positions will become surplus because of program curtailments, reduction in monetary or manpower allocations, or any other causes which will result in a reduction in the size of their SES workforce and initiate appropriate action.

- (3) Recommend placement actions within their organizations for surplus SES appointees.
- (4) Provide requests for personnel action and appropriate data in support of RIF actions affecting subordinate SES appointees.

6. REFERENCES.

- a. Title 5 CFR, part 359, contains regulatory authority and procedural requirements for removal from the SES.
- b. Title 5 CFR, part 752, provides adverse action regulations for removal for cause, including failure to accept a directed reassignment.
- c. Title 5 CFR, parts 1200 through 1201, provides regulations and procedures for appeal to the MSPB.
- d. Title 5 U.S.C., part 3595, provides the statutory basis for a furlough or RIF in the Senior Executive Service.
- e. DOE 3351.1, *Reduction in Force*, provides procedures governing a RIF affecting positions at GS-15 and below or equivalent.

7. CONTACT. Questions concerning this Order should be addressed to the Office of Human Resources Management, Executive Resources Management Division, at 202-586-8450.

8. DEFINITIONS.

- a. Appointee. Any member of the SES regardless of whether under a career, noncareer, limited term or limited emergency appointment or a reemployed annuitant.
- b. Career Appointee. For the purposes of this directive only, a career member of the SES who is not serving the 1-year probationary period and who is not serving as a reemployed annuitant.
- c. Competitive Area. For purposes of selection for furlough or RIF in the SES, the organizational and geographical area within which career and probationary appointees compete is Department-wide.
- d. Directed Reassignment. A management decision, by the Secretary, as Chairman of the DOE Executive Resources Board, to reassign a career or probationary appointee to another SES position anywhere within the Department (inside or outside of the commuting area). Failure to accept a directed reassignment will result in separation from the Federal Service.
- e. Furlough. Placing an appointee temporarily in a nonpay, nonduty status because of lack of work or funds or other nondisciplinary reason when the Department intends to recall the appointee to a pay and duty status within 1 year.

- f. Offer. A proposal made to an appointee requesting that he or she consider placement in another position. Failure to accept an offer will not alter an appointee's employment status.
- g. Performance Rating. The current official SES performance rating as reviewed by the Performance Review Board and approved by the Secretary of Energy. Those who have never received an SES performance rating are presumed to be "fully successful," or "meets expectations."
- h. Probationary Appointee. A career member of the SES, other than a reemployed annuitant, who has not completed the 1-year probationary period.
- i. Reduction in Force. The release of an SES career or SES probationary appointee who has been displaced by a career or probationary appointee in a surplus SES position who has a higher retention standing, or the release of an SES career or SES probationary appointee from a surplus SES position when such appointee has the lowest retention standing of those occupying SES positions for which he or she is qualified.
- j. Reemployed Annuitant. An annuitant receiving annuity from the Civil Service Retirement and Disability Fund who, having completed any required probationary period to acquire SES career appointment status, is reemployed in the SES. An annuitant so reemployed serves at the will of the appointing authority.
- k. Senior Executive Service Position. A position in the executive branch that is classified above GS-15, or is in level IV or V of the Executive Schedule, which is not required to be filled by Presidential appointment with Senate confirmation and meets the following criteria (Administrative Law Judges, members of the Board of Contract Appeals, and selective excepted service positions in the Department, including NNSA, are excluded):
 - (1) directs the work of an organizational unit;
 - (2) is held accountable for the success of one or more specific programs or projects;
 - (3) monitors progress toward organizational goals and periodically evaluates and makes appropriate adjustments to such goals;
 - (4) supervises the work of employees other than personal assistants; or
 - (5) otherwise exercises important policy-making, policy-determining, or other executive functions.
- l. Service Computation Date. As used in this directive, the date used to identify an appointee's total creditable civilian and military service for retention standing in furlough or RIF competition. In DOE, creditable service for RIF is determined in Title 5 regulatory requirements.

- m. Surplus Position. An SES position that becomes surplus to the needs of an organization and is abolished due to any of the following reasons:
- (1) lack of work or curtailment of a function,
 - (2) shortage of funds,
 - (3) reorganization,
 - (4) determination that the appointee's position no longer meets the definition for an SES position because of a change in duties or responsibilities,
 - (5) OPM withdrawal of SES spaces,
 - (6) total Agency shutdown, or
 - (7) other action which results in the elimination or modification of one or more SES positions.

