



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

SEP 29 2016

The Honorable Don Young
Chairman
Subcommittee on Indian, Insular
and Alaskan Native Affairs
Committee on Natural Resources
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed are responses prepared by the Office of Insular Affairs to the questions for the record submitted following the July 6, 2016, legislative hearing on H.R. 4531, to approve an agreement between the United States and the Republic of Palau, and for other purposes.

Thank you for the opportunity to provide this material to the Subcommittee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and
Legislative Affairs

Enclosure

cc: The Honorable Raul Ruiz
Ranking Minority Member

Committee on Natural Resources
Subcommittee on Indian, Insular and Alaska Native Affairs
Legislative Hearing
1324 Longworth House Office Building
July 6, 2016
2:00 p.m.

Legislative Hearing on

H.R. 4531 (Rep. Gregorio Kilili Camacho Sablan), To approve an agreement between the United States and the Republic of Palau, and for other purposes.

**Questions from Rep. Sablan for The Honorable Esther Kia'aina, Assistant Secretary,
Office of Insular Affairs, U.S. Department of Interior**

1. What was the rationale for the Administration negotiation for exclusion of the Full Faith and Credit clause, that was contained within Section 236 of the Palau Compact, in the 2010 Compact extension agreement?

ANSWER: The Administration worked closely with the Government of Palau for over 20 months, holding numerous discussions and negotiations, to achieve a carefully negotiated agreement between our two governments, which ultimately led to the signature of the Compact Review Agreement in September 2010. Through this Agreement, the United States seeks to continue to assist the Government of Palau in its efforts to advance the economic development and self-sufficiency of its people. We recognize the appropriate role of Congress in seeking to understand specific provisions of the Agreement as well as ultimately approving the Agreement, and have been advised by the Department of State that they have recently discussed issues related to the 2010 Compact Review Agreement directly with Rep. Sablan and other Committee Members.

2. What is the Administration's assessment of Chinese, Russian, Cuban and other actors' activities in the region and how the continued failure to approve an

extension of the Palau Compact may affect those activities and the influence of other nations in the Pacific?

ANSWER: The Administration considers that the relationship with Palau, as well as with other Compact nations and independent states in the Pacific, is a key aspect of the Administration's focus on expanding the scope and pace of our engagement with the Asia-Pacific region.

Critical security developments in the Pacific require the sustained presence and engagement of the United States. Many emerging regional players are actively courting Pacific island states, challenging the status quo in the region and increasing their economic, diplomatic, and military engagement. Our relationship with Palau under the Compact of Free Association would be reinforced with approval of the 2010 Compact Review Agreement.

Since the effective date of the Palau Compact of Free Association in 1994, the United States has taken full responsibility for the security and defense of Palau. This unique security arrangement has created a steady and reliable ally that helps the United States advance its national security goals in the Pacific region. Approval of the 2010 Compact Review Agreement would help ensure that this relationship from defense to people to people ties remains robust.



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Washington, DC 20240



SEP 12 2016

The Honorable Jason Chaffetz
Chairman
Committee on Oversight and Government Reform
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Chaffetz:

Enclosed are responses to follow-up questions from the oversight hearing on June 14, 2016, before the House Committee on Oversight and Government Reform.

Thank you for giving us the opportunity to respond to you on these matters.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and
Legislative Affairs

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

Enclosure

**Committee on Oversight and Government Reform
2154 Rayburn House Office Building**

**Tuesday, June 14, 2016
10:00 A.M.**

Hearing on:

“Oversight of the National Park Service”

Questions from Chairman Jason Chaffetz for Director Jarvis:

- 1. How many Department of the Interior Office of the Inspector General (DOI OIG) reports of investigation, memos, and advisories does the National Park Service (NPS) Director’s Office receive? What percentage of these DOI OIG reports referred to the National Park Service does the Director personally read?**

Response: The Department of the Interior Office of the Inspector General (OIG) does not send all its reports of investigation, memos, and advisories to the NPS director personally. The OIG routes these documents to many other NPS offices, as it deems appropriate. The receiving NPS office is then responsible for tasking the OIG documents to the appropriate officials to review, take action, and implement any recommendations. The director personally reads reports of investigation, memos, and advisories which the OIG sends directly to him.

- 2. Director Jarvis, during your oral testimony before the Committee, you testified that the NPS has information showing the impact of the ban on sales of plastic water bottles in national parks.**

[A] Please provide all data or other information concerning the reduction of waste due to the ban on plastic bottled water sales in national parks. Specifically, please include all data regarding reduced waste, disposal costs, and recycling.

Response: The NPS has implemented a voluntary plastic water bottle reduction program in 23 parks using a rigorous process to determine the appropriateness of this policy. The NPS makes available unlimited drinking water at these locations as a condition of the policy and visitors can bring any plastic water bottles to the park. We encourage refilling these containers.

Due to the complexity of the NPS solid waste stream, the bureau cannot easily measure the reduction in the waste stream associated with the disposable plastic water bottle sales eliminations. However, there are other environmental benefits that can be achieved via this policy. These benefits include introducing visitors to environmentally responsible purchasing, eliminating greenhouse gas pollution at all phases of disposable plastic water

bottle production and transport, and free access to drinking water for our visitors (requiring only a refillable container).

Going forward, the NPS will evaluate the effectiveness of the policy by calculating how many water bottle sales were eliminated (a process that requires obtaining available historic data from park concessioners), seeking to quantify the usage of filling stations, and by collecting visitor feedback regarding implementation of the policy.

One key to evaluating the effectiveness of this policy is to better quantify the impact of filling stations. For instance, in 2014, one NPS unit installed a filling station with a digital use counter which has since recorded over 49,000 uses. The NPS estimates that each recorded use prevented one water bottle from entering the waste stream. In the coming months, the NPS plans to determine how many filling stations in participating parks are metered to enable us to gather statistics for reporting and analysis. For those water bottle filling stations that are unmetered, the NPS plans to evaluate the efficacy of installing meters.

Below is a summary table that displays the parks' estimated benefits associated with sales elimination policies. Unless otherwise noted, the figures identified represent the estimates made by parks in their sales elimination applications to their regional director. Additionally, unless individually noted, these estimates were pre-implementation figures generated by park-defined processes. Therefore, the NPS does not wish to convey that these figures accurately account for all effects associated with implementing the sales eliminations.

No.	Park Name	Type of Concessions	Reported Reductions in Trash or Recycling Amounts:
1	Antietam National Battlefield	No concession food service, Cooperating Association allowed to sell bottled water.	*reported amounts based upon historic sales eliminations *estimates are from analysis submitted prior to implementation of policy
2	Arches National Park	No concession food service, Cooperating Association allowed to sell bottled water.	Estimate submitted in Analysis: The park anticipates a reduction in the amount of plastic bottles in the trash of 5-10% of current levels initially, increasing in the future as alternatives are promoted by the park and adopted by park visitors.
3	Biscayne National Park	No concession food service, Cooperating Association allowed to sell bottled water in vending machines.	Estimate submitted prior to implementation of policy: Analysis prediction of 15% volume reduction of trash and 25% volume reduction of recycling.
4	Bryce Canyon National Park	Concessioner retail sales aboard boat tours, no current contract; Cooperating Association	Estimate submitted prior to implementation of policy: analysis estimates some reduction in waste and recycling plastic bottle quantities.
5	Canyonlands National Park	Concessioner lodging, food service and gift store; Cooperating Association	Reported amounts based on historic sales eliminations: Several hundred pounds of empty water bottles waste eliminated from sales at General Store and Lodge Gift Shop (concessioner) and Visitor center (natural history assoc.).
6	Cape Hatteras National Seashore	No concession food service, Cooperating Association allowed to sell bottled water.	Estimate submitted prior to implementation of policy: Analysis prediction of 15% volume reduction of trash and 25% volume reduction of recycling.
7	Colorado National Monument	2 concessioner contracts, 1 not active; Cooperating Association	Reported amounts based on historic sales eliminations: based on concessioner sales records, estimate a reduction of 10,400 plastic bottles per year.
8	Fort Laramie National Historic Site	No concession food service, Cooperating Association allowed to sell bottled water.	Estimate submitted prior to implementation of policy: Analysis prediction of 10% volume reduction of recycled quantities.
9	Fort Raleigh National Historic Site	No concession food service, Cooperating Association, never sold bottled water	Estimate submitted prior to implementation of policy: Analysis prediction of significant reduction in volume of trash and 30% volume reduction of recycled quantities and trips to distant recycling centers.
10	Fort Sumter National Monument	Cooperating Association	Estimate submitted prior to implementation of policy: analysis estimates some reduction in waste and recycling plastic bottle quantities.
11	Grand Canyon National Park	1 concessioner contract; Cooperating Association	Reported amounts based on historic sales eliminations: based on concessioner sales records, estimate a reduction of 4,600 plastic bottles per year.
12	Mammoth Cave National Park	3 concessioner contracts, Multiple concessioner lodging, food service and gift store; Cooperating Association	Estimate submitted prior to implementation of policy: Analysis estimated disposable plastic water bottles comprising 20% of the park's overall waste stream and 30% of the park's recyclables.
13	Mount Rainier National Park	1 concessioner contract; Cooperating Association	Reported amounts based on historic sales eliminations: based on concessioner sales records, estimate a reduction of 2,904 plastic bottles per year. Plastic water bottles estimated to account for 5.7% of total recycled materials by weight.
14	Mount Rushmore National Park	Concessioner with food service	This is a new park to implement the Policy, request for approval submitted to Regional Director 6.16.2016 Estimate submitted in Analysis: based on concessioner sales records, In 2015, bottled water sales amounted to 26,232 units.
	Concessioner food service and gift store; Cooperating Association	Concessioner food service and gift store; Cooperating Association	Estimate submitted in Analysis: estimated a reduction of 30,000 plastic water bottles from waste stream per year.

