

PART 2045 - GENERAL

Subpart GG - Disciplinary and Adverse Actions, Performance-Based Actions, and Probationary Terminations

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PART 2045 - GENERAL PROVISIONS

Subpart GG - Disciplinary and Adverse Actions, Performance-Based Actions, and Probationary Terminations

§ 2045.1601 General Provisions.

(a) This establishes the principal Rural Development directive for (1) taking disciplinary and adverse actions; (2) taking performance-based actions; and (3) terminating probationary employees. Additional requirements may be provided for in collective bargaining agreements (CBA). Refer to this Instruction in conjunction with any governing CBA prior to taking any of the actions specified above. CBA requirements may be more specialized than those reflected below; when this occurs, CBA provisions supersede this Instruction. For the purpose of this Instruction, the term disciplinary action refers to less severe actions used to correct generally minor inappropriate behavior and conduct. The term adverse action refers to more severe actions used to address serious infractions or performance-related actions taken under Title 5, part 752, of the Code of Federal Regulations.

(b) Part 752 requirements are contained in Section § 2045.1604 and Exhibit A of this Instruction, and in Title 5, Parts 432 and 752 Requirements.

(c) Performance-based actions may be taken using either the procedures set forth in 5 CFR Part 432 or 5 CFR Part 752. These requirements are contained in Section §2045.1604 and Exhibit A of this Instruction.

(d) Probationary terminations can only be taken using the procedures established in 5 CFR Part 315, Subpart H. These requirements are also contained in Exhibit B of this Instruction.

(e) The purpose of disciplinary and adverse actions (misconduct or performance-based) is to maintain efficiency, morale, and productivity. These measures will only be imposed when Agency management establishes that employees have violated governing laws, instructions, rules, and other applicable guidance, as well as when an employee is performing at an unacceptable level. Disciplinary and adverse actions must be administered fairly; all employees must be provided an opportunity to provide their account of any incident which may subject them to disciplinary and/or adverse action. Penalties must be reasonable and consistent with what has been done in the same or similar cases.

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(f) A list of positions delegated authority to administer disciplinary and adverse actions is contained in Section §2045.1606 and Exhibits F and G of this Instruction.

(g) Progressive disciplinary and performance measures should be used, whenever feasible, prior to taking formal disciplinary or adverse actions to ensure that disciplinary and adverse actions are proportionate to the offense or unacceptable performance.

(h) Disciplinary and adverse actions may be taken for misconduct or unacceptable job performance.

§ 2045.1602 Definitions.

(a) Day means a calendar day.

(b) Furlough means the placing of an employee in a temporary status without duties and pay because of lack of work, funds, or other nondisciplinary reasons.

(c) Reduction in grade and pay means a change to a lower grade and a decrease in pay as a result of misconduct and/or unacceptable performance.

(d) Disciplinary action means less severe actions used to correct generally minor inappropriate behavior and conduct.

(e) Adverse action means more severe actions taken under Title 5, Part 752, of the Code of Federal Regulations.

(f) Removal means a permanent involuntary separation of an employee from the Agency for misconduct and/or unacceptable performance.

(g) Reprimand is a formal written warning notice which may or may not become a permanent part of an employee's disciplinary or adverse action file.

(h) Suspension means the placing of an employee, for misconduct reasons, in a temporary status without duties and pay.

§ 2045.1602 (Con.)

(i) Misconduct means failure to comply with a law, rule, regulation, instruction, order, or requirement.

(j) Progressive discipline means administering the minimum action thought necessary to correct the misconduct, and with each subsequent infraction the corrective action may be enhanced. For example, if the employee was previously issued a letter of reprimand and engaged in additional misconduct, it may be necessary to impose more severe action, such as a suspension, for the second offense.

(k) Acceptable performance means performance that meets an employee's performance requirement(s) or standard(s) at a level of performance above "unacceptable" or "does not meet" in the critical element(s) at issue.

(l) Unacceptable performance means performance that does not meet one or more of the critical element(s) contained within the Performance Work Plan. For example, the employee has not met time constraints, quantities, and/or quality requirements.

(m) Critical element means a work assignment of such importance that unacceptable performance on the element would result in a determination that an employee's overall performance is unacceptable. All elements in the pass/fail rating system are critical.

§ 2045.1603 Policy.

Supervisors are responsible for ensuring that Rural Development employees comply with laws, regulations, instructions, policies, and other guidance governing Rural Development. They must ensure that employees' conduct is acceptable for the workplace, and that they are performing at an acceptable level. When an employee's conduct warrants corrective measures, they must be administered in accordance with the provisions set forth in this Instruction. Disciplinary actions will be taken against employees for sufficient cause. Adverse actions will be taken only for such cause as will promote the efficiency of the service. Rural Development's policy is to administer progressive discipline, whenever possible. Informal measures will be used at a minimum for minor infractions, particularly for first offenders. More serious or repetitive misconduct or performance problems may require more severe action. In some instances, progressive discipline will not be feasible. First offenders who engage in egregious misconduct may be subject to removal for first offenses. Supervisors will administer the provisions of this

Instruction in a fair and consistent manner; like penalties will generally be imposed for like or similar offenses. Performance-based adverse actions will be equitable and consistent, and based upon unacceptable performance in the position.

§ 2045.1604 Types of Actions and Processing Procedures.

(a) Disciplinary Actions. The objective of discipline is to correct inappropriate behavior or conduct, motivate employees to conform to acceptable standards of conduct, and preclude future infractions. Disciplinary actions are divided into two categories: (1) informal and (2) formal. Informal discipline consists of oral and written counseling. Written reprimands are categorized as formal discipline.

(1) Informal discipline includes:

(i) Oral counseling - Verbal exchange between the supervisor and employee, generally initiated for first-time offenders. Prior to the discussion, the supervisor may prepare a talking paper listing the main points to be shared during the counseling. Immediately following the session, the supervisor should prepare and keep a brief summary of the discussion points. A copy does not have to be given to the employee. A verbal exchange between the employee and the supervisor will probably be perceived as less threatening than a written document.

(ii) Written counseling - Normally begins with a verbal exchange between the supervisor and employee. This is not a requirement, but a recommended idea. It is generally initiated after an oral counseling has failed to induce the appropriate behavior or conduct. However, it may be initiated the first time an employee commits an infraction. The supervisor may also want to prepare a talking paper. The difference is that the supervisor will prepare a written document and provide it to the employee. The document may be provided to the employee before or after the counseling session, but it usually is preferable to prepare the document after the session, because the supervisor then can include relevant employee input.

§ 2045.1604(a)(1)(ii) (Con.)

(A) Oral or written counseling should at a minimum include a:

(1) clear definition of the specific infraction or inappropriate behavior or conduct displayed. For example: **"An employee that is not on approved leave, does not report to work, and does not call the supervisor to request leave, is considered Absent Without Leave (AWOL)."**

(2) description of the circumstances in detail providing: nature of the violation; date; time; witnesses; location; any applicable rules, regulations, policies, procedures, or CBAs that were violated; and the consequences associated with the current infraction. For example: **"On Wednesday, January 2, 2002, you did not report to duty or call to request leave for your absence. Your absence was in violation of Article II, Section 8 of the Labor Management Agreement (LMA) between Rural Development and Local 12AB. The LMA requires employees to request leave from their supervisors or someone in their management chain within 2 hours of their scheduled reporting time. Your scheduled arrival time is 7:00 a.m.; therefore, you should have called in by 9:00 a.m. However, you did not contact me or leave a message for me. I arrived at work at 6:30 a.m., the earliest authorized reporting time. I also questioned other managers within your management chain (*state their names and titles*) as to whether you had contacted them. They all stated that they had not spoken with you, or received any messages. Since your absence was in violation of established leave procedures and, therefore, unauthorized, I charged you AWOL for your absence."**

(3) description of the required improvement. For example: **"In the future, if you desire to use unscheduled leave, on the morning of the projected absence, you should contact me or (your designee) to request leave immediately, but no later than 9:00 a.m. If you are unable to make the call, someone acting on your behalf should make the call. Whenever possible, you must personally call in. If someone else makes the call, you must have a valid reason for not making it yourself."**

(4) Statement(s) regarding the consequences of future infractions. For example: **"I encourage you to follow established leave procedures. Any future AWOL charges may lead to formal disciplinary action, which may include reprimand, suspension, or removal."**

(2) Formal discipline (official letters of reprimand.) Reprimands are more severe than counseling in that they are maintained in the Official Personnel Folder and can be used to enhance penalties if future misconduct should occur. Reprimands are generally issued after informal disciplinary measures have been exhausted; however, they may be issued for a first offense depending upon the misconduct. An employee to whom an official reprimand is being issued is entitled to:

(i) written notice stating the specific reasons for the reprimand and containing sufficient details for the employee to understand what misconduct or deficiency underlies the reprimand, and why the misconduct or performance deficiency is unacceptable;

(ii) notice that more severe disciplinary action may be taken for future misconduct or performance deficiencies;

(iii) a copy of any supporting documentation or evidence relied upon for the reprimand or information about where the employee may review the evidence;

(iv) a right to have the reprimand reviewed under the applicable grievance or complaint procedures, including the relevant time limit and official to contact;

§ 2045.1604(a)(2) (Con.)

(v) a statement that the reprimand will be maintained in the employee's Official Personnel Folder (OPF) for a specified period of time, not to exceed 2 years. (A shorter period is allowable.)

(b) Adverse Actions. Adverse actions are more severe disciplinary measures and are taken for such cause as will promote the efficiency of the service. They are divided into two categories: 1) Suspensions for 14 days or less taken under Title 5, Part 752, Subparts A and B; and 2) Suspensions for more than 14 days, removal, reduction in grade or pay, or furlough for 30 days or less taken under Title 5, Part 752, Subparts C and D.

(1) An employee against whom a suspension for 14 days or less is proposed is entitled to:

(i) a written proposal containing the following:

(1) specific reasons for the proposed suspension, with sufficient details for the employee to understand what misconduct or deficiency Rural Development relied upon to support the reasons for the action;

(2) an explanation as to why the misconduct or performance deficiency is unacceptable; and

(3) the employee's right to respond orally and in writing within days of receiving the proposal. The employee shall be given a reasonable length of time to answer, but not less than 24 hours;

(4) the right to furnish affidavits and other documentary evidence in support of the reply;

(5) the right to be represented by an attorney or other representative. Rural Development may disallow as an employee's representative an individual whose activities as a representative would cause a conflict of interest or position, or an employee of the agency whose release from his or her official position would give rise to unreasonable costs or whose priority work assignments preclude his or her release; and

(6) the right to review the material relied on to support the reasons for the action;

(ii) a written decision. The deciding official will consider only the reasons specified in the proposal notice, supporting evidence, prior discipline, and the employee and representative's responses when rendering a decision. The Agency cannot consider any reasons for the action that were not included in the proposal. The decision shall be delivered on or before the effective date of the action;

(iii) grievance rights. Employees may file grievances through the administrative or negotiated grievance systems, whichever is applicable. An employee in an exclusive bargaining unit may file a grievance only under the negotiated system; and

(iv) agency records. The employing office shall maintain copies of the action and furnish them upon request by the employee and/or his representative. The employee must designate the representative in writing, including the individual's name, address, and phone number, to the deciding official.

(2) An employee against whom a suspension for more than 14 days, removal, reduction in grade or pay, or furlough of 30 days or less, is proposed is entitled to:

(i) 30 days advance written notice (proposal) containing the following (If the Agency has reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed, the notice period may be curtailed to not less than 7 days):

(1) specific reasons for the proposed suspension, with sufficient details for the employee to understand what misconduct or deficiency Rural Development relied upon to support the reasons for the action;

(2) an explanation as to why the misconduct or performance deficiency is unacceptable;

(3) the employee's right to respond orally and in writing. The employee shall be given a reasonable length of time to answer but not less than 7 days;

§ 2045.1604(b) (Con.)

(4) the right to furnish affidavits and other documentary evidence in support of the reply;

(5) the right to be represented by an attorney or other representative. Rural Development may disallow as an employee's representative an individual whose activities as a representative would cause a conflict of interest or position, or an employee of the agency whose release from his or her official position would give rise to unreasonable costs or whose priority work assignments preclude his or her release; and

(6) the right to review the material relied on to support the reasons for the action.

(ii) a written decision. The deciding official will consider prior discipline, the reasons specified in the proposal notice, supporting evidence, and the employee and representative's responses when rendering a decision. The agency cannot consider any reasons for the action that were not included in the proposal. The decision shall be delivered on or before the effective date of the action.

(iii) appeal rights to the Merit Systems Protection Board (MSPB) or grievance rights. Rural Development employees covered by labor management agreements are bound by the terms of the agreement. The agreement may require the employee to use the negotiated grievance procedure, file an appeal with MSPB, or choose one forum or the other. Employees cannot file a grievance and an appeal on the same issue.

(iv) agency records. The employing office shall maintain copies of the action and furnish them upon request by the employee and/or his representative. The employee must designate the representative in writing, including the individual's name, address, and phone number, to the deciding official.

(3) Sample adverse action letters are contained in Exhibit C.

(c) Performance-Based Actions (5 CFR Part 432). This applies to the reduction in grade or removal of employees based solely upon unacceptable performance.

(1) Employees must be provided a reasonable opportunity to demonstrate acceptable performance for each critical element being performed at an unacceptable level prior to initiating adverse action.

(2) A proposed action may only be based on unacceptable performance occurring within a one-year period, commencing on the date of the improvement period and ending on the date of the notice of proposed action. An employee against whom a Part 432 adverse action is proposed is entitled to:

(i) a 30-day advance notice (proposal) identifying the specific instances of unacceptable performance (i.e. case names, type of report, etc.) and the critical element(s) that the employee is performing unacceptably;

(ii) reasonable time to answer the proposal notice orally and/or in writing;

(iii) to be represented by an attorney or other representative;

(iv) the opportunity to present medical documentation, if an employee believes that it contributed to the unacceptable performance;

(v) a final written decision no later than 30 days after expiration of the advance notice period. The deciding official must be in a position higher than that of the proposing official. The deciding official must consider the employee and representative's responses in arriving at a decision. The decision shall be provided to the employee on or before the effective date, and shall inform the employee of the applicable appeal, and/or grievance rights;

(vi) agency records. The employing office shall maintain copies of the action and furnish them upon request by the employee and/or his representative. The employee must designate the representative in writing, including the individual's name, address, and phone number, to the deciding official.

§ 2045.1604(c) (Con.)

(3) Sample performance-based actions are contained in Exhibit C.

(d) Probationary Terminations. This applies to the termination of probationary employees and employees serving trial periods. These types of terminations are divided into two categories and have different requirements. The categories are (1) terminations for unsatisfactory performance and/or conduct and (2) terminations based upon adverse conditions arising before the appointment.

(1) Employees terminated based upon unsatisfactory performance or conduct are entitled to:

(i) written notice stating the reasons for the termination;
and

(ii) the effective date of the termination. (Probation ends when the employee completes the scheduled tour of duty on the day before the anniversary date of the appointment. For example, when the last workday is a Friday and the anniversary date is the following Monday, the employee must be separated before the end of the tour on duty on Friday. This is the last day the employee would have had to demonstrate fitness for duty.)

