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GUIDE

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SUBJECT: SENIOR EXECUTIVE SERVICE PERSONNEL GUIDE

1. **PURPOSE.** This Guide has been prepared by the Executive Resources Policies and Programs Branch, Executive Resources Division, Office of Personnel, for use by all Departmental members of the Senior Executive Service. It explains a general overview, definitions, and general guidelines and procedures covered by Federal regulations in the areas of Senior Executive Service employment, the performance appraisal system, and reductions-in-force. Each chapter indicates the appropriate federal regulation containing the requirements for that particular subject.
2. **APPLICABILITY.** This Guide can be used by all Department of Energy members of the Senior Executive Service.
3. **EXEMPTIONS.** Not applicable.
4. **COMMENTS AND ASSISTANCE.** Questions or comments on this Guide should be addressed to the Department of Energy, Executive Resources Policies and Programs Branch, Executive Resources Division, Office of Personnel, Washington, D.C. 20585 or by telephoning (202) 586-8450.
5. **REFERENCES.** References are contained in Attachment 1.

BY ORDER OF THE SECRETARY OF ENERGY:



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DISTRIBUTION:
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INITIATED BY:
Office of Personnel

REFERENCES

1. Civil Service Reform Act (Public Law 95-454), which established the Senior Executive Service and provides for a performance appraisal system for its members.
2. 5 United States Codes 3391-3395, which provide statutory provisions covering appointments, reassignments, and transfers in the Senior Executive Service.
3. 5 United States Code 3593, which provides statutory provisions for reinstatement to the Senior Executive Service.
4. 5 United States Code 3595, which provides statutory authority and procedural requirements for conducting a reduction-in-force in the Senior Executive Service.
5. Title 5 Code of Federal Regulations, part 293, which provides for an employee performance file system for Senior Executive Service members.
6. Title 5 Code of Federal Regulations, part 359, which provides regulations for career appointee's removal for unacceptable performance, and removal during probation.
7. Title 5 Code of Federal Regulations, part 752, which provides adverse action regulations for removal for cause, including failure to accept a direct reassignment.
8. Title 5 Code of Federal Regulations, part 771, which provides grievance coverage and regulations.
9. Title 5 Code of Federal Regulations, parts 1200-1201, which provide regulations and procedures of appeal to the Merit Systems Protection Board.
10. Title 5 Code of Federal Regulations, parts 1201 and 1250, which provide regulations and procedures governing appeals to the Merit Systems Protection Board and investigations by the Office of Special Counsel into alleged prohibited personnel practices.
11. Federal Personnel Manual Supplement 296-33, subchapter 6, which provides the procedures used in determining creditable service for reduction-in-force purposes.
12. DOE 1700.1, FREEDOM OF INFORMATION PROGRAM, of 11-19-79, which provides procedures for receiving and responding to requests for information contained in Departmental records.
13. DOE 1800.1, PRIVACY ACT, of 8-31-84, which provides procedures for receiving and responding to requests for information contained in Departmental records.

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CHAPTER I

REASSIGNMENTS

1. **OVERVIEW.** Reassignments are the permanent movement of a Senior Executive Service appointee from one Senior Executive Service position to another within the same Federal agency.
2. **AUTHORITY.** 5 Code of Federal Regulations 317, subpart I.
3. **GUIDELINES AND PROCEDURES.**
 - a. **Reassignment of Career Appointees.** Career Senior Executive Service members may be reassigned non-competitively to any Senior Executive Service position for which they possess the requisite technical or professional qualifications of the proposed position. (Executive Core Qualifications are transferable to any position in the Senior Executive Service.) Career reassignments include the following:
 - (1) **Non-Geographic Reassignment.** Reassignment within the same commuting area requires a 15-day advance written notice.
 - (2) **Geographic Reassignment.** Reassignment outside the commuting area, requires a 60-day advance written notice specifying the reasons for the reassignment. Requires advanced consultation with executive. **Note:** All or part of the 15/60-day notice may be waived by the executive, in which case the reassignment can be effected sooner.
 - b. **Failure of Acceptance.** Failure to accept a reassignment within the same geographic area makes the executive subject to removal under adverse action procedures, which is appealable to the Merit Systems Protection Board. If separation is for failure to accept a reassignment to a different commuting area, the executive is entitled to discontinued service retirement, if eligible, or severance pay, unless a position description or other written agreement or understanding provides for such geographic reassignments.
 - c. **Involuntary Reassignments.** Career Senior Executive Service members may not be reassigned involuntarily within 120 days after the appointment of a new agency head or a new non-career supervisor who has the authority to appraise the executive. This precaution was designed to provide time for each executive's capabilities to be adequately judged by the new appointee. **Note:** Career members may transfer to another agency, but cannot be transferred involuntarily.