No.	Park Name	Type of Concessions	Reported Reductions in Trash or Recycling Amounts: *reported amounts based upon historic sales eliminations *estimates are from analysis submitted prior to implementation of policy
15	Pecos National Historical Park	No concession food service. Cooperating Association allowed to sell bottled water.	Estimate submitted prior to implementation of policy: Analysis estimated disposable plastic water bottles comprising 25% of the park's overall waste stream and significant reduction potential.
16	Petrified Forest National Park	Concessioner food service and gift store; Cooperating Association	Reported amounts based on historic sales eliminations: a reduction of 9,000 plastic water bottles from waste stream per year.
17	San Antonio Missions National Historical Park	No concession food service. Cooperating Association allowed to sell bottled water.	Estimate submitted prior to implementation of policy: Analysis prediction of 10% volume reduction of trash and 25% volume reduction of recycling.
18	Saguaro National Park	No concession food service. No Cooperating Association allowed to sell bottled water. No CUA. Only non-profit informal agreement with Pepsi Co. to operate 4 vending machines at 40/60 split of revenues.	Estimate submitted prior to implementation of policy: Analysis prediction of 15% volume reduction of trash and 40% volume reduction of recycling.
19	Salinas Pueblo Missions National Monument	No concession food service. Cooperating Association allowed to sell bottled water. No CUA. Only employee association operates 3 vending machines.	Estimate submitted prior to implementation of policy: Analysis prediction of 10% volume reduction of trash and 15% volume reduction of recycling.
20	Timpanogos Cave National Monument	Concessioner food service and gift store; Cooperating Association	Estimate submitted prior to implementation of policy: Analysis noted that trash and recycling containers have a high percentage of disposable water bottles and anticipate significant reduction in quantity and cost of management.
21	Wind Cave National Monument	No concession food service. No Cooperating Association allowed to sell bottled water. A CUA leaseholder is allowed to operate 1 vending machine dispensing snacks, sandwiches and beverages.	Estimate submitted in Analysis: Analysis estimates a modest reduction in waste and recycling plastic bottle quantities.
22	Wright Brothers National Memorial	No concession food service, Cooperating Association, never sold bottled water	Estimate submitted prior to implementation of policy: analysis estimates some reduction in waste and recycling plastic bottle quantities.
23	Zion National Park	Concessioner lodging, food service and gift store; Cooperating Association	Estimate submitted in Analysis: estimated 14,000 pounds per year reduction in recycled quantities and 11,000 pounds per year reduction in waste quantities, based on a waste composition study and assuming 100% elimination of plastic bottles water bottles from recycling and landfill.
Summary statements	10 parks with concessions contracts, total of 13 individual contracts		* Note that as per the Policy the analysis is required to be submitted to Regional Director for approval prior to implementation, so the analysis document can only include estimates of potential waste reduction. In some cases concessioner historic sales records in # bottled water units sold is provided, which provides partial data indicating amount of waste reduction.

- 3. In advance of the National Park Service Centennial celebration, the specialty outdoor retailer, REI, was selected as the official outdoor retailer for the celebration.**

[A] Please provide to the Committee copies of any contract or memorandum of understanding between REI and NPS, as well as any criteria and reasoning used to evaluate and select REI for such contracts or memorandum.

Response: The National Park Service and its congressionally-chartered charitable partner, the National Park Foundation, created the "Find Your Park" campaign to celebrate the agency's 100th anniversary and increase public awareness of all national park sites and programs. The campaign is funded by private donations to the National Park Foundation and is not supported by federal appropriations. REI and five other corporate sponsors participate in the campaign at the premier level. The National Park Foundation is responsible for securing private sector support and maintaining all agreements with these partners.

- 4. During your testimony you stated that you could not discuss individual discipline in a public forum on advice from the Office of the Solicitor. Please provide to the Committee this specific advice and provide the reasoning for withholding this information from Congress, including any laws, regulation, and rules that prevent you from doing so.**

Response: The agency is willing to discuss individual employee discipline with the Committee in a private forum, however, the Office of the Solicitor has advised that providing such information in a public forum may raise issues under the Privacy Act. Information about employee disciplinary actions is maintained in Privacy Act systems of records that are covered by the OPM-1 System of Records Notice (SORN), and use of this information is governed by the Privacy Act and the OPM-1 SORN. The Privacy Act provides that no agency shall disclose any record which is covered in a system of records by any means of communication to any person, or to any agency, without the written permission of the person to whom the information pertains. There are twelve exceptions to this general rule protecting Privacy Act-protected information. None of these exceptions authorize the sharing of employee disciplinary actions to agency employees generally or to the general public. It is unclear whether Exception 9, which authorizes the release of Privacy Act-protected information to Congress itself and its committees with oversight jurisdiction, permits disclosure of protected information in an open public hearing. Violations of the Privacy Act may be subject to civil and/or criminal penalties.

- 5. The Table of Penalties used at the Department of the Interior (attached) includes three types of offenses. Page 23 of Appendix B of 370 DM 752 lists "General Misconduct" penalties, page 30 lists "Statutorily Mandated Penalties", and page 31 lists "Violations of Statute." What is the difference between the three types of offenses?**

Response: The Departmental Manual Chapter, Discipline and Adverse Actions (370 DM 752) dated December 22, 2006, is attached. This Chapter includes the current Table of Offenses and Penalties in use at the Department of the Interior, and differs from the January 18, 2006 version in two locations: (1) the section titled “Statutorily Mandated Penalties” has been correctly titled “Supervisory Misconduct”, and (2) #20 has been clarified to note that more severe discipline may be warranted for a first or second offense. The range of penalties described in the Table is intended to serve as a guide to discipline, not a rigid standard, and the Chapter describes in greater detail appropriate use of the Table.

The Table of Offenses and Penalties is divided into three main sections: General Misconduct, Supervisory Misconduct, and Violations of Statute. The first section, “General Misconduct,” applies to all Department of the Interior employees covered by 370 DM 752. The second section, “Supervisory Misconduct,” applies to employees in supervisory positions. The third section, “Violations of Statute,” identifies misconduct specifically prohibited by sections of the United States Code.

6. **Several penalties are listed twice within the broader Table of Penalties. Sexual misconduct is originally penalized at bullet 9 on page 26. The recommended penalty for first offense ranges from a written reprimand to removal. Sexual misconduct is subsequently penalized again at bullet 5 on page 30. The recommended penalty for first offense ranges from a 5-day suspension to removal. Why is sexual misconduct in the Table of Penalties twice, and why are there two different recommended penalties for a first offense?**

Response: The Table of Offenses and Penalties lists misconduct of a sexual nature in two locations to address misconduct by non-supervisory employees (#9 on page 24) and by supervisory employees (#5 on page 28). The recommended penalty for supervisory employees for a first offense is higher than that for non-supervisory employees because supervisors are generally held to a higher standard of conduct than their subordinates due to the responsibilities of their positions.

7. **Several penalties are listed twice within the broader Table of Penalties. Discrimination based on race, color, gender, age, religion, national origin, marital status, political affiliation, sexual orientation, or handicapping condition is originally penalized at bullet 10 on page 26. The recommended penalty for first offense ranges from a written reprimand to removal. Discrimination is subsequently penalized again at bullet 1 on page 30. The recommended penalty for first offense ranges from a 5-day suspension to removal. Why is discrimination in the Table of Penalties twice, and why are there two different recommended penalties for a first offense?**

Response: The Table of Offenses and Penalties lists discriminatory behavior in two locations to address misconduct by non-supervisory employees (#10 on page 24) and by supervisory employees (#1 on page 28). The recommended penalty for supervisory

employees for a first offense is higher than that for non-supervisory employees because supervisors are generally held to a higher standard of conduct than their subordinates due to the responsibilities of their positions.

8. **Several penalties are listed twice within the broader Table of Penalties. Violating the Department's Code of Scientific Conduct (or other professional code of conduct that applies to employees required to maintain a professional license or membership) is originally penalized at bullet 30 on page 29. The recommended penalty for first offense ranges from a written reprimand to 30-day suspension. Violating a Department's Code of Scientific Conduct is subsequently penalized again at bullet 7 on page 30. The recommended penalty for first offense ranges from a 5-day suspension to removal. Why is violation of a code of conduct in the Table of Penalties twice, and why are there two different recommended penalties for a first offense?**

Response: The Table of Offenses and Penalties lists discriminatory behavior in two locations to address misconduct by non-supervisory employees (#30 on page 28) and by supervisory employees (#7 on page 29). The recommended penalty for supervisory employees for a first offense is higher than that for non-supervisory employees because supervisors are generally held to a higher standard of conduct than their subordinates due to the responsibilities of their positions.

9. **Do the penalties contained within the Table of Penalties (TOP) apply to all employees at the Department of Interior, or are there some employees for which the TOP does not apply?**

Response: The Departmental Manual Chapter, Discipline and Adverse Actions (370 DM 752) dated December 22, 2006, applies to all bureaus and offices of the Department. Section 1.3 of the Chapter, attached, describes the extent of the coverage of the Chapter, including the Table of Offenses and Penalties.

Department of the Interior Departmental Manual

Effective Date: 12/22/06

Series: Personnel Management

Part 370: Departmental Personnel Program

Chapter 752: Discipline and Adverse Actions

Originating Office: Office of Human Resources

370 DM 752

1.1 Purpose. This chapter establishes the policy, procedures and authority/responsibility for administering employee discipline within the Department of the Interior (Department), and for taking appropriate corrective action for disciplinary or certain non-disciplinary reasons, when it is determined that such actions will promote the efficiency of the service. Requirements stated in this chapter are consistent with law, regulations and other Department policy applicable at the time of its issuance. Actions taken through the application of this chapter must comply with the requirements of pertinent laws, rules and regulations, as well as the lawful provisions of applicable negotiated agreements for employees in exclusive bargaining units.

