



DEPARTMENT OF THE NAVY

NAVAL EDUCATION AND TRAINING PROGRAM
MANAGEMENT SUPPORT ACTIVITY
PENSACOLA FLORIDA 32309 5000

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NETPMSA INSTRUCTION 12752.149

Subj: ADVERSE ACTIONS FOR CIVILIAN EMPLOYEES

Encl: (1) CPI 752

1. Purpose. To establish procedures for proposing and effecting disciplinary and adverse actions as defined by enclosure (1), to provide guidance to managers, to ensure employees are afforded due process, and to ensure full consideration is given to the merits of adverse action prior to the taking of such action.

2. Cancellation. NETPMSAINST 12752.1

3. Policy. Command policy is to effect adverse actions in accordance with enclosure (1) when it is determined such action is for cause, and will promote the efficiency of the service.

4. Delegation of Authority

a. All supervisors are delegated the authority to:

- (1) Admonish employees orally and in writing.
- (2) Issue letters of reprimand.

b. Division Heads are delegated the authority to:

- (1) Propose suspensions.
- (2) Propose reductions-in-grade or pay for cause.
- (3) Propose removal.
- 4) Propose furloughs.

c. Department Heads are delegated the authority to:

- (1) Propose or take adverse actions.
- (2) Issue decisions on actions proposed by lower level officials in the chain-of-command.

5. The Executive Officer and the Technical Director are delegated the authority to propose or take adverse action and to issue decisions on actions proposed by lower level officials. Any management official in the chain-of-command may revoke or modify the authority of a subordinate at any time.

6. Expedited Procedure for Adjudicating Disallowance of Representative

a. Any management official or supervisor who has the authority to propose or take adverse action may propose the disallowance of an employee's representative only under the criteria set forth in enclosure (1).

b. An official or supervisor who proposed that an employee's representative be disallowed must state in writing the basis for the disallowance. This statement will also identify the official who will issue a decision on the disallowance, generally the next higher level official who has the authority to take the adverse action. A copy of the statement will be provided to the employee (if reasonably available) and to the deciding official.

c. The affected employee may, within five days, provide a written statement to the deciding official on the issue of disallowance.

d. Within five days of receipt of the employee's statement, the designated official will review and consider the written record, including the employee's statement, if any, and issue a decision on the disallowance of representative.

7. Role of the Human Resources Office (HRO)

a. The cognizant Employee Relations Specialist of the Labor and Employee Relations Service Office, HRO will provide advice and guidance to managers and to individuals involved in adverse action.

b. The Labor and Employee Relations Service Office, HRO will maintain records as required by enclosure (1).

8. Relationship to Negotiated Agreement. The provisions and regulations of this Instruction apply to Bargaining Unit Employees except in case of conflict, then the negotiated agreement; will take precedence.

9. Activities serviced by HRO Pensacola are encouraged to adopt this instruction for their use.


P. A. LEE

Distribution: (NETPMSAINST 5216.1A)
Lists I and II

DEPARTMENT OF THE NAVY DISCIPLINARY ACTIONS

File immediately following Chapter 752 of the
Federal Personnel Manual

1. Purpose. To establish Department of the Navy policy and procedures for disciplinary actions.
2. Applicability. This Civilian Personnel Instruction (CPI) applies to all Department of the Navy employees as defined in Appendix A, except any:
 - a. Individual paid with nonappropriated funds.
 - b. Reemployed annuitant.
 - c. Excepted service appointee under Schedule C, Part 213 of Title 5, Code of Federal Regulations (CFR).
 - d. Individual appointed by the President.
 - e. Individual in a statutorily excepted position that has been determined to be of a confidential, policy-determining, policy-making or policy-advocating character by the President, the U.S. Office of Personnel Management, or the Secretary of the Navy.
 - f. Career appointee in the Senior Executive Service (SES) serving a probationary period, or who was not covered by Section 7511 of Title 5, United States Code (U.S.C.), immediately before appointment to the SES.
 - g. Limited term, or limited emergency SES appointee not described as a covered employee at 5 CFR 752.601.
 - h. Noncitizen appointed to an overseas position under Civil Service Rule VIII, 5 CFR 8.3.
 - i. Civilian mariner covered under Civilian Marine Personnel Instruction 750.
3. Definitions. Definitions are contained in Appendix A.
4. Policy. It is Department of the Navy policy to use discipline as a managerial tool to correct deficiencies in employee conduct and performance, as a deterrent to unacceptable conduct or behavior (such as illegal drug use) and for correction of other situations which interfere with efficient operations.

Enclosure (1)

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The objective is to promote the efficiency of the service by ensuring high standards of government service and maintaining public confidence in the Department of the Navy. Adverse actions, including performance-based adverse actions, may be taken under this CPI only for such cause as will promote the efficiency of the service.