(2) Employees terminated based in whole or in part upon conditions arising before appointment are entitled to:

(i) advance written notice of the proposed termination action stating the reasons in detail;

(ii) a reasonable time to file a written answer to the proposal and for furnishing affidavits in support of the answer;

(iii) a written decision as soon as practical, but in all cases prior to the effective date. The decision will include the consideration that the supervisor gave to the employee's response, the reasons for the action, and appeal rights to the MSPB.

(3) Sample probationary terminations are contained in Exhibit C.

§ 2045.1605 Determining the Appropriate Action.

Generally, third parties (e.g., EEOC, MSPB or arbitrators) do not view removal as an appropriate penalty for offenders engaging in occasional minor infractions or for first time offenders, unless the misconduct is egregious. The information below should be considered prior to selecting a penalty.

(a) The 12 factors, referred to as the Douglas Factors, annotated in Amendment No. 230 of DPM Chapter 751, subject: Appendix A-USDA Guide for Disciplinary Penalties. A copy of the Douglas Factors is also contained in Exhibit D.

(b) The USDA Guide for Disciplinary Penalties should be used to achieve a reasonable degree of uniformity in the imposition of adverse action penalties. A copy of the Table is contained in Exhibit E.

(c) State and St. Louis supervisors must submit all disciplinary and adverse actions to the Field Services Branch for review prior to issuing them to employees. National Office supervisors in Washington, DC, must contact the Headquarters Personnel Services Branch.

§ 2045.1606 Delegations of Authority.

(a) Generally, the Under Secretary is delegated authority for disciplinary actions (counseling and Letters of Reprimand), adverse actions (suspensions, removals, reductions in pay or grade), and probationary terminations within Rural Development. The Under Secretary has redelegated much of this authority to: (1) Administrators (2) the Deputy Administrator for Operations and Management (DAOM); (3) the Assistant Administrator for Human Resources (AAHR); (4) State Directors (SD) for employees within their chain of command; (5) the Chief Financial Officer (CFO); (6) the Deputy Chief Financial Officer (DCFO); (7) the Chief Information Officer (CIO); (8) the Deputy Chief Information Officer; (9) the Director of Property and Supply Management Division (DPSMD); and (10) the Director of the Centralized Servicing Center (CSC) as reflected below. These individuals have further redelegated much of their authority to supervisors within their chain of command. See delegation charts in Exhibits F and G.

§ 2045.1606(a) (Con.)

- (1) The DAOM has been redelegated authority for:
 - (i) counseling employees;
 - (ii) issuing reprimands;
 - (iii) proposing and deciding suspensions of 14 days or less;
 - (iv) proposing and deciding suspensions of more than 14 days, removals, and reductions in grade or pay;
 - (v) proposing and deciding terminations during the probationary or trial period;
 - (vi) reviewing and analyzing employees' written and/or oral replies; and
 - (vii) redelegating the foregoing responsibilities to supervisors within his/her chain of command. The DAOM renders the decision for all actions, except for suspensions of 14 days or less and terminations during probation that require no proposal because they are based on current performance or conduct.

- (2) The AAHR has been redelegated authority for:
 - (i) counseling employees;
 - (ii) issuing reprimands;
 - (iii) proposing and/or deciding suspensions of 14 days or less;
 - (iv) proposing suspensions of more than 14 days, removals, and reductions in grade or pay;
 - (v) proposing terminations during the probationary or trial period when the reason is based in whole or in part on conditions arising before the employee's appointment;
 - (vi) terminating employees during the probationary or trial period when the termination is based on current conduct or performance;

- (vii) reviewing and analyzing employees' written and/or oral replies; and
 - (viii) redelegating the foregoing responsibilities to supervisors within his/her chain of command.
- (3) SDs have been redelegated authority for:
- (i) counseling employees;
 - (ii) issuing reprimands;
 - (iii) proposing and/or deciding suspensions of 14 days or less;
 - (iv) proposing suspensions of more than 14 days, removals, and reductions in grade or pay;
 - (v) proposing terminations during the probationary or trial period when the reason is based in whole or in part on conditions arising before the employee's appointment;
 - (vi) terminating employees during the probationary or trial period when the termination is based on current conduct or performance;
 - (vii) reviewing and analyzing employees' written and/or oral replies; and
 - (viii) redelegating the foregoing responsibilities to supervisors within their chain of command.
- (4) The CFO, DCFO, CIO, DCIO, and DPSMD have been redelegated authority for:
- (i) counseling employees;
 - (ii) issuing reprimands;
 - (iii) proposing and/or deciding suspensions of 14 days or less;

§ 2045.1606(a)(4) (Con.)

(iv) proposing suspensions of more than 14 days, removals, and reductions in grade or pay;

(v) proposing terminations during the probationary or trial period when the reason is based in whole or in part on conditions arising before the employee's appointment;

(vi) terminating employees during the probationary or trial period when the termination is based on current conduct or performance;

(vii) reviewing and analyzing employees' written and/or oral replies; and

(viii) redelegating the foregoing responsibilities to supervisors within their chain of command.

(5) The Director of CSC has been redelegated authority for:

(i) counseling employees;

(ii) issuing reprimands;

(iii) proposing and/or deciding suspensions of 14 days or less;

(iv) proposing suspensions of more than 14 days, removals, and reductions in grade or pay;

(v) proposing terminations during the probationary or trial period when the reason is based in whole or in part on conditions arising before the employee's appointment;

(vi) terminating employees during the probationary or trial period when the termination is based on current conduct or performance;

(vii) reviewing and analyzing employees' written and/or oral replies; and

(viii) redelegating the foregoing responsibilities to supervisors within their chain of command.

(b) Delegations of Authority Charts are contained in Exhibits F and G.

§ 2045.1607 Delegation Exceptions.

The officials listed in section §2045.1606 do not have the authority to administer discipline or take adverse actions when the actions involve:

(a) State Directors, Senior Executive Service employees, and Schedule C employees. The Director, Office of Human Resources Management (DOHRM), USDA, has been delegated authority to take action against these employees.

(b) Also, the DOHRM will issue written concurrence on disciplinary or corrective action taken for cases where there is a finding of discrimination made in a Final Agency Decision, Administrative Law Judge and Administrative Judge decision, or court order.

§ 2045.1608 Delivery of Proposals and Decision Letters.

(a) All information will be provided to the employee in person, whenever possible. Employees will be requested to sign and date copies of proposals and decision letters. This serves as an acknowledgment of receipt, not agreement with the contents. If employees refuse to sign the letters, the delivery person will sign and date documents, acknowledging that delivery was successful and that the employee refused to sign.

(b) When employees are unavailable for face-to-face delivery, the letters should be forwarded to employees as follows: (1) certified mail/return receipt or overnight delivery and (2) regular mail.

§ 2045.1609 File Maintenance.

Copies of adverse actions, including supporting documentation (proposal, employee's reply, summary of the oral conference, and the decision letter), shall be maintained by the employing office. Copies of adverse actions in the states shall be maintained by the Field Services Branch. Copies shall be furnished to the employee and/or his/her representative upon request.

Attachments: Exhibits A, B, C, D, E, F, G

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TITLE 5 PARTS 432 AND 752 REQUIREMENTS

	UNACCEPTABLE PERFORMANCE PART 432	UNACCEPTABLE PERFORMANCE PART 752	ADVERSE ACTION PART 752, SUBPARTS A&B	ADVERSE ACTION PART 752, SUBPARTS C&D
Action Coverage	1. Removal. 2. Demotion.	1. Suspension. 2. Removal. 3. Demotion.	Suspension for 14 days or less.	1. Removal. 2. Suspensions over 14 days. 3. Reduction in grade or pay. 4. Furlough of 30 days or less.
Basis for Action	1. Action is taken for performance which fails to meet (unacceptable performance) performance standards for one or more established critical elements. 2. Actions can only be based upon the employee's established formal performance standards that the supervisor has communicated to the employee. 3. Employee must be provided an improvement period.	1. Action is taken for "such cause as will promote the efficiency of the service." NOTE: Adverse action promotes the efficiency of the service when the grounds for it relate to either the employee's ability to accomplish his/her job duties satisfactorily or to some other legitimate government interest.	Action is taken for "such cause as will promote the efficiency of the service."	Action is taken for "such cause as will promote the efficiency of the service." For example, if an agency removes an employee for notoriously disgraceful conduct, the agency can establish that the action promotes the efficiency of the service by showing that the agency lost confidence in the appellant's honesty and integrity as a result of the misconduct.

TITLE 5 PARTS 432 AND 752 REQUIREMENTS

	UNACCEPTABLE PERFORMANCE PART 432	UNACCEPTABLE PERFORMANCE PART 752	ADVERSE ACTION PART 752, SUBPARTS A&B	ADVERSE ACTION PART 752, SUBPARTS C&D
Basis for Action (con.)		<p>2. Actions can be based upon the supervisor's expectations for the employee in the position or established formal performance standards.</p> <p>3. No requirement for an improvement period. However, it is encouraged and the preferred method.</p>		
Notice of Proposed Action	<p>1. The agency shall provide a 30-day advance written notice (proposal).</p> <p>2. Normally an agency may extend the notice period for a period not to exceed 30 days under its regulations.</p> <p>(a) Any additional extensions must be approved in advance by the Office of Personnel Management (OPM).</p>	<p>The agency shall provide a 30-day advance written notice (proposal).</p>	<p>1. The agency shall provide an advance written notice (proposal).</p> <p>2. No time limit for including incident/charges.</p>	<p>1. The agency shall provide a 30-day advance written notice (proposal).</p> <p>2. A shorter notice may be given for emergency suspensions.</p> <p>3. A shorter notice may be given if the "crime provision" is invoked.</p>

TITLE 5 PARTS 432 AND 752 REQUIREMENTS

	UNACCEPTABLE PERFORMANCE PART 432	UNACCEPTABLE PERFORMANCE PART 752	ADVERSE ACTION PART 752, SUBPARTS A&B	ADVERSE ACTION PART 752, SUBPARTS C&D
Notice of Proposed Action (con.)	(b) An agency may extend the notice period beyond 30 days without OPM approval if the following applies: 1) the employee is obtaining medical information; 2) the employee or deciding official needs travel time to attend the oral conference; 3) additional time is needed to consider the employee's reply; 4) to consider reasonable accommodation of a handicapping condition; 5) to consider positions to reassign the employee to; 6) to comply with a stay ordered by the Merit Systems Protection Board (MSPB).			

TITLE 5 PARTS 432 AND 752 REQUIREMENTS

	UNACCEPTABLE PERFORMANCE PART 432	UNACCEPTABLE PERFORMANCE PART 752	ADVERSE ACTION PART 752, SUBPARTS A&B	ADVERSE ACTION PART 752, SUBPARTS C&D
Content of Proposal	<p>The proposal must identify:</p> <ol style="list-style-type: none"> 1. The specific instances of unacceptable performance. 2. Critical elements of the employee's position involved in each instance of unacceptable performance. 3. Unacceptable performance that occurred within a 1-year period ending on the date of the notice of proposed action. 4. The employee's right to respond orally and/or in writing. 5. The employee's right to review the material on which the proposal was based. 	<p>The proposal must state:</p> <ol style="list-style-type: none"> 1. The specific reasons (instances of unacceptable performance) for the proposed action. 2. Critical elements of the employee's position involved in each instance of unacceptable performance. 3. The employee's right to respond orally and/or in writing. 4. The employee's right to review the material on which the proposal was based. 	<p>The proposal must state:</p> <ol style="list-style-type: none"> 1. The specific reasons for the proposed action. 2. The employee's right to respond orally and/or in writing. 3. The employee's right to review the material on which the proposal was based. 	<p>The proposal must state:</p> <ol style="list-style-type: none"> 1. The specific reasons for the proposed action. 2. The employee's right to respond orally and/or in writing. 3. The employee's right to review the material on which the proposal was based.

TITLE 5 PARTS 432 AND 752 REQUIREMENTS

	UNACCEPTABLE PERFORMANCE PART 432	UNACCEPTABLE PERFORMANCE PART 752	ADVERSE ACTION PART 752, SUBPARTS A&B	ADVERSE ACTION PART 752, SUBPARTS C&D
Employee Represent- tation	<p>1. The employee is entitled to be represented by an attorney or other representative.</p> <p>2. The agency may disallow the employee's choice on basis of:</p> <p>(a) conflict of interest or position.</p> <p>(b) priority needs of the Government.</p> <p>(c) unreasonable costs to the Government.</p>	<p>1. The employee is entitled to be represented by an attorney or other representative.</p> <p>2. The agency may disallow the employee's choice on basis of:</p> <p>(a) conflict of interest or position.</p> <p>(b) priority needs of the Government.</p> <p>(c) unreasonable costs to the Government.</p>	<p>1. The employee is entitled to be represented by an attorney or other representative.</p> <p>2. The agency may disallow the employee's choice on basis of:</p> <p>(a) conflict of interest or position.</p> <p>(b) priority needs of the Government.</p> <p>(c) unreasonable costs to the Government.</p>	<p>1. The employee is entitled to be represented by an attorney or other representative.</p> <p>2. The agency may disallow the employee's choice on basis of:</p> <p>(a) conflict of interest or position.</p> <p>(b) priority needs of the Government.</p> <p>(c) unreasonable costs to the Government.</p>

TITLE 5 PARTS 432 AND 752 REQUIREMENTS

	UNACCEPTABLE PERFORMANCE PART 432	UNACCEPTABLE PERFORMANCE PART 752	ADVERSE ACTION PART 752, SUBPARTS A&B	ADVERSE ACTION PART 752, SUBPARTS C&D
Employee Response	<p>1. The employee is entitled to a reasonable time to respond to the proposal, but not less than 7 days.</p> <p>2. The employee may furnish affidavits and other documentary evidence.</p> <p>3. The employee's response, when in writing, and a summary of any oral response are to be made a part of the record.</p>	<p>1. The employee is entitled to a reasonable time to respond, but not less than 7 days.</p> <p>2. The employee may furnish affidavits and other documentary evidence.</p> <p>3. The employee's response, when in writing, and a summary of any oral response are to be made a part of the record.</p>	<p>1. The employee is entitled to a reasonable time to respond, but not less than 24 hours.</p> <p>2. The employee may furnish affidavits and other documentary evidence.</p> <p>3. The employee's response, when in writing, and a summary of any oral response are to be made a part of the record.</p>	<p>1. The employee is entitled to a reasonable time to respond, but not less than 7 days.</p> <p>2. The employee may furnish affidavits and other documentary evidence.</p> <p>3. The answer, when in writing, and a summary of any oral response are to be made a part of the record.</p> <p>4. The deciding official may designate an official to hear the employee's response who has authority to recommend a final decision.</p>

