Reinventing Govt.

The Office of Personnel Management

The Model Agency

The Model Agency is our goal. This is my vision of making OPM an example of the best in government:

WE STRESS THE HUMAN ELEMENT IN EVERYTHING WE DO. *In our work together and with our customers, we remember that people are the reason for our jobs. We care about the people we serve—federal employees, managers, retirees, the public, and our fellow workers.*

THERE IS NO US AND THEM. ONLY US. *Change is a reality. The American people have demanded the change we're talking about. You can be a participant and a player in every sense of the word, to the degree of your interest.*

But, workplace democracy is more than participation. It is about the dignity of work and respect for the individual doing that work.

I'll make every effort to give each of you the responsibility and authority to be a success at your job and to earn the respect of your fellow workers, your supervisors, and the public. From each of you, I expect the same effort and consideration.

WE ARE HERE TO SERVE OUR CUSTOMERS. *We identify and determine the needs of our customers, then we work to meet those needs. This means taking a fresh look at the problems we face and correcting them with a hands-on, experienced-based approach to problem solving.*

To do this, we open two-way lines of communication with our customers. Let's speak and write in plain English. No Gobbledygook.

WE FOCUS ON RESULTS RATHER THAN RULES. *We strive for productivity. When processes, procedures, and regulations get in the way of serving the customers' needs, we act to change the rules.*

We act. We take reasonable risks. We are part of the solution.

WE BALANCE WORK AND FAMILY NEEDS. *The workplace should be family friendly. Our priorities should reflect our commitment to our families, our spiritual lives and then to our jobs, in that order. Yet, this is not an excuse for less than whole-hearted effort. When we work, we work.*

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, D.C. 20415

OFFICE OF THE DIRECTOR

JUL 26 1993

MEMORANDUM TO ALL EMPLOYEES

FROM: JAMES B. KING
DIRECTOR

SUBJECT: OPM - The Model Agency

All of you have seen the banners hanging in the ground floor lobby of our building. And I know that many of you have been wondering what that slogan -- OPM - The Model Agency -- really means. Are we a model agency now? If we're not a model agency now, how do we get there?

These are good questions and they deserve a response. Becoming a model agency is our goal.

Are we a model agency now? Although I have been very impressed with the people and the programs here, I think we can do even better. We'll not achieve a model agency overnight. It's a long road that we must travel together. Our striving for improvement must be permanent. OPM has done much good over the years but we must reexamine the way we perform our jobs. As we move into the 21st Century, we must focus on people - our customers and our employees. The world is changing and Americans are looking to their Government to change with it.

OPM has taken the leadership role in the Governmentwide updating of the Federal personnel system. This makes us a crucial element of Vice President Gore's National Performance Review.

At OPM our internal Reinvention Task Force is off to a great start. So far, more than 200 suggestions have been submitted by you and your colleagues to improve the way we do our work. Your interest demonstrates that our goal to be a model agency can be achieved. But we need everyone's continuing help.

We can set the standard for the rest of Government to follow, both by how we operate our own agency and how we serve our customers. The statement printed on the reverse side of this letter embodies the goals and objectives I am striving for during my time at OPM. I share them with you and enlist your support and commitment to make them your goals as well. We are already doing many of these things, but I believe it helps to focus on what we want to be - The Model Agency!

'Reinvent' Government Cautiously, Study Urges

VICE PRESIDENT GORE
suggests top tier is too large

the private sector—as part oader effort to "reinvent"

d why the administration a high-profile meeting e r Executive Service the corps of top civil ser- hich is targeted for reduc- the Clinton budget plan, the SES and said that for e review had relied on SES members for infor- help.

Gore then suggested that the r of the federal work force too big. "I think if you look number of SES people rela- the overall work force you t a sense of some of the s that might be advisable—a arge percentage of people e in the SES category com- o the overall work force, and robably not sensible and not as or designed."

r, when asked about Gore's of the SES, an aide to e president said it would be ake to read anything into his nts" that Gore's re- did not signal that any s were planned for the SES.

A. Bonosaro, president of nior Executives Association, oup that represents the gov- nt's senior cadre of manage- officials, said the SES repre- three-tenths of 1 percent of million federal work force. ought the vice president had a g deal of insight in the x months," Bonosaro said. hat remark makes it clear he fully acquainted with the SES, mately,"

By Stephen Barr
Washington Post Staff Writer

Evolution or Reinvention? That is the question a new Brookings Institution study poses for the Clinton administration's "reinventing government" initiative.

The Brookings authors, apparently concerned that Vice President Gore's National Performance Review will attempt to do too much too fast in its effort to overhaul the bureaucracy, argue for a "careful, prudent" approach to such reinvention efforts.

"In truth, the federal government as it functions today cannot be reinvented because it was not invented in the first place," says the study, which is scheduled for release today.

"The bureaucracy evolved through pragmatic, almost catch-as-catch-can responses to particular problems as they appeared. It is this development that warns of the need for an incremental, evolutionary, experimental approach to institutional reform."

The Brookings study, "Improving Government Performance: An Owner's Manual," is written by John J. DiIulio Jr., professor of politics and public affairs at Princeton University; Gerald Garvey, professor of politics at Princeton; and Donald F. Kettl, professor of political science and public affairs at the University of Wisconsin at Madison.

Brookings governmental studies director Thomas Mann, who supervised the study, said in a statement that it "is intended to develop appropriate standards by which to judge the National Performance Review."

The performance review, announced by President Clinton in March, has assembled teams of federal workers to recommend ways to streamline federal operations and fix what's wrong with the government—including proposals for fundamental changes in budget, personnel and procurement systems.

As a guide for much of its work, the Gore team is relying on "Reinventing Government: How the Entrepreneurial Spirit Is Transforming the Public Sector," a bestseller by journalist David Osborne and Ted Gaebler, a former city manager.

The Brookings study used the book as the fulcrum for its discussion, saying Osborne and Gaebler

BUILDING A BETTER GOVERNMENT

"Improving Government Performance," a study sponsored by the Brookings Institution, offers a series of recommendations for reinvigorating the bureaucracy. Among the study's proposals:

MANAGEMENT

- Top federal officials must promote within their agencies a culture that values a pro-active, problem-solving attitude to replace the reactive, problem-avoiding attitude that too often dominates the bureaucracy.
- The Office of Management and Budget should better manage its central clearance function, balancing its need to maintain policy control over federal agencies against the agencies' need for increased managerial flexibility.
- To help Congress develop a stronger capacity to examine management problems, any congressional committees creating or reshaping government programs should produce a "management impact statement."

STREAMLINING

- Congress should mandate that the OMB deputy director for management and the director of the Office of Personnel Management devise a plan to reduce at least one layer of management between the branch level and the assistant secretary or commissioner level in all agencies.
- Congress should reduce the number of political appointments by one-third, focusing especially on cutting the number of Schedule C slots.
- A commission, patterned on the commission to close defense bases, should prepare a plan for consolidating or closing federal field offices across the nation.
- The civil service should be modernized so that it provides more flexibility to promote superior performers, demote or fire mediocre ones and transfer workers among jobs within agencies.

CONTRACTING OUT

- Congress and the president should together devote greater resources to strengthening the fundamental capacity of government agencies to oversee contractors.
- OMB should strengthen the guidance provided to federal agencies about which functions can be assigned to contractors and which ones must never be contracted out.
- Congress should mandate a series of experiments that authorize federal procurement officials to award contracts based on past experience with contractors
- Congress should authorize agencies to assume most of the purchasing responsibilities held by the General Services Administration. GSA needs to transform itself from a centralized, control-oriented agency to a service agency and strategic planner more attuned to the needs of federal agencies.
- OMB, working with the White House science adviser and the Office of Technology Assessment, should develop a master plan for the government's information management and technology needs.

THE WASHINGTON POST

"have generated reform energy unmatched in a generation."

But the study also warns that "reconstructing government will require carefully placed modifications informed by an experimental rather than a dogmatic or recklessly inventive spirit."

In the past, the study says, groups like the Reagan-era Grace Commission have confused disagreement over policy or priorities with government inefficiency. "No one should be surprised when the promised results are not achieved: the proponents of the changes have underestimated the political strength of forces that would resist change."

The vice president and his aides have repeatedly stressed that their proposals are likely to invite resistance and that their effort to instill a new bureaucratic culture in Washington will demand a multi-year commitment.

But "there are changes that should, can and will happen immediately," one aide to Gore said yesterday, referring to executive orders that Clinton will sign when the National Performance Review makes its recommendations in September.

The Brookings study, however, expresses doubt that "a clear vision" can emerge from ideas collected from federal workers. "Studying today's government performance problems can provide a starting place but rarely a realistic picture of the ending place," the report says.

The study includes a capsule review of how the federal government has evolved, an analysis of new management theories and offers a series of proposals to rebuild, streamline and deregulate the government. A number of the proposals are similar to those under study in the National Performance Review.

For example, the Brookings study points out that the Office of Management and Budget and congressional committees often "micromanage" agencies, leaving them burdened with regulations trapped in procedural straitjackets.

"Federal acquisition regulations and the armed services procurement regulations fill tens of thousands of pages. They allow procurement officers little discretion to use initiative," the Brookings study points out.

"The military specifications for fruitcake, adopted in 1980, for example, ran to 18 pages. It defined, among other things, the size of nuts and the procedures for soaking the raisins."

THE LOOP

(June 25)

BILL TEXT Report for S.20
As passed by the Senate (Engrossed)

S.20 As passed by the Senate (Engrossed)

103d CONGRESS
1st Session

S. 20

AN ACT

To provide for the establishment of strategic planning and performance measurement in the Federal Government, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Government Performance and Results Act of 1993".

SEC. 2. FINDINGS AND PURPOSES.

(a) Findings.--The Congress finds that--

(1) waste and inefficiency in Federal programs undermine the confidence of the American people in the Government and reduces the Federal Government's ability to address adequately vital public needs;

(2) Federal managers are seriously disadvantaged in their efforts to improve program efficiency and effectiveness, because of insufficient articulation of program goals and inadequate information on program performance; and

(3) congressional policymaking, spending decisions and program oversight are seriously handicapped by insufficient attention to program performance and results.

(b) Purposes.--The purposes of this Act are to--

(1) improve the confidence of the American people in the capability of the Federal Government, by systematically holding Federal agencies accountable for achieving program results;

(2) initiate program performance reform with a series of pilot projects in setting program goals, measuring program performance against those goals, and reporting publicly on their progress;

(3) improve Federal program effectiveness and public accountability by promoting a new focus on results, service quality, and customer satisfaction;

(4) help Federal managers improve service delivery, by requiring that they plan for meeting program objectives and by providing them with information about program results and service quality;

(5) improve congressional decisionmaking by providing more objective information on achieving statutory objectives, and on the relative effectiveness and efficiency of Federal programs and spending; and

(6) improve internal management of the Federal Government.

SEC. 3. STRATEGIC PLANNING.

Chapter 3 of title 5, United States Code, is amended by adding after section 305 the following new section:

"Sec. 306. Strategic plans

"(a) No later than September 30, 1997, the head of each agency shall submit to the Director of the Office of Management and Budget and to the Congress a strategic plan for program activities. Such plan shall contain--

"(1) a comprehensive mission statement covering the major functions and operations of the agency;

"(2) general goals and objectives, including outcome-related goals and objectives, for the major functions and operations of the agency;

"(3) a description of how the goals and objectives are to be achieved, including a description of the operational processes, skills and technology, and the human, capital, information, and other resources required to meet those goals and objectives;

"(4) a description of how the performance goals included in the plan required by section 1115(a) of title 31 shall be related to the general goals and objectives in the strategic plan;

"(5) an identification of those key factors external to the agency and beyond its control that could significantly affect the achievement of the general goals and objectives; and

"(6) a description of the program evaluations used in establishing or revising general goals and objectives, with a schedule for future program evaluations.

"(b) The strategic plan shall cover a period of not less than five years forward from the fiscal year in which it is submitted, and shall be updated and revised at least every three years.

"(c) The performance plan required by section 1115 of title 31 shall be consistent with the agency's strategic plan. A performance plan may not be submitted for a fiscal year not covered by a current strategic plan under this section.

"(d) When developing a strategic plan, the agency shall consult with the Congress, and shall solicit and consider the views and suggestions of those entities potentially affected by or interested in such a plan.

"(e) The functions and activities of this section shall be considered to be inherently Governmental functions. The drafting of strategic plans under this section shall be performed only by Federal employees.

"(f) For purposes of this section the term 'agency' means an Executive agency defined under section 105, but does not include the Central Intelligence Agency, the General Accounting Office, the Panama Canal Commission, the United States Postal Service, and the Postal Rate Commission.".

SEC. 4. ANNUAL PERFORMANCE PLANS AND REPORTS.

(a) Budget Contents and Submission to Congress.--Section 1105(a) of title 31, United States Code, is amended by adding at the end thereof the following new paragraph:

"(29) beginning with fiscal year 1999, a Federal Government performance plan for the overall budget as provided for under section 1115.".

