

U.S. NUCLEAR REGULATORY COMMISSION MANAGEMENT DIRECTIVE (MD)

MD 10.99	DISCIPLINE AND ADVERSE ACTIONS	DT-20-08
<i>Volume 10,</i>	Personnel Management	
<i>Part 4:</i>	Labor Relations, Discipline, Grievances, Appeals, RIFs	
<i>Approved By:</i>	Miriam L. Cohen Chief Human Capital Officer	
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<i>Issuing Office:</i>	Office of Chief Human Capital Officer	
<i>Contact Name:</i>	Allison Robinson	Servicing Human Resources Specialist (names and phone numbers are listed here)

EXECUTIVE SUMMARY

Management Directive (MD) 10.99, “Discipline and Adverse Actions,” is revised to—

- Replace Manual Chapter and Appendix 4171, “Discipline, Adverse Actions, and Separations.”
- Reflect changes in law, related MDs, and U.S. Nuclear Regulatory Commission practice.
- Clarify guidance for supervisors about addressing misconduct.
- Incorporate the provisions of MD 10.100, formerly Manual Chapter 4156, “Appeals from Adverse Actions,” which will be eliminated upon publication of the revised MD 10.99.
- Change the title from “Discipline, Adverse Actions, and Separations,” to “Discipline and Adverse Actions.”

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For updates or revisions to policies contained in this MD that were issued after the MD was signed, please see the Yellow Announcement to Management Directive index ([YA-to-MD index](#)).

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I. POLICY

- A. It is the policy of the U.S. Nuclear Regulatory Commission (NRC) to separate, suspend, involuntarily reduce in grade or pay, furlough for 30 calendar days or less, reprimand, or admonish NRC employees, as appropriate, for such cause as will promote the efficiency of the Federal service.
- B. Actions may be taken for disciplinary reasons, to address misconduct, or for nondisciplinary reasons, such as lack of work or funds.
- C. The NRC is covered by and complies with 5 U.S.C. Chapter 75, Subchapter II, “Removal, Suspension for more than 14 Days, Reduction in Grade or Pay, or Furlough for 30 Days or Less,” and with the Office of Personnel Management (OPM) regulations found in 5 CFR Part 752, Subpart D, in effecting suspensions of more than 14 calendar days, furloughs of 30 calendar days or less, reductions in grade or pay, and removals described in this management directive (MD).
- D. The NRC is not covered by 5 United States Codes (U.S.C.) Chapter 75, Subchapter I, “Suspension for 14 Days or Less.” However, the NRC often parallels requirements and entitlements concerning suspensions for 14 calendar days or less as set forth in 5 *Code of Federal Register* (CFR) Part 752, “Adverse Actions,” Subpart B, “Regulatory Requirements for Suspension for 14 Days or Less,” which may be referenced for further guidance. If this subpart specifically conflicts with a stated NRC policy or procedure, the NRC policy or procedure prevails.

E. Bargaining Unit Employees

When provisions of the Collective Bargaining Agreement (CBA) entered into by the agency and the employees' exclusive representatives are in conflict with this MD, the provisions of the CBA supersede this MD with regard to bargaining unit employees. (Refer to the "Collective Bargaining Agreement Between U.S. Nuclear Regulatory Commission and National Treasury Employees Union" for detailed guidance.)

II. OBJECTIVES

- Maintain the highest standards of public service.
- Provide for the orderly and timely processing of the actions described in this MD, including the appropriate procedural protections.
- Ensure that disciplinary actions and nondisciplinary adverse actions are taken when reasonable and appropriate to promote the efficiency of the service.
- Prevent employee misconduct, correct misconduct (or a combination of misconduct and poor performance) when feasible, and, as appropriate, take disciplinary or adverse action proportional to the specific situation.

III. ORGANIZATIONAL RESPONSIBILITIES AND DELEGATIONS OF AUTHORITY**A. Chairman, Commissioners, Executive Director for Operations (EDO), Office Directors (ODs) and Regional Administrators (RAs)**

After consultation with the Office of the Chief Human Capital Officer (OCHCO) and the Office of the General Counsel (OGC), issue (or designate officials to issue) to an employee disciplinary and/or adverse action as covered by this MD, as necessary and appropriate when it rises to their level.

B. Deputy Executive Director for Materials, Waste, Research, State, Tribal, Compliance, Administration and Human Capital Programs (DEDM)

Provides general guidance to the Chief Human Capital Officer (CHCO) on, and designated oversight activities for, the NRC's disciplinary and adverse actions process and procedure.

C. General Counsel (GC)

Advises OCHCO, as needed, on interpretations of this MD. Provides review and advice on interpretations regarding the intent and applicability of this MD.

D. Inspector General (IG)

IG consults with OCHCO and OGC, as necessary, regarding disciplinary and non-disciplinary matters that may arise within the Office of the Inspector General (OIG). Directs the implementation of and approves exceptions to this MD for employees in the Office of the Inspector General (OIG).

E. Chief Human Capital Officer (CHCO)

1. Prescribes the standards, requirements, and guidance for taking disciplinary and adverse actions, and nondisciplinary adverse actions.
2. Grants exceptions, as appropriate, from procedural requirements of this MD unless such requirements are based on law or regulation.
3. Provides staff assistance to managers and supervisors on carrying out their supervisory responsibilities, including taking disciplinary and adverse actions when appropriate and in accordance with procedures described in this MD.
4. Ensures the maintenance and retention of appropriate personnel records, including records relating to disciplinary and adverse actions.
5. As appropriate, reports to the Office of Personnel Management (OPM) information related to actions discussed in this MD.

