



United States Department of the Interior

OFFICE OF THE SECRETARY
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PERSONNEL BULLETIN NO: 18-07

SUBJECT: Changes to Departmental Manual Chapter 370 DM 752

1. Purpose. This Personnel Bulletin (PB) modifies Departmental policy on taking corrective action for disciplinary and certain non-disciplinary reasons for employees covered by Departmental Manual (DM) Chapter 370 DM 752 and supersedes any conflicting language until corresponding changes in the DM are made.

2. Authorities.

- A. Title 5 of the United States Code (U.S.C.), Section 2301
- B. Title 5 of the U.S.C., Chapter 75 and substantially similar authorities covering employees in alternate personnel systems
- C. Title 5 of the Code of Federal Regulations (CFR), Part 752
- D. Executive Order 13839: Executive Order on Promoting Accountability and Streamlining Removal Procedures Consistent with Merit Systems Principles, dated May 25, 2018 (EO 13839)
- E. 370 DM 752, Discipline and Adverse Actions, dated December 22, 2006

3. Background. Merit system principles call for holding Federal employees accountable for their conduct. They state that employees should maintain high standards of integrity, conduct, and concern for the public interest. In order to promote employee accountability consistent with merit system principles and to ensure that the workforce is used efficiently and effectively, procedural steps to effect adverse actions should be straightforward and timely while simultaneously recognizing employees' procedural rights and protections.

4. Policy.

A. Clarifications on Addressing Unacceptable Performance Using Procedures under 370 DM 752 and Progressive Discipline. Some management officials have not historically been aware that they can use procedures under 370 DM 752 to address instances of unacceptable performance when appropriate. In addition, over time, in some cases, the requirement that penalty selection be proportional to the offense and should reflect the disciplinary/adverse action most likely to correct the behavior has also been misunderstood as a requirement to first issue a lower level penalty before being able to impose a more severe penalty, irrespective of the facts and circumstances of the misconduct.

To clarify these misunderstandings, Section 1.6.C. of 370 DM 752 is modified as follows:

C. Use and Choice of Discipline. Discipline should be imposed to correct improper employee conduct, including instances of unacceptable performance when appropriate, and to maintain order, morale and workplace safety throughout the workforce. After determining that misconduct occurred and that corrective action is warranted, discipline should be initiated as soon as practicable after the misconduct that prompted it, and should be effected on a reasonable and equitable basis as much as possible. In dealing with an instance of employee misconduct, the responsible management official (often the first-level supervisor) should select the disciplinary/adverse action most likely to correct the specific behavioral problem, with penalties selected at an escalating level for subsequent (even if not similar) offenses, when appropriate.

Proposing and deciding officials are not required to use progressive discipline, in that they do not have to first issue a lower level penalty before progressing to a more severe option. The penalty for a specific instance of misconduct should be tailored to the facts and circumstances, such that management officials may choose to reasonably impose a severe penalty, including removal, for the first instance of misconduct. Management officials must exercise reasonable judgment and consider all relevant factors, both mitigating and aggravating (as reflected in the guidance found at Appendix A), in determining the most appropriate corrective action for each situation. As a guide for considering disciplinary options, the Department's Table of Offenses and Penalties is included as Appendix B to this chapter. This Table does not mandate the use of specific penalties in most disciplinary situations. Supervisors/managers retain full authority, except in limited circumstances (i.e., discipline prescribed by statute or the MSPB), to set penalties as they deem appropriate, based on the particular circumstances and specifications of the offense. Consultation and close coordination with the servicing HRO should ensure that a particular penalty is proportional to the offense and employees who commit similar offenses are treated with relative consistency.

In addition, the fourth paragraph of Appendix B is clarified as follows:

Although the Table of Penalties presents First, Second, and Third Offenses in a progressive manner, proposing and deciding officials are not required to use progressive discipline. The penalty for an instance of misconduct should be tailored to the facts and circumstances, such that the strongest action in the Table of Penalties can be taken for a first offense when the specific facts of the misconduct and the factors described in Appendix A indicate that the penalty is reasonable. If the employee has already been disciplined at a lower level, progressively stronger corrective actions should be taken if that employee engages in misconduct again. When an employee receives corrective action for an offense which falls under one range of penalties, and later commits a different offense under the same or another category of offense, the latter is considered a second offense for progressive disciplinary purposes. For example, if an employee is charged with absence without leave (AWOL) and is issued a 5-day suspension (first offense), then is later charged with insubordination for subsequent misconduct, the appropriate penalty range for the insubordination charge is a 30-day suspension to removal (as a second offense).

B. Adverse Action Procedures. Employees subject to adverse actions taken under 370 DM 752 Section 1.7.C. (removal, suspension for more than 14 days, furlough without pay for 30 days or

less, or reduction in grade or pay) are entitled to receive advance written notice of at least 30 days before the covered action may be taken, excluding the exceptions listed in Section 1.7.C(1) (emergency furlough and crime provision). To the extent practicable, the advance notice period must be limited to the minimum 30-day period in order to bring timely resolution to the proposed action. For proposed removal actions, to the extent practicable, deciding officials must at the latest issue a decision within 15 business days of the end of the employee's reply period following a notice of proposed removal. Further, employees subject to adverse actions under 5 U.S.C. 7513(b) have a statutory entitlement to a reasonable time, not less than 7 days, to answer the proposal orally and/or in writing. In line with this legal requirement, employees have 7 calendar days to answer the proposal notice under Section 1.7.C.

To reflect these requirements, the following changes are made to 370 DM 752:

1. The first two sentences of Section 1.7.C(2) are modified as follows:

(2) An employee against whom an adverse action is initiated is entitled to receive a written proposal (with advance notice limited to 30 days, to the extent practicable), stating the specific action proposed and the reason(s) for the proposed action (including the relevant penalty determination factors referenced in Appendix A) in sufficient detail to enable the employee to answer the charge(s). The notice of proposed adverse action (issued by the immediate supervisor or other management official, with the advice and assistance of the servicing HRO, and after a legal sufficiency review by the Office of the Solicitor), additionally shall reference that the employee may: review the material relied upon by management in proposing the suspension; have 7 days (including a reasonable amount of official time) to answer orally and/or in writing the proposal (and furnish affidavits and other documentary evidence) for consideration before a decision is made; be represented by an attorney or other representative; and receive a written decision (explaining the specific reasons for that decision) at the earliest practicable date.

The remainder of Section 1.7.C(2) remains in effect as previously issued.

2. The first sentence of Section 1.7.C(4) is modified as follows:

(4) The employee's answer(s) to the proposed adverse action should be provided to the deciding official (or designee) within 7 days following the date the employee receives the proposal notice.

The remainder of Section 1.7.C(4) remains in effect as previously issued.

3. The first sentence of Section 1.7.C(7) is modified as follows:

(7) The deciding official must issue a written decision at the earliest practicable date after receipt of the employee's answer(s), or following expiration of the 7-day answer period, keeping in mind the limitation that the total time between the date the proposal notice is issued to the employee and the date that the final action is effected should be limited to 30 days to the extent possible. For removal actions, to

the extent practicable, the deciding official must at the latest issue a written decision within 15 business days of the end of the 7-day answer period.

The remainder of Section 1.7.C(7) remains in effect as previously issued.

5. Inquiries. Any Department employee or employee representative seeking further information concerning this policy may contact the appropriate servicing human resources office (HRO). Servicing HROs may contact the Department's Office of Human Resources, Workforce Relations Division concerning questions related to this policy.



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