

ment as a law enforcement officer on the last day of the first applicable pay period following the conviction notice date.

(c)(1) This section does not prohibit the removal of an individual from employment as a law enforcement officer before a conviction notice date if the removal is properly effected other than under this section.

(2) This section does not prohibit the employment of any individual in any position other than that of a law enforcement officer.

(d) If the conviction is overturned on appeal, the removal shall be set aside retroactively to the date on which the removal occurred, with back pay under section 5596 for the period during which the removal was in effect, unless the removal was properly effected other than under this section.

(e)(1) If removal is required under this section, the agency shall deliver written notice to the employee as soon as practicable, and not later than 5 calendar days after the conviction notice date. The notice shall include a description of the specific reasons for the removal, the date of removal, and the procedures made applicable under paragraph (2).

(2) The procedures under section 7513(b)(2), (3), and (4), (c), (d), and (e) shall apply to any removal under this section. The employee may use the procedures to contest or appeal a removal, but only with respect to whether—

- (A) the employee is a law enforcement officer;
- (B) the employee was convicted of a felony; or
- (C) the conviction was overturned on appeal.

(3) A removal required under this section shall occur on the date specified in subsection (b) regardless of whether the notice required under paragraph (1) of this subsection and the procedures made applicable under paragraph (2) of this subsection have been provided or completed by that date.

(Added Pub. L. 106-554, § 1(a)(3) [title VI, § 639(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-168.)

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Pub. L. 106-554, § 1(a)(3) [title VI, § 639(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A-168, provided that: “The amendments made by this section [enacting this subchapter] shall take effect 30 days after the date of enactment of this Act [Dec. 21, 2000] and shall apply to any conviction of a felony entered by a Federal or State court on or after that date.”

### CHAPTER 75—ADVERSE ACTIONS

#### SUBCHAPTER I—SUSPENSION OF<sup>1</sup> 14 DAYS OR LESS

Sec.	
7501.	Definitions.
7502.	Actions covered.
7503.	Cause and procedure.
7504.	Regulations.

#### SUBCHAPTER II—REMOVAL, SUSPENSION FOR MORE THAN 14 DAYS, REDUCTION IN GRADE OR PAY, OR FURLOUGH FOR 30 DAYS OR LESS

7511.	Definitions; application.
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7512.	Actions covered.
7513.	Cause and procedure.
7514.	Regulations.
7515.	Discipline of supervisors based on retaliation against whistleblowers.

#### SUBCHAPTER III—ADMINISTRATIVE LAW JUDGES

7521.	Actions against administrative law judges.
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#### SUBCHAPTER IV—NATIONAL SECURITY

7531.	Definitions.
7532.	Suspension and removal.
7533.	Effect on other statutes.

#### SUBCHAPTER V—SENIOR EXECUTIVE SERVICE

7541.	Definitions.
7542.	Actions covered.
7543.	Cause and procedure.

#### Editorial Notes

##### AMENDMENTS

2017—Pub. L. 115-91, div. A, title X, § 1097(e)(2), Dec. 12, 2017, 131 Stat. 1622, added item 7515 and struck out former item 7515 “Discipline of supervisors based on retaliation against whistleblowers”. Item was added to and stricken from analysis for this chapter, notwithstanding directory language adding item to, and striking item from, analysis for subchapter II of this chapter.

Pub. L. 115-73, title I, § 104(b), Oct. 26, 2017, 131 Stat. 1238, added item 7515. Item was added to analysis for this chapter, notwithstanding directory language adding item to analysis for subchapter II of this chapter.

1978—Pub. L. 95-454, title II, § 204(b), title IV, § 411(1), Oct. 13, 1978, 92 Stat. 1137, 1173, substituted “SUSPENSION OF 14 DAYS OR LESS” for “COMPETITIVE SERVICE” in subchapter heading, substituted “Definitions” for “Cause; procedure; exception” in item 7501, added items 7502 to 7504, substituted “REMOVAL, SUSPENSION FOR MORE THAN 14 DAYS, REDUCTION IN GRADE OR PAY, OR FURLOUGH FOR 30 DAYS OR LESS” for “PREFERENCE ELIGIBLES” in subchapter II heading, inserted “; application” in item 7511, substituted “Actions covered” for “Cause; procedure; exception” in item 7512, added items 7513 and 7514, substituted “ADMINISTRATIVE LAW JUDGES” for “HEARING EXAMINERS” in subchapter III heading, substituted “Actions against administrative law judges” for “Removal” in item 7521, and added subchapter V heading and items 7541 to 7543.

#### Executive Documents

EX. ORD. NO. 13839. PROMOTING ACCOUNTABILITY AND STREAMLINING REMOVAL PROCEDURES CONSISTENT WITH MERIT SYSTEM PRINCIPLES

Ex. Ord. No. 13839, May 25, 2018, 83 F.R. 25343, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 1104(a)(1), 3301, and 7301 of title 5, United States Code, and section 301 of title 3, United States Code, and to ensure the effective functioning of the executive branch, it is hereby ordered as follows:

SECTION 1. *Purpose.* Merit system principles call for holding Federal employees accountable for performance and conduct. They state that employees should maintain high standards of integrity, conduct, and concern for the public interest, and that the Federal workforce should be used efficiently and effectively. They further state that employees should be retained based on the adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards. Unfortunately, implementation of America’s civil service laws has fallen far short of these ideals. The Federal Employee

<sup>1</sup>So in original. Does not conform to subchapter heading.