1.2 Authority. Chapter 75 of Title 5, United States Code and Part 752 of Title 5, Code of Federal Regulations.

1.3 Coverage.

A. This chapter applies to all bureaus and offices of the Department. Bureaus/offices will not issue supplemental disciplinary policy, except where otherwise prescribed in this chapter. Employees covered by a collective bargaining agreement may be subject to additional procedures which may supersede/supplement those described in this chapter. Bureaus/offices may issue supplemental implementing guidance as needed.

B. The disciplinary/adverse action procedures described in this chapter do not apply to an Administrative Law Judge (ALJ), whose discipline is governed by separate statutory requirements. Additionally, only the adverse action procedures described in 1.7C of this chapter are applicable to Department appointees in the Senior Executive Service (SES), although SES employees (and ALJs) may be counseled/reprimanded for engaging in misconduct. Management must consult with the servicing Human Resources Office for guidance regarding employee/action coverage.

C. Employees

(1) The following employees are covered by the provisions of this chapter:

(a) An employee in the competitive service who has completed a probationary or trial period, or 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;

(b) A preference eligible employee in the excepted service who has completed one year of current continuous employment in the same or similar positions;

(c) A non-preference eligible employee in the excepted service who has completed two years of current continuous employment in the same or similar positions under other than a temporary appointment limited to two years or less;

(d) An employee with competitive status who occupies a Schedule B position; and

(e) An employee who was in the competitive service at the time his/her position was first listed as part of the excepted service and still occupies that position.

(2) The following employees are excluded from coverage:

(a) An individual appointed by the President;

(b) An employee whose position has been determined to be of a confidential, policy-determining, policy-making, or policy-advocating character by the President, the agency head, or the Office of Personnel Management (such that the position is excepted from the competitive service – “Schedule C”);

(c) A reemployed annuitant;

(d) An employee whose appointment is made with the advice and consent of the Senate;

(e) A non-preference eligible employee serving a probationary or trial period under an initial appointment in the excepted service pending conversion to the competitive service;

(f) Administrative Law Judges;

(g) An employee in the competitive service serving a probationary or trial period; and

(h) Individuals who are otherwise excluded by the statutory provisions of Title 5, United States Code.

D. Actions

(1) The following actions are covered by this chapter when taken with respect to a covered employee:

- (a) Written Reprimands;
- (b) Suspensions;
- (c) Removals;
- (d) Reductions in grade;
- (e) Reductions in pay; and
- (f) Furloughs without pay for 30 days or less.

(2) The following actions are not covered by this chapter:

- (a) A reduction-in-force action;
- (b) A suspension or removal in the interest of national security;
- (c) An action taken against an Administrative Law Judge;
- (d) The reduction in grade of a supervisor or manager who fails to successfully complete a new probationary period as a supervisor or manager, if such reduction is to the grade held immediately before becoming a supervisor or manager;
- (e) An action which entitles an employee to grade retention, and an action to terminate this entitlement;
- (f) A voluntary action initiated by the employee;
- (g) Termination of appointment on the expiration date specified as a basic condition of employment at the time the appointment was made;
- (h) An action which terminates a temporary or term promotion and returns the employee to the position from which temporarily promoted, or to a different position of equivalent grade and pay, if the Department informed the employee that it was to be of limited duration;
- (i) Cancellation of a promotion to a position not classified prior to the promotion;
- (j) Reduction of an employee's rate of pay from a rate which is contrary to a rate allowed or permitted by law or regulation;

(k) Placement of an employee serving on an intermittent or seasonal basis in a temporary non-duty, non-pay status in accordance with conditions established at the time of appointment;

(l) An action imposed by the Merit Systems Protection Board;

(m) A reduction in grade or removal based solely on unacceptable performance and taken under 5 U.S.C. 4303; and

(n) An action taken or directed by the Office of Personnel Management based on a suitability determination.

(o) An action otherwise not covered by the statutory provisions of Title 5, United States Code, and the regulatory provisions of Title 5, Code of Federal Regulations.

1.4 Definitions.

A. Administrative Leave. An excused absence from duty without charge to leave or loss of pay.

B. Adverse Action. For purposes of this chapter, a personnel action taken by management, appealable to the Merit Systems Protection Board (MSPB), to effect an employee's removal, suspension for more than 14 days, furlough without pay for 30 days or less, or reduction in grade or pay.

C. Day. A calendar day (except where otherwise specified).

D. Deciding Official. A Department supervisor or manager who makes a decision on a proposed adverse action or disciplinary action.

E. Disciplinary Action. For purposes of this chapter, an action taken by management, not appealable to the MSPB (i.e., written reprimand; suspension for 14 days or less) to address employee misconduct.

F. Furlough. The placement of an employee in a temporary status without duties and pay because of lack of work or funds or other non-disciplinary reasons.

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

H. Indefinite Suspension. The placement 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 pending conditions set forth in the notice of action which may include the completion of any subsequent administrative action.

I. Pay. The rate of basic pay fixed by law or administrative action for the position held by an employee.

J. Preponderance of the Evidence. That degree of relevant evidence which a reasonable person, considering the record as a whole, might accept as sufficient to find that a contested fact is more likely to be true than untrue.

K. Proposing Official. A Department supervisor or manager who proposes an adverse or disciplinary action.

L. Removal. The involuntary separation of an employee from employment with the Department and Federal service, except when effected due to a reduction-in-force or the expiration of an appointment.

M. Suspension. The involuntary placement of an employee in a temporary non-duty, non-pay status for disciplinary reasons.

1.5 Responsibilities.

A. Heads of Bureaus and Offices are Responsible for:

(1) Implementing, supporting and providing oversight for the effective management of employee conduct and discipline;

(2) Communicating information to the workforce regarding conduct requirements and disciplinary parameters;

(3) Delegating appropriate authority, establishing roles/responsibilities for policy implementation within the bureau/office, and ensuring that applicable training is provided for supervisors to properly exercise their disciplinary responsibilities;

(4) Ensuring adherence to the policy and procedural requirements of this chapter, as well as the applicable provisions of established collective bargaining agreements; and

(5) Providing and implementing bureau/office-wide guidance and instructions other than those outlined in this chapter, as appropriate.

B. Director, Office of Human Resources is Responsible for:

(1) Developing and issuing Departmental policy and guidance regarding employee conduct and discipline;

(2) Monitoring and evaluating the administration of discipline throughout the Department, and revising the disciplinary policy and procedures as appropriate;

(3) Providing advice and assistance to bureaus/offices on the provisions of this chapter (as well as related laws, rules and regulations) and on managing employee conduct and discipline;

(4) Establishing and implementing reporting requirements for actions taken under this chapter, as well as complying with reporting requirements established by OPM; and

(5) Establishing overall parameters for Department-wide conduct/discipline training and coordinating the availability of related training opportunities.

C. Servicing Human Resources Offices (HRO) are Responsible for:

(1) Advising supervisors on employee conduct issues and disciplinary options (including procedural/regulatory parameters);

(2) Drafting or reviewing all disciplinary notices prior to issuance and applicable case files, to ensure reasonableness of penalty and statutory/regulatory compliance;

(3) Advising employees and supervisors of their procedural rights and responsibilities relative to this chapter (and applicable laws, regulations and negotiated agreements);

(4) Consulting for legal sufficiency with the Office of the Solicitor on adverse action proposals and decisions, and providing technical assistance to the Office of the Solicitor on actions taken under this chapter;

(5) Maintaining disciplinary and adverse action files and an information system for tracking and periodically reporting the actions effected; and

(6) Providing operational training support to ensure the workforce is sufficiently aware of the provisions of this chapter.

D. Office of the Solicitor is Responsible for:

(1) Providing reviews for legal sufficiency and overall appropriateness of adverse actions being considered, proposed, or taken under this chapter;

(2) Representing the Department during settlement negotiations, MSPB appeals, arbitrations and other activities related to the administrative and federal personnel litigation process; in accordance with established Departmental policy, coordinating settlements of actions taken under this chapter which impose a financial obligation on the Department; and

(3) Reviewing and providing input on conduct/discipline training and related instructional guidance for Department supervisors and employees.

E. Supervisors are Responsible for:

- (1) Establishing and maintaining a safe, productive, supportive and well-ordered work environment;
- (2) Providing a work environment free of illegal discrimination;
- (3) Advising employees regarding assigned duties and conduct expectations and observing employee performance and conduct to ensure compliance with the standards of ethical conduct and other established work requirements;
- (4) Promptly investigating and documenting circumstances related to incidents of employee misconduct;
- (5) Consulting with the servicing HRO regarding employee misconduct and initiating appropriate, timely and relatively consistent corrective action as warranted; and
- (6) Recognizing and complying with the requirements of this chapter and the applicable provisions of established collective bargaining agreements.

F. Employees are Responsible for:

- (1) Having a familiarity with Federal and Departmental standards of ethical conduct, complying with all established conduct and performance requirements, and requesting clarification if necessary;
- (2) Reporting incidents of waste, fraud, abuse, corruption and other misconduct to appropriate authorities; and
- (3) Cooperating in official investigations and furnishing testimony.

1.6 Policy.

A. General. Employees of the Department are expected to demonstrate high standards of integrity, both on and off the job, abiding by the Department's conduct regulations (43 CFR Part 20) and other Federal and Departmental laws, rules and regulations. When established standards of conduct are violated, or the rules of the workplace are disregarded, corrective action is warranted to motivate employees to conform to acceptable behavioral standards and prevent prohibited and/or unsafe activities. Such corrective actions, when taken under this chapter, should comport with applicable laws and regulations, should be administered with relative consistency and should be taken for such cause as will promote the efficiency of the service.

