

Personnel and Training

CIVILIAN EMPLOYEE DISCIPLINE AND ADVERSE ACTIONS



BY ORDER OF THE DIRECTOR

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AUTHORITY: This directive is established in compliance with 5 USC Chapter 75, "Adverse Actions" and 5 CFR Part 752, "Adverse Actions."

HOW TO SUPPLEMENT: This directive may be further supplemented.

APPLICABILITY: This directive applies to Headquarters, DeCA, and the East Service Center which are serviced by the Peninsula Civilian Personnel Support Activity (PCPSA) and to CONUS, DeCA Components including Alaska, Hawaii, and Puerto Rico which are serviced by the DLA Offices of Civilian Personnel and DeCA Region DP offices.

MANAGEMENT CONTROL: This directive does not contain Internal Management Control provisions that are subject to evaluation, testing and other requirements of DeCAD 70-2 and as specified by the Federal Manager's Financial Integrity Act.

HOW TO ORDER COPIES: Stores needing additional copies will submit requirements on DeCA Form 30-21 to Region/IM; Region/IM will consolidate Store and Region requirements on DeCA Form 30-21 and forward to HQ DeCA/SA.

SUMMARY: This directive establishes DeCA's policy for maintaining civilian employee discipline and the procedures for effecting corrective actions relating to misconduct.

OFFICE OF PRIMARY RESPONSIBILITY (OPR): HQ DeCA/DP
COORDINATORS: DeCA/OGC, DeCA/CONUS Regions
DISTRIBUTION: E

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Chapter 1

CIVILIAN EMPLOYEE DISCIPLINE AND ADVERSE ACTION

1-1. **PURPOSE:** This Directive provides supervisors with policy and procedural guidance for taking disciplinary or adverse actions because of delinquency or misconduct of civilian employees under their supervision.

1-2. **REFERENCES:**

- a. 5 United States Code, Chapter 75, "Adverse Actions."
- b. 5 Code of Federal Regulations, Part 752, "Adverse Actions."

1-3. **APPLICABILITY:** These procedures do not apply to:

- a. An action which implements a decision of the Office of Personnel Management.
- b. An action taken in the interest of national security.
- c. A reduction-in-force action.
- d. A demotion based on unacceptable performance of a supervisor or manager who has not completed a probationary period, if such demotion is to the grade immediately held before becoming a supervisor or manager.
- e. A demotion or removal based on unacceptable performance under Title 5 United States Code (U.S.C.) 4303.
- f. An action imposed by the Merit Systems Protection Board (MSPB).
- g. The separation of an appointee during the probationary period.
- h. A change to lower grade as a result of a reclassification action when the position has been classified at the higher grade for a continuous period of at least one year.
- i. The termination of an appointment on the expiration date specified at the time the appointment was made.
- j. The reduction of an employee's rate of pay from a rate which is contrary to law or regulation to a rate which is required or permitted by law or regulation.
- k. The denial of a within grade increase (see DeCAD 50-7).
- l. Any other action specifically excluded by law or regulation.

1-4. **POLICY:**

- a. Supervisors are expected to use their best efforts to motivate employees to be effective and efficient. Supervisors will place primary emphasis on preventing situations requiring disciplinary actions by

creating an atmosphere conducive to productive employee-management relations, and interchange of information.

b. Supervisors must keep employees informed of established standards of conduct and performance.

c. Employees are required to perform their assigned duties conscientiously, to conduct themselves properly, and to respect the authority of those in charge. Employees are also responsible for assuring that their off-duty conduct discredits neither the Defense Commissary Agency (DeCA) nor the Federal service. All DeCA employees must keep in mind that their positions involve a degree of public trust and, as a consequence, require appropriate and lawful conduct.

d. When feasible, a conflict or misunderstanding will be resolved informally. When disciplinary action becomes necessary, it will be taken promptly, impartially, and constructively. Employees will be forthrightly informed of the reasons for the actions taken against them.

e. Before taking a disciplinary action, the supervisor will determine and document the essential facts.

f. Disciplinary action will not be taken because of an employee's political beliefs, except when required by law, nor will it be taken because of race, color, religion, national origin, sex, marital status, age, or handicapping condition.

g. The manner in which disciplinary problems are handled can have a lasting effect on a supervisor's working relationship with all of his/her employees, not just those involved in the misconduct. An efficient and disciplined work environment requires active and knowledgeable supervision and personnel management.

h. It is the policy of DeCA that any civilian employee found to have engaged in theft, fraud, or other intentionally dishonest conduct against DeCA will be considered for removal from the Federal Service. Any lesser penalty will require justifiable mitigating circumstances. This strong disciplinary posture is necessary in a retail business environment where the Agency is required to rely heavily on the trust and confidence it has in all of its employees. All Agency employees are constantly and consistently in a position to have access to money, money substitutes and retail grocery products belonging to the Defense Commissary Agency, consequently, honesty and trust-worthiness are essential qualities in each and every employee.

i. A resignation, optional retirement, or reduction in grade or pay at an employee's request is an adverse action if it is obtained by duress, unreasonable time pressure, intimidation or deception. However, it is proper for DeCA officials to initiate a discussion with an employee in which he/she is given an election between leaving his/her position voluntarily or having formal action initiated against him/her. It is proper to advise the employee as to the possible alternatives that may be available.

1-5. **RESPONSIBILITIES:**

a. Employees are to perform their assigned duties conscientiously, conduct themselves properly, respect the authority of those in charge, and comply with applicable Standards of Conduct.

b. Supervisors are to carefully and thoroughly evaluate all the facts surrounding any incident and/or situation that may prompt disciplinary action prior to taking or recommending discipline.

c. Managers must assure that the disciplinary program is administered in a uniform, fair and impartial manner to maintain proper discipline in the work place and act as decision-makers when necessary.

d. Servicing DeCA Region/Satellite/PMSO offices are to provide regulatory guidance and interpretation of policy and procedures concerning disciplinary actions, and share in management's responsibility to ensure that such actions comply with governing requirements, including negotiated agreements where applicable. Accordingly, supervisors who are considering taking a disciplinary action must consult with the Region/Satellite/PMSO office. Written notices of proposed action and notices of final decision will be coordinated with the Region/Satellite/PMSO office before delivery to employees.

e. The local Labor Counselor and/or Legal Counsel will provide opinions, guidance, and assistance to DeCA and servicing EEO and DeCA Region/Satellite/PMSO officials involved in adverse action cases. They will also represent the Agency for actions being appealed to the Merit Systems Protection Board (MSPB) or grieved under the negotiated grievance procedure or actions involving EEO complaints of discrimination.

1-6. **PROCEDURES:**

a. The purpose of discipline is to correct the offending employee's behavior and maintain discipline and morale among other employees. Normally, supervisors should impose the minimum penalty that can reasonably be expected to achieve these objectives. Supervisors have a variety of disciplinary actions available. Each circumstance must be carefully evaluated so that a firm basis for any disciplinary action can be established; otherwise, no action should be taken. The types of disciplinary and adverse actions available to supervisors in order of their severity are defined below:

(1) Oral admonishment - a warning by a supervisor which is intended to improve an employee's conduct, attitude, habits, or work methods.

(2) Letter of counseling/warning - a letter advising the employee of the need to improve work habits, conduct, attitude or work methods. This action is more significant than an oral admonishment but not as formal as an official reprimand. Although this type letter is not filed in the employee's OPF, it may be referred to in support of future actions for similar offenses.

(3) Written reprimand - a formal disciplinary letter issued to an employee by a supervisor as a result of the employee's misconduct or repeated infractions of a minor nature which are sufficiently serious to warrant formal disciplinary action.

(4) Suspension - the placing of an employee in a temporary status without duties and pay for disciplinary reasons.

(5) Demotion - the involuntary assignment of an employee to a position at a lower classification level for disciplinary reasons.

(6) Removal - the involuntary separation of an employee from DeCA for disciplinary reasons.

b. A table of penalties for delinquency or misconduct is provided at Appendix A as a guide to disciplinary action which may be taken when warranted. This table should not be applied mechanically. Supervisors should consider the circumstances carefully when evaluating offenses and penalties, taking into account:

- (1) The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
- (2) The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
- (3) The employee's past disciplinary record;
- (4) The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
- (5) The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon the supervisor's confidence in the employee's ability to perform assigned duties;
- (6) Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
- (7) Consistency of the penalty with the DeCA table of penalties (see Appendix A);
- (8) The notoriety of the offense or its impact upon the reputation of DeCA;
- (9) The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
- (10) Potential for the employee's rehabilitation;
- (11) Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, bad faith, malice or provocation on the part of others involved in the matter; and
- (12) The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

c. Not all of these factors will be pertinent in every case, and frequently, in the individual case, some of the pertinent factors will weigh in the individual's favor while others may not or may even constitute aggravating circumstances. Selection of an appropriate penalty must thus involve a responsible balance of the relevant factors in the individual case. When the action taken exceeds the standard table of penalties an explanation for exceeding the table of penalties should be provided in the proposed notice of disciplinary action.

d. Some reasons constitute, by their nature, an insufficient or potentially insufficient cause of action.

