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States and shall not within a reasonable time after demand made upon him or her by the Secretary of State or by such citizen, his or her executor, administrator, or legal representative, account for and pay over all moneys, property, and effects, less his or her lawful fees, due to such citizen, shall be deemed guilty of embezzlement, and shall be punishable by imprisonment for not more than five years, and by a fine of not more than $2,000 (22 U.S.C. 1198). Penalties of imprisonment and fine are also prescribed for embezzlement in connection with the acceptance, without execution of a prescribed form of bond, of appointment from any foreign state as administrator, guardian, or to any other office of trust for the settlement or conservation of estates of deceased persons or of their heirs or of persons under legal disabilities (22 U.S.C. 1178 and 1179). Acceptance of such appointments is not ordinarily permitted under existing regulations. See § 92.81 of this chapter.

(22 U.S.C. 2658 and 3926)

[22 FR 10789, Dec. 27, 1957, as amended at 49 FR 16989, Apr. 23, 1984]

§ 13.3 Liability for neglect of duty or for malfeasance generally; action on bond; penalty.

Whenever any consular officer willfully neglects or omits to perform seasonably any duty imposed upon him or her by law, or by any order or instruction made or given in pursuance of law, or is guilty of any willful malfeasance or abuse of power, or of any corrupt conduct in his or her office, he or she shall be liable to all persons injured by any such neglect, or omission, malfeasance, abuse, or corrupt conduct, for all damages, occasioned thereby; and for all such damages, he or she and his or her sureties upon his or her official bond shall be responsible thereon to the full amount of the penalty thereof to be sued in the name of the United States for the use of the person injured. Such suit, however, shall in no case prejudice, but shall be held in entire subordination to the interests, claims, and demands of the United States, as against any officer, under such bond, for every willful act of malfeasance or corrupt conduct in his or her office. If any consul neglects or omits to perform seasonably the duties imposed upon him or her by the laws regulating the shipment and discharge of seamen, or is guilty of any malversation or abuse of power, he or she shall be liable to any injured person for all damage occasioned thereby; and for all malversation and corrupt conduct in office, he or she shall be punishable by imprisonment for not more than five years and not less than one, and by a fine of not more than $10,000 and not less than $1,000 (22 U.S.C. 1199).

(22 U.S.C. 2658 and 3926)

[22 FR 10789, Dec. 27, 1957, as amended at 49 FR 16989, Apr. 23, 1984]

§ 13.4 False certificate as to ownership of property.

If any consul of vice consul falsely and knowingly certifies that property belonging to foreigners is property belonging to citizens of the United States, he or she shall be punishable by imprisonment for not more than three years, and by a fine of not more than $10,000 (22 U.S.C. 1200).

(22 U.S.C. 2658 and 3926)

[22 FR 10789, Dec. 27, 1957, as amended by Dept. Reg. 108.838, 49 FR 16989, Apr. 23, 1984]

PART 16—FOREIGN SERVICE GRIEVANCE SYSTEM

Sec.

16.1 Definitions.
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AUTHORITY: Sec. 4 of the Act of May 26, 1949, as amended (63 Stat. 111; 22 U.S.C. 2658); Pub. L. 94–141 (89 Stat. 765); 22 U.S.C. 1037; sec. 10 of E.O. 11636 (36 FR 24901).

SOURCE: 41 FR 13912, Apr. 1, 1976, unless otherwise noted.

§ 16.1 Definitions.

(a) *Act* means the Foreign Service Act of 1946, as amended.

(b) *Grievant* means any officer or employee of the Service who is a citizen of the United States; or for purposes of paragraphs (c) (7) and (8) of this section, a former officer or employee of the Service; or in the case of death of the officer or employee, a surviving spouse or dependent family member of the officer or employee.