B. Standard for Taking Action. Management must be able to show that the actions taken under this chapter promote the efficiency of the service. To demonstrate this, the written notices of proposal and decision must clearly specify the charge(s) or reason(s) upon which the action is based, be able to prove the specific basis for its action by a preponderance of the evidence, be able to show the connection ("nexus") between the charge(s) and promotion of the efficiency of the service, and be able to establish the reasonableness of the action taken under the

circumstances. In taking a corrective action against an appointee in the SES, management's options are limited to a written reprimand or an adverse action covered by this chapter (i.e., suspension for more than 14 days; removal from the Federal service); management may take an adverse action against an SES 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.

C. Use and Choice of Discipline. Discipline should be imposed to correct improper employee conduct and to maintain order, morale and workplace safety throughout the workforce. After determining that misconduct occurred and that corrective action is warranted, discipline should be initiated as soon as practicable after the misconduct which prompted it and effected on a progressive and equitable basis as much as possible. Progressive discipline provides that in dealing with an instance of employee misconduct, the responsible management official (often the first-level supervisor) should select the minimum disciplinary/adverse action most likely to correct the specific behavioral problem, with penalties selected at an escalating level for subsequent (but not necessarily identical) offenses, when appropriate. Management officials must exercise reasonable judgment and consider all relevant factors, both mitigating and aggravating (as reflected in the guidance found at Appendix A), in determining the most appropriate corrective action for each situation. As a guide for considering disciplinary options, the Department's *Table of Offenses and Penalties* is included as Appendix B to this chapter. This *Table* does not mandate the use of specific penalties in most disciplinary situations. Supervisors/managers retain full authority, except in limited circumstances (i.e., discipline prescribed by statute or the MSPB), to set penalties as they deem appropriate, based on the particular circumstances and specifications of the offense. Consultation and close coordination with the servicing HRO should ensure that a particular penalty is proportional to the offense and employees who commit similar offenses are treated with relative consistency.

D. Delegations of Authority. Each bureau will determine the level of supervisory authority required for taking actions covered by this chapter. For actions that require the issuance of a proposal and a decision (e.g., suspensions; removals; reductions in grade/pay), ordinarily the same supervisory/management official should not serve as both the proposing and deciding official on the action. Generally, the decision on a proposed action should be made by a management official at a higher organizational level than the proposing official; if there is no higher-level official within the Bureau/Office or if it is not feasible to use the higher-level official, another management official within the Department may be delegated the decision-making authority (in such exceptional situations, determinations regarding the delegation of decision-making authority must be approved by the Bureau/Office head, with the concurrence of the Director, OHR). Bureau officials, managers and supervisors who are delegated authority for implementing the provisions of this chapter and managing the workforce are accountable for complying with and properly administering all controlling laws, rules, policies, regulations and negotiated agreements pertaining to employee conduct and discipline.

1.7 Procedures.

A. General. Taking a corrective action against an employee is appropriate only when the employee has engaged in identifiable misconduct adversely affecting the efficiency of the service. Before initiating such action, management should conduct a thorough inquiry into any

apparent offense (collecting information to the greatest extent practicable directly from the subject employee) to ensure the objective consideration of all relevant facts and aspects of the situation. Ordinarily, this inquiry will be conducted by the appropriate line supervisor, with guidance from the servicing HRO. However, certain situations (particularly those involving possible criminal activity) warrant an investigation by the Office of Inspector General and/or internal Bureau law enforcement/criminal investigation offices. Once it is established that an employee engaged in misconduct necessitating corrective action, a supervisor or other management official (using the guidance at Appendices A and B, and in consultation with the servicing HRO) must determine the action/penalty required to deter the recurrence of the unacceptable behavior.

Minor misconduct may be corrected if the supervisor informally counsels the employee about the problem promptly after the first instance. The supervisor also may rely on notices of warning/admonishment to convince the employee to change the undesirable behavior. These actions are less severe than the disciplinary and adverse actions described below, are less subject to review by third parties, and do not become part of the employee's permanent official employment record. Notices of warning/admonishment document the employee's misconduct, place the employee on notice regarding the behavior expected by management, and advise the employee that more serious corrective action (e.g., reprimand; suspension; removal) will result if the unacceptable behavior is not corrected. The use of such corrective actions does not constitute a "prior penalty" for disciplinary purposes, as alluded to in Appendix B, to enhance the severity of penalty for a subsequent offense; however, such corrective actions may be viewed as "prior notice" (in consideration of factor 9, Appendix A).

B. Disciplinary Action.

(1) Written Reprimand

(a) This is a written notice issued to an employee by an authorized management official (usually the immediate or higher-level supervisor) when the employee's conduct warrants a corrective action more serious than a counseling or warning but without involving a loss of pay. Unlike a notice of counseling, warning or admonishment, a written reprimand is a formal penalty for disciplinary purposes (under Appendix B).

(b) The servicing HRO will assist management in the preparation and issuance of the reprimand, which should specify: the reason(s) prompting the action; the period of time a copy of the reprimand will be maintained in the employee's Official Personnel Folder (OPF); for progressive disciplinary purposes, the possibility of taking more serious action for any subsequent offenses(s); and, the employee's right to file a grievance in accordance with the applicable administrative/negotiated grievance procedures.

(c) A copy of the reprimand will be filed on the temporary side of the employee's OPF for a period not-to-exceed two years or where applicable, the time specified by an established negotiated agreement; the time period will be appropriately recorded and tracked by the servicing HRO. The employee's supervisor may elect to withdraw the reprimand from the

OPF earlier than the period specified, in which case the supervisor will inform the employee, after consulting with the servicing HRO.

(2) Suspension (14 days or less)

(a) A disciplinary suspension is a management directed absence from work for an employee (excluding all SES appointees), with forfeiture of pay for the time specified. Since suspensions result in a loss of productivity and represent a financial loss to employees, they should be imposed only after lesser corrective actions have proven ineffective in improving employee behavior or when an employee has engaged in serious misconduct.

(b) An employee against whom a suspension of 14 days or less is initiated is entitled to receive a written proposal stating the specific reason(s) for the proposed action (including aggravating/mitigating factors referenced in Appendix A) in sufficient detail to enable the employee to answer the charge(s). The notice of proposed suspension (issued by the immediate supervisor or other management official, with the advice and assistance of the servicing HRO), shall state the proposed length of the suspension, as well as the employee's entitlement to: review the material relied upon by management in proposing the suspension (upon request); 7 days to answer orally and/or in writing the proposal (and furnish affidavits and other documentary evidence) before a decision is made; representation by an attorney or other representative; and a written decision (explaining the specific reasons for that decision) at the earliest practicable date. The notice also shall identify the name of the deciding official (generally, a higher-level manager) and, if different, the name of the official designated to receive the oral and/or written answer (if such an official is designated, that individual may provide a recommendation to the deciding official regarding the disposition of the proposed action). After issuing the notice of proposed suspension, management can amend the proposal notice (or cancel and reissue it at a later date) to allow for the consideration of any additional misconduct which becomes known to management prior to the issuance of a decision.

(c) The employee's representative must be designated, in writing, to the deciding official prior to any oral and/or written answer. Employees serving in a legal capacity within the Department (e.g., attorneys with the Office of the Solicitor and Office of Hearings and Appeals) may not represent another Department employee with regard to actions taken under this chapter. Additionally, Department management may disallow, as an employee's representative, an individual whose activities as a representative could cause a conflict of interest or of position, or an employee of the Department whose release from his/her official position would result in unreasonable costs or whose priority work assignments preclude his/her release for representational duties.

(d) The employee's answer(s) to the proposed suspension should be provided to the deciding official (or designee) within 7 days following the date the employee receives the proposal notice. The employee is entitled to a reasonable amount of official time (normally a matter of hours, not days) to prepare and present an oral and/or written answer. If the employee wishes additional time to answer, the employee (or designated representative) must submit an extension request, in writing, to the deciding official (or designee) before the expiration of the answer period, stating the reason for the request and the amount of additional

time needed. The deciding official shall respond to the employee, in writing, either granting or denying (fully or partially) the time extension request.

(e) The right to answer orally does not include the right to a formal hearing and the appearance of witnesses will not be permitted. Although oral replies are generally conducted in a face-to-face meeting, when this is impractical, audio or video conferencing may be used. When practicable, a representative from the servicing HRO should be present during the presentation of the oral answer, to assist and provide procedural guidance to the deciding official (or designee) and employee (or representative). If the employee makes an oral answer, the deciding official (or designee), shall prepare a written summary for the record (no verbatim transcript of the oral answer is required). A draft of the summary should be provided to the employee (or representative) for the opportunity to comment before it is made part of the record. The final summary of the oral answer and any comment made by the employee (or representative) regarding the summary shall become part of the official disciplinary case file maintained by the servicing HRO.

(f) The deciding official will obtain (from the servicing HRO) and review a copy of the entire case file, which should contain all the evidence relied upon by the proposing official (including the proposal notice and all supporting documents), before making a decision on the proposed suspension. Upon request, the employee also may review this file, which should contain only the material relied upon to support the action; information that cannot be disclosed to the employee shall not be used as a basis for taking any action.

(g) The deciding official shall issue a written decision at the earliest practicable date after receipt of the employee's answer(s), or following expiration of the answer period. The notice of decision must be delivered to the employee (or representative) at or before the time any action is to be effected (or in accordance with applicable provisions of any negotiated agreement). The servicing HRO will assist the deciding official in making the appropriate decision and preparing and issuing the decision notice. In arriving at a decision, the deciding official should consider only the information, evidence and communication available to the employee for comment or answer throughout the disciplinary process, as well as the employee's answer(s), and use only the reasons which were included in the proposal notice to support the decision. The deciding official may seek additional information to corroborate/refute any information previously obtained during the process; if considered, the deciding official should make such additional information available to the employee for comment prior to making a decision.