(1) The fact that an employee was arrested for a crime does not by itself provide a cause for adverse action, even when the fact of the arrest is completely established, since the employee may be innocent of the crime for which the arrest was made. The correct basis for any action would be the misconduct which led to the arrest (or which would warrant suspension pending further investigation). Criminal indictment may not constitute by itself sufficient cause for an adverse action, except for an indefinite suspension pending disposition of criminal indictments (when the indictment interferes with the Agency's ability to perform its mission). Conviction may be cause for removal. However, a subsequent acquittal of the employee on appeal may vacate the cause for action. If the cause relied on is the employee's

act or wrongdoing rather than the conviction, generally the administrative action by the Agency will not be affected by the subsequent court action on the criminal case.

(2) Misuse of leave as a reason for taking disciplinary action has caused much confusion.

(a) Because of the Agency's discretion to approve or deny most requests for leave, the general rule is that the Agency may not take action based on the employee's use of leave which the Agency has approved, i.e., sick, annual, or leave without pay. (Use of accrued sick leave in the absence of fraud or subterfuge, is an entitlement of every employee who is ill or incapacitated by injury. Approval by the supervisor is contingent on submission of supporting evidence acceptable to the supervisor/DeCA. The right of the employee to take sick leave for non-emergency examinations is subject to requesting this leave in advance, with the approval of the proposed time subject to the need for the employee's services.) When a supervisor exercises his/her authority to approve an employee's request for leave, including leave without pay, the supervisor has presumably made a determination that the employee's presence on the job is not required. The supervisor may, if she/he needs the employee's services, deny leave and if the employee does not report for duty, charge an absence to absent without leave (AWOL). A denial of leave and a charge to AWOL is not punitive nor does it mean that the employee has insufficient reason for requesting leave, but rather that the employee's presence is required and that the reason for requesting leave is not one for which leave must be approved. Such a denial of leave and charge to AWOL, however, may form the basis of an adverse action. If the supervisor has in the past approved an employee's leave, but believes that the extent of the leave used is such that the employee is not on duty on a regular full-time or part-time basis in a position which requires a regular, full-time or part-time employee, or that the employee has consistently failed to obtain advance approval for leave, the supervisor has the opportunity to establish an appropriate record as part of a basis for further action. To do this, the supervisor should issue the employee a "Letter of Requirement" which informs the employee that his/her attendance record is unsatisfactory and needs to be improved and warns the employee that further sick leave will not be approved without sufficient medical documentation and that annual leave and leave without pay will be approved only if requested in advance and the employee's services are not essential during the period for which the leave is requested. If the employee is then absent without prior approval or proper medical documentation, OPM recommends that the supervisor record the absence as AWOL, which may serve as a basis for disciplinary action.

(b) The one exception to the general rule is that adverse action may be taken based on a record of excessive unscheduled leave without pay (LWOP) when three criteria are met: (1) the record showed that the employee was absent for compelling reasons beyond his/her control so that Agency approval or disapproval was immaterial because the employee could not be on the job; (2) the absence or absences continued beyond a reasonable time and the employee was warned that adverse action might be initiated unless the employee became available for duty on a regular, full-time or part-time basis; and (3) the Agency showed that the position needed to be filled by an employee available for duty on a regular, full-time or part-time basis. This exception would be applicable only under certain unusual circumstances, e.g., the inability of an employee to return to duty or to work on a regular basis because of the continuing effects of illness or injury (on or off-the-job).

e. Oral Admonishment:

(1) An oral admonishment is not considered to be a formal disciplinary action for the purpose of determining that a second or third offense has occurred. However, incidents for which an employee has been admonished may be included among the reasons to support a more severe disciplinary action for subsequent misconduct. If included, they must be cited specifically and in detail.

(2) Procedural Requirements:

(a) The supervisor will administer the admonishment in private.

- (b) The supervisor will inform the employee that he/she is being admonished.
- (c) The supervisor will state the reasons for admonishment so the employee clearly understands them.
- (d) The supervisor will give the employee an opportunity to express his/her views and to explain the circumstances giving rise to the offense.
- (e) The supervisor will fully consider the employee's explanation.
- (f) The supervisor will inform the employee whether his/her explanation(s) are satisfactory and if not, the specific ways in which the employee can improve or correct the deficiency for which admonished.
- (g) The supervisor may prepare a Memorandum For Record to serve as a memory jogger should similar offenses occur and disciplinary action become necessary.

f. Memorandum of Counseling/Warning:

- (1) A Memorandum of Counseling/Warning notifies the employee of unacceptable behavior and serves notice that stronger corrective action will be taken should there be similar future offenses.
- (2) A Memorandum of Counseling/Warning will not be made a matter of record to be placed in the employee's Official Personnel Folder. It may be considered in determining appropriate action should an offense occur later.
- (3) A Memorandum of Counseling/Warning may be considered when it is determined that a more formal action such as a reprimand is not warranted but something stronger than an oral admonishment is needed.
- (4) A sample Memorandum of Counseling/Warning is provided at Appendix B.

g. Written Reprimand:

- (1) Written reprimands shall be retained as temporary records on the left-hand side of the employee's Official Personnel Folder for a period not longer than three years or until the employee leaves DeCA, whichever is sooner.
- (2) Written reprimands will be discussed with and reviewed by a servicing Region/Satellite/PMSO staff member prior to their issuance.
- (3) A written reprimand may be used to support increased penalties in the event of future charges or in connection with any other proposed disciplinary action. A written reprimand may not be used in support of another disciplinary action if it has been withdrawn from the employee's Official Personnel Folder.
- (4) Procedural Requirements:
 - (a) When a supervisor considers that a written reprimand is required to correct misconduct on the part of a subordinate employee, the supervisor will obtain all available information concerning the alleged misconduct. The supervisor may, at his or her election, discuss the incident with the employee to ensure that all the relevant facts are known. Since disciplinary action could result from this

discussion, supervisors are cautioned that employees may be entitled to union representation during the discussion pursuant to 5 USC 7114(a)(2)(B). Supervisors should contact the Region/Satellite/PMSO Office to determine appropriate procedures. When a supervisor has elected to discuss the matter with the employee, the supervisor has the option of discontinuing his/her discussion at any time and obtaining the information through other sources. If, during the discussion, the supervisor determines that there is an acceptable explanation for the employee's conduct and that discipline is not warranted, the matter will be closed and the employee so advised.

(b) If the supervisor determines that discipline is warranted, the supervisor will issue a written reprimand. The reprimand will:

1. Inform the employee that he/she is being reprimanded;
2. Refer to any discussion held under paragraph (a) above with the employee, if any;
3. Cite specifically and in detail the reasons supporting the reprimand, including substantive points made by the employee during the discussion, if any;
4. Inform the employee of his/her right to formally grieve the reprimand either under the DeCA grievance procedure or a negotiated grievance procedure if applicable;
5. Inform the employee of the time limit for filing the grievance;
6. Inform the employee that he/she will be allowed a reasonable amount of official time to prepare a grievance, whom to contact to arrange for such time, and that his/her representative, if a DeCA employee, is also entitled to a reasonable amount of official time to prepare the grievance. If a negotiated agreement is in effect, the employee will be informed of the amount of time his/her representative is permitted as provided by the terms of that agreement;
7. Inform the employee that the reprimand will be filed in his/her Official Personnel Folder. The statement will specify the period (not more than three years) that the disciplinary action will remain a matter of record;
8. Provide the name of the Region/Satellite/ PMSO representative who can explain the action and provide procedural guidance for filing a grievance; and
9. Warn the employee that any future misconduct may result in more severe disciplinary action.

(c) The Region/Satellite/PMSO Office will forward a copy of the reprimand to the servicing DLA OCP/PCPSA for filing in the employee's Official Personnel Folder.

(d) A formal written reprimand is not permanent in nature and will be withdrawn from the Official Personnel Folder upon:

1. Expiration of the period specified in the letter of reprimand; or
2. Departure of the employee from the rolls of DeCA; or
3. Determination through an appropriate adjudicatory procedure that the reprimand is not warranted; or
4. Determination by the initiating supervisor that the employee has sufficiently corrected his/her behavior and the reprimand has served its purpose.

(e) Supervisors should annotate the supervisors' employee file of the notice of reprimand.

(f) Appendix C provides a sample written reprimand.

h. Suspension:

(1) Suspension is an action that requires careful consideration and should be taken only after a responsible determination that a less severe penalty, such as an oral admonishment or reprimand, is inadequate and after discussion and review with a personnel management specialist.