(c) *Grievance* means any act or condition subject to the control of the Foreign Affairs agencies (the Department of State, the Agency for International Development, or the U.S. Information Agency) which is alleged to deprive the grievant of a right or benefit authorized by law or regulation or is otherwise a source of concern or dissatisfaction to the grievant, including, but not limited to the following:

(1) Complaints against separation of an officer or employee allegedly contrary to law or regulation or predicated upon alleged inaccuracy (including inaccuracy resulting from omission or any relevant and material document), error, or falsely prejudicial character of any part of the grievant's official personnel record;

(2) Other alleged violation, misinterpretation, or misapplication of applicable law, regulation, or published policy affecting the terms and conditions of the grievant's employment or career status;

(3) Allegedly wrongful disciplinary action against an employee constituting a reprimand or suspension from official duties;

(4) Dissatisfaction with any matter subject to the control of the agency with respect to the grievant's physical working environment;

(5) Alleged inaccuracy, error, or falsely prejudicial material in the grievant's official personnel file;

(6) Action alleged to be in the nature of reprisal or other interference with freedom of action in connection with an employee's participation under these grievance procedures;

(7) When the grievant is a former officer who was involuntarily retired pursuant to sections 633 and 634 of the Act within 6 years prior to December 1, 1975, ''grievance'' shall mean a complaint that such involuntary retirement violated applicable law or regulation effective at the time of the retirement or that the involuntary retirement was predicated directly upon material contained in the grievant's official personnel file alleged to be erroneous or falsely prejudicial in character; and

(8) When the grievant is a former officer or employee or a surviving spouse or dependent family member of a former officer or employee, ''grievance'' shall mean a complaint that an allowance or other financial benefit has been denied arbitrarily, capriciously or contrary to applicable law or regulation.

(d) Grievance does not include the following:

(1) Complaints against individual assignment or transfers of Foreign Service officers or employees, which are ordered in accordance with law and regulation (see also paragraph (c)(2) of this section);

(2) Judgments of Selection Boards rendered pursuant to section 623 of the Act, or of equivalent bodies, in ranking Foreign Service officers and employees for promotion on the basis of merit, or judgments in examinations prescribed by the Board of Examiners pursuant to section 516 or 517 of the Act (see also paragraph (c)(2) of this section);

(3) Termination of time-limited appointments pursuant to 22 U.S.C. 929 and 1008, and the pertinent regulations prescribed by the employing agency (see also paragraph (c)(2) of this section);

(4) Any complaints or appeals for which a specific statutory appeals procedure exists (see appendix A for examples).

A grievance filed under these procedures may be based on matters for which there is a specific statutory appeals procedure which is applicable to the Foreign Service grievant. Should the jurisdiction of the Grievance Board over a specific grievance be placed into question on grounds that the basis of the grievance is not encompassed within the Board's authority (§ 16.1(d)(4) and Appendix A), the Board shall consult with the other statutory body concerned, transmitting the views of the

parties concerned before determining whether it has jurisdiction.

(e) *Employee organization* means any employee organization accorded recognition as the excusive employee representative pursuant to Executive Order 11636 dated December 17, 1971.

(f) *Grievance Board* or *Board* means the full Foreign Service Grievance Board, or a Panel or member thereof, as appropriate.

(g) *Party* means the grievant or the Foreign Affairs agency having control over the act or condition forming the subject matter of the grievance.

(h) *Bureau* means equivalent organizational elements in State and USIA, and includes offices in AID.

(i) *Days* means calendar days.

§ 16.2 General provisions.

(a) *Statement of purpose*. These regulations establish procedures as required by law to provide Foreign Service officers and employees (and their survivors) of the Foreign Affairs agencies, a grievance procedure to insure a full measure of due process, and to provide for the just consideration and resolution of grievances of such officers, employees, and survivors. No regulation promulgated in this part shall be interpreted or applied in any manner which would alter or abridge the provisions of the due process established by the Congress in Pub. L. 94–141, 22 U.S.C. 1037, section 691.

(b) *Discussion of complaints*. (1) Every effort should be made to settle any employee complaint informally, promptly, and satisfactorily.

(2) Supervisors and other responsible officers should encourage employees to discuss complaints with them and should respond in a timely manner to resolve the complaints.

(3) An employee initially should discuss a complaint with the employee's current supervisor or with the responsible officer who has immediate jurisdiction over the complaint to give that person an opportunity to resolve the matter, before further steps are taken under these procedures.

