

Department of the Interior
DEPARTMENTAL MANUAL

Personnel

Part 370 DM Addition to FPM

Chapter 752 Discipline and Adverse Actions

370 DM 752,1

Subchapter 1 Policy and Responsibilities

1.1 Purpose and Scope. This chapter contains policy and procedures for taking actions covered under 5 U.S.C. 7502 and 7512 (suspensions, reductions in grade or pay, removal based on misconduct; actions based on a combination of performance and nonperformance related factors; and certain nondisciplinary demotions and separations. Reductions in pay for purposes of this chapter do not include loss of pay differentials). When used in this chapter, the word "days" means calendar days.

1.2 Policy.

A. The public interest requires the maintenance of high standards of employee integrity, conduct, and effectiveness. When such standards are not met, it is essential that prompt and just corrective action be taken. The Department's policy is to conform with standards of conduct and efficiency which will promote the best interest of the service. Where a disciplinary action or adverse action is warranted, the discipline will be in proportion to the character of the offense or series of offenses. Disciplinary and adverse actions shall be governed by these basic principles; the employee

- (1) shall be informed specifically in writing when the action is being brought;
- (2) shall be advised of the right to grieve or appeal as appropriate;
- (3) shall have the right to be accompanied, represented, and advised by a representative of his/her own choosing pursuant to 370 DM 752 ,3.9; or in accordance with applicable labor relations agreements; and
- (4) the employee and representative shall have freedom from restraint, interference, coercion, discrimination, or reprisal in presenting the case.

B. Actions covered in this chapter shall be taken when it is evident that other supervisory techniques have failed to correct a given problem or would be inappropriate. In taking such actions, like penalties should be imposed for like offenses or series of offenses, when the circumstances are fairly similar. Several factors should be considered in determining what penalty is appropriate, including not only the nature and gravity of the offense but such other matters as the existence of mitigating circumstances and the frequency of the offense.

C. The procedures described in this chapter will be used for disciplinary and adverse actions and, when practical, should be taken on a progressive and constructive basis.

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D. An action covered under this chapter must not be based on discrimination because of race, color, age, religion, sex, or national origin, or for physical or mental handicap with respect to any position the duties of which may be efficiently performed by a person with physical or mental handicap. Except when required by statute, an action covered under this chapter must not be taken against an employee because of marital status or partisan political reasons. Also, actions covered under this chapter must not be taken as reprisal for the proper exercise of an employee's legal or administrative rights and privileges.

1.3 Responsibility.

A. A bureau, office, or field facility head is responsible for:

- (1) Administering the policy concerning disciplinary and adverse actions in conformance with requirements of this chapter and the Federal Personnel Manual; reviewing existing policies and recommending appropriate changes;
- (2) Assigning supervisors appropriate authority as per bureau policy and delegations for the direction and discipline of employees under their jurisdiction;
- (3) Assuring the proper training of supervisors so that they are able to perform their functions as described in this chapter; and
- (4) Assuring that supervisors properly exercise their disciplinary authority.

B. A supervisor (who may be any official in the line of command) is responsible for:

- (1) Maintaining standards of conduct and performance among the employees he or she supervises;
- (2) Gathering, analyzing, and documenting the facts concerning each disciplinary or adverse action;
- (3) Recommending appropriate and timely disciplinary or adverse actions;
- (4) Reviewing existing policies and recommending appropriate changes; and
- (5) Counseling employees and keeping adequate documentation.

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C. The Servicing Personnel Officer or designee is responsible for:

(1) Advising supervisors and management officials with disciplinary and adverse action matters; recommending appropriate practices; reviewing existing policies and recommending appropriate changes;

(2) Preparing notices of proposal and decision prior to issuance to ensure appropriateness of penalty and statutory and regulatory compliance;

(3) Advising and assisting employees relative to their rights on appeal and grievance procedures; providing information and interpretation of disciplinary and adverse action procedures, regulations, and statutes; and

(4) Having the policy and procedure for administering disciplinary and adverse actions brought to the attention of and made available to all employees; and having each employee notified where a copy of this chapter may be available for review.