- d. Reassignment of Non-Career Appointees. Non-career members (who must be assigned to an Senior Executive Service general position) may be reassigned to any other Senior Executive Service General position for which they are qualified after prior approval by the Office of Personnel Management. Non-career reassignments are not subject to competitive processes.

CHAPTER II

REDUCTION-IN-FORCE

1. **OVERVIEW.** An agency must have issued written procedures before conducting a reduction-in-force. A copy of the procedures shall be provided to the Office of Personnel Management upon issuance (5 Code of Federal Regulations 359.601(c)).
2. **AUTHORITY.** 5 Code of Federal Regulations 359.601(c).
3. **DEFINITION.** As defined in 5 United States Code 3595(d), reduction in force "includes the elimination or modification of a position due to reorganization, lack of funds, curtailment of work, or any other factor." Other factors include the withdrawal of Senior Executive Service allocations by the Office of Personnel Management, a total agency shutdown, or the determination that a position no longer meets the criteria for inclusion in the Senior Executive Service. Positions which meet this criteria are typically regarded as "surplus."
4. **GENERAL GUIDELINES AND PROCEDURES.** The following summarizes procedures required to effect a reduction-in-force impacting career Senior Executive Service appointees.
 - a. Advance planning and documentation of function(s) abolished;
 - b. Approval of surplus status of position(s) by the Secretary of Energy or designee;
 - c. Advanced written notification to surplus executives;
 - d. Qualifications analysis of surplus executives with vacant Senior Executive Service positions for reassignment consideration;
 - e. As applicable, Departmental certification to the Office of Personnel Management to advise of inability to place surplus or displaced career executives in Senior Executive Service positions for which qualified;
 - f. Office of Personnel Management Placement Assistance (45 days); and
 - g. Transfer or removal of displaced executives from Senior Executive Service. Removal appealable to the Merit Systems Protection Board.

CHAPTER III

DISCONTINUED SERVICE RETIREMENT

1. **OVERVIEW.** There are a number of situations in which it serves the public interest and satisfies management objectives to permit the retirement of career executives who are eligible under the provisions of 5 United States Code 8336(d), "Discontinued Service Retirement (DSR)," commonly referred to as "early retirement" or "early out."

<u>Age Required</u>	<u>Service Years Required</u>
50	20
any age	25

2. **AUTHORITY.** 5 United States Code 8336(d).

3. **GENERAL GUIDELINES AND PROCEDURES.**

- a. **Abolishment/Change of Senior Executive Service Position.** Management action can sometimes result in substantial change or abolishment of a career Senior Executive Service position with the result that an executive is "surplus" to the needs of the Department. In the following situations, an executive who meets discontinued service retirement age/service criteria could elect to retire.
 - (1) A program/organization is abolished;
 - (2) The program erodes and no longer supports the Senior Executive Service position;
 - (3) The project or "special emphasis" purpose for which a Senior Executive Service position was initially established has been accomplished; and/or
 - (4) Changes in program priorities or emphasis require reorganization and a Senior Executive Service position is not needed in the new structure.
- b. **Reassignment of a Career Appointee.** Career Senior Executive Service members who meet discontinued service retirement age/service criteria may elect to retire "early" in lieu of accepting directed reassignment to another Senior Executive Service position which is outside the commuting area of the executive's present position. Such situations would require decision by the Secretary or designee that the executive's skills are most needed in the proposed position and thus it is in the interest of the Department to direct the reassignment.