(c) *Guidance*. Nothing in these procedures prevents a grievant from seeking guidance from any official who might be helpful respecting the submission of a grievance or its resolution.

(d) *Freedom of action*. (1) Any grievant, witness, representative or other person involved in a proceeding hereunder shall be free from any restraint, interference, coercion, harassment, discrimination, or reprisal in those proceedings or by virtue of them. The Foreign Affairs agencies recognize their obligation to insure compliance with this section. Any person involved or having immediate knowledge of any alleged breach of this section should call it to the attention of the pertinent foreign affairs agency through appropriate channels for corrective action as necessary. Normally such allegations should be brought to the attention of the senior agency official at the post; and at Washington, DC, to the Director, Grievance Staff for State; Chief, Employee Relations Branch for AID and Chief, Employee-Management Relations Division for USIA.

(2) The grievant has the right to a representative of the grievant's own choosing at every stage of the proceedings. The grievant and representative(s) who are under the control, supervision, or responsibility of the Foreign Affairs agencies shall be granted reasonable periods of administrative leave to prepare, to be present, and to present the grievance.

(3) Any witness under the control, supervision, or responsibility of a Foreign Affairs agency shall be granted reasonable periods of administrative leave to appear and testify at any such proceeding.

(4) The Foreign Service Grievance Board established hereunder shall have authority to ensure that no copy of the determination of the agency head or designee to reject a Grievance Board recommendation, no notation of the failure of the Grievance Board to find for the grievant, and no notation that a proceeding is pending or has been held, shall be entered in the personnel records of the grievant (unless by order of the Grievance Board as a remedy for the grievance) or those of any other officer or employee connected the the grievance. The Foreign Affairs agencies shall maintain grievance records under appropriate safeguards to preserve confidentiality (§ 16.9).

§ 16.3 Access to records.

(a) *Grievance Board records.* The grievant and the grievant's representative shall have access to the record of proceedings, including the decision of the Board.

(b) *Agency records.* (1) In considering the validity of a grievance, the Grievance Board shall have access, to the extent permitted by law, to any agency record considered by the Board to be relevant to the grievant and the subject matter of the grievance.

(2) The agency shall, subject to applicable law, promptly furnish the grievant any agency record which the grievant requests to substantiate the grievance and which the agency or the Grievance Board determines is relevant and material to the proceeding. When deemed appropriate by the agency or the Board, a grievant may be supplied with only a summary of extract of classified material. If a request by a grievant for a document is denied prior to or during the agency's consideration of a grievance, such denial may be raised by the grievant as an integral part of the grievance before the Board.

(3) These regulations do not require disclosure of any official agency record to the Grievance Board or a grievant where the head of agency or deputy determines in writing that such disclosure whould adversely affect the foreign policy or national security of the United States.

§ 16.4 Time limits for grievance filing.

(a) A grievance concerning a continuing practice or condition may be presented at any time if its adverse effect is presently continuing. Documents contained in official employee personnel files, for example, shall be deemed to constitute a continuing condition.

(b) Subject to paragraph (a) of this section, a grievance under these regulations is forever barred, and the Grievance Board shall not consider or resolve the grievance, unless the grievance is presented within a period of 3 years after the occurrence or occurrences giving rise to the grievance, except that if the grievance arose earlier than 2 years prior to the effective date of these regulations, the grievance shall be so barred, and no considered and resolved, unless it is presented within a period of 2 years after the effective date of these regulations, There shall be excluded from the computation of any such period any time during which the grievant was unaware of the grounds which are the basis of the grievance and could not have discovered such grounds if the grievant had exercised, as determined by the Grievance Board, reasonable diligence.

(c) A grievance shall be deemed presented to the responsible official (§ 16.7(b)), transmitted to post or bureau (§ 16.7(c)) submitted for agency review (§ 16.8) or filed with the Grievance Board § 16.11(a):

(1) On the date of its dispatch by telegram, registered or certified mail, or receipted mail, in a diplomatic pouch;

(2) On the date of its arrival at the appropriate office, if delivered by any other means.

§ 16.5 Relationship to other remedies.