D. An employee is responsible for:

(1) Meeting conduct and performance standards;

(2) Asking the supervisor to explain any standards of conduct or performance that are unclear; and

(3) Furnishing testimony as required by 355 DM.

1.4 Officials Authorized to Propose and Decide Actions. The authority of officials to issue warning letters and reprimands and adverse actions will be determined by each bureau. Decisions on proposed adverse actions will, however, be made by a higher-level official than the person proposing the action, unless there is no higher level official within the Department.

1.5 Representation at Investigative Interviews for Employees of Exclusive Bargaining Units. An exclusive representative of bargaining unit employees in an agency shall be given the opportunity to be represented at any examination of an employee in the unit by an agency official in connection with an investigation provided: the employee reasonably believes that the examination may result in disciplinary action against the employee; and the employee requests representation. 370 DM 711 should be consulted for further information. Nothing in this section shall be interpreted to be in conflict with or replace an agreement provision entered into prior to January 11, 1979, which continues or is renewed pursuant to 5 U.S.C. 7135 (a)C.

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1.6 Determining the Facts and Proposed Action.

A. Determining the Facts. The supervisor will examine the evidence to determine what action is warranted. If sufficient evidence to provide a proper basis for initiating action is available from official sources (e.g., time and attendance records), the supervisor will use those sources as supporting documentation. Where such evidence is not available, administrative review will be made into noncriminal incidents or situations as soon as possible. Ordinarily, this inquiry will be made by the appropriate line supervisor, except where the conduct is required by 355 DM to be reported to the OIG. When necessary, the employee who is alleged to have committed the offense and any other persons who may have pertinent information about the case should be interviewed and signed statements obtained as appropriate. Information will be developed impartially, and a reasonable effort will be made to reconcile conflicting statements by developing additional evidence. The information obtained should be documented. When any additional information is needed, the responsible personnel official will so advise the line manager.

B. Reportable Incidents. The Office of Inspector General (OIG) should be notified immediately of serious misconduct, alleged violations of Departmental Standards of Conduct or of Federal criminal or civil fraud statutes, or similar incidents involving employees. (See 355 DM for further guidance on reportable incidents.) In such instances, local inquiry into further details should await concurrence or assumption of jurisdiction by the OIG. When circumstances of retaining the employee concerned in a duty status may present a hazard to employees or property, the OIG should be notified of the need to remove the employee from the work site pending investigation.

C. Using Official Investigation Reports.

(1) It may not be necessary or appropriate for a supervisor to inquire into an incident where sufficient evidence to provide a proper basis for initiating action is available from other official sources (e.g. investigative reports, court records, affidavits of witnesses, etc.).

(2) When management relies on facts developed from an official investigation or other official inquiry to support a proposed disciplinary or adverse action, extracts which are relied upon will be assembled for the evidence file, which the employee or representative may review. Investigative reports emanating from the Office of the Inspector General may not be released without prior approval from that office.

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D. Determining Appropriate Action.

(1) After determining the facts in a case, any extenuating or mitigating circumstances which may have some bearing on the situation, including past record, should be considered in determining the proposed action. Before recommending disciplinary or adverse action, the initiating official must consult the servicing personnel office as to its propriety.

(2) Servicing personnel offices will also assure, prior to taking any specific disciplinary actions that, a proposed action is not based on discrimination or other prohibited reasons.

1.7 Status of Employee Pending Inquiry or Investigation, or Pending Decision on Proposed Action. Ordinarily, the employee will be retained in a pay and active duty status in his/her position, and at current grade and salary, pending inquiry or investigation, or pending decision on a proposed action. When immediate action to remove the employee from the work site may be required under the terms of 5 CFR 752.404(d)(3) the employee may be placed in a non-duty status with pay for such time, not to exceed 10 days. (See 370 DM 752,3.10 for further details.)

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Subchapter 2. Disciplinary Actions

2.1 Written Warning.

A. Definition. A written warning or notice is a statement given to an employee for an act of misconduct or performance deficiency when an oral counseling has not caused improvement or would not be expected to do so. The warning notifies the employee of a standard which if not adhered to may result in stronger discipline being imposed.