(b) Performance Plans and Reports.--Chapter 11 of title 31, United States Code, is amended by adding after section 1114 the following new sections:

"Sec. 1115. Performance plans

"(a) In carrying out the provisions of section 1105(a)(29), the Director of the Office of Management and Budget shall require each agency to prepare an annual performance plan covering each program activity set forth in the budget of such agency. Such plan shall--

"(1) establish performance goals to define the level of performance to be achieved by a program activity;

"(2) express such goals in an objective, quantifiable, and measurable form unless authorized to be in an alternative form under subsection (b);

"(3) briefly describe the operational processes, skills and technology, and the human, capital, information, or other resources required to meet the performance goals;

"(4) establish performance indicators to be used in measuring or assessing the relevant outputs, service levels, and outcomes of each program activity;

"(5) provide a basis for comparing actual program results with the established performance goals; and

"(6) describe the means to be used to verify and validate measured values.

"(b) If an agency, in consultation with the Director of the Office of Management and Budget, determines that it is not feasible to express the performance goals for a particular program activity in an objective, quantifiable, and measurable form, the Director of the Office of Management and Budget may authorize an alternative form. Such alternative form shall--

"(1) include separate descriptive statements of--

"(A)(i) a minimally effective program, and

"(ii) a successful program, or

"(B) such alternative as authorized by the Director of the Office of Management and Budget,

with sufficient precision and in such terms that would allow for an accurate, independent determination of whether the program activity's performance meets the criteria of the description; or

"(2) state why it is infeasible or impractical to express a performance goal in any form for the program activity.

"(c) For the purpose of complying with this section, an agency may aggregate, disaggregate, or consolidate program activities, except that any aggregation or consolidation may not omit or minimize the significance of any program activity constituting a major function or operation for the agency.

"(d) An agency may submit with its annual performance plan an appendix covering any portion of the plan that--

"(1) is specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy; and

"(2) is properly classified pursuant to such Executive order.

"(e) The functions and activities of this section shall be considered to be inherently Governmental functions. The drafting of performance plans under this section shall be performed only by Federal employees.

"(f) For purposes of this section and sections 1116 through 1119, and sections 9703 and 9704 the term--

"(1) 'agency' has the same meaning as such term is defined under section 306(f) of title 5;

"(2) 'outcome measure' means an assessment of the results of a program activity compared to its intended purpose;

"(3) 'output measure' means the tabulation, calculation, or recording of activity or effort and can be expressed in a quantitative or qualitative manner;

"(4) 'performance goal' means a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared, including a goal expressed as a quantitative standard, value, or rate;

"(5) 'performance indicator' means a particular value or characteristic used to measure output or outcome;

"(6) 'program activity' means a specific activity or project as listed in the program and financing schedules of the annual budget of the United States Government; and

"(7) 'program evaluation' means an assessment, through objective measurement and systematic analysis, of the manner and extent to which Federal programs achieve intended objectives.

"Sec. 1116. Program performance reports

"(a) No later than March 31, 2000, and no later than March 31 of each year thereafter, the head of each agency shall prepare and submit to the President and the Congress, a report on program performance for the previous fiscal year.

"(b)(1) Each program performance report shall set forth the performance indicators established in the agency performance plan under section 1115, along with the actual program performance achieved compared with the performance goals expressed in the plan for that fiscal year.

"(2) If performance goals are specified in an alternative form under section 1115(b), the results of such program shall be described in relation to such specifications, including whether the performance failed to meet the criteria of a minimally effective or successful program.

"(c) The report for fiscal year 2000 shall include actual results for the preceding fiscal year, the report for fiscal year 2001 shall include actual results for the two preceding fiscal years, and the report for fiscal year 2002 and all subsequent reports shall include actual results for the three preceding fiscal years.

"(d) Each report shall--

"(1) review the success of achieving the performance goals of the fiscal year;

"(2) evaluate the performance plan for the current fiscal year relative to the performance achieved toward the performance goals in the fiscal year covered by the report;

"(3) explain and describe, where a performance goal has not been met (including when a program activity's performance is determined not to have met the criteria of a successful program activity under section 1115(b)(1)(A)(ii) or a corresponding level of achievement if another alternative form is used)--

"(A) why the goal was not met;

"(B) those plans and schedules for achieving the established performance goal; and

"(C) if the performance goal is impractical or infeasible, why that is the case and what action is recommended;

"(4) describe the use and assess the effectiveness in achieving performance goals of any waiver under section 9703 of this title; and

"(5) include the summary findings of those program evaluations completed during the fiscal year covered by the report.

"(e) An agency head may include all program performance information required annually under this section in an annual financial statement required under section 3515 if any such statement is submitted to the Congress no later than March 31 of the applicable fiscal year.

"(f) The functions and activities of this section shall be considered to be inherently Governmental functions. The drafting of program performance reports under this section shall be performed only by Federal employees.

"Sec. 1117. Exemption

"The Director of the Office of Management and Budget may exempt from the requirements of sections 1115 and 1116 of this title and section 306 of title 5, any agency with annual outlays of $20,000,000 or less.".

SEC. 5. MANAGERIAL ACCOUNTABILITY AND FLEXIBILITY.

(a) Managerial Accountability and Flexibility.--Chapter 97 of title 31, United States Code, is amended by adding after section 9702, the following new section:

"Sec. 9703. Managerial accountability and flexibility

"(a) Beginning with fiscal year 1999, the performance plans required under section 1115 may include proposals to waive administrative procedural requirements and controls, including specification of personnel staffing levels, limitations on compensation or remuneration, and prohibitions or restrictions on funding transfers among budget object classification 20 and subclassifications 11, 12, 31, and 32 of each annual budget submitted under section 1105, in return for specific individual or organization accountability to achieve a performance goal. In preparing and submitting the performance plan under section 1105(a)(29), the Director of the Office of Management and Budget shall review and may approve any proposed waivers. A waiver shall take effect at the beginning of the fiscal year for which the waiver is approved.

"(b) Any such proposal under subsection (a) shall describe the anticipated effects on performance resulting from greater managerial or organizational flexibility, discretion, and authority, and shall quantify the expected improvements in performance resulting from any waiver. The expected improvements shall be compared to current actual performance, and to the projected level of performance that would be achieved independent of any waiver.

"(c) Any proposal waiving limitations on compensation or remuneration shall precisely express the monetary change in compensation or remuneration amounts, such as bonuses or awards, that shall result from meeting, exceeding, or failing to meet performance goals.

"(d) Any proposed waiver of procedural requirements or controls imposed by an agency (other than the proposing agency or the Office of Management and Budget) may not be included in a performance plan unless it is endorsed by the agency that established the requirement, and the endorsement included in the proposing agency's performance plan.

"(e) A waiver shall be in effect for one or two years as specified by the Director of the Office of Management and Budget in approving the waiver. A waiver may be renewed for a subsequent year. After a waiver has been in effect for three consecutive years, the performance plan prepared under section 1115 may propose that a waiver, other than a waiver of limitations on compensation or remuneration, be made permanent.

"(f) For purposes of this section, the definitions under section 1115(f) shall apply.".

SEC. 6. PILOT PROJECTS.

(a) Performance Plans and Reports.--Chapter 11 of title 31, United States Code, is amended by inserting after section 1117 (as added by section 4 of this Act) the following new section:

"Sec. 1118. Pilot projects for performance goals

"(a) The Director of the Office of Management and Budget, after consultation with the head of each agency, shall designate not less than ten agencies as pilot projects in performance measurement for fiscal years 1994, 1995, and 1996. The selected agencies shall reflect a representative range of Government functions and capabilities in measuring and reporting program performance.

"(b) Pilot projects in the designated agencies shall undertake the preparation of performance plans under section 1115, and program performance reports under section 1116, other than section 1116(c), for one or more of the major functions and operations of the agency. A strategic plan shall be used when preparing agency performance plans during one or more years of the pilot period.

"(c) No later than May 1, 1997, the Director of the Office of Management and Budget shall submit a report to the President and to the Congress which shall--

"(1) assess the benefits, costs, and usefulness of the plans and reports prepared by the pilot agencies in meeting the purposes of the Government Performance and Results Act of 1993;

"(2) identify any significant difficulties experienced by the pilot agencies in preparing plans and reports; and

"(3) set forth any recommended changes in the requirements of the provisions of Government Performance and Results Act of 1993, section 306 of title 5, sections 1105, 1115, 1116, 1117, 1119 and 9703 of this title, and this section.".

(b) Managerial Accountability and Flexibility.--Chapter 97 of title 31, United States Code, is amended by inserting after section 9703 (as added by section 5 of this Act) the following new section:

"Sec. 9704. Pilot projects for managerial accountability and flexibility

"(a) The Director of the Office of Management and Budget shall designate not less than five agencies as pilot projects in managerial accountability and flexibility for fiscal years 1995 and 1996. Such agencies shall be selected from those designated as pilot projects under section 1118 and shall reflect a representative range of Government functions and capabilities in measuring and reporting program performance.

"(b) Pilot projects in the designated agencies shall include proposed waivers in accordance with section 9703 for one or more of the major functions and operations of the agency.

"(c) The Director of the Office of Management and Budget shall include in the report to the President and to the Congress required under section 1118(c)--

"(1) an assessment of the benefits, costs, and usefulness of increasing managerial and organizational flexibility, discretion, and authority in exchange for improved performance through a waiver; and

"(2) an identification of any significant difficulties experienced by the pilot agencies in preparing proposed waivers.

"(d) For purposes of this section the definitions under section 1115(f) shall apply.".

(c) Performance Budgeting.--Chapter 11 of title 31, United States Code, is amended by inserting after section 1118 (as added by section 6 of this Act) the following new section:

"Sec. 1119. Pilot projects for performance budgeting

"(a) The Director of the Office of Management and Budget, after consultation with the head of each agency shall designate not less than five agencies as pilot projects in performance budgeting for fiscal years 1998 and 1999. At least three of the agencies shall be selected from those designated as pilot projects under section 1118, and shall also reflect a representative range of Government functions and capabilities in measuring and reporting program performance.

"(b) Pilot projects in the designated agencies shall cover the preparation of performance budgets. Such budgets shall present, for one or more of the major functions and operations of the agency, the varying levels of performance, including outcome-related performance, that would result from different budgeted amounts.

"(c) The Director of the Office of Management and Budget shall include, as an alternative budget presentation in the budget submitted under section 1105 for fiscal year 1999, the performance budgets of the designated agencies for this fiscal year.

"(d) No later than March 31, 2001, the Director of the Office of Management and Budget shall transmit a report to the President and to the Congress on the performance budgeting pilot projects which shall--

"(1) assess the feasibility and advisability of including a performance budget as part of the annual budget submitted under section 1105;

"(2) describe any difficulties encountered by the pilot agencies in preparing a performance budget;

"(3) recommend whether legislation requiring performance budgets should be proposed and the general provisions of any legislation; and

"(4) set forth any recommended changes in the other requirements of the Government Performance and Results Act of 1993, section 306 of title 5, sections 1105, 1115, 1116, 1117, and 9703 of this title, and this section.

"(e) After receipt of the report required under subsection (d), the Congress may specify that a performance budget be submitted as part of the annual budget submitted under section 1105.".

SEC. 7. UNITED STATES POSTAL SERVICE.

Part III of title 39, United States Code, is amended by adding at the end thereof the following new chapter:

"CHAPTER 28--STRATEGIC PLANNING AND PERFORMANCE MANAGEMENT

"Sec.

"2801. Definitions.

"2802. Strategic plans.

"2803. Performance plans.

"2804. Program performance reports.

"2805. Inherently Governmental functions.

"Sec. 2801. Definitions

"For purposes of this chapter the term--

"(1) 'outcome measure' refers to an assessment of the results of a program activity compared to its intended purpose;

"(2) 'output measure' refers to the tabulation, calculation, or recording of activity or effort and can be expressed in a quantitative or qualitative manner;

"(3) 'performance goal' means a target level of performance expressed as a tangible, measurable objective, against which actual achievement shall be compared, including a goal expressed as a quantitative standard, value, or rate;

"(4) 'performance indicator' refers to a particular value or characteristic used to measure output or outcome;

"(5) 'program activity' means a specific activity related to the mission of the Postal Service; and

"(6) 'program evaluation' means an assessment, through objective measurement and systematic analysis, of the manner and extent to which Postal Service programs achieve intended objectives.

"Sec. 2802. Strategic plans

"(a) No later than September 30, 1997, the Postal Service shall submit to the President and the Congress a strategic plan for its program activities. Such plan shall contain--

"(1) a comprehensive mission statement covering the major functions and operations of the Postal Service;

"(2) general goals and objectives, including outcome-related goals and objectives, for the major functions and operations of the Postal Service;

"(3) a description of how the goals and objectives are to be achieved, including a description of the operational processes, skills and technology, and the human, capital, information, and other resources required to meet those goals and objectives;

"(4) a description of how the performance goals included in the plan required under section 2803 shall be related to the general goals and objectives in the strategic plan;

"(5) an identification of those key factors external to the Postal Service and beyond its control that could significantly affect the achievement of the general goals and objectives; and

"(6) a description of the program evaluations used in establishing or revising general goals and objectives, with a schedule for future program evaluations.