(a) A grievant may not file a grievance under these procedures if the grievant has formally requested, prior to filing a grievance, that the matter or matters which are the basis of the grievance be considered or resolved and relief be provided, under another provision of law, regulation, or executive order, and the matter has been carried to final decision thereunder on its merits or is still under consideration.

(b) If a grievant is not prohibited from filing a grievance under these regulations by paragraph (a) of this section, the grievant may file under these regulations notwithstanding the fact that such grievance may be eligible for consideration, resolution, and relief under a regulation or executive order other than under these regulations, but such election of remedies shall be final upon the acceptance of jurisdiction by the Board.

§ 16.6 Security clearances.

The agencies shall use their best endeavors to expedite security clearances whenever necessary to ensure a fair and prompt investigation and hearing.

§ 16.7 Agency procedures.

(a) *Initial consideration.* (1) Grievances shall be considered through the steps

provided in this section before they are filed with the Grievance Board.

(2) During the pendency of agency procedures under this section, the grievant may request a suspension of the proposed action of the character of separation or termination of the grievant, disciplinary action against the grievant, or recovery from the grievant of alleged overpayment of salary, expenses or allowances, which is related to the grievance. The request must be in writing and addressed to the responsible official of the agencies, as designated in §16.8(a)(2) stating the reasons for such suspension. If the request is related to separation or termination of the grievant, and the agency considers that the grievance is not frivolous and is integral to the proposed action, the agency shall suspend its proposed action until completion of agency procedures, and for a period thereafter if necessary, consistent with paragraph (a) of §16.11, to permit the grievant to file a grievance with the Board, and to request interim relief under paragraph (c) of §16.11. If a request is denied, the agency shall provide the grievant in writing the reason for denial. Nothing in these regulations shall be deemed to preclude an employee from requesting the suspension of any proposed action.

(b) *Consideration by responsible officer.* (1) While every effort should be made to resolve a complaint by an initial discussion between an employee and the supervisor or responsible officer, an employee may present the complaint as a grievance by submitting it in writing, to that person. (The term ''responsible officer'' as used herein includes any appropriate officer who has immediate jurisdiction over the complaint.) The presentation shall include a description of the act or condition which is the subject of the grievance; its effect on the grievant; any provision of law, regulation, or agency policy which the grievant may believe was violated or misapplied; any documentary evidence readily available to the grievant on which the grievance rests; the identity of individuals having knowledge of relevant facts; and a statement of the remedial action requested.

(2) The responsible officer, whenever possible, shall use independent judgment in deciding whether the grievance is meritorious and what the resolution of it should be. Within 15 days from receipt of the written grievance, the responsible officer shall provide the grievant with a written response, which shall include a statement of any proposed resolution of the grievance.

(3) If the response denies in whole or in part the remedial action requested, such response shall notify the grievant of the time within which to appeal the decision, and identity of the senior official, or designee, to whom the appeal should be addressed. In those cases in which the senior official, or designee, is the responsible officer to whom the grievance was initially presented or has participated in the decision process and has formally approved the written response of the responsible officer, the grievant shall be so notified and advised that the grievance may be submitted directly to the agency for review under §16.8.

(c) *Bureau or post review.* (1) If the responsible officer's written response does not resolve the grievance to the grievant's satisfaction, within 10 days of receiving it (or, if no response is received, within 25 days after first presenting the grievance), the grievant may pursue the grievance by transmitting it in writing to the senior official, or the designee in the bureau or post which has authority to resolve the grievance. The written transmission shall include all the information required by paragraph (b)(1) of this section and copies of any correspondence under paragraphs (b) (2) and (3) of this section.

(2) Within 15 days from receipt of the grievance that official shall provide the grievant with a written decision, including any proposed resolution of the grievance. If the decision denies in whole or in part the remedial action requested, the communication shall notify the grievant of the time within which to submit the grievance for agency review and the identity of the appropriate agency official to whom the grievance should be addressed.

§ 16.8 Agency review.