5. Actions Covered by this CPI. Appealable, grievable and noncontestable actions as defined in Appendix A.

6. Actions Not Covered by this CPI

a. Actions excluded by 5 CFR 752.401(c)(1) through (15).

b. A suspension or removal taken in the interests of national security (5 U.S.C. 3531 and/or 7532).

c. A reduction-in-force action (5 U.S.C. 3502).

d. The reduction in grade of an employee who is given grade retention under 10 U.S.C. 1586 (Fromer V. DOD, 85 FMSR 5510, 29 MSPR 481) (1985)).

e. A separation during probation under 5 CFR 315.804, or a separation during probation based in whole or in part on pre-appointment reasons under 5 CFR 315.805.

f. The denial of a within-grade increase (see CPI 431).

g. A suspension of 14 days or less of an SES employee (see 5 CFR 752.601(b)(1)).

h. A removal action affecting an SES employee taken under 5 U.S.C. 3592, or a reduction-in-force action affecting an SES employee taken under 3595.

i. Actions taken under provision of statute, other than one codified in 5 U.S.C., which exempts the action from subchapter I and/or II of Chapter 75 of Title 5, U.S.C.

7. Responsibilities

a. Assistant for Administration, office of the Under Secretary of the Navy (AA/USN); Commandant of the Marine Corps (CMC); Chief of Naval Operations (CNO); Chief of Naval Research (CNR). The AA/USN, CMC, CNO and CNR are responsible for ensuring the implementation of this CPI and giving advice and guidance to their subordinate organizations.

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b. Director, Office of Civilian Personnel Management (OCPM). The Director, OCPM will establish Department of the Navy policy, procedures and guidance.

c. Regional Directors, Office of Civilian Personnel Management (RD, OCPM) and the CMC (MPC 30). RD, OCPH, and CMC (MPC-30) for Marine Corps commands, will provide guidance and assistance to activities on the implementation of this CPI.

d. Activity Heads/Commanders. Each Navy activity and Marine Corps command employing civilian personnel:

(1) Will ensure coverage of their civilian employees under an instruction adopting or implementing the policies and procedures of this instruction, including a statement of activity/command policy on disciplinary actions, including Appendix B. This may be done, for example, by issuing an activity/command implementing instruction, by issuing a brief instruction adopting this CPI, including an activity/command policy statement and delegation of authority, or through coverage under an appropriate instruction issued by a servicing civilian personnel office (or another activity/command) supplemented by an activity/command policy statement and delegation of authority.

(2) Will ensure that all employees are apprised of their activity/command disciplinary action policy, including Appendix B/through such means as activity/command newspapers or the use of bulletin boards.

(3) Are authorized to propose and decide disciplinary actions under this CPI. They may redelegate this authority to subordinate managers and supervisors to the extent they deem appropriate. This authority may be withdrawn and redelegated at any time in the disciplinary action process as deemed necessary. An adverse action may be modified to correct an error of Fact or judgment made by a subordinate official to include cancelling a disciplinary action and proposing a lesser or harsher remedy after ensuring the employee's due process rights have been afforded.

(4) Disseminate to all civilian employees, at least annually, applicable information on Standards of Conduct prescribed in SECNAVINST 5370.2H.

(5) Ensure that the records required by paragraph 13 of this CPI are maintained by the activity/command or servicing civilian personnel office.

e. Civilian Personnel Offices (CPO). Servicing civilian personnel offices will provide advice and guidance to employees and managers of activities/commands they serve. Advice and guidance must be consistent with this CPI. A CPO may maintain disciplinary action records, as arranged with serviced activities/commands.

f. Supervisors. Supervisors are responsible for:

(1) Communicating to employees standards of conduct and expectations regarding conduct and performance.

(2) Setting a good example by their own conduct.

(3) Monitoring employee conduct and taking or initiating corrective action as required.

(4) Referring employees to the Civilian Employee Assistance Program as appropriate under CPI 792.

(5) Consulting with CPO as appropriate.

g. Employees. Employees are responsible for:

(1) Conducting themselves, both on and off duty, in a manner which will ensure that their conduct does not reflect adversely on the Department of the Navy.

(2) Complying with the standards of conduct prescribed in SECNAVINST 5370.2H.

(3) Following on-the-job work rules, including reporting for work on time and in a condition which will permit safe and reliable performance of assigned duties.

(4) Performing their job duties at a fully successful level and in a safe and reliable manner.

Employees who fail to comply with (1) - (4), above, may be subject to discipline under this CPI.

