

U.S. Department of Energy
Washington, D.C.

ORDER

DOE 3351.2

11-27-81

SUBJECT: REDUCTION IN FORCE IN THE SENIOR EXECUTIVE SERVICE

-
1. PURPOSE. To establish the procedures for conducting a reduction in force (RIF) among members of the Senior Executive Service (SES) in the Department of Energy (DOE).
 2. REFERENCES.
 - a. Statutory authority and procedural requirements for conducting a RIF in the SES are contained in 5 U.S.C. 3595.
 - b. Office of Personnel Management (OPM) regulations for career appointees' removal for unacceptable performance, and removal during probation are provided in Part 359 of Title 5 of the Code of Federal Regulations.
 - c. DOE 3351.1, REDUCTION IN FORCE, provides procedures governing a RIF affecting positions at GS-15 and below or equivalent.
 - d. Part 752 of Title 5 of the Code of Federal Regulations provides adverse action regulations for removal for cause, including failure to accept a directed reassignment.
 - e. Part 1200 - 1201 of Title 5 of the Code of Federal Regulations provides regulations and procedures of appeal to the Merit Systems Protection Board (MSPB).
 - f. FPM Supplement 296-33, subchapter 6, provides the procedures used in determining creditable service for RIF purposes.
 3. POLICY.
 - a. Before formal RIF procedures are initiated, the Department shall make a concerted effort to place employees who occupy surplus positions by means of directed reassignment to a vacant SES position or other appropriate action.
 - b. If a RIF becomes necessary, appointees of surplus positions and displaced appointees shall 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 shall be accorded fair and equitable treatment, consistent with governing regulations and Departmental procedures.
 - c. 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

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INITIATED BY:
Office of Personnel

- (3) Removal for Unacceptable Performance. Career appointees are entitled to 30 calendar days' advance written notification; probationary appointees will be notified in writing prior to the effective date of the removal. Notice specifications may be found under DOE 3430.4, SENIOR EXECUTIVE SERVICE PERFORMANCE APPRAISAL SYSTEM.
- (4) Directed Reassignment. Career and probationary appointees are entitled to 15 calendar days' advance written notice of a directed reassignment.
- (5) Removal for Failure to Accept a Directed Reassignment. Career appointees 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 under 5 CFR 752.
- (6) 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:
 - (a) The appointee's retention standing;
 - (b) Why the action is being taken;
 - (c) How placement of the appointee in another SES position within the Department was attempted;
 - (d) An offer to exercise reinstatement eligibility to a vacant General Schedule position within the Department, as feasible;
 - (e) Any placement rights following separation from the SES;
 - (f) The OPM offer process;
 - (g) The place where the appointee may inspect the regulations and records pertinent to the action;
 - (h) The name and telephone number of the personnel specialist who is available to provide counseling concerning the appointee's rights.
 - (i) 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, and a copy of the applicable MSPB regulations and an appeals form.
 - (j) The date of separation if no offer is made by OPM or if such reasonable offer is not accepted.

- d. Reemployment Entitlement. Career appointees who were career appointees on 5-31-81 who could not be placed by the Department 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.

7. APPEAL RIGHTS TO MSPB.

- a. Only Career Appointees Who Were Career Appointees on 5-31-81 are entitled to appeal nonelection for reinstatement under 5 U.S.C. 3593(c)(2).
- b. All Career Appointees are entitled to appeal:
 - (1) Alleged procedural error by the Department in implementing the RIF under 5 U.S.C. 3595(c)(1).
 - (2) Reasonableness of the OPM offer under 5 U.S. C. 3595(c)(1).
 - (3) Separation resultant from failure to accept a reasonable offer in another agency, under 5 U.S.C. 3595(c)(2).
 - (4) Lack of reasonable placement effort by OPM, under 5 U.S. C. 3595(c)(3).
 - (5) Removal for declining directed reassignment, under 5 U.S.C- 7543.
- (c) 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 reduction in force.
- (d) Probationary Appointees are entitled to appeal:
 - (1) Competitive RIF procedures under 5 U.S.C. 3595(c)(1).
 - (2) Removal for declining a directed reassignment, under 5 U.S.C. 7543, as applicable (see paragraph 6c(4)).

