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(10) An employee described in section 5102(c)(11) of title 5, United States Code, who is an alien or noncitizen occupying a position outside the United States;

(11) 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

(12) An employee whose agency or position has been excluded from the appointing provisions of title 5, United States Code, by separate statutory authority in the absence of any provision to place the employee within the coverage of chapter 75 of title 5, United States Code.

[53 FR 21622, June 9, 1988, as amended at 58 FR 13192, Mar. 10, 1993]

§ 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 postions 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 21623, 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 of 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