TITLE 5 PARTS 432 AND 752 REQUIREMENTS

	UNACCEPTABLE PERFORMANCE PART 432	UNACCEPTABLE PERFORMANCE PART 752	ADVERSE ACTION PART 752, SUBPARTS A&B	ADVERSE ACTION PART 752, SUBPARTS C&D
Mitigation	The deciding official may mitigate, sustain, or reverse the action.	The deciding official may mitigate, sustain, or reverse the action.	The deciding official may mitigate, sustain, or reverse the action.	The deciding official may mitigate, sustain, or reverse the action.
Notice of Decision	<p>1. A decision to reduce in grade or remove may be made only after the employee has had an opportunity to demonstrate acceptable performance.</p> <p>2. A written decision should be issued within 30 days after the date of expiration of the notice period.</p> <p>3. The decision should specify the instances of unacceptable performance on which the action is based (which were also specified in the notice of proposed action).</p>	<p>1. A written decision should be provided to the employee at the earliest practical date.</p> <p>2. The decision should be delivered to the employee at or before the time the action will be effective.</p> <p>3. The decision should state the specific instances of unacceptable performance upon which the action is based (which were also specified in the notice of proposed action).</p> <p>4. The decision must inform the employee of applicable appeal/grievance rights.</p>	<p>1. A written decision should be provided to the employee at the earliest practical date.</p> <p>2. The decision should be delivered to the employee at or before the time the action will be effective.</p> <p>3. The decision should state the specific reasons relied upon (which were also specified in the notice of proposed action.)</p> <p>4. The decision must inform the employee of applicable appeal/grievance rights.</p>	<p>1. A written decision should be provided to the employee at the earliest practical date.</p> <p>2. The decision should be delivered to the employee at or before the time the action will be effective.</p> <p>3. The decision should state the specific reasons relied upon (which were also specified in the notice of proposed action.)</p> <p>4. The decision must inform the employee of applicable appeal/grievance rights.</p>

TITLE 5 PARTS 432 AND 752 REQUIREMENTS

	UNACCEPTABLE PERFORMANCE PART 432	UNACCEPTABLE PERFORMANCE PART 752	ADVERSE ACTION PART 752, SUBPARTS A&B	ADVERSE ACTION PART 752, SUBPARTS C&D
Notice of Decision (con.)	<p>4. The decision to remove or demote the employee may be based only on those instances of unacceptable performance that occurred during the 1-year period ending on the date of issuance of the notice (proposal).</p> <p>5. The decision must be issued on or before the effective date.</p> <p>6. The decision must inform employee of applicable appeal/grievance rights.</p> <p>7. The decision must be concurred in by an agency official that is in a higher position than the individual who proposed the action, unless it was proposed by the head of the agency.</p>	<p>5. The decision must be concurred in by an agency official that is in a higher position than the individual who proposed the action, unless it was proposed by the head of the agency.</p>		<p>5. The decision must be concurred in by an agency official that is in a higher position than the individual who proposed the action, unless it was proposed by the head of the agency.</p>

TITLE 5 PARTS 432 AND 752 REQUIREMENTS

	UNACCEPTABLE PERFORMANCE PART 432	UNACCEPTABLE PERFORMANCE PART 752	ADVERSE ACTION PART 752, SUBPARTS A&B	ADVERSE ACTION PART 752, SUBPARTS C&D
Appeal and Grievance Rights	<p>1. A non-bargaining unit employee who has been demoted or removed may appeal to MSPB.</p> <p>2. A bargaining unit employee is bound by the terms of the collective bargaining agreement. The agreement may require the employee to use the negotiated procedure, file an MSPB appeal, or choose one or the other.</p>	<p>1. A non-bargaining unit employee who has been demoted or removed may appeal to the MSPB.</p> <p>2. A bargaining unit employee is bound by the terms of the collective bargaining agreement. The agreement may require the employee to use the negotiated procedure, file an MSPB appeal, or choose one or the other.</p>	<p>1. Employees may grieve the action under the appropriate grievance system:</p> <p>(a) agency administrative grievance system.</p> <p>(b) negotiated grievance system.</p>	<p>1. A non-bargaining unit employee who has been suspended beyond 14 days, demoted, or removed may appeal to the Merit Systems Protection Board (MSPB).</p> <p>2. A bargaining unit employee is bound by the terms of the collective bargaining agreement. The agreement may require the employee to use the negotiated procedure, file an MSPB appeal, or choose one or the other.</p>

TITLE 5 PARTS 432 AND 752 REQUIREMENTS

	UNACCEPTABLE PERFORMANCE PART 432	UNACCEPTABLE PERFORMANCE PART 752	ADVERSE ACTION PART 752, SUBPARTS A&B	ADVERSE ACTION PART 752, SUBPARTS C&D
Standard of Proof	Upon appeal, the action must be supported by substantial evidence (lower standard than part 752).	The action must be proven by a "preponderance of the evidence" (higher standard than part 432).	Not addressed in law or regulation.	Upon appeal, the action must be supported by a preponderance of the evidence.
Agency Records	<p>1. The agency shall maintain copies of all relevant documentation relating to the removal or demotion, including a copy of:</p> <ul style="list-style-type: none"> (a) proposal, (b) employee's written response, (c) oral reply summary, (d) decision letter, (e) supporting material, and (f) documentation regarding opportunity afforded employee to demonstrate acceptable performance. 	<p>The agency shall maintain copies of all documentation relating to the action, including:</p> <ul style="list-style-type: none"> (a) proposal, (b) employee's written response, (c) oral reply summary, (d) decision letter, (e) supporting material, and (f) any documentation effecting an action under this subpart. 	<p>The agency shall maintain copies of all documentation relating to the suspension, including:</p> <ul style="list-style-type: none"> (a) proposal, (b) employee's written response, (c) oral reply summary, (d) decision letter, (e) supporting material, and (f) any documentation effecting the suspension. 	<p>The agency shall maintain copies of all documentation relating to the action, including:</p> <ul style="list-style-type: none"> (a) proposal, (b) employee's written response, (c) oral reply summary, (d) decision letter, (e) supporting material, and (f) any documentation effecting an action under this subpart.

TITLE 5 PART 315 REQUIREMENTS

Action coverage	<ul style="list-style-type: none">• Probationary Terminations for unsatisfactory performance or conduct.• Probationary Terminations for conditions arising before appointment.
Basis for action	<ul style="list-style-type: none">• Action is taken when current performance and/or conduct of probationary/trial employees fail to demonstrate their fitness or qualifications for continued employment.• Action is taken when conditions arising prior to the appointment of probationary/trial employees warrant the termination.
Notice for terminations based upon current performance and/or conduct	<ul style="list-style-type: none">• The agency shall notify the employee in writing.• Proposals and decision letters are not issued for these types of probationary terminations. Employees only receive a notice.

TITLE 5 PART 315 REQUIREMENTS

<p>Proposal notice for terminations based upon conditions arising prior to employees' appointment</p>	<ul style="list-style-type: none">• The employee is entitled to an advance written notice (proposal).• Proposals are only issued when terminations are based in whole or in part on conditions arising before the employee's appointment.
<p>Content of written notice for terminations based upon current performance and/or conduct</p>	<ul style="list-style-type: none">• The agency shall specify the reasons for the termination and the effective date.• The information in the notice shall, at a minimum, consist of the agency's conclusions as to the performance or conduct inadequacies.
<p>Content of proposal notice for terminations based upon conditions arising prior to employees' appointment</p>	<p>The proposal must:</p> <ul style="list-style-type: none">• State the specific reasons for the proposed action.• Provide a detailed account of the conditions arising before the employee's appointment that serve as the basis for the termination.• Give the employee a reasonable amount of time to reply to the charges (usually no less than 7 days.)

TITLE 5 PART 315 REQUIREMENTS

<p>Notice of adverse decision for terminations based upon conditions arising prior to employees' appointment</p>	<ul style="list-style-type: none"> • Notify the employee of the decision as early as practicable. • A written decision should be delivered to the employee on or before the effective date. • The decision should also specify the reasons for the action. • The decision must inform the employee of his/her limited Merit Systems Protection Board (MSPB) appeal rights and EEO complaint rights. • The decision must be concurred in by an agency official that is in a higher position than the proposing official, unless the head of the agency proposed the action.
<p>Probationary and trial employees' appeal rights</p>	<ul style="list-style-type: none"> • Employees terminated based upon misconduct or performance during their probationary period may only appeal to MSPB if: <ul style="list-style-type: none"> a. They claim discrimination based upon partisan political reasons or marital status; or b. They claim discrimination based on race, color, religion, sex, or national origin, or age (40 or older), or handicapping condition if the individual meets the Equal Employment Opportunity Commission's definition of "handicapped person." An appeal alleging a discriminatory termination may be filed under this subsection only if it is raised in addition to paragraph (a) above. • Employees terminated based upon conditions arising prior to employment with RD may appeal to MSPB if: <ul style="list-style-type: none"> a. They claim discrimination based upon partisan political reasons or marital status; b. They allege the termination was not effected in accordance with procedural requirements contained herein; and c. They claim discrimination based on race, color, religion, sex, national origin, age (40 or older), or handicapping condition. An appeal alleging a discriminatory termination may be filed under this subsection only if it is raised in addition to paragraph (a) or (b) above.

TITLE 5 PART 315 REQUIREMENTS

Probationary and trial employees' Equal Employment Opportunity rights	Employees who claim discrimination based solely on race, color, religion, sex, national origin, age (40 or older), or handicapping condition may file EEO complaints.
Agency records	The agency shall maintain copies of all relevant documentation relating to the termination, including a copy of: <ul style="list-style-type: none">• the written notice or proposal• employee's written response• decision letter• supporting material

MASTER SAMPLE --- LETTER OF REPRIMAND

[Employee's full name]
[Employee's official job title]
USDA Rural Development
[Organization]
[Street address]
[City, state, and zip code]

Dear [Ms. or Mr.],

This is a formal Letter of Reprimand for the offense of [insert chosen or constructed conduct charge from the USDA Guide for Disciplinary Penalties], [give number] instances (specifications).

Specifically, the following facts are cited to support this Letter of Reprimand:

[Background paragraph: Explain the events leading up to the employee's being charged with misconduct, identifying all individuals by their full names and titles/relation to the charged employee, exact dates, and exact titles for any forms or regulations named. If the employee has been previously counseled regarding his/her infractions, explain that here.]

Specification 1: [Describe the first instance of misconduct, giving the full names and titles of newly-named individuals, spelling out all acronyms when first used, and using the full names of any forms or regulations. Give as much who, what, when, where, and how information as you can so that the specificity requirement can be met and so that the employee is clear about exactly what he/she did wrong. For example, if the charge is AWOL, it is not enough to say, "Last week you came in late and were charged AWOL." A better, more specific charge would be, "On Tuesday, June 3, 2001, you arrived at work at 8:45 a.m., which is 15 minutes past your tour of duty starting time. As you did not comply with your leave restriction letter discussed in the foregoing paragraph and failed to call me [the supervisor] to inform me that you would be late, I charged you 15 minutes AWOL for June 3, 2001."]

Specification 2: [Describe the second separate instance of misconduct, if there is one, with the same specificity as the first specification.]

Specification 3: [Describe the third separate instance of misconduct, continuing these paragraphs until all instances of misconduct have been described.]

I cannot condone your **[name the overall misconduct that has caused this reprimand to be issued.]** Such conduct **[describe the negative effect the misconduct has had on the reputation of the agency or its negative impact on the employee's office or co-workers morale or ability to meet the mission. Describe any other harm the misconduct has caused. If the employee has a high grade or many years in his current position or has had ample training or counseling regarding the reason for the reprimand, include a sentence about how the supervisor is disappointed to have to issue this reprimand since the employee should know better that to have committed the infraction.]**

The USDA Guide for Disciplinary Penalties, DPM-731, Chapter 751, Appendix A, provides for the penalty of a letter of reprimand to **[the maximum penalty]** for a **[first]** offense of **"[give charge as written in the Disciplinary Guide]"** **[If your charge is worded differently, add the phrase "the charge most similar to the charges in this letter."]** Clearly, a Letter of Reprimand is the most lenient formal discipline I can take. I have chosen a disciplinary action that will not be made a permanent record in your Official Personnel Folder (OPF) because I believe that you will be willing and able to correct your misconduct. Nevertheless, I hope that this reprimand will impress upon you your responsibility to **[do whatever the employee should have done in the first place]** in the future, thereby promoting the efficiency of the Federal service. Any future incidents of misconduct for which you are charged may result in more severe formal disciplinary action up to and including removal, if warranted.

A copy of this Letter of Reprimand will be filed on the temporary (left) side of your OPF for a period of two years from the date of this letter.

[If the employee is not in a bargaining unit say:] In accordance with RD Instruction 2063-L, Administrative Grievance Procedure, you have the right to grieve this Letter of Reprimand within 15 calendar days of receipt if you believe that it is unwarranted. Your grievance should clearly state the issue(s) and desired remedial action and should be addressed to me **[whoever is signing the reprimand]**. If an extension of time is needed under the provisions of this paragraph, you should request it from me **[whoever is hearing the informal grievance]**. You have the right to be accompanied, represented, and advised at any stage of the grievance by a representative of your choice. Please refer to Rural Development Instruction 2063-L for further guidance on filing a grievance.

[If the employee is in a bargaining unit, say:] In accordance with the negotiated Labor-Management Relations Agreement, Article **[give title of article]**, you have the right to grieve this Letter of Reprimand within **[number of calendar or work]** days of receipt if you believe that it is unwarranted. You have the right to be represented and advised by a union representative. Please refer to Article [] for further guidance on filing a grievance.

You also have the right to pursue an Equal Employment Opportunity (EEO) complaint if you believe that this reprimand was issued based on discriminatory reasons (race, color, religion, national origin, sex, age, or physical or mental handicap). You should contact an EEO Counselor in the Civil Rights Office in Washington, D.C. at 1-800-787-8821 if you wish to pursue this option. An EEO complaint must be filed within 45 calendar days from your receipt of this reprimand.

Work-related problems can be the result of personal situations. It may be helpful to consider all of the factors contributing to your conduct and take appropriate action to deal with them. The Employee Assistance Program (EAP) is available if you wish to seek assistance. **[If a State Office, say:]** The EAP Coordinator for the State is **[name, (if there is a state coordinator), who may be contacted at (telephone number)]**. You may also call the national EAP Helpline at 1-888-243-5744. Trained counselors at that number are available to help you. All information you provide is strictly confidential. I encourage you to consider seeking such assistance.

If you have questions regarding the grievance procedure or if you need access to regulations or records related to your Letter of Reprimand, you may contact **[name, address, and telephone number of Human Resources Manager/Specialist, or management official]**.

Sincerely,

[Full name]
[Title of Management Official]

I acknowledge receipt of this Letter of Reprimand.

[Employee's name]

Date

MASTER SAMPLE---PROPOSED SHORT SUSPENSION (1-14 DAYS)

[Employee's full name]
[Employee's official job title]
USDA Rural Development
[Organization]
[Street address]
[City, state, and zip code]

Dear [Ms. or Mr.],

This is notice of a proposal to suspend you from duty without pay from your position of [official job title, pay plan, series, and grade] for [give number] workdays, no sooner than seven calendar days [If there is a Labor-Management Agreement, it may specify a different number of days] from the date you receive this notice. During this advance notice period, you will remain in an active duty status in your current position. This action is being proposed under Title 5, U.S. Code, Chapter 75, to promote the efficiency of the Federal service. The reason(s) for this proposed action [is/are] as follows:

REASON: FAILURE TO COMPLY WITH WRITTEN SUPERVISORY INSTRUCTIONS (or: the first specific charge in this particular case)]

[Background paragraph (optional if the specification paragraphs below contain the background information): Explain the events leading up to the employee's misconduct. Identify all individuals by their full names, official titles, and relation to the charged employee (co-worker, supervisor, security officer, witness, etc.). Include exact dates and exact titles of any forms or regulations referenced.]

