



Department of Defense INSTRUCTION

NUMBER 1402.03, Volume 6

February 28, 2013

Incorporating Change 2, May 27, 2022

DA&M

SUBJECT: Senior Executive Service (SES), Senior Level (SL), and Scientific and Professional (ST) Personnel Categories in the DoD Fourth Estate: Probationary Periods, Disciplinary Actions, and Removals

References: See Enclosure 1

1. PURPOSE

a. Instruction. This instruction reissues DoD Directive (DoDD) 1402.3 (Reference (a)) as an instruction in accordance with the authority in DoDD 5105.53 and the January 11, 2021 Deputy Secretary of Defense Memorandum (References (b) and (c)). It is composed of multiple volumes, each containing its own purpose. The purpose of the overall instruction is to establish policy, assign responsibilities, delegate authorities, and provide the DoD Fourth Estate Entities with supplemental guidance to the policy, laws, and regulations relevant to the administration of the SES, SL, and ST categories, in accordance with DoDD 1403.1 (Reference (d)) and pursuant to Title 5, United States Code (Reference (e)) and Title 5, Code of Federal Regulations (Reference (f)).

b. Volume. This volume:

(1) Establishes policy, assigns responsibilities, and prescribes procedures for SES, SL and ST probationary periods, disciplinary actions, and removals.

(2) Incorporates and cancels chapter 9 of DoD 1402.3-H (Reference (g)).

2. APPLICABILITY. This volume:

a. Applies to OSD, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the DoD that are not in the Military Departments or the Combatant Commands (referred to collectively in this instruction as the "DoD Fourth Estate.")

b. Does not apply to:

(1) Those persons in Defense Intelligence SES and Defense Intelligence SL positions, established under section 1601 of Title 10, United States Code (Reference (h)).

(2) The Office of Inspector General of the Department of Defense.

(3) Expert and consultant appointments pursuant to section 3109 of Reference (e) or highly qualified experts appointed pursuant to section 9903 of Reference (e).

3. POLICY. It is DoD policy that:

a. An individual who is newly appointed to a career SES position is normally required to serve a 1 year probationary period.

(1) Probationers must be evaluated by their supervisors during their first year of employment to determine whether their job performance and conduct is acceptable or not acceptable for continued employment (pursuant to section 3393 of Reference (e)).

(2) In addition, even if their current performance is acceptable, probationers may be removed from the SES for conditions arising before their appointment (e.g., if negative information is found during a security clearance investigation).

(3) Probationary SES employees are not entitled to a full 12-month probationary period and action to remove the probationer may be taken any time before the end of the probationary period. Advanced written notification of removal must be given to the probationer at or before the time the removal action is effective.

b. An SES career member who is not serving a probationary period may be removed from the SES for unacceptable performance or misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

c. A noncareer, limited term, or limited emergency SES member may be removed from the SES at any time. This includes reemployed annuitants holding any type of appointment as they serve at the pleasure of the appointing authority and do not have placement rights.

d. As required by DoDI 1442.02 (Reference (i)), proposed actions involving SES attorneys must have the approval of the General Counsel of the Department of Defense and Director, Defense Legal Services Agency, prior to being processed.

4. RESPONSIBILITIES. See Enclosure 2.

5. PROCEDURES. See Enclosure 3.

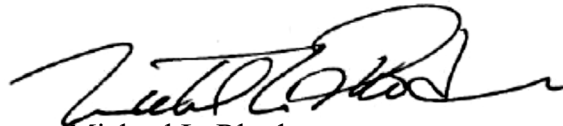
6. **RELEASABILITY. Cleared for public release.** This volume is available on the DoD Issuances Website at <https://www.esd.whs.mil/DD/>.

7. **SUMMARY OF CHANGE 2.** This change is administrative and, in accordance with the March 21, 2022 Washington Headquarters Services Memorandum (Reference (j)):

a. Reassigns the Director of Administration, Office of the Deputy Chief Management Officer of the Department of Defense responsibilities and duties to the Director of Administration and Management (DA&M) in accordance with Section 901 of Public Law 116-283 (Reference (k)), which eliminated the position of the Deputy Chief Management Officer of the Department of Defense effective January 1, 2021; and Reference (c) and the January 11, 2021 Deputy Secretary of Defense Memorandum (Reference (l)), which implemented Reference (k) and reestablished the DA&M.

b. Updates organizational titles and references for accuracy.

8. **EFFECTIVE DATE.** This volume is effective February 28, 2013.



