

**AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL-CIO**

**REPRESENTING
TRANSPORTATION SECURITY
AGENCY EMPLOYEES
HANDBOOK**

*On Your
Side From
the Beginning*



Resource Guide 1st Edition

TABLE OF CONTENTS

<u>INTRODUCTION</u>	<u>2</u>
<u>GENERAL INFORMATION</u>	<u>3</u>
<u>INVESTIGATING THE SITUATION</u>	<u>6</u>
<u>GENERAL INFORMATION REGARDING DISCIPLINARY ACTIONS</u>	<u>10</u>
<u>GRIEVANCES</u>	<u>15</u>
<u>DISCIPLINARY REVIEW BOARD</u>	<u>19</u>
<u>ELEMENTS CONTAINED IN GRIEVANCES/APPEALS</u>	<u>21</u>
<u>NEW INITIATIVES</u>	<u>25</u>
<u>OTHER LAWS/RIGHTS APPLICABLE TO TSOS</u>	<u>26</u>
<u>SAMPLES</u>	<u>29</u>
SAMPLE DESIGNATION OF REPRESENTATION	30
SAMPLE FIRST STEP GRIEVANCE	31
SAMPLE SECOND STEP GRIEVANCE	35
SAMPLE DRB APPEAL	39
<u>POLICIES</u>	<u>43</u>
TSA GUIDANCE ON UNION ACTIVITY	
TSA MANAGEMENT DIRECTIVE NO. 1100.73-5 EMPLOYEE RESPONSIBILITIES AND CONDUCT	
TSA MANAGEMENT DIRECTIVE NO. 1100.72-3 TSO DRESS & APPEARANCE RESPONSIBILITIES	
TSA MANAGEMENT DIRECTIVE NO. 1100.75-3 ADDRESSING PERFORMANCE AND CONDUCT PROBLEMS	
TSA MANAGEMENT DIRECTIVE NO. 1100.77-1 DISCIPLINARY REVIEW BOARD	
TSA MANAGEMENT DIRECTIVE NO. 1100.77-2 GRIEVANCE PROCEDURES	
TSA MANAGEMENT DIRECTIVE NO. 1100.63-3 REPRESENTATION	
DOUGLAS FACTORS	

Representing Transportation Security Administration Employees

Introduction

Representing Transportation Security Administration (TSA) employees is unlike representing any other federal government employee. TSA employees operate in a unique employment environment and have few employment rights. When the Transportation Security Administration was created in 2001 by the Aviation and Transportation Security Act (ATSA), Congress gave authority to the head of the TSA to “employ, appoint, discipline, terminate, and fix the compensation, terms, and conditions of employment” notwithstanding any other provision of law. TSA has seized this authority and issued policies that eliminate or modify the basic protections that apply to all other federal employees. For the most part, United States Code Title 5, which covers government organization and employees, and other federal employment laws do not apply to TSA employees, particularly at the TSO level. Transportation Security Administration employees do not yet have any collective bargaining rights and they do not have any Merit System Protection Board (MSPB) rights. Transportation Security Administration employees do have limited whistleblowing and Equal Employment Opportunity (EEO) rights. TSA employees have full Workers’ Compensation rights. Thus, it is important for representatives to familiarize themselves with TSA policy to understand what rights TSA employees possess. Copies of all TSA policy in AFGE’s possession can be found on the AFGE website at:

<http://www.afge.com/Index.cfm?page=TSAPolicies>. Also, TSA employees have access via agency interweb to all TSA policies.

The most important policies/regulations are:

- 1) TSA Management Directive (MD) No. 1100.73-5 Employee Responsibilities and Conduct;
- 2) TSA MD No. 1100.73-2 TSO Dress and Appearance Responsibilities (new 6/21/07);
- 3) TSA MD No. 1100.75-3 Addressing Performance and Conduct Problems;
- 4) TSA MD No. 1100.77-1 Disciplinary Review Board; and
- 5) TSA MD No. 1100.77-2 Grievance Procedures.
- 6) TSA MD No. 1100.63-3 Representation

Each of these policies is included in this Handbook.

General Information

TSA Policy on Union Activity

In a letter to all FSDs and Transportation Security Administration employees dated 12/9/2005, TSA made clear that **“employees have the right to participate in union activities without fear of retaliation or discrimination. It is every manager’s and supervisor’s responsibility to protect that right....The expression ‘union activities’ includes discussing union issues (both pro-union and anti-union), organizing and attending meetings, distributing and reading literature, and signing petitions.”** (Emphasis added.)