(2) Factors to consider in determining whether to suspend an employee include those cited in Paragraph 6, b. (1)-(12) and Appendix A of this regulation as well as any law or regulation which may require a suspension penalty for a particular offense.

(3) Procedural requirements for effecting suspensions for:

(a) 14 calendar days or less are contained in Appendix D.

(b) more than 14 calendar days are contained in Appendix E.

i. Demotion:

(1) An employee can be demoted for disciplinary reasons if, as a result of misconduct, or physical or mental inability and the employee can no longer be relied on to perform some or all of the duties of the position to which assigned.

(2) Procedural requirements for effecting demotions are contained in Appendix E.

j. Removal:

(1) A removal is the maximum penalty which can be imposed on an employee. Not only does it deprive the person of present employment and an immediate livelihood, but it may hamper or lessen his/her chance for obtaining future employment. Therefore, it is most important that all the facts and circumstances involved in a proposed removal action be carefully analyzed and found to support a conclusion that removal action should be taken.

(2) Factors to consider in determining whether to remove an employee are described in paragraph 6, b.(1)-(12) and in Appendix A.

(3) Following are some examples of causes for disciplinary removals.

(a) Misconduct. Action may be taken to remove an employee when:

1. He/she clearly demonstrates a continued unwillingness to conform to the rules of conduct; or

2. A progression of applied disciplinary measures has failed to rehabilitate an employee; or

3. Certain violations are so serious that removal for a first or second offense is warranted.

(b) Declined assignment:

1. Management may assign employees to positions where their services can be best utilized and to satisfy workload requirements. In addition, employees may be reassigned under a Rotation Program for career development purposes and to enhance professional independence and job objectivity; or

2. An employee who refuses to accept a management-directed assignment to a different position, including a different geographical or organizational location, may be removed provided the action promotes the efficiency of the service.

(4) Firm Choice. The Merit Systems Protection Board (MSPB) now requires agencies to offer employees handicapped by alcoholism a specific choice between treatment or removal for their alcohol related misconduct. The MSPB has decided that to satisfy the firm choice requirement, an agency must afford an affected employee "an unequivocal" choice between effective treatment of the condition or the initiation of removal procedures if the employee:

- (a) chooses not to participate in a treatment program; or
- (b) ceases to participate in the treatment program; or
- (c) is discharged from the treatment program before completing it; or
- (d) fails to adhere to the terms of the treatment program; or
- (e) engages in alcohol related deficiencies after completing a treatment program.

Before any adverse action appealable to MSPB is taken against a DeCA employee for alcohol related reasons, the employee must be advised/provided a firm choice between treatment or initiation of removal procedures. The firm choice offer should be extended to the employee in writing and advise the employee of the option between treatment and the five conditions identified above which would result in removal.

(5) Last Chance Agreements. Last Chance Agreements are used to give the employee one last chance to correct an offensive behavior or face removal. Typical last chance agreements include terms or provisions to which the employee agrees in exchange for holding a removal action in abeyance. Such terms or provisions may include:

- (a) the employee agreeing to refraining from the offensive behavior for a given period of time;
- (b) agreeing to receiving counseling, if appropriate; and
- (c) agreeing to waiving rights to grieve, appeal, complain or otherwise contest an action resulting from breach of the agreement. Such agreements must be entered into voluntarily, without coercion or under duress. The use of last chance agreements is encouraged, at the discretion of the management official taking the action. A sample Last Chance Agreement is contained at Appendix F.

(6) Procedural requirements for effecting removals are contained in Appendix E.

k. Coordination with the DeCA Region/Satellite/PMSO Office:

(1) Each notice of proposed adverse action and notice of decision will be discussed with and reviewed by a personnel management specialist prior to issuance to the employee.

(2) The supervisor or higher level supervisor, as appropriate, will issue a notice of proposed adverse action and notice of decision to the employee at the appropriate times. The supervisor

will obtain receipted, dated copies from the employee and will forward them through channels to the DeCA/Region/Satellite/PMSO Office. If the employee refuses to acknowledge written receipt of the notice, the supervisor will annotate on the notice indicating the refusal and the date delivery of the notice was accomplished.

l. Employee Representation:

(1) In any discussion with an employee which may result in formal disciplinary action, the employee has the right to representation if:

- (a) The employee is in a bargaining unit having recognition;
- (b) The employee reasonably believes that disciplinary or adverse action may result;

and

(c) The employee requests representation by the organization having the exclusive recognition.

(2) Bargaining unit employees must select their representative for disciplinary actions in accordance with the provisions of 5 USC 7114(a)(5), governing representation rights (and any applicable negotiated agreement).

(3) All non-bargaining unit employees who receive a notice of proposed adverse action or who receive a notice of decision of adverse action are entitled to represent themselves or to be represented by an attorney or other representative of their own choosing.

(4) DeCA may disallow an employee representative if:

- (a) That individual's activities as a representative would cause a conflict of interest; or
- (b) That individual's priority work assignments preclude his/her release; or
- (c) That individual is an employee whose participation would result in unreasonable cost to the government.

m. Employee Status During Notice Period:

(1) Normally, an employee receiving a notice of proposed adverse action will remain on active duty during the notice period. In those rare instances where management determines that the employee's continued presence at the worksite may pose a threat to the employee or others, result in loss of or damage to government property, or otherwise jeopardize legitimate government interests, management may determine that the employee cannot be retained in his/her regular job during the notice period. In these circumstances, management may consider the following alternatives:

(a) Assign the employee to duties where he/she is no longer a threat to safety, the DeCA mission, or to government property; or

(b) Place the employee on leave with his/her consent; or

(c) Place the employee on involuntary sick or other leave when management has medical documentation demonstrating physical or mental incapacitation; or

(d) Carry the employee on appropriate leave if he/she is absent for reasons not originating with management.

(e) Curtailment of the notice period when the Agency can invoke the "crime provision." This provision can be invoked when there is reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed.

(2) If none of the above alternatives are feasible, management may place the employee in a paid, non-duty status during all or part of the advance notice period.

n. Records.

The DeCA Region/Satellite/PMSO shall maintain for a period of four years after a suspension, demotion, or removal is closed, a copy of: the notice of proposed action; the employee's written reply, if any; a summary of the employee's oral reply, if any; the notice of decision; any order effecting the action; and any other supporting data. This material shall be furnished to the Merit Systems Protection Board upon its request and to the employee upon the employee's request.

APPENDIX A
GUIDANCE FOR DETERMINING PENALTIES FOR
DELINQUENCY OR MISCONDUCT

This table will be used as a general guide in determining penalties to be imposed for delinquency or misconduct to assure consistent treatment of employees throughout the Defense Commissary Agency. The List of offenses and suggested penalties set forth below may not cover all situations and is to be considered as suggestive only. Final decision on the penalty to be imposed rests with the official taking the action. Consideration should be given to the period of time which has elapsed since the prior offense when imposing progressive penalties for a second or third offense.

<u>OFFENSE</u>	<u>EXPLANATION</u>	<u>FIRST OFFENSE</u>	<u>PENALTIES</u>	
			<u>SECOND OFFENSE</u>	<u>THIRD OFFENSE</u>
1. insubordination	Refusal to obey orders, defiance of authority.	Written reprimand to removal	5 day suspension to removal	Removal
2. Fighting/ Creating a Disturbance	a. Creating a disturbance resulting in adverse effect on morale, production, or maintenance of proper discipline.	Written reprimand to 5 day suspension	5 to 10 day suspension	10 day suspension to removal
	b. Threatening or attempting to inflict bodily harm without bodily contact.	Written reprimand to removal	14 day suspension to removal	30 day suspension to removal
	c. Hitting, pushing or other acts against another without causing injury.	Written reprimand to 30 day suspension	30 day suspension to removal	Removal
	d. Hitting, pushing or other acts against another causing injury.	Written reprimand to removal	Removal	
3. Sleeping on duty	a. Where safety of personnel or property is not endangered.	Written reprimand to 1 day suspension	1 to 5 day suspension	5 day suspension to removal
	b. Where safety of personnel or property is endangered.	1 day suspension to removal	Removal	
4. Loafing; delay in carrying out instructions	a. Idleness or failure to work on assigned duties.	Written reprimand to 3 day suspension	1 to 5 day suspension	5 day suspension to removal
	b. Delay in carrying out or failure to carry out instructions.	Written reprimand to 3 day suspension	1 to 5 day suspension	5 day suspension to removal
5. Attendance related offenses	a. Absence from the regularly scheduled tour of duty which has not been authorized and/or for which pay must be denied (AWOL) or any absence from management directed additional hours of duty (Unauthorized Absence). Includes leaving the work site without permission.	Written reprimand to 5 day suspension	1 to 14 day suspension	5 day suspension to removal
	b. Failure to follow established leave procedures.	Written reprimand to 5 day suspension	1 to 5 day suspension	5 day suspension to removal
	c. Unexcused tardiness leave procedures.	Written reprimand to 1 day suspension	1 to 3 day suspension	1 to 5 day suspension habitual tardiness warrants removal