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Director of Administration and Management

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ENCLOSURE 1

REFERENCES

- (a) DoD Directive 1402.3, “Administration of the Senior Executive Service Program in the Office of the Secretary of Defense and the Defense Agencies,” August 16, 1984 (cancelled by Volume 1 of this instruction)
- (b) DoD Directive 5105.53, “Director of Administration and Management (DA&M),” February 26, 2008
- (c) Deputy Secretary of Defense Memorandum, “Re-establishment of the Assistant to the Secretary of Defense for Intelligence Oversight and the Director of Administration and Management,” January 11, 2021
- (d) DoD Directive 1403.1, “The Senior Executive Service and Equivalent-Level Positions and Personnel,” October 18, 1982
- (e) Title 5, United States Code
- (f) Title 5, Code of Federal Regulations
- (g) DoD 1402.3-H, Chapter 9, “Senior Executive Service Disciplinary Actions and Removals,” May 1985 (hereby cancelled)
- (h) Title 10, United State Code
- (i) DoD Instruction 1442.02, “Personnel Actions Involving Civilian Attorneys,” September 30, 2010
- (j) Washington Headquarters Services Memorandum, “Approval of Administrative Changes to Office of the Director of Administration and Management (ODA&M) DoD Issuances, Phase 2,” March 21, 2022
- (k) Public Law 116-283, “William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021,” January 1, 2021
- (l) Deputy Secretary of Defense Memorandum, “Disestablishment of the Chief Management Officer of the DoD and Realignment of Functions and Responsibilities,” January 11, 2021
- (m) Administrative Instruction 37, “Employee Grievances,” October 27, 2006
- (n) Administrative Instruction 9, “Processing Complaints of Discrimination,” November 6, 2013, as amended

ENCLOSURE 2

RESPONSIBILITIES

1. DA&M. The DA&M issues internal operating procedures for the DoD Fourth Estate regarding probationary periods, discipline, and removal of SES members consistent with applicable laws, regulations, and Office of Personnel Management (OPM) and OSD guidance.

2. DoD FOURTH ESTATE COMPONENT HEADS. The DoD Fourth Estate Component heads ensure that their supervisors and managers of SES probationers and post-probationers:
 - a. Assess whether SES probationers have satisfactorily completed the 1 year probationary period and authorize the personnel action taken pursuant to this volume.

 - b. Recommend other performance or disciplinary actions be taken when appropriate.

ENCLOSURE 3

PROCEDURES

1. PROBATIONARY PERIODS. Executive probationary periods begin on the effective date of the appointment and end when the individual completes his or her last scheduled tour of duty before the anniversary date of the appointment. For example, if an individual was appointed to the SES on June 1, the probationary period ends on May 31 of the following year. The initial career appointment becomes final only after the executive has successfully completed a 1-year probationary period.

a. Notification. The servicing human resources (HR) specialist determines whether a new SES career appointee is required to serve a probationary period based on previous service. If the probationary period is required, the HR specialist:

(1) Notifies the probationer in writing, before the effective appointment date, of the start and end dates of the probationary period and the conditions of serving a probationary period.

(2) Notifies the probationer's immediate first-line supervisor of the start and end date of the probationary period and of supervisory responsibilities to evaluate the probationer's performance during the probationary period.

(3) Within 60 calendar days before the end of the probationary period, notifies the probationer's supervisor in writing that the end of the period is imminent and confirms employee's suitability for continued inclusion in the SES.

b. Crediting Service. Certain conditions apply to crediting service toward completion of the probationary period pursuant to section 317.503(d) of Reference (f).

(1) Time on leave with pay while in an SES position is credited. Earned leave for which the employee is compensated by lump-sum payment on separation is not credited.

(2) Time in a non-pay status (e.g., leave without pay (LWOP) or furlough) while in an SES position is credited up to a total of 30 calendar days (or 22 workdays). After 30 calendar days (or 22 workdays), the probationary period is extended by adding time equal to that served in a non-pay status (e.g., if the individual was absent for 50 calendar days, the probationary period is extended by 20 calendar days).

(3) Time following transfer to an SES position in another agency is credited (i.e., the employee does not have to start a new probationary period). Credit is given for time served during a probationary period prior to transfer.

(4) Time absent on military duty or due to compensable injury is credited upon restoration to the SES when no other break in SES service has occurred.

c. Supervisory Responsibilities. The first line immediate supervisors of SES probationers have primary responsibility for helping the probationer succeed as a new SES member. Supervisors:

- (1) Follow through to ensure that the probationer receives agency-initiated or qualifications review board (QRB) recommended or required training.
- (2) Observe the probationer's performance and conduct; hold periodic, documented progress evaluation meetings, clearly outlining individual strengths and weaknesses in relation to the position's performance requirements.
- (3) Complete a performance assessment before the probationary period ends. If the probationer is performing at a satisfactory level and exhibiting conduct in a manner expected of an SES member, the supervisor certifies acceptable completion of the probationary period by signing a standard memorandum provided by the servicing HR specialist. This memorandum is subsequently filed in the probationer's official personnel folder.
- (4) Initiate action to remove the probationer from the SES if it becomes apparent that the probationer's performance is not satisfactory. Probationary periods may not be extended beyond 1 year, except as provided in paragraph 1b of this enclosure.

d. Removal of a Career Probationer from the SES. If the career probationer's executive conduct or performance is inadequate, he or she should be released from the SES in accordance with subpart D of part 359 of Reference (f). The procedures for removal differ depending upon the reasons for the removal.