"(b) The strategic plan shall cover a period of not less than five years forward from the fiscal year in which it is submitted, and shall be updated and revised at least every three years.

"(c) The performance plan required under section 2803 shall be consistent with the Postal Service's strategic plan. A performance plan may not be submitted for a fiscal year not covered by a current strategic plan under this section.

"(d) When developing a strategic plan, the Postal Service shall solicit and consider the views and suggestions of those entities potentially affected by or interested in such a plan, and shall advise the Congress of the contents of the plan.

"Sec. 2803. Performance plans

"(a) The Postal Service shall prepare an annual performance plan covering each program activity set forth in the Postal Service budget, which shall be included in the comprehensive statement presented under section 2401(g) of this title. Such plan shall--

"(1) establish performance goals to define the level of performance to be achieved by a program activity;

"(2) express such goals in an objective, quantifiable, and measurable form unless an alternative form is used under subsection (b);

"(3) briefly describe the operational processes, skills and technology, and the human, capital, information, or other resources required to meet the performance goals;

"(4) establish performance indicators to be used in measuring or assessing the relevant outputs, service levels, and outcomes of each program activity;

"(5) provide a basis for comparing actual program results with the established performance goals; and

"(6) describe the means to be used to verify and validate measured values.

"(b) If the Postal Service determines that it is not feasible to express the performance goals for a particular program activity in an objective, quantifiable, and measurable form, the Postal Service may use an alternative form. Such alternative form shall--

"(1) include separate descriptive statements of--

"(A) a minimally effective program, and

"(B) a successful program,

with sufficient precision and in such terms that would allow for an accurate, independent determination of whether the program activity's performance meets the criteria of either description; or

"(2) state why it is infeasible or impractical to express a performance goal in any form for the program activity.

"(c) In preparing a comprehensive and informative plan under this section, the Postal Service may aggregate, disaggregate, or consolidate program activities, except that any aggregation or consolidation may not omit or minimize the significance of any program activity constituting a major function or operation.

"(d) The Postal Service may prepare a non-public annex to its plan covering program activities or parts of program activities relating to--

"(1) the avoidance of interference with criminal prosecution; or

"(2) matters otherwise exempt from public disclosure under section 410(c) of this title.

"Sec. 2804. Program performance reports

"(a) The Postal Service shall prepare a report on program performance for each fiscal year, which shall be included in the annual comprehensive statement presented under section 2401(g) of this title.

"(b)(1) The program performance report shall set forth the performance indicators established in the Postal Service performance plan, along with the actual program performance achieved compared with the performance goals expressed in the plan for that fiscal year.

"(2) If performance goals are specified by descriptive statements of a minimally effective program activity and a successful program activity, the results of such program shall be described in relationship to those categories, including whether the performance failed to meet the criteria of either category.

"(c) The report for fiscal year 2000 shall include actual results for the preceding fiscal year, the report for fiscal year 2001 shall include actual results for the two preceding fiscal years, and the report for fiscal year 2002 and all subsequent reports shall include actual results for the three preceding fiscal years.

"(d) Each report shall--

"(1) review the success of achieving the performance goals of the fiscal year;

"(2) evaluate the performance plan for the current fiscal year relative to the performance achieved towards the performance goals in the fiscal year covered by the report;

"(3) explain and describe, where a performance goal has not been met (including when a program activity's performance is determined not to have met the criteria of a successful program activity under section 2803(b)(2))--

"(A) why the goal was not met;

"(B) those plans and schedules for achieving the established performance goal; and

"(C) if the performance goal is impractical or infeasible, why that is the case and what action is recommended; and

"(4) include the summary findings of those program evaluations completed during the fiscal year covered by the report.

"Sec. 2805. Inherently Governmental functions

"The functions and activities of this chapter shall be considered to be inherently Governmental functions. The drafting of strategic plans, performance plans, and program performance reports under this section shall be performed only by employees of the Postal Service.".

SEC. 8. CONGRESSIONAL OVERSIGHT AND LEGISLATION.

(a) In General.--Nothing in this Act shall be construed as limiting the ability of Congress to establish, amend, suspend, or annul a performance goal. Any such action shall have the effect of superseding that goal in the plan submitted under section 1105(a)(29) of title 31, United States Code.

(b) GAO Report.--No later than June 1, 1997, the Comptroller General of the United States shall report to Congress on the implementation of this Act, including the prospects for compliance by Federal agencies beyond those participating as pilot projects under sections 1118 and 9704 of title 31, United States Code.

SEC. 9. TRAINING.

The Office of Personnel Management shall, in consultation with the Director of the Office of Management and Budget and the Comptroller General of the United States, develop a strategic planning and performance measurement training component for its management training program and otherwise provide managers with an orientation on the development and use of strategic planning and program performance measurement.

SEC. 10. APPLICATION OF ACT.

No provision or amendment made by this Act may be construed as--

(1) creating any right, privilege, benefit, or entitlement for any person who is not an officer or employee of the United States acting in such capacity, and no person who is not an officer or employee of the United States acting in such capacity shall have standing to file any civil action in a court of the United States to enforce any provision or amendment made by this Act; or

(2) superseding any statutory requirement, including any requirement under section 553 of title 5, United States Code.

SEC. 11. TECHNICAL AND CONFORMING AMENDMENTS.

(a) Amendment to Title 5, United States Code.--The table of sections for chapter 3 of title 5, United States Code, is amended by adding after the item relating to section 305 the following:

"306. Strategic plans.".

(b) Amendments to Title 31, United States Code.--

(1) Amendment to chapter 11.--The table of sections for chapter 11 of title 31, United States Code, is amended by adding after the item relating to section 1114 the following:

"1115. Performance plans.

"1116. Program performance reports.

"1117. Exemptions.

"1118. Pilot projects for performance goals.

"1119. Pilot projects for performance budgeting.".

(2) Amendment to chapter 97.--The table of sections for chapter 97 of title 31, United States Code, is amended by adding after the item relating to section 9702 the following:

"9703. Managerial accountability and flexibility.

"9704. Pilot projects for managerial accountability and flexibility.".

(c) Amendment to Title 39, United States Code.--The table of chapters for part III of title 39, United States Code, is amended by adding at the end thereof the following new item:

"28. Strategic planning and performance management............... 2801".

Passed the Senate June 23 (legislative day, June 22), 1993.

Office of Personnel Management OPM EL No. A-838

Employee Letter

SUBJECT: Reinventing Government

Washington, DC 20415
April 29, 1993

While I haven't been at OPM very long and I haven't had the opportunity to meet most of you, I've been here long enough to see that we have a lot of talent in this Agency and a lot of good ideas to share. I want to start immediately to tap into these ideas, so that together we can improve the quality of our work and the quality of our workplace.

President Clinton has established the National Performance Review, headed by Vice-President Gore, to "reinvent" the Federal Government. This is our opportunity to reduce the barriers associated with bureaucracy and increase the flexibility available to us, as individual employees and as members of work teams, to accomplish our mission.

Look at your job -- your own performance and your organization's performance. What would you like to do differently? How will it improve our service? What steps are necessary to make the change? What can you do, and what help do you need?

I'd like your ideas on internal items as well as external issues. No idea is too small or too large. Some ideas we will be able to handle here in our own Agency; others we will have to pass along to the National Performance Review team.

To review your ideas for reinventing government, OPM has established an Agency-wide "Reinvention Initiatives" task force. This group will hold its initial meeting the week of May 17. To have your ideas presented at this first meeting, please try to submit them by May 14.

Your ideas for improving the way we conduct business and the services we provide to the public are always welcome. The "Reinvention Initiatives" task force will meet periodically to review all of the ideas submitted.

To make sure your ideas get to the task force as quickly as possible, I encourage you to use one of the following methods to submit them:

- We have a special post office box for reinvention ideas. Mail your ideas to Reinventing Government at OPM, P.O. Box 18418, Washington, DC 20036. Feel free to use a franked envelope.
- FAX your ideas to (202) 606-2264. Use of a Government-owned FAX is permissible.
- Those of you who work in the Theodore Roosevelt Building may prefer to use one of the green "reinventing government" boxes located in the building.

I look forward to hearing from you. We need your help in this important endeavor.

James B. King

James B. King
Director

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LETTER EXPIRES: April 20, 1994

OPM Form 755-A(WP) 1/79

REED

04/01/93

NATIONAL PERFORMANCE REVIEW TEAMS

An Overview

The National Performance Review will be divided into 11 system reinvention teams and 22 agency-by-agency policy redesign teams. In general, these teams will examine the value of individual programs and the barriers that agency line managers face in providing services to their customers. These teams will work with OMB, GAO, and each department or agency's own "reinvention" teams. In addition, three support teams will focus on outreach, fiscal issues, and implementation.

Following is a description of these teams and related activities:

-- System Reinvention Teams. The 11 system reinvention teams will have core staffs of 2-6 people. They will draw on findings from the literature, the agency-by-agency reviews, and outreach contacts to develop their findings and prepare their recommendations. They will each have a GAO and an OMB liaison; three teams will have fulltime OMB staff assigned. These teams may choose to create advisory groups to assist them. OMB has taken the lead in conducting the background literature search for both the system reinvention and agency-by-agency redesign teams.

-- Agency Heads' Redesign Teams. Each agency head has been encouraged to create his or her own internal redesign teams, identify successes, and designate several pilot "reinvention lab" units. These units will be granted internal waivers and allowed to experiment with different ways of redesigning their own operations to improve services to their customers, accountability for program results, and program effectiveness. These teams will work in tandem with the NPR agency-by-agency redesign teams.

-- NPR's Agency-by-Agency Redesign Teams. The NPR's 22 agency-by-agency teams will have a core staff of 2-3 people. Each agency will supplement these core staff with teams of approximately 6-8 people. The composition might include 1 political appointee, 1 senior executive, and 5-6 line managers. Each team will have a GAO and an OMB liaison. These teams will work in concert with each agency's own redesign teams. They will also feed information into the system reinvention teams. Selected agency-by-agency teams may be tasked with the additional responsibility of redesigning a major policy area that may cut across agencies. For example, the Labor team might be asked, in addition to looking at that agency, to also examine the overall job training role for the federal government.

-- Shared Management Agendas. In addition to the agency-by-agency redesign teams, Vice President Al Gore, OMB Deputy Director for Management (designee) Phil Lader, David Osborne, and Elaine Kamarck will visit each agency head to discuss the development of a shared management agenda. The agency head will be asked to identify several key management issues that he or she will commit to completing during the next 4 years. GAO will assist by nominating 3 potential key management issues for each of the agencies that would serve as background information for the Vice President and the agency head.

-- The Three Support Teams. Separate support teams are being created to deal with outreach, fiscal issues, and implementation strategies. The outreach team would solicit or ideas from civil servants, the public, and experts. This team would be responsible for identifying models of success, conducting agency visits, and field hearings. The fiscal team will be responsible for developing the cost impacts of alternative policy and management changes. The implementation strategies team will work with OMB, Hill, and agency staffs on developing appropriate action strategies, such as drafting executive orders, legislation, and implementation strategies beyond September 7th.

THE 11 SYSTEM REINVENTION TEAMS

Mission-Driven, Results-Oriented Budgeting. How can we clarify agency missions, increase agency managers' focus on results (instead of processes and inputs), and measure performance? What needs to be done to the budget process to explicitly link program missions, resources, and results? How can we create budgetary incentives for line managers to save money rather than spend it? How can we encourage them to earn money?

Transforming Organizational Structures. Would the delayering of agencies' staff offices and the reduction in the number of field offices improve line managers' abilities to better serve program customers? Would separating policymaking from program administration clarify lines of accountability?

Reinventing Personnel Management. How do we make the current human resource management system support line managers so they can hire the best, train them well, provide them with challenging work, and reward them for doing a good job? Can we increase accountability for results via the use of performance agreements? Can we improve customer satisfaction and save resources through better training? Can we develop downsizing strategies that strengthen an organization?

Reengineering Through Information Technology. Can we ensure agencies reengineer outmoded business processes instead of just automating them with new information technology? Can we develop common standards and models to reduce development and acquisition costs?

Improving Financial Management. Can we develop common standards and models, and decentralize financial management to agencies so they can be more responsive to customers and more self-disciplined in the use of funds? Can we move toward activity-based cost accounting and accrual standards so managers and policymakers know the true costs of their decisions?

Eliminating Internal Barriers. Are there opportunities to reduce the number of regulations, circulars, and statutory requirements that do not directly add value to an agency's mission or serve its customers? Can we improve the procurement and contracting processes by making them more responsive to their customers? Are there opportunities to make agencies more entrepreneurial internally through, for example providing services such as payroll accounting for other agencies on a competitive basis?