William S. Heffelfinger
Assistant Secretary
Management and Administration

DEPARTMENTAL PLACEMENT RIGHTS OF SES PROBATIONARY APPOINTEES

PROBATIONARY APPOINTEE

WHO

PRIOR TO
FORMAL RIF

OCCUPIES A SURPLUS POSITION

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 USC 3595 (b)(3)(A)

DURING A
FORMAL RIF

IS DISPLACED BY AN APPOINTEE OF HIGHER
RETENTION STANDING IN RIF COMPETITION

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 USC 3595 (a)

or

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 USC 3594

If no GS-15 vacancies exist for which qualified or does not have fallback entitlement, is involuntarily separated from the DOE rolls. 5 USC 3592 (eligible for discontinued service retirement 5 CFR 831)

and

Has no further placement entitlement

Competes for job retention and displaces the appointee with the lowest retention standing of those who occupy a position for which technically qualified. 5 USC 3595 (a)

or

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 USC 3594

If *no* GS-15 vacancies exist for which qualified or does not have fallback entitlement, is involuntarily separated from the DOE rolls. 5 USC 3592 (eligible for discontinued service retirement 5 CFR 831)

and

Has no further placement entitlement

* Departmental determination to extend this provision; not guaranteed by statute

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

	CAREER APPOINTEE	Who
	PRIOR To FORMAL RIF	
	<u>OCCUPIES A SURPLUS POSITION</u>	
Placement within DOE:	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 USC 3595 (b)(3)(A)	
	During A FORMAL RIF	
		<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 USC 3595 (b)(3)(A)
	If no vacancies exist for which qualified, competes for job retention and displaces the appointee with the latest retention standing of those who occupy a position for which technically qualified. 5 USC 3595 (a)	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 USC 3595 (a)
	or	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 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 of DOE.:	If not placed in an SES position or reinstatement to a General Schedule 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 USC 3595 (b)(3)(B)	If not placed in an SES position or reinstatement to a General Schedule 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 USC 3595 (b)(3)(B)
	Offered an SES position in another agency. 5 USC 3595 (b)(3)(B)	Offered an SES position in another agency. 5 USC 3595 (b)(3)(B)
	or	or
	If OPM offer is not made or accepted, the appointee is involuntarily separated from DOE rolls. 5 USC 3595 (b)(4) (eligible for discontinued service retirement 5 CFR 831)	If OPM offer is not made or accepted, the appointee is involuntarily separated from DOE rolls. 5 USC 3595 (b)(4) (eligible for discontinued service retirement 5 CFR 831)
For Career Appointees who were Career Appointees on 5 - 31 - 81:	If a career appointee on 5-31-81, the appointee remains on DOE rolls for an additional 30-day Congressional review period. 5 USC 3595 (b)(5)	If a career appointee on 5-31-81, the appointee remains on DOE rolls for an additional 30-day Congressional review period. 5 USC 3595 (b)(5)
	Placement in an SES position somewhere in the Federal Government is effected. 5 USC 3595 (b)	Placement in an SES position somewhere in the Federal Government is effected. 5 USC 3595 (b)
	or	or
	Appointee is involuntarily separated from DOE rolls. 5 USC 3595 (b)(4)(B) (eligible for discontinued service retirement 5 CFR 831)	Appointee is involuntarily separated from DOE rolls. 5 USC 3595 (b)(4)(B) (eligible for discontinued service retirement 5 CFR 831)
	Entitled to be selected for SES announced vacancy in DOE for which qualified. (entitlement for 1 year from date of certification to OPM) 5 USC 3593 (c)(1)	Entitled to be selected for SES announced vacancy in DOE for which qualified. (entitlement for 1 year from date of certification to OPM) 5 USC 3593 (c)(1)

*Departmental determination to extend this provisions; not guaranteed by statute.