Viewpoint Survey has consistently found that less than one-third of Federal employees believe that the Government deals with poor performers effectively. Failure to address unacceptable performance and misconduct undermines morale, burdens good performers with subpar colleagues, and inhibits the ability of executive agencies (as defined in section 105 of title 5, United States Code, but excluding the Government Accountability Office) (agencies) to accomplish their missions. This order advances the ability of supervisors in agencies to promote civil servant accountability consistent with merit system principles while simultaneously recognizing employees' procedural rights and protections.

**SEC. 2. Principles for Accountability in the Federal Workforce.** (a) Removing unacceptable performers should be a straightforward process that minimizes the burden on supervisors. Agencies should limit opportunity periods to demonstrate acceptable performance under section 4302(c)(6) of title 5, United States Code, to the amount of time that provides sufficient opportunity to demonstrate acceptable performance.

(b) Supervisors and deciding officials should not be required to use progressive discipline. The penalty for an instance of misconduct should be tailored to the facts and circumstances.

(c) Each employee's work performance and disciplinary history is unique, and disciplinary action should be calibrated to the specific facts and circumstances of each individual employee's situation. Conduct that justifies discipline of one employee at one time does not necessarily justify similar discipline of a different employee at a different time -- particularly where the employees are in different work units or chains of supervision -- and agencies are not prohibited from removing an employee simply because they did not remove a different employee for comparable conduct. Nonetheless, employees should be treated equitably, so agencies should consider appropriate comparators as they evaluate potential disciplinary actions.

(d) Suspension should not be a substitute for removal in circumstances in which removal would be appropriate. Agencies should not require suspension of an employee before proposing to remove that employee, except as may be appropriate under applicable facts.

(e) When taking disciplinary action, agencies should have discretion to take into account an employee's disciplinary record and past work record, including all past misconduct -- not only similar past misconduct. Agencies should provide an employee with appropriate notice when taking a disciplinary action.

(f) To the extent practicable, agencies should issue decisions on proposed removals taken under chapter 75 of title 5, United States Code [5 U.S.C. 7501 et seq.], within 15 business days of the end of the employee reply period following a notice of proposed removal.

(g) To the extent practicable, agencies should limit the written notice of adverse action to the 30 days prescribed in section 7513(b)(1) of title 5, United States Code.

(h) The removal procedures set forth in chapter 75 of title 5, United States Code (Chapter 75 procedures), should be used in appropriate cases to address instances of unacceptable performance.

(i) A probationary period should be used as the final step in the hiring process of a new employee. Supervisors should use that period to assess how well an employee can perform the duties of a job. A probationary period can be a highly effective tool to evaluate a candidate's potential to be an asset to an agency before the candidate's appointment becomes final.

(j) Following issuance of regulations under section 7 of this order, agencies should prioritize performance over length of service when determining which employees will be retained following a reduction in force.

**SEC. 3. Standard for Negotiating Grievance Procedures.** Whenever reasonable in view of the particular circumstances, agency heads shall endeavor to exclude from the application of any grievance procedures negotiated under section 7121 of title 5, United States Code, any dispute concerning decisions to remove any employee

from Federal service for misconduct or unacceptable performance. Each agency shall commit the time and resources necessary to achieve this goal and to fulfill its obligation to bargain in good faith. If an agreement cannot be reached, the agency shall, to the extent permitted by law, promptly request the assistance of the Federal Mediation and Conciliation Service and, as necessary, the Federal Service Impasses Panel in the resolution of the disagreement. Within 30 days after the adoption of any collective bargaining agreement that fails to achieve this goal, the agency head shall provide an explanation to the President, through the Director of the Office of Personnel Management (OPM Director).

**SEC. 4. Managing the Federal Workforce.** To promote good morale in the Federal workforce, employee accountability, and high performance, and to ensure the effective and efficient accomplishment of agency missions and the efficiency of the Federal service, to the extent consistent with law, no agency shall:

(a) subject to grievance procedures or binding arbitration disputes concerning:

(i) the assignment of ratings of record; or  
(ii) the award of any form of incentive pay, including cash awards; quality step increases; or recruitment, retention, or relocation payments;

(b) make any agreement, including a collective bargaining agreement:

(i) that limits the agency's discretion to employ Chapter 75 procedures to address unacceptable performance of an employee;

(ii) that requires the use of procedures under chapter 43 of title 5, United States Code [5 U.S.C. 4301 et seq.] (including any performance assistance period or similar informal period to demonstrate improved performance prior to the initiation of an opportunity period under section 4302(c)(6) of title 5, United States Code), before removing an employee for unacceptable performance; or

(iii) that limits the agency's discretion to remove an employee from Federal service without first engaging in progressive discipline; or

(c) generally afford an employee more than a 30-day period to demonstrate acceptable performance under section 4302(c)(6) of title 5, United States Code, except when the agency determines in its sole and exclusive discretion that a longer period is necessary to provide sufficient time to evaluate an employee's performance.