Specification 1: [Describe the first instance of misconduct and any background information needed to make the description understandable to an outside party: Give full names and titles of newly-named individuals, spell out all acronyms when first used, and use the correct names of any forms or regulations. So that the employee can clearly understand the infraction(s) for which he/she is being disciplined, give as much "who, what, when, where, and how" information as you can. For example, if the charge is failure to follow written supervisory instructions, the specification would contain language similar to the following: "On Saturday, April 7, 2001, your supervisor, Mr. John Jones, stopped by the Smithtown Area Office at 7:10 p.m. to pick up some briefing papers. He discovered that you were in the office at your desk in clear violation of his Direct Order, dated April 2, 2001, that you were not to be in the office on a non-work day beyond your tour of duty hours of 8:30 a.m. to 5:00 p.m."]

Describe any additional reasons and instances (specifications) of misconduct using the same level of detail as the first reason and specification until all instances of misconduct have been cited. Number each reason and specification as a separate paragraph as shown above.]

I have considered the following in proposing this suspension [or I have decided that this action is necessary because] [Review the 12 Douglas factors and elaborate on those most applicable to this case. They may be mitigating factors which support a lesser penalty than could have been proposed, or they may be aggravating factors which support a greater penalty than the maximum found in the USDA Guide for Disciplinary Penalties. If the employee has been previously counseled, issued a letter of warning, issued a direct order, or formally disciplined regarding the infraction(s), include that here. If the employee has several years of federal service or years in the current position, has had ample training, or is in a team leader, senior level, or higher-graded position, include these factors hereto establish that the employee is well aware of agency and office policies and procedures regarding (whatever the infraction is)].

I cannot condone your [failure to follow written supervisory instructions (or whatever the infraction is)] because such conduct...[Complete this sentence with a summary statement of why the conduct is harmful—it harms the reputation of the agency, it negatively impacts the agency mission, it adversely affects the morale of co-workers, other employees had to perform the charged employee's work, supervisory trust was violated, etc.] The USDA Guide for Disciplinary Penalties, DPM 751, Chapter 751, Appendix A, provides for the penalty of [insert minimum penalty] to [insert maximum penalty] for a [insert "first" or "subsequent"] offense of "[give charge as written in the Disciplinary Penalties Guide]." [If your charge is worded differently, add the phrase "the charge that is most similar to the charge in this proposed suspension."] [If imposing a lesser or greater penalty than that recommended in the Disciplinary Penalties Guide, identify the factors you considered in selecting the lesser or greater penalty.] Since you are being charged with [give number] separate specifications of such misconduct following a written direct order and other counselings [or whatever the supervisor did to try to get the employee to conform to acceptable standards of behavior], this proposed [give number]-day suspension is well within USDA guidelines.

This letter is only a proposal; no decision has been made on what action, if any, will be taken. If you believe that this proposed suspension is not justified, you have the right to make an oral and/or a written reply and to review the material used to support this proposal.

If you wish to review the supporting material, please contact [**name, title, and telephone number of Human Resources Manager/Specialist or management official**].

If you wish to submit a written reply, it must be addressed to [**whoever is the deciding official, name, and location (room, building, street address, city/town, and zip code), and telephone number**], since [**name of deciding official**] is the deciding official in this case. You must submit your written reply within seven calendar days from your receipt of this proposal.

If you wish to make an oral reply in addition to or instead of a written reply, you must submit a written request for an oral conference to [**the deciding official's name**] within the seven-day timeframe. **Mr./Ms. [name of deciding official]** will notify you in writing of the date and time for the oral conference. Consideration will be given to extending the time to reply if you provide **him/her** a written request for an extension within the seven-day timeframe and explain why additional time is needed. An extension will only be granted for good cause.

[For bargaining unit employees, use the following representation rights:] In accordance with the Labor-Management Agreement, you have the right to represent yourself or to be accompanied, represented, and advised at any stage of the proceedings regarding your proposed suspension by a representative of [**the specific union local**]. You will be allowed up to [**give number from the contract**] hours of official time to review the material used to support this proposed suspension, to prepare a written reply, and to prepare and present an oral reply. Arrangements for the use of official time must be made with your immediate supervisor. Consideration will be given to extending the number of hours of official time if you submit a written request to your supervisor stating your reasons for the request.

[For non-bargaining unit employees, use the following representation rights:] You have the right to be accompanied, represented, and advised at any stage of the proceedings regarding your proposed suspension by a representative of your choice. You will be allowed up to eight hours of official time to review the material used to support this proposed suspension, to prepare a written reply, and to prepare and present an oral reply. Arrangements for the use of official time must be made with your immediate supervisor. Consideration will be given to extending the number of hours of official time if you submit a written request to your supervisor stating your reasons for the request.

Full consideration will be given to any reply and any evidence that you submit in your defense. As soon as possible after your oral and/or written reply is received, or after expiration of the seven-day limit if you do not reply, [**name of the deciding official**] will issue a written decision to you regarding this proposed suspension.

Work-related problems can be the result of personal situations. It may be helpful to consider all of the factors contributing to your conduct and take appropriate action to deal with them. The Employee Assistance Program (EAP) is available if you wish to seek assistance. **[If a State Office, say:]** The EAP Coordinator for the State is **[name, (if there is a state coordinator), who may be contacted at (telephone number)]**. You may also call the national EAP Helpline at 1-888-243-5744. Trained counselors at that number are available to help you. All information you provide is strictly confidential. I encourage you to consider seeking such assistance.

If you have questions regarding your rights or if you need access to regulations or records related to your proposed suspension, you may contact **[name, address, and telephone number of Human Resources Manager/Specialist, or management official]**.

Sincerely,

[Full name]
[Title of Management Official]

I acknowledge receipt of this proposed suspension.

[Employee's name]

Date

*If this letter is mailed to the employee, it should be sent certified, return receipt requested, so that the acknowledgement is documented on the "green slip." The letter should also be sent by regular, first-class mail as a back-up in case the employee refuses to sign for the certified mail. When an employee personally presented with this letter refuses to sign and date it, the presenter of the letter should write "Employee refused/declined to sign" on the employee's signature line and should write the date of presentation on the date line so that there is proof that the employee received the letter.

MASTER SAMPLE---SHORT SUSPENSION DECISION (1 to 14 Days)

[Employee's full name]
[Employee's official job title]
USDA Rural Development
[Organization]
[Street address]
[City, state, and zip code]

Dear [Ms. or Mr.],

This is a decision regarding the proposal, dated [give date], to suspend you for [give number] [work or calendar] days for [state the misconduct charge(s) here exactly as worded in the proposed suspension letter]. In the referenced proposal, you were informed of your right to reply to **this/these** charge(s) both orally and in writing. You submitted a written reply by [letter, fax, etc.] on [date] and made an oral reply on [date]. [or: You made no oral or written reply.] [or: You made [an oral or written] reply on [date] but made no [oral or written] reply.] [If there were any extensions to the reply time granted, reference them here.]

I have carefully considered the documentation leading to your proposed [give number]-day suspension and your oral and written replies. My analyses and conclusions regarding the charge(s) against you and the main points of your reply are as follows:

You claim that [give a one- or two-sentence summary of the employee's first main point]. [In this same paragraph, provide an analysis of the employee's claim and draw a written conclusion regarding it—it is either a supportable defense or it isn't.]

You maintain that...[Continue the format of the preceding paragraph until you have addressed all of the main points of the employee's reply, each in a separate paragraph.]

I have considered the following in arriving at my decision:

Mitigating factors: [List the pertinent Douglas factors and parts of the employee's reply that weighed in the employee's favor, such as "Prior to the current proposed discipline, you did not have an official disciplinary record," "You have 23 years of Federal service," and/or "You were experiencing unusual stress in your personal life due to the death of your mother."]

Aggravating factors: [List the pertinent Douglas factors and parts of the employee's reply that weighed against the employee, such as "The conduct expected of you was clearly outlined by your supervisor in his counseling memorandum to you dated [give date], yet you deliberately disregarded his instructions and [committed the misconduct at issue]" or "Based on your lack of remorse for the [describe the misconduct] that you admit you committed, I see no evidence that absent formal discipline, you will correct you behavior in the future."]

In conclusion, I have decided that reasons and specifications [list the numbers of all of the reasons and specifications being sustained] as described in the proposal letter are supported by the evidence, are sustained, and warrant your suspension from duty. Your written and oral replies do not refute the charge(s) of [name the specific charge(s)/reasons again] or present acceptable extenuating circumstances to justify withdrawing or reducing the proposed penalty. [If the number of reasons and/or specifications not sustained warrants a reduction of the proposed penalty, discuss that here. For example, "In your oral reply, you state that you did not process the erroneous loan. You maintain that although the loan would normally have been your responsibility, the former contract (temporary) employee, Ms. Mary Jones, processed it. You subsequently provided me a copy of a printout containing her initials. Upon investigation, I discovered that Ms. Jones had logged onto that screen and had annotated her initials as the action officer. Therefore, I dismiss this specification. Because this was a very serious offense and carried considerable weight in determining the appropriate penalty to propose, I have also decided to reduce your proposed 5-day suspension to a 3-day suspension.] Accordingly, you will be suspended from duty without pay for [give number] [work or calendar] days effective [day of the week, month, day, and year] through [day of the week, month, day, and year]. You will return to duty at your regularly scheduled start time on [day of the week, month, day, and year].

It is my hope that this suspension will be corrective and preclude future incidents of misconduct, thereby promoting the efficiency of the Federal service. Future occurrences of misconduct for which you are charged may result in more severe disciplinary action up to and including removal from the Federal service, if warranted.

a. **[If the employee is not in a bargaining unit use the following grievance rights:]** In accordance with RD Instruction 2063-L, Administrative Grievance Procedure, you have the right to file a formal written grievance regarding this suspension. The grievance must be filed within 15 calendar days of receipt of this letter and should clearly state the issue(s) and desired remedial action. The grievance must be addressed to Mr. William Fleming, Assistant Administrator for Human Resources (AAHR), c/o Ms. Marie L. Carver, Chief, Field Services Branch, 1520 Market Street, FC-61, USDA Rural Development, St. Louis, Missouri 63103-2614. If an extension of time to file your grievance is needed, you should request it from the AAHR through Ms. Carver. You have the right to be accompanied, represented, and advised at any stage of the grievance by a representative of your choice. Please refer to the Instruction for further guidance on filing a grievance.

[If the employee is in a bargaining unit, use the following grievance rights:] In accordance with the negotiated Labor-Management Agreement, Article [give title of article], you have the right to grieve this suspension decision within [state number of calendar or work] days of receipt if you believe that it is unwarranted. You have the right to be represented and advised by a union representative or you may represent yourself. Please refer to Article [] for further guidance on filing a grievance.

b. You have the right to pursue an Equal Employment Opportunity (EEO) complaint if you believe that this suspension is based on discriminatory reasons (race, color, religion, national origin, gender, age, marital status, or physical or mental handicap). You should contact an EEO Counselor in the Civil Rights Office in Washington, D.C. at 1-(800)-787-8821 if you wish to pursue this option. An EEO complaint must be filed within 45 calendar days from your receipt of this suspension decision.

If you file both a grievance and an EEO complaint over the same matter, the formal grievance will not be processed simultaneously with the EEO complaint. Your grievance will be returned and you may resubmit it within 10 calendar days following the decision on the EEO complaint. If the merits of the grievance issue are not addressed in the EEO complaint decision, review of the grievance will resume following the final Department decision on the EEO complaint if you resubmit the grievance. If the findings on the EEO complaint do address the merits of the grievance issue, the grievance will be rejected.

Work-related problems can be the result of personal situations. It may be helpful to consider all of the factors contributing to your conduct and take appropriate action to deal with them. The Employee Assistance Program (EAP) is available if you wish to seek assistance. **[If a State Office, say:]** The EAP Coordinator for the State is **[name, (if there is a state coordinator), who may be contacted at (telephone number)]**. You may also call the national EAP Helpline at 1-888-243-5744. Trained counselors at that number are available to help you. All information you provide is strictly confidential. I encourage you to consider seeking such assistance.

If you have questions regarding the grievance procedure or if you need access to regulations or records related to your suspension, you may contact **[name, address, and telephone number of Human Resources Manager/Specialist, or management official]**.

Sincerely,

[Full name]
[Title of Management Official]

I acknowledge receipt of this suspension decision.*

[Employee's name]

Date

* If this letter is mailed to the employee, it should be sent by both regular, first class mail and certified, return receipt requested, so that the acknowledgement is documented on the "green slip." When an employee personally presented with this letter refuses to sign and date it, the presenter of the letter should write "Employee refused/declined to sign" on the employee's signature line and should write the date of presentation on the date line so that there is proof that the employee received the letter.

MASTER SAMPLE---PROPOSED LONG SUSPENSION (15 OR MORE DAYS)

[Employee's full name]
[Employee's official job title]
USDA Rural Development
[Organization]
[Street address]
[City, state, and zip code]

Dear [Ms. or Mr.],

This is notice of a proposal to suspend you from duty without pay from your position of [official job title, pay plan, series, and grade] for [give number, such as 30] calendar days no sooner than 30 calendar days [If there is a Labor-Management Agreement, it may specify a different number of days and you must cite that number rather than 30] from the date you receive this notice. During this advance notice period, you will remain in an active duty status in your current position. This action is being proposed under Title 5 U.S. Code, Chapter 75, to promote the efficiency of the Federal service. The reason(s) for this proposed action **is/are** as follows:

REASON: UNAUTHORIZED USE OF A GOVERNMENT VEHICLE (or: the first specific charge in this particular case. If there is more than one charge, number them "REASON 1," "REASON 2," etc.)]

[Background paragraph (optional if the specification paragraphs below contain the background information): Explain the events leading up to the employee's misconduct. Identify all individuals by their full names, official titles, and relation to the charged employee (co-worker, supervisor, security officer, witness, etc.). Include exact dates and exact titles of any forms or regulations referenced.]

Specification 1: [Describe the first instance of misconduct and any background information needed to make the description understandable to an outside party: Give full names and titles of newly-named individuals, spell out all acronyms when first used, and use the correct names of any forms or regulations. So that the employee can clearly understand the infraction(s) for which he/she is being disciplined, give as much "who, what, when, where, and how" information as you can. For example, if the charge is "unauthorized use of a Government vehicle", the specification would contain language similar to the following: "On June 22, 2001, you signed out a 1999 Jeep Cherokee belonging to this state office, Government Plate Number G11-14972, (State) Plate Number 712-EGT. The sign-out log in the Motor Vehicle Building documents that you took the vehicle at 9:20 a.m. The Director of Administrative Programs for the State, Mr. John Long, personally witnessed your return of this vehicle at 1:15 p.m. that same

day. When Mr. Long questioned you regarding your use of the vehicle, you told him that your mother, who was home alone, had fallen that morning and had called you from her cell phone concerned that her hip might be broken. Since you had ridden to work that day with a friend named Joe Curtis, who works at the Texaco Plant in Albertville, 50 miles away, you responded to the emergency with the quickest means possible, transportation via the Government vehicle. You explained that you had taken your mother to check in at the United Memorial Hospital on Sadie Lane and returned to duty with the vehicle as soon as you possibly could. Mr. Long told you that your use of the Government vehicle was unauthorized and improper. You acknowledged that this was true, but stated that you would do the same thing again if your mother sustained another injury.”]

[Describe any additional reasons and instances (specifications) of misconduct using the same level of detail as the first reason and specification until all instances of misconduct have been cited. Number each reason and specification as a separate paragraph as shown above.]