(h) The notice of decision should indicate: the specific action decided upon (and applicable effective dates); the charge(s) and specification(s) in the proposal notice which were/were not sustained; the consideration given to the employee's answer(s), if any, and to any mitigating and aggravating factors; for progressive disciplinary purposes, the possibility of taking more serious action for any subsequent offenses(s); and, the employee's right to file a grievance in accordance with the applicable administrative/negotiated grievance procedures.

C. Adverse Action.

(1) Most adverse actions taken under this chapter (i.e., removal for cause; suspension for indefinite period/more than 14 days; reduction in grade or pay) are based on instances of egregious and/or repeated employee misconduct (exceptions include furlough for 30 days or less and removal for medical inability to perform the duties of the position). Employees are entitled to receive advance written notice of at least 30 days before an action covered by this chapter may be effected, except for the following situations:

(a) *Emergency furlough.* The requirements for both an advance written notice and an employee opportunity to answer are waived for furloughs due to unforeseeable circumstances, such as sudden breakdowns in equipment, a lapse of appropriations, acts of God, or sudden emergencies requiring immediate curtailment of activities. Circumstances must be truly unforeseen, and of such a nature that they do not reasonably allow for time to prepare a proposal to take action or to receive an employee's answer.

(b) *Crime provision.* Management may shorten the advance notice period when there is reasonable cause to believe an employee has committed a crime (either on or off the job) for which a sentence of imprisonment may be imposed. The shortened notice period must still be at least 7 days. When circumstances require that the employee be kept away from the worksite during this shortened notice period, management may place the employee in an administrative leave status for such time as is necessary to decide and effect the adverse action. Generally, evidence that meets the requirements for a shortened notice period also will support an adverse action to *indefinitely* suspend an employee pending resolution of the criminal charges or completion of a subsequent administrative action. An employee who has been arrested with or without a warrant and held for further legal action by a magistrate court or indicted by a grand jury for a serious crime should be indefinitely suspended without pay pending the outcome of the judicial process. The consideration of any adverse action prompted by an employee's alleged criminal conduct must be closely coordinated with the Office of the Solicitor.

(2) An employee against whom an adverse action is initiated is entitled to receive a written proposal (normally with 30-days advance notice), stating the specific action proposed and the reason(s) for the proposed action (including any aggravating and/or mitigating factors referenced in Appendix A) in sufficient detail to enable the employee to answer the charge(s). The notice of proposed adverse action (issued by the immediate supervisor or other management official, with the advice and assistance of the servicing HRO, and after a legal sufficiency review by the Office of the Solicitor), additionally shall reference that the employee may: review the material relied upon by management in proposing the suspension; have 14 days (and a reasonable amount of official time) to answer orally and/or in writing the proposal (and furnish affidavits and other documentary evidence) for consideration before a decision is made; be represented by an attorney or other representative; and receive a written decision (explaining the specific reasons for that decision) at the earliest practicable date. The notice also shall identify the name of the deciding official (generally, a higher-level manager) and, if different, the name of the official designated to receive the oral and/or written answer (if such an official is designated, that individual may provide a recommendation to the deciding official regarding the disposition of the proposed action). After issuing the notice of proposed adverse action, management can amend the proposal notice (or cancel and reissue it at a later date) to allow for

the consideration of any additional misconduct which becomes known to management prior to the issuance of a decision.

(a) When some but not all employees in a given competitive level are being furloughed, the notice of proposal shall state the basis for selecting a particular employee for furlough, as well as the reasons for the furlough.

(b) Ordinarily, the employee shall remain in an active duty status during the advance notice period, and the proposal notice should so state. However, in rare instances, the proposing official may determine that the employee's presence at the workplace may be injurious to the employee or to others, may result in loss of or damage to Government property, or may otherwise jeopardize legitimate Government interests. In such cases, management (in consultation with the servicing HRO and the Office of the Solicitor) may assign the employee to other duties, allow the employee to take leave (or place the employee in an appropriate leave status if the employee is absent from the workplace), curtail the notice period (using the crime provision), or place the employee in an administrative leave status for such time as is necessary to make a decision and effect an action. The placement of an employee on administrative leave does not constitute an adverse action, but should only be done in the most exceptional situations (i.e., cases involving proposed removals or indefinite suspensions), when all other options are considered imprudent. Only bureau/office heads, their deputies, or the Director, OHR, may authorize the placement of an employee on administrative leave for an extended period of time (i.e., beyond 45 days); this authority may not be re-delegated. Bureau/Office heads (or their deputies) must coordinate decisions regarding the placement/continuation of an employee in an administrative leave status for more than 45 days with the Director, OHR, who will review such decisions for the Department and may rescind them if considered inappropriate.

(c) Management must make a reasonable and diligent effort to ensure that the employee receives the notice of proposed adverse action in a timely basis. Personal delivery of the advance notice to the employee, allowing for the employee's signed acknowledgment of receipt, is the most desirable method of delivery. If the notice cannot be personally delivered to the employee, the servicing HRO will determine the appropriate alternative delivery method.

(3) The employee's representative must be designated, in writing, to the deciding official prior to any oral and/or written answer. Employees serving in a legal capacity within the Department (e.g., attorneys with the Office of the Solicitor and Office of Hearings and Appeals) may not represent another Department employee with regard to actions taken under this chapter. Additionally, Department management may disallow, as an employee's representative, an individual whose activities as a representative could cause a conflict of interest or of position, or an employee of the Department whose release from his/her official position would result in unreasonable costs or whose priority work assignments preclude his/her release.

(4) The employee's answer(s) to the proposed adverse action should be provided to the deciding official (or designee) within 14 days following the date the employee receives the proposal notice. An employee in an active duty status is entitled to a reasonable amount of official time (normally a matter of hours, not days) to review the material relied on to support the proposed action and to prepare and present an oral and/or written answer; the employee must

request and obtain supervisory approval for the use of official time, in advance. If the employee wishes additional time to answer, the employee (or designated representative) must submit an extension request, in writing, to the deciding official (or designee) before the expiration of the answer period, stating the reason for the request and the amount of additional time needed. The deciding official shall respond to the employee, in writing, either granting or denying (fully or partially) the time extension request.

(5) The right to answer orally does not include the right to a formal hearing and the appearance of witnesses will not be permitted. Although oral replies are generally conducted in a face-to-face meeting, when this is impractical, audio or video conferencing may be used. When practicable, a representative from the servicing HRO should be present during the presentation of the oral answer, to assist and provide procedural guidance to the deciding official (or designee) and employee (or representative). If the employee makes an oral answer, the deciding official (or designee), shall prepare a written summary for the record (no verbatim transcript of the oral answer meeting is required). A draft of the summary should be provided to the employee (or representative) for the opportunity to comment before it is made part of the record. The final summary of the oral answer and any comment made by the employee (or representative) regarding the summary shall become part of the official adverse action case file maintained by the servicing HRO.

(6) The deciding official will obtain (from the servicing HRO) and review a copy of the entire case file, which should contain all the evidence relied upon by the proposing official (including the proposal notice and all supporting documents) before making a decision on the proposed adverse action. Upon request, the employee also may review this file, which should contain only the material relied upon to support the action; information that cannot be disclosed to the employee shall not be used as a basis for taking any action.

(7) The deciding official shall issue a written decision at the earliest practicable date after receipt of the employee's answer(s), or following expiration of the 14-day answer period. The notice of decision must be delivered to the employee (or representative) at or before the time any action is to be effected (or in accordance with applicable provisions of any negotiated agreement). The servicing HRO will assist the deciding official in making the appropriate decision and preparing and issuing the decision notice. In arriving at a decision, the deciding official should consider only the information, evidence and communication available to the employee for comment or answer throughout the adverse action process, as well as the employee's answer(s), and use only the reasons which were included in the proposal notice to support the decision. The deciding official may seek additional information to corroborate/refute any information previously obtained during the process.

(8) The notice of decision should indicate: the specific action decided upon (and applicable effective dates); the charge(s) and specification(s) in the proposal notice which were/were not sustained; the consideration given to the employee's answer(s), if any, and to any mitigating and aggravating factors; for progressive disciplinary purposes, the possibility of taking more serious action for any subsequent offenses(s); and, the employee's right to either file an appeal to MSPB (include a copy of the Board's appeal form/regulations and the address of the

appropriate Board office) or file a grievance in accordance with any applicable negotiated agreement.

1.8 Records. The servicing HRO shall maintain confidential disciplinary/adverse action case files; each file shall contain copies of the notice of proposed action, any written answer, a summary of any oral answer, the notice of decision (including the reasons for it), any order effecting the action, and any supporting material (e.g., witness statements; affidavits; documents; investigative reports). Disciplinary/adverse action files must be provided to various parties (e.g., the MSPB; the affected employee and/or designated representative; a grievance examiner), but need only be furnished in response to a specific request.

APPENDIX A

PENALTY DETERMINATION

After establishing a sufficient basis for taking action (i.e., a preponderance of the evidence to support the charge(s); a nexus between the offense(s) and the employee's job or the agency's mission), the supervisor/manager, in consultation with the servicing HRO, must determine the appropriate penalty for the employee's misconduct. At this point, whether proposing or deciding an action, it is prudent to consider all remedies (disciplinary or non-disciplinary; formal or informal) that may effectively resolve the identified problem.

In selecting an appropriate penalty for a specific offense, responsible judgment must be exercised so that an employee will not be penalized out of proportion to the offense. Management should take into account all of the specific circumstances of the case and should ensure, to the extent possible, that employees who commit similar offenses are treated consistently. However, while equitable and uniform treatment of employees who commit similar offenses (under "like" circumstances) is preferable when possible, mechanistic consistency is not recommended or required. In *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981), the MSPB identified a number of factors -- generally referred to as the "*Douglas Factors*" -- which it specified were not exhaustive, but were generally recognized as relevant in determining the appropriateness of a penalty. A reasonable and conscientious application of these factors (listed below, with guidance based on MSPB case-law) could result in employees receiving different penalties, even though they may have committed similar offenses.