8. Noncontestable Actions. Oral admonishments and letters of caution are not grievable under the Department of the Navy Administrative Grievance System (CPI 771) and are not appealable the Merit Systems Protection Board (MSPB) (CPI 771). A letter of caution must state:

a. The reason(s) for issuance.

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b. That the action is neither grievable under CPI 771 nor appealable to MSPB. Activities/commands should review their collective bargaining agreements, however, because much actions may be grievable under a negotiated grievance procedure (NGP).

c. That a letter of caution will not be made a matter of record in the employee's Official Personnel Folder (OPF).

Neither an oral admonishment nor a letter of action will be counted as a prior offense in determining a range of remedies under Appendix B. However, they may be considered in determining an appropriate remedy should an offense later occur.

9. Grievable Actions. Grievable actions include letters of requirement, letters of reprimand, and suspensions of 14 days or less.

a. A letter of requirement must state:

- (1) The reason(s) for issuance.
- (2) The specific requirement(s) the employee must meet.
- (3) That failure to meet a requirement may lead to disciplinary action.
- (4) The length of time a requirement is in effect.
- (5) The employee's right to file a grievance under CPI 771, or under a NGP, as appropriate.
- (6) That it will not be made a matter of record in the employee's OPF.
- (7) That it will not be counted as a prior offense when determining a range of remedies under Appendix B, but may be considered in determining an appropriate remedy should an offense subsequently occur.

b. A letter of reprimand must state:

- (1) The reason(s) for issuance.
- (2) The employee's right to file a grievance under CPI 771 or under a NGP, as appropriate.

(3) The length of time (not less than one nor more than two years) that it will be retained in the employee's OPF, and during which it may be counted as a prior offense for determining a range of remedies under Appendix 8. (However, as with a letter of requirement or a noncontestable action, the letter of reprimand may continue to be considered when determining an appropriate remedy for a subsequent offense.)

c. A suspension of 14 days or less entitles the affected employee to:

(1) An advance written notice stating:

(a) The specific reason(s) for the proposed action,

(b) The name and title of the official designated to hear an oral reply and/or receive a written reply. The official so designated must have authority to either make or recommend a final decision on the proposed suspension.

(c) The amount of time (not less than 24 consecutive hours) that the employee is allowed to provide an answer orally and/or in writing.

(d) The right to review, or have a representative review the material relied upon to support the reason(s) given in the notice of proposed suspension.

(2) A reasonable amount of official time to review the notice and supporting material, to prepare an answer and to secure affidavits, if the employee is otherwise in an active duty status.

(3) A reasonable amount of time (not less than 24 consecutive hours) to answer orally and/or in writing, and to furnish affidavits and other documentary evidence in support of the answer, including medical documentation (as defined in 5 CFR 339) to support any medical condition alleged to have caused the reason(s) for the proposed action.

(4) Be represented by an attorney or other representative.

(5) A written decision at the earliest practicable date which:

(a) Considers only the reason(s) specified in the advance written notice.

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(b) Considers any answer the employee and/or the employee's representative made to a designated official, any medical or other documentation furnished under paragraph 9c(3), above, and any entitlement to reasonable accommodation. under CPI 792 and 29 CFR 1613.704.

(c) Specifies the reason(s) for the decision.

(d) Is signed by an official in a higher position than the official who proposed the action, unless the activity head/commander issued the advance notice, in which case the activity head/commmander may issue the decision.

(e) Specifies the employee's right to file a grievance under CPI 771 or under a NGP, as appropriate.

(f) Is delivered to the employee on or before the effective date of the suspension.

d. Extensions of reply time. An employee given an advance notice may request additional time to respond orally and/or in writing. The official designated to accept the oral or written reply will make the decision to grant or deny such an extension.

10. Appealable Actions

a. Appealable actions (removal, suspension For more than 14 days or indefinite suspension, reduction in grade or pay, or furlough for 30 days or less) entitle the affected employee to:

(1) At least 30 days advance written notice stating:

(a) The specific reason(s) for the proposed action. Material may not be used that cannot be disclosed to the employee or his or her representative or designated physician under 5 CFR 297.204(c). If the action is furlough, the notice must state the reason(s) for the furlough, and the basis for selecting the employee if all individuals in the employee's competitive level are not being furloughed.

(b) The name and title of the official designated to hear an oral reply and/or receive a written reply. The official so designated must have authority to either make or recommend a final decision on the proposed action.

(c) The amount of time (not less than seven days) that the employee is allowed to answer orally and/or in writing.

(d) The right to review, or have a representative review, the material relied upon to support the reason(s) given in the notice.

(2) A reasonable amount of official time to review the notice and supporting material, to prepare an answer and to secure affidavits, if the employee is otherwise in an active duty status.