- c. Poor Performance by a Career Appointee. A career Senior Executive Service member who meets Discontinued Service Retirement criteria and is being removed from the Senior Executive Service because of poor performance, may elect early retirement in lieu of accepting an offer of a GS/GM-15 position. Poor performance warranting mandatory removal includes:
- (1) Two ratings of "unsatisfactory" within 5 consecutive years;
 - (2) Two ratings of "minimally satisfactory" or "needs improvement" within 3 consecutive years; or
 - (3) One rating of "unsatisfactory" and one rating of "minimally satisfactory" or "needs improvement" within 3 consecutive years.
- d. Recertification. As applicable, a career Senior Executive Service member who is not recertified is eligible for immediate Discontinued Service Retirement in lieu of placement rights.

CHAPTER IV

DETAILS

1. **DEFINITION.** A "detail" is the temporary movement of an employee within, into, or out of the Senior Executive Service for a specified period, usually with the expectation that the employee will return to his or her regular position at the end of the period. Administratively, the employee continues to be the incumbent of the position from which detailed for purposes of pay and benefits. Details may be within the employing agency or negotiated between organizations/agencies.
2. **AUTHORITY.** 5 Code of Federal Regulations 317, subpart I.
3. **TYPES OF DETAILS.**
 - a. **Unclassified Duties.** Details to "unclassified" duties where a grade determination has not been made may not exceed 120 days. After this time frame, the executive must be detailed or permanently assigned to an allocated position.
 - b. **Intergovernmental Personnel Act.** Under this authority, an executive, with his or her consent, may be assigned to a State or local government either on detail or on leave-without-pay. In either case, the executive remains an executive of the employing Federal agency and retains the rights and benefits attached to that status (i.e., the executive's pay, allowances, privileges, rights, seniority, and other benefits are preserved and remain in effect during the assignment). These "temporary" assignments are designed to facilitate the movement or "mobility" of employees for short periods of time when this movement can serve a sound public purpose. (Note: A discussion on permanent "mobility" actions is provided under the section entitled "Mobility Assignments.")
4. **GENERAL GUIDELINES AND PROCEDURES.**
 - a. The Office of Personnel Management provides that only a career Senior Executive Service employee or a career-type non-Senior Executive Service employee may be detailed to a Career Reserved position. Any Senior Executive Service employee may be detailed to a general position.
 - b. All details over 30 days involving established Senior Executive Service positions/members must be approved by the Executive Resources Board.
 - c. Office of Personnel Management regulation permits non-competitive details of non-Senior Executive Service employees to established Senior Executive Service

positions for up to 120 days. Competitive selection procedures must be used for details of non-Senior Executive Service employees to Senior Executive Service positions for more than 120 days, and the Office of Personnel Management approval is required for any detail of a non-Senior Executive Service employee to a Senior Executive Service position for more than 240 days.

- d. A Senior Executive Service appointee may not be detailed into an established GS/GM-15 or lower position, or a non-Senior Executive Service position (e.g., Senior Level (SL), Scientific and Professional (ST), Administratively Determined (AD)). The Senior Executive Service is a distinct personnel system which is not interchangeable with other personnel systems.
- e. While there are no current restrictions on the length of details of Senior Executive Service members to established Senior Executive Service positions, Office of Personnel Management guidelines discourage details exceeding 1 year and require that details be approved in increments of 120 days.
- f. There is no requirement for advance notification to an executive regarding the detail. However, it is normal practice for details to be coordinated in advance by the participating organizations before the detail is submitted to the Executive Resources Board for approval.

