



Montgomery County Government

ROCKVILLE, MARYLAND 20850

M E M O R A N D U M

November 7, 1991

TO: All Department Heads

FROM: William H. Hussmann, Chief Administrative Officer *WH*

SUBJECT: Administrative Procedure 4-19, Reduction-In-Force

Attached is Administrative Procedure 4-19, Reduction-In-Force. This procedure provides departments with procedures to carry out reduction-in-force policy.

Departments' comments on the interim administrative procedure were reviewed and as a result three changes were made to the procedure. First, Section 3.18 of the procedure was revised to include a tie breaking mechanism when they occur in seniority calculations. Second, Section 5.3.C was expanded to allow service need or work performance to be used in determining eligibility for Discontinued Service Retirement when a seniority tie cannot be broken. Finally, Section 6.3 of the procedure was revised to add a sentence to clarify that the Personnel Office is responsible for calculating seniority.

Please insert this administrative procedure in place of the interim procedure in the Staffing Section of your Personnel Manuals.

WHH:pw

Attachment: Administrative Procedure 4-19, Reduction-In-Force



ADMINISTRATIVE PROCEDURE

MONTGOMERY COUNTY, MARYLAND

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CAO APPROVAL		

TITLE Reduction-in-Force

PURPOSE

- 1.0 To establish procedures necessary to carry out reduction-in-force (RIF) policy as set forth in Section 33-7.b(4) of the Montgomery County Code and Section 25 of the Personnel Regulations for Merit System Employees.

POLICY

- 2.0 The conditions which may give rise to a reduction-in-force can sometimes be addressed through other means (e.g., effective position management and employee placement, reduced working hours, restructuring positions and retraining incumbents, administrative retirement, etc.). These alternatives are to be exhausted before reduction-in-force is instituted.
- 2.1 Reduction-in-force is to be accomplished in a way which will reduce adverse impact on employees to the greatest extent which is reasonable under the circumstances, and in a manner consistent with the County's Affirmative Action commitment.
- 2.2 In carrying out reductions-in-force, every effort will be made to maintain or restore, but not to improve, the employment status of affected employees.
- 2.3 Authority to administer this procedure is delegated to the Personnel Director by the Chief Administrative Officer.

DEFINITIONS

- 3.0 AFFECTED CLASS - Class (see definition 3.4 below) within a Department from which position(s) are to be eliminated, and where the elimination of such positions may require the demotion or termination of employees.
- 3.1 AFFECTED EMPLOYEES - Employees who are assigned to positions in affected classes, and who have received a "notice of intent" (see 3.10).
- 3.2 ALTERNATIVE PLACEMENT - The process of providing placement and other assistance to affected and displaced employees (see definitions 3.1 and 3.6) under authority delegated by the Chief Administrative Officer. Alternative Placement activity will be primarily the responsibility of the Division of Employment and will involve participation by the Division of Employee Services, the Labor and Employee Relations Unit, the Employee Assistance Program, and the Office of Management and Budget. (Services may include, but are not limited to, job placement, both within and outside of the Montgomery County Government; training in resume preparation, job search skills, interview techniques, etc.; personal and family counseling; formal and informal grievance counseling and assistance; and benefits counseling concerning unemployment compensation, retirement, health, and life insurance coverage, etc.)



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- 3.3 BUDGET LEVEL - The highest-grade class in an occupational series to which employees may be promoted noncompetitively. The budget level of an occupational series is designated with an asterisk in the Classification Plan. For purposes of reduction-in-force, all classes in an occupational series at or below the budget level are treated as a single class.
- 3.4 CLASS - For the purposes of reduction-in-force, class will be defined as all positions in an occupational class as defined in Section 7-2 (e) of the Personnel Regulations and all occupational classes in an occupational series at or below the budget level which share in common the number of hours or range of hours to be worked and their distribution within the workyear, including but not limited to the categories full-time year round, full-time school year, part-time year round or part-time school year. (See also, "Budget Level," definition 3.3)
- 3.5 DEMOTION - As used in Section 26-1 of the Personnel Regulations and in this Procedure, demotion refers to voluntary demotion to vacant positions as defined in Section 26-3 of the Personnel Regulations:

"Voluntary demotions may occur with the written consent of an employee. Such demotions must be without prejudice and may be used to retain an employee whose position has been abolished or reclassified downward or who, because of physical or mental incapacity, is unable to productively perform assigned duties and wishes to continue employment in a position for which qualified. Such demotion shall not be detrimental to an employee's work record and shall not adversely affect the employee's opportunity for future promotions to a position for which qualified.
- 3.6 DISPLACED EMPLOYEES - Employees formally notified through reduction-in-force procedures that they are to be removed from their assigned classes, and employees who have been demoted or terminated through reduction-in-force. Employees who are demoted in pre-RIF placement efforts as described in Section 5 of this Procedure are displaced employees.
- 3.7 EXCLUDED EMPLOYEES - Employees who are excluded from consideration under reduction-in-force procedures. Excluded employees are employees occupying Term positions as defined in Section 3-7 (a) and 3-9 (a) of the Personnel Regulations and Section 3.24 of this Procedure. The circumstances under which term positions will be retained or eliminated are determined at the time the positions are established. Such positions are eliminated upon the occurrence of the events which condition their survival, and only upon such occurrence. The appointments of employees assigned to these positions are (assuming satisfactory performance and conduct) contingent on the duration of the positions. These employees may have a legitimate expectation of continued employment for as long as their performance and conduct are satisfactory and their positions exist, but are not entitled to retention or placement in other County positions beyond that time. Employees who were appointed as "Merit System Conditional" are excluded employees.

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NOTE: When it is necessary to eliminate Term positions, these Procedures will be followed in identifying employees to be displaced. The method for identifying such employees will include consideration of: department, class, program or function and source of funding. No other provisions of these Procedures apply to excluded employees. However, the County will make a reasonable effort to find alternative positions for such employees through transfer, demotion, or non-competitive re-appointment subject to the following conditions:

1. employees affected by RIF who are legally entitled to priority consideration have not expressed interest and/or are not qualified for the vacancy under consideration;
 2. term employees were hired to perform duties which were anticipated to be ongoing in nature and which were funded by outside sources, not for assignments which were for specific projects of limited and/or specified duration;
 3. the vacancy is at or below the employee's current grade level;
 4. the employee is qualified;
 5. the selection of a Term employee does not abridge bona fide promotional opportunities of other full and part-time employees.
- 3.8 LAY-OFF - As used in Section 25-2 of the Personnel Regulations, means termination or demotion as a result of a reduction-in-force, including demotions in pre-RIF placement efforts described in Section 5 of this Procedure.
- 3.9 NEW EMPLOYEE - As used in Section 25-4 of the Personnel Regulations, a new employee includes all individuals seeking initial appointment to a full or part-time positions as well as former employees who seek reappointment.
- 3.10 NOTICE OF INTENT - A letter issued by the Personnel Director to all employees within classes in Departments identified for position elimination. Such notice will advise employees of potential terminations and provide such employees a right to placement on special eligible lists. When circumstances necessitating a reduction-in-force are eliminated, letters of intent to affected employees will be rescinded by the Personnel Director.
- 3.11 NOTIFICATION - Notification, as required in Section 25-3 of the Personnel Regulations shall mean a written notification advising employees of termination as a result of a reduction-in-force. Such notice shall be issued no less than thirty (30) days prior to the effective date of the termination. Such notice shall be issued by the Personnel Director.
- 3.12 PRIORITY CONSIDERATION - As used in Section 25-4 of the Personnel Regulations and in this Procedure, refers to the right of all qualified affected and displaced employees to be considered for vacancies at or below the grade they hold as affected employees or from which they were displaced. Affected and displaced employees who apply for any vacancy at or below their grade and for which they are found qualified will be placed on a special eligible list (see



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3.20) for that position. Appointing authorities must make appointments from special eligible lists in lieu of filling vacancies by any other means. Employees will be entitled to priority consideration for vacancies in the same branch of government as that from which they were affected or displaced. However, employees of the Legislative and Judicial branches hired prior to August 1, 1983, shall have priority consideration for all vacancies in all branches. Employees of the Executive Branch who are on the Re-employment List as of November 8, 1983, shall retain priority consideration rights for all positions in all branches of the government until removed from that list as otherwise provided in these procedures (see Section 3.17).