Improving Regulatory Systems. Can we design a regulatory process that reduces central agency reviews, is more accessible to the public, and encourages innovation, flexibility, and negotiation in the rulemaking process? Would a sunsetting process ensure rules are more relevant and responsive to those affected by the process?

Empowering State and Local Governments. Can we reduce the number of the nearly 600 categorical grant programs and increase the effectiveness of $200 billion in federal aid to states and localities? Would the expanded use of waivers, the creation of challenge grants, and more flexibility in the use of existing grants result in better program outcomes for affected customers?

Rethinking Program Design. Would a central program design office--that focuses on the appropriate use of different policy tools (grants, loans, regulation) to achieve federal objectives--improve the chances for successful outcomes for federal policies? Would sunset legislation be a useful lever to encourage periodic reassessments of policy and program areas?

Redesigning Management Systems. As we empower agencies, should we rethink the roles of central management agencies, such as OMB, OPM, GSA, and Treasury's Financial Management Service? How do we better foster TQM and showcase success? How do we provide consulting services so agencies can "reinvent" themselves? Would incentives, such as an Innovation Fund help agencies invest in changes that might have substantial future savings?

Minimizing Federal Damage to the Environment. How much environmental damage has been caused by federal agencies, how much potential damage exists, and what strategies and resources are needed to resolve them?

THE 22 AGENCY-BY-AGENCY REDESIGN TEAMS

Department of Agriculture

Department of Commerce

Department of Defense

Department of Education

Department of Energy

Department of Health and Human Services

Department of Housing and Urban Development

Department of the Interior

Department of Justice

Department of Labor

Department of State

Department of Transportation

Department of the Treasury

Department of Veterans Affairs

Environmental Protection Agency

National Aeronautics and Space Administration

National Science Foundation

Nuclear Regulatory Commission

Agency for International Development

Federal Emergency Management Agency

Small Business Administration

All Others

Note:

The Office of Management and Budget will be covered by the Budgeting and the Management Reinvention teams; the Office of Personnel Management will be covered by the Personnel Reinvention team; and the General Services Administration will be covered by the Internal Barriers Reinvention team.

C.F.R. 432 - Removal / dismissal

752 - adverse actions

MSPB Protection Regs?

§ 540.111 of this chapter. If major subcomponents of an agency propose to modify any element of the agency's system that is included in the Performance Management Plan Checklist, as provided in § 540.111(b)(1), or to develop a separate system based on agency guidelines, each such subcomponent's proposed plan must be reviewed and approved by the agency and submitted to OPM for final approval.

(b) Agencies shall submit to OPM for approval any changes to their performance appraisal plans that modify any element of the agency's system that is included in the Performance Management Plan Checklist.

§ 430.412 Reports.

So that OPM can provide the Congress and others with information regarding the operation of the Performance Management and Recognition System and performance management plans including the performance appraisal systems, each agency shall maintain such records and submit to OPM such reports as OPM may require.

Subpart E—Performance Awards

Source: 51 FR 8417, Mar. 11, 1986, unless otherwise noted.

§ 430.501 Authority and coverage.

(a) This subpart contains the Office of Personnel Management's (OPM) regulatory requirements for establishing and conducting the performance awards component of the Performance Management System, under the authority of title 5, United States Code, chapters 43 and 45.

(b) This subpart applies to employees as defined under section 2105 of title 5, United States Code, but does not include employees under the Performance Management and Recognition System, nor employees in the Senior Executive Service.

(c) This subpart applies to agencies as defined in section 4501 of title 5, United States Code.

(d) Refer to part 451, subpart A of this chapter for the regulatory requirements for granting Superior Accomplishment Awards to employees for suggestions, inventions, and special acts or services.

§ 430.502 Definitions.

In this subpart, terms are defined as follows:

Performance award means a performance-based cash payment to an employee based on the employee's rating of record. A performance award does not increase base pay.

Performance award budget means the amount of money allocated by an agency for distribution as performance awards to covered employees.

Performance Management Plan means the description of the agency's methods which integrate performance, pay, and awards systems with its basic management functions for the purpose of improving individual and organizational effectiveness in the accomplishment of agency mission and goals. The Performance Management Plan, which includes the performance awards plan, must be submitted to OPM for review and approval as required by § 430.506 of this subpart and subpart A of this part.

Rating of record means the summary rating required at the time specified in the Performance Management Plan or at such other times as the plan specifies for special circumstances.

§ 430.503 Policy.

(a) The purpose of performance awards is to motivate employees by recognizing and rewarding those who attain high levels of performance.

(b) An award under this subpart shall be based on the employee's rating of record for the current appraisal period for which performance awards are being paid.

(c) Awards under this part shall be documented in the Official Personnel Folder to reflect the nature of the award, including the amount of award.

(d) A performance award shall be given due weight when rating and ranking an employee for a promotion, as provided in 5 U.S.C. 3362.

(e) OPM encourages agencies to make maximum use of their authorities under chapters 43 and 45 of title 5, United States Code, within existing appropriated funds to establish and administer performance awards programs that best support and enhance agency and national goals and meet employee recognition needs.

[51 FR 8417, Mar. 11, 1986, as amended at 56 FR 20333, May 3, 1991]

§ 430.504 Performance award payment.

(a) An award paid under this subpart may not exceed 10 percent of the employee's annual rate of basic pay, except that the agency head may determine that exceptional performance by the employee justifies an award exceeding 10 percent and may authorize an award of up to 20 percent of the employee's annual rate of basic pay, subject to the limitations at § 430.506(b)(3) of this part.

(b) Performance awards are paid as a lump sum and are not considered part of an employee's rate of basic pay.

(c) For the purpose of computing the percentage of basic pay under paragraph (a) of this section, the rate of basic pay used shall be determined without taking into account any locality-based comparability payment under 5 U.S.C. 5304 or an interim geographic adjustment or special law enforcement adjustment under section 302 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509), respectively.

(d) The decision to grant a performance award, including the amount of such award, shall be reviewed and approved by an official of the agency who is at a higher level than the official who made the initial decision, unless there is no official at a higher level in the agency.

(e) The failure to pay an award under this subpart, or the amount of such an award, may not be appealed.

[56 FR 20333, May 3, 1991, as amended at 57 FR 14626, Apr. 22, 1992]

§ 430.505 Responsibilities of the Office of Personnel Management.

In accordance with subpart A of this part, OPM shall review and approve the agency performance awards component of the Performance Management Plan, and any proposed plan revisions which have an impact on how an agency meets statutory and regulatory requirements.

§ 430.506 Agency responsibilities.

(a) The head of each agency shall, within existing appropriated funds, establish a performance awards program as a component of the Performance Management System.

(b) The head of each agency shall submit to OPM—

(1) A performance awards plan, as part of the Performance Management Plan, which includes provisions for determining the agency performance awards fund, and the method for determining projected expenditures, for review and approval as provided in subpart A of this part;

(2) Proposed plan revisions for review and approval as required in subpart A of this part;

(3) All recommendations for performance awards in excess of $10,000 up to $25,000 for review and approval;

(4) An annual report on performance awards activities for the past fiscal year.

[51 FR 8417, Mar. 11, 1986, as amended at 56 FR 20333, May 3, 1991]

PART 432—PERFORMANCE BASED REDUCTION IN GRADE AND REMOVAL ACTIONS

Sec.

AUTHORITY: 5 U.S.C. 4302a, 4303, and 4305.

SOURCE: 54 FR 26179, June 21, 1989, unless otherwise noted.

§ 432.101 Statutory authority.

This part applies to reduction in grade and removal of employees covered by the Performance Management and Recognition System (PMRS) based solely on performance below the fully successful level and the reduction in grade and removal of other employees covered by the provisions of this part based solely on performance at the unacceptable level. 5 U.S.C. 4305 authorizes the Office of Personnel Management to prescribe regulations to carry out the purposes of title 5, chapter 43, including 5 U.S.C. 4303, which covers agency actions to reduce in grade or remove employees for unacceptable performance and 5 U.S.C. 4302a(b) which covers actions to reduce in grade or remove employees covered by the Performance Management and Recognition System for performance below the fully successful level. (The provisions of 5 U.S.C. 7501 *et. seq.* may also be used to reduce in grade or remove employees. See part 752 of this chapter.)

[54 FR 49075, Nov. 28, 1989]

§ 432.102 Coverage.

(a) *Actions covered.* This part covers reduction in grade and removal of:

(1) Employees, covered by the PMRS, based on performance below the fully successful level; and

(2) Employees, not covered by the PMRS, based on unacceptable performance.

(b) *Actions excluded.* This part does not apply to:

(1) The reduction in grade of a supervisor or manager who has not completed the probationary period under 5 U.S.C. 3321(a)(2) if such a reduction is based on supervisory or managerial performance and the reduction is to the grade held immediately before becoming a supervisor or manager in accordance with 5 U.S.C. 3321(b);

(2) The reduction in grade or removal of an employee in the competitive service who is serving a probationary or trial period under an initial appointment;

(3) The reduction in grade or removal of an employee in the competitive service serving in an appointment that requires no probationary or trial period who has not completed 1 year of current continuous employment in the same or similar position under other than a temporary appointment limited to 1 year or less;

(4) The reduction in grade or removal of an employee in the excepted service who has not completed 1 year of current continuous employment in the same or similar positions;

(5) An action imposed by the Merit Systems Protection Board under the authority of 5 U.S.C. 1206;

(6) An action taken under 5 U.S.C. 7521 against an administrative law judge;

(7) An action taken under 5 U.S.C. 7532 in the interest of national security;

(8) An action taken under a provision of statute, other than one codified in title 5 of the U.S. Code, which excepts the action from the provisions of title 5 of the U.S. Code;

(9) A removal from the Senior Executive Service to a civil service position outside the *Senior Executive Service* under part 359 of this chapter;

(10) A reduction-in-force governed by part 351 of this chapter;

(11) A voluntary action by the employee;

(12) A performance-based action taken under part 752 of this chapter;

(13) An action that terminates a temporary or term promotion and returns the employee to the position from which temporarily promoted, or to a different position of equivalent grade and pay if the agency informed the employee that it was to be of limited duration;

(14) A termination in accordance with terms specified as conditions of employment at the time the appointment was made; and

(15) An involuntary retirement because of disability under part 831 of this chapter.

(c) *Agencies covered.* This part applies to:

(1) The executive departments listed at 5 U.S.C. 101;

(2) The military departments listed at 5 U.S.C. 102;

(3) Independent establishments in the executive branch as described at 5 U.S.C. 104, except for a Government corporation; and

(4) The Government Printing Office.

(d) *Agencies excluded.* This part does not apply to:

(1) A Government corporation;

(2) The Central Intelligence Agency;

(3) The Defense Intelligence Agency;

(4) The National Security Agency;

(5) Any executive agency or unit thereof which is designated by the President and the principal function of which is the conduct of foreign intelligence or counterintelligence activities;

(6) The General *Accounting Office*;

(7) The U.S. Postal Service; and

(8) The Postal Rate Commission.

(e) *Employees covered.* This part applies to individuals employed in or under a covered agency as specified at § 432.102(c) except as listed in § 432.102(f).

(f) *Employees excluded.* This part does not apply to:

(1) An employee in the competitive service who is serving a probationary or trial period under an initial appointment;

(2) An employee in the competitive service serving in an appointment that requires no probationary or trial period, who has not completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less;

(3) An employee in the excepted service who has not completed 1 year of current continuous employment in the same or similar positions;

(4) An employee outside the United States who is paid in accordance with local native prevailing wage rates for the area in which employed;

(5) An individual in the Foreign Service of the United States;

(6) A physician, dentist, nurse, or other employee in the Department of Medicine and Surgery, Department of Veterans Affairs, whose pay is fixed under chapter 73 of title 38, U.S. Code, except persons appointed under 38 U.S.C. 4104(3);

(7) An administrative law judge appointed under 5 U.S.C. 3105;

(8) An individual in the Senior Executive Service;

(9) An individual appointed by the President;

(10) An employee occupying a position in Schedule C as authorized under part 213 of this chapter;

(11) A reemployed annuitant;

(12) A technician in the National Guard described in 5 U.S.C. 8337(h)(1), employed under section 709(b) of title 32;

(13) An individual occupying a position in the excepted service for which employment is not reasonably expected to exceed 120 calendar days in a consecutive 12 month period; and

(14) A manager or supervisor returned to his or her previously held grade pursuant to 5 U.S.C. 3321 (a)(2) and (b).

[54 FR 26179, June 21, 1989, as amended at 54 FR 49076, Nov. 28, 1989; 57 FR 10125, Mar. 24, 1992; 57 FR 20043, May 11, 1992]

§ 432.103 Definitions.

For the purpose of this part—

(a) *Acceptable performance* means performance that meets an employee's performance requirement(s) or standard(s) at a level of performance above "unacceptable" in the critical element(s) at issue where the employee is not covered by the Performance Management and Recognition System (PMRS). For those employees covered by the PMRS, acceptable performance is performance determined to be at the fully successful level or above in the critical element(s) and/or critical work objective(s) at issue.