Please note that there are guidelines concerning what activities can and cannot be engaged in, as outlined below (this chart is taken *directly* from the TSA letter referenced above, and the letter is included in its entirety in this handbook):

Guidelines for Transportation Security Officers – What they can and cannot do	
CAN	CANNOT
<ul style="list-style-type: none"> • Join unions and contribute to a union through payroll deductions • Engage in union activities when they are off duty, including when they are on breaks, provided they do not disturb employees who are on duty and do not harass employees who do not wish to engage in such activities. 	<ul style="list-style-type: none"> • Disturb those on duty or engage in union activities while on duty • Harass employees who do not wish to engage in such activities • Conduct union activities at the checkpoint, either by employees or union representatives • Access any sterile or non-public area if they are union representatives who are not TSA employees - just as any unauthorized persons are not entitled to such access • Engage in discussions with TSOs while they are on duty, either by employees or union representatives • Engage in strikes or other work-related collaborative activities

Issues Not Covered by Grievance or Appeal to the Disciplinary Review Board (DRB)

Without collective bargaining in place, there are several issues that simply cannot be addressed via the grievance/appeal process. TSA has made the determinations as to what kinds of issues are addressable by the grievance/appeal process. For example, the DRB will *only* hear cases related to removals, suspensions of 15 or more days (including indefinite suspensions), and reduction in pay bands (demotions). Some of the more popular requests for assistance pertain to unhappiness with shift bids and changes in shift-bid seniority determinations for people with the same hire date, and split-shifts. There are not a lot of grievance/appeal options for these situations. Many situations will only be rectified with collective bargaining. Please see the

Grievance and Disciplinary Review Board (DRB) sections of this handbook for more information on what issues are, and are not, grievable/appealable.

Get It in Writing

Get anything offered in writing. Otherwise, there will never be proof that the offer was made at all. This particularly applies to requested extensions, requests to see documentation upon which the alleged charges against the Transportation Security Administration employee were based, or determinations regarding SSI. Documentation of the requests and the subsequent approval or denial will help the case should there be issues with the timeline or irregularities in compliance with policy.

Sensitive Security Information (SSI)

Please note that TSA has a very liberal definition of Sensitive Security Information (SSI) and severely punishes Transportation Security Administration employees whom they believe have divulged SSI. It is illegal to divulge SSI. Representatives (who are not cleared to do so, e.g., other Transportation Security Administration employees) should avoid discussing SSI with Transportation Security Administration employees and should not include SSI in any grievance, response, or appeal. Examples of SSI include Standard Operating Procedures (SOP), training materials, tests, test scores, and employee lists aggregated by airport. TSA's SSI regulations can be found at 49 CFR 1520.

If there is some question that a written response, etc. contains SSI, ask the officials to review it and clear it in writing. Ask management to either clear it or provide the employee with a redacted copy.

Resignations

If a TSA employee resigns, she or he has effectively removed themselves from the appeals/grievance process. While there is limited case law in which the MSPB has accepted for review some "voluntary" self-removals from federal service, based on the theory of constructive discharge (that is, the employee was tricked, misled, or coerced into resigning, making it non-voluntary), the TSA is not bound by these decisions, and therefore has discretion about whether to review such a case.

Signing Documents

Often, when TSA employees are presented with a Notice of Proposed Removal or other document that requests their signature, the signature line is there as an indication of receipt and date of receipt. It does not mean they are agreeing to the version of events as outlined in the proposal. **The day the TSA employee receives the notice is the day the grievance or appeal timelines start to run;** refusing to sign can mean the date on the top of the letter will be used as the date the timelines start, instead of the date the TSA employee received the document. Usually there is a statement to that effect on the document on the signature line. If there is not, the TSA employee should write in "signature indicates date of receipt."

Note that this does not apply to written statements that the TSA employee provides or any prepared document purporting to be the TSA employee's version of events. While TSA policy allows investigating officials to edit statements to reflect the "essentials" of what TSA employees "meant," TSA employees should not sign prepared written statements that purport to represent their version of what happened, whether acting as a witness or a participant, unless the document is accurate. They should also request a copy at the time it is signed.

Deadlines

The deadlines for each of the major avenues are addressed in full below. However, the TSA employee or his/her representative is responsible for keeping track of these dates. The turnaround times are tight and even one day can mean the difference between having time to prepare an appeal and missing the deadline. Once the deadline for filing a first- or second-step grievance, or an appeal with the DRB, has passed, it is too late.

TSA policy states that if the deadline falls on a weekend day or a holiday, it will rollover until the next business day. Getting the grievance or appeal in before this time will avoid any possible back-and-forth about when the materials were submitted.