Full-time employees whose hours have been reduced will be given priority consideration for all full-time vacancies at or below their grade level, provided they are qualified. Full-time affected employees will have priority over part-time affected employees for all full-time vacancies. Part-time employees will have priority for part-time vacancies.

3.13 PROBATIONARY EMPLOYEES - "Probationary Employee," as used in Section 25-2 of the Personnel Regulations, shall mean all persons appointed to full-time or part-time Merit System positions, who have not become Merit System employees (i.e., completed their probationary periods) prior to the effective date of their notification of termination as defined in paragraph 3.11. Probationary employees are not entitled to priority consideration or reinstatement. Merit System employees who are promoted, transferred, demoted, or reinstated do not serve an additional probationary period.

3.14 QUALIFIED - As used in Section 25-4 of the Personnel Regulations and in these Procedures, the term "qualified" shall mean a determination by the Employment Division, Office of Personnel, that an individual who is entitled to priority consideration meets the minimum qualifications as well as any bona fide position-specific requirements as determined by job analysis. The employee may be required to successfully complete examinations as required by the Personnel Director in order to establish qualifications for particular positions.

3.15 RECALL - The right of a displaced employee to reinstatement to a vacant position in the same class and Department as that from which laid-off for so long as the employee remains on the reemployment list. Selection for recall among employees laid-off will be in inverse order of their selection for lay-off. Employees who are demoted in Pre-RIF placement efforts as described in Section 5 of this Procedure will be assigned the place in the recall order they would have been assigned had they not elected demotion. The right of recall supersedes the right of priority consideration for other affected employees.

3.16 REDUCTION-IN-FORCE (RIF) - Reduction-in-force is the elimination of a position or positions because of a lack of sufficient funds, a change in the approved work program/plan/design for a Department/Office, or a technological change or advancement that impacts on work force needs.

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- 3.17 REEMPLOYMENT LIST - As used in Section 25-4 of the Personnel Regulations and in this Procedure, employees who remain eligible for priority consideration. Placement on the reemployment list begins with the effective date of demotion, termination or loss of hours/status and extends for a maximum period of two (2) years, or until the rights and benefits (e.g., grade, salary, number or range of hours, and tenure) employed prior to the Reduction-in-Force are reinstated, whichever comes first (see section 9-17(c)).
- 3.18 SENIORITY - Seniority, as used in Section 25-2 of the Personnel Regulations and in this Procedure, shall mean all paid service in a full or part-time position as defined in Sections 3-6, 3-7, 3-8, and 3-9 of the Personnel Regulations. Seniority shall not include service as a temporary employee (see 3.22), or in a non-pay status (e.g., breaks in service, leave without pay, etc.). However, up to 1040 hours of leave without pay may be credited for reduction-in-force seniority when such leave without pay is used during specific periods designated in advance by the Chief Administrative Officer. Seniority shall be calculated from the date of appointment to a full-time or part-time position to a fixed date established by the Employment Division for all affected employees in a Department and class of work. Part-time employees will be pro-rated seniority on the basis of the number of hours worked per week. Seniority will be calculated to the day. Time as a paid firefighter for a volunteer fire corporation shall be credited for seniority purposes. In the event that a seniority calculation results in a tie, seniority within the affected class, as calculated above, will be used to break the tie.
- 3.19 SERVICE NEEDS - Are the specialized duties or functions which will remain after a reduction-in-force has taken place. These specialized duties or functions are unique and different from other positions and are not performed by all incumbents of the class in the Department. Service needs may provide the basis for an exception to the seniority and/or performance based criterion for lay-off. Service needs will require knowledge, skills, and abilities which are imperative to satisfactory performance but will not include capabilities which can be acquired readily within a brief period of time (approximately six months or less). A department may request an exception to retain the unique functions of a particular position within a class by providing documentation as to how the position differs from others in the class and department and substantiating the service need for such position. The Personnel Office will then conduct a job analysis to evaluate the tasks, their required qualifications, and the qualifications of remaining employees.
- 3.20 SPECIAL ELIGIBLE LIST - An eligible list which sets forth employees who will receive priority consideration for a vacancy. (See Section 3.12 for explanation of priority rights and eligibility requirements.) Affected and displaced employees may apply for placement on a special eligible list for positions at or below the grade they hold as affected employees, or from which they were displaced (employees who are downgraded through classification action may also be placed on special eligible lists under authority of Section 6-5 of the Personnel Regulations). Such employees will be placed on a special eligible list if they are found qualified for the position in question.