(1) *Nature and Seriousness of Offense* – 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.

- Mitigating factors and the employee's potential for rehabilitation must be balanced against the seriousness of the offense and its effect on the duties of the position and the mission of the organization.
- Serious misconduct can outweigh an employee's length of service and overall good work record.

- If the misconduct is serious enough, removal might be an appropriate penalty for a first offense, and on appeal, a third party might overlook a questionable application of other *Douglas* factors (e.g. failure to properly notify the employee of consideration of past record; disparate penalties).

(2) *Employee's Job* – the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position.

- Persons in positions of trust can be held to higher standards; positions of trust include jobs with fiduciary, law enforcement and public safety or health responsibilities.
- Loss of confidence in an employee's ability to function as a supervisor supports removal from a supervisory position.
- If an employee has performed well in non-supervisory jobs, but fails as a supervisor, demotion is often viewed as more appropriate than removal from federal service.

(3) *Disciplinary Record* – the employee's past disciplinary record.

- The MSPB may review independently prior disciplinary actions pending in grievance proceedings when reviewing termination and other serious disciplinary actions.
- An employee's record of past discipline is used to enhance the penalty; it may not be used as proof of the current misconduct.
- Any past offense may form the basis for proposing a penalty from the next higher range of penalties for a subsequent offense; the offenses need not be identical or similar.
- Prior disciplinary actions may be cited even if they involved offenses unrelated to the current charges, although past discipline that occurred years before the current action and that involved unrelated offenses likely will be discounted on appeal.
- Management may not cite disciplinary actions that have expired in accordance with agency regulations or a collective bargaining agreement.
- An employee may not challenge the merits of prior disciplinary actions if the employee was informed of the actions in writing, the actions are a matter of record, and the employee had an opportunity to dispute the actions before a higher authority (if such actions were reviewed by a higher authority, they must have been upheld).
- Management's intent to consider the past disciplinary record must be stated in the proposal notice.

(4) *Work Record* – the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability.

- When the offense involves supervisory misconduct, the length of service as a supervisor is more important than total service with the agency.
- When official records concerning an employee's performance (e.g. written performance appraisals) are contradicted by a manager's statements in the notice of decision or in testimony, the official records will be judged more reliable.
- Disciplinary actions or additional misconduct occurring after the issuance of the adverse action proposal may not be cited as a past disciplinary record, but may be used to show an overall poor work record.

- Positive actions by management after learning of an employee's misconduct (e.g. promoting the employee; allowing the employee to perform his/her duties for an extended period of time) may indicate that the employee's overall work record outweighs or diminishes the seriousness of the offense.

(5) *Effect on Future Performance* – 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.

- Loss of trust in the employee's ability to perform assigned duties in the future may be used to enhance the penalty.
- Offenses directly related to an employee's duties (e.g., falsification of the same documents the employee has responsibility to review) raise legitimate concerns about his/her ability to continue to perform those duties.
- Offenses inconsistent with an employee's supervisory responsibilities call into question his ability to function as a supervisor in the future.

(6) *Consistency with Other Penalties* – consistency of the penalty with those imposed upon other employees for the same or similar offenses.

- Management may not knowingly treat similarly situated employees differently when setting disciplinary penalties; to be similarly situated, the comparison employees must work in the same unit for the same supervisor. When an employee identifies a difference in penalties for the same offense, management may need to present evidence supporting the difference.
- There is no requirement for management to be absolutely consistent in its penalty determinations. The prior disciplinary and work records of the comparison employees may justify a difference, and the underlying facts in each case might warrant different penalties.
- When management has an established policy or practice to impose a particular penalty for an offense, it cannot begin to use a harsher penalty without giving prior notice to employees.

(7) *Consistency with Table of Penalties* – consistency of the penalty with any applicable agency table of penalties.

- Management's departure from the agency table of penalties may be permissible; it should not apply the table of penalties so rigidly as to ignore other *Douglas* factors.
- Management may take a more severe action than suggested in the table of penalties for a first offense if the employee has a record of prior, unrelated offenses.

(8) *Notoriety and Impact* – the notoriety of the offense or its impact upon the reputation of the Agency.

- Publicity or even the possibility of publicity that could have a negative impact on the reputation of the agency is a factor that may be considered to enhance a penalty.

(9) *Clarity of Notice* – 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.

- While lack of notice of the rules to be followed can be a mitigating factor, management is under no obligation to warn employees about behavior the employees should know is improper.
- Supervisors' ignoring or condoning certain behavior can indicate lack of notice.
- Training on agency policies constitutes notice of expected behavior.
- Prior misconduct for which the employee was counseled, even though the employee was not formally disciplined (or was formally reprimanded, but the reprimand is no longer in effect), can be cited to show an employee was on notice of the rules to be followed.

(10) *Potential for Rehabilitation* – potential for the employee's rehabilitation.

- An employee who admits misconduct and shows remorse displays potential for rehabilitation, while an employee who rationalizes his/her wrongdoing, fails to take responsibility or doesn't show an understanding of why his/her behavior was wrong is not a good candidate for rehabilitation.
- Lying during an investigation may be viewed as a lack of potential for rehabilitation.
- An employee who ceases misconduct after being warned may show potential for rehabilitation; however, an employee who shows improvement after receiving a notice of proposed adverse action is not particularly convincing.
- Attending meetings with an EAP counselor to discuss personal problems may indicate potential for rehabilitation.

(11) *Mitigating Circumstances* – mitigating circumstances surrounding the offense, such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter.

- Emotional problems and stress may be mitigating factors, but there must be some evidence showing the problems contributed to the misconduct.
- Stress generally should not be viewed as a mitigating factor when the misconduct involves illegal drug use.
- Job tension, although not a medical problem, can be a mitigating factor.
- Bad faith on the part of agency management (e.g., evidence that management set out to "get rid of" the employee) can be a factor used to reduce the penalty.
- Evidence that the deciding official was predisposed against the employee is viewed as a mitigating factor by a third party.

(12) *Availability of Alternative Sanctions* – the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

- Prior warnings and reprimands indicate that a penalty less than removal will not deter the employee from similar misconduct in the future.
- A penalty designed primarily for its value as an example or warning to other employees likely will not be upheld upon review, as third parties generally do not accept this as a

valid basis for penalty selection. A penalty can be used to deter future misconduct by other employees, but this objective does not warrant overlooking other relevant *Douglas* factors.

- Management does not have to prove that the penalty was the least sanction necessary to promote the efficiency of the service or that it considered alternative penalties. However, such a showing provides essential evidence that the deciding official considered the relevant *Douglas* factors and that the penalty is reasonable.

Not all of these factors will be pertinent in every case. Frequently, some of the pertinent factors will weigh in the employee's favor while others may not (or even constitute aggravating factors). Selection of an appropriate penalty must involve a responsible balancing of the relevant factors in the specific case, and in reviewing penalty selection, a third party will determine whether management considered all the relevant factors and exercised its discretion within tolerable limits of reasonableness.

Management need not demonstrate that it considered all potential mitigating or aggravating factors before selecting a penalty, nor is it required to specifically show how each *Douglas* factor applies to each case. Even though there is no absolute requirement to do so, it is advisable for management to specifically state in proposal/decision notices what factors it considered in setting the penalty, to avoid concerns that relevant issues were not addressed. Therefore, both proposing and deciding officials should address the *Douglas* factors, as well as any mitigating factors, in terms of their particular relevance to penalty selection.

As a general rule, aggravating factors used by management in its penalty determination (e.g., an employee's poor work record), should be included in the proposal notice so that the employee has a chance to respond to them in the oral and/or written replies. In the notice of decision, the deciding official should reference his/her consideration of the proposing official's *Douglas* factor analysis and the employee's related response(s), before explaining his/her judgment regarding how the relevant factors serve to support or mitigate the proposed penalty.

APPENDIX B

TABLE OF OFFENSES AND PENALTIES

This Table provides a list of common infractions, along with a suggested range of penalties for each; it does not presume to cover all possible offenses, nor does it mandate the use of specific penalties in most disciplinary situations. The range of penalties described in the Table is intended to serve as a guide to discipline, not a rigid standard, and deviations are allowable for a variety of reasons. Greater or lesser penalties than suggested may be imposed as circumstances warrant, and based on a consideration of mitigating and aggravating factors. Management officials must exercise reasonable judgment and consider all relevant factors (as reflected in the guidance found at Appendix A) in determining the most appropriate corrective action for each situation. Any penalty determination outside the suggested range should be based upon a

reasonable consideration of the factors described in Appendix A, and the rationale documented in the decision notice.

The use of this Table as a guide will help to ensure appropriateness of penalty in relation to the charge(s), as well as relative consistency in discipline throughout the Department. The fact that a particular offense is not listed in the Table does not mean that the employee cannot be charged with that offense. In such instances, a reasonable penalty can be determined (with the assistance of the servicing HRO) by a comparison to those offenses listed in the Table.

The Table lists only disciplinary and adverse actions which become a matter of record in the employee's Official Personnel Folder; it does not mention oral warnings, counseling notices, and other corrective actions which may be more appropriate for correcting minor offenses. The *First Offense* column, therefore, refers to the first offense for which a disciplinary/adverse action is taken, although it may not be the first time the employee engaged in misconduct.

Progressively stronger corrective actions should be taken if an employee repeatedly engages in misconduct. When an employee receives corrective action for an offense which falls under one range of penalties, and later commits a different offense under the same or another category of offense, the latter is considered a second offense for progressive disciplinary purposes. For example, if an employee is charged with absence without leave (AWOL) and is issued an official reprimand (first offense), then is later charged with insubordination for subsequent misconduct, the appropriate penalty range for the insubordination charge is a 30-day suspension to removal (as a second offense).

