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

752.601 Coverage.
752.602 Definitions.
752.603 Standard for action.
752.604 Procedures.
752.605 Appeal rights.
752.606 Agency records.

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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.

(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) An employee of the Department of Veterans Affairs appointed under section 7401(3) of title 38, United States Code; and

(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. 7531;

(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; 58 FR 13192, Mar. 10, 1993]

§ 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 an agency administrative grievance system (if applicable) 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; 60 FR 47040, Sept. 11, 1995]

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;

(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 within the Central Intelligence Agency or the General Accounting Office;

(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;

(9) Who is described in section 5102(c)(11) of this title; or

(10) Who holds a position with the Veterans Health Administration which has been excluded from the competitive service by or under a provision of title 38, unless such employee was appointed to such position under section 7401(3) of such 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,