CHAPTER V

MOBILITY ASSIGNMENTS

1. **OVERVIEW.** Mobility assignments are used for a variety of purposes primarily to broaden individual career Senior Executive Service technical and leadership skills and perspectives which benefit both the executive and the Federal Government.
2. **AUTHORITY.** 5 Code of Federal Regulations 412.
3. **DEFINITION.** Mobility assignments may include temporary and permanent job changes.
 - a. **Temporary Job Change or Detail.** This type of job change typically involves moving from one Senior Executive Service position within the same agency, a different agency, and/or different geographic area for a period of approximately 4 to 12 months.
 - b. **Permanent Job Change.** In some agencies, executives are provided the opportunity throughout their careers to sample various functions within their employing agency or between other agencies and departments. These "permanent" job changes provide the executive the opportunity to gain valuable knowledge and skills, producing benefits to organizations as well as executives.
4. **TYPES OF MOBILITY ASSIGNMENTS.**
 - a. **Intergovernmental Personnel Act Assignments.** Under this authority, Federal executives are provided the opportunity to work in State, local and Indian tribal governments, colleges or universities, private companies, or non-profit organizations. The Office of Personnel Management is responsible for tracking the use of these assignments. Primary features include the following:
 - (1) Assignments can be intermittent, part time, or full time;
 - (2) They can last up to 2 years and may be extended by the Federal agency head for up to 2 more years, if all parties agree to the extension;
 - (3) Individuals may be assigned to non-Federal organizations on detail or leave without pay. Either way, they remain Federal employees and retain all benefits of that status; and
 - (4) When assignments end, executives return to the positions they held before their Intergovernmental Personnel Act assignments, or they may be reassigned to positions of like pay and grade.

- b. Sabbaticals. A sabbatical is a temporary, 3- to 11-month assignment in which executives temporarily leave their Senior Executive Service jobs to work outside the Federal Government. Typically, Senior Executive Service members initiate these assignments, as they are best able to determine their own developmental needs and interests. The Office of Personnel Management is responsible for overseeing the sabbatical authority. As key elements of executive development programs, sabbaticals broaden professional skills, provide opportunities for personal growth, enhance Senior Executive Service recruitment and retention efforts, and help executives deal with stress. Sabbatical activities may include:
- (1) Teaching, study, or research at a university;
 - (2) Study or research in a "think tank;"
 - (3) Work with a private sector, nonprofit organization, or State, local or foreign governments; and
 - (4) Other activities such as bench research, invention, design, development of a project, trouble-shooting or problem-solving, or writing.

While on sabbaticals, Senior Executive Service appointees occupy the position of record, receive Senior Executive Service pay, earn leave, are charged for leave taken, and are evaluated under the employing agency's Senior Executive Service performance appraisal system.

CHAPTER VI

REMOVAL BASED ON PERFORMANCE

1. **OVERVIEW.** Removal based on performance involves those career appointees who have completed the 1-year probationary period in the Senior Executive Service and career Senior Executive Service appointees who were not required to serve a probationary period.
2. **AUTHORITY.** 5 Code of Federal Regulations Part 35, Subpart E. (Removal must be based on final Senior Executive Service rating(s).)
3. **GENERAL GUIDELINES AND PROCEDURES.**
 - a. Removal may not occur within 120 calendar days of the appointment of a new Secretary or the appointment of the most immediate non-career appointee in the supervisory chain who has the authority to remove the executive.
 - b. An executive who receives a final rating of unsatisfactory cannot remain in the same position. The Department must either place the executive:
 - (1) in a position outside the Senior Executive Service; or
 - (2) in another position in the Senior Executive Service for which he or she is qualified.
 - c. Executives must be removed upon receipt of the following final ratings under the Senior Executive Service performance appraisal system:
 - (1) two ratings of unsatisfactory within 5 consecutive years;
 - (2) two ratings of minimally satisfactory within 3 consecutive years; or
 - (3) one rating of unsatisfactory and one rating of minimally satisfactory within 3 consecutive years.
 - d. Secretarial Officer obtains written approval of the Executive Resources Board.
 - e. Secretarial Officer must provide executive with a written 30-day advance notice before the effective date of removal from the Senior Executive Service. The written removal notice, as a minimum, shall provide:
 - (1) reasons for the removal;