<u>OFFENSE</u>	<u>EXPLANATION</u>	<u>FIRST OFFENSE</u>	<u>PENALTIES</u>	
			<u>SECOND OFFENSE</u>	<u>THIRD OFFENSE</u>
6. Unauthorized use of alcohol	a. Unauthorized possession or transfer of alcoholic beverages while on government premises or in a duty status.	Written reprimand to 5 day suspension	5 to 14 day suspension	14 day suspension to removal
	b. Unauthorized use of alcoholic beverages while on government premises or in a duty status.	Written reprimand to 14 day suspension	14 to 30 day suspension	30 day suspension to removal
	c. Reporting to work or being on duty while under the influence of alcohol, a drug or other controlled substance to a degree which would interfere with proper performance of duty, would be a menace to safety, or would be prejudicial to the maintenance of good order or discipline.	Written reprimand to 30 day suspension. Removal may be warranted if the safety of personnel or property is endangered.	14 day suspension to removal	Removal
	See para 13 for other drug related offenses.			
7. Discourtesy	a. Discourtesy, e.g., rude unmannerly, impolite acts or remarks (non-discriminatory).	Written reprimand to 1 day suspension	1 to 5 day suspension	3 to 10 suspension
	b. Use of abusive or offensive language, gestures or similar conduct (non-discriminatory).	Written reprimand to 5 day suspension	5 day suspension to removal	30 day suspension to removal
8. Gambling	a. Participating in an unauthorized gambling activity while on Government premises or in a duty status.	Written reprimand to 1 day suspension	1 to 5 day suspension	5 day suspension to removal
	b. Operating, assisting or promoting an unauthorized gambling activity while on Government premises or in a duty status or while others involved are in a duty status.	14 day suspension to removal	Removal	
9. Indebtedness	Failure to honor just debts where agency mission or employee performance are affected.	Written reprimand to 5 day suspension	Written reprimand to removal	5 day suspension
10. False Statements	a. False statements, misrepresentation, or fraud in entitlements, includes falsifying information on a time card, leave form, travel voucher, or other document pertaining to entitlements.	Written reprimand to removal	30 day suspension to removal	Removal
	b. False statements of misrepresentation on an SF 171, or other documents pertaining to qualifications, or on any official record not otherwise enumerated.	Written reprimand to removal	14 day suspension to removal	30 day suspension to removal

<u>OFFENSE</u>	<u>EXPLANATION</u>	<u>FIRST OFFENSE</u>	<u>PENALTIES</u>	
			<u>SECOND OFFENSE</u>	<u>THIRD OFFENSE</u>
	c. Knowingly making false or malicious statement against co-workers, supervisors, subordinates, or government officials with the intent of harming or destroying the reputation, authority, or official standing of that individual or an organization.	Written reprimand to removal	Removal	
	d. Deliberate misrepresentation, exaggeration, concealment, withholding of a material fact. Includes perjury, making false sworn statements, and lying to a supervisor.	Written reprimand to removal	5 day suspension to removal	10 day suspension to removal
11. Theft	Stealing, misappropriation, theft, or unauthorized possession of government property or property of others, actual or attempted, or collusion with others to commit such acts.	Removal		
12. Misuse or Abuse of Government Property for other than official purposes	a. Using Government property or Federal employees in a duty status	Written reprimand to removal	1 day suspension to removal	14 day suspension to removal
	b. Loss of or damage to government property, records or information when an employee is entrusted to safeguard Government property as a requirement of the job (e.g., cashier, warehouse worker, property book officer).	Written reprimand to 14 day suspension	Written reprimand to removal	14 day suspension to removal
	c. Willfully using or authorizing the use of a government motor vehicle or aircraft for other than official purposes.			
	d. Misuse of Government credentials.	Written reprimand to removal	5 day suspension to removal	14 day suspension to removal
	e. intentionally and wrongfully defacing/mutilating or destroying a government record/file.	Written reprimand to removal	Removal	
	f. Blackmarketing Commissary goods.	Removal		
13. Unauthorized use or possession of a controlled substance.	a. introduction of controlled substances to a work area or government installation for personal use.	3 day suspension to removal	Removal	
	b. Introduction of a controlled substance to a work area or government installation in amounts sufficient for distribution or distribution of a controlled substance on a government installation.	Removal		
14. Failure to observe written regulations, orders, rules or procedures.	a. Violation of administrative rules or regulations where safety to persons or property is not endangered.	Written reprimand to 1 day suspension	1 to 14 day suspension	5 day suspension to removal

<u>OFFENSE</u>	<u>EXPLANATION</u>	<u>PENALTIES</u>		
		<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OFFENSE</u>
	b. Violation of administrative rules or regulations where safety to persons or property is endangered.	Written reprimand to removal	30 day suspension to removal	Removal
	c. Violation of official security regulations. Action against National Security:			
	(1) where restriction is not compromised and breach is unintentional.	written reprimand to 5 day suspension	1 to 14 day suspension	5 day suspension to removal
	(2) Where restricted information is compromised and breach is unintentional.	Written reprimand to removal	30 day suspension	Removal
	(3) Deliberate violation	30 day suspension to removal	Removal	
15. Intentional discrimination based on race, color, religion, age, sex, national origin, political affiliation, handicap, or marital status	Prohibited discriminatory practice in any aspect of employment (e.g., employment, appraisal, development, advancement or treatment of employees). Includes failure to prevent or curtail discrimination of a subordinate when the supervisor knew or should have known of the discrimination.	Written reprimand to removal	Removal	
16. Sexual Harassment. Influencing, offering to influence, or threatening the career, pay, job, or work assignments of another person in exchange for sexual favors or deliberate repeated offensive comments, gestures or physical contact of a sexual nature.	a. Involving a subordinate.	1 day suspension to removal	10 day suspension to removal	30 day suspension to removal
	b. Not involving a subordinate.	Written reprimand to 30 day suspension	5 day suspension to removal	15 day suspension to removal
17. Constitutional Violation	Violation of employee's constitutional rights (i.e., freedom of speech/association/religion).	Written reprimand to removal	5 day suspension to removal	30 day suspension to removal
18. Conduct Unbecoming a Federal Employee.	a. Immoral, indecent, or disgraceful conduct.	1 day suspension to removal	Removal	
	b. Solicitation of or accepting anything of monetary value from person who is seeking contracts or other business from the government for financial gain. (See DoD Directive 5500.7R - Joint Ethics Regulation).	10 day suspension to removal	Removal	
	c. Soliciting contributions from other government officers or employees for gifts or presents to those in superior official positions. Accepting gifts or presents offered or presented as contributions from government employees receiving less pay. (See DoD Directive 5500.7R - Joint Ethics Regulation).	10 day suspension to removal	Removal	
19. Refusal to testify; interference or obstruction	a. Refusal to testify or cooperate in a properly authorized inquiry or investigation when there is a duty to do so.	1 day suspension to removal	5 day suspension to removal	Removal

<u>OFFENSE</u>	<u>EXPLANATION</u>	<u>PENALTIES</u>		
		<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OFFENSE</u>
	b. Interference with, attempting to influence, or attempting to alter testimony of witnesses or participants in an administrative or judicial process.	5 day suspension to removal	10 day suspension to removal	Removal
	c. Attempting to impede an investigation or to influence investigating officials.	10 day suspension to removal	30 day suspension to removal	Removal
20. Political Activity (Hatch Act Violations)	a. Violation of prohibition against soliciting political contributions.	Removal		
	b. Violation of prohibition against campaigning or influencing elections.	30 day suspension to removal	Removal	
21. Misappropriation	a. Directing, expecting or rendering services not covered by appropriations.	Removal		
	b. The unauthorized or wrongful use of government funds.	Removal		
22. Job Actions	Participating in or promoting a strike, work stoppage, slowdown, sick out or other job actions.	Removal		
23. Reprisal	a. Intentional interference with an employee's exercise of, or reprisal against an employee for exercising a right to grieve, appeal or file a complaint through established procedures.	5 day suspension to removal	10 day suspension to removal	30 day suspension to removal
	b. Reprisal against an employee for providing information to an Inspector General, MSPB Office of Special Counsel, EEOC or OCI investigator, Whistle blowing, or for testifying in an official proceeding.	5 day suspension to removal	10 day suspension to removal	30 day suspension to removal
	c. Intentional interference with an employee's exercise of, or reprisal against an employee for exercising a right provided under 5 USC 7101 <i>et seq</i> (governing Federal Labor-Management Relations).	5 day suspension to removal	10 day suspension to removal	30 day suspension to removal
	d. Finding by KSPB of refusal to comply with MSPB order or finding of intentional violation of statute causing issuance of a special counsel complaint.	Written reprimand to removal	Removal	

Appendix B

SAMPLE MEMORANDUM OF WARNING

February 26, 19XX

MEMORANDUM FOR JOHN DOE, XYZ BRANCH OFFICE

SUBJECT: Memorandum of Warning

This memorandum serves as a warning regarding your absence from your work area without your supervisor's permission.