(3) A reasonable time (not less than seven days) to answer orally and/or in writing and to furnish affidavits and other documentary evidence in support of the answer, including medical documentation (as define in 5 CFR 339), to support any medical condition alleged to have contributed to the reason(s) for the proposed action.

(4) Be represented by an attorney or other representative.

(5) A written decision at the earliest practicable date which:

(a) Considers only the reason(s) specified in the advance written notice.

(b) Considers any answer the employee and/or the employee's representative made to a designated official, any medical or other documentation furnished under paragraph 10a(3), above, any entitlement to reasonable accommodation under CPI 792 and 29 CFR 1613.704, and the recommendation of the designated official (where applicable).

(c) Specifies the reason(s) for the decision.

(d) Is signed by an official in a higher position than the official who proposed the action, unless the activity head/commander issued the advance notice, in which case the activity head/commander may issue the written decision.

(e) Specifies the employee's right to appeal to the MSPB and, when applicable, to file a grievance under a NGP, but not both.

(f) Provides the time limits and address for filing an appeal to the MSPB, a copy of the MSPB regulations, a copy of the MSPB Appeal Form (Optional Form 283), and specifies the time limits for filing a grievance under a NGP, if applicable.

(g) Is delivered to the employee on or before the effective date of the action.

b. Hearings. Activities shall not provide for a hearing in lieu of, or in addition to, the opportunity to respond orally and/or in writing to a notice of proposed action, Deciding officials may, however, on a case by case basis, grant an SES member a hearing with examination of witnesses' in place of or in addition to the opportunity for written and oral reply.

c. Duty status during the notice period. Under ordinary circumstances, employees will remain in a duty status in their regular positions during the advance notice period. Other options, e.g., voluntary use of leave, reassignment, detail, etc., may be appropriate in a given situation. If all other options have been explored and found not feasible, an activity head/commander may excuse an employee from duty, without charge to leave or loss of pay, during the notice period of that employee's removal or indefinite suspension effected under this CPI. Excused absence for this purpose should be used only in those rare circumstances where the retention of the employee in an active duty status during the notice period may pose a threat to the employee or others, result in loss of or damage to Government property, or otherwise jeopardize Government interests (5 CFR 752.404(b)(3)). Care should be exercised to use the minimum amount of excused absence necessary in any individual situation. NOTE: If available evidence supports a conclusion that an employee is incapacitated for normal work, the enforced sick leave procedure described in CPI 630.S4 should be considered.

d. Shortened notice period. Under 5 U.S.C. 7513(b)(1) (the "crime provision"), the notice period required in paragraph 10a(1) may be shortened when there is reasonable cause to believe that an employee has committed a crime for which a sentence of imprisonment may be imposed. Judicial action is not required. Activities/commands may effect such an action, including an indefinite suspension, in less than 30 days following the issuance of the advance written notice. In such cases, the employee may be required to furnish any answer to the proposed action, and any affidavits or other documentary evidence in support of the answer, within such time as under the circumstances would be reasonable, but not less than seven days. When the circumstances require immediate action, an activity/command may place the employee in a nonduty status with pay for such time, not to exceed ten days, as is necessary to effect the action.

e. Extensions of reply time. An employee given an advance notice may request additional time to respond orally and/or in writing. The official designated to accept the response will make the decision to grant or deny such a request.

f. Medical examinations. After reviewing, medical documentation supplied by the employee in reply to a proposed action, the activity/command may, if authorized, require a medical examination or, at its option, offer a medical examination following the procedures in CPI 339.

g. Disability Retirement. When the employee has five years or more of civilian service and asserts or documents impairment or disability, the activity/command shall provide information to him or her concerning disability retirement. An employee's application for disability retirement shall not preclude or delay any other appropriate personnel action.

11. Performance Based Actions. Performance-based actions may be effected using either the procedures of CPI 432 or this CPI, Before initiating a performance-based disciplinary action, an activity/command should consider the differences between the requirements of CPI 432 and those of this CPI as they apply to the potential action.

12. Disallowance of an Employee's Choice of Representatives

a. Activity heads/commanders may disallow an employee's choice of a representative if such representation would result in a conflict of interest or position, conflict with priority needs of the activity/command, or would give rise to unreasonable costs to the Government. The terms of any applicable collective bargaining agreement govern representation for unit employees.

b. Activity heads/commanders may redelegate authority to make a determination to disallow the choice of an employee's representative to an appropriate level no lower than the level of the official designated to make the final written decision,

c. Activity/command instructions shall establish an expedited process for resolving an employee's disagreement with a determination to disallow a choice of representative. At a minimum, the review process shall require the final decision to be made by an official higher than the one who made the disputed determination.

