



To enhance mission performance, TSA is committed to promoting a culture founded on its values of Integrity, Innovation and Team Spirit.

NOTE: Pursuant to Section 101 of the Aviation and Transportation Security Act (49 U.S.C. 114(n)), this directive and all related Handbooks, Attachments, and Appendices establish Transportation Security Administration (TSA) policy and must be applied accordingly.

REVISION: This revised directive supersedes TSA MD 1100.75-3, *Addressing Unacceptable Performance and Conduct*, dated June 3, 2013.

SUMMARY OF CHANGES: Section 6, revised the One-Step Process to include one-step removals for arrests for specified offenses.

1. **PURPOSE:** This directive provides TSA policy and procedures for the use of non-disciplinary, corrective, disciplinary, and adverse actions to address unacceptable employee performance and conduct.
2. **SCOPE:** This directive applies to all TSA employees, including members of the Transportation Security Executive Service (TSES). Additional provisions applicable to TSES employees are found in [TSA MD 1100.30-24, *Transportation Security Executive Service Program*](#).
3. **AUTHORITIES:** The Aviation and Transportation Security Act, Pub. L. 107-71 (ATSA)
4. **DEFINITIONS:** See the [Handbook to TSA MD 1100.75-3, *Addressing Unacceptable Performance and Conduct*](#).
5. **RESPONSIBILITIES:**
 - A. The Assistant Administrator for Human Capital (AA/OHC) is responsible for:
 - (1) Reviewing requests for delegation of authority related to this directive and rendering a decision.
 - (2) Administering this policy and ensuring that it supports the mission of the agency.
 - B. The Office of Professional Responsibility (OPR) is responsible for:
 - (1) Reviewing Reports of Investigation (ROI) issued by the DHS Office of Inspector General (OIG) or by the TSA Office of Inspection (OOI), as well as any other matter the Assistant Administrator for Professional Responsibility, or his/her designee, determines should be reviewed by OPR.

(2) Issuing adverse, disciplinary, and corrective actions against TSA employees covered by [TSA MD 1100.75-7, Office of Professional Responsibility](#).

- C. The Office of Chief Counsel (OCC), if requested by OPR or other management officials serving as proposing or deciding officials, is responsible for reviewing any adverse or disciplinary action to advise whether there is sufficient evidence to sustain the action; whether there is a nexus between a legitimate government interest and the misconduct/matter that is the basis for the action; and whether the penalty is reasonable.
- D. In matters not adjudicated by OPR, management officials are responsible for reviewing ROIs or other investigative reports and for issuing adverse, disciplinary, or corrective actions in accordance with this directive and the accompanying Handbook when addressing unacceptable employee performance or conduct.

6. POLICY:

A. Actions Covered:

(1) Adverse and Disciplinary Actions. This directive applies to the following adverse and disciplinary actions:

- (a) Letter of Reprimand;
- (b) Reprimand In Lieu of Suspension;
- (c) Suspension of any length, including Indefinite Suspension;
- (d) Involuntary Demotion for Performance/Conduct; and
- (e) Removal.

NOTE: Refer to Section J of the accompanying Handbook for applicable appeal rights and grievance procedures.

(2) Corrective Actions. This directive applies to the following actions:

- (a) Letter of Counseling;
- (b) Letter of Guidance and Direction;
- (c) Letter of Leave Restriction; and
- (d) Specific, Mutually-acceptable, Appropriate, Realistic and Time-based (SMART) Agreement.

NOTE: These actions are not grievable with the exception of Letters of Leave Restriction. For Letters of Leave Restriction, refer to Section J of the accompanying

Handbook for applicable appeal rights or grievance procedures.