**SEC. 5. Ensuring Integrity of Personnel Files.** Agencies shall not agree to erase, remove, alter, or withhold from another agency any information about a civilian employee's performance or conduct in that employee's official personnel records, including an employee's Official Personnel Folder and Employee Performance File, as part of, or as a condition to, resolving a formal or informal complaint by the employee or settling an administrative challenge to an adverse personnel action.

**SEC. 6. Data Collection of Adverse Actions.** (a) For fiscal year 2018, and for each fiscal year thereafter, each agency shall provide a report to the OPM Director containing the following information:

(i) the number of civilian employees in a probationary period or otherwise employed for a specific term who were removed by the agency;

(ii) the number of civilian employees reprimanded in writing by the agency;

(iii) the number of civilian employees afforded an opportunity period by the agency under section 4302(c)(6) of title 5, United States Code, breaking out the number of such employees receiving an opportunity period longer than 30 days;

(iv) the number of adverse personnel actions taken against civilian employees by the agency, broken down by type of adverse personnel action, including reduction in grade or pay (or equivalent), suspension, and removal;

(v) the number of decisions on proposed removals by the agency taken under chapter 75 of title 5, United States Code, not issued within 15 business days of the end of the employee reply period;

(vi) the number of adverse personnel actions by the agency for which employees received written notice in

excess of the 30 days prescribed in section 7513(b)(1) of title 5, United States Code;

(vii) the number and key terms of settlements reached by the agency with civilian employees in cases arising out of adverse personnel actions; and

(viii) the resolutions of litigation about adverse personnel actions involving civilian employees reached by the agency.

(b) Compilation and submission of the data required by subsection (a) of this section shall be conducted in accordance with all applicable laws, including those governing privacy and data security.

(c) To enhance public accountability of agencies for their management of the Federal workforce, the OPM Director shall, consistent with applicable law, publish the information received under subsection (a) of this section, at the minimum level of aggregation necessary to protect personal privacy. The OPM Director may withhold particular information if publication would unduly risk disclosing information protected by law, including personally identifiable information.

(d) Within 60 days of the date of this order [May 25, 2018], the OPM Director shall issue guidance regarding the implementation of this section, including with respect to any exemptions necessary for compliance with applicable law and the reporting format for submissions required by subsection (a) of this section.

**SEC. 7. Implementation.** (a) Within 45 days of the date of this order, the OPM Director shall examine whether existing regulations effectuate the principles set forth in section 2 of this order and the requirements of sections 3, 4, 5, and 6 of this order. To the extent necessary or appropriate, the OPM Director shall, as soon as practicable, propose for notice and public comment appropriate regulations to effectuate the principles set forth in section 2 of this order and the requirements of sections 3, 4, 5, and 6 of this order.

(b) The head of each agency shall take steps to conform internal agency discipline and unacceptable performance policies to the principles and requirements of this order. To the extent consistent with law, each agency head shall:

(i) within 45 days of this order, revise its discipline and unacceptable performance policies to conform to the principles and requirements of this order, in areas where new final Office of Personnel Management (OPM) regulations are not required, and shall further revise such policies as necessary to conform to any new final OPM regulations, within 45 days of the issuance of such regulations; and

(ii) renegotiate, as applicable, any collective bargaining agreement provisions that are inconsistent with any part of this order or any final OPM regulations promulgated pursuant to this order. Each agency shall give any contractually required notice of its intent to alter the terms of such agreement and reopen negotiations. Each agency shall, to the extent consistent with law, subsequently conform such terms to the requirements of this order, and to any final OPM regulations issued pursuant to this order, on the earliest practicable date permitted by law.

(c) Within 15 months of the adoption of any final rules issued pursuant to subsection (a) of this section, the OPM Director shall submit to the President a report, through the Director of the Office of Management and Budget, evaluating the effect of those rules, including their effect on the ability of Federal supervisors to hold employees accountable for their performance.

(d) Within a reasonable amount of time following the adoption of any final rules issued pursuant to subsection (a) of this section, the OPM Director and the Chief Human Capital Officers Council shall undertake a Government-wide initiative to educate Federal supervisors about holding employees accountable for unacceptable performance or misconduct under those rules.

**SEC. 8. General Provisions.** (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) Agencies shall consult with employee labor representatives about the implementation of this order. Nothing in this order shall abrogate any collective bargaining agreement in effect on the date of this order.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(e) If any provision of this order, including any of its applications, is held to be invalid, the remainder of this order and all of its other applications shall not be affected thereby.

DONALD J. TRUMP.

[Ex. Ord. No. 13839, set out above, construed to be amended to the extent necessary, by Memorandum of President of the United States, Oct. 11, 2019, 84 F.R. 56095, set out as a note under section 7101 of this title.]