In addition to a management-initiated corrective action, a Department employee also may be subject to criminal prosecution when there is evidence of a possible statutory violation; such evidence should be provided to the Office of Inspector General, which then may refer the matter to the Department of Justice for further consideration and possible prosecution. If the Department of Justice declines to prosecute, the employee involved in the alleged wrongdoing will then be subject to an appropriate administrative action consistent with the penalties contained in this Table. An employee who has been arrested and held for further legal action by a magistrate court, or indicted by a grand jury for an imprisonable offense, should be indefinitely suspended without pay pending the outcome of the judicial process so as not to prejudice the employee's right to due process in the criminal case. If the employee pleads guilty or is convicted, the Department may then proceed with a removal or other appropriate action; in the absence of a conviction, the indefinite suspension should end, although other administrative action may be taken.

The servicing HRO must be consulted regarding the procedural requirements to follow when taking corrective action. This consultation requirement includes securing advice on the merits of the charge(s) and the appropriateness and Departmental-consistency of the penalty being proposed. In situations involving possible violations of the Department's Standards of Ethical Conduct, supervisors/managers should also consult with a bureau Ethics Counselor and/or an ethics official from the Office of the Solicitor, Office of Ethics.

Nature of Offense (General Misconduct)	Penalty for First Offense	Penalty for Second Offense	Penalty for Third Offense	Remarks
<p>1. Attendance-related offenses.</p> <p>a. Absence without leave (AWOL). This includes tardiness and unauthorized delay in returning from lunch and break periods, or in returning after leaving work station on official business; unauthorized departure or absence from duty station.</p> <p>b. Failure to follow established leave procedures; failure to provide administratively acceptable documentation to support absence(s).</p> <p>c. Excessive unauthorized absences (e.g., more than 5 consecutive workdays).</p>	<p>Written Reprimand to 5-day suspension</p> <p>Written Reprimand to 5-day suspension</p> <p>5-day suspension to removal</p>	<p>5- to 30-day suspension</p> <p>5- to 30-day suspension</p> <p>14-day suspension to removal</p>	<p>30-day suspension to removal</p> <p>30-day suspension to removal</p> <p>Removal</p>	<p>Refer to 370 DM 630 for leave requirements and guidance. Penalty depends primarily on length and frequency of unacceptable absences. Removal may be appropriate for a first or second offense if the absence is prolonged, the failure to adhere to leave procedures is flagrant, or the circumstances are otherwise particularly burdensome.</p>
<p>2. Improper or unauthorized release of sensitive and administratively-controlled information or employee records; failure to safeguard classified material.</p> <p>a. Information is not compromised and release is unintentional.</p> <p>b. Information is compromised and release is unintentional.</p> <p>c. Release of restricted information is deliberate.</p>	<p>Written Reprimand to 5-day suspension</p> <p>Written Reprimand to 30-day suspension</p> <p>30-day suspension to removal</p>	<p>5- to 30-day suspension</p> <p>30-day suspension to removal</p> <p>Removal</p>	<p>30-day suspension to removal</p> <p>Removal</p>	<p>Refer to 5 USC 552a and 43 CFR 2.52 for Privacy Act provisions regarding the misuse of personal information; also refer to 18 USC 798 and 18 USC 1905. Deliberate disclosures of Privacy Act information must be referred to OIG.</p>
<p>3. Offenses related to substance abuse.</p> <p>a. Alcohol-related</p> <p>(1) Reporting to or being on duty while “under the influence” of alcohol.</p>	<p>Written Reprimand to 5-day</p>	<p>5- to 30-day suspension</p>	<p>30-day suspension to removal</p>	<p>Refer to 43 CFR 20.505, 370 DM 792, Drug-Free Workplace (Zero Tolerance) Policy, DOI Handbook on the Department of Transportation</p>

<p>(2) Unauthorized use and/or possession of alcoholic beverages while on Government premises (or vehicle).</p> <p>(3) Operating a Government vehicle/aircraft while "under the influence" of alcohol.</p>	<p>suspension</p> <p>Written Reprimand to 30-day suspension</p> <p>30-day suspension to removal</p>	<p>30-day suspension to removal</p> <p>Removal</p>	<p>Removal</p>	<p>Alcohol and Drug Testing Program, and DOI Federal Railroad Administration Supplement for specific guidance.</p> <p>Actions involving these offenses must assure that counseling or rehabilitative assistance is offered; however, referral to an employee assistance program (EAP) does not preclude the initiation of corrective action.</p>
<p>b. Drug-related</p>				
<p>(1) Administratively confirmed positive finding under the testing portion of the Drug-Free Workplace Program.</p>	<p>Written Reprimand to removal</p>	<p>Removal</p>	<p>Removal</p>	<p>The illegal drugs currently tested for (as defined in 370 DM 792, Subchapters 9 & 10) include: marijuana, cocaine, opiates, amphetamines and phencyclidine (PCP). However, the Department is authorized to test for any illegal drugs as deemed necessary.</p>
<p>(2) Unlawful use, being under the influence or unauthorized possession of drugs, drug paraphernalia or controlled substance while on Government premises or in a duty status.</p>	<p>Written Reprimand to removal</p>	<p>30-day suspension to removal</p>	<p>Removal</p>	<p>When there is possession of illegal drugs - call law enforcement and notify OIG.</p>
<p>(3) Sale or transfer of an illegal drug or controlled substance while on Government premises (or vehicle).</p>	<p>Removal</p>	<p>30-day suspension to removal</p>	<p>Removal</p>	<p>When the substance is prescribed by an appropriate medical authority and used accordingly, it would not be an offense. 370 DM 792, 10.12 requires mandatory initiation of removal from service for a second offense of failing to refrain from illegal drug use.</p>
<p>(4) Refusal or failure to provide a required specimen for drug-testing; tampering with a drug-test specimen; refusal to obtain counseling or rehabilitation (after finding of illegal drug use).</p>	<p>14-day suspension to removal</p>	<p>30-day suspension to removal</p>	<p>Removal</p>	<p>When there is possession of illegal drugs - call law enforcement and notify OIG.</p> <p>When the substance is prescribed by an appropriate medical authority and used accordingly, it would not be an offense. 370 DM 792, 10.12 requires mandatory initiation of removal from service for a second offense of failing to refrain from illegal drug use.</p>
<p>4. Discourteous conduct (e.g., rude, insolent, disgraceful acts or remarks)</p>	<p>Written Reprimand to</p>	<p>5- to 30-day suspension</p>	<p>30-day suspension</p>	<p>5 USC 7503(a) permits suspension of</p>

toward supervisors, co-workers, or the public.	5-day suspension		to removal	14 days or less of any employee with four documented instances of discourteous conduct toward the public within a one-year period as confirmed by an immediate supervisor, or any other pattern of discourteous conduct.
5. Boisterous or disruptive/disorderly conduct; use of insulting, intimidating, abusive or offensive language to or about another employee or supervisor.	Written Reprimand to 5-day suspension	5- to 30-day suspension	30-day suspension to removal	
6. Deliberately making known false, malicious, or unfounded statements against co-workers, supervisors, subordinates, or Government officials which could undermine the authority or damage the reputation of those concerned.	Written Reprimand to removal	14-day suspension to removal	30-day suspension to removal	Refer to 5 USC 2302(b)(8) and (9), prohibiting actions against employees for engaging in protected activities.
7. Threatening statements or behavior (of a physical nature).	14-day suspension to removal	Removal		Charge involving "threat" must consider the listener's reactions, the listener's apprehension of harm, the speaker's intent, any conditional nature of the statements, and the attendant circumstances – refer to <u>Metz v. Dept. of Treasury</u> , 780 F.2d 1001 (Fed. Cir. 1986).
8. Fighting and offenses related to fighting. a. Engaging in potentially dangerous "horseplay." b. Hitting, pushing, or other acts against another without causing injury. c. Hitting, pushing, or other acts against another causing injury.	Written Reprimand to 14-day suspension 5- to 30-day suspension 30-day suspension to removal	14-day suspension to removal 30-day suspension to removal Removal	30-day suspension to removal Removal	Penalty depends on such factors as provocation, extent of injuries, and whether actions were defensive or offensive in nature.

<p>9. Misconduct of a sexual nature that includes, but is not limited to, unwelcome sexual remarks, indecent comments/jokes, offensive sexual banter, unwanted sexual advances, or unwelcome physical touching.</p>	<p>Written Reprimand to removal</p>	<p>14- day suspension to removal</p>	<p>Removal</p>	<p>Refer to the Department's Zero Tolerance Policy; penalty may include mandatory training. More severe discipline is appropriate for egregious misconduct.</p>
<p>10. Failure to provide equal opportunity regardless of race, color, religion, gender, national origin, age, marital status, political affiliation, sexual orientation or handicapping condition.</p>	<p>Written Reprimand to removal</p>	<p>14-day suspension to removal</p>	<p>Removal</p>	<p>Refer to 5 CFR 2635.101(13).</p>
<p>11. Unauthorized possession/sale (actual or attempted) of Government property or property of others; improper acceptance of Government funds/reimbursement.</p>	<p>Written Reprimand to removal</p>	<p>14-day suspension to removal</p>	<p>30-day suspension to removal</p>	<p>Referral to OIG may be appropriate.</p>
<p>12. Loss, misuse of, damage to or failure to safeguard Government property, records, or information (e.g., willful or negligent damage to Government resources; carelessness in performance of duty resulting in waste of public funds).</p>	<p>Written Reprimand to 14-day suspension</p>	<p>14- to 30-day suspension</p>	<p>30-day suspension to removal</p>	<p>Refer to 5 CFR 2635.101(9). For misuse of Government vehicles, see item 5 under Violations of Statute. Referral to OIG may be appropriate.</p>
<p>13. Failure to comply with safety regulations, instructions or prescribed safe practices; failure to use proper safety equipment; failure to report accident or injury.</p>	<p>Written Reprimand to 14-day suspension</p>	<p>14- to 30-day suspension</p>	<p>30-day suspension to removal</p>	
<p>14. Sleeping or loafing while on duty; inattention to duty; willful idleness while on duty.</p>	<p>Written Reprimand to 5-day suspension</p>	<p>5- to 14-day suspension</p>	<p>14-day suspension to removal</p>	<p>Seriousness of offense is greater if persons/property endangered.</p>
<p>15. Failure or delay in carrying out instructions; failure or carelessness in performing assigned work; failure to take/complete officially-directed training.</p>	<p>Written Reprimand to 14-day suspension</p>	<p>14- to 30-day suspension</p>	<p>30-day suspension to removal</p>	<p>Refer to 370 DM 430 to deal with unacceptable performance and performance-based actions.</p>
<p>16. Insubordination; disregard of directive; refusal to comply with a proper order.</p>	<p>5-day suspension to removal</p>	<p>30-day suspension to removal</p>	<p>Removal</p>	<p>Refer to 43 CFR 20.502. An "insubordination" charge requires a showing that the</p>