(b) *Critical element* means a component of a position consisting of one or more duties and responsibilities that contributes toward accomplishing organizational goals and objectives and that is of such importance that unacceptable performance on the element would result in unacceptable performance in the position.

(c) *Critical work objective* means a component of a position consisting of one or more performance requirements of such importance that unacceptable performance on the work objective would result in unacceptable performance in the position. Work objectives are written statements that contain one or more performance requirements of a PMRS employee's position and one or more performance objectives used to evaluate job performance against such requirements.

(d) *Current continuous employment* means a period of employment or service immediately preceding an action under this part in the same or similar positions without a break in Federal civilian employment of a workday.

(e) *Opportunity to demonstrate acceptable performance* means a reasonable chance for the employee whose performance has been determined to be unacceptable in one or more critical elements or in one or more critical work objectives to demonstrate acceptable performance in the critical element(s) and/or critical work objective(s) at issue.

(f) *Performance improvement plan* means the plan agencies are required to provide to a PMRS employee whose performance in one or more critical elements or in one or more critical work objectives has been determined to be below the fully successful level. As part of the plan, agencies shall notify the employee of the critical element(s) and/or critical work objective(s) in which he or she is performing below the fully successful level; describe the types of improvements that the employee must demonstrate to attain fully successful performance; offer assistance to the employee in attaining fully successful performance; and provide the employee with a reasonable period of time, commensurate with the duties and responsibilities of the employee's position, to demonstrate fully successful performance. The agency may include, as part of the performance improvement plan, other information and matters that the agency considers appropriate.

(g) *Reduction in grade* means the involuntary assignment of an employee to a position at a lower classification or job grading level.

(h) *Removal* means the involuntary separation of an employee from employment with an agency.

(i) *Similar positions* mean positions in which the duties performed are similar in nature and character and require substantially the same or similar qualifications, so that the incumbents could be interchanged without significant training or undue interruption to the work.

(j) *Unacceptable performance* means performance of an employee that fails to meet established performance standards in one or more critical elements or fails to meet the performance objectives in one or more critical work objectives of such employee's position.

[54 FR 26179, June 21, 1989, as amended at 54 FR 49076, Nov. 29, 1989; 55 FR 25950, June 26, 1990; 57 FR 23045, June 1, 1992; 57 FR 60717, Dec. 22, 1992]

§ 432.104 Addressing unacceptable performance by non-PMRS employees.

At any time during the performance appraisal cycle that a non-PMRS employee's performance is determined to be unacceptable in one or more critical elements, the agency shall notify the employee of the critical element(s) for which performance is unacceptable and inform the employee of the performance requirement(s) or standard(s) that must be attained in order to demonstrate acceptable performance in his or her position. The agency should also inform the employee that unless his or her performance in the critical element(s) improves to and is sustained at an acceptable level, the employee may be reduced in grade or removed. For each critical element in which the employee's performance is unacceptable, the agency shall afford the employee a reasonable opportunity to demonstrate acceptable performance, commensurate with the duties and responsibilities of the employee's position. As part of the employee's opportunity to demonstrate acceptable performance, the agency shall offer assistance to the employee in improving unacceptable performance.

[55 FR 25950, June 26, 1990]

§ 432.105 Addressing below fully successful performance by PMRS employees.

At any time during the performance appraisal cycle that a PMRS employee's performance is determined to be below fully successful in one or more critical elements or in one or more critical work objectives, the agency shall afford the employee an opportunity to improve through a performance improvement plan. As part of the plan, the agency shall notify the employee of the critical element(s) and/or critical work objective(s) in which he or she is performing below the fully successful level; describe the types of improvements that the employee must demonstrate to attain fully successful performance; offer assistance to the employee in attaining fully successful performance; and provide the employee with a reasonable period of time, commensurate with the duties and responsibilities of the employee's position, to demonstrate fully successful performance. The agency may include, as part of the performance improvement plan, other information and matters that the agency considers appropriate. The agency should also inform the employee that, unless his or her performance in the critical element(s) and/or critical work objective(s) improves to and is sustained at a fully successful level, the employee may be reduced in grade or removed.

[57 FR 60718, Dec. 22, 1992]

§ 432.106 Proposing and taking action based on unacceptable performance for non-PMRS employees.

(a) *Proposing action based on unacceptable performance.* (1) Once an employee has been afforded a reasonable opportunity to demonstrate acceptable performance pursuant to § 432.104, an agency may propose a reduction-in-grade or removal action if the employee's performance during or following the opportunity to demonstrate acceptable performance is unacceptable in 1 or more of the critical elements for which the employee was afforded an opportunity to demonstrate acceptable performance.

(2) If an employee has performed acceptably for 1 year from the beginning of an opportunity to demonstrate acceptable performance (in the critical element(s) for which the employee was afforded an opportunity to demonstrate acceptable performance), and the employee's performance again becomes unacceptable, the agency shall afford the employee an additional opportunity to demonstrate acceptable performance before determining whether to propose a reduction in grade or removal under this part.

(3) A proposed action may be based on instances of unacceptable performance which occur within a 1 year period ending on the date of the notice of proposed action.

(4) An employee whose reduction in grade or removal is proposed under this part is entitled to:

(i) *Advance notice.* (A) The agency shall afford the employee a 30 day advance notice of the proposed action that identifies both the specific instances of unacceptable performance by the employee on which the proposed action is based and the critical element(s) of the employee's position involved in each instance of unacceptable performance.

(B) An agency may extend this advance notice period for a period not to exceed 30 days under regulations prescribed by the head of the agency. An agency may extend this notice period further without prior OPM approval for the following reasons:

(*1*) To obtain and/or evaluate medical information when the employee has raised a medical issue in the answer to a proposed reduction in grade or removal;

(*2*) To arrange for the employee's travel to make an oral reply to an appropriate agency official, or the travel of an agency official to hear the employee's oral reply;

(*3*) To consider the employee's answer if an extention to the period for an answer has been granted (e.g., because of the employee's illness or incapacitation);

(*4*) To consider reasonable accommodation of a handicapping condition;

(*5*) If agency procedures so require, to consider positions to which the employee might be reassigned or reduced in grade; or

(*6*) To comply with a stay ordered by a member of the Merit Systems Protection Board under 5 U.S.C. 1208(b).

(C) If an agency believes that an extension of the advance notice period is necessary for another reason, it may request prior approval for such extension from the Chief, Employee Relations Division, Office of Employee and Labor Relations, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

(ii) *Opportunity to answer.* The agency shall afford the employee a reasonable time to answer the agency's notice of proposed action orally and in writing.

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(iii) *Representation.* The agency shall allow the employee to be represented by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as a representative would cause a conflict of interest or position or an employee whose release from his or her official position would give rise to unreasonable costs to the Government or whose priority work assignment precludes his or her release from official duties.

(iv) *Consideration of medical conditions.* The agency shall allow an employee who wishes to raise a medical condition which may have contributed to his or her unacceptable performance to furnish medical documentation (as defined in § 339.102 of this chapter of the condition for the agency's consideration. Whenever possible, the employee shall supply this documentation following the agency's notification of unacceptable performance under § 432.104. If the employee offers such documentation after the agency has proposed a reduction in grade or removal, he or she shall supply this information in accordance with § 432.105(a)(4)(ii). In considering documentation submitted in connection with the employee's claim of a medical condition, the agency may require or offer a medical examination in accordance with the criteria and procedures of part 339 of this chapter, and shall be aware of the affirmative obligations of 29 CFR 1613.704. If the employee who raises a medical condition has the requisite years of service under the Civil Service Retirement System or the Federal Employees Retirement System, the agency shall provide information concerning application for disability retirement. As provided at § 831.501(d) of this chapter, an employee's application for disability retirement shall not preclude or delay any other appropriate agency decision or personnel action.

(b) *Final written decision.* The agency shall make its final decision within 30 days after expiration of the advance notice period. Unless proposed by the head of the agency, such written decision shall be concurred in by an employee who is in a higher position than the person who proposed the action. In arriving at its decision, the agency shall consider any answer of the employee and/or his or her representative furnished in response to the agency's proposal. A decision to reduce in grade or remove an employee for unacceptable performance may be based only on those instances of unacceptable performance that occurred during the 1 year period ending on the date of issuance of the advance notice of proposed action under § 432.105(a)(4)(i). The agency shall issue written notice of its decision to the employee at or before the time the action will be effective. Such notice shall specify the instances of unacceptable performance by the employee on which the action is based and shall inform the employee of any applicable appeal and/or grievance rights.

[54 FR 26179, June 21, 1989. Redesignated and amended at 54 FR 49076, Nov. 29, 1989]

§ 432.107 Proposing and taking action based on performance below the fully successful level for FMRS employees.

(a) *Proposing action based on performance below the fully successful level.* (1) Once an employee has been afforded an opportunity to improve performance to the fully successful level through a performance improvement plan pursuant to § 432.106, an agency may propose a reduction in grade or removal action if the employee's performance during or following the performance improvement plan is below fully successful in one or more critical elements or one or more critical work objectives for which the employee was afforded an opportunity to improve through a performance improvement plan.

(2) If an employee has performed at the fully successful level for 1 year from the beginning of a performance improvement plan in the critical element(s) and/or critical work objective(s) for which the employee was afforded a performance improvement plan and the employee's performance again is determined to be below fully successful, the agency shall afford the employee an additional performance improvement plan before determining whether to propose a reduction in grade or removal under this part.

(3) A proposed action may be based on instances of below fully successful performance which occur within a one-year period ending on the date of the notice of proposed action.

(4) An employee whose reduction in grade or removal is proposed under this part is entitled to:

(i) *Advance notice.* (A) The agency shall afford the employee a 30-day advance notice of the proposed action that identifies both the specific instances of below fully successful performance by the employee on which the proposed action is based and the critical element(s) and/or critical work objective(s) of the employee's position involved in each instance of below fully successful performance.

(B) An agency may extend this advance notice period for a period not to exceed 30 days under regulations prescribed by the head of the agency. An agency may extend this notice period further without prior OPM approval for the following reasons:

(*1*) To obtain and/or evaluate medical information when the employee has raised a medical issue in the answer to a proposed reduction in grade or removal;

(*2*) To arrange for the employee's travel to make an oral reply to an appropriate agency official, or the travel of an agency official to hear the employee's oral reply;

(*3*) To consider the employee's answer if an extension to the period for an answer has been granted (e.g., because of the employee's illness or incapacitation);

(*4*) To consider reasonable accommodation of a handicapping condition;

(*5*) If agency procedures so require, to consider positions to which the employee might be reassigned or reduced in grade; or

(*6*) To comply with a stay ordered by a member of the Merit Systems Protection Board under 5 U.S.C. 1208(b).

(C) If an agency believes that an extension of the advance notice period is necessary for another reason, it may request prior approval for such extension from the Chief, Employee Relations Division, Office of Employee and Labor Relations, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

(ii) *Opportunity to answer.* The agency shall afford the employee a reasonable time to answer the agency's notice of proposed action orally and in writing.

(iii) *Representation.* The agency shall allow the employee to be represented by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as a representative would cause a conflict of interest or position or an employee whose release from his or her official position would give rise to unreasonable costs to the Government or whose priority work assignment precludes his or her release from official duties.

(iv) *Consideration of medical conditions.* The agency shall allow an employee who wishes to raise a medical condition which may have contributed to his or her deficient performance to furnish medical documentation (as defined in § 339.102 of this chapter) of the condition for the agency's consideration. Whenever possible, the employee shall supply this documentation following the agency's notification that the employee's performance is below fully successful and the establishment of the performance improvement plan under § 432.106. If the employee offers such documentation after the agency has proposed a reduction in grade or removal, he or she shall supply this information in accordance with § 432.107(a)(4)(ii). In considering documentation submitted in connection with the employee's claim of a medical condition, the agency may require or offer a medical examination in accordance with the criteria and procedures of part 339 of this chapter, and shall be aware of the affirmative obligations of 29 CFR 1613.704. If the employee who raises a medical condition has the requisite years of service under the Civil Service Retirement System or the Federal Employees Retirement System, the agency shall provide information concerning application for disability retirement. As provided at § 831.501(d) of this chapter, an employee's application for disability retirement shall not preclude or delay any other appropriate agency decision or personnel action.

(b) *Final written decision.* The agency shall make its final decision within 30 days after expiration of the advance notice period. Unless proposed by the head of the agency, such written decision shall be concurred in by an employee who is in a higher position than the person who proposed the action. In arriving at its decision, the agency shall consider any answer of the employee and/or his or her representative furnished in response to the agency's proposal. A decision to reduce in grade or remove an employee for performance below the fully successful level may be based only on those instances of performance that occurred during the one year period ending on the date of issuance of the advance notice of proposed action under § 432.107(a)(4)(i). The agency shall issue written notice of its decision to the employee at or before the time the action will be effective. Such notice shall specify the instances of below fully successful performance by the employee on which the action is based and shall inform the employee of any applicable appeal and/or grievance rights.