B. Procedure. The warning will be in the form of an official letter or memorandum describing the reasons for the warning. It will be reviewed by the personnel officer or designee before issuance and advise the employee that a copy and any written explanation that he/she may make will be retained by the supervisor and/or in the employee's personnel folder as a temporary record at the discretion of the bureau.

C. Withdrawal of Warning. After 1 year, a warning will be removed from the files and destroyed, if no further action has been taken on the case, or when the employee leaves the Department in less than one year. If the employee's conduct so warrants, the warning may be withdrawn for destruction prior to one year. When the warning was issued by the employee's current supervisor, that supervisor may withdraw it. If the employee's current supervisor did not issue the warning, he/she may wish to consult with the previous supervisor who did issue it, when withdrawing the warning.

(1) In determining whether a warning should be withdrawn early, consideration should be given to the fact that a removed or withdrawn warning memorandum may not be used to support future charges.

(2) When a warning has been withdrawn early and destroyed, the supervisory official will so inform the employee in writing.

(3) Since the warning will automatically be removed from the files after 1 year, a grievance may not be filed based on a supervisor's decision not to remove it earlier than the expiration date.

D. Right to File a Grievance. If the employee is covered under the grievance procedure in 370 DM 771, he or she may grieve the warning under the grievance procedure, unless it is a preliminary notice of an action which would be grievable or appealable at the time a decision is made to effect the action. Employees covered by a negotiated grievance procedure must use the negotiated procedure, when applicable, if they wish to contest the warning.

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2.2 Reprimand.

A. Definition. A reprimand is a statement of censure given to an employee for misconduct, or misconduct coupled with unacceptable performance, of such concern, that a semi-permanent record of the incident should be established. This concern may also be due to repetitive minor incidences of misconduct or performance deficiencies.

B. Procedure. A reprimand will be an official letter describing the reasons for the action. It will be reviewed by the personnel officer or designee before issuance and advise the employee that a copy of the reprimand and any written explanation that he/she may furnish will be placed in his/her Official Personnel Folder. The reprimand will also contain a statement of the withdrawal provisions.

C. Withdrawal of Reprimand. After two years or the employee's leaving the Department (except in a transfer of function) whichever comes first, a reprimand for misconduct will be removed from the personnel folder and destroyed. If the employee's conduct so warrants, the reprimand may be withdrawn for destruction prior to two years. When the reprimand was issued by the employee's current supervisor, that supervisor may withdraw it. If the employee's current supervisor did not issue the reprimand he/she may wish to consult with the previous supervisor who did issue it before withdrawing it.

(1) In determining whether a reprimand should be withdrawn early, consideration should be given to the fact that a removed or withdrawn reprimand may not be used thereafter to support future charges.

(2) When a reprimand has been withdrawn early and destroyed, the supervisory official will so inform the employee in writing.

D. Right to File Grievance. If the employee is covered under the grievance procedure in 370 DM 771, he/she may grieve the reprimand. When an employee and action are covered by negotiated agreement with an exclusive representative, he/she must use the negotiated grievance procedure provided. Since the reprimand may be grieved under the agency grievance procedure initially and will automatically be removed from the personnel folder at some given time not exceed two years, a grievance may not be filed based on a supervisor's decision not to remove the reprimand earlier than its expiration date.

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Subchapter 3. Removal, Suspension for More than 14 Days, Reduction in Grade and Pay, and Furlough for 30 Days or Less

3.1 Adverse Actions.

A. Definition. Adverse action refers to a suspension, removal, reduction in grade or pay, not at the employee's request, furlough of 30 days or less, or other action which results in an involuntary separation or reduction in grade or pay.

B. Records. The following records shall be maintained and shall be furnished to the Merit Systems Protection Board upon its request and to the affected employee upon the employee's request:

- (1) a copy of the notice of proposed action;
- (2) a copy of the employee's written answer, if any, and a summary of the employee's oral reply, if one was made;
- (3) a copy of the notice of decision;
- (4) a copy of any order effecting the action; and
- (5) any supporting material used in proposing the action.