B. Actions Not Covered. This directive does not apply to the following actions:

- (1) Action taken under involuntary workforce reduction procedures;
- (2) Furlough of any length;
- (3) Involuntary Demotion During Initial Supervisory or Managerial Trial Period, as described in [TSA MD 1100.31-1, *Trial Periods*](#), if the reduction is to a pay band or rate of pay no lower than that held by the employee before entering the supervisory or managerial position;
- (4) Termination of a temporary promotion at any time and return of the employee to a position at a pay band no lower than the one from which promoted;
- (5) Placement of an employee serving on an intermittent or seasonal basis in non-duty and non-pay status in accordance with the conditions of the appointment;
- (6) Termination during a trial period other than supervisory or managerial trial period;
- (7) Reassignment to a different position with the same rate of basic pay;
- (8) Termination of a reemployed annuitant;
- (9) Termination at any time of a time-limited appointment;
- (10) Termination at any time of a time-limited appointment associated with salary offset;
- (11) Expiration of a time-limited appointment;
- (12) Correction of an erroneous personnel action, including correction of a pay band or rate of pay that is contrary to law, regulation, or TSA policy;
- (13) Action directed by a court or other competent authority; and
- (14) Voluntary action initiated by the employee, for example, resignation or reduction in pay band.

C. Matters Reviewed and Adjudicated by OPR: Where the conduct of an employee covered by TSA MD 1100.75-7 is the subject of an investigation, OPR will review the matter and take appropriate adverse, disciplinary, or corrective action in accordance with all applicable TSA policies. Refer to TSA MD 1100.75-7 for additional information regarding OPR's jurisdiction.

D. Consequences: Actions covered by this directive and accompanying Handbook may have adverse collateral consequences, such as on award decisions, promotions, or

workforce reductions. Such consequences may be in addition to using the action to demonstrate that the employee was on notice about the performance or conduct in question; using the action for progressive discipline; or using the action to rebut a claim that the employee had no prior history of conduct or performance problems.

- E. Efficiency of the Service Standard: An employee may be suspended, removed, or demoted for such cause as will promote the efficiency of the service. This standard generally means that the action must be taken to further a legitimate government interest. Taking adverse or disciplinary action would promote the efficiency of the service when, for example, an employee fails to perform his or her duties acceptably, interferes with other employees' performance of their duties, or exhibits conduct that adversely affects the agency's ability to accomplish its mission.

NOTE: TSES members may be removed for unacceptable performance, misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment. Refer to TSA MD 1100.30-24 for additional information.

- F. Sufficiency Review: OPR or management officials serving as proposing or deciding officials may, in their discretion, request OCC to advise whether there is sufficient evidence to sustain an adverse or disciplinary action, whether there is a nexus between a legitimate government interest and the misconduct/performance/matter that is the basis for the action, and whether the penalty is reasonable. [The TSA Table of Offenses and Penalties](#) should guide the determination of the reasonableness of the penalty.
- G. Nexus: Adverse or disciplinary action may be taken when there is nexus, or connection, between a legitimate government interest and the employee's unacceptable performance, conduct, or matter that is the basis for adverse or disciplinary action. Refer to Section A, Definitions, of the related Handbook for additional information.
- H. Non-disciplinary Actions: Certain actions by an employee that are not considered unacceptable performance or conduct may warrant action that promotes the efficiency of the service. For example, if an employee declines to accept a directed reassignment to another commuting area, the declination would not be considered misconduct or unacceptable performance, but the employee's removal would nevertheless be taken "for such cause as will promote the efficiency of the service." Similarly, if an employee is medically unable to perform the functions of the position, the employee is not engaging in misconduct, but still may be removed to promote the efficiency of the service.
- I. Unacceptable Conduct or Performance: Disciplinary actions and performance management measures may be taken under the authority of this directive. In situations where disciplinary action is appropriate, consideration should be given to whether the unacceptable behavior is conduct-based or performance-based. To assist in making these distinctions when the matter involves the performance of duties, the guidance offered in the *Definitions* section of the Handbook should be considered as well as the factors below, which include, but are not limited to the following:

**TSA MANAGEMENT DIRECTIVE No. 1100.75-3
ADDRESSING UNACCEPTABLE
PERFORMANCE AND CONDUCT**

- (1) Conduct-based actions: Intentional refusal to perform, or a negligent failure to perform acceptably due to factors such as inattention to duty, poor judgment, or negligence. The following factors weigh in favor of treating a matter as conduct-based:
 - (a) The employee knew, or should have known, of the applicable rule or standard;
or
 - (b) The employee's act or omission was within the employee's control; or
 - (c) The behavior involves repeated violations of the rule or standard.