I have considered the following in proposing this suspension [or: I have decided that this action is necessary because...] [Review the 12 Douglas factors and elaborate on those most applicable to this case. They may be mitigating factors which support a lesser penalty than could have been proposed, or they may be aggravating factors which support a greater penalty than the maximum found in the USDA Guide for Disciplinary Penalties. If the employee has been previously counseled, issued a letter of warning, issued a direct order, or formally disciplined regarding the infraction(s), include that here. If the employee has several years of Federal service or years in the current position, has had training or instruction on the subject at issue, or is in a team leader, senior level, or higher-graded position, include these factors here to establish that the employee is well aware of agency and office policies and procedures regarding (whatever the infraction is)].

I cannot condone your [unauthorized use of a Government vehicle (or whatever the infraction is)] because such conduct...[Complete this sentence with a summary statement of why the conduct is harmful—it violates Government or Rural Development regulations or policies, it harms the reputation of the agency, it negatively impacts the agency mission, it adversely affects the morale of co-workers, it caused other employees to have to perform the charged employee’s work, supervisory trust was violated, etc.] The USDA Guide for Disciplinary Penalties, DPM 751, Chapter 751, Appendix A, provides for the penalty of [insert minimum penalty] to [insert maximum penalty] for a [insert “first” or “subsequent”] offense of “[give charge as written in the Disciplinary Penalties Guide].” [If your charge is worded differently, add the phrase “the charge that is most similar to the charge in this proposed suspension.”]

[If proposing a lesser or greater penalty than that recommended in the Disciplinary Penalties Guide, identify the factors you considered in selecting the lesser or greater penalty.] Since you are being charged with **[give number]** separate specifications of such misconduct following a written direct order and other counselings **[or whatever the supervisor did to try to get the employee to conform to acceptable standards of behavior]**, this proposed **[give number]**-day suspension is well within USDA guidelines.

This letter is only a proposal; no decision has been made on what action, if any, will be taken. A final decision will not be effected for at least 30 calendar days **[or the length of time negotiated in the Labor-Management Relations contract in states with bargaining units]**. In the interim, if you believe that this proposed suspension is not justified, you have the right to review the material relied upon to support this proposal and to make oral and/or written replies to the deciding official.

If you wish to review the supporting material, please contact **[name, title, and telephone number of Human Resources Manager/Specialist, or management official]**.

If you wish to submit a written reply, it must be addressed to the deciding official in this case, as follows:

Ms. Sherie Hinton Henry
Deputy Administrator for

Operations and

Management

c/o Ms. Marie L. Carver
Chief, Field Services Branch
USDA/Rural Development
1520 Market Street, FC-61
St. Louis, Missouri 63103-2614

You must submit your written reply within 10 calendar days from your receipt of this proposal. **[In states with bargaining units, consult the Labor-Management Agreement; the negotiated reply time may be different.]** You may submit affidavits and/or any other evidence or information you wish to have considered in support of your reply. If you wish to make an oral reply, in addition to or instead of a written reply, you must submit a written request for an oral conference to Ms. Henry, c/o of Ms. Carver, at the address above, within the 10-day **[or negotiated number of days]** timeframe. You will be notified of the date and time for the oral conference and the name of the official who is authorized to hear your oral reply and to make a recommendation to Ms. Henry. This oral conference, if requested, may be

conducted over the telephone at the option of the agency. Your right to an oral reply does not include a right to a formal pre-decisional hearing with the examination of witnesses. If you are subsequently suspended, you will be given additional appeal rights, including the right to a hearing, at that time.

Consideration will be given to extending the time to reply either orally and/or in writing if you provide Ms. Henry c/o Ms. Carver, a written request for an extension within the 10-day timeframe **[or negotiated time frame]** and explain why additional time is needed. An extension will only be granted for good cause.

[For bargaining unit employees, use the following representation rights:] In accordance with the Labor-Management Agreement, you have the right to represent yourself or to be accompanied, represented, and advised at any stage of the proceedings regarding your proposed suspension by a representative of **[the specific union local]**. You will be allowed up to **[give number from the contract]** hours of official time to review the material used to support this proposed suspension, to prepare a written reply, and to prepare and present an oral reply. Arrangements for the use of official time must be made with your immediate supervisor. Consideration will be given to extending the number of hours of official time if you submit a written request to your supervisor stating your reasons for the request.

[For non-bargaining unit employees, use the following representation rights:] You have the right to be accompanied, represented, and advised at any stage of the proceedings regarding your proposed suspension by a representative of your choice. You will be allowed up to eight hours of official time to review the material used to support this proposed suspension, to prepare a written reply, and to prepare and present an oral reply. Arrangements for the use of official time must be made with your immediate supervisor before using it. Consideration will be given to extending the number of hours of official time if you submit a written request to your supervisor stating your reasons for the request.

Full consideration will be given to any reply and any evidence that you submit in your defense. As soon as possible after your oral and/or written reply is received, or after expiration of the 30 calendar day limit **[see contract in states with bargaining units]** if you do not reply, Ms. Henry will issue a final written decision to you regarding this proposed suspension.

Work-related problems can be the result of personal situations. It may be helpful to consider all of the factors contributing to your conduct and take appropriate action to deal with them. The Employee Assistance Program (EAP) is available if you wish to seek assistance. **[If a State Office, say:]** The EAP Coordinator for the State is **[name, (if there is a state coordinator), who may be contacted at (telephone number)]**. You may also call the national EAP Helpline at 1-888-243-5744. Trained counselors at that number are available to help you. All information you provide is strictly confidential. I encourage you to consider seeking such assistance.

If you have questions regarding your rights or if you need access to regulations or records related to your proposed suspension, you may contact **[name, address, and telephone number of Human Resources Manager/Specialist, or management official]**.

Sincerely,

[Full name]
[Title of Management Official]

cc: DAOM-Henry
AAHR-Fleming
AAHR/FSB-Carver

I acknowledge receipt of this proposed suspension.

[Employee's name]

Date

*If this letter is mailed to the employee, it should be sent certified, return receipt requested, so that the acknowledgement is documented on the "green slip." The letter should also be sent by regular, first-class mail as a back-up in case the employee refuses to sign for the certified mail. When an employee personally presented with this letter refuses to sign and date it, the presenter of the letter should write "Employee refused/declined to sign" on the employee's signature line and should write the date of presentation on the date line so that there is proof that the employee received the letter.

MASTER SAMPLE---PROPOSED REMOVAL UNDER 5 CFR 752 (CONDUCT)

[Employee's full name]
[Employee's official job title]
USDA Rural Development
[Organization]
[Street address]
[City, state, and zip code]

Dear [Ms. or Mr.],

This is notice of a proposal to remove you from your position of [official job title, pay plan, series, and grade] and from the Federal service no sooner than 30 calendar days from the date you receive this notice. [If there is a Labor-Management Agreement, it may specify a greater number of days and you must cite that number rather than 30.] During this advance notice period, you will remain in an active duty status in your current position. This action is being proposed under Title 5, U.S. Code, Chapter 75, to promote the efficiency of the Federal service. The reason(s) for this proposed removal is/are as follows:

REASON: CONDUCT UNBECOMING A FEDERAL EMPLOYEE (or: the first specific charge in this particular case. If there is more than one charge/reason, number them "REASON 1," "REASON 2," etc.) Refer to DPM-751, Chapter 751-Discipline, Appendix A-USDA Guide for Disciplinary Penalties, for assistance in titling charges.]

[Background paragraph (optional if the specification paragraphs below contain the background information): Explain the events leading up to the employee's misconduct. Identify all individuals by their full names, official titles, and relation to the charged employee (co-worker, supervisor, security officer, witness, etc.). Include exact dates and exact titles of any forms or regulations referenced.]

Specification 1: [Describe the first instance of misconduct and any background information needed to make the description understandable to an outside party: Give full names and titles of newly-named individuals, spell out all acronyms when first used, and use the correct names of any forms or regulations. So that the employee can clearly understand the infraction(s) for which he/she is being removed, give as much "who, what, when, where, and how" information as you can. For example, if the charge is "conduct unbecoming a Federal employee," the specification would contain language similar to the following: "On Monday, July 16, 2001, at approximately 8:30 a.m., Ms. Sally Smith, Secretary for the Operations Branch, went to the elevator outside her office

on the second floor of the Arch Building on her way to take a FEDEX package to the mailroom on the fourth floor. Although you work on the sixth floor and have no business reason to go to the second floor, you suddenly appeared next to Ms. Smith at the second floor elevator and began asking her if she would go out with you. Even though she had told you several times before that she is happily married and is not interested in dating you, you got very close to her face and kept asking the same question. Ms. Smith told you repeatedly and in increasingly louder tones to leave her alone. You refused to stop questioning her or to go away until you saw Ms. Joan Brown, a co-worker of Ms. Smith's, coming down the hall toward the two of you. When you saw Ms. Brown approaching, you turned and walked quickly down the hall in the opposite direction. In her witness statement, Ms. Brown says that she saw you approach Ms. Smith at the second floor elevators, saw you speaking to Ms. Smith, and saw Ms. Smith's agitated efforts to move away from you. Ms. Brown states that Ms. Smith was visibly shaken and quite upset. She encouraged Ms. Smith to immediately report this incident to her supervisor, Mr. James Jones, which Ms. Smith did that same day. Since Ms. Smith was still upset over the incident with you, Ms. Brown accompanied Ms. Smith to Mr. Jones' office. In a written statement that Ms. Smith prepared on July 16, 2001, she explained to Mr. Jones that as a result of your unwelcome behavior toward her at the elevator, she was unable to concentrate on her job duties the rest of the day due to an upset stomach and the fear that you would again approach her. At 1 p.m. on July 17, 2001, Mr. Jones counseled you about the elevator incident with Ms. Smith. You admitted that you had approached her and asked her to go out with you. Mr. Jones reminded you that this was the third time this week that he had had to caution you about unwelcome behavior toward female employees of this agency and that you had already been suspended twice for similar misconduct. He also informed you that additional formal disciplinary action would be proposed based on this incident and several other similar incidents that had recently occurred. Your approaching and questioning Ms. Smith at the elevator on July 16, 2001 is considered conduct unbecoming because it was an unwelcome intrusion into Ms. Smith's privacy, it had a negative effect on her ability to do her job, and it disrupted another employee, Ms. Brown, at work."

[Describe any additional reasons and instances (specifications) of misconduct using the same level of detail as the first reason and specification until all instances of misconduct have been cited. Number each reason and specification as a separate paragraph as shown above.]

I have considered the following in proposing this removal [or: I have decided that this removal is necessary because...] [Review the 12 Douglas factors and elaborate on those most applicable to this case. If the employee has been previously counseled, issued a letter of warning, issued a direct order, or formally disciplined regarding the infraction(s), include that here. (Note: If any of the employee's previous disciplines are still being challenged by the employee through an avenue of redress such as the grievance procedure, consult one of the Employee Relations Specialists in the St. Louis Human Resources Office.

The Federal Circuit Court cases of Gregory v. U.S. Postal Service, May 15, 2000, and Blank v. DA, April 19, 2001, may impact how the past discipline is used in the proposed removal letter.) If the employee has several years of Federal service or years in the current position, has had training or instruction on the subject at issue, or is in a team leader, senior level, or higher-graded position, include these factors here to establish that the employee is well aware of agency and office policies and procedures regarding (whatever the infraction is). Also include, if applicable, a statement regarding the employee's lack of rehabilitation potential based on the failure of previous corrective actions to prevent the employee's current misconduct.]

I cannot condone your [unbecoming conduct (or whatever the infraction is)] because such conduct...[Complete this sentence with a summary statement of why the conduct is harmful—it violates Government or Rural Development regulations or policies, it harms the reputation of the agency, it negatively impacts the agency mission, it adversely affects the morale of co-workers, it caused other employees to have to perform the charged employee's work, supervisory trust was violated, etc.] The USDA Guide for Disciplinary Penalties, DPM 751, Chapter 751, Appendix A, provides for the penalty of [insert minimum penalty] to [insert maximum penalty] for a [insert "first" or "subsequent"] offense of "[give charge as written in the Disciplinary Penalties Guide]." [If your charge is worded differently, add the phrase "the charge that is most similar to the charge in this proposed removal."] [If proposing a greater penalty than that recommended in the Disciplinary Penalties Guide, identify the factors you considered in selecting the greater penalty.] Since you are being charged with [give number] separate specifications of such misconduct following a written direct order and other counselings [or whatever the supervisor did to try to get the employee to conform to acceptable standards of behavior], this proposed removal is well within USDA guidelines.

This letter is only a proposal; no decision has been made on what action, if any, will be taken. A final decision will not be effected for at least 30 calendar days [**or the length of time negotiated in the Labor-Management Relations contract in states with bargaining units**]. In the interim, if you believe that this proposed removal is not justified, you have the right to review the material relied upon to support this proposal and to make oral and/or written replies to the deciding official.

If you wish to review the supporting material, please contact [**name, title, and telephone number of the Human Resources Manager/Specialist, or management official**].

If you wish to submit a written reply, it must be addressed to the following deciding official:

Ms. Sherie Hinton Henry
Deputy Administrator for
Operations and
Management
c/o Ms. Marie L. Carver
Chief, Field Services Branch
1520 Market Street, FC-61
St. Louis, Missouri 63103-2614

You must submit your written reply within 10 calendar days from your receipt of this proposal. [**In states with bargaining units, consult the Labor-Management Agreement; the negotiated reply time may be different**]. You may submit affidavits and/or any other evidence or information you wish to have considered in support of your reply.

If you wish to make an oral reply, in addition to or instead of a written reply, you must submit a written request for an oral conference to Ms. Henry, c/o of Ms. Carver at the address above, within the 10-day [**or negotiated number of days**] time frame. You will be notified of the date and time for the oral conference and the name of the official who is authorized to hear your oral reply and to make a recommendation to Ms. Henry. This oral conference, if requested, may be conducted over the telephone at the option of the agency. Your right to an oral reply does not include a right to a formal pre-decisional hearing with the examination of witnesses. If you are subsequently removed, you will be given additional appeal rights, including the right to a hearing, at that time.

Consideration will be given to extending the time to reply either orally and/or in writing if you provide Ms. Henry, c/o Ms. Carver, a written request for an extension within the 10-day time frame **[or negotiated time frame]** and explain why additional time is needed. An extension will only be granted for good cause.

[For bargaining unit employees, use the following representation rights:] In accordance with the Labor-Management Agreement, you have the right to represent yourself or to be accompanied, represented, and advised at any stage of the proceedings regarding your proposed removal by a representative of **[the specific union local]**. You will be allowed up to **[give number from the contract]** hours of official time to review the material used to support this proposed removal, to prepare a written reply, and to prepare and present an oral reply. Arrangements for the use of official time must be made with your immediate supervisor. Consideration will be given to extending the number of hours of official time if you submit a written request to your supervisor stating your reasons for the request.

[For non-bargaining unit employees, use the following representation rights:] You have the right to be accompanied, represented, and advised at any stage of the proceedings regarding your proposed removal by a representative of your choice. You will be allowed up to eight hours of official time to review the material used to support this proposed removal, to prepare a written reply, and to prepare and present an oral reply. Arrangements for the use of official time must be made with your immediate supervisor. Consideration will be given to extending the number of hours of official time if you submit a written request to your supervisor stating your reasons for the request.