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- 3.21 STATUS - The conditions of employment enjoyed by employees, i.e., grade, salary, number and distribution of hours and tenure.
- 3.22 TEMPORARY EMPLOYEE - As used in Section 25-2 of the Personnel Regulations, "temporary employee" shall mean an incumbent of a position required for a specific task for a period not to exceed twelve months, or of a position that is used intermittently on an as-needed basis (seasonal, substitute, etc.). Temporary employees include, but are not limited to, all employees afforded Non-Career appointments prior to the December 2, 1980, revision to the Personnel Regulations. Temporary employees are not eligible for priority consideration or reinstatement.
- 3.23 TEMPORARY PLACEMENT - Affected employees may be placed in a temporary position as interim placement when no other placements are available. Such employees will retain their right to priority consideration as provided in Section 3.12 of this Procedure.
- 3.24 TERM EMPLOYEE - Full or part-time employees who occupy positions which were created for a special term, project or program or which are funded in whole or in part by Revenue Bonds (C.I.P.) or Federal, State or private funds or organizations. (See Personnel Regulations, Subsections 3-7 (a) and 3-9 (a).) Merit system employees transferred to positions as defined in Personnel Regulations, Subsections 3-7 (a) and 3-9 (a) retain their rights to placement on a reemployment list and to priority consideration as defined in Sections 3.17 and 3.12 of this Procedure.
- 3.25 TRANSFER - As used in Section 25-2 of the Personnel Regulations, transfer shall mean "...the movement of an employee from one position or task assignment to another position or task assignment at the same grade and salary level within a department/office or between departments/offices. Transfers usually involve one or more of the following factors:
- (1) a change from one Merit System position to another;
 - (2) a change in physical location of the job or position;
 - (3) a change in duty assignment but within the same occupational class;
 - (4) a change from a State/County position to a County Merit System position.
- 3.26 WORK PERFORMANCE - As used in Section 25-2 of the Personnel Regulations, and in this Procedure, work performance shall mean a performance rating based on a formally established, standardized procedure of employee performance appraisal used uniformly for at least a one-year period for all employees within a particular Department and class which is subject to reduction-in-force. The determination of the Personnel Director, with respect to the acceptability of a performance appraisal system for use in determining reductions-in-force, will be final.

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RESPONSIBILITIES

- 4.0 Department Heads
 - A. Notify the Offices of Personnel and Management and Budget (OMB) as soon as a decision which may give rise to a reduction-in-force is made.
 - B. Designate individual(s) who will represent the department in dealing with the Offices of Personnel and Management and Budget to implement reduction-in-force actions and provide timely and accurate information required to make reduction-in-force decisions.
- 4.1 Personnel Director
 - A. Administer this Procedure, providing leadership for Alternative Placement, and designating a Personnel representative for reduction-in-force decisions.
- 4.2 Director, Office of Management and Budget
 - A. Authorize the creation and deletion of positions and the filling of vacancies in accordance with budgetary requirements and for designating staff to work with Departmental and Personnel representatives in making decisions necessary to resolve reduction-in-force issues.