(1) Unacceptable Performance. The employing organization must provide written notification to the probationer at or before the time the action will be made effective. The written notice must state, at a minimum:

- (a) The agency's conclusions as to the inadequacies of the probationer's performance.
- (b) Whether the probationer has placement rights under section 359.701 of Reference (f) and, if so, the specific position to which the probationer will be assigned.
- (c) The effective date of the action.

(2) Misconduct. When removing a career probationer for misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function, the employing organization must provide written notification to the probationer at or before the time the action will be made effective. The written notice will state, at a minimum:

- (a) The agency's basis for the removal action (including the act(s) of misconduct, neglect of duty, or malfeasance if those factors are involved).

(b) The effective date of the action.

(3) Conditions Arising Before Appointment. When the removal of a career probationer is based in whole or in part on conditions arising before the appointment, the employing organization will provide written notification to the probationer at or before the time the action will be made effective. The written notice states, at a minimum:

(a) The specific reasons for the proposed removal.

(b) Notice of a reasonable time to reply to the specific reasons for the proposed removal. (Generally, the probationer will be given at least 10 business days to reply, either orally or in writing, and allowed to furnish documentary evidence to refute the reasons for the removal).

(4) Employing Organization's Written Decision. When removing a career probationer in accordance with paragraph 1d(3) of this enclosure, the probationer will be provided a written decision showing the reasons for the action and the effective date of removal. The decision is given to the probationer at or before the time the removal is effective.

(5) Exceptions. When the probationer was covered under section 7511 of Reference (f), paragraphs 1(d)(2) and (3) of this enclosure do not apply. In that case the removal is subject to the provisions of part 752 of Reference (f).

e. Guaranteed Placement Versus Removal

(1) Individuals from outside the federal government or who were in a probationary period at the position held prior to being placed into an SES appointment do not have guaranteed placement rights to a position outside the SES. These probationers will be separated from the federal service.

(2) A probationer removed for disciplinary reasons does not have guaranteed placement rights to a position outside the SES.

(3) A probationer removed from the SES for non-disciplinary reasons who held a career or career-conditional appointment (or an appointment of equivalent tenure) prior to their SES appointment is entitled to placement in a civil service position outside of the SES. The position will:

(a) Be a continuing position at the General Schedule (GS)-15 level or above (i.e., senior level or equivalent).

(b) Be equivalent in tenure to that of the appointment held at the time of appointment to the SES unless the appointee is willing to accept a position with different tenure.

(c) Be one for which the probationer meets the qualification requirements.

(4) The employing organization removing a probationer who is entitled to guaranteed placement must place the probationer in an appropriate position within that same organization or arrange placement in an appropriate position in another organization. In the latter case, the transfer must be mutually acceptable to the probationer and the gaining organization. The placement of the probationer under these provisions must not cause the separation or reduction in grade of any other employee.

(5) For probationers placed as a result of guaranteed placement, basic pay or the equivalent will be the highest of:

(a) The rate of basic pay (or equivalent) in effect for the position in which the probationer is being placed.

(b) The rate of basic pay (or equivalent) currently in effect for the position the probationer held in the federal service immediately prior to appointment to the SES.

(c) The rate of basic pay (or equivalent) in effect for the probationer immediately prior to his or her removal from the SES.

f. Restrictions Regarding Probationary Removal During a Moratorium. In accordance with section 359.406 of Reference (f).

(1) Removal from the SES may not be made effective within 120 days after the appointment of a new agency head or within 120 days of the appointment in the agency of the career appointee's most immediate supervisor who is a noncareer appointee with career appointee removal authority.

(2) These restrictions do not apply:

(a) When the career probationer has received a final rating of unsatisfactory before the appointment of a new agency head or the appointment of the probationer's most immediate supervisor who is a noncareer appointee with the authority to remove career appointees, whose appointment caused initiation of the moratorium.

(b) To disciplinary action initiated before the appointment of a new agency head or the appointment of the probationer's most immediate supervisor who is a noncareer appointee with the authority to remove career appointees.