Full consideration will be given to any reply and any evidence that you submit in your defense. As soon as possible after your oral and/or written reply is received, or after expiration of the 30 calendar day limit **[or negotiated time limit]** if you do not reply, Ms. Henry will issue a final written decision to you regarding this proposed removal.

Work-related problems can be the result of personal situations. It may be helpful to consider all of the factors contributing to your conduct and take appropriate action to deal with them. The Employee Assistance Program (EAP) is available if you wish to seek assistance. **[If a State Office, say:]** The EAP Coordinator for the State is **[name, (if there is a state coordinator), who may be contacted at (telephone number)]**. You may also call the national EAP Helpline at 1-888-243-5744. Trained counselors at that number are available to help you. All information you provide is strictly confidential. I encourage you to consider seeking such assistance.

If you have questions regarding your rights or if you need access to regulations or records related to your proposed removal, you may contact **[name, address, and telephone number of the Human Resources Manager/Specialist, or management official]**.

Sincerely,

[Full name]
[Title of Management Official]

cc: DAOM-Henry
AAHR-Fleming
AAHR/FSB-Carver

I acknowledge receipt of this proposed removal.

[Employee's name]

Date

*If this letter is mailed to the employee, it should be sent certified, return receipt requested, so that the acknowledgement is documented on the "green slip." The letter should also be sent by regular, first-class mail as a back-up in case the employee refuses to sign for the certified mail. When an employee personally presented with this letter refuses to sign and date it, the presenter should write "Employee refused/declined to sign" on the employee's signature line and the date of presentation on the date line. This will establish proof that the employee received the letter.

MASTER SAMPLE---PROPOSED REMOVAL UNDER 5 CFR 432 (PERFORMANCE)

[Employee's full name]
[Employee's official job title]
USDA/Rural Development
[State Office--Identify state]
[Street address]
[City, state, and zip code]

Dear [Ms. or Mr. _____]:

This is notice of a proposal to remove you from your position of [official job title, pay plan, series, and grade] and from the Federal service no sooner than 30 calendar days from the date you receive this notice. [If there is a Labor-Management Agreement, it may specify a greater number of days and you must cite that number rather than 30.] During this advance notice period, you will remain in an active duty status in your current position. This action is being proposed under Title 5, U.S. Code, Chapter 43. The reason for this proposed removal is as follows:

REASON: UNACCEPTABLE WORK PERFORMANCE

You were placed on a ____-day [state number of days; usually 90 or 120. If the state has a bargaining unit, consult the Labor-Management Agreement for any mandated number of days] Opportunity-to-Improve (OTI) period on [date] due to your unacceptable performance in the following __ [state number; can be any number from one to all of the employee's critical elements] critical elements of your performance plan:

- 1) Critical element # __ , _____ [state the number and title of this element exactly as it is written in the employee's performance plan, which is the document that lists the employee's performance elements and standards. For example, "Critical element # 5, Customer Service."]
- 2) Critical element # __ , _____ [state the number and title of any additional unacceptable critical elements exactly as they are written in the performance plan.]

Details of your unacceptable performance on the foregoing elements were provided to you in the OTI letter of [date].

During the OTI period, your supervisor, [full name and title], took the following actions to assist you in meeting the standards of the [state number] critical elements that you had not performed acceptably:

[State a recap of the major actions that the supervisor and/or others took to assist the employee during the OTI period, such as periodic counseling sessions, meetings, or office visits (give total number and dates of each; for example, "You were counseled on the following three dates: July 10, 2001, July 20, 2001, and July 25, 2001); work product reviews; oral and written reminders or checklists; examples of acceptable work products; reassignment of duties away from the employee to allow him/her to concentrate on more important duties; assignment of additional employees to assist with the work; additional formal or informal training, etc.]

Despite the foregoing assistance, you did not improve your performance to the acceptable level during the OTI period or in the period since that time expired. Therefore, your removal is now being proposed based on the unacceptable performance detailed below:

Critical Element #___, _____ [State number and title exactly as shown in the performance plan. The unacceptable elements supporting the removal must be one or more of the unacceptable elements documented in the OTI letter.]

Standard: [Copy the standard supporting this critical element verbatim from the performance plan. If some part, but not all, of the standard was failed, make sure that the documentation shows that the overall critical element was failed.]

Actual Performance:

Specification 1: [Describe the first example of unacceptable performance in as much detail as possible; identify all newly-named individuals by their full names, titles, and relation to the employee; spell out all acronyms when first used; give complete dates; and use exact titles and numbers for any forms or regulations referenced. So that the employee can clearly understand why he/she failed to meet the standard(s) and why this warrants removal, state as much "who, what, when, where, and how" information as you can in each specification. For example, if the critical element is "Program Management" and the failed standard is "Manages and monitors all aspects of assigned programs for quality, timeliness, and effectiveness," Specification 1 might read, "In the Loan Program area, supervised bank account number 67398 for Mr. John Smart remained open until September 5, 2001. Mr. Smart was one of this agency's clients whose case was assigned to you on January 1, 2001. Mr. Smart passed away on March 10, 2001. Rural Development (RD) Regulation XXX, Housing Loan Program, requires in chapter 3, paragraph 7(b), that all bank accounts of decedents be closed within three months of the date of death. You have a personal copy of RD Regulation XXX on your desk where it is available for your daily use. You were notified of Mr. Smart's death by a letter from Mrs. Smart, dated March 15, 2001, which you received on March 16, 2001. The date that you took action to close the account was almost 3 months past the

required deadline. When your supervisor discussed this delay with you, your explanation was that 'you had forgotten that the case was in your desk drawer.' This is an example of a clear failure on your part to meet your timeliness and effectiveness standard for the Loan Program."

[Describe any additional examples (specifications) of unacceptable performance that relate to this particular critical element using the same level of detail as the first specification until all examples have been cited. Number each specification as a separate paragraph as shown above.]

[If there are other critical elements that were failed, list them as shown above, cite the applicable standards that describe acceptable performance under each element, and cite and number all of the examples/specifications of unacceptable performance of that element].

In proposing this removal, I have considered ...[If the employee has several years of Federal service or years in the current position, has had training or instruction on the tasks/projects/programs at issue, or is in a team leader, senior level, or higher-graded position, include these factors here to establish that the employee has sufficient reason to know how to perform his/her job acceptably.]

I cannot condone your continued unacceptable performance. [Add a summary statement of why the unacceptable performance is harmful—Government or Rural Development regulations or policies have been violated, the reputation of the agency has been harmed by customer complaints or the employee's egregious errors, the agency mission is not being met, the morale of co-workers has been negatively affected, other employees have had to perform the unacceptable employee's work, supervisory trust was violated, etc.] Title 5, U.S. Code, Chapter 43, paragraph 4303(a), provides that an agency may remove an employee from Federal service for unacceptable performance. In view of the performance deficiencies documented in this letter, which have continued despite all of the documented efforts to assist you in reaching an acceptable level of performance, I believe that I am left with no other option but to propose your removal.

This letter is only a proposal; no decision has been made on what action, if any, will be taken. A final decision will not be effected for at least 30 calendar days [or the length of time negotiated in the Labor-Management Agreement in states with bargaining units]. In the interim, if you believe that this proposed removal is not justified, you have the right to review the material relied upon to support this proposal and to make oral and/or written replies to the deciding official.

If you wish to review the supporting material, please contact **[name, title, and telephone number of the Human Resources Manager/Specialist, or management official]**.

If you wish to submit a written reply, it must be addressed to the following deciding official:

Ms. Sherie Hinton Henry
Acting Deputy Administrator for
Operations and Management
c/o Ms. Marie L. Carver
Chief, Field Services Branch
USDA/Rural Development
1520 Market Street, FC-61
St. Louis, Missouri 63103-2614

You must submit your written reply within 10 calendar days from your receipt of this proposal. **[In states with bargaining units, consult the Labor-Management Agreement; the negotiated reply time may be different]**. You may submit affidavits and/or any other evidence or information you wish to have considered in support of your reply.

If you wish to make an oral reply, in addition to or instead of a written reply, you must submit a written request for an oral conference to Ms. Henry, c/o of Ms. Carver at the address above, within the 10-day **[or negotiated number of days]** time frame. You will be notified of the date and time for the oral conference and the name of the official who is authorized to hear your oral reply and to make a recommendation to Ms. Henry. This oral conference, if requested, may be conducted over the telephone at the option of the agency. Your right to an oral reply does not include a right to a formal pre-decisional hearing with the examination of witnesses. If you are subsequently removed, you will be given additional appeal rights, including the right to a hearing, at that time.

Consideration will be given to extending the time to reply either orally and/or in writing if you provide Ms. Henry, c/o Ms. Carver, a written request for an extension within the 10-day time frame **[or negotiated time frame]** and explain why additional time is needed. An extension will only be granted for good cause.

[For bargaining unit employees, use the following representation rights:] In accordance with the Labor-Management Agreement, you have the right to represent yourself or to be accompanied, represented, and advised at any stage of the proceedings regarding your proposed removal by a representative of **[the specific union local]**. You will be allowed up to **[give number from the contract]** hours of official time to review the material used to support this

proposed removal, to prepare a written reply, and to prepare and present an oral reply. Arrangements for the use of official time must be made with your immediate supervisor. Consideration will be given to extending the number of hours of official time if you submit a written request to your supervisor stating your reasons for the request.

[For non-bargaining unit employees, use the following representation rights:]

You have the right to be accompanied, represented, and advised at any stage of the proceedings regarding your proposed removal by a representative of your choice. You will be allowed up to eight hours of official time to review the material used to support this proposed removal, to prepare a written reply, and to prepare and present an oral reply. Arrangements for the use of official time must be made with your immediate supervisor. Consideration will be given to extending the number of hours of official time if you submit a written request to your supervisor stating your reasons for the request.

Full consideration will be given to any reply and any evidence that you submit in your defense. As soon as possible after your oral and/or written reply is received, or after expiration of the 30 calendar day limit **[or negotiated time limit]** if you do not reply, Ms. Henry will issue a final written decision to you regarding this proposed removal.

Work-related problems can be the result of personal situations. It may be helpful to consider all of the factors contributing to your unacceptable performance and take appropriate action to deal with them. The Employee Assistance Program (EAP) is available if you wish to seek assistance. **[If a State Office, say:]** The EAP Coordinator for the State is **[name, (if there is a state coordinator), who may be contacted at (telephone number)]**. You may also call the national EAP Helpline at 1-888-243-5744. Trained counselors at that number are available to help you. All information you provide is strictly confidential. I encourage you to consider seeking such assistance.

If you have questions regarding your rights or if you need access to regulations or records related to your proposed removal, you may contact **[name, address, and telephone number of the Human Resources Manager/Specialist, or management official]**.

Sincerely,

[Full Name]
[Title of Management Official]

cc: DAOM-Henry
AAHR-Fleming
AAHR/FSB-Carver

I acknowledge receipt of this proposed removal.

[Employee's name]

Date

*If this letter is mailed to the employee, it should be sent certified, return receipt requested, so that the acknowledgement is documented on the "green slip." The letter should also be sent by regular, first-class mail as a back-up in case the employee refuses to sign for the certified mail. When an employee personally presented with this letter refuses to sign and date it, the presenter should write "Employee refused/declined to sign" on the employee's signature line and the date of presentation on the date line. This will establish proof that the employee received the letter.

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Douglas Factors

Managers should consider the factors below prior to proposing or deciding penalties. All of the factors may not be relevant in every case; some may weigh in the employee's favor (mitigating factors), others against the employee (aggravating factors). It is only recommended that managers consider these factors during the proposal stage; however, consideration must be given to them during the decision stage. These factors will assist management to determine if mitigating the penalty to a lesser offense is appropriate or if the proposed penalty should be sustained. Deciding officials cannot impose more severe penalties than those proposed. They may only sustain, reduce, or cancel the action. Penalty selection requires weighing the relevant factors in the individual case.

1. The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
2. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
3. The employee's past disciplinary record;
4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
5. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties;
6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
7. Consistency of the penalty with the USDA Guide for Disciplinary Penalties;
8. The notoriety of the offense or its impact upon the reputation of the agency;
9. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
10. Potential for the employee's rehabilitation;

11. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and

12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

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Table of Penalties

In determining an appropriate penalty managers should consult the USDA Guide for Disciplinary Penalties as reflected below. The Guide is a useful tool for ensuring that employees are treated equitably. Rural Development Managers should normally use the penalties contained within the guide unless there is substantial justification for deviating. While the Guide does not cover every possible offense, it does provide the more common types of offenses and the penalties usually assessed. Opportunities for the appropriate use of *alternative discipline* (see Departmental Personnel Bulletin 751-3) may also be considered. Alternative discipline is available in appropriate circumstances in all cases, except when the penalty to be proposed is removal from the service or dictated by statute. Alternative discipline may also be considered when mitigating circumstances serve to reduce a proposed penalty of removal to a lesser penalty, including a suspension of letter of reprimand. Although each case must be evaluated on its own merits, the Guide does provide a framework to assure consistent application of disciplinary penalties throughout the Department.

USDA GUIDE FOR DISCIPLINARY PENALTIES

TYPE OF MISCONDUCT	PENALTY FOR FIRST OFFENSE	PENALTY FOR SUBSEQUENT OFFENSE
1. FISCAL IRREGULARITIES (Penalty depends on the monetary value, position held, personal benefit, and/or other pertinent factors.)		
a. Submission of (or causing or allowing the submission of) falsely stated time logs, leave forms, travel or purchase vouchers, payroll, loan, or other fiscal document(s).	Letter of Reprimand to Removal, if for administrative convenience or to avoid following required procedures.	Removal.
	14-Day Suspension, if it results in personal benefit to another.	Removal.
	Removal, if it results in personal benefit.	
b. Unauthorized and/or improper use of property, Government or other funds, or any other thing of value coming into an employee's custody as a result of employment.	14-Day Suspension to Removal.	Removal.

USDA GUIDE FOR DISCIPLINARY PENALTIES

TYPE OF MISCONDUCT	PENALTY FOR FIRST OFFENSE	PENALTY FOR SUBSEQUENT OFFENSE
c. Failure to properly account for or make proper distribution of any property, Government or other funds, or any other thing of value coming into an employee's custody as a result of employment.	Letter of Reprimand to Removal.	Removal.
d. Concealment of (or failing to report) missing, lost, or misappropriated funds, or other fiscal irregularities.	Letter of Reprimand to Removal.	14-Day Suspension to Removal.
2. FALSE STATEMENT(S)/INCORRECT OFFICIAL DOCUMENTS (False statements or entries in connection with fiscal matters and documents are covered in 1 above.)		
a. Deliberate falsification of an application for employment (SF-171) or other personal history record by omission or by making a false entry. Note: If an incorrect or inaccurate entry or statement is determined to be unintentional, other (non-disciplinary) action should be taken.	Removal, if it would have adversely affected selection for appointment or promotion.	
	Letter of Reprimand to 14-Day Suspension, if it would not have adversely affected selection for appointment or promotion.	14-Day Suspension to Removal.
b. Misrepresentation, falsification, or concealment of material facts or documents in connection with an official matter, including an investigation.	Letter of Reprimand to Removal.	Removal.
c. Knowingly and willfully making an incorrect entry on an official document or approving an incorrect official document.	Letter of Reprimand to Removal.	14-Day Suspension to Removal.