F. Chief, Policy, Labor and Employee Relations Branch (PLERB), OCHCO

1. Develops and provides instructions for the appropriate use and orderly processing of disciplinary and adverse actions, as well as review of such actions.
2. Assists supervisors and managers in determining appropriate courses of action to address employee problems.
3. Provides staff assistance and advice on matters described in this MD. This assistance and advice include reviewing and assisting in drafting disciplinary and adverse actions and all related documents. Ensures that the correspondence complies with applicable laws, rules, and regulations. Ensures that fairness and consistency are applied appropriately across the organization.
4. Serves as liaison with other advising agency components including OGC; OIG; the NRC Health Center; the Division of Facilities and Security (DFS), Office of Administration (ADM); and the Office of Small Business and Civil Rights (SBCR).
5. May disapprove an individual as an employee representative if acting as a representative might cause a conflict of interest, conflict with the priority needs of the NRC, or incur unreasonable costs to the Government.
6. Provides final interpretations regarding the intent and applicability of this MD.

7. Provides final decisions regarding how applicable laws and regulations will be implemented at the NRC.

G. Managers and Supervisors

1. Inform employees of and enforce work expectations related to conduct and performance.
2. Resolve matters of employee conduct or other issues affecting the efficiency of the service at the lowest practical supervisory level and, when appropriate, in an informal, constructive manner.
3. Gather, analyze, and consider carefully the facts and circumstances before taking or recommending corrective or adverse action.
4. In consultation with the Chief, PLERB, OCHCO, issues appropriate actions as defined by this MD (e.g., disciplinary and adverse actions and all related documents).

IV. APPLICABILITY

Provisions of this MD apply to all NRC employees, except Senior Executive Service (SES), appointees and Judges.

When provisions of the "U.S. Nuclear Regulatory Commission and National Treasury Employees Union Collective Bargaining Agreement" conflict with this MD, the provisions of the agreement govern with reference to bargaining unit employees.

V. DIRECTIVE HANDBOOK

Handbook 10.99 provides the high-level procedures, requirements, and guidance relating to addressing misconduct pertaining to disciplinary and adverse actions and all related documents covered by this MD.

VI. ADMINISTRATIVE REVIEW

Section 161.d of the Atomic Energy Act of 1954, as amended, provides that "the Commission shall make adequate provision for administrative review of any determination to dismiss any employee." This provision ensures that all employees, except those whose appointments can be terminated at will, can request some form of administrative review of removals for cause. For the separation actions of employees covered by this MD, the Merit Systems Protection Board (MSPB) appeal procedure satisfies this requirement.

VII. ACTIONS EXCLUDED FROM THIS MD

- A.** Voluntary actions by the employee such as resignation, retirement, or change to a lower grade at the employee's request.

- B.** Actions based solely on unacceptable performance under Title 5 Chapter 43 of the United States Code, "Performance Appraisal" (see MD 10.67, "General Grade Performance Management System," or MD 10.137, "Senior Executive Service Performance Management System").
- C.** Actions taken pursuant with 5 U.S.C. 7532, "Suspension and Removal."
- D.** Adverse actions ordered by the Merit Systems Protection Board under 5 U.S.C. 1215, "Disciplinary Action," for reasons such as prohibited political activity or commitment of a prohibited personnel practice (see MD 7.10, "Political Activity").
- E.** Termination of appointment on the expiration date specified as a basic condition of employment at the time the appointment was made (5 CFR 752.401(c)(6)).
- F.** Separation during the initial trial or probationary period for the position (see MD 10.14, "Employee Trial Period").
- G.** Reduction in grade due to failure to satisfactorily complete the supervisory or managerial probationary period if the reduction in grade is to a position equal in grade to the position held before selection (see MD 10.14).
- H.** Change to a lower grade when the employee has been granted grade retention (see MD 10.41, "Pay Administration"), or after a temporary promotion (see MD 10.1, "Recruitment, Appointments, and Merit Staffing"), or as the result of cancelation of a promotion to a position not classified before the promotion (5 CFR 752.401(b)(13)).
- I.** The return of an employee on an NRC Limited (Excepted) Appointment to a position to which he or she has return rights. This is not an adverse action even if the return right is to a lower graded position than the one held under the Limited Appointment (see MD 10.1).
- J.** Reduction-in-force actions, including furloughs of more than 30 calendar days, affecting non-SES employees (see MD 10.103, "Reduction in Force for Non-SES Employees").
- K.** Informal actions with related documentation; including, but not limited to leave restriction memoranda, notes of verbal counseling and written counseling memoranda.
- L.** Disciplinary and adverse actions against members of the SES.
- M.** Adverse actions affecting Presidential appointees, Administrative Law Judges appointed under 5 U.S.C. 3105, employees holding NRC Limited (Excepted) Appointments (5 U.S.C. 7511(b)(2)), or reemployed annuitants (5 U.S.C. 3323(b) and 5 CFR 752.401(c)(12)).
- N.** Furloughs for military service (see MD 10.62, "Leave Administration").