				employee <u>deliberately</u> disregarded supervisory directives. In some instances (e.g., refusal to report for an ordered reassignment) removal may be appropriate.
17. Falsification/misrepresentation of official Government records or documents including, but not limited to, time and attendance records, travel vouchers, job applications, performance appraisals, claims for benefits, and other employment-related documents.	Written Reprimand to removal	30-day suspension to removal	Removal	Refer to 43 CFR 20.510. Referral to OIG may be appropriate.
18. Misrepresentation, falsification, exaggeration, concealment or withholding of material fact in connection with an official Government investigation, inquiry or other administrative proceeding.	14-day suspension to removal	30-day suspension to removal	Removal	Refer to 43 CFR 20.510. Referral to OIG may be appropriate.
19. Refusal to testify or cooperate in connection with any administrative investigation, inquiry, or other proper proceeding (when criminal charges are not anticipated).	5-day suspension to removal	14-day suspension to removal	30-day suspension to removal	
20. Prohibited/improper use of Government property (e.g., office equipment; supplies; facilities; credentials; records; communication resources; cellular phones; official time); misuse of the Internet/electronic mail; using the Internet/electronic mail for unauthorized purposes.	Written Reprimand to 14-day suspension More severe discipline (including removal) may be appropriate for first/second offense if misconduct involves using the Department's Internet/electronic mail system for prohibited reasons, including	14- to 30-day suspension More severe discipline (including removal) may be appropriate for first/second offense if misconduct involves using the Department's Internet/electronic mail system for prohibited reasons, including gambling, accessing/send	30-day suspension to removal	Refer to 5 CFR 2635.704 and 705(a); 410 DM 2 (Limited Personal Use of Government Personal Property). Consider issue of employee notice regarding agency policy.

	gambling, accessing/sending prohibited sexually-related material, or other egregious acts of misuse.	ing prohibited sexually-related material, or other egregious acts of misuse.		
21. Offenses related to gambling.				Refer to 5 CFR 735.201.
a. Participating in a gambling activity while on Government premises or in a duty status (e.g., office pools).	Written Reprimand to 14-day suspension	14- to 30-day suspension	30-day suspension to removal	
b. Operating, assisting, or promoting a gambling activity while on Government premises or in a duty status or while others involved are in a duty status.	5- to 30-day suspension	30-day suspension to removal	Removal	
22. Indebtedness; failure to meet financial obligations in a proper and timely manner.	Written Reprimand to 5-day suspension	5- to 14-day suspension	14-day suspension to removal	Refer to 5 CFR 2635.809. Actionable if there is a nexus between the failure to pay and the efficiency of the service. Since a suspension may reduce an employee's ability to pay overdue financial obligations, a reprimand may be more appropriate for a first offense (more severe discipline may be appropriate for subsequent offenses). Special care is called for in dealing with this type of offense, as it may involve mitigating circumstances.
23. Offenses related to Government travel charge card and/or purchase card.				Refer to Financial Administration Memorandum (FAM) 2000-010 for further information and instructions on
a. Misuse of travel card (i.e., personal/unauthorized purchases) or	Written Reprimand to	5-day suspension to	30-day suspension	

delinquent in payment.	30-day suspension	removal	to removal	Resolving Delinquencies on Individually-billed Travel Card Accounts, and the Department's Integrated Charge Card Program Guide (revised 4/2004).
b. Misuse of travel card (i.e., personal/unauthorized purchases) and delinquent in payment.	5- to 30-day suspension	14-day suspension to removal	Removal	
c. Unauthorized use of or failure to appropriately monitor use of Government purchase card; "micro-purchasing" violations.	Written Reprimand to 30-day suspension	14-day suspension to removal	Removal	
24. Carrying a firearm or other weapon on Government property (or in Government vehicle) unless specifically authorized/required in the performance of duties.	30-day suspension to removal	Removal		Refer to 43 CFR 20.511.
25. Using public office for private gain.	5-day suspension to removal	Removal		Refer to 5 CFR 2635.702.
26. Engaging in unauthorized/prohibited selling, soliciting or fundraising activities.	Written Reprimand to 5-day suspension	5- to 14-day suspension	14-day suspension to removal	Refer to 5 CFR 2635.808.
27. Engaging in prohibited outside employment or private business activities.	Written Reprimand to removal	Removal		Refer to 5 CFR 3501.105.
28. Participating in particular matters while having a conflicting financial interest.	5-day suspension to removal	Removal		Refer to 5 CFR 2635.401. Consult Ethics Office and may require referral to OIG. See 18 USC 208.
29. Participating in matters affecting financial interests of an entity where employment is being sought.	5-day suspension to removal	Removal		Refer to 5 CFR 2635.601. Consult Ethics Office and may require referral to OIG. See 18 USC 208.
30. Violating the Department's Code of Scientific Conduct (or other professional code of conduct that applies to employees required to maintain a professional license or membership).	Written Reprimand to 30-day suspension	30-day suspension to removal	Removal	Refer to 305 DM 3.

31. Violating the Standards of Ethical Conduct not covered elsewhere in this Table.	Written Reprimand to removal	14-day suspension to removal	Removal	Refer to 5 CFR 2635.
32. Unauthorized use of nonpublic information.	Written Reprimand to removal	Removal		Refer to 5 CFR 2635.703.
33. Engaging (on-duty or off-duty) in criminal, infamous, dishonest, or notoriously disgraceful conduct prejudicial to the Government.	5-day suspension to removal	30-day suspension to removal	Removal	Refer to 43 CFR 20.501.
Nature of Offense (Supervisory Misconduct)	Penalty for First Offense	Penalty for Second Offense	Penalty for Third Offense	Remarks
1. Taking, directing others to take, recommending or approving any action which may be considered a "prohibited personnel practice" (e.g., reprisal against an employee for engaging in protected activities; discrimination based on race, color, gender, age, religion, national origin, marital status, political affiliation, sexual orientation or handicapping condition).	5-day suspension to removal	14-day suspension to removal	Removal	Refer to 5 USC 2302, 5 CFR 2635.101(13), and related Department policies. Action may be taken regardless of whether there was an official "finding" of discrimination (or other prohibited personnel practice).
2. Taking reprisal action against an employee for exercising rights provided by the Federal Service Labor-Management Relations Statute.	5- to 30-day suspension	14-day suspension to removal	Removal	Refer to 5 USC, Chapter 71.
3. Neglecting to recommend/take corrective action upon receipt of information regarding the job-related misconduct of a subordinate employee.	Written Reprimand to 30-day suspension	14-day suspension to removal	Removal	
4. Failure to appropriately monitor employee use of Government purchase/travel charge card.	Written Reprimand to 14-day suspension	14-day suspension to removal	Removal	
5. Misconduct of a sexual nature that includes, but is not limited to, unwelcome sexual remarks, indecent comments/jokes, offensive sexual banter, unwanted sexual advances, or unwelcome physical touching.	5-day suspension to removal	14-day suspension to removal	Removal	Refer to the Department's Zero Tolerance Policy; penalty may include mandatory training. More severe discipline is appropriate for egregious misconduct.

6. Influencing or attempting to influence the DOI employment of a relative.	5- to 30-day suspension	14-day suspension to removal	Removal	Refer to 5 USC 3110.
7. Violating, or inducing a subordinate to violate, the Department's Code of Scientific Conduct (or other profession's Code of Ethical Conduct).	5-day suspension to removal	Removal	Removal	Refer to 305 DM 3.
8. Using Government employees in duty status for other than official purposes.	Written Reprimand to removal	14-day suspension to removal	30-day suspension to removal	Refer to 5 CFR 2635.705(b).
Nature of Offense (Violations of Statute)	Penalty for First Offense	Penalty for Second Offense	Penalty for Third Offense	Remarks
1. Engaging in prohibited partisan political activity (e.g., partisan campaigning; soliciting/receiving political contributions).	30-day suspension to removal	Removal		Refer to 5 USC, Sections 7321-7326.
2. Participating in a strike, work stoppage, work slowdown, sick-out, or other similar job action.	30-day suspension to removal	Removal		Refer to 5 USC 7311.
3. Misappropriating/misapplying Government funds; directing, expecting, or rendering services not covered by appropriations.	1- to 30-day suspension	30-day suspension to removal	Removal	Refer to 31 USC 1301, 1341 and 1349.
4. Willfully mutilating or destroying a public record.	Removal			Refer to 18 USC 2071.
5. Willfully using or authorizing the use of a Government vehicle/aircraft for other than official purposes.	30-day suspension to removal	Removal		Refer to 31 USC 1344 and 1349.
6. Engaging in actions against national security.	30-day suspension to removal	Removal		Refer to 5 USC 7532.

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Replaces 3/29/06 #3705