- (2) right to guaranteed placement ("fall back") in a position outside the Senior Executive Service;
 - (3) right to request an informal hearing before the Merit Systems Protection Board at least 15 days before the effective date of the action;
 - (4) effective date of the action; and
 - (5) when eligible, the right to elect discontinued service retirement in lieu of "fall back."
- f. The Secretarial Officer requesting the removal action is responsible for arranging placement. The executive must be placed in a position which is:
- (1) at Grade 15 or above, or equivalent;
 - (2) a continuing position that will last at least 3 months;
 - (3) a position for which the executive meets qualification requirements; and
 - (4) equivalent in tenure to the appointment held at the time of entry into the Senior Executive Service, if it was a career or career-conditional appointment or equivalent tenure.
- g. In the rare event that internal placement is not possible, the Secretarial Officer may arrange a transfer to another agency, only when mutually acceptable to the executive and the gaining agency.
- h. Executives placed in non-Senior Executive Service positions for unacceptable performance are entitled to be paid at the highest of:
- (1) rate of basic pay for the position in which placed;
 - (2) current rate of basic pay in effect for the civil service position held immediately before entry into the Senior Executive Service; or
 - (3) rate of basic pay held under the Senior Executive Service immediately before removal.
- i. Not appealable to the Merit Systems Protection Board. If requested, the executive will be granted an informal hearing at least 15 days before the removal. Granting or the conduct of an informal hearing does not delay the effective date of removal.

CHAPTER VII

WRITTEN REPRIMAND

1. **DEFINITION.** A written reprimand responds to offenses by an Senior Executive Service executive that are not severe as to warrant suspension for 15 days or more or removal from Federal Service. A reprimand is inappropriate for use in cases of poor performances.
2. **AUTHORITY.** No statutory authority for issuing written reprimands. Senior Executive Service suspension actions of 14 days or less are not authorized by statutory authority.
3. **GENERAL GUIDELINES AND PROCEDURES.**
 - a. The reprimand should be personally presented to the executive by the Secretarial Officer signing the reprimand. The executive should be asked to sign for receipt of the written reprimand.
 - b. The reprimand should include:
 - (1) reason for the reprimand including events leading to the reprimand;
 - (2) description of the impact of the behavior on the agency or program;
 - (3) amount of time for retaining the reprimand in the Official Personnel Folder, i.e., one calendar year or until the executive leaves the Department; and
 - (4) executive's rights and the procedures to grieve the reprimand.

CHAPTER VIII

SUSPENSION TO REMOVAL

1. **OVERVIEW.** Actions typically denote intentional wrongdoing by the executive such as: 1) misconduct; 2) neglect of duty; 3) malfeasance; or 4) failure to accept a directed reassignment or to accompany a position in a transfer of function. This applies to Career Senior Executive Service appointees who have completed the Senior Executive Service probationary period or who were not required to serve one, and certain limited appointees in the Senior Executive Service.
2. **AUTHORITY.** 5 United States Code 754-43 and 5 Code of Federal Regulations, part 752, subpart F. This authority covers suspensions for more than 14 days and removals from the Senior Executive Service for disciplinary reasons. Removal means removal from the Federal Service.
3. **GENERAL GUIDELINES AND PROCEDURES.**
 - a. Secretarial Officer obtains written approval of the proposed action by the Executive Resources Board;
 - b. Executive must be provided a 30-day advance written notice with the following information:
 - (1) nature and specific reasons for proposed action;
 - (2) right to review material used to support the charges;
 - (3) right to reply orally and in writing;
 - (4) right to representation; and
 - (5) exception, if warranted, to the 30-day notice period.
 - c. Notice of agency decision must be provided to the executive.
 - d. A 120-day moratorium is not applicable.
 - e. The executive is not entitled to guaranteed placement ("fall back").
 - f. The executive is not entitled to saved pay.
 - g. Suspension can be appealed to the Merit Systems Protection Board.