VIII. REFERENCES

Code of Federal Regulations

5 CFR Part 297.205, "Access to Medical Records."

5 CFR Part 339, "Medical Qualification Determinations."

5 CFR Part 735, "Employee Responsibilities and Conduct."

5 CFR Part 752, "Adverse Actions."

5 CFR Part 752, "Adverse Actions," Subpart B, "Regulatory Requirements for Suspension for 14 Days or Less."

5 CFR Part 752, "Adverse Actions," Subpart D, "Regulatory Requirements for Removal, Suspension for More Than 14 Days, Reduction in Grade or Pay, or Furlough for 30 Days or Less."

10 CFR Part 10, "Criteria and Procedures for Determining Eligibility for Access to Restricted Data or National Security Information or an Employment Clearance."

Office of Personnel Management

Office of Personnel Management Operating Manual, "Guide to Processing Personnel Actions."

Executive Orders

Executive Order 13839, "Promoting Accountability and Streamlining Removal Procedures Consistent with Merit System Principles," May 25, 2018.

U.S. Nuclear Regulatory Commission

"Collective Bargaining Agreement Between U.S. Nuclear Regulatory Commission and National Treasury Employees Union," (November 9, 2015), <https://www.nrc.gov/docs/ML1609/ML16092A326.pdf>.

Management Directives—

4.5, "Contingency Plan for Periods of Lapsed Appropriations."

7.10, "Political Activity."

9.2, "Organization and Functions, Office of the Inspector General."

10.1, "Recruitment, Appointments, and Merit Staffing."

10.14, "Employee Trial Period."

10.41, "Pay Administration."

- 10.62, "Leave Administration."
- 10.67, "General Grade Performance Management System."
- 10.101, "Employee Grievances."
- 10.103, "Reduction in Force for Non-SES Employees."
- 10.137, "Senior Executive Service Performance Management System."
- 10.138, "Reduction in Force in the Senior Executive Service."
- 10.161, "Civil Rights Program and Affirmative Employment and Diversity Management Program."
- 10.162, "Disability Programs and Reasonable Accommodation."
- 10.166, "Telework."
- 12.3, "NRC Personnel Security Program."

NRC Forms Library on SharePoint:

<https://usnrc.sharepoint.com/teams/NRC-Forms-Library/SitePages/Home.aspx>.

OCHCO Work Life Programs Webpage available at

<https://drupal.nrc.gov/ochco/catalog/818>.

OCHCO Labor and Employee Relations (LER) [representatives](#)

<https://drupal.nrc.gov/ochco/25485#plerb>.

United States Code

Adverse Actions, Subchapter I, "Suspension for 14 Days or Less" (5 U.S.C. Chapter 75).

Adverse Actions, Subchapter II, "Removal, Suspension for More than 14 Days, Reduction in Grade or Pay, or Furlough for 30 Days or Less" (5 U.S.C. Chapter 75).

Appointment of Administrative Law Judges (5 U.S.C. 3105).

Automatic Separations; Reappointment; Re-Employment of Annuitants (5 U.S.C. 3323).

Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq. Section 161.d).

Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 (Pub. L 115-73).

Individual Right of Action in Certain Reprisal Cases (5 U.S.C. Chapter 12, Subchapter III).

Office of Special Counsel (5 U.S.C. Chapter 12, Subchapter II).

Performance Appraisal (5 U.S.C. Chapter 43, Sections 1215 and 3323(b)).

Prohibited Personnel Practice (5 U.S.C. Chapter 2302).

U.S. NUCLEAR REGULATORY COMMISSION DIRECTIVE HANDBOOK (DH)

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I. ACTIONS COVERED

This section provides procedural guidance applicable to actions covered by this management directive (MD). Covered actions include—

- Admonishments and reprimands;
- Suspensions, including indefinite suspensions;
- Reduction in grade or pay;
- Removal; and
- Furlough for 30 calendar days (or 22 workdays) or less.

II. GENERAL PROVISIONS

- A.** All U.S. Nuclear Regulatory Commission (NRC) staff are responsible for appropriate conduct in the work place. This includes adherence to applicable laws, rules, regulations; NRC policies and procedures; and workplace norms.
- B.** The purpose of implementing sufficient corrective actions is to promote the efficiency of the Federal service.
1. Misconduct under this MD can include, but is not limited to, improper workplace behavior and/or failure to comply with work-related, legal, or other applicable rules and policies; however, misconduct is not strictly limited to violations of written policies or procedures.
 2. Additionally, off-duty misconduct (such as, but not limited to, criminal behavior or a conflict of interest) can be addressed when it—
 - (a) Interferes with the agency's ability to trust or rely on the employee at work;