C. Employees Covered. This subchapter applies to:

- (1) an individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has completed one year of current continuous employment under other than a temporary appointment limited to one year or less;
- (2) a preference eligible in the excepted service who has completed one year of current continuous service in the same or similar positions;
- (3) an employee with competitive status who occupies a position under Schedule B; and
- (4) a nonpreference "career-type" employee in the excepted service who has completed one year of current continuous service in the same or similar positions if specifically included by the Bureau head or higher authority.

D. Employees Not Covered. This subchapter does not apply to:

- (1) a Schedule C employee;
- (2) an employee whose appointment is made with the advice and consent of the Senate;

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- (3) a Presidential appointee; and
- (4) a reemployed annuitant.

E. Proposed Adverse Action Evidence File. If adverse action is contemplated, an evidence file shall be established before the proposal notice is issued to the employee. The file shall contain all the evidence which is relied upon to support the reasons (including past disciplinary actions and related material, if part of the basis for the action proposed).

3.2 Disciplinary Suspension for 14 Calendar Days or Less

A. Definition. A disciplinary suspension for 14 calendar days or less is an enforced temporary nonpay status and absence from duty. Such action is taken for significant misconduct. It may also be given for continued or repeated acts of minor misconduct, but usually only after prior efforts of counseling, warning and/or reprimand have failed.

B. Procedure. 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 (such notice must be reviewed by the servicing personnel officer or designee prior to issuance);
- (2) a reasonable time, but not less than 24 hours, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer ;
- (3) representation by an attorney or other representative pursuant to 370 DM 752,3.9 or in accordance with applicable labor relations agreements;
- (4) a written decision and the specific reasons for the decision at the earliest practicable date; and
- (5) upon request, copies of all supporting materials.

C. Decision Authority. A final decision on a proposed suspension of 14 days or less will be made by a higher level official than the person who proposed the action, unless there is no higher level official within the Department.

D. Right to Grieve. The employee may grieve the suspension under the grievance procedure in 370 DM 771. Employees covered by negotiated grievance procedures must use that procedure, if applicable, to grieve such

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suspension. An employee subject to a suspension of 14 days or less is not entitled to appeal the action to the Merit Systems Protection Board except as provided under 5 U.S.C. 2302.

3.3 Suspension for More than 14 days, Demotion, Removal and Other Adverse Actions.

A. Suspension for More than 14 Calendar Days. A suspension for more than 14 calendar days is an enforced temporary nonpay status and absence from duty. Such action is taken for serious misconduct. It may also be taken for continued or repeated acts of misconduct of a significant nature which appear to be a blatant disregard of requirements or for emergency reasons as described elsewhere in this chapter.

B. Demotion for Disciplinary Reasons. A reduction in grade or pay imposed for disciplinary reasons can be used under certain circumstances. For example, misuse of supervisory authority might be grounds for demotion to a non-supervisory position.

C. Removal for Disciplinary Reasons. Removal for disciplinary reasons is an involuntary separation taken for very serious misconduct or for continued or repeated acts of misconduct of a less serious nature when other disciplinary methods would not induce correction.

D. Demotion or Separation for Non-disciplinary Reasons. An action may be nondisciplinary, but at the same time adverse to the employee. For example, the removal of an employee because of refusal to accompany his or her activity to a new location is an adverse action even though no disciplinary factor may be involved. A reduction in grade or pay based on a reclassification of an employee's position will constitute an adverse action only when the grade and pay retention provisions of 5 U.S.C. 5362 and 5363 are not applicable. Separation due to disability, where an employee is not eligible for disability retirement, is another example of an adverse action taken which did not grow out of a disciplinary situation.

E. Demotion or Separation Based on a Combination of Performance and Nonperformance Related Factors. Adverse actions based on a combination of performance and either misconduct or inability to do the work of the position because of disability are processed under this chapter rather than 370 DM 432.

F. Right to File a Grievance or Appeal. If the employee is included by statute or OPM regulation, he or she may appeal to MSPB or use the negotiated grievance procedure, if applicable, but not both. Any non-preference "career type" employee in the excepted service may grieve an adverse action other than removal through the administrative grievance procedure of 370 DM 771,3. When such an employee has completed one year of current continuous service in the same or similar positions, he or she may also grieve a removal.