BY ORDER OF THE SECRETARY OF ENERGY:



KYLE E. MCSLARROW
Deputy Secretary

DOE ORGANIZATIONS TO WHICH DOE O 327.1 IS APPLICABLE

Office of the Secretary
Chief Information Officer
Office of Civilian Radioactive Waste Management
Office of Congressional and Intergovernmental Affairs
Office of Counterintelligence
Departmental Representative to the Defense Nuclear Facilities Safety Board
Office of Economic Impact and Diversity
Office of Energy Efficiency and Renewable Energy
Energy Information Administration
Office of Environment, Safety and Health
Office of Environmental Management
Office of Fossil Energy
Office of General Counsel
Office of Hearings and Appeals
Office of Independent Oversight and Performance Assurance
Office of Intelligence
Office of Management, Budget and Evaluation and Chief Financial Officer
National Nuclear Security Administration
Office of Nuclear Energy, Science and Technology
Office of Policy and International Affairs
Office of Public Affairs
Office of Science
Secretary of Energy Advisory Board
Office of Security
Office of Worker and Community Transition
Office of Energy Assurance
Bonneville Power Administration
Southeastern Power Administration
Southwestern Power Administration
Western Area Power Administration

PLACEMENT RIGHTS OF SES PROBATIONARY APPOINTEES

PROBATIONARY APPOINTEE WHO	
PRIOR TO FORMAL RIF	
<u>OCCUPIES A SURPLUS POSITION</u>	
May elect discontinued service retirement because of facing involuntary separation from SES position. 5 CFR 831	
or	
*Is placed in a vacant SES position by directed reassignment. 5 U.S.C. 3595 (b)(3)(A)	
DURING A FORMAL RIF	<u>IS DISPLACED BY AN APPOINTEE OF HIGHER RETENTION STANDING IN RIF COMPETITION</u>
If not reassigned prior to RIF:	May elect discontinued service retirement because of facing involuntary separation from SES position. 5 CFR 831
Competes for job retention and displaces the appointee with the lowest retention standing of those who occupy a position for which technically qualified. 5 U.S.C. 3595 (a)	Competes for job retention and displaces the appointee with the lowest retention standing of those who occupy a position for which technically qualified. 5 U.S.C. 3595 (a)
or	or
If nobody has a lower retention standing, is entitled to fall back to grade 15 vacant position in the General Schedule (if came into the SES from a competitive civil service position). 5 U.S.C. 3594	If nobody has a lower retention standing, is entitled to fallback to grade 15 vacant position in the General Schedule (if came into the SES from a competitive civil service position). 5 U.S.C. 3594
If no GS-15 vacancies exist for which qualified or does not have fallback entitlement, is involuntarily separated from the DOE rolls. 5 U.S.C. 3592 (eligible for discontinued service retirement 5 CFR 831)	If no GS-15 vacancies exist for which qualified or does not have fallback entitlement, is involuntarily separated from the DOE rolls. 5 U.S.C. 3592 (eligible for discontinued service retirement 5 CFR 831)
and	and
Has no further placement entitlement.	Has no further placement entitlement.
*Departmental determination to extend this provision is not guaranteed by statute.	

**PLACEMENT RIGHTS OF SES CAREER APPOINTEES
(Who Have Completed or Were Not Subject to Probation)**

CAREER APPOINTEE WHO		
Placement within DOE, including NNSA:	PRIOR TO FORMAL RIF <u>OCCUPIES A SURPLUS POSITION</u> May elect discontinued service retirement because of facing involuntary separation from SES position. 5 CFR 831 or Is placed in a vacant SES position by directed reassignment. 5 U.S.C. 3595 (b)(3)(A)	<u>IS DISPLACED BY AN APPOINTEE OF HIGHER RETENTION STANDING IN RIF COMPETITION</u> May elect discontinued service retirement because of facing involuntary separation from SES position. 5 CFR 831 or Is placed in a vacant SES position by directed reassignment. 5 U.S.C. 3595 (b)(3)(A)
	DURING A FORMAL RIF If no vacancies exist for which qualified, competes for job retention and displaces the appointee with the lowest retention standing of those who occupy a position for which technically qualified. 5 U.S.C. 3595(a) or *If nobody has a lower retention standing, is offered an opportunity to exercise reinstatement eligibility to a General Schedule position, as feasible, within the Department.	If no vacancies exist for which qualified, competes for job retention and displaces the appointee with the lowest retention standing of those who occupy a position for which technically qualified. 5 U.S.C. 3595(a) or *If nobody has a lower retention standing, is offered an opportunity to exercise reinstatement eligibility to a General Schedule position, as feasible, within the Department.
Placement outside DOE, including NNSA:	If not placed in an SES position or reinstatement to a General Schedule position is not effected, certified to OPM for 120-day search for SES position in another Agency (during which time remains on DOE rolls). 5 U.S.C. 3595(b)(3)(B) Offered an SES position in another Agency. 5 U.S.C. 3395(b)(3)(B) or If OPM offer is not made or accepted, the appointee is involuntarily separated from DOE rolls. 5 U.S.C. 3595(b)(4) (eligible for discontinued service retirement 5 CFR 831) *Departmental determination to extend this provision is not guaranteed by statute.	If not placed in an SES position or reinstatement to a General Schedule is position is not effected, is certified to OPM for 120-day search for SES position in another Agency (during which time remains on DOE rolls). 5 U.S.C. 3595(b)(3)(B) Offered an SES position in another Agency. 5 U.S.C. 3395(b)(3)(B) or If OPM offer is not made or accepted, the appointee is involuntarily separated from DOE rolls. 5 U.S.C. 3595(b)(4) (eligible for discontinued service retirement 5 CFR 831)