- (b) Shows that the employee may constitute a danger to themselves, other staff members, the public, or agency property; or
 - (c) Otherwise negatively affects the work environment or efficiency of the Federal service.
- C.** Corrective actions include oral and written counseling, disciplinary and adverse actions, and any actions taken to correct misconduct. The purpose of oral and written counseling is to correct misconduct where appropriate at the least severe level (i.e., without discipline). These types of informal corrective actions may be used to show that an employee was made aware of and notified of the misconduct and informed of the agency's rules and expectations. Employees may respond to written counseling in writing and any such response may be kept in the agency's files with the written counseling. Oral and written counseling are not considered discipline, are not filed in the employee's electronic Official Personnel Folder (eOPF), and are not covered actions under this MD because they are non-disciplinary actions.
- D.** Disciplinary and adverse actions are personnel actions memorialized in the employee's eOPF for a defined term, or permanently, based on the action. Generally, disciplinary actions are considered lesser penalties (e.g., admonishments, reprimands, suspension for 14 calendar days or less). Adverse actions are more substantial penalties than disciplinary actions (e.g., suspensions of 15 or more calendar days, demotion, removal, indefinite suspension).
- E.** Seeking Advice and Gathering Information
 1. Generally, supervisors should inform employees of their work expectations, including conduct and performance expectations.
 2. When a supervisor believes an employee has engaged in misconduct or demonstrates behavior that is detrimental to the workplace, the supervisor should—
 - (a) Consult with the appropriate Labor and Employee Relations (LER) representative (contact information available at <https://drupal.nrc.gov/ochco/25485#plerb>) to discuss the behavior and possible solutions. The LER representative will provide advice and guidance on topics such as assessing the seriousness of the misconduct, general penalty considerations, progressive discipline, and the involvement of other appropriate parties, as needed.
 - (b) As appropriate, notify and/or consult with the Inspector General (IG) or the Division of Facilities and Security (DFS), Office of Administration (ADM).
 - (c) Gather appropriate information, which may include documentation related to the incident of misconduct and statements (preferably in writing) from employees or other witnesses. In some cases, the supervisor may obtain the employee's explanation of the incident before acting. During a discussion with a bargaining unit employee, the employee is entitled to union representation upon request. If a

request for union representation is made, the manager should consult with the LER representative before continuing the conversation. However, it is not the supervisor's responsibility to advise employees of this right. Nonbargaining unit employees are not entitled to a representative during such discussions.

F. Progressive Discipline

When addressing misconduct, a supervisor may consider actions that are progressive in nature, which means management may consider taking the least severe action appropriate to address the misconduct and defer further disciplinary action. However, discipline need not follow any specific sequence. Major offenses may be cause for severe action, including removal, irrespective of whether previous disciplinary action had been taken against the employee.

III. FORMAL CORRECTIVE (DISCIPLINARY AND ADVERSE) ACTIONS

A supervisor must consult with the appropriate LER Specialist, OCHCO, when deciding to address employee misconduct through formal actions.

A. Discussion of Terms

The terms listed below provide context on various types of formal corrective actions used to address employee misconduct.

1. **Disciplinary actions:** Actions taken against an employee to address misconduct. These corrective actions include suspensions of 14 calendar days or less, reprimands, and admonishments.
2. **Adverse actions:** Actions taken against an employee to address severe, repeated, or egregious misconduct. These corrective actions include suspensions of 15 calendar days or more, demotions (reductions in grade), and removals.
3. **Admonishments:** Disciplinary memoranda issued to the employee to address misconduct. Admonishments are retained in an eOPF for up to 6 months.
4. **Reprimands:** Disciplinary memoranda issued to the employee to address misconduct. Letters of reprimand are retained in an eOPF for up to 2 years.
5. **Suspension:** Placement of an employee in a temporary non-pay and non-duty status as a result of misconduct. Suspensions can be classified as either disciplinary or adverse depending on the length of the suspension.
6. **Demotion:** Adverse action that involuntarily moves an employee to a position of lower grade.
7. **Removal:** Adverse action that results in separation from the Federal service.

B. Admonishments and Reprimands

1. A memorandum may be issued to an employee to address lesser instances of misconduct. At management's discretion, admonishments and reprimands may be removed from the eOPF before their expiration date for reasons such as, but not limited to, improved conduct and remorse.
2. To the extent feasible, a supervisor should meet with the employee to issue the memorandum, discuss the misconduct, and clarify expectations.
3. Each admonishment or reprimand memorandum normally should include—
 - (a) Reasons for the action, including a clear, detailed description of the misconduct, including the time, place, and circumstances of the misconduct.
 - (b) Reference to any known previous counseling or discipline, whether related or not to the current misconduct being addressed.
 - (c) Any failure of the employee to take remedial action previously discussed, if applicable.
 - (d) A statement advising the employee of management's expectations, the importance of correcting the misconduct, and how the misconduct can be corrected. Also, as appropriate, a timeframe for which the correction should take place.
 - (e) A warning that future offenses may result in more severe disciplinary action up to and including removal from the Federal service.
 - (f) If the supervisor suspects that a personal problem, health problem, or medical condition may have contributed to the misconduct or behavior, the memorandum may include a reminder about the availability, and purpose of, the Employee Assistance Program (EAP), the NRC Health Center, and the Reasonable Accommodation Program (more information is available in the HR Programs and Services Catalog, under [Work Life Programs](#)). (MD 10.162, "Disability Programs and Reasonable Accommodation.")
 - (g) A statement describing retention timeframes for the action.
 - (h) A statement that this action is subject to applicable grievance procedures.
 - (i) Space for the employee signature to acknowledge receipt of the document provided. If the employee refuses to sign, management annotation is acceptable. Electronic acknowledgement of receipt also may be acceptable.