- (2) Performance-based actions: Inability to meet performance expectations, standards, or goals as set forth in the performance plan. Performance-based actions are held to the substantial evidence standard. Substantial evidence is the degree of relevant evidence that a reasonable person, considering the record as a whole, might accept as adequate to support a conclusion, even though other reasonable persons might disagree. It is a lower standard than preponderance of the evidence. The following factors weigh in favor of treating a matter as performance-based:
 - (a) The performance deficiency persists after the employee has been given notice that his or her performance is deficient; or
 - (b) The performance deficiency involves the quality, quantity and/or timeliness of work assignments/duties or work products.

- (3) Non-disciplinary Performance Management Measures: If there is an inability to meet performance expectations, standards, or goals as set forth in the performance plan, and the performance deficiency indicates a lack of skill, training, information, or other similar, relevant factors, such as the employee's exercise of reasonable care under the circumstances, management is encouraged to consider whether an employee's deficient performance should be addressed in the non-disciplinary context of performance management.

NOTE: Guidance and requirements on addressing deficient unacceptable performance, whether in progress reviews, performance evaluations, or Improvement Performance Notices or Performance Improvement Plans, are provided in [TSA MD 1100.43-3, *Employee Performance Management Program*](#) (for non-bargaining unit employees), and [TSA MD 1100.43-4, *Transportation Officer Performance System*](#) (TOPS) and in Article 1 of the Collective Bargaining Agreement between TSA and the American Federation of Government Employees. Performance-based actions for TSES members will be taken in accordance with TSA MD 1100.30-24, and the accompanying Handbook. Contact the respective airport/office Lead Employee Relations Specialist (ER), OHC/ER for additional assistance.

J. Progressive Discipline:

- (1) Progressive discipline is the process of using the least severe form of action that may be used to correct a deficiency. When appropriate, TSA will take progressively more severe action until the unacceptable performance or conduct is corrected, or the employee is demoted or removed, as appropriate. Management officials should consider applicable aggravating and mitigating factors when making a determination. Refer to the Table of Offenses and Penalties for additional information.
- (2) Removal is required for specific TSO offenses and is a permitted penalty for the first violation for other offenses. See Appendix A of the accompanying Handbook for additional details. The Deputy Assistant Administrator for the Office of Security Operations or his/her designee must approve any exception to required removal for listed TSO offenses. For cases under its jurisdiction, OPR may seek an exception from the Deputy Administrator or his/her designee.
- (3) Nothing in this section or in the accompanying Handbook prevents management officials from removing an employee after a first offense when the misconduct is so serious as to warrant removal, such as engaging in activity that seriously undermines security interests or poses a threat or danger to TSA employees or to the traveling public, or results in significant monetary loss.

K. One-Step Process: TSA has developed a One-Step Process that allows management officials to impose appropriate adverse or disciplinary actions in an expeditious manner to address specific employee offenses or issues. This One-Step Process includes one-step removals for arrests for specified offenses. See the accompanying Handbook for additional details.

L. Harmful Error: A failure to comply with the provisions of this directive, the accompanying Handbook, or Appendices may be grounds for reversing an action only if it caused TSA to reach a conclusion different from the one it would have reached in the absence of the failure.

7. **PROCEDURES:** Refer to the [Handbook to TSA MD 1100.75-3, Addressing Unacceptable Performance and Conduct](#).
8. **APPROVAL AND EFFECTIVE DATE:** This policy is approved and effective the date of signature unless otherwise specified.

APPROVAL

Signed

February 12, 2014

Karen Shelton Waters
Assistant Administrator for Human Capital

Date

EFFECTIVE

Date

Distribution: Administrator, Deputy Administrator, Assistant Administrators,
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