13. Records for Suspensions, Removals, Reductions in Grade or Pay, or Furoughs for 30 days or less

a. A record shall contain copies of:

(1) The advance written notice of proposed action.

(2) The employee's written answer, if any.

(3) A written summary of the employee's oral reply, if an oral reply was made.

(4) The reasons for and written notice of decision.

(5) Any order affecting the action.

(6) Any supporting material.

(7) The Notification of Personnel Action (Standard Form 50) effecting the decision.

b. If an employee appeals to the MSPB, the record shall be furnished to the employee and to the MSPB as directed in the MSPB's Initial Order.

c. Records required by this CPI shall be retained and disposed of per SECNAVINST 5212.5C. Records which may be required for further administrative or judicial litigation may be retained until no longer necessary.

14. Senior Executive Service (SES) Actions

a. Suspensions of SES employees of 14 days or less are prohibited by 5 CFR 752.601(b)(1).

b. Suspension of SES employees for more than 14 days, and removals of such employees from the civil service, may only be taken for misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function (5 U.S.C. 7543(a)). Procedures applicable to such actions are described in paragraph 10, above.

Appendix A: Definitions

Appendix B: Schedule of Offenses and Recommended Remedies

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1. Activity. A field installation, headquarters command, or office.
2. Appealable action. A removal; a suspension for more than 14 days, including an indefinite suspension; a reduction in grade or pay; or a furlough of 30 days or less.
3. Current continuous employment. A period of employment or service immediately preceding an action under 5 CFR Part 752 in the same or similar positions without a break in Federal civilian employment of a work day.
4. Day. Calendar day.
5. Drugs. A controlled substance included in Schedules I - V established by section 202 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (84 Stat 1256) as updated and republished under the provisions of that Act.
6. Drug paraphernalia. Equipment, products, or materials used, intended for use, or designed for use in injecting, ingesting, or otherwise introducing drugs into the human body in violation of the law.
7. Employee. For:
 - a. Grievable actions
 - (1) An individual presently or formerly employed by the Department of the Navy for whom a remedy can be provided (see CPI 771 for exclusions from the Administrative Grievance System),
 - b. Appealable actions
 - (1) An individual in the competitive service who has completed a probationary or trial period.
 - (2) An individual in the competitive service who is serving in an appointment that requires no probationary or trial period, and who has completed one year of current continuous employment in the same or similar positions under other than a temporary appointment limited to one year or less.

(3) An individual in the excepted service who is a preference eligible as defined at 5 U.S.C. 105 and who has completed one year of current continuous service in the same or similar positions.

(4) An individual with competitive status who occupies a position in Schedule B of 5 CFR Part 213.

(5) An individual who occupies a professional and administrative career (PAC) position in Schedule B of 5 CFR Part 213, provided that he or she has completed a trial period of one year after initial appointment in such a position.

(6) An individual who was in the competitive service at the time his or her position was first listed under Schedule A, B, or C of the excepted service (5 CFR Part 213) and will occupy that position.

(7) Any nonprobationary Senior Executive Service (SES) career appointee covered under 5 CFR 752.601(c), and any limited term or limited emergency SES appointee covered under 5 CFR 752.601(c).

8. Furlough. Temporary status without duties and pay because of lack of work or funds or for other nondisciplinary reasons.

9. Grade. A level of classification under a position classification system.

10. Greivable action. A letter of reprimand or requirement, or a suspension for 14 days or less.

11. Illegal (or unlawful) use or possession of a drug. Use of possession of a drug without a valid medical prescription for the use of that drug or otherwise contrary to law or regulation.

12. Indefinite suspension. The placing of an employee in a temporary status without duties and pay pending investigation, inquiry, or further agency action. The indefinite suspension continues for an indeterminate period of time and ends with the occurrence of the condition(s) set forth in the notice of action which may include the completion of any subsequent administrative action.

13. Letter of caution. A written notification issued by a superior to an employee concerning unacceptable conduct and warning the employee that a disciplinary action may be imposed unless the conduct improves.

14. Letter of reprimand. A written disciplinary action issued a superior to an employee based on specific unacceptable conduct deficiencies.

15. Letter of requirement. A written notification (order) issued by a superior to an employee concerning, conduct deficiencies, such as sick leave abuse or tardiness, which sets forth requirements and procedures to be followed by the employee to avoid a future disciplinary action for similar deficient conduct.

16. Noncontestable action. An oral admonishment or a letter of These actions are not recorded in an employee's OPF. While not grievable under CPI 771, they may be grievable under the provisions of a negotiated grievance procedure for employees in an exclusively recognized bargaining unit.