C. Suspensions, Demotions, and Removals

Suspensions, demotions, and removals are formal disciplinary or adverse actions, are issued to the employee, normally result in a loss of pay, and are permanently documented in the eOPF. These actions require appropriate due process procedures

including advance written notice (Proposal Notice) and an opportunity for the employee to respond to the Proposal Notice, orally, in writing, or both (Oral/Written Reply) before the decision (Decision Notice) and final implementation of any action resulting from the decision.

1. Proposal Notice

- (a) The proposing official is normally the first line supervisor of the employee who engaged in the misconduct, but may be another management official, as appropriate.
- (b) To the extent feasible, a supervisor should meet with an employee to issue the Proposal Notice, discuss the basis for the Proposal Notice, and inform the employee of his or her rights in this matter.
- (c) Proposal Notices normally include—
 - (i) Identification of the action proposed (e.g., suspension, removal, demotion).
 - (ii) Applicable laws, rules, and regulations under which the action is proposed.
 - (iii) The reason the action is proposed. A description of each offense or incident of misconduct (charge(s)).
 - A clear description of the misconduct including, as appropriate, the time, place, names of persons involved, and the circumstances. Also, any other relevant information that forms the basis for the action.
 - The reason must be sufficiently specific to give the employee a fair and reasonable opportunity to respond to the charges.

(d) Discussion of Penalty Consideration

When determining the severity of the action, the agency will consider the relevance of any aggravating and/or mitigating circumstances. The following factors, included for purposes of illustration, are meant to be neither exhaustive nor mechanically applied by management in exercising its discretion to select the appropriate penalty, but all must be considered in making the determination:

- (i) The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
- (ii) The employee's job level and type of employment including fiduciary role, contacts with the public, and prominence of the position;
- (iii) The employee's past disciplinary record;

- (iv) The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
 - (v) The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon the employer's confidence in the employee's ability to perform assigned duties;
 - (vi) Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
 - (vii) The notoriety of the offense or its impact upon the reputation of the employer;
 - (viii) The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
 - (ix) Potential for the employee's rehabilitation;
 - (x) Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment or bad faith, and malice or provocation on the part of the others involved in the matter;
 - (xi) The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others, and
 - (xii) Any other special consideration. For example, other penalties required by law including, but not limited to S.585, the "Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017" (the Act), which was signed into law on October 26, 2017, requires that when a supervisor is found to have engaged in whistleblower retaliation, the agency is required to propose a minimum of a 3 calendar day suspension for a first offense, and a removal for a second offense.
- (e) Discussion of Advanced Notice Period
- (i) In accordance with applicable regulations, the proposed adverse action will be effective no earlier than 30 calendar days after the date the proposal notice is delivered (not counting the date of delivery), unless another timeline is applicable.
 - (ii) Proposed disciplinary actions may be effective no earlier than 15 calendar days after the date the proposal notice is delivered (not counting the date of delivery).
 - (iii) Crime. If there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, the proposed adverse action may take place as soon as practical after the employee's reply has been received or the opportunity to reply has elapsed, normally 7 calendar days. If the full 30 calendar days' notice is not given, the notice

must refer to that fact and state specifically the time given for any reply and the earliest possible effective date.

(f) References to the Material Relied upon for the Proposed Action

- (i) The material on which the notice is based and that is relied on to support the reasons in the notice (for example, documentation, past related correspondence, witness statements) will be assembled and made available to the employee for review. Typically, this is accomplished by providing the employee with a complete copy of the material on which the proposal is based when the proposal is issued. If the employee is not given a copy of the material, the notice will inform the employee when and where the material may be reviewed. Material that cannot be disclosed to the employee or to a designated physician under 5 CFR 297.205, "Access to Medical Records," may not be used to support the reasons in the notice.
- (ii) The proposing official is not precluded from developing additional evidence after the issuance of the proposal notice. The information should be pertinent to the underlying reasons for the proposal notice. For example, if an action is proposed based on a statement secured from one witness, statements may later be secured from additional witnesses. The employee will be given a reasonable amount of time to review and reply to any such additional material not included with the proposal notice.

(g) Identify the Deciding Official (DO)

The proposal notice must identify the deciding official (DO). The DO is usually a management official charged with making the agency's final decision on the proposed action. Normally, the DO is a management official at the same or a higher level than the proposing official; however, the same official may propose and decide the action.

(h) The Employee's Status During the Advanced Notice Period

- (i) An employee against whom an action is proposed will normally be retained in an active duty status until a decision is rendered.
- (ii) If the employee's continued presence in the workplace may pose a threat to the work environment or to others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests, the office director or a designee will consult with the LER representative regarding use of alternatives such as—
 - Assigning or detailing the employee to other duties or allowing telework (MD 10.166, "Telework,")
 - Allowing the employee to take appropriate leave, and
 - Placing the employee in a paid, nonduty status.

