

SUBJECT TO SUBSECTION (E) OF THIS SECTION, THE SECRETARY SHALL DETERMINE THE PART OF THE REPORT, IF ANY, THAT WILL REMAIN IN THE EMPLOYEE'S OFFICIAL EMPLOYMENT RECORD FOR DETERMINING THE SUITABILITY OF THE EMPLOYEE FOR FUTURE EMPLOYMENT.

(E) EMPLOYMENT RECORD.

(1) A REPORT MADE UNDER THIS SECTION MAY NOT BECOME PART OF THE EMPLOYEE'S OFFICIAL EMPLOYMENT RECORD UNTIL AFTER THE EMPLOYEE HAS HAD AN OPPORTUNITY TO RESPOND TO THE REPORT.

(2) IF A REPORT IS MADE A PART OF AN EMPLOYEE'S OFFICIAL EMPLOYMENT RECORD, THE EMPLOYEE'S WRITTEN RESPONSE, IF ANY, SHALL ALSO BE MADE A PART OF THE EMPLOYEE'S RECORD.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 64A, § 34.

In subsections (a)(1) and (c)(1) of this section, the phrase "to the Secretary" is added to state expressly that which only was implied in the former law - i.e., reports and responses are submitted to the Secretary. Similarly, the reference to a hearing "before the Secretary" is added in subsection (c)(2).

In subsection (b) of this section, the requirement that the "appointing authority" provide notice to an employee is substituted for the former requirement that the "Secretary" give the notice, to conform to long-standing Departmental understanding and administrative practice.

In subsections (b)(2) and (e)(1) of this section, the broad references to an employee's "respond[ing]" to a report is substituted for the former reference to an "answer ... in writing", reflecting a nonprobationary employee's right to respond in writing or at a hearing.

In subsections (d) and (e) of this section, the former reference to a "permanent" record is deleted as unnecessary in light of the reference to an "official" record.

Subsection (d) of this section is also revised to extend its applicability not only to a decision made after a hearing but, also, to a decision made solely on a written response from a probationary employee, who does not have a right to a hearing, or from a nonprobationary employee who fails to request a hearing.

In subsection (e)(2) of this section, the condition "[i]f a report is made part of an employee's official employment record" is added to clarify that an employee's written response to an unsatisfactory work or conduct report becomes part of an employee's employment record only when the report that elicited the response is also placed in the employee's record - reflecting long-standing Departmental understanding and administrative practice.