(c) To a disciplinary action when there is a reasonable cause to believe that the career probationer has committed a crime for which a sentence of imprisonment can be imposed.

(d) To a disciplinary action when retention of the career probationer may pose a threat to the probationer or others; may result in a loss of or damage to government property; or may otherwise jeopardize legitimate government interests.

(3) When invoking an exception to the 120-day restriction under paragraph 1f(2)(c) or (d) of this enclosure, the procedures set forth in section 359.406 (d) of Reference (f) must be followed.

(4) There is no provision for extending probationary periods during a moratorium. (section 359.406(e) of Reference (e)).

g. Appeals

(1) Generally, removal during the probationary period for unacceptable performance, conduct, or for conditions arising before appointment is not appealable to the Merit Systems Protection Board (MSPB) pursuant to section 359.407 of Reference (e).

(2) Removals during the probationary period based on partisan political reasons or marital status can be appealed to the MSPB in accordance with section 1201.3 (9) of Reference (f).

(3) Allegations of prohibited personnel practices may be submitted by the probationer to the Office of Special Council or the MSPB.

(4) Matters excluded from appeal under the employing organization's grievance procedures include:

(a) The return of a probationer from the SES to the GS or another pay system during the 1-year probationary period.

(b) The termination of a probationer for unacceptable performance.

(c) An unacceptable SES performance evaluation.

(d) A decision that is appealable to the MSPB or that is subject to final administrative review by the OPM or the Equal Employment Opportunity Commission.

2. REMOVAL OF CAREER SES MEMBERS FOR LESS THAN FULLY SUCCESSFUL PERFORMANCE. This section covers the removal of a career SES member (except reemployed annuitants) who has completed a probationary period (or who was not required to complete one) from the SES for a performance rating of less than achieved expectations. The DA&M is the deciding official on actions taken for SES members in the DoD Fourth Estate.

a. Reasons for Removal. Removal must be based on the SES member's final SES rating (or ratings) of record assigned by the appointing authority, following recommendation of a performance review board (PRB). However, if the performance deficiencies result from intentional wrongdoing by the SES member it may be more appropriate to treat the action as misconduct. Under these circumstances, the rating supervisor should follow the adverse action

procedures described in chapter 75 of Reference (e) based on the specific act (or acts) of wrongdoing.

b. Timing of Removal. A performance appraisal period may be terminated before its completion when there is adequate basis on which to appraise and rate the SES member. This means that an employing organization need not retain an unacceptable SES member in a position until the end of the SES rating cycle, although the SES member must be given a reasonable opportunity to demonstrate competence in a position before being appraised. The minimum appraisal period of 90 days must be met and the organization must complete the full rating process, including action by a PRB and final rating by the appointing authority.

c. Options to Removal. Although an SES career member who receives a summary rating of “unacceptable” cannot remain in their current position, there are options to removal from federal service or from the SES:

- (1) Reassignment to another SES position within the employing organization;
- (2) Removal from the SES and placement in an appropriate non-SES position within the employing organization; or
- (3) Transfer to an appropriate position in another agency.

d. Mandatory Removal. A career appointee must be removed from the SES when:

- (1) He or she receives two final ratings of unacceptable within 5 consecutive years; or
- (2) He or she receives two final ratings of less than achieved expectations (e.g., one “unacceptable” and one “minimally satisfactory” rating) within 3 consecutive years.

e. Notification. The employing organization will notify the career appointee in writing at least 30 calendar days before the effective date of the removal action pursuant to section 359.502 of Reference (f). The written notice must be signed by an official in the organization with authority to recommend the removal of the SES career member and must be coordinated in advance with Executive and Political Personnel Division. In addition, coordination of this action with the Office of the General Counsel of the Department of Defense (OGC) and the concurrence of the Assistant Director, Executive and Political Personnel (AD, EPP) Division, Human Resources Directorate, Washington Headquarters Services (WHS), is required. The notice must include information regarding:

(1) The basis for the removal (i.e., the final rating(s) of “less than achieved expectations” and date(s), when given).

(2) The SES member’s right to be placed in a position outside the SES. If the decision is made regarding the specific position to which the SES member will be assigned, include this information in the advance notice. As an alternative, the employing organization may advise the

SES member of the new position in a supplementary notice issued no later than 10 calendar days before the effective date of the action.

(3) The appointee's right to request an informal hearing before the MSPB. The SES member should be advised that the request should be made to the headquarters office of the MSPB at least 15 days before the effective date of the action; however, the MSPB lacks authority to change a performance rating or to order a specific remedy, such as reinstatement to the SES, as a result of the hearing. Conducting an informal hearing does not delay the effective date of removal.

(4) The effective date of the removal.