## SUBCHAPTER I—SUSPENSION FOR 14 DAYS OR LESS

### Editorial Notes

#### AMENDMENTS

1978—Pub. L. 95-454, title II, § 204(a), Oct. 13, 1978, 92 Stat. 1134, substituted “SUSPENSION FOR 14 DAYS OR LESS” for “COMPETITIVE SERVICE” in subchapter heading.

### § 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, except as provided in section 1599e of title 10, 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.

(Added Pub. L. 95-454, title II, § 204(a), Oct. 13, 1978, 92 Stat. 1134; amended Pub. L. 114-92, div. A, title XI, § 1105(c)(3), Nov. 25, 2015, 129 Stat. 1024.)

#### PRIOR PROVISIONS

A prior section 7501, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 527, related to removal or suspension without pay of an individual in the competitive service and procedures applicable to such removal or suspension, prior to repeal by Pub. L. 95-454, § 204(a).

#### AMENDMENTS

2015—Par. (1). Pub. L. 114-92 substituted “or, except as provided in section 1599e of title 10, who” for “or who”.

#### EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

#### SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101-376, §1, Aug. 17, 1990, 104 Stat. 461, provided that: “This Act [amending sections 4303, 7511, and 7701 of this title and enacting provisions set out as notes under section 4303 of this title] may be cited as the ‘Civil Service Due Process Amendments’.”

**§ 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 1215 of this title.

(Added Pub. L. 95-454, title II, § 204(a), Oct. 13, 1978, 92 Stat. 1135; amended Pub. L. 101-12, § 9(a)(2), Apr. 10, 1989, 103 Stat. 35.)

**Editorial Notes****AMENDMENTS**

1989—Pub. L. 101-12 substituted “1215” for “1206”.

**Statutory Notes and Related Subsidiaries****EFFECTIVE DATE OF 1989 AMENDMENT**

Amendment by Pub. L. 101-12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101-12, set out as a note under section 1201 of this title.

**EFFECTIVE DATE**

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 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<sup>1</sup> 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.

(Added Pub. L. 95-454, title II, § 204(a), Oct. 13, 1978, 92 Stat. 1135.)

**Statutory Notes and Related Subsidiaries****EFFECTIVE DATE**

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

**INFORMATION ON APPEAL RIGHTS**

Pub. L. 115-91, div. A, title X, § 1097(b)(2), Dec. 12, 2017, 131 Stat. 1617, provided that:

<sup>1</sup> So in original. Probably should be “affecting”.

“(A) IN GENERAL.—Any notice provided to an employee under section 7503(b)(1), section 7513(b)(1), or section 7543(b)(1) of title 5, United States Code, shall include detailed information with respect to—

“(i) the right of the employee to appeal an action brought under the applicable section;

“(ii) the forums in which the employee may file an appeal described in clause (i); and

“(iii) any limitations on the rights of the employee that would apply because of the forum in which the employee decides to file an appeal.

“(B) DEVELOPMENT OF INFORMATION.—The information described in subparagraph (A) shall be developed by the Director of the Office of Personnel Management, in consultation with the Special Counsel, the Merit Systems Protection Board, and the Equal Employment Opportunity Commission.”

**§ 7504. Regulations**

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

(Added Pub. L. 95-454, title II, § 204(a), Oct. 13, 1978, 92 Stat. 1135.)

**Statutory Notes and Related Subsidiaries****EFFECTIVE DATE**

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

**SUBCHAPTER II—REMOVAL, SUSPENSION FOR MORE THAN 14 DAYS, REDUCTION IN GRADE OR PAY, OR FURLOUGH FOR 30 DAYS OR LESS****Editorial Notes****AMENDMENTS**

1978—Pub. L. 95-454, title II, § 204(a), Oct. 13, 1978, 92 Stat. 1135, substituted “REMOVAL, SUSPENSION FOR MORE THAN 14 DAYS, REDUCTION IN GRADE OR PAY, OR FURLOUGH FOR 30 DAYS OR LESS” for “PREFERENCE ELIGIBLES” in subchapter heading.

**§ 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) except as provided in section 1599e of title 10, 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 Regulatory 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 same 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) Repealed. Pub. L. 114-328, div. A, title V, §512(c), Dec. 23, 2016, 130 Stat. 2112.]
- (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 Government Accountability Office;
- (8) whose position is within the United States Postal Service, the Postal Regulatory Commission, the Panama Canal Commission, the Tennessee Valley Authority, the Federal Bureau of Investigation, an intelligence component of the Department of Defense (as defined in section 1614 of title 10), or an intelligence activity of a military department covered under subchapter I of chapter 83 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 within 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 regulation of the Office which is not otherwise covered by this subchapter.