17. Oral admonishment. An oral notification given by a superior to an employee concerning conduct deficiencies, and warning the employee that a disciplinary action or letter of requirement may be imposed for continued deficiencies.

18. Pay. The rate of basic wage or salary fixed by law or administrative action for the position held by an employee, that is, the rate of pay before any deductions and exclusive of additional pay of any kind.

19. Qualified handicapped employee/person. With respect to employment, a handicapped person who, with or without reasonable accommodation, can perform the essential functions of the position in question without endangering the health and safety of himself or herself or others and who, depending upon the type of appointing authority being used: (1) meets the experience and/or education requirements(which may include passing a written test) of the position in question, or (2) meets the criteria for appointment under one of the special appointing authorities for handicapped persons.

20. Reasonable accommodation. Accommodation to all employee's physical or mental handicapping condition which will allow the employee to perform the essential duties of the position without endangering the health and safety of that employee or others and which will not impose an undue hardship on the activity. Reasonable accommodation may include referral to the Civilian Employee Assistance Program (CEAP) for diagnostic counseling and referral for treatment or rehabilitation or other assistance; granting of leave for treatment, rehabilitation or assistance; and a reasonable opportunity to demonstrate minimally acceptable

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performance or conduct. Refer to 29 CFR 1613.704 for additional information. A decision to provide reasonable accommodation does not preclude concurrent disciplinary action.

21. Removal. Involuntary separation of an employee from the Federal service except when taken as a reduction-in-form action.

22. Similar positions. Positions in which the duties performed are similar in nature and character and require substantially the same or similar qualifications, so that the incumbent could be interchanged between the positions without significant training or undue interruption of the work.

23. Suspension. Placing an employee in a temporary status duties and pay for disciplinary reasons, including pending inquiry.

24. Trafficking (drug). Unlawful manufacture, distribution, or transfer of drugs, and/or the unlawful possession of drugs with the intent to distribute, sell, or transfer.

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APPENDIX BSCHEDULE OF OFFENSES AND RECOMMENDED REMEDIES

1. Instructions for Use. This schedule is a guide. Remedies for offenses should normally fall within the range shown in the schedule unless mitigating or aggravating factors justify a remedy outside the range. For example, remedies greater than those shown can be appropriate when an aggravated offense, frequent infractions, or simultaneous multiple offenses are established.

a. The schedule does not cover every possible offense. When specifying an offense not listed on the schedule, the use of terms such as "theft" or "fraud," which require establishing the element of intent; should only be used when the element of intent can be proven. Management officials may contact their servicing civilian personnel office for assistance.

b. Some of the offenses listed in this schedule combine several offenses in one statement connected by the word "OR." Use only the part of the statement which describes the employee's actual conduct; leave out parts which do not apply.

c. Due to the nature of their positions, offenses by supervisors or managers may warrant more severe remedies than the same offense committed by a non-supervisory employee.

d. The schedule generally provides for a range of remedies, e.g., Reprimand to Removal, to provide flexibility in correcting conduct deficiencies. Selection of a reasonable remedy from such a broad range should be made with good judgment. Excessive, arbitrary or capricious remedies, and remedies selected without consideration of mitigating factors may be reversal by third parties if challenged.

e. All disciplinary actions are to be taken following the provisions of law.

f. Servicing civilian personnel offices can provide advice and assistance with issues such as establishing the required nexus between off-duty misconduct and the efficiency of the service, appropriate wording of the charge(s), application of mitigating factors, consistency of remedies, etc., based on current case law. Activity heads/commanders, managers, and supervisors delegated authority to propose and/or decide disciplinary actions are encouraged to take advantage of much assistance to ensure conformance with this instruction;

2. Past Offenses

a. When used to select a range of remedies or remedy, a past offense must be described in sufficient detail to enable the employee to understand and respond to it, Past offenses may be used in determining a range of remedies or remedy when:

(1) The employee was disciplined in writing;

(2) The employee was provided the opportunity to dispute the action to a higher level; and

(3) The action was made a matter of record in the employee's Official Personnel Folder.

b. Any past offense may form the basis for proposing b remedy from the next higher range of remedies for a subsequent offense. The offenses need not be identical or similar.

c. The following actions may not be counted as past offenses for determining a range of remedies (however, actions discussed in paragraphs (1) and (2) may be considered when determining an appropriate remedy within a range for any subsequent offense):

(1) Oral admonishments and letters of caution or requirement.

(2) Letters of Reprimand dated more than two years before the date of any advance written notice required under this CPI.

(3) Reductions in grade or pay not effected for disciplinary reasons.