(a) *Submission*. (1) An employee may submit the grievance for agency review if the grievance (i) is not within the jurisdiction of a post or bureau, or (ii) the grievance has been considered but not resolved to the grievant's satisfaction within the post or bureau as provided in § 16.7(c) within 10 days after receipt of the post's or bureau's decision (or, if no response is received, within 25 days after presenting it to the senior official or the designee). The grievant shall submit it in writing to the responsible official of the agency which has control of the act or condition which is the subject of the grievance.

(2) *Responsible officials*. The responsible officials of the agencies are the Deputy Assistant Secretary for Personnel (State), the Director of Personnel and Manpower (AID), and the Chief, Employee-Management Relations Division (USIA).

(3) *Contents*. (i) A request for agency review shall include a description of the act or condition which is the subject of the grievance; its effect on the grievant; any provision of law, regulation or agency policy which the grievant may believe was violated or misapplied; copies of any correspondence under § 16.7(a), any documentary evidence readily available to the grievant on which the grievance rests; the identity of individuals having knowledge of relevant facts; and a statement of the remedial action requested.

(ii) The responsible official shall review the grievance on the basis of available documentary evidence, and, in that official's discretion, interview persons having knowledge of the facts. The agency review shall be completed and its decision dispatched within 90 days from the date of the initial written presentation of the grievance. The grievant shall be informed in writing of the findings of the responsible official and any proposed resolution of the grievance. The communication shall also include the time within which the grievant may file a grievance with the Grievance Board and the appropriate procedure to be followed in this respect.

§ 16.9 Records.

All official records concerning agency consideration of grievances, except those appropriate to implementation of decisions favorable to grievants, shall be kept separate from the official personnel record of the grievant and any other individuals connected with the grievance, and shall not be accessible to agency personnel other than the grievant, the grievant's representative, and those responsible for consideration of grievances.

§ 16.10 Foreign Service Grievance Board.

(a) *Establishment and composition*. There is hereby established a Foreign Service Grievance Board for the Department of State, the Agency for International Development and the U.S. Information Agency to consider and resolve grievances under these procedures.

(b) The Grievance Board shall consist of not less than 5 members nor more than 15 members (including a chairperson) who shall be independent, distinguished citizens of the United States, well known for their integrity, who are not active officers, employees, or consultants of the Foreign Affairs agencies (except consultants who served as public members of the Interim Grievance Board previously established under section 660, Volume 3, Foreign Affairs Manual) but may be retired officers or employees. On its initial establishment, the Board shall consist of 15 members including chairperson.

(c) The Board may act by or through panels or individual members designated by the chairperson, except that hearings within the continental United States shall be held by panels of at least three members unless the parties agree otherwise. Reference in these regulations to the Grievance Board shall be considered to be reference to a panel or member of the Grievance Board where appropriate. All members of the Grievance Board shall act as impartial individuals in considering grievances.

(d) The members of the Grievance Board, including the chairperson, shall be appointed by the Secretary of State after being designated by the written

agreement of the Foreign Affairs agencies and the employee organization.

(e) The Board chairperson and other members shall be appointed for terms of 2 years, subject to renewal upon the agreement of the Foreign Affairs agencies and the employee organization; except that the terms of 7 of the initially appointed members shall expire at the end of one year.

(f) Any vacancies shall be filled by the Secretary of State upon the nomination by the Board following the agreement of the agencies and the employee organization.

(g) *Compensation*. Members, including the chairperson, who are not employees of the Federal Government shall receive compensation for each day they are performing their duties as members of the Grievance Board (including travel time) at the daily rate paid an individual at GS–18 level of the General Schedule under section 5332 of title 5 of the United States Code.

(h) *Removal*. Grievance Board members shall be subject to removal by the Secretary of State for corruption, other malfeasance, or the demonstrated incapacity to perform their functions. No member shall be removed from office until after the Board of the Foreign Service has conducted a hearing and made its recommendations in writing to the Secretary of State, except where the right to a hearing is waived in writing. The Board of the Foreign Service shall provide a member with full notice of the charges against that member, and afford a member the right to counsel, to examine and cross-examine witnesses, and to present documentary evidence.

(i) *Grievance Board procedures*. In accordance with part J, title VI of the Act, the Board may adopt regulations concerning the organization of the Board and such other regulations as mey be necessary to govern its proceedings.