It is always worth asking for a reasonable extension if one is needed. Make sure to get the request and the response to the request in writing. If it is extended orally, follow up with an email asking for confirmation and retain a copy for the record.

If the employee emails or faxes the grievance, please keep the sent copy and/or the fax confirmation sheet to prove delivery, and make sure the date submitted is legible. Certified mail, return receipt requested, is preferred, as it outlines a solid timeline of submission.

Investigating the Situation

When approached by someone with an issue, it's important to get a clear picture of the entire situation so that the best possible defense can be mounted. The outline below provides a good roadmap for discerning what kind of disciplinary issue the employee may be facing and how to proceed with a grievance situation. A DRB appeal will require a written submission and will be much less likely to result in a hearing situation.

INTERVIEW THE GRIEVANT

- 1) Is the TSA employee a member of AFGE? If not, why not? Ask her or him to join.
- 2) Is the TSA employee a probationary employee?
 - a. **The probationary period for TSOs is 2 years.**
 - b. If the TSO is a probationary employee, they have no rights to appeal to the DRB for removal actions. Contact the FSD or deciding official personally to speak with her or him to see if something could be worked out, like a last-chance agreement regarding tardiness or an agreement to place the TSO in "retain & retrain" for recertification.
- 3) What happened?
 - a. Get the location, time, and series of events that led up to the discipline.
 - b. Make it clear that the truth must be shared regarding the incident. The TSA employee needs to be frank and clear regarding the facts, regardless of how damaging they may appear on the surface. The TSA employee might shade the events to gain sympathy or assistance. However, this will do more harm than good and could damage the union's credibility as well. Let the TSA employee know that if everything about the situation is known, responses can be prepared to every possible management argument against them.
 - c. Be aware that the TSA employee might be scared, frustrated, or angry, and this emotion could color her/his version of events. Separate the bare-bones facts of the events from any subsequent additions or theories regarding the event.
 - d. Dig into phrases like "one thing led to another" and "the next thing I knew, they arrested me." What, precisely, led to what, that resulted in the incident? Be curious about everything!
 - e. Review the *Douglas* Factors section of this handbook (page 21) and use those bullet points as a framework for further questions for the TSA employee.
- 4) When did it happen?
 - a. The timelines for responses to proposed discipline (7 days), filing grievances (15 days), and appeals to the DRB (30 days) are fairly quick, and sometimes the TSA employee might wait until the last minute to realize the situation is not going to just go away. There may be only one day in which to act!
 - b. If requesting an extension, get it in writing.
- 5) Has the TSA employee already made any written or oral communications regarding the incident to management?
 - a. If so, ask what they have said, or ask for a copy of what they have written. Often, statements made immediately after an incident may be confused or based in fear.

It's important to know what the TSA employee may have already related to management.

- 6) Who saw it?
 - a. Were there any witnesses to the incident, and could/would they provide written statements that could help the employee?
- 7) Ask the TSA employee about similar situations that have happened at that checkpoint/terminal/airport and the discipline that resulted.
 - a. If 10 people are late on the same day, by the same amount of time, for the same reason, and only this TSA employee was disciplined, that is not right.
 - b. However, the TSA employee's prior work history and record may factor into the discipline, so be aware of that as well.
- 8) Find out about the TSA employee's work history.
 - a. Disciplinary record
 - i. Particularly regarding the current type of infraction – this is where progressive discipline comes into play.
 - ii. Progressive discipline means that disciplinary actions should follow an increasingly severe progression with the goal of correcting the problem. TSA policy requires this doctrine to be followed in all cases except for offences for which removal is mandatory on the first offense: intentional security violations, drug violations, or theft, among others. Please see TSA Management Directive No. 1100.75-3 ADDRESSING PERFORMANCE AND CONDUCT PROBLEMS for the complete list (in the Policies and Samples section at the end of this handbook).
 - b. Length of service with TSA
 - c. Any awards/recognition
- 9) Ask if any general statements of support could be secured from co-workers, leads, supervisors, or managers.
- 10) What does the TSA employee want?
 - a. Would the TSA employee accept a lesser punishment?
 - b. Would the TSA employee be willing to enter into a "last chance" agreement whereby they agree to refrain from the activity for a period of time in order to avoid discipline?
- 11) Ask management to see any materials relied on for the specifications laid against the TSA employee.
- 12) Once the story is laid out, relate it back to the TSA employee and ask him or her to correct anything which is unclear or incorrect. A clear understanding of all the events will allow the best grievance/appeal to be filed. Relating the story back to the TSA employee also allows her or him the opportunity to review the incident themselves and clarify any inconsistencies.