US. Department of Energy
Washington, D.C.

PAGE CHANGE

DOE 3351.2 Chg 1

4-7-32

SUBJECT: REDUCTION IN FORCE IN THE SENIOR EXECUTIVE SERVICE

1. PURPOSE. To transmit revised pages to DOE 3351.2, REDUCTION IN FORCE IN THE SENIOR EXECUTIVE SERVICE, of 11-27-81.
2. EXPLANATION OF CHANGE. The Office of Personnel Management issued a determination, dated 2-16-82, which changes entitlement to discontinued service annuity for failure to accept a directed reassignment outside of the commuting area, and further defines reemployment entitlement of career Senior Executive Service appointees. References to directed reassignment and reemployment entitlement contained in DOE 3351.2 have been revised accordingly.

3. FILING INSTRUCTIONS.

a.	<u>Remove Page</u>	<u>Dated</u>	<u>Insert Page</u>	<u>Dated</u>
	3	11-27-81	3	4-7-82
	4	11-27-81	4	11-27-81
	7	11-27-81	7	11-27-81
	8	11-27-81	8	4-7-82
	9	11-27-81	9	4-7-82
	10	11-27-81	10	11-27-81
	11 (and 12)	11-27-81	11 (and 12)	4-7-82

- a.
- b. After filing the attached pages, this transmittal may be discarded.



William S. Heffelfinger
Assistant Secretary
Management and Administration

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INITIATED BY:
Office of Personnel

- e. Career Appointee. For the purpose of this directive only, a career member of the SES who has completed or was not subject to the 1-year probationary period.
 - f. Probationary Appointee. A career member of the SES who has not completed the 1-year probationary period.
 - g. Competitive Area. For purposes of RIF in the SES, the organizational and geographical area within which career and probationary appointees compete for job retention is Department wide.
 - h. Service Computation Date. As used in this directive, the date used to identify an appointee's total creditable civilian and uniformed service for retention standing in RIF competition. In the Department of Energy, creditable service for RIF is determined in the same manner for SES as in the General Schedule, using FPM 296-33, subchapter 6.
 - i. Performance Rating. The current official SES performance rating as reviewed by a Performance Review Board and approved by the Chairman of the Executive Personnel Board (EPB) or the Secretary of Energy, or by the authorized official of another agency.
 - j. Directed Reassignment. A management decision, by the Secretary or Deputy Secretary, as Chairman of the EPB, 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 (as described under paragraph 9).
 - k. 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.
5. RESPONSIBILITIES.
- a. Secretary of Energy or Chairman of EPB (Deputy Secretary of Energy)
 - (1) Approves the need for a RIF in the SES.
 - (2) Approves placement offers or separation actions for surplus and displaced appointees.
 - b. Assistant Secretary, Management and Administration. Ensures that Departmental RIF's in the SES are based on concepts of efficiency, effective mission support, and are carried out in accordance with governing regulations and Departmental policies and procedures.
 - c. Director of Personnel.
 - (1) Develops, promulgates, and implements Departmental procedures for implementing a RIF in the SES and related personnel functions, consistent with appropriate laws and OPM regulations.

Vertical line denotes change.

eligibility to a General Schedule vacancy shall be extended, as feasible, to afford eligible career appointees the same opportunities extended by statute to eligible probationary appointees.

4. DEFINITIONS.

- a. Reduction in Force. The release of a career or probationary appointee from a position in the SES who has been displaced by a career or probationary appointee in a surplus position who has a higher retention standing or the release of a career or probationary appointee from a surplus position in the SES when such appointee has the lowest retention standing of those occupying SES positions for which he or she is qualified.
- b. Surplus Position. An SES position which 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; or
 - (5) Other action which results in the elimination or modification of one or more SES positions.
- b. Senior Executive Service Position. Any position in the Department of Energy, other than an Administrative Law Judge or Member of the Board of Contract Appeals, which is classifiable at a level equivalent to GS-16, 17 or 18 of the General Schedule or Level V or IV of the Executive Schedule, which is not required to be filled by an appointment by the President by and with the advice and consent of the Senate and in which an employee:
 - (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 policymaking, policy determining or other executive functions.
- d. Appointee. Any member of the SES regardless of whether under a career, noncareer, limited term or limited emergency appointment or a reemployed annuitant.