(5) When applicable, the appointee's eligibility for immediate retirement under sections 8336(h) and 8414 of Reference (e).

f. Guaranteed Placement

(1) A career SES member who has completed the probationary period under section 3393(d) of Reference (e), and who is removed from the SES for unacceptable performance is entitled to placement in a civil service position outside of the SES pursuant to section 3594 of Reference (e) and section 359.701 of Reference (f). The placement must:

(a) Be to a continuing position at GS-15 or above, or equivalent, that will last at least 3 months.

(b) Be to a position for which the appointee meets the qualification requirements.

(2) A nonprobationary appointee, or a nonprobationary appointee who at the time of appointment to the SES held a career or career-conditional appointment (or equivalent), is entitled to be placed in a position of tenure equivalent to that of the appointment held at the time of appointment to the SES. This provision does not apply if the employing organization does not have a position with an appointment of equivalent tenure or if the SES member is willing to accept a position having a different tenure. If a post-probationer does not have reinstatement eligibility in the competitive service and if there is no regular excepted appointment authority the employing organization can use, the organization may use the Schedule B authority pursuant to part 213.3202(m) of Reference (f).

(3) Placement of an SES under these provisions shall not cause the separation or reduction in grade of any other employee in accordance with section 359.705 of Reference (e).

(4) The employing organization taking the removal action is required to first attempt to place the SES member in an appropriate position within the employing organization. If no qualifying positions are identified, the employing organization may arrange for placement in another organization within the DoD. Any transfer must be mutually acceptable to the SES member and the gaining employing organization.

(5) An SES member placed under these provisions (to include placement outside of the employing organization) is entitled to receive basic pay (including saved pay) at the highest rate of basic pay (or equivalent):

- (a) In effect for the position in which the SES member is being placed;
- (b) Currently in effect for the position the SES member held immediately prior to appointment to the SES; or
- (c) In effect for the SES member immediately prior to his or her removal from the SES.

g. Moratorium. The involuntary removal of an SES career member for performance reasons is subject to the 120-day moratorium, except for a removal based on an unacceptable rating given before the appointment of the new agency head or non-career supervisor that initiated the moratorium. This exception covers:

- (1) An optional removal based on one unacceptable rating.
- (2) A mandatory removal based on two unacceptable ratings in 5 consecutive years.
- (3) A mandatory removal based on two ratings of less than “Achieved Expectations” in 3 consecutive years.

h. Appeals

(1) The removal of an SES career member under these provisions is not appealable to the MSPB pursuant to section 7701 of Reference (e). Neither the granting nor the conduct of an informal hearing discussed in paragraph 2e (3) of this enclosure constitutes an appeal before the MSPB.

(2) The removal of an SES career member under these provisions is not grievable under the employing organization’s grievance procedures pursuant to Administrative Instruction 37 (Reference (n)).

(3) Complaints alleging discrimination based on race, color, religion, sex, national origin, age, or physical or mental disability will be processed in accordance with employing organization procedures. There is a 45-day filing deadline. SES career members that believe they’ve experienced an act of discrimination or other management wrong doing should contact:

- (a) DoD Equal Opportunity (EO) or Equal Employment Opportunity (EEO) Office or
- (b) In the case of employees assigned to organizations serviced by WHS, see Administrative Instruction 9 (Reference (n)) for procedures.

3. REMOVAL OR SUSPENSION FOR MORE THAN 14 DAYS (ADVERSE ACTIONS)

a. Types of Covered Disciplinary Actions. This section applies to suspensions for more than 14 days and removals from the civil service as set forth in section 7542 of Reference (e) of SES career members, and certain limited term SES, for disciplinary reasons including misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

b. Standard for Taking Action. Adverse actions in the SES may result in removal from the federal service or suspension for more than 14 days. Suspensions for 14 days or less are not authorized (pursuant to section 752.601 of Reference (f)).

(1) If an employing organization wishes to take disciplinary action based on the SES career member's off-duty actions or misconduct, it must demonstrate a nexus between the off-duty actions and the SES member's ability to carry out the assigned responsibilities of the position.

(2) Although failure to accept a directed reassignment to a position outside the commuting area or to accompany a position in a transfer of function outside the commuting area is considered grounds for suspension or removal from the civil service, it will not be considered as a removal for cause on charges of misconduct or delinquency (i.e., eligibility for an annuity based upon involuntary separation is not jeopardized).