USDA GUIDE FOR DISCIPLINARY PENALTIES

TYPE OF MISCONDUCT	PENALTY FOR FIRST OFFENSE	PENALTY FOR SUBSEQUENT OFFENSE
3. CONDUCT PREJUDICIAL TO THE BEST INTERESTS OF THE SERVICE		
a. Conduct that causes the employee to be indicted or charged with a criminal offense which is related directly to the duties of the employee's position or the mission of the Agency and for which a sentence of imprisonment may be imposed.	Indefinite Suspension (Until the outcome of the legal action is known and/or until the completion of appropriate administrative action.)	
b. Conduct which causes the employee to be convicted of a criminal charge which is related directly to the duties of the employee's position or the mission of the Agency.	Removal.	
c. Off duty conduct which adversely affects the employee's job performance or trustworthiness, or adversely affects the ability of the Agency to accomplish its mission.	Letter of Reprimand to Removal.	Removal.
d. Infamous or notoriously disgraceful conduct.	Removal.	
e. Concealing, removing, mutilating, altering or destroying Government records.	Letter of Reprimand to Removal.	14-Day Suspension to Removal.
f. Malicious or intentional damage or loss of Government-owned or Government-leased property.	Letter of Reprimand to Removal.	14-Day Suspension to Removal.
g. Using public office for private gain.	14-Day Suspension to Removal.	Removal.
h. Unethical or improper use of official authority or credentials.	Letter of Reprimand to Removal.	Removal.

USDA GUIDE FOR DISCIPLINARY PENALTIES

TYPE OF MISCONDUCT	PENALTY FOR FIRST OFFENSE	PENALTY FOR SUBSEQUENT OFFENSE
i. Unauthorized disclosure or use of (or failure to safeguard) information protected by the Privacy Act or other official, sensitive, or confidential information.	Letter of Reprimand to Removal.	Removal.
j. Having a direct or indirect financial interest that an employee could reasonably expect to be in conflict or appear to be in conflict with his or her official duties and responsibilities. (When a conflict of financial interest occurs that is inadvertent and that could not be reasonably anticipated by the employee, the situation would normally be handled by divestiture or recusation rather than disciplinary action.)	Letter of Reprimand to Removal.	Removal.
k. Engaging in outside employment or other activities without required prior approval.	Letter of Reprimand to 5-Day Suspension.	14-Day Suspension to Removal.
l. Improperly soliciting or accepting, directly or indirectly, a gift from any individual or establishment seeking or having a contractual or business relationship with the Department.	5-Day Suspension to Removal.	Removal.
m. Improperly soliciting a contribution from another employee for a gift to an official superior, making a donation as a gift to an official superior, or accepting a gift from an employee receiving less pay.	Letter of Reprimand to Removal.	Removal.

USDA GUIDE FOR DISCIPLINARY PENALTIES

TYPE OF MISCONDUCT	PENALTY FOR FIRST OFFENSE	PENALTY FOR SUBSEQUENT OFFENSE
n. Borrowing money from a subordinate employee, securing a subordinate's endorsement on a loan, or otherwise having a subordinate assume the financial responsibility of a superior.	Letter of Reprimand to Removal.	Removal.
o. Use of (or authorizing the use of) employees, or Government owned, leased or provided property, facilities, services or credit cards, for inappropriate or non-official purposes.	Letter of Reprimand to Removal.	5-Day Suspension to Removal.
p. Willful use of (or authorizing the use of) any Government-owned or Government-leased passenger vehicles or aircraft for other than official purposes.	30-Day Suspension to Removal. (31 U.S.C. 1349(b) mandates a <u>minimum</u> penalty of a one month suspension for unofficial use of Government passenger carrying vehicles or aircraft.)	Removal.
q. Use of (or authorizing the use of) other Government-owned or Government-leased vehicles such as trucks, aircraft, boats or other motor vehicles for other than official purposes.	30-Day Suspension to Removal.	Removal.
r. Carrying of unauthorized passengers in Government-owned or Government-leased vehicles such as trucks, aircraft, boats or other motor vehicles for other than official purposes.	Letter of Reprimand to 14-Day Suspension.	14-Day Suspension to Removal.
s. Unauthorized use, removal or possession of a thing of value belonging to another employee or private citizen.	Letter of Reprimand to Removal.	Removal.

USDA GUIDE FOR DISCIPLINARY PENALTIES

TYPE OF MISCONDUCT	PENALTY FOR FIRST OFFENSE	PENALTY FOR SUBSEQUENT OFFENSE
t. Fighting, threatening, attempting to inflict or inflicting bodily harm while on Government premises and/or when in a duty status.	5-Day Suspension to Removal.	14-Day Suspension to Removal.
u. Use of abusive, offensive, unprofessional, distracting, or incitatory (goading) language, gestures, or other conduct; quarreling, creating a disturbance or disruption; or horseplay.	Letter of Reprimand to 14-Day Suspension.	5-Day Suspension to Removal.
v. Use of slanderous, malicious, derogatory, discourteous, or otherwise inappropriate language, gestures, or other conduct toward employees, supervisors, or the public.	Letter of Reprimand to Removal.	5-Day Suspension to Removal.
w. Failure to pay just debts in a timely and proper manner.	Letter of Reprimand to 14-Day Suspension.	1-Day Suspension to Removal.
x. Gambling on duty or in work areas.	Letter of Reprimand to Removal.	Removal.
y. Participating in a strike, work stoppage, slowdown, sickout, or similar activity.	Removal.	
4. FAILURE/REFUSAL TO FOLLOW INSTRUCTION		
a. Negligence, including the careless failure to comply with rules, regulations, written procedures, or proper supervisory instructions.	Letter of Reprimand to 14-Day Suspension.	5-Day Suspension to Removal.
b. Deliberate or malicious refusal to comply with rules, regulations, written procedures, or proper supervisory instructions.	Letter of Reprimand to Removal.	14-Day Suspension to Removal.

USDA GUIDE FOR DISCIPLINARY PENALTIES

TYPE OF MISCONDUCT	PENALTY FOR FIRST OFFENSE	PENALTY FOR SUBSEQUENT OFFENSE
c. Refusal to provide information to authorized representatives of the Department or other Government Agencies when called upon, when the inquiry relates to official matters and the information is obtained in the course of employment or as the result of relationships incident to such employment.	Letter of Reprimand to Removal.	Removal.
d. Failure to report for duty as detailed, transferred, or reassigned.	Removal.	
e. Failure to submit required statements of financial interests and outside employment.	Letter of Reprimand to 3-Day Suspension.	5-Day Suspension to Removal.
5. NEGLECT OF DUTY		
Careless/negligent work, loafing, sleeping on duty, wasting time, and conducting personal business while on duty.	Letter of Reprimand to Removal.	5-Day Suspension to Removal.
6. ATTENDANCE-RELATED OFFENSES (Penalty will depend on the circumstances, including length, frequency, and nature of position. To support disciplinary action, tardiness and unauthorized absences from the work place must be charged to AWOL on the employee's Time and Attendance Report.)		
a. Unexcused tardiness, including delay in: (1) reporting at the scheduled starting time, (2) returning from lunch or break periods, and (3) returning from an authorized absence from the work station.	Letter of Reprimand to 1-Day Suspension.	5-Day Suspension to Removal.

USDA GUIDE FOR DISCIPLINARY PENALTIES

TYPE OF MISCONDUCT	PENALTY FOR FIRST OFFENSE	PENALTY FOR SUBSEQUENT OFFENSE
<p>b. Unauthorized absence, including leaving the workstation without permission or before the end of the workday. [Time periods at right refer to the accumulated total amount of AWOL for each offense (i.e., disciplinary action proposed) rather than for each instance or occurrence of unauthorized absence. For example, if an employee is AWOL on three separate occasions and the total amount of AWOL shown on the T&As is more than 8 hours but less than 5 workdays, the proposed penalty for a first offense would normally be a suspension of from 1 to 14 days.]</p>	<p>Letter of Reprimand to 5-Day Suspension.</p>	<p>5-Day Suspension to Removal.</p>
<p>Absences of More Than 8 Hours But Less Than 5 Workdays.</p>	<p>1-Day Suspension to 14-Day Suspension.</p>	<p>14-Day Suspension to Removal.</p>
<p>Absences of 5 Workdays or More.</p>	<p>14-Day Suspension to Removal.</p>	<p>Removal.</p>
<p>7. INTOXICANTS - Alcohol and Spirits (Agencies must assure the requirements of alcohol abuse programs are met before taking action.)</p>		
<p>a. Unauthorized use of intoxicants while on duty, on Government property or Government-controlled property or premises where official duties are performed.</p>	<p>Letter of Reprimand to 14-Day Suspension.</p>	<p>30-Day Suspension to Removal.</p>
<p>b. Reporting to or being on duty while under the influence of intoxicants.</p>	<p>Letter of Reprimand to 30-Day Suspension.</p>	<p>30-Day Suspension to Removal.</p>

USDA GUIDE FOR DISCIPLINARY PENALTIES

TYPE OF MISCONDUCT	PENALTY FOR FIRST OFFENSE	PENALTY FOR SUBSEQUENT OFFENSE
c. Operating a Government-owned or Government-leased vehicle (or privately-owned vehicle on official business) while under the influence of intoxicants.	Removal [If a penalty of less than removal is determined to be appropriate, agencies should (at a minimum) suspend the employee's official driving privileges for a period of one year.]	
8. ILLEGAL DRUGS/DRUG PARAPHERNALIA/CONTROLLED SUBSTANCES [See DPM Supplement 792-3, Subchapter 8. USDA will not initiate disciplinary action when an employee - (1) Voluntarily admits drug use to appropriate supervisors or management officials before being identified through other means. (2) Obtains and completes counseling and rehabilitation through Employee Counseling Services Program (ECSP). (3) Thereafter refrains from illegal drug use. In all other circumstances, agencies must make appropriate referrals to the ECSP and initiate appropriate disciplinary action.]		
a. Possession of an illegal drug, drug paraphernalia, or unauthorized controlled substance while on duty, on Government property or Government-controlled property, or on premises where official duties are performed.	5-Day Suspension to Removal.	Removal.
b. Use of an illegal drug or unauthorized controlled substance while on duty, on Government property or Government-controlled property, or on premises where official duties are performed.	14-Day Suspension to Removal.	Removal.
c. Reporting to or being on duty while under the influence of an illegal drug or unauthorized controlled substance.	14-Day Suspension to Removal.	Removal.
d. Sale or distribution of an illegal drug or controlled substance.	Removal.	

USDA GUIDE FOR DISCIPLINARY PENALTIES

TYPE OF MISCONDUCT	PENALTY FOR FIRST OFFENSE	PENALTY FOR SUBSEQUENT OFFENSE
e. Operating a Government-owned or Government-leased vehicle (or privately-owned vehicle on official business) while under the influence of an illegal drug.	Removal.	
f. Interfering with, or refusing or failing to submit to a properly ordered or authorized drug test, including substituting, adulterating, or otherwise tampering with a urine sample.	Removal.	
g. Use of an illegal drug or unauthorized controlled substance during non-duty hours and on non-work premises.	Letter of Reprimand to Removal.	Removal.
9. PROHIBITED POLITICAL ACTIVITY		
Engaging in the types of political activity prohibited by law or by Office of Personnel Management regulations.	Letter of Reprimand to Removal.	14-Day Suspension to Removal.
10. SAFETY AND HEALTH VIOLATIONS (Penalty should take into consideration whether danger to persons or property is involved.)		
a. Failure to report an accident and/or injury as required.	Letter of Reprimand to 14-Day Suspension.	14-Day Suspension to Removal.
b. Failure or refusal to wear/use required protective equipment (e.g., seat belts, earplugs, eye protection, etc.).	Letter of Reprimand to 14-Day Suspension.	14-Day Suspension to Removal.
c. Operation of a Government-owned or Government-leased vehicle (or privately-owned vehicle while on official business) without an appropriate State driver's license.	5-Day Suspension to Removal.	Removal.

USDA GUIDE FOR DISCIPLINARY PENALTIES

TYPE OF MISCONDUCT	PENALTY FOR FIRST OFFENSE	PENALTY FOR SUBSEQUENT OFFENSE
d. Failure or refusal to observe and/or enforce Safety and Health regulations or to perform duties in a safe manner.	Letter of Reprimand to Removal.	5-Day Suspension to Removal.
11. DISCRIMINATORY PRACTICES (Penalty should take into consideration whether violation is willful/deliberate, or careless/negligent.)		
a. Acting or failing to act on an official matter (including a personnel action) in a manner which improperly takes into consideration an individual's political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition. [This includes discrimination for or against any employee or applicant for employment prohibited by 42 U.S.C. 2000e-16; 29 U.S.C. 631 or 633a; 29 U.S.C. 206(d); 29 U.S.C. 791; or any other law, rule, or regulation.]	5-Day Suspension to Removal.	Removal.
b. Any reprisal or retaliation action against an individual involved in the EEO complaint process.	5-Day Suspension to Removal.	Removal.
c. Use of remarks which relate to and insult or denigrate an individual's race, color, religion, national origin, sex, marital status, age, or handicapping condition.	Letter of Reprimand to 30-Day Suspension.	14-Day Suspension to Removal.

USDA GUIDE FOR DISCIPLINARY PENALTIES

TYPE OF MISCONDUCT	PENALTY FOR FIRST OFFENSE	PENALTY FOR SUBSEQUENT OFFENSE
d. Negligence or insensitivity to an individual's race, color, religion, national origin, sex, marital status, age, or handicapping condition which is determined to be discriminatory and where there is no other finding of overt discrimination.	Letter of Reprimand to 5-Day Suspension.	5-Day Suspension to Removal.
e. Failure to take appropriate action regarding allegations or findings of discriminatory practices.	5-Day Suspension to Removal.	Removal.
12. SEXUAL MISCONDUCT		
a. Actual or attempted sexual assault (e.g., rape)	Removal	
b. Inappropriate and/or unwelcome touching or other physical contact.	14-Day Suspension to Removal.	30-Day Suspension to Removal.
c. Pressure for (or official action based on) sexual favors, including taking action favorable to an employee because of the granting of a sexual favor or denying an action favorable to an employee because of the withholding of a sexual favor.	30-Day Suspension to Removal.	Removal.
d. Inappropriate and/or unwelcome teasing, jokes, actions, gestures, display of visual material of a sexual nature or remarks of a sexual nature.	Letter of Reprimand to 30-Day Suspension.	14-Day Suspension to Removal.
e. Purposefully accessing an inappropriate (pornographic) website. (Added 05-18-11, PN 449.)	Letter of Reprimand to 30-Day Suspension.	14-Day Suspension to Removal.
13. PROHIBITED PERSONNEL PRACTICES (Not elsewhere covered.)		
Abuse of authority and commission of a prohibited personnel practice covered by 5 U.S.C. 2302.	Letter of Reprimand to Removal.	Removal.

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National Office Delegations Chart
 DELEGATIONS OF AUTHORITY FOR DISCIPLINARY AND ADVERSE ACTIONS, PERFORMANCE-BASED ACTIONS, AND
 PROBATIONARY AND TRIAL PERIOD TERMINATIONS

Employee Relations Activity	Deputy Administrator for Operations and Management (DAOM)	Administrators, Assistant Administrators, Chief Financial Officer, Deputy Chief Financial Officer, Chief Information Officer, Deputy Chief Information Officer, and Director of Centralized Servicing Center	Section Heads, Branch Chiefs, and above (St. Louis personnel only)	First and Second Line Supervisors (D.C. personnel only)	Remarks
Counseling (written or oral)	✓	✓	✓	✓	Supervisors at any level are authorized to provide performance and disciplinary counseling. Field Services Branch (FSB) and Headquarters Personnel Services Branch (HPSB) staff may assist in the preparation of a written counseling.
Reprimand	✓	✓	✓	✓	Supervisors at any level are authorized to issue reprimands. FSB and HPSB staff <u>must</u> assist in the preparation of written reprimands.