[54 FR 49077, Nov. 29, 1989; 54 FR 50307, Dec. 5, 1989, as amended at 57 FR 60718, Dec. 22, 1992]

§ 432.108 Appeal and grievance rights.

(a) *Appeal rights.* An employee covered under § 432.102(e) who has been removed or reduced in grade under this part may appeal to the Merit Systems Protection Board if the employee is:

(1) In the competitive service and has completed a probationary or trial period;

(2) In the competitive service serving in an appointment which is not subject to a probationary or trial period, and has completed 1 year of current continuous employment in the same or similar position under other than a temporary appointment limited to 1 year or less;

(3) A preference eligible in the excepted service who has completed 1 year of current continuous employment in the same or similar position(s); or

(4) A nonpreference eligible in the excepted service who is covered by subparts C and D of part 752 of this chapter.

(b) *Grievance rights.* (1) A bargaining unit employee covered under § 432.102(e) who has been removed or reduced in grade under this part may file a grievance under an applicable negotiated grievance procedure if the removal or reduction in grade action falls within its coverage (i.e., is not excluded by the parties to the collective bargaining agreement) and the employee is:

(i) In the competitive service and has completed a probationary or trial period;

(ii) In the competitive service, serving in an appointment which is not subject to a probationary or trial period, and has completed 1 year of current continuous employment in the same or similar position under other than a temporary appointment limited to 1 year or less;

(iii) A preference eligible in the excepted service who has completed 1 year of current continuous employment in the same or similar position(s); or

(iv) A nonpreference eligible in the excepted service who is covered by subparts C and D of part 752 of the chapter.

(2) 5 U.S.C. 7114(a)(5) and 7121(b)(3), and the terms of an applicable collective bargaining agreement govern representation for employees in an exclusive bargaining unit who grieve a matter under this section through the negotiated grievance process.

(c) *Election of forum.* As provided at 5 U.S.C. 7121(e)(1), a bargaining unit employee who by law may file an appeal or a grievance, and who has exercised his or her option to appeal an action taken under this part to the Merit Systems Protection Board, may not also file a grievance on the matter under a negotiated grievance procedure. Likewise, a bargaining unit employee who has exercised his or her option to grieve an action taken under this part may not also file an appeal

on the matter with the Merit Systems Protection Board.

[54 FR 26179, June 21, 1989. Redesignated at 54 FR 49076, Nov. 29, 1989; 57 FR 20042, May 11, 1992]

§ 432.109 Agency records.

(a) *When the action is effected.* The agency shall preserve all relevant documentation concerning a reduction in grade or removal which is based on unacceptable performance for non-PMRS employees, or below fully successful performance for PMRS employees, and make it available for review by the affected employee or his or her representative. At a minimum, the agency's records shall consist of a copy of the notice of proposed action, the answer of the employee when it is in writing, a summary thereof when the employee makes an oral reply, the written notice of decision and the reasons therefor, and any supporting material including documentation regarding the opportunity afforded the employee to demonstrate acceptable performance.

(b) *When the action is not effected.* As provided at 5 U.S.C. 4303(d), if, because of performance improvement by the employee during the notice period, the employee is not reduced in grade or removed, and the employee's performance continues to be acceptable for 1 year from the date of the advanced written notice provided in accordance with §§ 432.106(a)(4)(i) and 432.107(a)(4)(i), any entry or other notation of the unacceptable, or below fully successful, performance for which the action was proposed shall be removed from any agency record relating to the employee.

[55 FR 25960, June 25, 1990]

PART 451—INCENTIVE AWARDS

Subpart A—Agency Superior Accomplishment Awards

Subpart B—Presidential Awards

Subpart C—Time Off as an Incentive Award

AUTHORITY: 5 U.S.C. 4501–4507, and 5407.

Subpart A—Agency Superior Accomplishment Awards

SOURCE: 51 FR 8418, Mar. 11, 1986, unless otherwise noted.

§ 451.101 Authority and coverage.

(a) This subpart contains the regulatory requirements of the Office of Personnel Management (OPM) for establishing and conducting the Superior Accomplishment Awards component of the Performance Management System under the authority of title 5, United States Code, chapters 43, 45, and 54.

(b) This subpart applies to employees as defined by section 2105 of title 5, United States Code. Employees covered by the Performance Management and Recognition System under chapter 54 of title 5, United States Code, are covered by the provisions of this subpart.

(c) This subpart applies to agencies as defined in section 4501 of title 5, United States Code.

(d) For the regulatory requirements for granting performance awards based on an employee's rating of record, refer to—

(1) Part 430, subpart E, of this chapter for General Schedule, prevailing rate, and certain other employees covered by 5 U.S.C. 4301–4305;

(2) Section 540.109 of this chapter for PMRS employees; and

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tion is requested, whether in person or by telephone, of the purpose for which the information is being sought and of the uses that may be made of the information. The interviewing agent must notify each person interviewed and each custodian of records contacted that all information provided, including the record source's identity, may be disclosed upon the request of the subject of the investigation.

(b) The interviewing agent may grant a pledge to keep confidential the identity of an information source upon specific request by the source. In addition, the agent has discretion to offer the source a pledge of confidentiality where the agent believes that such a pledge is necessary to obtain information pertinent to the investigation. A pledge of confidentiality may not be assumed by the source. The interviewing agent may not suggest to a source that the source request confidentiality.

(c) Where information is requested by written inquiry, the form, instructions, or correspondence used by an agency will include: (1) Notification that all information furnished by the source, including the source's identity, except for custodians of law enforcement or educational records, may be disclosed upon the request of the subject of the investigation; and (2) Space for the information source to request a pledge that the source's identity will not be disclosed to the subject of the investigation; or (3) An offer to make special arrangements to obtain significant information which the source feels unable to furnish without a promise that the source's identity will be kept confidential.

(d) A pledge of confidentiality, if granted, extends only to the identity of the source, and to any information furnished by the source that would reveal the identity of the source.

§ 736.103 Protecting the identity of a source.

When a source is granted a promise that the source's identity will be kept confidential, the investigative agency and all other agencies that receive information obtained under the promise are required to take all reasonable precautions to protect the source's identity. Each agency will prepare for its investigators and agents implementing instructions consistent with this part.

§ 736.104 Public availability of investigative files.

(a) Investigative files are records subject to the Privacy Act and the Freedom of Information Act and are made available to requesters in accordance with the provisions of those Acts.

(b) Requests for investigative records are to be submitted to the Office of Personnel Management, Federal Investigations Processing Center, FOI/PA, Boyers, Pennsylvania 16018.

Subpart B—Investigative Requirements

§ 736.201 Responsibilities of OPM and other Federal agencies.

(a) Unless provided otherwise by law, the investigation of persons entering or employed in the competitive service, or by career appointment in the Senior Executive Service, is the responsibility of OPM.

(b) Requests for delegated investigating authority. Agencies may request delegated authority from OPM to conduct or contract out investigations of persons entering or employed in the competitive service or by career appointment in the Senior Executive Service. Such requests shall be made in writing by agency heads, or designees, and specify the reason(s) for the request.

(c) Timing of investigations. Investigations required for positions must be initiated within 14 days of placement in the position except for: Positions designated Critical-Sensitive under part 732 of this chapter must be completed preplacement, or post-placement with approval of a waiver in accordance with § 732.202(a) of this chapter; and for positions designated Special-Sensitive under part 732 of this chapter must be completed preplacement.

PART 752—ADVERSE ACTIONS

AUTHORITY: 5 U.S.C. 7504 and 7514; 5 U.S.C. 1302, Pub. L. 95-454; Section 752.401 also issued under 5 U.S.C. 3301 and 3302, and E.O. 10577; Section 752.406 also issued under 5 U.S.C. 1302 and 7513; subpart F also issued under 5 U.S.C. 7543.

SOURCE: 45 FR 46778, July 11, 1980, unless otherwise noted.

Subpart A—Principal Statutory Requirements for Suspension for 14 Days or Less

§ 752.101 Principal statutory requirements.

This subpart incorporates the principal statutory requirements for suspensions for 14 days or less, found in subchapter II of chapter 75 of title 5, United States Code.

CHAPTER 75—ADVERSE ACTIONS

SUBCHAPTER I—SUSPENSION FOR 14 DAYS OR LESS

§ 7501. Definitions

For the purpose of this subchapter—

(1) "employee" means an individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less; and

(2) "suspension" means the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay.

§ 7502. Actions covered

This subchapter applies to a suspension for 14 days or less, but does not apply to a suspension under section 7521 or 7532 of this title or any action initiated under section 1206 of this title.

§ 7503. Cause and procedure

(a) Under regulations prescribed by the Office of Personnel Management, an employee may be suspended for 14 days or less for such cause as will promote the efficiency of the service (including discourteous conduct to the public confirmed by an immediate supervisor's report of four such instances within any one-year period or any other pattern of discourteous conduct).

(b) An employee against whom a suspension for 14 days or less is proposed is entitled to—

(1) an advance written notice stating the specific reasons for the proposed action;

(2) a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(3) be represented by an attorney or other representative; and

(4) a written decision and the specific reasons therefor at the earliest practicable date.

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(c) Copies of the notice of proposed action, the answer of the employee if written, a summary thereof if made orally, the notice of decision and reasons therefor, and any order effecting the suspension, together with any supporting material, shall be maintained by the agency and shall be furnished to the Merit Systems Protection Board upon its request and to the employee affected upon the employee's request.

§ 7504. *Regulations*

The Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter.

Subpart B—Regulatory Requirements for Suspension for 14 Days or Less

§ 752.201 Coverage.

(a) *Actions covered.* This subpart covers suspension for 14 days or less.

(b) *Employees covered.* This subpart covers:

(1) An employee in the competitive service who has completd a probationary or trial period;

(2) An employee in the competitive service serving in an appointment which requires no probationary or trial period, and who has completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less;

(3) An employee with competitive status who occupies a position under Schedule B of part 213 of this chapter;

(4) An employee who was in the competitive service at the time his or her position was first listed under Schedule A, B, or C of the excepted service and still occupies that position;

(5) A certified respiratory therapy technician, registered respiratory therapist, licensed physical therapist, and licensed practical or vocational nurse employed under 38 U.S.C. 4104(3);

(6) An employee of the Government Printing Office.

(c) *Exclusions.* This subpart does not apply to a suspension for 14 days or less:

(1) Of an administrative law judge under 5 U.S.C. 7521;

(2) Taken for national security reasons under 5 U.S.C. 7532;

(3) Taken under a provision of statute, other than one codified in 5 U.S. Code, which excepts the action from subchapter I, chapter 75 of title 5, U.S. Code;

(4) Of a reemployed annuitant; or

(5) Of a National Guard Technician.

(d) *Definitions.* In this subpart—

(1) *Day* means a calendar day.

(2) *Current continuous employment* means a period of employment immediately preceding a suspension action in the same or similar positions without a break in Federal civilian employment of a workday.

(3) *Similar positions* mean positions in which the duties performed are similar in nature and character and require substantially the same or similar qualifications, so that the incumbent could be interchanged between the positions without significant training or undue interruption to the work.

(4) *Suspension* means the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay.

[45 FR 46778, July 11, 1980, as amended at 46 FR 12191, Feb. 13, 1981; 53 FR 21622, June 9, 1988; 57 FR 20043, May 11, 1992]

§ 752.202 Standard for action.

(a) An agency may take action under this subpart only as set forth in 5 U.S.C. 7503(a).

(b) An agency may not take a suspension against an employee on the basis of any reason prohibited by 5 U.S.C. 2302.

§ 752.203 Procedures.

(a) *Employee entitlements.* An employee under this subpart whose suspension is proposed under this subpart is entitled to the procedures provided in 5 U.S.C. 7503(b).

(b) *Notice of proposed action.* The notice of proposal shall inform the employee of his or her right to review the material which is relied on to support the reasons for action given in the notice.

(c) *Time to answer.* The employee shall be given a reasonable time to answer but not less than 24 hours.

(d) *Representation.* Section 7503(b)(3) of title 5 of the United States Code provides that an employee covered by this part whose suspension is proposed in entitled to be represented during the action by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as a representative would cause a conflict of interest or position, or an employee of the agency whose release from his or her official position would give rise to unreasonable costs or whose priority work assignments preclude his or her release.

(e) *Agency decision.* In arriving at its written decision, the agency shall consider only the reasons specified in the notice of proposed action and shall consider any answer of the empoloyee and/or his or her representative made to a designated official. The agency shall deliver the notice of decision to the employee at or before the time the action will be effective.

(f) *Grievances.* The employee may file a grievance through the agency administrative grievance system under part 771 or, if the suspension falls within the coverage of an applicable negotiated grievance procedure, an employee in an exclusive bargaining unit may file a grievance only under that procedure. Sections 7114(a)(5) and 7121(b)(3) of title 5 U.S.C., and the terms of any collective bargaining agreement govern representation for employees in an exclusive bargaining unit who grieve a suspension under this subpart through the negotiated grievance procedure.