- (2) Maintains liaison with OPM on RIF policy and placement offers for affected employees.
- (3) Reviews plans to conduct a RIF in the SES, provides staff advice and recommendations, and provides technical support for program implementation.

d. Heads of Departmental Elements.

- (1) 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 work force; and initiate appropriate action as described under paragraph 6a(1).
- (2) Recommend placement actions within their organizations for surplus SES appointees.
- (3) Provide requests for personnel action and appropriate data in support of RIF actions affecting subordinate SES appointees.

6. PROCEDURES

a. Planning. The following actions should be taken prior to any RIF in the SES:

- (1) Proposal. In order 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 Personnel 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. a 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;
 - (c) Names of persons for whom proposed reassignment offers were not available or accepted and who, therefore, must be placed utilizing formal RIF procedures.

(4) Assignment Right.

- (a) SES Career Appointees who can displace other appointees through the formal RIF process may be offered vacant SES positions in the Department 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 Deputy Secretary, as Chairman of the EPB, or the Secretary of Energy will determine the placement to be made for those appointees with assignment rights.
- (b) SES Probationary Appointees who are RIFed from their positions 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):
 - 1 The rate of basic pay in effect for the General Schedule position in which placed;
 - 2 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
 - 3 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.

(5) Departmental Certification. If the Department is unable to place a RIFed career appointee in a vacant SES position for which he or she is qualified, certification of this fact must be made in writing to OPM under the signature of the Secretary of Energy.

(6) OPM Placement Offer. OPM has 120 calendar days from the date of agency certification 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.

- (7) OPM Certification to Congress. If within the 120-day period OPM cannot locate a vacant SES position for a RIFed career appointee (who was on the agency's rolls as a career appointee on 5-31-81, and who has completed the probationary period), OPM must so certify this in writing to appropriate congressional committees.
- (8) Congressional Review. Congress has 30 calendar days to review the names certified as being unable to be placed by OPM before such individuals may be separated from Departmental rolls.
- (9) Separation.
- (a) Probationary Appointees are considered involuntarily separated from Departmental rolls and entitled to discontinued service annuities (provided they meet the eligibility requirements of Part 831 of Title 5 of the Code of Federal Regulations) when:
- 1 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
 - 2 They decline an offer of a continuing GS-15 position in the Department, upon separation from the SES; or
 - 3 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.
- (b) Career Appointees are considered involuntarily separated from Departmental rolls and entitled to discontinued service annuities (provided they meet the eligibility requirements of Part 831 of Title 5 of the Code of Federal Regulations) when:
- 1 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
 - 2 They decline a reasonable offer of another SES position somewhere in the Federal Government made by OPM; or
 - 3 Whichever of the following that applies, occurs:
 - a They are not placed by OPM in an SES position in another agency within 120 days after OPM received written certification that DOE could not place them; or
 - b Thirty days has elapsed after OPM notified Congress that placement was not possible in the case of any appointee who had a career appointment as of 5-31-81; or

Vertical line denotes change.

- 4 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.
- (c) 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 not qualifying as a basis for discontinued service retirement.
- (d) Noncareer and Limited Appointees and Reemployed Annuitants. If they occupy positions which 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.
- (e) 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 prior to the removal of any other SES appointee 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 such 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 such 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 DOE 3430.4, SENIOR EXECUTIVE SERVICE PERFORMANCE APPRAISAL SYSTEM.

c. Notice.

- (1) 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.

Vertical line denotes change.