- (iii) If the employee has absented himself or herself from the workplace, the employee should be carried in an appropriate leave status or as absent without leave.
- (i) Proposal Notices also must include information on Procedures for Replying such as—
 - (i) A statement that the employee has the right to answer the notice orally, in writing, or both, and to present affidavits in support of the answer, but that the employee is not entitled to a formal hearing or examination of witnesses at this time.
 - (ii) The Time Allowed to Reply
 - Must be a reasonable period, normally 7 calendar days. (Management can consider approval for requests for additional time on a case-by-case basis.) The time allotted should be sufficient to afford the employee the opportunity to review the material relied upon to support the reasons in the notice, and to prepare a response and secure affidavits.
 - Official time allowed for preparation of the response. The employee should be given a reasonable amount of official time to prepare and present a reply to a proposed action if he or she is otherwise in an active duty status. "Reasonable" is usually defined in terms of hours, not days or weeks. For example, up to 8 hours of official time would normally be permitted to reply to a proposal to suspend for 14 calendar days or less. The supervisor or other appropriate management official may grant additional official time upon request by the employee.
 - (iii) A statement that the employee may be represented by an attorney or other representative.
 - The Chief, PLERB, OCHCO, may disallow someone as an employee's representative because of a conflict of interest or position. In addition, an NRC employee may be disallowed as a representative if release from his or her official position would give rise to unreasonable costs or if priority work assignments preclude his or her release.
 - An NRC employee who is serving as a representative is not entitled to any official time to help the employee prepare an answer to the proposal but may be granted official time to attend the presentation of an oral reply.
 - (iv) A statement that, should an employee provide an oral reply, a summary of the meeting, or a verbatim transcript may be taken and a copy will be provided to the employee and his or her representative, as appropriate.
 - (v) Information on how to request an oral reply and where to send any written reply.

- (j) Confirmation that the employee's response, if any, along with the evidence relied upon, will be considered before a final decision is made.
 - (k) A statement that a decision on the notice will be rendered in writing as soon as practicable after the employee replies or after the reply period has elapsed.
 - (l) Other information, as appropriate.
 - (i) An explanation of the impact of the misconduct on the workplace if not already clear, the importance of correcting the deficiency, and the conduct expected in the future.
 - (ii) A warning that any future offenses of the same nature may result in a more severe disciplinary action.
 - (iii) Reference to the agency's EAP.
2. Delivery of Proposal Notice
- (a) When practicable, notices should be delivered to the employee personally, preferably at the place of work.
 - (b) When the notice is not delivered personally, one copy of the notice should be sent by first class mail, and another copy of the notice should be sent by a means that attempts to obtain the employee's signature acknowledging receipt. Additionally, delivery by personal e-mail may be acceptable in certain circumstances.
 - (c) When the notice is delivered by mail, the agency will use the address listed officially in an agency system.

3. Written Notice of Decision

The designated OCHCO representative must concur in the notice of decision before issuance after appropriate consultation with the Office of the General Counsel (OGC).

- (a) Consideration of Available Information
 - (i) The DO will consider the proposal, the materials relied upon, and the employee's reply, if any. The decision will rely only on the reasons or charges specified in the proposal notice.
 - (ii) The DO may seek other information, if appropriate; for example, to clarify or confirm information in the proposal or in the employee's reply. Any new information garnered must be shared with the employee in advance of the decision. The DO must allow the employee additional time to review and reply to the new information before making the decision.

(b) Discretion in Decision

The DO may decide to affect the action proposed, affect any disciplinary or adverse action less severe than the one proposed, or take no action.

(c) Content of Written Notice of Decision

- (i) The DO should give the employee a written, dated notice of his or her decision. In accordance with Executive Order 13839, "Promoting Accountability and Streamlining Removal Procedures Consistent with Merit System Principles," dated May 25, 2018, to the extent practicable, management should limit the advance notice period for the action to 30 calendar days. For removal actions, decisions should be issued within 15 calendar days of the end of the employee's reply period.
- (ii) The written decision should include the following, along with any other information relevant to the specific action:
- Reference to the advance notice of proposed action.
 - Whether the employee replied, including whether any reply was oral and/or in writing, the date, and whether the employee was represented. The decision will also confirm that the DO considered the reply if one was made.
 - Reference to the reasons and/or charges for the notice of proposed action and whether they have been sustained. If some but not all reasons and/or charges have been sustained, the decision should specify which reasons and/or charges have and which have not been sustained. The decision may not be reached by reliance upon information that was not in the original notice of proposed action, except as noted in Section III.C.3(a)(ii) of this handbook.
 - Evaluation of penalty consideration as described in Section III.C.1(d) of this handbook.
 - The decision notice will specify the action to be taken or indicate that no action is to be taken.
 - Effective Date
 - The effective date must not be before the end of the notice period established in the advance notice but may be later. The action may not be affected before the decision is delivered. Separation actions typically become effective at the close of business on the specified effective date. Other actions (such as suspensions, reductions in grade, and furloughs) typically become effective at the beginning of the day specified in the decision.

- The decision will specify the date(s) of suspension or furlough actions. Suspension and furlough days need not be consecutive. For example, an employee may serve 15 days of a 30 calendar day suspension, return to work for a few weeks, and then serve the other 15 days of the suspension. In contrast, it would be inappropriate to affect a suspension by specifying that the employee be suspended only on workdays during consecutive weeks.

(iii) Appeal Rights of the Employee

Appropriate/applicable notice must be given to an employee related to review of agency decisions. Depending on the nature of the action (severity of penalty) and the employee (bargaining unit status), an employee may be entitled to appeal through appropriate grievance and/or arbitration procedures, the Merit System Protection Board (MSPB), and other applicable procedures under law.