(Added Pub. L. 95-454, title II, §204(a), Oct. 13, 1978, 92 Stat. 1135; amended Pub. L. 101-376, §2(a), Aug. 17, 1990, 104 Stat. 461; Pub. L. 102-378, §6(a), Oct. 2, 1992, 106 Stat. 1358; Pub. L. 103-359, title V, §501(l), Oct. 14, 1994, 108 Stat. 3430; Pub. L. 104-201, div. A, title XVI, §1634(b), Sept. 23, 1996, 110 Stat. 2752; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814; Pub. L. 109-435, title VI, §604(b), (f), Dec. 20, 2006, 120 Stat. 3241, 3242; Pub. L. 114-92, div. A, title XI, §1105(c)(4), Nov. 25, 2015, 129 Stat. 1024; Pub. L. 114-328, div. A, title V, §512(c), Dec. 23, 2016, 130 Stat. 2112.)

#### Editorial Notes

#### REFERENCES IN TEXT

Section 103 of the Foreign Service Act of 1980, referred to in subsec. (b)(6), is classified to section 3903 of Title 22, Foreign Relations and Intercourse.

#### PRIOR PROVISIONS

A prior section 7511, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 528; Pub. L. 94-183, §2(30), Dec. 31, 1975, 89 Stat. 1058, defined “preference eligible employee” and “adverse action” for purposes of this subchapter, prior to repeal by Pub. L. 95-454, §204(a).

#### AMENDMENTS

2016—Subsec. (b)(5). Pub. L. 114-328 struck out par. (5) which read as follows: “who is described in section 8337(h)(1), relating to technicians in the National Guard.”

2015—Subsec. (a)(1)(A)(ii). Pub. L. 114-92 inserted “except as provided in section 1599e of title 10,” before “who”.

2006—Subsec. (a)(1)(B)(ii). Pub. L. 109-435, §604(b), substituted “Postal Regulatory Commission” for “Postal Rate Commission”.

Subsec. (b)(8). Pub. L. 109-435, §604(f), substituted “Postal Regulatory Commission” for “Postal Rate Commission”.

2004—Subsec. (b)(7). Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office”.

1996—Subsec. (b)(8). Pub. L. 104-201 substituted “an intelligence component of the Department of Defense (as defined in section 1614 of title 10), or an intelligence activity of a military department covered under subchapter I of chapter 83 of title 10” for “the National Security Agency, the Defense Intelligence Agency, the Central Imagery Office, or an intelligence activity of a military department covered under section 1590 of title 10”.

1994—Subsec. (b)(8). Pub. L. 103-359 inserted “the Central Imagery Office,” after “Defense Intelligence Agency.”

1992—Subsec. (b)(7). Pub. L. 102-378, §6(a)(1), amended par. (7) generally. Prior to amendment, par. (7) read as follows: “whose position is with the Central Intelligence Agency, the General Accounting Office, or the Veterans Health Services and Research Administration;”.

Subsec. (b)(10). Pub. L. 102-378, §6(a)(2)-(4), added par. (10).

1990—Pub. L. 101-376 amended section generally. Prior to amendment, section read as follows:

“(a) For the purpose of this subchapter—

“(1) ‘employee’ means—

“(A) 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 under other than a temporary appointment limited to 1 year or less; and

“(B) a preference eligible in an Executive agency in the excepted service, and a preference eligible in the United States Postal Service or the Postal Rate Commission, who has completed 1 year of current continuous service in the same or similar positions;

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

“(B) the President or the head of an agency for a position which is excepted from the competitive service by statute.

“(c) The Office may provide for the application of this subchapter to any position or group of positions excepted from the competitive service by regulation of the Office.”

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-201 effective Oct. 1, 1996, see section 1635 of Pub. L. 104-201, set out as a note under section 1593 of Title 10, Armed Forces.

##### EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102-378, §6(b), Oct. 2, 1992, 106 Stat. 1359, provided that:

“(1) The amendments made by subsection (a) [amending this section] shall apply with respect to any personnel action taking effect on or after the date of enactment of this Act [Oct. 2, 1992].

“(2) In the case of an employee or former employee of the Veterans Health Administration (or predecessor agency in name)—

“(A) against whom an adverse personnel action was taken before the date of enactment of this Act,

“(B) who, as a result of the enactment of the Civil Service Due Process Amendments (5 U.S.C. 7501 note) [Pub. L. 101-376], became ineligible to appeal such action to the Merit Systems Protection Board,

“(C) as to whom that appeal right is restored as a result of the enactment of subsection (a), or would have been restored but for the passage of time, and

“(D) who is not precluded, by section 7121(e)(1) of title 5, United States Code, from appealing to the Merit Systems Protection Board, the deadline for bringing an appeal under section 7513(d) or section 4303(e) of such title with respect to such action shall be the latter of—

“(i) the 60th day after the date of enactment of this Act; or

“(ii) the deadline which would otherwise apply if this paragraph had not been enacted.”

##### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-376 applicable with respect to any personnel action taking effect on or after Aug. 17, 1990, see section 2(c) of Pub. L. 101-376, set out as a note under section 4303 of this title.

##### EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

#### § 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,

(E) an action initiated under section 1215 or 7521 of this title, or

(F) a suitability action taken by the Office under regulations prescribed by the Office, subject to the rules prescribed by the President under this title for the administration of the competitive service.