PROCEDURES

PRIOR TO A REDUCTION-IN-FORCE, THE FOLLOWING PREVENTIVE MEASURES WILL BE TAKEN:

- 5.0 Department and OMB
 - Notify Personnel Director of circumstances which may lead to an eventual reduction-in-force; specify classes and Departments from which positions are to be eliminated.
- 5.1 Personnel Office
 - Coordinate specific plans for placement of employees in vacant positions within the department. The plan will include but will not be limited to:
 - A) analysis of the impact of proposals on affirmative action objectives;
 - B) designation of a specific date or dates for completion of all alternatives to reduction-in-force procedures;
 - C) development of detailed position management and employee placement strategies for affected employees;



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- 5.2 Personnel Director Establish a freeze for vacant positions in affected classes and departments. (A more extensive freeze may be initiated by the Chief Administrative Officer.)
- 5.3 Personnel Office, Department and OMB
 - Office of Management and Budget
 - A) the number of Discontinued Service Retirements requested does not exceed the number of position abolishments;
 - B) the Discontinued Service Retirement is for an individual within an affected class;
 - Department and Office of Management and Budget
 - C) when the number of employees who express interest in Discontinued Service Retirement exceeds the number of positions abolished, the first right of refusal will be offered to eligible employees within the affected class on the basis of seniority and if seniority is tied, service need or work performance as determined by the Personnel Office;
 - Department
 - D) when the employee selected for Discontinued Service Retirement is not the most senior, the Department Head must submit documentation to the Personnel Director of offers of right of first refusal to more senior employees;
 - Department and Employee
 - E) the employee and Department Head agree such action would be in the best interest of the employee and the County;
 - Personnel Office and Employee
 - F) following approval by the Personnel Director, employee must file application for Discontinued Service Retirement with the Personnel Office, Division of Employee Services.

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5.4 Personnel Director

Issue to all remaining employees within an affected class "Notice of Intent" to conduct a reduction-in-force.

NOTE: When full-time or part-time position(s) are eliminated in the class which contains both full and part-time incumbents, notices will be issued only to those employees whose status is the same as the position(s) to be eliminated. (See definition of class, Section 3.4.)

5.5 Personnel Director

Ensure that affected employees who apply for any vacancy at or below their grade, and who are found qualified, receive priority consideration.

Personnel Director

Vacancy announcements may be restricted to consider only affected employees in the Departments where the vacancy exists when such a restriction is consistent with the Department's placement plans.

WHEN ALTERNATIVES ARE NOT SUCCESSFUL, INITIATE THE FOLLOWING REDUCTION-IN-FORCE PROCEDURES:

6.0 OMB and Department

Establish final number of positions to be abolished.

6.1 Department and Personnel Office

Identify for elimination by Department, all positions in each affected class to which temporary employees or employees who have not completed their required probationary periods are assigned.

6.2 Department and Personnel Office

If the identification of these positions does not identify all employees to be displaced by the reduction-in-force, review service needs and the qualifications required of employees who will perform the remaining work appropriate to the occupational class from which positions are to be eliminated. (The qualifications considered should include basic minimum qualifications and specialized skills required by the nature of the work but should not include skills that could be acquired readily in approximately six months on the job.)



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6.3 Department and Personnel Office

If the review of service needs in relation to the qualifications of incumbents of the affected class not identified in paragraph 6.1 fails to provide a basis for identifying all employees to be displaced by a reduction-in-force, review performance appraisals and/or seniority of all employees in the occupational class in question who are not identified in paragraphs 6.1 and 6.2. The Personnel Office is responsible for calculating seniority. The Personnel Director will be responsible for certifying the acceptability of using performance appraisals when identifying employees for displacement.

6.4 Personnel Director

Send by certified mail, return receipt requested, formal "Notification" to employees identified in paragraph 6.1 through 6.3.

Such employees will be given the option of termination, as defined in Section 24 of the Personnel Regulations, or of placement in leave-without-pay status, as defined in Section 15 of the Personnel Regulations, for a period not to exceed one year.

6.5 Department

Refer all displaced employees to the Alternative Placement Unit, Employment Division, Office of Personnel. Counseling will be provided to employees on benefits such as retirement, health, leave, etc.

6.6 Personnel Director

Rescind "Notice of Intent" for employees who have not been displaced.

REINSTATEMENT PROCEDURE

7.0 Employees will be recalled automatically from the reemployment list to vacant positions in the class and department from which they were terminated or demoted under Section 5 of these Procedures. Recall of employees will be in the inverse order of their identification for displacement.

7.1 Personnel Director may restrict vacancy announcements to consider only employees who were displaced from positions at or above the grade of the vacancy being announced. Such employees, if determined to be qualified upon application, will be placed on a special eligible list and given priority placement consideration.

