

§ 752.405 Appeal and grievance rights.

(a) *Appeal rights.* Under the provisions of 5 U.S.C. 7513(d), an employee against whom an action is taken under this subpart is entitled to appeal to the Merit Systems Protection Board.

(b) *Grievance rights.* As provided at 5 U.S.C. 7121(e)(1), if a matter covered by this subpart falls within the coverage of an applicable negotiated grievance procedure, and employee may elect to file a grievance under that procedure or appeal to the Merit Systems Protection Board under 5 U.S.C. 7701, but not both. 5 U.S.C. 7114(a)(5) and 7121(b)(3), and the terms of an applicable collective bargaining agreement, govern representation for employees in an exclusive bargaining unit who grieve a matter under this subpart through the negotiated grievance procedure.

[45 FR 46778, July 11, 1980, as amended at 53 FR 21624, June 9, 1988]

§ 752.406 Agency records.

The agency shall maintain copies of the items specified in 5 U.S.C. 7513(e) and shall furnish them upon request as required by that subsection.

Subpart E—Principal Statutory Requirements for Taking Adverse Actions Under the Senior Executive Service**§ 752.501 Principal statutory requirements.**

This subpart sets forth for the benefit of the user the statutory requirements of subchapter V of Chapter 75 for suspension for more than 14 days and removal from the civil service. (5 U.S.C. 7541–7543)

“§ 7541. DEFINITIONS

“For the purpose of this subchapter—

“(1) ‘employee’ means a career appointee in the Senior Executive Service who—

“(A) has completed the probationary period prescribed under section 3393(d) of this title; or

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

“(2) ‘suspension’ as the meaning set forth in section 7501(2) of this title.

“§ 7542. ACTIONS COVERED

“This subchapter applies to a removal from the civil service or suspension for more than 14 days, but does not apply to an action initiated under section 1206 of this title, to a suspension or removal under section 7532 of this title, or to a removal under section 3592 or 3595 of this title.

“§ 7543. CAUSE AND PROCEDURE

“(a) Under regulations prescribed by the Office of Personnel Management, an agency may take an action covered by this subchapter against an employee only for misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

“(b) An employee against whom an action covered by this subchapter is proposed is entitled to—

“(1) at least 30 days’ advance written notice, unless there is reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment can be imposed, stating specific reasons for the proposed action;

“(2) a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

“(3) be represented by an attorney or other representative; and

“(4) a written decision and specific reasons therefor at the earliest practicable date.

“(c) An agency may provide, by regulation, for a hearing which may be in lieu of or in addition to the opportunity to answer provided under subsection (b)(2) of this section.

“(d) An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

“(e) Copies of the notice of proposed action, the answer of the employee when written, and a summary thereof when made orally, the notice of decision and reasons therefor, and any order effecting an action covered by this subchapter, together with any supporting material, shall be maintained by the agency and shall be furnished to the Merit Systems Protection Board upon its request and to the employee affected upon the employee’s request.”

[45 FR 46778, July 11, 1980, as amended at 52 FR 34624, Sept. 14, 1987]

Subpart F—Regulatory Requirements for Taking Adverse Actions Under the Senior Executive Service

SOURCE: 52 FR 34624, Sept. 14, 1987, unless otherwise noted.