On February 22, 19XX you left your work area at 4:15 p.m., thirty minutes before the end of your workday. You failed to return to work on that date.

During our discussion you did not furnish an adequate reason for your absence. Therefore, I am charging you one half hour of absence without leave (AWOL) for the absence in question.

This memorandum will not be placed in your Official Personnel Folder; however, a copy will be retained in my files. This copy will be destroyed not later than one year after the date of this memorandum provided your conduct has been satisfactory.

You are warned that a repetition of this offense may result in more severe disciplinary action.

(Supervisor's signature and title)

I acknowledge receipt of this document.

(Employee's Signature) (Date)

Appendix C

SAMPLE WRITTEN REPRIMAND

June 12, 19XX

MEMORANDUM FOR ROBERT R. ROE, REGION OFFICE

SUBJECT: Memorandum of Warning

You are hereby reprimanded for violation of security regulations.

On Monday, June 11, 19XX, I discussed with you the following incident which comprises the reason for this reprimand.

While checking the office at close of business of Friday, June 8, 19XX, I routinely went through the files on the tops of all desks in the office. In going through your work basket, I found a file relating to a service contract. The file cover was marked SECRET, top and bottom, front and back. It contained three separate documents marked "SECRET".

During our discussion of June 11, 19XX, you acknowledged that you had taken the file from the secure file cabinet Friday afternoon for use in connection with an assignment you were working on. Your explanation that the material had become covered by other files and overlooked in the rush of closing up for the weekend only confirms that your handling of this classified material was careless and negligent.

As you well know, responsibility for the safeguarding of classified material rests with each individual who handles such material. Each employee is responsible for classified material on his desk or in his immediate work area.

Fortunately, in this instance, the room in which the material was found had not been unattended and compromise of the material is not probable.

You are reminded that future infractions may result in more severe disciplinary actions.

If you consider this action improper, you may initiate a grievance under the administrative grievance procedures, (or the negotiated grievance procedure, if appropriate). For purposes of filing a grievance, our discussion of this matter on (add date) is considered to satisfy the informal grievance requirement. Any grievance you may file should be initiated at the formal grievance step, must be written, and should be addressed to the deciding official. It must state all facts and details with respect to date, time, place and other pertinent information; it must state what changes in the action you believe should result from your grievance; it must identify individuals you wish the grievance examiner or arbitrator to contact and the matters about which these individuals are to be queried relevant to your case; it must also state whether you wish to present your case personally to the grievance examiner. Your grievance must be filed not later than 15 calendar days from the date of receipt of this letter.

If you are in an active duty status, you are entitled to a reasonable amount of official time to prepare your grievance. You may contact me to arrange for such time. If you have a representative who is an employee of DeCA and in an active duty status, that person is also entitled to a reasonable amount of official time to prepare your grievance. Arrangements for such time must be made with your representative's supervisor.

This letter of reprimand will be placed in your Official Personnel Folder where it will be retained for up to three years or until you leave the Agency, whichever occurs first, at which time it will be removed and destroyed.

If you need further assistance concerning this action or procedural guidance concerning your grievance, you may contact _____ Personnel Division, _____

(Supervisor's Signature and Title)

I hereby acknowledge receipt of this document.

(Employee's Signature) (Date)

Appendix D

PROCEDURAL GUIDANCE FOR EFFECTING A SUSPENSION OF 14 DAYS OR LESS

Office of Personnel Management regulations implementing Subchapter I of Chapter 75 of the Civil Service Reform Act of 1978 require certain procedural requirements be observed when an employee is suspended for 14 days or less. This Appendix delineates those as well as the Agency's requirements when taking such disciplinary actions. Failure to comply with these requirements can be considered a procedural defect and cause reversal of the action upon a grievance.

A. Notice of Proposed Suspension:

(The sample memorandum at page D-6 contains the requirements described below.)

- (1) The notice of proposed suspension must clearly be only a proposal. Any language in the notice implying a decision has been reached must be carefully avoided.
- (2) No minimum advance notice period is required by law. Required allowances for time in which to reply to the notice of proposed suspension are specified below.
- (3) The notice must state the specific number of calendar days of the proposed suspension. Vague proposals such as "a period to be determined" or "an appropriate number of days" are inadequate because they are misleading and not clear as to how severe the suspension may be.
- (4) The notice must state the reasons for the proposed suspension and any supporting facts specifically and in detail, including dates, times, places, and names. The notice should be so self-contained that a person unacquainted with the facts and circumstances involved could obtain from the notice a clear understanding of the reasons for the proposed action and a person acquainted with the facts and circumstances could respond to the charges. Statements of conclusion unsupported by details leading to the conclusion do not meet the specificity and detail requirement.
- (5) The notice must inform the employee of the right to review all the material relied on to support the reasons for the proposed action, including material relevant to the employee's past record, if that record forms part of the basis for the proposed action.
- (6) The notice must inform the employee where the material referred to in Paragraph A.(5) above may be reviewed.
- (7) The notice must inform the employee of his/her right to reply to the notice orally and/or in writing, and to submit affidavits in support of the reply. Any reply will be made to the official taking the action.
- (8) The time limit within which the reply must be submitted will be stated in the notice and normally will be at least seven full calendar days. Reasonable extensions for good reasons, requested in writing, should be approved. In no case will the employee be given less than 24 hours to reply, and such cases should be rare and based upon the notoriety of the offense.
- (9) The notice must inform the employee that official time will be allowed to review the material relied on to support the reasons in the notice, secure affidavits, and prepare a reply. The amount of time will be reasonable according to the charges and complexity of the case. The notice will also inform the

employee of the appropriate person with whom to arrange for such time. A reasonable request for additional official time submitted in writing should be approved.

(10) The notice must inform the employee of the right to be represented. All employees may act as their own representative or be represented by an attorney or other representative who, if a DeCA employee, is entitled to a reasonable amount of official time to assist in preparation and presentation of the reply. If a negotiated agreement is in effect, the employee will be informed of the amount of official time his/her representative is permitted as ordered by the terms of the negotiated agreement.

(11) The notice must include the name, location, and phone number of a person who can explain regulatory and procedural aspects of the action. Normally this would be someone in the DeCA Region/Satellite/PMSO.

(12) The employee's duty status during the notice period.

B. Delivery of Notice:

The method used to deliver a notice of proposed suspension is an important consideration. Should the question arise, it is the responsibility of the proposing official to show that all delivery requirements are satisfied. The proposing official should be able to show that the employee received the notice or that actions taken to deliver it constituted a reasonable and diligent effort, under the circumstances, to deliver the notice on a timely basis.

(1) Personal Delivery. It is usually best to deliver a notice to the employee personally and, if possible, to obtain his/her written acknowledgment of its receipt.

(2) Mail Delivery. A notice of proposed suspension will be delivered by mail only when personal delivery cannot be made. Mail delivery should be made by both registered mail with return receipt requested and first class U.S. mail, with a certificate of mailing.

C. Employee's Reply:

(1) In addition to replying in writing, the employee must be given an opportunity to make an oral response. The reply should not be restricted by management to matters relating solely to the reasons for proposing the action. The employee must be permitted to plead extenuating circumstances or make any other representations which he/she considers appropriate.

(2) A written summary of an oral reply will be prepared by the official taking the action.

(3) The official taking the action will fully consider any reply or replies, written and/or oral, which the employee makes.

D. Notice of Decision:

If the employee is still on DeCA's rolls, a dated, written notice of final decision must be given. (The sample memorandum on page D-8 contains the requirements described below.)

(1) The decision can be to suspend as proposed, reduce the suspension to fewer days or to a reprimand, or withdraw the proposal. In no case will the decision be to suspend for more days than proposed in the notice of proposed suspension.

(2) The notice of decision will include: the employee's name; the organizational location in DeCA; a reference to the notice of proposed adverse action by date; and the decision.

(3) The decision should normally be made by a higher level official than the proposing official. The decision rendering official must consider any written and/or verbal reply made by the employee. The proposing and deciding official may be the same person when that person is the head of the component e.g., Region Director, Commissary Officer.

(4) The notice of decision must clearly identify which of the reasons contained in the notice of proposed suspension are found to be sustained and relied on in taking the action and which, if any, are found not sustained.

(5) The notice of decision will not introduce new reasons for the action which were not contained in the notice of proposed suspension.

(6) The notice of decision will inform the employee of the effective date of the suspension.

(7) The notice of decision must inform the employee of his/her right to file a grievance under the administrative grievance procedure or a negotiated grievance procedure, whichever is applicable.