(Added Pub. L. 95-454, title II, §204(a), Oct. 13, 1978, 92 Stat. 1136; amended Pub. L. 101-12, §9(a)(2), Apr. 10, 1989, 103 Stat. 35; Pub. L. 114-92, div. A, title X, §1086(f)(9), Nov. 25, 2015, 129 Stat. 1010.)

#### Editorial Notes

##### PRIOR PROVISIONS

A prior section 7512, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 528, related to adverse action against a preference eligible employee and procedures applicable to such adverse action, prior to repeal by Pub. L. 95-454, §204(a).

##### AMENDMENTS

2015—Par. (F). Pub. L. 114-92 added par. (F).

1989—Par. (E). Pub. L. 101-12 substituted “1215” for “1206”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101-12, set out as a note under section 1201 of this title.

##### EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 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;

(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 the 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, 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 Board upon its request and to the employee affected upon the employee's request.

(Added Pub. L. 95-454, title II, § 204(a), Oct. 13, 1978, 92 Stat. 1136.)

#### **Statutory Notes and Related Subsidiaries**

##### **EFFECTIVE DATE**

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

#### **§ 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.

(Added Pub. L. 95-454, title II, § 204(a), Oct. 13, 1978, 92 Stat. 1137.)

#### **Statutory Notes and Related Subsidiaries**

##### **EFFECTIVE DATE**

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

#### **§ 7515. Discipline of supervisors based on retaliation against whistleblowers**

(a) **DEFINITIONS.**—In this section—

(1) the term “agency”—

(A) has the meaning given the term in section 2302(a)(2)(C), without regard to whether any other provision of this chapter is applicable to the entity; and

(B) does not include any entity that is an element of the intelligence community, as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 3003);

(2) the term “prohibited personnel action” means taking or failing to take an action in violation of paragraph (8), (9), or (14) of section 2302(b) against an employee of an agency; and

(3) the term “supervisor” means an employee who would be a supervisor, as defined

in section 7103(a), if the entity employing the employee was an agency.

##### **(b) PROPOSED DISCIPLINARY ACTIONS.—**

(1) **IN GENERAL.**—Subject to section 1214(f), if the head of the agency in which a supervisor is employed, an administrative law judge, the Merit Systems Protection Board, the Special Counsel, a judge of the United States, or the Inspector General of the agency in which a supervisor is employed has determined that the supervisor committed a prohibited personnel action, the head of the agency in which the supervisor is employed, consistent with the procedures required under paragraph (2)—

(A) for the first prohibited personnel action committed by the supervisor—

(i) shall propose suspending the supervisor for a period that is not less than 3 days; and

(ii) may propose an additional action determined appropriate by the head of the agency, including a reduction in grade or pay; and

(B) for the second prohibited personnel action committed by the supervisor, shall propose removing the supervisor.

##### **(2) PROCEDURES.—**

(A) **NOTICE.**—A supervisor against whom an action is proposed to be taken under paragraph (1) is entitled to written notice that—

(i) states the specific reasons for the proposed action; and

(ii) informs the supervisor about the right of the supervisor to review the material that is relied on to support the reasons given in the notice for the proposed action.

##### **(B) ANSWER AND EVIDENCE.—**

(i) **IN GENERAL.**—A supervisor who receives notice under subparagraph (A) may, not later than 14 days after the date on which the supervisor receives the notice, submit an answer and furnish evidence in support of that answer.

(ii) **NO EVIDENCE FURNISHED; INSUFFICIENT EVIDENCE FURNISHED.**—If, after the end of the 14-day period described in clause (i), a supervisor does not furnish any evidence as described in that clause, or if the head of the agency in which the supervisor is employed determines that the evidence furnished by the supervisor is insufficient, the head of the agency shall carry out the action proposed under subparagraph (A) or (B) of paragraph (1), as applicable.

(C) **SCOPE OF PROCEDURES.**—An action carried out under this section—

(i) except as provided in clause (ii), shall be subject to the same requirements and procedures, including those with respect to an appeal, as an action under section 7503, 7513, or 7543; and

(ii) shall not be subject to—

(I) paragraphs (1) and (2) of section 7503(b);

(II) paragraphs (1) and (2) of subsection

(b) and subsection (c) of section 7513; and

(III) paragraphs (1) and (2) of subsection (b) and subsection (c) of section 7543.

(3) NON-DELEGATION.—If the head of an agency is responsible for determining whether a supervisor has committed a prohibited personnel action for purposes of paragraph (1), the head of the agency may not delegate that responsibility.

(Added Pub. L. 115-91, div. A, title X, § 1097(e)(1)(B), Dec. 12, 2017, 131 Stat. 1621.)

#### Editorial Notes

##### PRIOR PROVISIONS

A prior section 7515, Pub. L. 115-73, title I, § 104(a), Oct. 26, 2017, 131 Stat. 1236, related to discipline of supervisors based on retaliation against whistleblowers, prior to repeal by Pub. L. 115-91, div. A, title X, § 1097(e)(1)(A), Dec. 12, 2017, 131 Stat. 1621.