3. Other Statutory and Regulatory Offenses. For information concerning other offenses for which employees may be disciplined by removal, fine or imprisonment, including offenses which require minimum mandatory remedies (such as misuse of government vehicles, Hatch Act violations, and giving gifts to superiors), see SECNAVINST 5370.2H and Chapter 735 of the Federal Personnel Manual (FPM).

4. Drug and Alcohol Abuse Offenses. Any employee who engages in misconduct involving drugs and/or alcohol shall be disciplined according to this Appendix. Special situations are described below.

a. Voluntary referral to the Civilian Employee Assistance Program (CEAP). An employee who voluntarily refers himself or

herself to the CEAP as a user of illegal drugs under the "safe harbor" provision of CPI 792 will be exempt from disciplinary action for the admitted acts of illegal drug use, including possession incident to such use, provided the employee meets and complies with the requirements of CPI 792-3, paragraph 7e(2).

b. Assertion of a handicapping condition in reply to a proposed action. Any employee who asserts a physical or mental impairment (handicapping condition) in connection with drug or alcohol-related unacceptable performance or misconduct shall be provided reasonable accommodation when the employee:

(1) Establishes by competent medical evidence that he or she is a qualified handicapped person, and

(2) Demonstrates that the unacceptable performance or misconduct is caused by the handicapping condition of alcoholism or drug dependency.

NOTE: See McCaffrey v. U.S. Postal Service, 88 FMSR 5043, 36 MSPR 224 (1988), and Brinkley v. Veterans Administration, 88 FMSR 5314, 37 MSPR 682 (1988), for a thorough description of an employee's burdens in meeting these two requirements, as applied by the U.S. Merit Systems Protection Board. Note, also, that under Terry v. Department of the Navy 89 FMSR 5034, 39 MSPR 561 (1989), an activity must inquire sufficiently to substantiate an employee's claim of handicapping condition where the activity has reasonable notice of the possible existence of the handicap.

c. Undue hardship on an activity/command. 29 CFR 1613.704(c) provides that reasonable accommodation is not required when it would impose an undue hardship on the operation of the program of the employee's activity/command, such as continuing an unreliable employee in a critical function or in duties which could affect the health or welfare of others.

d. Conduct which takes an employee outside the protection of the Rehabilitation Act. Similar to paragraph c, above, the MSPB has held that there are "... certain acts of misconduct which, when committed by an employee who is an alcoholic or drug addict, take that employee outside the scope of the protecting legislation because the misconduct renders that person not a 'qualified' handicapped individual." Egregious or notorious misconduct that hampers an employee's ability to perform his or her duties or to represent the agency, or which strikes at the core of the job or the agency's mission, can, standing alone, disqualify a Federal employee from his or her position (see Hougens v. U.S. Postal Service, 88 FMSR 5345, 38 MSPR 135 (1988)).

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e. Trafficking. Trafficking in drugs is misconduct which does not normally entitle an employee to reasonable accommodation. Accordingly, an employee who traffics in drugs will be subject to remedies as provided for in this appendix.

SCHEDULE OF OFFENSES AND RECOMMENDED REMEDIESRANGE OF REMEDIES

<u>OFFENSE</u>	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OFFENSE</u>	
<u>ALCOHOL ABUSE</u>				
Unauthorized possession, sale or transfer of alcohol on duty or on a military ship, aircraft, or installation	14-day suspension to removal	30-day Suspension to removal	Removal	
*Use of, or being under the influence of alcohol on duty or on a military ship, aircraft, or installation	14-day suspension to removal	30-day suspension to removal	Removal	(R)
<u>ATTENDANCE</u>				
Excessive unauthorized absence (more than 5 consecutive workdays)	Reprimand to removal	10-day suspension to removal	Removal	
Leaving job to which assigned or Department of the Navy premises at any time during working hours without proper authorization	Reprimand to 5-day suspension	Reprimand to 10-day suspension	Reprimand to removal	
Unexcused or unauthorized absence on one or more scheduled days of work or assigned overtime	Reprimand to removal	5-day suspension to removal	10-day suspension to removal	
Unexcused tardiness	Reprimand	Reprimand to 5-day suspension	Reprimand to removal	

*See paragraph 4b of this appendix.

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SCHEDULE OF OFFENSES AND RECOMMENDED REMEDIESRANGE OF REMEDIES (CONTINUED)

<u>OFFENSE</u>	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OFFENSE</u>
<u>DISCRIMINATION</u>			
Discrimination against an employee or applicant based on race, color, religion, sex, handicap, national origin, or age, or any reprisal or retaliation action against a complainant, representative, witness, or other person involved in the EEO complaint process	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
Sexual harassment	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
<u>DRUG ABUSE</u>			
* Unlawful use or possession of drugs or drug paraphernalia on or off duty	Reprimand to removal	Removal	
* Unlawful distribution, sale, or transfer of drugs or drug paraphernalia on or off duty	Removal		
* Unlawful use or possession of drugs or drug paraphernalia on a military ship or aircraft	Removal		
<u>DRUG TESTING</u>			
Refusal to provide a urine sample when required	Reprimand to removal	Removal	

* See pragraph 4b of this appendix.