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3.4 Initiating Adverse Actions (other than suspensions of 14 days or less) .

A. An employee against whom an action is proposed is entitled to: 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. The proposed notice must be reviewed by the servicing personnel officer or designee prior to issuance.

B. The final decision to take an adverse action must be made by a higher level official of the Department, than the official who proposed the action. The notice of decision must be signed by the official responsible for making the final decision to take adverse action as clear evidence that he/she did make the decision. The proposing and deciding officials must not be the same person, except when the action is proposed by the head of the Department. A higher level official is distinguished by the official's standing in the organizational hierarchy. The personnel official reviewing procedures for the final decision should also be at a higher level than the personnel official reviewing the proposal.

3.5 Advance Notice of Proposed Adverse Action (other than suspensions of 14 days or less) .

A. Preparation and Issuance. The appropriate supervisory official, with the assistance of the servicing personnel officer or designee will issue the advance notice of proposed adverse action, unless otherwise provided by the Bureau.

B. Prior Review by Servicing Personnel Officer. Before any notice is released to the employee the personnel officer or designee must examine the evidence, and advise as to the propriety of the penalty or action proposed, and prepare necessary paperwork. The official file copy should be initialed by a personnel officer or designee indicating the notice complies with procedural requirements.

C. Contents of Advance Notice. The notice of proposed adverse action must contain the following information:

(1) The nature of the proposed action (removal, demotion, length of suspension, etc.).

(2) A statement of specific reasons for the proposed adverse action, sufficient to enable the employee to fully understand why the action is proposed. This must include giving the basis for the action and sufficient information to afford the employee a fair opportunity to answer the reasons given.

(a) Mere use of conclusions of semantic labels in stating reasons, such as "Insubordination," "Disrespectful conduct," and "Neglect of Duty" is not sufficiently specific. What the employee did that was wrong must be stated in order to establish why the proposed action promotes efficiency of the service.

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(b) The reasons must show a cause of action i.e. a recognizable and current offense against the employer-employee relationship. Care must be exercised in writing the reasons so that an employee will understand why the action is proposed.

(c) In actions based on disability, specific statements of the actual duties the employee has been unable to perform must be included.

(d) When some but not all of the 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. In the case of a suspension for more than 14 days, a removal or a furlough of 30 days or less, a statement that the employee will be given at least 30 calendar days from the day following the date of the receipt of the proposal before the action, if taken, is effective. A specific effective date should not be included in the advance notice, since no final decision on the adverse action can be reached until the employee has had an opportunity for response.

(3) Statement that the employee has the right to reply both orally and in writing, and to submit affidavits and other documentary evidence in support of the reply, explaining why the proposed action should not be taken.

(4) Statement of where the evidence relied on to support the notice of proposed action is located and the arrangements for copies for the employee, representative, and/or designated physician as appropriate. Information that cannot be furnished the employee should not be relied upon to support the action. Generally, the evidence file should be maintained in the personnel office.

(5) Statement that the employee will be allowed official duty time (if in an active duty status) for reviewing the evidence to support the reasons in the notice; preparing a written reply; securing affidavits; and making an oral reply. The notice should inform the employee of the person with whom he or she should arrange for the use of official time. The time to be allowed will depend on the facts and circumstances of each case. The official duty time used by the employee in reviewing the evidence and preparing the reply must be documented. If the employee requests additional official time beyond what was originally granted, the request may be honored, if reasonable.

(6) Statement that if the employee does not understand the reasons, he/she may contact the proposing official or his/her designee for further explanation. Only those matters used as the basis for the proposed adverse action should be discussed by that official.

(7) Statement that the employee will be allowed a reasonable length of time to reply both orally and in writing. At least 7 calendar days must be allowed and more time should be allowed when the circumstances so justify.

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(8) Statement that the employee's written reply should be submitted to the deciding official, and that the deciding official or a designee will receive the employee's oral reply. A designee must have authority to make effective recommendations to the deciding official.

(9) When an employee's past disciplinary record is to be considered as part of the basis for the proposed penalty, a statement will be included that specifically cites and identifies the previous infractions and penalties. If cited, the previous disciplinary record will not be set forth as a current reason but will be stated in a paragraph separate and apart from the current reasons.