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Suspension (Preparation and issuance of proposals for 14 days or less.)	✓	✓	✓	✓	Supervisors at any level may be redelegated authority to propose suspensions of 14 days or less. FSB and HPSB staff <u>must</u> assist in the preparation of proposals.
Suspension (Preparation and issuance of decisions for 14 days or less.)	✓	✓	✓*	✓**	*Only Branch Chiefs and above may render decisions in St. Louis offices. **Normally, 2 nd line supervisors and above render decisions for National Office staff. The deciding official must be a GS-13 or above. FSB and HPSB staff <u>must</u> assist in the preparation of decision letters.

National Office Delegations Chart
 DELEGATIONS OF AUTHORITY FOR DISCIPLINARY AND ADVERSE ACTIONS, PERFORMANCE-BASED ACTIONS, AND
 PROBATIONARY AND TRIAL PERIOD TERMINATIONS

Employee Relations Activity	Deputy Administrator For Operations and Management (DAOM)	Administrators, Assistant Administrators, Chief Financial Officer, Deputy Chief Financial Officer, Chief Information Officer, Deputy Chief Information Officer, and Director of Centralized Servicing Center	Section Heads, Branch Chiefs, and above (St. Louis personnel only)	First and Second Line Supervisors (D.C. personnel only)	Remarks
Suspension (Preparation and issuance of proposals for more than 14 days.)	✓	✓	✓	✓	Supervisors at any level may be redelegated authority to propose suspensions of more than 14 days. Normally the immediate supervisor proposes the suspension for headquarters personnel. FSB and HPSB staff <u>must</u> assist in the preparation of decision letters.
Suspension (Preparation and issuance of decisions for more than 14 days.)	✓				DAOM serves as the deciding official for all suspensions of more than 14 days. Prior to issuance of a decision for suspensions exceeding 14 days, FSB and HPSB will prepare an analysis and recommendation for the deciding official's consideration.

National Office Delegations Chart
 DELEGATIONS OF AUTHORITY FOR DISCIPLINARY AND ADVERSE ACTIONS, PERFORMANCE-BASED ACTIONS, AND PROBATIONARY
 AND TRIAL PERIOD TERMINATIONS

Employee Relations Activity	Deputy Administrator For Operations and Management (DAOM)	Administrators, Assistant Administrators, Chief Financial Officer, Deputy Chief Financial Officer, Chief Information Officer, Deputy Chief Information Officer, and Director of Centralized Servicing Center	Section Heads, Branch Chiefs, and above (St. Louis personnel only)	First and Second Line Supervisors (D.C. personnel only)	Remarks
Reduction in grade (Preparation and issuance of proposal.)	✓	✓		✓*	*Normally the immediate supervisor proposes a reduction in grade at the NO level. The proposing official must be a GS-13 or above. FSB and HPSB staff <u>must</u> assist in the preparation of a proposal to reduce an employee in grade.
Reduction in grade (Preparation and issuance of decisions.)	✓				Only the DAOM serves as the deciding official for reductions in grade. Prior to issuance of a decision to reduce an employee in grade, FSB and HPSB staff will prepare an analysis and recommendation for the deciding official's consideration.

National Office Delegations Chart
 DELEGATIONS OF AUTHORITY FOR DISCIPLINARY AND ADVERSE ACTIONS, PERFORMANCE-BASED ACTIONS, AND
 PROBATIONARY AND TRIAL PERIOD TERMINATIONS

Employee Relations Activity	Deputy Administrator for Operations and Management (DAOM)	Administrators, Assistant Administrators, Chief Financial Officer, Deputy Chief Financial Officer, Chief Information Officer, Deputy Chief Information Officer, and Director of Centralized Servicing Center	Section Heads, Branch Chiefs, and above (St. Louis personnel only)	First and Second Line Supervisors (D.C. personnel only)	Remarks
Removal (Permanent Employee) Preparation and issuance of proposals.	✓	✓		✓*	*Normally the immediate supervisor proposes removal at the NO level. However, the proposing official must be a GS-13 or above. FSB and HPSB staff <u>must</u> assist in the preparation of a proposal to remove an employee.
Removal (Permanent Employee) Preparation and issuance of decision.	✓				Only the DAOM serves as the deciding official for removals. Prior to issuance of a decision for removal, FSB and HPSB will prepare an analysis and recommendation for the deciding official's consideration.

National Office Delegations Chart
 DELEGATIONS OF AUTHORITY FOR DISCIPLINARY AND ADVERSE ACTIONS, PERFORMANCE-BASED ACTIONS, AND
 PROBATIONARY AND TRIAL PERIOD TERMINATIONS

Employee Relations Activity	Deputy Administrator for Operations and Management (DAOM)	Administrators, Assistant Administrators, Chief Financial Officer, Deputy Chief Financial Officer, Chief Information Officer, Deputy Chief Information Officer, and Director of Centralized Servicing Center	Section Heads, Branch Chiefs, and above (St. Louis personnel only)	First and Second Line Supervisors (D.C. personnel only)	Remarks
Termination (Probationer) Preparation and issuance of written proposals* for Employees serving probationary or trial periods.	✓	✓	✓	✓	<p><i>*Proposals are only issued when terminations are based in part or whole on conditions arising <u>before</u> the employee's appointment.</i></p> <p>Branch Chiefs and above prepare the proposal of termination in St. Louis.</p> <p>Normally the immediate supervisor prepares the proposal of termination in D.C.</p> <p>Supervisors at all levels <u>must</u> seek review by FSB and HPSB prior to issuance of proposals to employees.</p>

National Office Delegations Chart
 DELEGATIONS OF AUTHORITY FOR DISCIPLINARY AND ADVERSE ACTIONS, PERFORMANCE-BASED ACTIONS, AND PROBATIONARY
 AND TRIAL PERIOD TERMINATIONS

Employee Relations Activity	Deputy Administrator for Operations and Management (DAOM)	Administrators, Assistant Administrators, Chief Financial Officer, Deputy Chief Financial Officer, Chief Information Officer, Deputy Chief Information Officer, and Director of Centralized Servicing Center	Section Heads, Branch Chiefs, and above (St. Louis personnel only)	First and Second Line Supervisors (D.C. personnel only)	Remarks
Termination continued (Probationer) Preparation and issuance of decisions* for employees serving probationary or trial periods.	✓			*	<p><i>Decision letters are only issued when proposals are given to employees.</i></p> <p>Only the DAOM serves as the Deciding Official for terminations when proposals are issued.</p> <p>Prior to issuance of a decision for all proposed terminations, HPSB and FSB prepare and submit an analysis and recommendation through the AAHR for the deciding official's consideration.</p>

National Office Delegations Chart
 DELEGATIONS OF AUTHORITY FOR DISCIPLINARY AND ADVERSE ACTIONS, PERFORMANCE-BASED ACTIONS, AND PROBATIONARY
 AND TRIAL PERIOD TERMINATIONS

Employee Relations Activity	Deputy Administrator for Operations and Management (DAOM)	Administrators, Assistant Administrators, Chief Financial Officer, Deputy Chief Financial Officer, Chief Information Officer, Deputy Chief Information Officer, and Director of Centralized Servicing Center	Section Heads, Branch Chiefs, and above (St. Louis personnel only)	First and Second Line Supervisors (D.C. personnel only)	Remarks
Termination (Probationer) Preparation and issuance of written notices* for employees serving probationary or trial periods.	✓	✓	✓	✓ *	<i>Notices, rather than proposals, are issued when terminations are based upon deficient performance or misconduct arising <u>during</u> an employee's current appointment</i> Decision letters are not issued to employees when notices are given. Supervisors at all levels <u>must</u> seek review by HPSB and FSB prior to issuance of proposals to employee.

The Under Secretary for Rural Development has delegated authority for administering disciplinary and adverse actions.

The Under Secretary has redelegated much of this authority to the positions annotated in this chart.

State Office Delegations Chart

DELEGATIONS OF AUTHORITY FOR DISCIPLINARY AND ADVERSE ACTIONS, PERFORMANCE-BASED ACTIONS, AND PROBATIONARY AND TRIAL PERIOD TERMINATIONS

EMPLOYEE RELATIONS ACTIVITY	DEPUTY ADMINISTRATOR for OPERATIONS and MANAGEMENT (DAOM)	ASSISTANT ADMINISTRATOR for HUMAN RESOURCES (AAHR)	STATE DIRECTOR (SD)	SECOND LINE SUPERVISOR	FIRST LINE SUPERVISOR	REMARKS
Counseling (written or oral)			✓	✓	✓	Supervisors at any level are authorized to provide performance and disciplinary counseling. FSB staff may assist in the preparation of counselings.
Reprimand			✓			SDs may redelegate this authority to supervisors at any level. FSB staff <u>must</u> assist in the preparation of a reprimand.
Suspension (Preparation and issuance of proposals for 14 days or less.)			✓			SDs may redelegate this authority to supervisors at any level. Supervisors at all levels <u>must</u> seek review by FSB prior to issuance to employee.

State Office Delegations Chart

DELEGATIONS OF AUTHORITY FOR DISCIPLINARY AND ADVERSE ACTIONS, PERFORMANCE-BASED ACTIONS, AND PROBATIONARY AND TRIAL PERIOD TERMINATIONS

EMPLOYEE RELATIONS ACTIVITY	DEPUTY ADMINISTRATOR for OPERATIONS and MANAGEMENT (DAOM)	ASSISTANT ADMINISTRATOR for HUMAN RESOURCES (AAHR)	STATE DIRECTOR (SD)	SECOND LINE SUPERVISOR	FIRST LINE SUPERVISOR	REMARKS
Suspension (Preparation and issuance of decisions for 14 days or less.)			✓			SDs may redelegate this authority to supervisors at any level. Supervisors at all levels <u>must</u> seek review by FSB prior to issuance to employee.
Suspension (Preparation and issuance of proposals for more than 14 days.)			✓			SDs may redelegate this authority to supervisors at any level. Supervisors at all levels <u>must</u> seek review by FSB prior to issuance to employee.
Suspension (Preparation and issuance of decisions for more than 14 days.)	✓					Prior to issuance of a decision for all proposed suspensions exceeding 14 days, FSB prepares and submits an analysis and recommendation through the AAHR for the deciding official's consideration.

State Office Delegations Chart
DELEGATIONS OF AUTHORITY FOR DISCIPLINARY AND ADVERSE ACTIONS, PERFORMANCE-BASED ACTIONS, AND PROBATIONARY
AND TRIAL PERIOD TERMINATIONS

EMPLOYEE RELATIONS ACTIVITY	DEPUTY ADMINISTRATOR for OPERATIONS and MANAGEMENT (DAOM)	ASSISTANT ADMINISTRATOR for HUMAN RESOURCES (AAHR)	STATE DIRECTOR (SD)	SECOND LINE SUPERVISOR	FIRST LINE SUPERVISOR	REMARKS
Reduction in grade (Preparation and issuance of proposals.)			✓			SDs may redelegate this authority to supervisors at any level. Supervisors at all levels <u>must</u> seek review by FSB prior to issuance to employee.
Reduction in grade (Preparation and issuance of decisions.)	✓					Prior to issuance of a decision for all proposed reductions in grade, FSB prepares and submits an analysis and recommendation through the AAHR for the deciding official's consideration.
Removal (Permanent Employee) Preparation and issuance of proposals.			✓			SDs may redelegate this authority to supervisors at any level. Supervisors at all levels <u>must</u> seek review by FSB prior to issuance to employee.

State Office Delegations Chart

DELEGATIONS OF AUTHORITY FOR DISCIPLINARY AND ADVERSE ACTIONS, PERFORMANCE-BASED ACTIONS, AND PROBATIONARY AND TRIAL PERIOD TERMINATIONS

EMPLOYEE RELATIONS ACTIVITY	DEPUTY ADMINISTRATOR for OPERATIONS and MANAGEMENT (DAOM)	ASSISTANT ADMINISTRATOR for HUMAN RESOURCES (AAHR)	STATE DIRECTOR (SD)	SECOND LINE SUPERVISOR	FIRST LINE SUPERVISOR	REMARKS
Removal (Permanent Employee) Preparation and issuance of decision.	✓					Prior to issuance of a decision for all proposed removals, FSB prepares and submits an analysis and recommendation through the AAHR for the deciding official's consideration.
Termination (Probationer) Preparation and issuance of written proposals* for employees serving probationary or trial periods.			✓			<p><i>*Proposals are only issued when terminations are based in part or whole on conditions arising before the employee's appointment.</i></p> <p>SD's may redelegate this authority to supervisors at any level.</p> <p>Supervisors at all levels <u>must</u> seek review by FSB prior to issuance of proposals to employees.</p>

State Office Delegations Chart

DELEGATIONS OF AUTHORITY FOR DISCIPLINARY AND ADVERSE ACTIONS, PERFORMANCE-BASED ACTIONS, AND PROBATIONARY

EMPLOYEE RELATIONS ACTIVITY	DEPUTY ADMINISTRATOR for OPERATIONS and MANAGEMENT (DAOM)	ASSISTANT ADMINISTRATOR for HUMAN RESOURCES (AAHR)	STATE DIRECTOR (SD)	SECOND LINE SUPERVISOR	FIRST LINE SUPERVISOR	REMARKS
<p>Termination Continued (Probationer)</p> <p>Preparation and issuance of decisions* for employees serving probationary or trial periods.</p>	<p>✓</p>					<p><i>*Decision letters are only issued when a proposal is given to the employee.</i></p> <p>Only the DAOM serves as the Deciding Official for terminations when proposals are issued.</p> <p>Prior to issuance of a decision for all proposed terminations, FSB prepares and submits an analysis and recommendation through the AAHR for the deciding official's consideration.</p>

State Office Delegations Chart
DELEGATIONS OF AUTHORITY FOR DISCIPLINARY AND ADVERSE ACTIONS, PERFORMANCE-BASED ACTIONS, AND PROBATIONARY AND TRIAL PERIOD TERMINATIONS

EMPLOYEE RELATIONS ACTIVITY	DEPUTY ADMINISTRATOR for OPERATIONS and MANAGEMENT (DAOM)	ASSISTANT ADMINISTRATOR for HUMAN RESOURCES (AAHR)	STATE DIRECTOR (SD)	SECOND LINE SUPERVISOR	FIRST LINE SUPERVISOR	REMARKS
Termination (Probationer) Preparation and issuance of written notices* for employees serving probationary or trial periods.			✓			<p><i>*Notices, rather than proposals, are issued when terminations are based upon deficient performance or misconduct arising during an employee's current appointment.</i></p> <p>Decision letters are not issued to employees when notices are given.</p> <p>Supervisors at all levels <u>must</u> seek review by FSB prior to issuance of proposals to employees.</p>

The Under Secretary for Rural Development has been delegated authority for discipline and adverse actions. The Under Secretary has redelegated much of this authority to the positions identified in this chart.