(3) At times, it may be appropriate to treat unacceptable performance as a disciplinary matter. This would pertain when the performance deficiencies result from intentional wrongdoing by the SES career member. Under these circumstances, the employing organization should follow the adverse action procedures discussed in section 2 of this enclosure. The cause of action will be the specific act (or acts) of wrongdoing.

b. Advance Notice. The employing organization will give the SES career member a written notice at least 30 calendar days in advance of the proposed removal or suspension of more than 14 calendar days pursuant to section 7543(b) of Reference (e). The notice must be signed by an official of the employing organization with the authority to remove or to recommend the removal of the SES member. A hearing in lieu of or in addition to the opportunity to answer may be provided by the agency under section 7543(c) of Reference (e). Additionally, advance coordination and notification of this action with the SES servicing office, OGC, and the concurrence of the AD, EPP, is required. Notice must include:

(1) The nature of the proposed action (if a suspension, give the duration).

(2) The specific reasons for the proposed action (i.e., identifying or describing the instances of misconduct, neglect of duty, or malfeasance, or the reassignment or transfer of function the SES member declined).

(3) The SES career member's right to review the material the employing organization is using to support the charges.

(4) The SES career member's right to reply orally and in writing and to furnish affidavits and other documentary evidence. The notice should identify the organization official, one level higher than the proposing official, who is authorized to hear the oral reply. The SES member must be advised of the time limit for making an oral or written reply, not less than 7 days.

(5) The SES member's right to be represented by an attorney or other representative.

c. Exceptions. Pursuant to section 752.604(d) of Reference (f) the 30-calendar-day advance notice period may be curtailed if the employing organization has reason to believe the SES career member committed a crime for which a sentence of imprisonment may be imposed and is proposing a removal or suspension. In such cases:

(1) The advance notice must explain the reasons for curtailing the notice period.

(2) The employing organization may require the SES member to provide an answer to the proposed action, including any supporting affidavits or other documentary evidence, within such time as the employing organization considers reasonable under the circumstances (i.e., not less than 7 calendar days or more than 10 calendar days).

(3) If the SES career member challenges the curtailment of the notice period and the proposed adverse action and the employing organization's final decision is to proceed with the action in less than 30 calendar days, the final decision notice may address the propriety of curtailing the notice period.

d. Other Considerations. If the employing organization does not have reasonable cause to believe that the SES career member committed a crime for which a sentence of imprisonment may be imposed, the SES career member has a right to the 30-day notice period. Even so, there may be circumstances where keeping the SES career member in his or her present position may pose a threat to the SES member or others, result in loss or damage to government property, or otherwise jeopardize legitimate government interests. In such cases, an employing organization may act to reduce or remove the threat during the notice period. Such actions could include:

(1) Assigning the SES career member to duties where he or she is no longer a threat.

(2) Placing the SES career member on leave with his or her consent.

(3) Carrying the SES career member in an appropriate leave status (i.e., annual, sick, LWOP, or absent without leave) if the SES career member is voluntarily absent for reasons not originating with the employing organization.

(4) If none of these options are available, the agency could place the SES member in a paid, non-duty status during all or part of the 30-calendar-day advance notice period.

e. Consideration of Response. If the appointee wishes the agency to consider any medical condition that may have affected the basis for the adverse action, the appointee must be given

reasonable time to furnish medical documentation (as defined in section 339.104 of Reference (f)) of the condition. After careful consideration of the SES member's response, an employing organization may decide to substitute a less severe penalty. The substitute penalty may be a suspension for more than 14 calendar days or a letter of reprimand. The organization's decision to mitigate the penalty should be included in the notice of final agency decision given the SES member.

f. Notice of Final Agency Decision. In arriving at the final agency decision, the decision maker considers only the reasons specified in the advance notice and any written or oral response the SES member or representative makes. The SES member will be given a notice of final decision and specific reasons signed by a management official at a level higher than the proposing official unless the proposing official is the Secretary of Defense or a DoD Fourth Estate component head. The notice must be signed by an official of the employing organization with the authority to remove or to recommend the removal of the SES member and must be coordinated in advance with the SES servicing office, the appropriate legal office, and the AD, EPP. The notice of the decision will:

(1) State the reasons for the employing organization's decision to remove or suspend the SES member (the notice should indicate the decision on each of the reasons specified in the advance notice).

(2) Show the effective date of the removal or the duration and effective dates of the suspension (except as provided for in 3c of this enclosure) on exceptions, the effective date may not be less than 30 calendar days from the date of the advance notice.

(3) Advise the SES member of the right of appeal to the MSPB (the notice should indicate the time limit for making an appeal and the MSPB office to which the appeal should be sent).

(4) Be delivered to the SES member at or before the time the action will be effective.

g. Moratorium. The removal of a career SES member from federal service or suspension from the SES for disciplinary reasons is not subject to the 120-day moratorium.

h. Placement. A career SES member removed from the SES under the provisions detailed in section 3 of this enclosure is not entitled to placement in a position outside the SES.

i. Appeals

(1) The removal or suspension of a career SES member under provisions section 3 is entitled to appeal to the MSPB pursuant to section 7543(d) of Reference (e).