(j) *Board facilities and staff support*. The Grievance Board may obtain facilities, services, and supplies through the general administrative services of the Department of State. All expenses of the Board, including necessary costs of the grievant's travel and travel-related expenses, shall be paid out of funds appropriated to the Department for obligation and expenditure by the Board. At the request of the Board, officers and employees on the rolls of the Foreign Affairs agencies may be assigned as staff employees to the Grievance Board. Within the limit of appropriated funds, the Board may appoint and fix the compensation of such other employees as the Board considers necessary to carry out its functions. The officers and employees so appointed or assigned shall be responsible solely to the Grievance Board and the Board shall prepare the performance evaluation reports for such officers and employees. The records of the Grievance Board shall be maintained by the Board and shall be separate from all other records of the Foreign Affairs agencies.

§ 16.11 Grievance Board consideration of grievances.

(a) *Filing of grievance*. A grievant whose grievance is not resolved satisfactorily under agency procedures (§ 16.7) shall be entitled to file a grievance with the Grievance Board no later than 60 days after receiving the agency decision. In the event that an agency has not provided its decision within 90 days of presentation, the grievant shall be entitled to file a grievance with the Grievance Board no later than 150 days after the date of presentation to the agency. The Board may extend or waive, for good cause, the time limits stated in this section.

(b) *Exhaustion of agency procedures*. In the event that the Grievance Board finds that a grievance has not been presented for agency consideration or that a grievance has been expanded or modified to include materially different elements, the Board shall return the grievance to the official responsible for final agency review unless the agency waives any objection to Board consideration of the grievance without such review.

(c) *Prescription of interim relief*. If the Grievance Board determines that the agency is considering any action of the character of separation or termination of the grievant, disciplinary action against the grievant, or recovery from the grievant of alleged overpayment of salary, expenses, or allowances, which is related to a grievance pending before

the Board, and that such action should be suspended, the agency shall suspend such action until the Board has ruled upon the grievance. *Notwithstanding* such suspension of action, the head of the agency concerned or a chief of mission or principal officer may exclude an officer or employee from official premises or from the performance of specified duties when such exclusion is determined in writing to be essential to the functioning of the post or office to which the officer or employee is assigned.

(d) *Inquiry into grievances.* The Board shall conduct a hearing at the request of a grievant in any case which involves disciplinary action, or a grievant's retirement from the Service under sections 633 and 634 of the Act, or which in the judgment of the Board can best be resolved by a hearing or by presentation of oral argument. In those grievances in which the Board holds no hearing, the Board shall offer to each party the opportunity to review and to supplement, by written submission, the record of proceedings prior to its decision.

§ 16.12 Hearing.

(a) *Appearances and representation.* The grievant, a reasonable number of representatives of the grievant's own choosing, and a reasonable number of agency representatives, are entitled to be present at the hearing. The Grievance Board may, after considering the views of the parties and any other individuals connected with the grievance, decide that a hearing should be open to others.

(b) *Conduct of hearing.* (1) Testimony at a hearing shall be given by oath or affirmation which any Board member or person designated by the Board shall have authority to administer.

(2) Each party shall be entitled to examine and cross-examine witnesses at the hearing or by deposition, and to serve interrogatories answered by the other party unless the Board finds such interrogatory irrelevant or immaterial. Upon request of the Board, or upon a request of the grievant deemed relevant and material by the Board, and agency shall promptly make available at the hearing or by deposition any witness under its control, supervision or responsibility, except that if the Board determines that the presence of such witness at the hearing is required for just resolution of the grievance, then the witness shall be made available at the hearing, with necessary costs and travel expenses provided by the agency.

(3) During any hearings held by the Board, any oral or documentary evidence may be received but the Board shall exclude any irrelevant, immaterial, or unduly repetitious evidence normally excluded in hearings conducted under the Administrative Procedures Act (5 U.S.C. 556).

(4) A verbatim transcript shall be made of any hearing and shall be part of the record of proceedings.

§ 16.13 Decisions.