(g) *Agency records.* The agency shall maintain copies of the items specified in 5 U.S.C. 7503(c) and shall furnish them upon request as required by that subsection.

[45 FR 46778, July 11, 1980, as amended at 53 FR 21622, June 9, 1988]

Subpart C—Principal Statutory Requirements for Removal, Suspension for More Than 14 Days, Reduction in Grade or Pay, or Furlough for 30 Days or Less

§ 752.301 Principal statutory requirements.

This subpart incorporates the principal statutory requirements in subchapter II of chapter 75 of title 5, United States Code, for removal, suspension for more than 14 days, reduction in grade or pay, or furlough for 30 days or less.

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

§ 7511. *Definitions; application*

(a) For the purpose of this subchapter—

(1) "employee" means—

(A) An individual in the competitive service—

(i) who is not serving a probationary or trial period under an initial appointment; or

(ii) who has completed 1 year of current continuous service under other than a temporary appointment limited to 1 year or less;

(B) a preference eligible in the excepted service who has completed 1 year of current continuous service in the same or similar positions—

(i) in an executive agency; or

(ii) in the United States Postal Service or Postal Rate Commission; and

(C) an individual in the excepted service other than a preference eligible—

(i) who is not serving a probationary or trial period under an initial appointment pending conversion to the competitive service; or

(ii) who has completed 2 years of current continuous service in the same or similar positions in an executive agency under other than a temporary appointment limited to 2 years or less;

(2) "suspension" has the meaning as set forth in section 7501(2) of this title;

(3) "grade" means a level of classification under a position classification system;

(4) "pay" means the rate of basic pay fixed by law or administrative action for the position held by an employee; and

(5) "furlough" means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.

(b) This subchapter does not apply to an employee—

(1) whose appointment is made by and with the advice and consent of the Senate;

(2) whose position has been determined to be of a confidential, policy-determining, policy-making or policy-advocating character by—

(A) the President for a position that the President has excepted from the competitive service;

(B) the Office of Personnel Management for a position that the Office has excepted from the competitive service; or

(C) the President or the head of an agency for a position excepted from the competitive service by statute;

(3) whose appointment is made by the President;

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(4) who is receiving an annuity from the Civil Service Retirement and Disability Fund, or the Foreign Service Retirement and Disability Fund, based on the service of such employee;

(5) who is described in section 8337(h)(1), relating to technicians in the National Guard;

(6) who is a member of the Foreign Service, as described in section 103 of the Foreign Service Act of 1980;

(7) whose position is with the Central Intelligence Agency, the General Accounting Office, or the Veterans Health Services and Research Administration;

(8) whose position is within the United States Postal Service, the Postal Rate Commission, the Panama Canal Commission, the Tennessee Valley Authority, the Federal Bureau of Investigation, the National Security Agency, the Defense Intelligence Agency, or an intelligence activity of a military department covered under section 1590 of title 10, unless subsection (a)(1)(B) of this section or section 1005(a) of title 39 is the basis for this subchapter's applicability; or

(9) who is described in section 5102(c)(11) of this title.

(c) The Office may provide for the application of this subchapter to any position or group of positions excepted from the competitive service by regulations of the Office which is not otherwise covered by this subchapter.

§ 7512. Actions covered

This Subchapter applies to—

(1) a removal;

(2) a suspension for more than 14 days;

(3) a reduction in grade;

(4) a reduction in pay; and

(5) a furlough of 30 days or less;

but does not apply to—

(A) a suspension or removal under section 7532 of this title,

(B) a reduction-in-force action under section 3502 of this title,

(C) the reduction in grade of a supervisor or manager who has not completed the probationary period under section 3321(a)(2) of this title if such reduction is to the grade held immediately before becoming such a supervisor or manager,

(D) a reduction in grade or removal under section 4303 of this title, or

(E) an action initiated under section 1206 or 7521 of this title.

§ 7513. Cause and procedure

(a) Under regulations prescribed by the Office of Personnel Management, an agency may take an action covered by this subchapter against an employee only for such cause as will promote the efficiency of the service.

(b) An employee against whom an action is proposed is entitled to—

(1) at least 30 days' advance written notice, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, stating the specific reasons for the proposed action;

a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(3) be represented by an attorney or other representative, and

(4) a written decision and the specific reasons therefore at the earliest practicable date.

(c) An agency may provide, by regulation, for a hearing which may be in lieu of or in addition to the opportunity to answer provided under subsection (b)(2) of this section.

(d) An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

(e) Copies of the notice of proposed action, the answer of the employee when written, a summary thereof when made orally, the notice of decision and reasons therefor, and an order effecting an action covered by this subchapter, together with any supporting material, shall be maintained by the agency and shall be furnished to the Board upon its request and to the employee affected upon the employee's request.

§ 7514. Regulations

The Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter, except as it concerns any matter with respect to which the Merit Systems Protection Board may prescribe regulations.

[45 FR 46778, July 11, 1980, as amended at 57 FR 20043, May 11, 1992]

Subpart D—Regulatory Requirements for Removal, Suspension for More Than 14 Days, Reduction in Grade or Pay, or Furlough for 30 Days or Less

§ 752.401 Coverage.

(a) *Adverse actions covered.* This subpart applies to the following actions:

(1) Removals;

(2) Suspensions for more than 14 days, including indefinite suspensions;

(3) Reductions in grade;

(4) Reductions in pay; and

(5) Furloughs of 30 days or less.

(b) *Actions excluded.* This subpart does not apply to:

(1) An action imposed by the Merit Systems Protection Board under the authority of 5 U.S.C. 1206;

(2) The reduction in grade of a supervisor or manager who has not completed the probationary period under 5 U.S.C. 3321(a)(2) if such a reduction is to the grade held immediately before becoming a supervisor or manager;

(3) A reduction-in-force action under 5 U.S.C. 3502;

(4) A reduction in grade or removal under 5 U.S.C. 4303;

(5) An action against an administrative law judge under 5 U.S.C. 7521;

(6) A suspension or removal under 5 U.S.C. 7532;

(7) Actions taken under provision of statute, other than one codified in title 5, United States Code, which excepts the action from subchapter II of chapter 75 of title 5, United States Code;

(8) Action that entitles an employee to grade retention under part 536 of this chapter, and an action to terminate this entitlement;

(9) A voluntary action by the employee;

(10) Action taken or directed by the Office of Personnel Management under part 731 or part 754 of this chapter;

(11) Termination of appointment on the expiration date specified as a basic condition of employment at the time the appointment was made;

(12) Action that terminates a temporary or term promotion and returns the employee to the position from which temporarily promoted, or to a different position of equivalent grade and pay, if the agency informed the employee that it was to be of limited duration;

(13) Cancellation of a promotion to a position not classified prior to the promotion;

(14) Placement of an employee serving on an intermittent or seasonal basis in a temporary nonduty, nonpay status in accordance with conditions established at the time of appointment; or

(15) Reduction of an employee's rate of basic pay from a rate that is contrary to law or regulation.

(c) *Employees covered.* This subpart covers:

(1) An employee in the competitive service who has completed a probationary or trial period;

(2) An employee in the competitive service serving in an appointment that requires no probationary or trial period, and who has completed 1 year of current continuous service in the same or similar positions under other than a temporary appointment limited to 1 year or less;

(3) An employee in the excepted service who is a preference eligible in an Executive agency as defined at 5 U.S.C. 105, the U.S. Postal Service, or the Postal Rate Commission and who has completed 1 year of current continuous service in the same or similar positions;

(4) A Postal Service employee covered by Public Law 100-90 who has completed 1 year of current continuous service in the same or similar positions and who is either a supervisory or management employee or an employee engaged in personnel work in other than a purely nonconfidential clerical capacity;

(5) An employee in the excepted service who is a nonpreference eligible in an Executive agency as defined at 5 U.S.C. 105 and who has completed 2 years of current continuous service in the same or similar positions under other than a temporary appointment limited to 2 years or less;

(6) An employee with competitive status who occupies a position in Schedule B of part 213 of this chapter;

(7) An employee who was in the competitive service at the time his or her position was first listed under Schedule A, B, or C of the excepted service and who still occupies that position; and

(8) An employee of the Government Printing Office.

(d) *Employees excluded.* This subpart does not apply to:

(1) An employee whose appointment is made by and with the advice and consent of the Senate;

(2) An employee whose position has been determined to be of a confidential, policy-determining, policy-making, or policy-advocating character by: The President for a position that

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the President has excepted from the competitive service; the Office of Personnel Management for a position that the Office has excepted from the competitive service (Schedule C); or the President or the head of an agency for a position excepted from the competitive service by statute;

(3) A Presidential appointee;

(4) A reemployed annuitant;

(5) A technician in the National Guard described in 5 U.S.C. 8337(h)(1) who is employed under section 709(b) of title 32;

(6) A Foreign Service member as described in section 103 of the Foreign Service Act of 1980;

(7) An employee of the Central Intelligence Agency, the General Accounting Office, and the Veterans Health Services and Research Administration;

(8) A nonpreference eligible employee with the U.S. Postal Service, the Postal Rate Commission, the Panama Canal Commission, the Tennessee Valley Authority, the Federal Bureau of Investigation, the National Security Agency, the Defense Intelligence Agency, or an intelligence activity of a military department covered under section 1590 of title 10;

(9) An employee described in 5 U.S.C. 5102(c)(11) who is an alien or noncitizen occupying a position outside the United States;

(10) A nonpreference eligible employee serving a probationary or trial period under an initial appointment in the excepted service pending conversion to the competitive service; and

(11) An employee whose agency or position has otherwise been excluded from the appointing and adverse action provisions of title 5 by separate statutory provision.

[53 FR 21622, June 9, 1988, as amended at 57 FR 20043, May 11, 1992]

§ 752.402 Definitions.

(a) *Day* means a calendar day.

(b) *Current continuous employment* means a period of employment or service immediately preceding an adverse action in the same or similar positions without a break in Federal civilian employment of a workday.

(c) *Furlough* means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.

(d) *Grade* means a level of classification under a position classification system.

(e) *Indefinite suspension* means the placing of an employee in a temporary status without duties and pay pending investigation, inquiry, or further agency action. The indefinite suspension continues for an indeterminate period of time and ends with the occurrence of the pending conditions set forth in the notice of action which may include the completion of any subsequent administrative action.

(f) *Pay* means the rate of basic pay fixed by law or administrative action for the position held by the employee, that is, the rate of pay before any deductions and exclusive of additional pay of any kind.

(g) *Similar positions* mean positions in which the duties performed are similar in nature and character and require substantially the same or similar qualifications, so that the incumbent could be interchanged between the positions without significant training or undue interruption to the work.

(h) *Suspension* means the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay for more than 14 days.

[53 FR 21623, June 9, 1988]

§ 752.403 Standard for action.

(a) An agency may take an adverse action, including a performance-based adverse action, under this subpart only such cause as will promote the efficiency of the service.

(b) An agency may not take an adverse action against an employee on the basis of any reason prohibited by 5 U.S.C. 2302.

[45 FR 46778, July 11, 1980, as amended at 53 FR 21622, June 9, 1988]

§ 752.404 Procedures.

(a) *Statutory entitlements.* An employee against whom action is proposed under this subpart is entitled to the procedures provided in 5 U.S.C. 7513(b).

(b) *Notice of proposed action.* (1) The notice of proposal shall inform the employee of his or her right to review the material which is relied on to support the reasons for action given in the notice. The agency may not use material that cannot be disclosed to the employee or his or her representative or designated physician under § 297.204(c) of this chapter to support the reasons in the notice.

(2) When some but not all employees in a given competitive level are being furloughed, the notice of proposal shall state the basis for selecting a particular employee for furlough, as well as the reasons for the furlough.

(3) Under ordinary circumstances, an employee whose removal or suspension, including indefinite suspension, has been proposed shall remain in a duty status in his or her regular position during the advance notice period. In those rare circumstances where the agency determines that the employee's continued presence in the workplace during the notice period may pose a threat to the employee or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests, the agency may elect one or a combination of the following alternatives:

(i) Assigning the employee to duties where he or she is no longer a threat to safety, the agency mission, or to Government property;

(ii) Allowing the employee to take leave, or carrying him or her in an appropriate leave status (annual, sick, leave without pay, or absence without leave) if the employee has absented himself or herself from the worksite without requesting leave;

(iii) Curtailing the notice period when the agency can invoke the provisions of § 752.404(d)(1) of this part, the "crime provision." This provision may be invoked even in the absence of judicial action if the agency has reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed; or

(iv) Placing the employee in a paid, nonduty status for such time as is necessary to effect the action.

(c) *Employee's answer.* (1) The agency shall give the employee a reasonable amount of official time to review the material relied on to support its proposal and to prepare an answer and to secure affidavits, if he or she is otherwise in an active duty status.

(2) The agency shall designate an official to hear the employee's oral answer who has authority either to make or recommend a final decision on the proposed adverse action. The right to answer orally in person does not include the right to a formal hearing with examination of witnesses unless the agency provides one in its regulations in accordance with paragraph (g) of this section.