- (2) Removal of Probationary Appointees. Probationary appointees will receive written notification of their separation from the SES, removal from the Department, or offer of a GS-15 position, as appropriate, in accordance with paragraph 6b(4)(b), 30 calendar days in advance of the effective date of the action to be taken, where feasible.
- (3) Removal for Unacceptable Performance. Career appointees are entitled to 30 calendar days' advance written notification; probationary appointees will be notified in writing prior to the effective date of the removal. Notice specifications may be found under DOE 3430.4, SENIOR EXECUTIVE SERVICE PERFORMANCE APPRAISAL SYSTEM.
- (4) Directed Reassignment. Career and probationary appointees are entitled to 15 calendar days' advance written notice of a directed reassignment.
- (5) Removal for Failure to Accept a Directed Reassignment. Career appointees 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 under 5 CFR 752.
- (6) 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:
 - (a) The appointee's retention standing;
 - (b) Why the action is being taken;
 - (c) How placement of the appointee in another SES position within the Department was attempted;
 - (d) An offer to exercise reinstatement eligibility to a vacant General Schedule position within the Department, as feasible;
 - (e) Any placement rights following separation from the SES;
 - (f) The OPM offer process;
 - (g) The place where the appointee may inspect the regulations and records pertinent to the action;
 - (h) The name and telephone number of the personnel specialist who is available to provide counseling concerning the appointee's rights.
 - (i) 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, and a copy of the applicable MSPB regulations and an appeals form.

(J) The date of separation if no offer is made by OPM
or if such reasonable offer is not accepted.

- d. Reemployment Entitlement. A career appointee who was involuntarily removed from the SES due to a RIF in the Department is entitled to be reinstated to a vacant SES position in the Department for which the appointee is found qualified if the appointee was a career member of the SES on 5-31-81; successfully completed the probationary period before the date of the actual separation from the SES; and applies for the vacant position within 1 year after the certification to OPM that no SES positions were available in the Department, as described under paragraph 6b(5) .

7. APPEAL RIGHTS TO MSPB.

- a. Only Career Appointees Who Were Career Members on 5-31-81, are entitled to appeal nonelection for reinstatement under 5 U.S.C. 3593(c)(2).
- b. All Career Appointees are entitled to appeal:
- (1) Alleged procedural error by the Department in implementing the RIF under 5 U.S.C. 3595(c)(1).
 - (2) Reasonableness of the OPM offer under 5 U.S.C. 3595(c)(1).
 - (3) Separation resultant from failure to accept a reasonable offer in another agency, under 5 U.S.C. 3595(c)(2).
 - (4) Lack of reasonable placement effort by OPM, under 5 U.S.C. 3595(c)(3).
 - (5) Removal for declining directed reassignment, under 5 U.S.C. 7543
- (c) 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 reduction in force.
- (d) Probationary Appointees are entitled to appeal:
- (1) Competitive RIF procedures under 5 U.S.C. 3595(c)(1).
 - (2) Removal for declining a directed reassignment, under 5 U.S.C. 7543, as applicable (see paragraph 6c(4)).

William S. Heffelfinger
Assistant Secretary
Management and Administration

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- e. Career Appointee. For the purpose of this directive only, a career member of the SES who has completed or was not subject to the 1-year probationary period.
- f. Probationary Appointee. A career member of the SES who has not completed the 1-year probationary period.
- g. Competitive Area. For purposes of RIF in the SES, the organizational and geographical area within which career and probationary appointees compete for job retention is Department wide.
- h. Service Computation Date. As used in this directive, the date used to identify an appointee's total creditable civilian and uniformed service for retention standing in RIF competition. In the Department of Energy, creditable service for RIF is determined in the same manner for SES as in the General Schedule, using FPM 296-33, subchapter 6.
- i. Performance Rating. The current official SES performance rating as reviewed by a Performance Review Board and approved by the Chairman of the Executive Personnel Board (EPB) or the Secretary of Energy, or by the authorized official of another agency.
- j. Directed Reassignment. A management decision, by the Secretary or Deputy Secretary, as Chairman of the EPB, to reassign a career or probationary appointee to another SES position anywhere within the Department (inside or outside of the commuting area). A directed reassignment is not an offer of another position, and failure to accept a directed reassignment is grounds for disciplinary removal action from the Department under 5 U.S. C. 7543(a). Such removal is considered a voluntary separation and is not qualifying as a basis for discontinued service retirement.
- k. Offer in Lieu of Separation. An offer to a continuing SES position outside of the commuting area, contained in an official notice of separation. Resignations in lieu of accepting such offers constitute involuntary separations for discontinued service retirement purposes.