7.2 Employees on the reemployment list will be given priority consideration for position vacancies announced as "employee only" or an "open examination" provided such employees are found qualified upon application and provided they held positions at or above the grade of the vacancy being announced.



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7.3 Employees on the reemployment list who decline an offer of reinstatement to any position at the grade and status from which they were displaced will be removed from the reemployment list unless excused by the Personnel Director for good cause shown. Employees who wish to retain reinstatement rights subsequent to declining an offer of reinstatement at grade and status must submit a written statement of the reasons for such a request to the Alternative Placement Unit within five (5) days of receiving the offer of reinstatement. Declination of an offer of reinstatement will not ordinarily be excused, and the decision of the Director of Personnel will be final.

SALARY CONSIDERATIONS

- 8.0 When a RIF is to be implemented at the outset of a fiscal year, the effective date of the general salary adjustment will precede the effective date of the personnel actions resulting from a RIF.
- 8.1 Employees who are demoted as a result of RIF action shall retain the salary being received on the day preceding the effective date of the action, subject to the following limitations:
- A) such employees are not eligible to receive service increments or general salary adjustments for so long as their salaries exceed the maximum for the lower graded class to which they are assigned;
 - B) such employees may retain pay in excess of the maximum for the lower graded class to which they are assigned for two years following the effective date of the demotion. If at the end of the two-year period the employee is still assigned to a class for which the salary maximum is less than his/her salary, the employee's salary shall be reduced to the maximum for the pay range of the grade to which he/she is then assigned;
 - C) if such an employee is promoted non-competitively during the two year retention period to a position of equal or lower grade than the position from which he/she was demoted, he/she shall not receive a promotional salary increase. Such an employee is eligible to receive a salary increase upon competitive promotion to a position of higher grade than the position from which he/she was demoted.

Affected employees who receive a grade increase up to their former grade level or who are reinstated to their pre-RIF (or higher) grade levels during the two year reinstatement period shall be entitled to salary equal to that which they would have received if the RIF had not occurred, subject to provision 8.1(B) of these Procedures.

BENEFITS

- 9.0 Affected employees who apply for temporary placement may do so under the following conditions:
- I. placement in a temporary position entitles such employees to those rights and benefits associated with the status of the new position;



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2. employees accepting placement in temporary positions will have the choice of termination from their permanent positions or taking leave without pay for one year. If leave without pay is selected, the employee:

- a. must leave employee contributions in the retirement system;
- * b. may continue health coverage by paying only the employee contribution for sixty (60) days and then as permitted by Federal law under the Consolidated Omnibus Reconciliation Budget Act (COBRA).
- c. accept annual leave accumulation pay-off, or "freeze" accumulated annual leave until termination from the temporary position;
- d. will not accrue sick and annual leave.

9.1 When an employee terminated by RIF is rehired or recalled within the two year reinstatement period, the employee will be entitled to the following benefits:

- A. ANNUAL LEAVE - Any leave balance which has not been paid out will be recredited to the employee. Further, the employee will accrue annual leave the rate in effect at the time of position abolishment.
- B. SICK LEAVE - All sick leave will be recredited.
- C. CREDITED SERVICE - All credited service will be restored, provided that retirement contributions have not been returned. Retirement contributions for employees with less than five years service will be automatically returned unless the employee elects to go on one year leave without pay. If at the end of one year the employee electing leave without pay has not returned to County service, retirement contributions will be returned. The returning employee will have the option to purchase prior service if he/she has withdrawn retirement credits. An employee with five or more years of credited service will have the option of withdrawing or remaining within the retirement system during the two-year reinstatement period; however, no credit will be given for the time during which no contributions were made.
- D. GROUP INSURANCE - Reinstatement will be made without evidence of good health. Credit is given for prior period(s) of insurance participation when determining the length of the continuation period at time of retirement.

DEPARTMENTS AFFECTED

10.0 All Departments allocated full and/or part-time positions as defined in Sections 3-6, 3-7, 3-8, and 3-9 of the Personnel Regulations.

AUTHORITY

11.0 Section 25 "Reduction-in-Force" Personnel Regulations for Merit System Employees.

