

ARTICLE 12315.1

TERMINATION OF PROBATIONARY EMPLOYEES

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SUBARTICLE 1. GENERAL PROVISIONS

1—1. Purpose. To provide guidance and procedures concerning the separation of employees serving a probationary period.

1—2. Probationary Period. The probationary period of one year is the final step in the examining process and provides an indispensable test of actual job performance. It is intended to give the activity an opportunity to assess, on the job, the employee's overall fitness and qualifications for continued employment and to permit the removal, without formal procedures, of an employee whose performance or conduct does not meet acceptable standards.

1—3. Evaluation of Probationer by Supervisor. During the probationary period, the supervisor is expected to closely observe the probationer's conduct, general character traits, and work performance; provide the probationer with proper guidance; and determine whether the probationer is suited for continued Federal employment. When it becomes apparent, after a full and fair trial, that the probationer's conduct, general character traits, or capacity are not fit for satisfactory service, the supervisor must initiate action to separate the employee. This kind of action should be taken as soon as these facts become apparent and should, in any event, be taken in sufficient time for the employee to be notified prior to the expiration of the probationary period that he or she will not be retained.

1—4. Delegation of Authority. The official to whom authority is delegated to separate a probationary employee will contact the Human Resources Office (HRO) for advice and assistance.

SUBARTICLE 2. PROCEDURES

2—1. Separation of Probationers

a. Termination for post-appointment reasons. When the termination action is based entirely on performance or conduct after entrance on duty, the probationer is entitled to written notice containing reasons for the action, the effective date, and information concerning the limited right to appeal described in Section 2—3 of this Article. The notice should contain sufficient information to enable the probationer to know why the action is being taken and must be dated on or before the effective date of the action. A probationer has no right to reply to the notice of action.

b. Termination for pre-appointment reasons. When the termination action is initiated for reasons based in whole or in part on something that occurred before entrance on duty (such as advance notice which: the intentional falsification of application forms or other pre-appointment documents), the probationer is entitled to advance notice which:

(1) States the reasons in sufficient detail for the employee to be able to understand and reply to them;

(2) Informs the employee that he or she may reply in writing with supporting affidavits; identifies the individual or office to receive the reply; and

(3) Sets a reasonable time for preparation and return of the reply. (This gives the probationer essentially the same consideration he or she would have received from OPM had the derogatory information come to light before appointment.)

A probationer is not entitled to a hearing. If after giving consideration to the employee's response, the agency decides to proceed with the termination, it must notify the employee at or before the time the action will be made effective. The notice must state the reasons for the action and clearly identify which of the charges in the advance notice are being relied upon, the effective date, and the right to appeal to the Merit Systems Protection Board (MSPB) under the limited circumstances in Section 2—3 of this Article. (The probationer may appeal only the procedures, not the merits of the action.) The procedures discussed in this paragraph do not apply when OPM directs the termination.

2—2. Timing of Separation. If a separation is not effected before completion of the probationary period, the employee will have, in fact, completed his/her probation and cannot be terminated under the procedures set forth in this Article. Probationary periods are completed at the end of a tour of duty while separation actions are effective at midnight. Therefore, if a probationer is to be separated, the effective date must be no later than the day before the probationary period is completed. (R)

2—3. Appeal and Grievance Rights

a. Appeal rights. An employee terminated during probation may appeal to the MSPB only when:

(1) The termination is based in part or in full on pre-appointment reasons and such an appeal is on the grounds that the agency failed to follow the procedures set forth in 5 CFR 315.805; or

(2) The employee alleges the agency's action was based on partisan political reasons (political affiliation) or marital status; or

(3) The employee alleges the action was based on race, color, religion, sex, national origin, disabling condition (see 29 CFR 1613.702(a)), and/or age (provided that at the time of the alleged discriminatory action, the employee was at least 40 years of age) if such discrimination is raised in addition to paragraph 2-3.a.(1) or (2). (Appeals of discrimination based solely on race, color, religion, sex, national origin, disabling condition or age are not appealable to MSPB themselves, but are subject to Equal Employment Opportunity Commission regulations and should be processed under an agency's discrimination complaint system.)

(4) Time limits for filing appeals. An appeal to MSPB must be filed no later than 30 calendar days after the termination has been effected. An appeal not submitted within this

time will be dismissed as untimely filed unless a good reason for the delay is shown.

b. Grievances. A probationary employee is not entitled to grieve his or her termination under Article 12771, Administrative Grievance Procedure. A probationary employee is not entitled to grieve his or her termination through a negotiated grievance procedure.

2—4. Technical Advice and Assistance. The servicing HRO will provide technical advice and assistance to management officials preparing notices to employees to ensure compliance with regulations.

2—5. Relationship to Negotiated Agreement. For activities with unions with exclusive recognition, this Article applies to bargaining unit employees, except in the case of conflict, then the negotiated agreement will take precedence.