SCHEDULE OF OFFENSES AND RECOMMENDED REMEDIES

RANGE OF REMEDIES (CONTINUED)

<u>OFFENSE</u>	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OFFENSE</u>
<u>DRUG TESTING</u>			
Substituting, adultering or otherwise tampering with a urine sample, testing equipment or related paraphernalia	30-day suspension to removal	Removal	
Attempted or actual falsification, misstatement or concealment of a material fact, record, correspondence or other communication prepared in connection with the collection, handling, transportation or testing of urine samples	Reprimand to removal	14-day suspension to removal	30-day suspension to removal (D)
<u>MISCELLANEOUS OFFENSES</u>			
Betting, gambling, or the promotion thereof on duty or on Department of the Navy premises	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
Careless workmanship resulting in delay in production or spoilage or waste of materials	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
Criminal, dishonest, infamous or notoriously disgraceful conduct	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
Disobedience to constituted authorities; deliberate refusal or failure or delay in carrying out any proper order, work assignment or instruction; insubordination, including failure to follow local or higher level policy	Reprimand to removal	5-day suspension to removal	10-day suspension to removal (R)

SCHEDULE OF OFFENSES AND RECOMMENDED REMEDIES

RANGE OF REMEDIES (CONTINUED)

<u>OFFENSE</u>	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OFFENSE</u>
<u>MISCELLANEOUS OFFENSES</u>			
A) Disrespectful conduct, use of insulting, abusive or obscene language to or about other personnel	Reprimand to 5-day suspension	5-day suspension to removal	10-day suspension to removal
R) Falsification (or aiding or assisting in falsification) of time and attendance records or claims against the government	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
A) Falsification, misstatement, or concealment of material fact in connection with any official record	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
A) False testimony or refusal to testify in an inquiry, investigation or other official proceeding	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
Loafing; wasting time; inattention to duty; sleeping on duty	Reprimand to 5-day suspension	5-day suspension to removal	10-day suspension to removal
R) Making threats to other employees or supervisor; fighting; engaging in dangerous horseplay	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
*Misuse of Government vehicle	Reprimand to removal	30-day suspension to removal	Removal
R) * 31 U.S.C. 1349(b) requires a minimum suspension of one month even for the first offense, if the misuse was willful, i.e., employee acted either with knowledge that the intended use would be characterized as unofficial or with reckless disregard of whether such use was unofficial.			

SCHEDULE OF OFFENSES AND RECOMMENDEDRANGE OF REMEDIES (CONTINUED)

<u>OFFENSE</u>	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OFFENSE</u>
<u>MISCELLANEOUS OFFENSES</u>			
Reckless driving or improper operation of motor vehicle:			
Causing personal injury to self or others or damage to government property	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
No personal injury to self or others or damage to government property	Reprimand to 5-day suspension	Reprimand to 10-day suspension	14-day suspension to removal
Unauthorized possession, use, loss or damage to government property or the property of others	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
<u>PROHIBITED PERSONNEL PRACTICE</u>			
Committing a prohibited personnel practice (See 5 U.S.C. 2302)	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
<u>SAFETY</u>			
Failure to observe posted smoking prohibitions	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
Failure to use protective clothing or equipment	Reprimand to removal	5-day suspension to removal	10-day suspension to removal

SCHEDULE OF OFFENSES AND RECOMMENDED REMEDIES

RANGE OF REMEDIES (CONTINUED)

<u>OFFENSE</u>	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OFFENSE</u>
<u>SAFETY</u>			
Violation of safety or traffic regulations an duty or on an installation (on or off duty):			
Causing injury to self or others or damage to property or endangering the safety of self or others	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
No injury or property damage; not endangering the safety of self or others	Reprimand to 5-day suspension	Reprimand to 10-day suspension	Reprimand to removal
<u>SECURITY</u>			
Failure to safeguard classified material:			
Security compromised	Reprimand to removal	14-day suspension to removal	Removal
Security not compromised	Reprimand to 5-day suspension	Reprimand to 14-day suspension	30-day suspension to removal
<u>UNAUTHORIZED DISCLOSURE OR USE OF PROTECTED MATERIAL</u>			
Unauthorized disclosure or use of information or other protected material (e.g., records covered by the Privacy Act or under 42 CFR Part 2 (CEAP records))	Reprimand to removal	14-day suspension to removal	30-day suspension to removal