5. RESPONSIBILITIES,

- a. Secretary of Energy or Chairman of EPB (Deputy Secretary of Energy)
 - (1) Approves the need for a RIF in the SES.
 - (2) Approves placement offers or separation actions for surplus and displaced appointees.
- b. Assistant Secretary, Management and Administration. Ensures that Departmental RIF's in the SES are based on concepts of efficiency, effective mission support, and are carried out in accordance with governing regulations and Departmental policies and procedures.

c. Director of Personnel.

- (1) Develops, promulgates and implements Departmental procedures for implementing a RIF in the SES and related personnel functions, consistent with appropriate laws and OPM regulations.
- (2) Maintains liaison with OPM on RIF policy and placement offers for affected employees.
- (3) Reviews plans to conduct a RIF in the SES, provides staff advice and recommendations, and provides technical support for program implementation.

d. Heads of Departmental Elements.

- (1) 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 work force; and initiate appropriate action as described under paragraph 6a(1).
- (2) Recommend placement actions within their organizations for surplus SES appointees.
- (3) Provide requests for personnel action and appropriate data in support of RIF actions affecting subordinate SES appointees.

6. PROCEDURES.a. Planning. The following actions should be taken prior to any RIF in the SES:

- (1) Proposal. In order 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 Personnel 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. a 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;
 - (c) Names of persons for whom proposed reassignment offers were not available or accepted and who, therefore, must be placed utilizing formal RIF procedures.

- (2) 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 unaccepted.
 - (3) Approval. The Secretary of Energy or the Deputy Secretary, as Chairman of the EPB, will render a final decision on the need for all RIF's affecting SES appointees in the Department, including specific directed reassignments or placement offers prior to a formal RIF.
- b. Implementation of a Formal RIF. Career and probationary appointees who occupy surplus positions and who have not been placed by directed reassignment into vacant SES positions in accordance with paragraph 6a will be subject to a formal RIF, conducted on the basis of retention competition. The Executive Resources Management Division staff, upon EPB determination of a RIF situation, will prepare a retention register and provide staff support for the formal implementation process.
- (1) Retention Registers. 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 the Department 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 6b(2).
 - (2) Retention Standing. Persons on the retention register are listed by group and subgroups, 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.
 - (a) Group I. All career and probationary appointees with Exceptional performance ratings.
 - 1 Subgroup A. Career appointees listed in descending order of service computation dates.
 - 2 Subgroup B. Probationary appointees listed in descending order of service computation dates.
 - (b) Group II. All career and probationary appointees with Highly Successful performance ratings.

- 1 Subgroup A. Career appointees listed in descending order of service computation dates.
 - 2 Subgroup B. Probationary appointees listed in descending order of service computation dates.
- (c) Group III. All career and probationary appointees with Fully Successful ratings or no rating.
- 1 Subgroup A. Career appointees listed in descending order of service computation dates.
 - 2 Subgroup B. Probationary appointees listed in descending order of service computation dates.
- (d) Group IV. All career and probationary appointees with Minimally Satisfactory ratings.
- 1 Subgroup A. Career appointees listed in descending order of service computation dates.
 - 2 Subgroup B. Probationary appointees listed in descending order of service computation dates.
- (3) Displacement and Consequence of Competition. If there are appointees occupying positions for which the surplus appointee is qualified and who are in a lower retention subgroup as determined through the competitive process described under paragraphs 6b(1) and (2), the appointee of the surplus position will displace--take over--the position of the appointee with the lowest retention standing. If there are no appointees in such positions who have a lower retention standing, there is no displacement and the appointee of the surplus position is given an opportunity to exercise any assignment right, as described under paragraph 6b(4), is certified to OPM for placement assistance as described under paragraphs 6b(5) and (6) or may be offered an opportunity to exercise reinstatement eligibility to a vacant position in the General Schedule. The appointee who is displaced 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 without prior approval from the EPB or Secretary of Energy of the technical qualifications of the surplus appointee for the position in which he or she is displacing another appointee. Such approval shall be based on input from the gaining supervisor and the staff recommendation of the Executive Resources Management Division.