#### SUBCHAPTER III—ADMINISTRATIVE LAW JUDGES

#### Editorial Notes

##### AMENDMENTS

1978—Pub. L. 95-454, title II, § 204(a), Oct. 13, 1978, 92 Stat. 1137, substituted “ADMINISTRATIVE LAW JUDGES” for “HEARING EXAMINERS” in subchapter heading.

#### § 7521. Actions against administrative law judges

(a) An action may be taken against an administrative law judge appointed under section 3105 of this title by the agency in which the administrative law judge is employed only for good cause established and determined by the Merit Systems Protection Board on the record after opportunity for hearing before the Board.

(b) The actions covered by this section are—

- (1) a removal;
- (2) a suspension;
- (3) a reduction in grade;
- (4) a reduction in pay; and
- (5) a furlough of 30 days or less;

but do not include—

- (A) a suspension or removal under section 7532 of this title;
- (B) a reduction-in-force action under section 3502 of this title; or
- (C) any action initiated under section 1215 of this title.

(Added Pub. L. 95-454, title II, § 204(a), Oct. 13, 1978, 92 Stat. 1137; amended Pub. L. 101-12, § 9(a)(2), Apr. 10, 1989, 103 Stat. 35.)

#### Editorial Notes

##### PRIOR PROVISIONS

A prior section 7521, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 528; Pub. L. 95-251, § 2(a)(1), Mar. 27, 1978, 92 Stat. 183, related to removal of an administrative law judge appointed under section 3105 of this title, prior to repeal by Pub. L. 95-454, § 204(a).

##### AMENDMENTS

1989—Subsec. (b)(C). Pub. L. 101-12 substituted “1215” for “1206”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101-12, set out as a note under section 1201 of this title.

#### EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

#### SUBCHAPTER IV—NATIONAL SECURITY

#### § 7531. Definitions

For the purpose of this subchapter, “agency” means—

- (1) the Department of State;
- (2) the Department of Commerce;
- (3) the Department of Justice;
- (4) the Department of Defense;
- (5) a military department;
- (6) the Coast Guard;
- (7) the Atomic Energy Commission;
- (8) the National Aeronautics and Space Administration; and
- (9) such other agency of the Government of the United States as the President designates in the best interests of national security.

The President shall report any designation to the Committees on the Armed Services of the Congress.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 528.)

#### HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 U.S.C. 22-3.	Aug. 26, 1950, ch. 823, § 3, 64 Stat. 477.

Paragraphs (1)-(8) are supplied on authority of former section 22-1, which is carried in part into section 7532. The references to “the Foreign Service of the United States” and “several field services” are omitted as unnecessary since they are within the agencies concerned. The words “military departments” are substituted for the enumeration of the military departments in view of the definition of “military department” in section 102.

The reference to the National Security Resources Board is omitted as the Board was abolished by 1953 Reorg. Plan No. 3, § 6, eff. June 12, 1953, 67 Stat. 636.

Paragraph (9) is restated to conform to the style of this title.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

#### Statutory Notes and Related Subsidiaries

##### TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

#### ABOLITION OF ATOMIC ENERGY COMMISSION

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42, The Public Health and Welfare. See, also, Transfer of Functions notes set out under those sections.

#### Executive Documents

##### PANAMA CANAL AND PANAMA RAILROAD COMPANY

Ex. Ord. No. 10237, Apr. 27, 1951, 16 F.R. 3627, made the provisions of former sections 22-1 and 22-3 of this title

[see Disposition Table preceding section 101 of this title] applicable to the Panama Canal Government and to the Panama Canal Company.

DESIGNATION OF NATIONAL SECURITY AGENCY, DEFENSE INTELLIGENCE AGENCY, AND DEFENSE MAPPING AGENCY AS "AGENCIES"

Memorandum of the President of the United States, May 23, 1988, 53 F.R. 26023, provided:

Memorandum for the Secretary of Defense

I have reviewed the personnel security requirements of the National Security Agency, the Defense Intelligence Agency, and the Defense Mapping Agency and the termination provisions of 5 U.S.C. Section 7532. I have determined that these Agencies are sensitive agencies and that it is in the best interests of national security that they be designated "agencies" within the meaning of that section.

Therefore, pursuant to the authority set forth in 5 U.S.C. Section 7531(9), I hereby designate the National Security Agency, the Defense Intelligence Agency, and the Defense Mapping Agency as "agencies" within the meaning of 5 U.S.C. Section 7532.

You are hereby authorized and directed to report these designations to the Committees on Armed Services of the Congress and to publish this memorandum in the Federal Register.

RONALD REAGAN.

**§ 7532. Suspension and removal**

(a) Notwithstanding other statutes, the head of an agency may suspend without pay an employee of his agency when he considers that action necessary in the interests of national security. To the extent that the head of the agency determines that the interests of national security permit, the suspended employee shall be notified of the reasons for the suspension. Within 30 days after the notification, the suspended employee is entitled to submit to the official designated by the head of the agency statements or affidavits to show why he should be restored to duty.

(b) Subject to subsection (c) of this section, the head of an agency may remove an employee suspended under subsection (a) of this section when, after such investigation and review as he considers necessary, he determines that removal is necessary or advisable in the interests of national security. The determination of the head of the agency is final.