(2) Allegations of prohibited personnel practices will be submitted to the OSC.

(3) Complaints alleging discrimination based on race, color, religion, sex, national origin, age, or physical or mental handicap will be processed in accordance with Reference (n).

4. REMOVAL OF SES NONCAREER, LIMITED TERM, OR LIMITED EMERGENCY SES INCLUDING REMOVAL OF REEMPLOYED ANNUITANTS. Limited appointees who were covered by section 7511 of Reference (e) immediately before SES appointment are covered by Part 752 of Reference (f) in disciplinary cases and subject to section 3 of this enclosure.

a. Notification

(1) The employing organization must give the SES member a written notice of at least 1 workday prior to the effective date of the removal action. The notice, signed by the Director, HRD, must show the effective date but need not include a statement of the reasons for the action.

(2) The notice should be given on a workday for the employee and not be effective on a non-workday (i.e., Saturday, Sunday, or holiday), unless there is at least 1 intervening workday following the day on which the notice was given.

b. Moratorium. A removal under these provisions is not subject to the moratorium restrictions.

c. Placement. The SES members described section 4 are usually not entitled to placement in a position outside the SES upon termination. However, a limited term or limited emergency SES member may have retreat (fallback) rights pursuant to part 317.605(d) of Reference (f). He or she may be entitled to be placed in the position he or she held immediately prior to the limited appointment or in a position of like tenure, status, and grade if:

(1) The limited term appointment (LTA) was made without a break of service in the same agency as the one in which the individual held a career or career conditional appointment or an appointment of equivalent tenure (as defined in part 359.701(a) of Reference (f)) in a permanent civil service position outside the SES.

(2) The limited term appointee was terminated for reasons other than misconduct, neglect of duty, or malfeasance.

d. Expiration of Appointment. A limited appointment must be terminated when the appointment expires. As conditions warrant, a limited term or limited emergency SES member may be separated prior to the expiration date of the limited appointment.

e. Maximum Period of Service. An LTA authority may not exceed 3 years. A limited emergency appointment authority may not exceed 18 months. An individual serving on an LTA authority may not be appointed to or continue to hold a position under such an appointment if, within the preceding 48 months, the individual served in the aggregate more than 36 months under any combination of limited term emergency or LTAs (sections 3394 and 3395(b) through (d) of Reference (f)).

f. Appeals

(1) The removal of an SES member serving under a non-career, limited term, limited emergency, or reemployed annuitant appointment under these provisions is not appealable to the MSPB pursuant to section 359.902 of Reference (f).

(2) Allegations of prohibited personnel practices will be submitted to the OSC.

(3) The removal of an SES member under this section may be grieved under agency grievance procedures in accordance with Reference (m).

(4) Complaints alleging discrimination based on race, color, religion, sex, national origin, age, or physical or mental handicap will be processed in accordance with Reference (n).

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

| | |
|---------|--|
| AD, EPP | Assistant Director, Executive and Political Personnel Division |
| DA&M | Director of Administration and Management |
| DoDD | DoD directive |
| DoDI | DoD instruction |
| GS | General Schedule |
| HR | human resources |
| HRD | Human Resources Directorate |
| LTA | limited term appointment |
| LWOP | leave without pay |
| MSPB | Merit Systems Protection Board |
| OGC | Office of the General Counsel of the Department of Defense |
| OPM | Office of Personnel Management |
| OSC | Office of the Special Counsel |
| PRB | performance review board |
| QRB | qualifications review board |
| SES | Senior Executive Service |
| WHS | Washington Headquarters Services |

PART II. DEFINITIONS

These terms and their definitions are for the purpose of this volume.

adverse (disciplinary) actions. Suspensions greater than 14 days, removals, downgrades, and demotions.

agency. Any major organizational component of DoD, including the DoD Fourth Estate, the Military Commands, the Combatant Commands, or any major organization outside of DoD.

agency head. The head of a major organizational component. For the DoD Fourth Estate, the agency head is the Secretary of Defense.

appointing authority. The agency head or designee with authority to make appointments in the SES.

career appointment. An SES appointment made without time limitations to either SES Career Reserved or SES General positions. Both provide certain job protections, tenure, and benefits not conferred by the other types of SES appointments. Initial career appointments must meet the competitive SES merit staffing provisions at the time of selection for the SES. The individual's executive qualifications must be certified by an OPM-administered QRB before appointment. Career appointments may also be made under noncompetitive procedures to reassign or transfer a current career SES appointee or reinstate a former career SES appointee who completed an SES probationary period. These actions do not require QRB approval.

directed reassignment (or management-directed reassignment). A management-initiated, involuntary reassignment of an employee to another position within the same function or between functions. Directed reassignments may be within or outside the employee's local commuting area.