(3) If the employee wishes the agency to consider any medical condition which may contribute to a conduct, performance, or leave problem, the employee shall be given a reasonable time to furnish medical documentation (as defined in § 339.102 of this chapter) of the condition. Whenever possible, the employee shall supply such documentation within the time limits allowed for an answer. After its review of the medical documentation supplied by the employee, the agency may, if authorized, require a medical examination under the criteria of § 339.301(a)(3) and the procedures of § 339.302 of this chapter, or otherwise, at its option, offer a medical examination in accordance with the criteria of § 339.301(d) and procedures of § 339.302 of this chapter. If the employee has the requisite years of service under the Civil Service Retirement System or the Federal Employees Retirement System, the agency shall provide information concerning disability retirement. The agency shall be aware of the affirmative obligations of the provisions of 29 CFR 1613.704, which require reasonable accommodation of a qualified employee who is handicapped.

(d) *Exceptions.* (1) Section 7512(b) of title 5 of the United States Code authorizes an exception to the 30 days' advance written notice when the agency has reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed and is proposing a removal or suspension (including indefinite suspension). The agency may require the employee to furnish

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any answer to the proposed action, and affidavits and other documentary evidence in support of the answer, within such time as would be reasonable, but not less than 7 days. When the circumstances require that the employee be kept away from the worksite, the agency may place him or her in a nonduty status with pay for such time as is necessary to effect the action.

(2) The advance written notice and opportunity to answer are not necessary for furlough without pay due to unforeseeable circumstances, such as sudden breakdowns in equipment, acts of God, or sudden emergencies requiring immediate curtailment of activities.

(e) *Representation.* Section 7513(b)(3) of title 5 of the United States Code provides that an employee covered by this part is entitled to be represented by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as representative would cause a conflict of interest or position, or an employee of the agency whose release from his or official position would give rise to unreasonable costs or whose priority work assignments preclude his or her release.

(f) *Agency decision.* In arriving at its decision, the agency shall not consider any reasons for action other than those specified in the notice of proposed action. It shall consider any answer of the employee and/or his or her representative made to a designated official and any medical documentation furnished under paragraph (c) of this section. The agency shall deliver the notice of decision to the employee at or before the time the action will be effective, and advise the employee of appeal rights.

(g) *Hearing.* Under 5 U.S.C. 7513(c), the agency may in its regulations provide a hearing in place of or in addition to the opportunity for written and oral answer.

(h) *Applications for disability retirement.* Section 831.501(d) of this chapter provides that an employee's application for disability retirement shall not preclude or delay any other appropriate personnel action. Section 831.1203 of this chapter sets forth the basis under which an agency shall file an application for disability retirement on behalf of an employee.

[45 FR 46778, July 11, 1980, as amended at 48 FR 18349, Apr. 29, 1983; 48 FR 45526, Oct. 6, 1983; 49 FR 1320, Jan. 11, 1984; 53 FR 21623, June 9, 1988]

§ 752.405 Appeal and grievance rights.

(a) *Appeal rights.* Under the provisions of 5 U.S.C. 7513(d), an employee against whom an action is taken under this subpart is entitled to appeal to the Merit Systems Protection Board.

(b) *Grievance rights.* As provided at 5 U.S.C. 7121(e)(1), if a matter covered by this subpart falls within the coverage of an applicable negotiated grievance procedure, and employee may elect to file a grievance under that procedure or appeal to the Merit Systems Protection Board under 5 U.S.C. 7701, but not both. 5 U.S.C. 7114(a)(5) and 7121(b)(3), and the terms of an applicable collective bargaining agreement, govern representation for employees in an exclusive bargaining unit who grieve a matter under this subpart through the negotiated grievance procedure.

[45 FR 46778, July 11, 1980, as amended at 53 FR 21624, June 9, 1988]

§ 752.406 Agency records.

The agency shall maintain copies of the items specified in 5 U.S.C. 7513(e) and shall furnish them upon request as required by that subsection.

Subpart E—Principal Statutory Requirements for Taking Adverse Actions Under the Senior Executive Service

§ 752.501 Principal statutory requirements.

This subpart sets forth for the benefit of the user the statutory requirements of subchapter V of Chapter 75 for suspension for more than 14 days and removal from the civil service. (5 U.S.C. 7541–7543)

"§ 7541. Definitions

"For the purpose of this subchapter—

"(1) 'employee' means a career appointee in the Senior Executive Service who—

"(A) has completed the probationary period prescribed under section 3393(d) of this title; or

"(B) was covered by the provisions of subchapter II of this chapter immediately before appointment to the Senior Executive Service; and

"(2) 'suspension' as the meaning set forth in section 7501(2) of this title.

"§ 7542. Actions covered

"This subchapter applies to a removal from the civil service or suspension for more than 14 days, but does not apply to an action initiated under section 1206 of this title, to a suspension or removal under section 7532 of this title, or to a removal under section 3592 or 3595 of this title.

"§ 7543. Cause and procedure

"(a) Under regulations prescribed by the Office of Personnel Management, an agency may take an action covered by this subchapter against an employee only for misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

"(b) An employee against whom an action covered by this subchapter is proposed is entitled to—

"(1) at least 30 days' advance written notice, unless there is reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment can be imposed, stating specific reasons for the proposed action;

"(2) a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

"(3) be represented by an attorney or other representative; and

"(4) a written decision and specific reasons therefor at the earliest practicable date.

"(c) An agency may provide, by regulation, for a hearing which may be in lieu of or in addition to the opportunity to answer provided under subsection (b)(2) of this section.

"(d) An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

"(e) Copies of the notice of proposed action, the answer of the employee when written, and a summary thereof when made orally, the notice of decision and reasons therefor, and any order effecting an action covered by this subchapter, together with any supporting material, shall be maintained by the agency and shall be furnished to the Merit Systems Protection Board upon its request and to the employee affected upon the employee's request.".

[45 FR 46778, July 11, 1980, as amended at 52 FR 34634, Sept. 14, 1987]

Subpart F—Regulatory Requirements for Taking Adverse Actions Under the Senior Executive Service

Source: 52 FR 34634, Sept. 14, 1987, unless otherwise noted.

§ 752.601 Coverage.

(a) *Adverse actions covered.* This subpart applies to suspensions for more than 14 days and removals from the civil service as set forth in 5 U.S.C. 7542.

(b) *Actions excluded.* (1) An agency may not take a suspension action of 14 days or less.

(2) This subpart does not apply to actions taken under 5 U.S.C. 1206(g), 3592, 3595, or 7532.

(c) *Employees covered.* This subpart covers the following appointees:

(1) A career appointee—

(i) Who has completed the probationary period in the Senior Executive Service;

(ii) Who is not required to serve a probationary period in the Senior Executive Service; or

(iii) Who was covered under 5 U.S.C. 7511 immediately before appointment to the Senior Executive Service.

(2) A limited term or limited emergency appointee—

(i) Who received the limited appointment without a break in service in the same agency as the one in which the employee held a career or career-conditional appointment (or an appointment of equivalent tenure as determined by the Office of Personnel Management) in a permanent civil service position outside the Senior Executive Service; and

(ii) Who was covered under 5 U.S.C. 7511 immediately before appointment to the Senior Executive Service.

(d) *Employees excluded.* This subpart does not cover an appointee who is serving as a reemployed annuitant.

§ 752.602 Definitions.

In this subpart—

Career appointee, limited term appointee, and *limited emergency ap-*

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pointee have the meaning given in 5 U.S.C. 2132(a).

Day means calendar day.

Suspension has the meaning given in 5 U.S.C. 7501(2).

§ 752.603 Standard for action.

(a) An agency may take an adverse action under this subpart only for reasons of misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

(b) An agency may not take an adverse action under this subpart on the basis of any reason prohibited by 5 U.S.C. 2302.

§ 752.604 Procedures.

(a) *Applicability.* The procedures provided in 5 U.S.C. 7543(b) apply to any appointee covered by this subpart.

(b) *Notice of proposed action.* (1) The notice of proposed action shall inform the appointee of his or her right to review the material that is relied on to support the reasons for action given in the notice.

(2) The agency may not use material that cannot be disclosed to the appointee or to the appointee's representative or designated physician under § 297.204(c) of this chapter to support the reasons in the notice.

(3) Under ordinary circumstances, an appointee whose removal has been proposed shall remain in a duty status in his or her regular position during the advance notice period. In those rare circumstances when the agency determines that the appointee's continued presence in the work place during the notice period may pose a threat to the appointee or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests, the agency shall consider whether any of the following alternatives is feasible:

(i) Assigning the appointee to duties where he or she is no longer a threat to safety, the agency mission, or Government property;

(ii) Placing the appointee on leave with his or her consent;

(iii) Carrying the appointee on appropriate leave (annual or sick leave, leave without pay, or absence without leave) if he or she is voluntarily absent for reasons not originating with the agency; or

(iv) Curtailing the notice period when the agency can invoke the provisions of paragraph (d) of this section (the "crime provision").

(4) If none of the alternatives in paragraph (b)(3) of this section, is available, agencies may consider placing the appointee in a paid, nonduty status during all or part of the advance notice period.

(c) *Appointee's answer.* (1) The agency shall give the appointee a reasonable amount of official time to review the material relied on to support its proposed action, to prepare an answer orally and in writing, and to secure affidavits, if the appointee is in an active duty status.

(2) The agency shall designate an official to hear the appointee's oral answer who has authority either to make or to recommend a final decision on the proposed adverse action.

(3) The right to answer orally in person does not include the right to a formal hearing with examination of witnesses unless the agency provides for a formal hearing in its regulations in accordance with paragraph (g) of this section.

(4) If the appointee wishes the agency to consider any medical condition that may have affected the basis for the adverse action, the appointee shall be given reasonable time to furnish medical documentation of the condition. The same procedures that are applicable in § 752.404(c)(3) of this chapter are also applicable for an appointee in the Senior Executive Service.

(d) *Exception.* Section 7543(b)(1) of title 5 of the United States Code authorizes an exception to the 30 days' advance written notice when the crime provision is invoked. This provision may be invoked even in the absence of judicial action if the agency has reasonable cause to believe that the appointee has committed a crime for which a sentence of imprisonment may be imposed. The agency may require the appointee to furnish any answer to the proposed action, and affidavits and other documentary evidence to support the answer, within such time as under the circumstances would be reasonable, but not less than 7 days. When the circumstances require immediate action, the agency may place the appointee in a nonduty status with pay for such time as is necessary to effect the action.

(e) *Representation.* (1) Under 5 U.S.C. 7543(b)(3), an appointee covered by this subpart is entitled to be represented by an attorney or other representative.

(2) An agency may disallow as an appointee's representative—

(i) An individual whose activities as a representative would cause a conflict of interest or position;

(ii) An employee of the agency whose release from his or her official position would give rise to unreasonable costs; or

(iii) An employee of the agency whose priority work assignments preclude the employee's release.

(f) *Agency decision.* In arriving at its written decision, the agency may consider only the reasons specified in the notice of proposed action. The agency shall consider any reply of the appointee or the appointee's representative made to a designated official and any medical documentation furnished under paragraph (c) of this section. The agency shall deliver the notice of decision to the appointee at or before the time the action will be effective. The notice of decision shall inform the appointee of his or her appeal rights.

(g) *Hearing.* Under 5 U.S.C. 7543(c), the agency may, in its regulations, provide a hearing in place of or in addition to the opportunity for written and oral reply.

§ 752.605 Appeal rights.

(a) Under 5 U.S.C. 7543(d), a career appointee against whom an action is taken under this subpart is entitled to appeal to the Merit Systems Protection Board.

(b) A limited term or limited emergency appointee who is covered under § 752.601(c)(2) also may appeal an action taken under this subpart to the Merit Systems Protection Board.

§ 752.606 Agency records.

The agency shall maintain copies of the adverse action record items specified in 5 U.S.C. 7543(e) and furnish them upon request as required by that subsection.

PART 754—[RESERVED]

PART 771—AGENCY ADMINISTRATIVE GRIEVANCE SYSTEM

Subpart A—General

Subpart B—Establishment and Administration of the Agency Administrative Grievance System

AUTHORITY: 5 U.S.C. 1302, 3301, 3302, 7301; E.O. 9830, 3 CFR 1943–1948 Comp., pp. 606–624; E.O. 11222, 3 CFR 1964–1965 Comp., p. 306.

SOURCE: 57 FR 56780, Nov. 30, 1992, unless otherwise noted.

Subpart A—General

§ 771.101 Purpose.

The purpose of the agency administrative grievance system is to provide a fair, equitable, and timely forum for internal review and resolution of disputes on employment-related matters arising within Federal agencies. This part sets forth requirements for the establishment and administration of agency administrative grievance systems.

§ 771.102 Definitions.

In this part:

Agency activity includes an organizational entity or geographical subdivision of an agency.

Bargaining unit employee means an employee included in an appropriate exclusive bargaining unit as determined by the Federal Labor Relations Authority.

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