(4) Assignment Rights.

(a) SES Career Appointees who can displace other appointees through the formal RIF process may be offered vacant SES positions in the Department 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 Deputy Secretary, as Chairman of the EPB, or the Secretary of Energy will determine the placement to be made for those appointees with assignment rights.

(b) SES Probationary Appointees who are RIFed from their positions 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):

- 1 The rate of basic pay in effect for the General Schedule position in which placed;
- 2 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
- 3 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.

(5) Departmental Certification. If the Department is unable to place a RIFed career appointee in a vacant SES position for which he or she is qualified, certification of this fact must be made in writing to OPM under the signature of the Secretary of Energy.

(6) OPM Placement Offer. OPM has 120 calendar days from the date of agency certification 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.

- (7) OPM Certification to Congress. If within the 120-day period OPM cannot locate a vacant SES position for a RIFed career appointee (who was on the agency's rolls as a career appointee on 5-31-81 and who has completed the probationary period), OPM must so certify this in writing to appropriate congressional committees.
- (8) Congressional Review. Congress has 30 calendar days to review the names certified as being unable to be placed by OPM before such individuals may be separated from Departmental rolls.
- (9) Separation.
- (a) Probationary Appointees are considered involuntarily separated from Departmental rolls and entitled to discontinued service annuities (provided they meet the eligibility requirements of Part 831 of Title 5 of the Code of Federal Regulations) when:
- 1 They decline an offer of reassignment to another SES position in the Department that is outside of the commuting area; or
 - 2 They decline an offer of a continuing GS-15 position in the Department, upon separation from the SES; or
 - 3 They resign upon receiving a specific notice that their position will be abolished and that they face involuntary separation from such position.
- (b) Career Appointees are considered involuntarily separated from Departmental rolls and entitled to discontinued service annuities (provided they meet the eligibility requirements of Part 831 of Title 5 of the Code of Federal Regulations) when:
- 1 They decline an offer of reassignment to another SES position in the Department that is outside of the commuting area; or
 - 2 They decline a reasonable offer of another SES position somewhere in the Federal Government made by OPM; or
 - 3 Whichever of the following that applies, occurs:
 - a They are not placed by OPM in an SES position in another agency within 120 days after OPM received written certification that DOE could not place them; or
 - b Thirty days has elapsed after OPM notified Congress that placement was not possible in the case of any appointee who had a career appointment as of 5-31-81; or
 - 4 They retire upon receiving a specific notice that their position will be abolished and that they face involuntary separation from such position.

- (c) Appointees Who Refuse a Directed Reassignment within the Department are removed from the Department for failure to accept the reassignment and are not eligible for a discontinued service annuity.
- (d) Noncareer and Limited Appointees and Reemployed Annuitants. If they occupy positions which 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.
- (e) 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 prior to the removal of any other SES appointee 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 such 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 such 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 DOE 3430.4, SENIOR EXECUTIVE SERVICE PERFORMANCE APPRAISAL SYSTEM.

c. Notice.

- (1) 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.
- (2) Removal of Probationary Appointees. Probationary appointees will receive written notification of their separation from the SES, removal from the Department, or offer of a GS-15 position, as appropriate in accordance with paragraph 6b(4)(b), 30 calendar days in advance of the effective date of the action to be taken, where feasible.