DoD Fourth Estate. The OSD, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Defense Agencies, and the DoD Field Activities.

employing organization. Any organizational component within the DoD Fourth Estate to which the SES member is assigned.

guaranteed placement. The rights of an SES career appointee to be placed in a non-SES, continuing position at the GS-15 or above, or equivalent, level, that will last at least 3 months, for which the employee meets all qualification requirements, and is of tenure equivalent to that of the appointment held at the time of appointment to the SES in lieu of removal from federal service.

limited emergency appointment. Appointment can only be made to meet a bona fide, unanticipated, urgent need for a period not to exceed 18 months. Limited emergency appointments are made only to General positions. The agency must have a limited appointment authority from OPM or use an authority from its limited appointment pool (3 percent of the agency SES allocation).

LTA. Nonrenewable appointment for up to 3 years to an SES General position which will expire because of the nature of the work (e.g., a special project). Limited appointments are made only to General positions. The agency must have a limited appointment authority from OPM or use an authority from its limited appointment pool (3 percent of the agency SES allocation).

moratorium. The 120 days immediately following the appointment of a new agency head or the career appointee's most immediate supervisor who is a noncareer appointee and who has the authority to make an initial appraisal of the career appointee's performance. During this time period involuntary reassignments are generally prohibited unless the involuntary reassignment results from a final unsatisfactory performance rating issued prior to the appointment that triggered the moratorium.

noncareer appointment. SES appointment made without time limitation, but the appointee serves at the pleasure of the appointing authority. The agency must have a noncareer appointment authority from OPM and the appointment can be made only to a General position.

placement rights. Entitlement to be placed in a vacant civil service position (other than an SES position).

post-probationer. An individual who has completed a probationary period or was not required to serve one.

PRB. An agency board that is responsible for making recommendations to the appointing authority on SES performance ratings and bonuses. Agencies may have more than one PRB.

probationary period. The first year of service of an employee who is given an SES career appointment. The probationary period is the final step in the examining process as it affords the supervisor an opportunity to evaluate the employee's performance and conduct on the job, and to remove the person without undue formality, if necessary.

probationer. An individual newly appointed to an SES career position required to serve a 1 year probationary period.

prohibited personnel practices. There are twelve prohibited personnel practices, including reprisal for whistleblowing, which are defined by law in section 2302(b) of Reference (e). Generally, a personnel action is necessary for a prohibited personnel practice to occur. Personnel action is defined in section 2302(a)2(A) of Reference (e) to include appointments, promotions, reassignments, disciplinary actions, and other personnel matters.

QRB. An OPM-administered independent board of SES members that assesses the executive core qualifications of SES candidates. It must certify that an SES candidate has the broad leadership skills to be successful in a variety of SES positions.

QRB certification. QRB approval of the qualifications of a proposed selection of an individual into the SES.

rate of basic pay. The rate of pay fixed by law or administrative action for the position held by an employee, before deductions and exclusive of additional pay of any kind. It does not include locality-based comparability payments in accordance with section 5304 of Reference (e), interim geographic adjustments, or special pay adjustments for law enforcement officers or allowances (e.g., cost-of-living allowances, retention allowances, and physicians' comparability allowances).

reemployed annuitant. An individual who is receiving an annuity under the Civil Service Retirement System or the Federal Employees' Retirement System on the basis of his or her former federal service and is reemployed by the federal government. A reemployed annuitant serves at the pleasure of the appointing authority.

retreat (fallback) rights. After termination, an SES member on a LTA is entitled to be placed in his or her former position or a position of like status, tenure, and grade if: the limited term appointment is made without a break of service in the same agency as the one in which the individual holds a career or career conditional appointment or an appointment of equivalent tenure, as defined in subpart 359.701(a) of Reference (f), in a permanent civil service position outside the SES; and the LTA is terminated for reasons other than misconduct, neglect of duty, or malfeasance.

save (or retained) pay. An employee whose rate of basic pay otherwise would be reduced as a result of a management action is entitled to retain his or her rate of basic pay.

SES Career Reserved. An SES position that may be filled only by an SES career appointee.

SES General. An SES position that may be filled through any type of SES appointment, i.e., career, noncareer, limited term, or limited emergency, or by a reemployed annuitant.

summary rating. Final rating under the performance appraisal plan assigned by the Secretary of Defense (for OSD or the Defense Agencies) or other appointing authority, after considering the recommendations of the PRB.