(a) If the grievance is filed under the DeCA procedure, the notice of proposed suspension and the employee's reply are considered to satisfy the informal grievance procedure. The grievance that is filed will be initiated at the formal grievance step.

(b) A grievance filed under the DeCA procedure must be filed within 15 calendar days after the effective date of the suspension.

(8) The notice of decision must inform the employee of the right to be represented. Bargaining unit employees covered under a negotiated grievance procedure may represent themselves or request representation from the union. All other employees may represent themselves or be represented by an attorney or other representative of their own choosing.

(9) The notice of decision must inform the employee:

(a) That a reasonable amount of official time will be allowed to prepare and present a grievance.

(b) The person with whom to arrange for such time.

(c) That his/her representative, if a DeCA employee, is entitled to a reasonable amount of official time to assist in preparation and presentation of the grievance. If a negotiated agreement is in effect, the employee will be informed of the amount of time his/her representative is permitted as provided by the terms of the agreement.

(10) The notice of decision must name a person in the DeCA Region/Satellite/PMSO Office who will provide the employee full information on his/her rights and procedural guidance on filing a grievance.

(11) The notice of decision must be delivered to the employee before the time the action is effective. Possible delays in making delivery, particularly when mail is used, must be taken into consideration in establishing the effective date of the suspension.

(12) The instructions in Section B, above, will be followed in the delivery of the notice of decision.

SAMPLE NOTICE OF PROPOSED SUSPENSION

October 19XX

MEMORANDUM FOR JOHN E. SMITH, REGIONAL OFFICE

SUBJECT: Proposed Suspension of 5 Calendar Days

You are hereby notified that I propose to suspend you from duty without pay for 5 calendar days for reporting to duty under the influence of intoxicants to a degree which rendered you unfit for duty.

At approximately 10:30 a.m. on Friday, October 12, 19XX, you left the office for the purpose of going to a contractor facility to obtain needed data. You arrived back at this office at 1:30 pm. In speaking with you at that time, I detected a strong odor of whiskey on your breath. Within the next half hour, your behavior worsened significantly. Your face became flushed, your speech was slurred and nearly incoherent; that speech which was coherent lacked relevance; and you were perspiring profusely and could hardly walk. You became loud and boisterous and abusive when told to stop disturbing others in the office. By 2:00 p.m., you were in such a state that you were ordered to go to the public health dispensary for treatment. The telephoned report from Dr. Gordon was that you were unfit for duty due to an excessive intake of alcoholic substances and should not return to duty.

In determining the penalty for the above misconduct, I have considered (list any appropriate mitigating or aggravating factors) and that this is the second disciplinary action brought against you in recent months. On June 20, 19XX, I issued a written reprimand to you for loud, boisterous behavior which disrupted the work of the office.

You have a right to review the material which is relied upon to support the reasons for action given in this notice. You may make an appointment to review this material in my office.

If you believe this proposed suspension is unwarranted, it is important that you reply to this notice, stating completely all the facts supporting why you believe the action should not be taken. You may reply to this charge orally and/or in writing, and submit affidavits in support of your reply to me.

You will be allowed 7 calendar days from the date of receipt of this letter to make your reply. If you are in a duty status, you will be allowed a reasonable amount of official time to prepare your reply and obtain affidavits in support of it. You may contact me to arrange for such time.

You also have a right to represent yourself, or to be represented by an attorney or other representative (or to ask the union for representation, if appropriate). If your representative is an employee of the Defense Commissary Agency and in active duty status, that person is also entitled to a reasonable amount of official time to prepare your reply. Arrangements for such time must be made with your representative's supervisor.

No decision to suspend you has been made or will be made until after the time allowed you for reply. Any reply you make will be given careful consideration before a final decision is made. Whether or not you reply, a written notice of final decision will be given to you.

If you wish to read the regulations pertinent to this action or obtain further information or guidance about how to make a reply, or wish any other explanation of this action, you may contact _____ of (enter location of the servicing civilian personnel office), telephone _____.

(Supervisor's signature)

I acknowledge receipt of this document.

(Employee's signature & Date)

SAMPLE NOTICE OF DECISION TO SUSPEND

October 22, 19XX

MEMORANDUM FOR JOHN E. SMITH, REGIONAL OFFICE

SUBJECT: Decision to Suspend

By memorandum dated October 15, 19XX, you were notified of a proposal to suspend you from duty without pay for 5 calendar days.

I have given full consideration to your reply of October 19, 19XX. The charges as stated in the first paragraph of the letter of October 15, 19XX, are fully supported by the evidence and warrant your suspension without pay to promote the efficiency of the service. It is my considered judgment that: (1) your condition was as described and it was disruptive to the office routine; and (2) Dr. Gordon exercised his best professional judgment in this matter in concluding that you were unfit for duty due to an excessive intake of alcoholic substances. Therefore, it is my decision that you be suspended for 5 calendar days beginning October 29, 19XX and ending on November 2, 19XX. You will report for duty on November 5, 19XX, at the usual time.

If you consider this suspension improper, you may file a grievance under the administrative grievance procedures (or under the negotiated procedure, if applicable). Your grievance may be filed immediately, but not later than 15 calendar days after the effective date of your suspension.

Any grievance you file should be initiated at the formal grievance step. It should be addressed to the regional director, (address). It must state all facts and details with respect to date, time, place, and other pertinent information; it must state what changes in the action you believe should result from your grievance; it must identify individuals you wish to be contacted by the grievance examiner and the matters about which these individuals are to be queried relevant to your case; it must also state whether you wish to personally present your case to the grievance examiner.

If you are in a duty status, you are entitled to a reasonable amount of official time to prepare your grievance. You may contact your supervisor to arrange for such time. You have the right to represent yourself, or to be represented by an attorney or any other individual of your own choosing (or to ask the union for representation, if appropriate). If you have a representative who is an employee of DeCA and in an active duty status, that person is also entitled to a reasonable amount of official time to prepare your grievance. Arrangements for such time must be made with your representative's supervisor.

For further information regarding the regulations and procedures used in this matter, you may contact _____, Personnel Management Specialist, in the DeCA Region/Satellite/PMSO Office at _____.

(Supervisor's signature)

I acknowledge receipt of this document.

(Employee's signature) (Date)

Appendix E

PROCEDURAL REQUIREMENTS FOR EFFECTING A REMOVAL, SUSPENSION FOR MORE THAN 14 DAYS, OR DEMOTION

Office of Personnel Management regulations implementing subchapter II of Chapter 75 of the Civil Service Reform Act of 1978 require that certain procedural requirements be observed when an employee is removed, suspended for more than 14 days, or demoted. This appendix delineates those requirements as well as DeCA's requirements when taking such actions. Failure to comply with these requirements can be considered a procedural defect and may cause reversal of the action upon a grievance or an appeal to the Merit Systems Protection Board.

A. Notice of Proposed Adverse Action

(The sample memorandum on page E-8 contains the requirements described below.)

(1) The notice of proposed adverse action must clearly be only a proposal. Any language in the notice implying that a decision has been reached should be carefully avoided.

(2) An employee against whom adverse action is proposed must be given 30 calendar days advance written notice of the proposed action except when the "crime provision" is involved. (See Section E. below.)

(3) The notice must state the specific penalty proposed. Vague proposals such as "suitable corrective action" or "an appropriate disciplinary action" are inadequate because they are misleading and not clear as to how severe the adverse action may be.

(4) The notice must state the reasons for the proposed action and any supporting facts specifically and in detail, including dates, times, places, and names. The notice should be so self-contained that a person unacquainted with the facts and circumstances involved could obtain from the notice a clear understanding of the reasons for the proposed action and a person acquainted with the facts and circumstances could respond to the charges. Statements of conclusion unsupported by details leading to the conclusion do not meet the specificity and detail requirement.

(5) The notice should discuss the pertinent factors from Paragraph 6. b. that were considered in determining the proposed action and whether they were mitigating or aggravating factors.

(6) The notice must inform the employee of the right to review all the material relied on to support the reasons for the proposed action, including material relevant to the employee's past record if that record forms part of the basis for the proposed action.

(7) The notice must inform the employee where the material relied upon may be reviewed.

(8) The notice must inform the employee of his/her right to reply to the notice orally and/or in writing, and to submit affidavits in support of the reply.

(9) The notice must inform the employee to whom to reply, orally and in writing, identified by name, title, address, and, if appropriate, telephone number. Any such reply will be made to the official taking the action.

(10) The time limit within which the reply must be submitted will be stated in the notice and will be at least 7 full calendar days. Reasonable extensions for good reasons, requested in writing, should be approved.

(11) The notice must inform the employee that official time will be allowed for the employee to review the material relied on to support the reasons in the notice, secure affidavits, and prepare a reply. The amount of time will be reasonable according to the charges and complexity of the case. The notice will also inform the employee of the appropriate person with whom to arrange for such time. A reasonable request for additional official time submitted in writing should be approved.