(10) Statement that consideration will be given to the employee's reply if one is made.

(11) Statement that the employee will be given a written decision as soon as practicable after the reply has had full consideration, or after the expiration of the time allowed for reply, if no reply is made.

(12) Statement advising the employee of the duty status in which he/she will be carried during the notice period.

(13) Statement that the employee has a right of representation by an attorney or other representative subject to 370 DM 752,3.9 or in accordance with appropriate labor relations agreement.

D. Method of Delivery. It is best to deliver a notice to the employee personally and, if possible, to obtain his or her written acknowledgement of its receipt. "Registered mail return receipt requested for receipt by the addressee only" is the preferred alternative. If it is not possible to serve the employee personally or by return receipt (e.g. when the employee is evading service), an alternative is first class mail which can be presumed delivered to the addressee if not returned within a reasonable period.

3.6 Employee's Reply to Proposed Adverse Action.

A. Oral Reply. If the employee requests an opportunity to reply orally, the deciding official will be available, or will make a representative other than the proposing official, available to receive the reply. The right to answer orally in person does not include a right to a formal hearing with examination of witnesses. The representative(s) designated to receive the reply will be officials who have authority to effectively recommend final action. The right to reply orally includes any plea which the employee believes might sway the final decision in his/her case. The employee's oral reply must not be restricted to matters dealing

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solely with guilt or innocence for the offense but the employee must be permitted to plead extenuating circumstances or make any other representations that might mitigate the proposed action. This opportunity for an oral reply must be offered to the employee and granted, if requested, before the final decision is reached so that all of the information or arguments may be considered in reaching a decision. The oral reply must be documented through a summary by the recipient. Whenever it is required that an employee travel outside his or her local commuting area to present an oral reply to a deciding official, or designee, travel, transportation and per diem will be paid for the employee, but not the designated representative. Usually local designees from another bureau or agency can be arranged by the Department's Office of Personnel to reduce the necessity of an employee's traveling to make an oral reply.

B. Written Reply. The employee may reply in writing to the notice, in addition to making an oral reply or instead of an oral reply.

C. Failure to Reply. An employee's failure to reply is not in itself an admission of guilt. The burden of proof rests with management to support its reasons for the action.

3.7 Arriving at Decision on Proposed Adverse Action.

A. The deciding official will give consideration to the employee's reply, if any, and all evidence in the record. Consistent with due process rights, the penalty may not be more severe than that stated in the notice of proposed action, but it may be less severe. Proposing a lesser penalty than that actually taken could be held misleading and influencing the nature of the employee's reply, or even an election by the employee not to make a reply.

B. A decision adverse to the employee must be based only on the reasons stated in the notice of proposed action. If none of the reasons is sustained, either in whole or in part, no penalty may be imposed, regardless of any past record cited in the notice. A penalty including a lesser one than that proposed, may be decided upon if any of the reasons are sustained.

C. If the notice of proposed adverse action is procedurally defective, or if it is found that additional reasons should be considered or that the appropriate penalty should be more severe, a new notice of proposed action may be issued. If so, the new notice will include a new advance notice period and another opportunity to reply both orally and in writing.

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3.8 Adverse Action Decision Notice (other than suspensions of 14 Days or Less).

A. Decision Letter. The decision letter will be dated and signed by the appropriate official, and will be delivered not less than 24 hours prior to the effective date of the action.

B. Prior Review by Servicing Personnel Officer. Before the decision is released to the employee, the personnel officer or designee must review and initial the official copy and indicate that the decision complies with procedural requirements.

C. Contents of Decision. The letter of decision must contain the following information:

(1) Statement that consideration has been given to all evidence developed, including the employee's reply.

(2) Statement specifically describing what reasons in the advance notice were found to be established and what reasons, if any, were dropped as not sufficiently supported.

(3) If the record of prior disciplinary actions was cited in the advance notice, the decision should also state that the action takes the past record, as cited in the advance notice, into consideration in determining a proper penalty. If a part of the past record cited in the proposal was not considered in arriving at the decision, a statement to that effect should be made.