(c) An employee suspended under subsection (a) of this section who—

- (1) has a permanent or indefinite appointment;
- (2) has completed his probationary or trial period; and
- (3) is a citizen of the United States;

is entitled, after suspension and before removal, to—

(A) a written statement of the charges against him within 30 days after suspension, which may be amended within 30 days thereafter and which shall be stated as specifically as security considerations permit;

(B) an opportunity within 30 days thereafter, plus an additional 30 days if the charges are amended, to answer the charges and submit affidavits;

(C) a hearing, at the request of the employee, by an agency authority duly constituted for this purpose;

(D) a review of his case by the head of the agency or his designee, before a decision adverse to the employee is made final; and

(E) a written statement of the decision of the head of the agency.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 529.)

HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 U.S.C. 22-1 (less 3d-5th provisos).	Aug. 26, 1950, ch. 803, § 1 (less 3d-5th provisos), 64 Stat. 476. July 29, 1958, Pub. L. 85-568, § 301(c), 72 Stat. 432.

The application of this section is covered by the definition in section 7531.

In subsection (a), the words "Notwithstanding the provisions of section 652 of this title" are omitted but are carried into section 7501(c). The words "in his absolute discretion" are omitted as unnecessary in view of the permissive grant of authority. The word "reinstated" is omitted as it is commonly used in other statutes to denote action different from that referred to here.

In subsections (b) and (c), the words "remove" and "removal" are coextensive with and substituted for "terminate the employment", "termination", and "employment is terminated", as appropriate.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

**§ 7533. Effect on other statutes**

This subchapter does not impair the powers vested in the Atomic Energy Commission by chapter 23 of title 42, or the requirement in section 2201(d) of title 42 that adequate provision be made for administrative review of a determination to dismiss an employee of the Atomic Energy Commission.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 529.)

HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 U.S.C. 22-2.	Aug. 26, 1950, ch. 803, § 2, 64 Stat. 477.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

**Statutory Notes and Related Subsidiaries**

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42, The Public Health and Welfare. See, also, Transfer of Functions notes set out under those sections.

**SUBCHAPTER V—SENIOR EXECUTIVE SERVICE**

**§ 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 section 1599e of title 10; or

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

(2) “suspension” has the meaning set forth in section 7501(2) of this title.

(Added Pub. L. 95-454, title IV, § 411(2), Oct. 13, 1978, 92 Stat. 1174; amended Pub. L. 114-92, div. A, title XI, § 1105(c)(5), Nov. 25, 2015, 129 Stat. 1024.)

#### Editorial Notes

##### AMENDMENTS

2015—Par. (1)(A). Pub. L. 114-92 inserted “or section 1599e of title 10” after “this title”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95-454, see section 415 of Pub. L. 95-454, set out as a note under section 3131 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 1215 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.

(Added Pub. L. 95-454, title IV, § 411(2), Oct. 13, 1978, 92 Stat. 1174; amended Pub. L. 97-35, title XVII, § 1704(d)(1), Aug. 13, 1981, 95 Stat. 758; Pub. L. 101-12, § 9(a)(2), Apr. 10, 1989, 103 Stat. 35.)

#### Editorial Notes

##### AMENDMENTS

1989—Pub. L. 101-12 substituted “1215” for “1206”.

1981—Pub. L. 97-35 inserted reference to section 3595 of this title.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101-12, set out as a note under section 1201 of this title.

##### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective June 1, 1981, with certain exceptions and conditions, see section 1704(e) of Pub. L. 97-35, set out as an Effective Date note under section 3595 of this title.

##### EFFECTIVE DATE

Section effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95-454, see section 415 of Pub. L. 95-454, set out as a note under section 3131 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.

(Added Pub. L. 95-454, title IV, § 411(2), Oct. 13, 1978, 92 Stat. 1174; amended Pub. L. 97-35, title XVII, § 1704(d)(2), Aug. 13, 1981, 95 Stat. 758; Pub. L. 98-615, title III, § 304(c), Nov. 8, 1984, 98 Stat. 3219.)

#### Editorial Notes

##### AMENDMENTS

1984—Subsec. (a). Pub. L. 98-615 inserted reference to failure to accept a directed reassignment or to accompany a position in a transfer of function.

1981—Subsec. (a). Pub. L. 97-35 substituted “misconduct, neglect of duty, or malfeasance” for “such cause as will promote the efficiency of the service”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective Nov. 8, 1984, see section 307 of Pub. L. 98-615, set out as a note under section 3393 of this title.

##### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective June 1, 1981, with certain exceptions and conditions, see section 1704(e) of Pub. L. 97-35, set out as an Effective Date note under section 3595 of this title.

##### EFFECTIVE DATE

Section effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95-454, see section 415 of Pub. L. 95-454, set out as a note under section 3131 of this title.

#### CHAPTER 77—APPEALS

Sec.

7701.

Appellate procedures.

7702.

Actions involving discrimination.

7703.

Judicial review of decisions of the Merit Systems Protection Board.