(12) The notice must inform the employee of the right to be represented. All employees may act as their own representative or be represented by an attorney or other representative who, if a DeCA employee, is entitled to a reasonable amount of official time to assist in preparation and presentation of the reply. If a negotiated agreement is in effect, the employee will be informed of the amount of official time his/her representative is permitted as provided by the terms of the negotiated agreement.

(13) The notice must inform the employee of his/her duty status during the notice period. (See paragraph 6. 1. for guidance in those situations when it is not practicable to retain an employee at the work-site.)

(14) The notice must include the name, location and phone number of a person who can explain regulatory and procedural aspects of the action. Normally, this will be someone in the DeCA Region/Satellite/PMSO Office.

B. Delivery of Notice.

The method used to deliver a notice of proposed adverse action is an important consideration. Should the question arise, it is the proposing official's responsibility to show that all delivery requirements were satisfied. The proposing official should be able to show that the employee received the notice or that actions taken to deliver it constituted a reasonable and diligent effort, under the circumstances, to deliver the notice on a timely basis.

(1) Personal Delivery. It is usually best to deliver a notice to the employee personally and, if possible, to obtain his/her written acknowledgement of its receipt.

(2) Mail Delivery. Notices of proposed adverse action will be delivered by mail only when personal delivery cannot be made. Mail delivery should be made by both registered (not certified) mail, return-receipt requested, and by regular first class mail with a certificate of mailing.

C. Employee's Reply.

(1) If an employee requests an opportunity to make an oral reply, such reply will be made to the official taking the action. The employee's reply may not be restricted to matters relating solely to DeCA's reasons for proposing the adverse action. The employee must be permitted to plead extenuating circumstances or make any other representations which he/she considers appropriate.

(2) A written summary of an oral reply will be prepared and made a part of the record.

(3) The official taking the action will fully consider any reply or replies, written and oral, which the employee makes, and will resolve any doubts raised as to the accuracy of the reasons or propriety of the proposed action before reaching a final decision.

D. Notice of Decision.

If the employee is still on DeCA's rolls, a dated, written notice of decision must be given to him/her. (The sample memorandum on page E-11 contains the requirements described below.)

(1) The decision can be to take the action proposed, take a less severe action, or withdraw the proposal. In no case can the decision be to take a more severe action than that proposed in the notice of proposed adverse action.

(2) The decision should normally be made by a higher level official, than the proposing official. The decision rendering official must consider any written and/or verbal reply made by the employee. The proposing and deciding official may be the same person when that person is the head of the component e.g., Region Director, Commissary Officer.

(3) The notice of decision will include:

- (a) The name of the employee;
- (b) The name of the Agency;
- (c) Reference to the notice of proposed adverse action by date;
- (d) The decision.

(4) The notice of decision must clearly identify which of the reasons contained in the notice or proposed adverse action are found to be sustained and relied on in taking the action and which, if any, are found not sustained. This can be accomplished by repeating the reasons, referring to them by paragraph number or any other appropriate and unmistakable manner. This portion of the notice of decision will also include substantive answers to specific points raised in the employee's reply concerning the reasons.

(5) The notice of decision will not introduce new reasons for the action which were not contained in the notice of proposed adverse action.

(6) The notice of decision will inform the employee of the effective date of any action being taken. In no case will the effective date of an adverse action fall on a holiday or regular day off.

(7) The notice of decision must inform employees of their appeal and grievance rights.

(a) The following employees are entitled either to appeal to the Merit Systems Protection Board (the Board) or to file a grievance under the negotiated grievance procedure, but not both:

1. Individuals in the competitive service who are not serving a probationary or trial period under an initial appointment or who have completed one year of current and continuous employment in the same or similar positions under other than a temporary appointment limited to one year or less.

2. Preference eligibles in the excepted service who have completed one year of current continuous service in the same or similar positions.

3. Employees with competitive status who occupy positions in Schedule B of Part 213 of the Office of Personnel Management regulations under a nontemporary appointment.

(b) The notice of decision will provide the above employees with the following information:

1. Appeals to the Board must be filed no later than 20 calendar days after the effective date of the adverse action.

2. A copy of the Board's regulations regarding appeals.

3. A copy of the Board's appeal form.

4. The address of the appropriate Board office for filing the appeal.

(c) Other employees in the excepted service who are serving under indefinite appointment and have completed one year of current continuous service in the same or similar positions are entitled to file a grievance under the DeCA grievance procedure. For purposes of filing a grievance under this paragraph, the notice of proposed adverse action and the employee's reply are considered to satisfy the informal grievance requirement. Any grievance that is filed will be initiated at the formal grievance step. The grievance must be submitted within 15 calendar days after the effective date of the action.

(d) The following notice should be attached to all DeCA decisions on personnel actions which are appealable to the MSPB, where the employee has raised the issue of discrimination, either orally or in writing, during the processing of the personnel action but prior to the agency decision to effect that personnel action:

"If you believe that this personnel action discriminates against you on the basis of your race, color, religion, sex, national origin, age, or handicapping condition, you may file a complaint of discrimination or you may file an appeal with the Merit Systems Protection Board, as previously described. You may not, however, file both. Should you elect to file a complaint of discrimination, your complaint will be processed following EEOC regulations at 29 CFR Part 1613, Subpart D, and you should immediately contact an EEO counselor. Should you elect to file an appeal, your appeal will be processed following MSPB regulations at 5 CFR, Part 1201, Subpart E."

(8) The notice of decision must inform the employee of the right to be represented. Bargaining unit employees covered under a negotiated grievance procedure may represent themselves or request representation from the union. Bargaining unit employees who elect to appeal to the Board and all other employees may represent themselves, or be represented by an attorney or other representative of their own choosing.

(9) The notice of decision must inform the employee:

(a) That a reasonable amount of time will be allowed to prepare and present the appeal/grievance;

(b) The person with whom to arrange for such time;

(c) That his/her representative, if a DeCA employee, is entitled to a reasonable amount of official time to assist in preparing and presenting the appeal. If a negotiated agreement is in effect, the employee will be informed of the amount of time his/her representative is permitted as provided by the terms of the agreement.

(10) The notice of decision must name a person in the DeCA Region/Satellite/PMSO Office who will provide the employee full information on his or her appeal/grievance rights and procedural guidance on filing an appeal/grievance.

(11) The notice of decision must be delivered to the employee before the time the action is effective. Possible delays in making delivery, particularly when mail is used, must be taken into consideration in establishing the effective date of the action.

(12) The supervisor will ensure that a copy of the notice of proposed adverse action, the employee's reply, if any, and the notice of decision are forwarded to the servicing personnel office.

E. Crime Provision.

(1) When there is reasonable cause to believe an employee has committed a crime for which a sentence of imprisonment can be imposed, DeCA may give the employee less than 30 days advance written notice of a proposed adverse action. The notice would be a proposed indefinite suspension pending investigation, inquiry or further DeCA action or a proposed removal when DeCA has sufficient evidence to warrant removal. An indefinite suspension continues for an indeterminable period of time and ends with the occurrence of the pending conditions set forth in the notice of action which may include the completion of any subsequent administrative action.

(2) The chief difficulty in construing and applying the crime provision is knowing if the crime in question is one for which a sentence of imprisonment can be imposed. (This is the language which appears in the law.) If you are not sure, you should contact the Office of the General Counsel at HQ DeCA or the Region DeCA Legal Counselor.

(3) Another difficulty in applying the crime provision is to determine what constitutes reasonable cause for believing that an employee has committed the crime. The crime provision cannot be invoked solely on evidence that the employee was arrested. However, if evidence exists that the employee was arrested and held for further legal action by a magistrate or was indicted by a grand jury, then there is reasonable cause for believing the employee guilty of the crime (see sample notice on page E-12). If evidence is acquired which connects an employee with the commission of a crime, then it must be determined whether all the facts and circumstances uncovered constitute reasonable cause for believing the employee guilty of the crime.

(4) The so-called "Crime Provision" of 5 U.S.C. 7513(b) (1) is concerned solely with the duration of the advance notice period and the opportunity to answer. It does not deal with the employee's duty status during the advance notice or the merits of the case. To invoke the crime provision and process a removal or indefinite suspension with a curtailed notice period, the following steps will be taken:

(a) Notify the employee that he or she is being put immediately in a non-duty with pay status for no longer than ten calendar days.

(b) Give the employee a notice of either a proposed indefinite suspension pending a disposition of the criminal action or a proposed removal when the evidence warrants removal. The notice will tell the employee of the reasonable period to answer (but not less than seven calendar days).

(c) Issue a decision on the action after the employee has had an opportunity to reply and DeCA has considered the reply.