- The decision notice should include specific language related to options for filing appeals, associated timeframes, and applicable procedures.
- The action is not held in abeyance or delayed because of a review or appeal.
- Where employees may appeal to the MSPB, a copy of the MSPB regulations and appeal form or a link to the information may be included.
- Generally—
 - A non-bargaining unit employee suspended for 14 calendar days or less may grieve a decision through the grievance procedures described in MD 10.101 “Employee Grievances.”
 - A non-bargaining unit employee suspended for greater than 14 calendar days, reduced in grade, and removed may appeal the decision to the MSPB.
 - A bargaining unit employee suspended for 14 calendar days or less may appeal following the applicable procedures found in the [Collective Bargaining Agreement \(CBA\)](#).
 - A bargaining unit employee suspended for greater than 14 calendar days, reduced in grade, and removed may appeal the decision to the MSPB or other applicable venue, as appropriate, in accordance with the CBA.
- Any employee suspended for greater than 14 calendar days, reduced in grade, and removed, may elect to seek corrective action pursuant to Subchapter II, “Office of Special Counsel,” and Subchapter III, “Individual Right of Action in Certain Reprisal Cases,” of 5 U.S.C Chapter 12, “Merit

Systems Protection Board, Office of Special Counsel, and Employee Right of Action.”

- In accordance with MD 10.161, “Civil Rights Program and Affirmative Employment and Diversity Management Program,” where applicable, an employee is also entitled to file a complaint with the Equal Employment Opportunity Commission (EEOC) or include claims of discrimination with an action appealable to the MSPB.
- Delivery of notice of final decision. The requirements of Section III.C.2 of this handbook concerning delivery of advance notices also apply to delivery of decision letters.

(iv) Effecting Actions

- Personnel actions described in this handbook that affect the pay or appointment status of an employee (for example, change to a lower grade, suspension, removal, or furlough) will be formally affected and documented by a Standard Form (SF) 50, "Notification of Personnel Action," or its equivalent as permitted by the Office of Personnel Management (OPM) Operating Manual, "Guide to Processing Personnel Actions." (SF 50 is available in the NRC Forms Library on SharePoint, at <https://usnrc.sharepoint.com/teams/NRC-Forms-Library/SitePages/Home.aspx>).
- SF 50s are maintained as a permanent record in the eOPF.

D. Indefinite Suspensions and Removals Related to Security Actions Taken Pursuant to 10 CFR Part 10 or 5 U.S.C. 7532

Indefinite suspensions and removals taken pursuant to 10 CFR Part 10, “Criteria and Procedures for Determining Eligibility for Access to Restricted Data or National Security Information or an Employment Clearance,” or 5 U.S.C 7532, “Suspension and Removal,” and in accordance with MD 12.3, “NRC Personnel Security Program,” generally follow the adverse actions procedures described in this MD. However, because these actions are a result of a loss of qualifications, there is no discussion of penalty consideration as described in Section III.C.1(d) of this handbook.

IV. NONDISCIPLINARY ADVERSE ACTIONS

The actions listed below are not caused by misconduct or unacceptable performance. These actions are nondisciplinary because they are not based on misconduct or unacceptable performance. Nondisciplinary Adverse Actions discussed in this section are Separation for Medical Inability to Perform Assigned Duties, Furloughs of 30 calendar days or less, and Declined Reassignment or Relocation.

A. Separation for Medical Inability to Perform Assigned Duties

1. Separation for medical inability to perform assigned duties occurs when—
 - (a) An employee has an established medical condition;
 - (b) An employee is unable to report to duty or perform the essential functions of his or her job, with or without a reasonable accommodation (in accordance with MD 10.162, "Disability Programs and Reasonable Accommodation"); and
 - (c) The agency is unable to secure a medically suitable reassignment, or the employee has declined reassignment as a reasonable accommodation.
2. Guidelines for Separating an Employee on the Basis of Medical Inability to Perform Assigned Duties
 - (a) Before initiating an action, management must consult with the Reasonable Accommodations Program Manager to ensure all reasonable accommodations options have been exhausted.
 - (b) Separations for Medical Inability are processed using the Adverse Actions procedures described in Section IV of this handbook.
 - (c) The employee, at his or her own discretion, may apply for disability retirement at any time during this process.
 - (d) In accordance with applicable OPM guidance, the employee may be entitled to severance pay upon separation if he or she is not eligible to retire or if other conditions are met.

B. Furloughs of 30 Calendar Days or Less

Continuous furloughs of 30 calendar days or less and intermittent furloughs for 22 workdays or less are discussed below. Longer furloughs are processed in accordance with procedures described in MD 10.103, "Reduction in Force for Non-SES Employees," or MD 10.138, "Reduction in Force in the Senior Executive Service."

