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TITLE 5--ADMINISTRATIVE PERSONNEL

CHAPTER I--OFFICE OF PERSONNEL MANAGEMENT

PART 536\_GRADE AND PAY RETENTION--Table of Contents

Subpart D\_Appeals and Miscellaneous Provisions

Source: 45 FR 85656, Dec. 30, 1980. Redesignated at 70 FR 31310, May 31, 2005.

Sec. 536.401 Placement and classification plans.

(a) Agencies which employ individuals subject to this part are required to establish in writing placement and classification plans.

(b) The placement and classification plans must commit the agency to:

- (1) Identify and correct classification errors; and
- (2) Correct position management problems; and
- (3) Carry out specific planned efforts to place employees subject to this part; and
- (4) Pursue placement efforts that do not adversely affect affirmative action goals.

[45 FR 85656, Dec. 30, 1980. Redesignated at 70 FR 31310, May 31, 2005.]

Sec. 536.402 Appeal of termination of benefits because of reasonable offer.

(a) Except as provided for in paragraph (e) of this section, an employee whose grade or pay retention benefits are terminated on the grounds the employee declined a reasonable offer of a position the grade or pay of which is equal to or greater than his or her retained grade or pay may appeal the termination to the Office of Personnel Management.

(b) An employee who appeals under this section shall file the appeal in writing with the Office of Personnel

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Management not later than 20 calendar days after being notified that his or her grade or pay retention benefits have been terminated, and shall state in the appeal the reasons why the employee believes the offer of a position was not a reasonable offer.

(c) The Office of Personnel Management may conduct any investigation or hearing it determines necessary to ascertain the facts of the case.

(d) If a decision by the Office of Personnel Management on an appeal under this section requires corrective action by an agency, including the retroactive or prospective restoration of grade or pay retention

benefits, the agency shall take that corrective action.

(e) Termination of benefits based on a declination of a reasonable offer by an employee in an exclusively recognized bargaining unit may be reviewed under the negotiated grievance and arbitration procedures in accordance with chapter 71 of title 5, United States Code, and the terms of any applicable collective bargaining agreement. An employee in an exclusively recognized bargaining unit may not appeal a termination of benefits to the Office of Personnel Management if the grievance procedure of the agreement by which he or she is covered provides for this review.

(f) Decisions issued by the Office of Personnel Management shall be considered final decisions. OPM may, at its discretion, reconsider an original appellate decision when new and material information is presented, in writing, by the employee or the agency, which establishes a reasonable doubt as to the appropriateness of the original decision. The request must show that the information was not readily available when the decision was issued. A request for reconsideration of an original appeal decision must be submitted to OPM within 30 calendar days of the date of the original decision.

[45 FR 85656, Dec. 30, 1980, as amended at 50 FR 428, Jan. 4, 1985; 50 FR 45389, Oct. 31, 1985. Redesignated at 70 FR 31310, May 31, 2005]

#### Sec. 536.403 Documentation.

The application of the provisions of this part shall be documented in writing as a permanent part of the employee's Official Personnel Folder. As a minimum this documentation will include a copy of the letter described in Sec. 536.404.

[45 FR 85656, Dec. 30, 1980. Redesignated and amended at 70 FR 31310, May 31, 2005.]

#### Sec. 536.404 Issuance of employee letters.

When an employee is entitled to grade and/or pay retention, the employing agency shall give to the employee, with a copy of the Notification of Personnel Action (SF-50) documenting entitlement to grade and/or pay retention, a letter describing the circumstances warranting grade and/or pay retention, and the nature of that entitlement.

[45 FR 85656, Dec. 30, 1980. Redesignated at 70 FR 31310, May 31, 2005.]

#### Sec. 536.405 Availability of information.

(a) The Office, upon a request which identifies the individual from whose file the information is sought, shall disclose the following information from an appeal file to a member of the public, except when the disclosure would constitute a clearly unwarranted invasion of personal privacy:

(1) Confirmation of the name of the individual from whose file the information is sought and the names of the other parties concerned;

(2) The status of the appeal;

(3) The results of the appeal (i.e., proper title, pay plan, series, and grade);

(4) The classification requested (i.e., title, pay plan, series, and grade); and

(5) With the consent of the parties concerned, other reasonably identified information from the file.

(b) The Office will disclose to the parties concerned, the information contained in an appeal file in proceedings under this part, except when the disclosure would violate the proscription against the disclosure of medical information in Sec. 297.205 of this chapter. For the purposes of this section, ``the parties concerned'' means the Government employee or former Government employee involved in the proceedings, his or her representative designated in writing, and the representative of the

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agency or the Office involved in the proceeding.

[50 FR 3313, Jan. 24, 1985, as amended at 54 FR 18879, May 3, 1989. Redesignated and amended at 70 FR 31310, May 31, 2005]