(a) Upon completion of the hearing or the compilation of such record as the Board may find appropriate in the absence of a hearing, the board shall expeditiously decide the grievance on the basis of the record of proceedings. In each case the decision of the Board shall be in writing, shall include findings of fact, and shall include the reasons for the Board's decision.

(b) If the Grievance Board finds that the grievance is meritorious, the Board shall have the authority within the limitations of the authority of the head of the agency, to direct the agency:

(1) To correct any official personnel record relating to the grievant which the Board finds to be inaccurate, erroneous, or falsely prejudicial;

(2) To reverse and administrative decision denying the grievant compensation including related within-class salary increases pursuant to section 625 of the Act or any other perquisite of employment authorized by law or regulation when the Board finds that such denial was arbitrary, capricious, or contrary to law or regulation;

(3) To retain in service and employee whose termination would be in consequence of the matter by which the employee is aggrieved;

(4) To reinstate with back pay, under applicable law and regulations, an employee where it is clearly established

that the separation or suspension without pay of the employee was unjustified or unwarranted;

(5) To order an extension of the time of an employee's eligibility for promotion to a higher class where the employee suffered career impairment in consequence of the matter by which the employee is aggrieved;

(6) To order that an employee be provided with facilities relating to the physical working environment which the employee has been denied arbitrarily, capriciously or in violation of applicable regulation.

(c) Such orders of the Board shall be final, subject to judicial review as provided for in section 694 of the Act, except that reinstatement of former officers who have filed grievances under § 16.1(c)(7) shall be presented as Board recommendations, the decision on which shall be subject to the sole discretion of the agency head or designee, who shall take into account the needs of the Service in deciding on such recommendations, and shall not be subjected to judicial review under section 694 of the Act. The reason(s) for the agency head's (or designee's) decision will be conveyed in writing to the Board and the grievant.

(d) If the Board finds that the grievance is meritorious and that remedial action should be taken that directly relates to promotion or assignment of the grievant, or to other remedial action, including additional step increases, not provided for in paragraph (b) of this section, or if the Board finds that the evidence before it warrants disciplinary action against any officer or employee, it shall make an appropriate recommendation to the head of the agency, and forward to the head of the agency the record of the Board's proceedings, including the transcript of the hearing, if any. The head of the agency (or designee, who shall not have direct responsibility for administrative management) shall make a written decision to the parties and to the Board on the Board's recommendation within 30 days from receipt of the recommendation. A recommendation of the Board may be rejected in part or in whole if the action recommended would be contrary to law, would adversely affect the foreign policy or security of the United States, or would substantially impair the efficiency of the Service. If the decision rejects the Board's recommendation in part or in whole, the decision shall state specifically any and all reasons for such action. Pending the decision, there shall be no ex parte communications concerning the grievance between the agency head, or designee, and any person involved in the grievance proceeding.

§ 16.14 Reconsideration of a grievance.

A grievant whose grievance is found not to be meritorious by the Board may obtain reconsideration by the Board only upon presenting newly discovered or previously unavailable material evidence not previously considered by the Board and then only upon approval of the Board.

§ 16.15 Judicial review.

Any aggrieved party may obtain judicial review of these regulations, and revisions thereto, and final actions of the agency head (or designee) or the Grievance Board hereunder, in the District Courts of the United States, in accordance with the standards set forth in chapter 7 of title 5 of the United States Code. Section 706 of title 5 shall apply without limitation or exception.

PART 17—OVERPAYMENTS TO ANNUITANTS UNDER THE FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM

Sec.
17.1 Definitions.
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17.3 Notice to annuitants.
17.4 Initial determination.
17.5 Standards.
17.6 Notice of decision and right of appeal.
17.7 Appeal.

AUTHORITY: 22 U.S.C. 842; 22 U.S.C. 1061; 22 U.S.C. 2658; and E.O. 10897 (25 FR 12439).

SOURCE: 44 FR 47928, Aug. 16, 1979, unless otherwise noted.

§ 17.1 Definitions.

(a) *Act* means the Foreign Service Act of 1946, as amended.

(b) *Annuitant* has the meaning set forth in section 804(1) of the Act (22 U.S.C. 1064(1)).