1. Furloughs are nondisciplinary adverse actions that place employees in unpaid, nonduty status because of lack of work or funds. The furlough period does not need to be a continuous period. It may be intermittent as long as the adverse action notice provides the dates on which furlough days are to occur. For example, a furlough for 1 day per pay period over a total of 20 pay periods would constitute an intermittent furlough.
2. When management determines that for fiscally related reasons furlough is appropriate to the extent practical, employees will be treated equitably by placing them on furlough (a) by organizational segments and (b) equally as to the number of days required in a non-pay status. Managers may opt to use relative standing on a retention register to select employees for furloughs described in this handbook. If

- certain individuals are selected for furlough in a manner other than noted above, but for cause as will promote the efficiency of the Federal service, the basis for their selection, as well as the reasons for the furlough, will be stated in the advance notice.
3. When furlough is necessary because of a temporary lack of funds, employees in an organizational segment performing work that can be curtailed for a short period may be selected. When there is temporary lack of work but not a temporary lack of funds, employees may request annual leave instead of furlough.
 4. Adverse action procedures will be used to effect furloughs, except that advance written notice and an opportunity to answer are not required in unforeseeable circumstances, such as sudden breakdowns of equipment, acts of God, a lapse of funding, or other emergencies requiring immediate curtailment of activities (see MD 4.5, "Contingency Plan for Periods of Lapsed Appropriations"). When the furlough is foreseeable, and advance notice is given, the furlough action is not to be affected before the end of the notice period.

C. Declined Reassignment or Relocation

1. A reassignment to another position with the same grade and basic pay is not an adverse action even if it requires a move to another duty station. However, an employee may be removed due to—
 - (a) Refusal to accept a directed reassignment outside of the commuting area or
 - (b) Refusal to accompany the employee's function or activity when it is moved outside of the commuting area.
2. Guidelines for Separation Due to Declination of Reassignment or Relocation
 - (a) A separation due to declination is processed using the adverse actions procedures described in Section IV of this handbook but typically is not considered disciplinary in nature. However, refusal to accept a reassignment within the same commuting area is grounds for disciplinary action, up to and including removal.
 - (b) If the employee indicates he or she is not relocating, the employee may be considered for placement in vacant positions in accordance with provisions in MD 10.1, "Recruitment, Appointments, and Merit Staffing."
 - (c) If eligible, the employee may apply for discontinued service retirement if he or she does not accept the reassignment/relocation. Final decision on retirement is subject to OPM approval.
 - (d) In accordance with applicable OPM guidance the employee may be entitled to severance pay upon separation if he or she is not eligible to retire, and other conditions are met.

V. ALTERNATIVE DISCIPLINE AGREEMENTS

- A. Alternative discipline is an optional, non-traditional approach to address employee misconduct, which provides for a variety of corrective actions. The goal of such an approach is to positively change an employee's conduct by offering an alternative means of correcting such conduct. Alternative discipline is offered solely at management's discretion. Under no circumstances is alternative discipline required to be used and is not precedent-setting.
- B. Alternative discipline may be offered at any point in the disciplinary process, including before the issuance of the proposal.
- C. An alternative discipline agreement will not be placed in the eOPF. However, a resulting personnel action documented with an SF-50 will be appropriately placed in an eOPF.
- D. Should the employee violate the alternative discipline agreement, the employee will be notified in writing of the violation and that the penalty for the violation as outlined in the alternative discipline agreement will be affected. If the employee disputes whether a violation of the alternative discipline agreement occurred, the employee may file a grievance, in accordance with MD 10.101, or applicable provisions in the CBA, only on the issue of whether a violation of the alternative discipline agreement occurred.
- E. Any alternative discipline agreement must include a description of the alternative discipline which has been agreed to, and the retention period of the alternative discipline agreement in the employer's records.

VI. GLOSSARY

Admonishment

A disciplinary memorandum that addresses misconduct or a combination of misconduct and poor performance. An admonishment is considered less severe than a reprimand and is retained in the employee's Official Personnel Folder for up to 6 months.

Adverse action

A personnel action that addresses a deficiency in conduct or combined performance and conduct that affects an employee's pay (that is, an action by which an employee is removed, suspended for 15 calendar days or more, furloughed for 30 calendar days or less, or reduced in grade or pay). An adverse action may be disciplinary or nondisciplinary in nature.

Corrective Action

Management action used to address misconduct and/or poor performance. Corrective actions can include formal disciplinary and adverse actions; or informal actions such as oral and written counseling.

Day

A calendar day, including a weekend or nonworkday except where days are specified to be workdays.

Demotion

Adverse action that involuntarily moves an employee to a position of lower grade.

Deciding official

The management official who makes the final decision on a proposed adverse or disciplinary action.

Disciplinary action

A written action that addresses a deficiency in conduct or combined performance and conduct. Disciplinary actions include admonishments, reprimands, and suspensions of 14 calendar days or less.

Furlough

A nondisciplinary, adverse action that places an employee temporarily in a non-pay and non-duty status because of lack of work or funds.

Misconduct

Improper behavior or failure to comply with work-related, legal, or other applicable rules and policies.

Proposing official

The management official, usually the employee's first-level supervisor, who proposes a disciplinary or adverse action.

Reassignment

The change of an employee from one position to another within the same agency without a change in grade or basic pay. A reassignment does not constitute a disciplinary or adverse action even if it forces the employee to relocate.

Reduction in grade (Demotion)

An action to place an employee involuntarily in a position with a lower grade under a position evaluation system.

Reduction in pay

Reduction in basic pay.

Removal

An involuntary separation, generally for cause or other reasons that promote the efficiency of the Federal service.

Reprimand

A memorandum that formally disciplines an employee for misconduct or a combination of misconduct and poor performance. A Reprimand is retained in the employee's Official Personnel Folder for up to 2 years.

Resignation

A voluntary separation by the employee.

Separation

Any action that ends an individual's employment.

Suspension

An action that places an employee in a temporary, non-pay, non-duty status.