(d) Complete the action before the employee has been in a non-duty with pay status for more than ten calendar days. When there are doubts as to whether a "crime" has been committed for which a sentence of imprisonment may be imposed, action will not be taken to invoke the crime provision until the doubts cease to exist.

(5) If it is decided to indefinitely suspend the employee, and later, after the resolution of the criminal charges, it is decided to remove him/her, a new adverse action must be initiated to remove the employee. The removal may be effected while the employee is still on indefinite suspension, if the advance notice and notice of decision for the suspension are worded to include this possibility.

SAMPLE OF NOTICE OF PROPOSED ACTION

June 19XX

MEMORANDUM FOR (Name and address of employee)

SUBJECT: Proposed Notice of (State type of action--e.g., removal, suspension, etc.)

You are hereby notified that I propose to (state type of action) from (state current position and position description number) at (state location) not earlier than 30 calendar days from the day you received this notice. (If the proposed action is a demotion, this paragraph should state to which position the employee will be demoted if the action is sustained.)

The charges against you are (enumerate the charges and provide supporting detail using specific dates, times and references to documents and, if any, witnesses; state specifically how the misconduct adversely impacted on the efficiency of DeCA and/or the Federal service; include a statement as to the mitigating or aggravating factors considered in determining the proposed penalty).

You may review the material relied on to support the charges against you. You should contact (state name, title and phone number) to make arrangements to review the material. (Only material that may be released to the public may be used to support an adverse action).

You may reply to the above charge orally and in writing. Written replies should be addressed to me (state address). If you wish to make an oral reply, you should contact me to arrange for your presentation. You will be allowed (state number of calendar days) to make either or both replies. If you are in an active duty status, you will be allowed a reasonable amount of official time to prepare your reply and to obtain affidavits in support of it. You should contact me to arrange for such time.

You have the right to represent yourself or to be represented by an attorney or other representative of your choosing (or ask the union for representation, if appropriate). If your representative is an employee of the Defense Commissary Agency and is in an active duty status, he/she is also entitled to a reasonable amount of official time to prepare your reply. Arrangements for such time must be made with your representative's supervisor.

If you believe the proposed action is unwarranted, it is important that you reply. Your reply should completely state why you believe the proposed action should not be taken. Your reply does not necessarily have to confine itself to the charges and specifications and may raise any circumstances, including medical evidence, that may mitigate the reasons for the proposed action. During the notice period, you will remain in an active duty status in your present position, grade and salary.

Full and careful consideration will be given to any reply you make before a final decision is made on the proposed action. Whether or not you reply, a written notice of final decision will be given to you after expiration of the period allowed for your reply.

If you need to read regulations pertinent to this action, obtain information or guidance on how to proceed or wish any other explanation of this action, you may consult (name) of the civilian personnel office on (phone number).

(Signed by individual taking the action)

I acknowledge receipt of this document.

(Employee's signature) (Date)

SAMPLE NOTICE OF DECISION

July 19XX

MEMORANDUM FOR (Name and address of employee)

SUBJECT: (State type of action)

By memorandum dated (date) you were notified of a proposal to (state type of action).

In making my decision in this matter, I have carefully considered the charges and specifications contained in the above referenced memorandum, the material used to support those charges, your written reply and the arguments you made during your oral reply. (If there is no oral or written reply, state that fact at this point.) Based on my review of the above I find the following:

Charge 1, Specification 1 -- (State whether you found that this charge and specification supports the action or does not and state the reasons for your determination. Do this for each charge and specification.)

Based on the above findings and all of the factors considered in determining the proposed action, it is my decision that (state what the decision is; if the proposed penalty is mitigated, state why and specifically state the new penalty; state the effective date of decision).

You have the right to appeal this action to the Merit Systems Protection Board or, if applicable, to grieve this action under the negotiated grievance procedure of the Collective Bargaining Agreement, but you may not do both. Any appeal you may elect to make to the Board must be in writing and delivered to the Board in person or by mail within 20 calendar days of the effective date of this action. If you elect to appeal, your appeal should be submitted to (state the address of the Board's office) and may be on the attached form. Also attached for your information is a copy of the Board's rules. You have the right to represent yourself, or to be represented by an attorney or other individual of your own choosing or to ask the union for representation, if appropriate.

If you are in an active duty status, you are entitled to a reasonable amount of official time to prepare and present your appeal/grievance/complaint. You should contact (state name and phone number) to arrange for such time. Your representative, if an employee of the Defense Commissary Agency and in an active duty status, is entitled to a reasonable amount of time to assist in the preparation and presentation of your appeal/grievance/complaint. Arrangements for such time must be made with your representative's supervisor.

Information concerning this action, Merit Systems Protection Board regulations and procedures, and EEO regulations and procedures may also be obtained from (state name and phone number) of the DeCA Region/Satellite/PMSO Office.

(Signed by the individual taking the action)

2 Attachments

1. MSPB Rules Regulations for the Processing of Appeals
2. MSPB Appeals Form

I acknowledge receipt of this document.

(Employee's signature)

(Date)

SAMPLE NOTICE OF INDEFINITE SUSPENSION (USING CRIME PROVISION)

August 19XX

MEMORANDUM FOR (Name and Address of Employee)

SUBJECT: Proposed Indefinite Suspension

This is to notify you that I propose to suspend you indefinitely. The proposed suspension will be effective no earlier than August 9, 19XX. This suspension is proposed because there is reasonable cause to believe that you have committed a crime for which a sentence of imprisonment may be imposed as explained below:

You were arrested on July 29, 19XX, by Detectives James Rogers and Victor Moore of the Philadelphia Police Force and were charged with armed robbery. You were arraigned before Magistrate Bryan Cummings and held for \$40,000 bail pending trial.

You may reply to this charge orally and in writing. You will be allowed 7 days from the time of receipt of this notice to show reasons why this proposed suspension should not be effected.

You also have a right to be represented by an attorney or other representative or to ask the union for representation, if appropriate. If your representative is an employee of the Defense Commissary Agency and in an active duty status, that person is entitled to a reasonable amount of official time to prepare your reply. Arrangements for such time must be made with your representative's supervisor.

If you need further explanation of the reasons for the proposed action, you may call me on extension XXXX for such explanation.

Pending decision on this proposed indefinite suspension, you will be carried in non-duty pay status from the time of your receipt of this notice.

If you need to read regulations pertinent to this action, obtain information or guidance about how to make a reply, or wish any other explanation of this action, you may consult _____ of the DeCA Region/Satellite/PMSO Office, telephone _____

Signature block

I acknowledge receipt of this document.

(Employee's signature)

(Date)

LAST CHANCE AGREEMENT

On 1 February 19XX, Ms. _____ was issued a letter of proposed removal from her position in the Federal Service for excessive unauthorized absences. After consideration of Ms. _____ oral and written response to the proposal, the Commissary Officer of _____ has determined that Ms. _____ should be removed. The removal will be held in abeyance subject to the following:

- (1) execution of this Last Chance Agreement and
 - (2) compliance with each of the obligations outlined herein.
- A. Ms. _____ shall maintain conduct that is acceptable to her supervisor. This obligation extends to all aspects of punctuality, attendance, leave usage.
- B. Ms. _____ shall continue to meet with the Counseling/Referral Service (C/RS) representative and follow her prescribed treatment program precisely as outlined in the attached rehabilitation plan. Any changes to the rehabilitation plan must be approved in advance of such change by _____ of the C/RS
- C. Ms. _____ will sign all required release forms to allow all appropriate personnel access to pertinent medical/treatment information and feedback regarding her rehabilitative efforts.
- D. Ms. _____ voluntarily waives all rights to challenge, and all procedural rights for any disciplinary action (including, but not limited to removal) that is proposed or taken against her related to the issues of this instant action. The waived rights include, but are not limited to, the rights to (1) appeal to the Merit System Protection Board, (2) file a complaint under Equal Employment Opportunity procedures, (3) file a grievance, or (4) file a civil action in court.
- E. This agreement will remain in effect for the period of one calendar year (March 1, 19XX to February 28, 19XX).
- F. If Ms. _____ complies with each of her obligations under this Agreement, the Commissary Officer, _____ will cancel the removal decision at the end of the year.
- G. If Ms. _____ fails to comply with any; of her obligations under this Agreement, the Commissary Officer, _____ may, at any point during the time period, end the Last Chance Agreement by written notice and remove Ms. _____ from her position and the Federal service as soon as practicable. The waiver of rights stated in paragraph d above shall be applicable to such removal. One instance of noncompliance with this Agreement, including unexcused tardiness, absence without leave and failure to comply with instructions, failure to comply with treatment recommendations, and failure to remain drug free as evidenced by your urinalysis, will be cause for removal.

This Agreement sets forth the entire Agreement of the Commissary Officer, _____ and Ms. _____ and supersedes any prior agreement between them concerning the subject matter of this Agreement.

Date: _____

(Signature)

Date: _____

(Signature)