(4) Statement of the effective date, the type of penalty imposed or the inclusive dates, if the penalty is a suspension.

(a) In setting the effective date, the date the employee receives the notice of proposed action is excluded from the computation of the 30-day notice period.

(b) The notice period must be 30 full calendar days following date of delivery. Accordingly, an action may not be made effective at any time before midnight on the thirtieth day.

(c) The final day of the notice period must fall on a week day. A Saturday, a Sunday or a legal holiday may not be designated as the last day of the notice period.

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(5) The letter of decision must also contain a statement of the employee's appeal or grievance rights, including:

(a) if applicable, notice of the time limits for appealing to the Merit Systems Protection Board, and the address of the appropriate office for filing the appeal;

(b) a copy of the Board's regulations;

(c) a copy of the appeal form contained in Appendix I of the Board's regulations; and

(d) notice of any applicable rights to a grievance procedure.

Adverse actions involving classification or salary retention issues require special language as there are varied appeal rights.

3.9 Representation. An employee's representative may not be an individual whose activities as a representative would cause a conflict of interest or of position; whose priority work assignments preclude his/her release; or whose release would give rise to unreasonable costs to the Government.

3.10 Special Situations.

A. Unfit for Duty. In a non-disciplinary situation when an employee is not ready, willing and able to work, he/she may be placed on annual or sick leave or in a non-duty non-pay status, as the circumstances and status of leave account require. This could occur when an employee fails to report with required safety equipment, proper uniform, necessary licenses or certifications, or appears otherwise impaired to fulfill his/her duties. The enforced absence will not be considered a suspension as long as it is not disciplinary in nature.

B. Emergency Options.

If the appropriate supervisory official decides, after consultation with the personnel officer, that the employee's continued performance of the duties and responsibilities of the position during the notice period of a removal or suspension of more than 14 days: may result in damage to Government property; may be injurious to the employee or others; or may be detrimental to the interests of the Government, the employee may be reassigned to other duties where the risk is not present. Arrangements may sometimes be made on an inter-bureau basis. If this is not possible, the employee may request and be granted appropriate leave. CG Dec. B-131094 dated 4/17/57 and B-182851, dated 2/11/75 allow for an employee's home to be designated as a post of duty under certain circumstances. Where none of the above actions are possible, the employee may be placed on administrative leave during the 30 day notice period.

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DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL

Personnel

Part 370 DM Addition to FPM

Chapter 752 Discipline and Adverse Actions

370 DM 752,3.10C

C. Crime Provision. An employee need not be given the full 30 days advance written notice of a removal or suspension of more than 14 days, if there is reasonable cause to believe the employee is guilty of a crime for which a sentence of imprisonment can be imposed. This would be in situations where the crime can readily be referenced in an appropriate statute or penal code and some sound evidence (e.g. sworn statements of witnesses, court or indictment records, employee admission, etc.) strongly suggest a violation has occurred. Under such circumstances, the employee must be given such lesser number of days advance notice and opportunity to answer as under the circumstances is reasonable and can be justified, but no less than 7 days. All other requirements for taking adverse action must be met. The employee may be carried on administrative leave when the crime provision is invoked while notices are being prepared. Normally this should not exceed 10 days.

D. Unforeseeable Circumstances. 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 emergencies requiring immediate curtailment of activities.

E. Indefinite Suspensions. When the crime provision is invoked, there may be insufficient information available to determine if removal is warranted. An indefinite suspension pending outcome of further investigation or court proceedings may be taken and the employee placed in a non-pay, non-duty status. If facts subsequently develop to show that neither suspension nor removal is merited, the indefinite suspension may be canceled and appropriate backpay for the period provided.

3.11 Review of Adverse Actions. Upon notification that an employee has appealed an adverse action either to MSPB or through a negotiated grievance procedure, the servicing personnel officer may provide the bureau personnel officer with the entire case file for review. The file will contain copies of all materials pertinent to the action and the appeal. Actions found by the bureau personnel officer to be unwarranted or procedurally defective and constituting harmful error should, after consultation with the initiating office, be cancelled prior to further processing as an appeal. When a procedural defect is the sole problem, the actions may be reinitiated with the defect being corrected.