ANALYZE THE SITUATION

- 1) Ensure the issue is one that is covered by the grievance/appeal process.
- 2) Figure out how TSA management's version of events differs from the TSA employee's version.
- 3) Determine if any factors that influenced the situation were left out of TSA's analysis.

RESEARCH THE SITUATION

- 1) Gather any supporting documents revealed in the interview.
- 2) Review any procedural errors that might have an impact on the union's case (for example, management did not follow the proper procedures in preparing or presenting the notice of discipline)
- 3) Secure copies of local policies that impact the situation, witness statements, video, statements of support, whatever sheds light on the case and events leading up to the situation

PREPARE ARGUMENTS

- 1) Figure out where the TSA's argument breaks down or leaves out important information.
 - a. Use the Proposed Notice of Discipline and Notice of Decision as a roadmap to their arguments.
 - i. Any evidence relied upon in the final decision must have been presented in the proposed notice.
 - b. Match all arguments to TSA's assertions.
 - c. Add anything that bolsters the case.
- 2) Address all arguments that TSA management makes.
- 3) Be clear, concise, and rational.

PRESENT THE GRIEVANCE

- 1) Let the grievant know that the grievance process is his/her way to have their side of the story heard. Ask them to confine their discussions of the situation to the grievance format. THIS IS EXTREMELY IMPORTANT. The volunteering of unnecessary information can be detrimental to the union's case.
- 2) Ensure the representative will be able to accompany the grievant to the grievance proceeding.
 - a. If the representative is a TSA employee, he or she should ask for "official time" to prepare and represent the grievant.
 - b. Please see the "official time" section in this handbook (p. 11).
- 3) Be courteous and respectful throughout the proceeding.
- 4) Be aware that it could be an emotional time for the grievant; getting upset or angry is to be strongly discouraged.
- 5) If the representative or the employee need to pause the proceedings for any reason, ask for a short break.
- 6) Be firm, be unemotional, and be factual and precise.

FOLLOW-UP IF NECESSARY

- 1) Particularly if the grievance is a first-step grievance and the clock is ticking towards a second-step grievance deadline

- 2) If the agency/management ask for more time, get it in writing that any second-step or response timeframe is extended as well

General Information regarding Disciplinary Actions

TSA MD No. 1100.75-3 governs all disciplinary actions. There are five main types of disciplinary action:

- 1) Letter of Reprimand;
- 2) Suspension;
- 3) Indefinite Suspension;
- 4) Demotion; and
- 5) Removal.

Most disciplinary actions are based on alleged violations of TSA MD No. 1100.73-5 Employee Responsibilities and Conduct and/or TSA MD No. 1100.73-2 TSO Dress and Appearance Responsibilities. **It is essential that representatives review this policy prior to responding to disciplinary actions.**

All TSA disciplinary actions must meet four criteria to be legitimate:

- 1) the alleged misconduct must be supported by a preponderance of the evidence (this means that it is *more likely than not* that the alleged misconduct occurred- so ~51% likelihood that it happened the way TSA management says it did);
- 2) a nexus must exist between a legitimate government interest and the alleged misconduct;
(A “nexus” is a *connection*. For example, the TSA, as a government agency that oversees transportation security, has a legitimate interest in protecting the security of the traveling public. Improper screening procedures at the checkpoint is misconduct that negatively affects this government interest, so a clear connection, or nexus, exists.)
- 3) the alleged misconduct must be a violation of law, statute, rule, TSA policy or procedure; and
- 4) the discipline must be reasonable.

The Pre-Decision Process

TSA Management Directive No 1100.75-3, **ADDRESSING PERFORMANCE AND CONDUCT PROBLEMS**, states that “[p]rior to taking any disciplinary action, management must follow these steps:

1. Assess the incident or allegations;
2. Engage in relevant fact-finding to the extent necessary to make an informed decision (obtain related evidence, witness statements, etc.);
3. Review all relevant evidence to ensure that the action meets standards of proof;
4. Meet and discuss the matter with the employee, advise the employee of the allegation and possible consequences, and provide the employee an opportunity to respond orally and/or in writing; and

5. After meeting with the employee, management must determine if corrective and/or disciplinary action will be taken.”

Once management has completed this process, they will make a determination regarding discipline and prepare the notice of proposed action. If management has not followed these steps, this can be another point in the argument as to why management’s decision was inappropriate. For example, if the process was very quick, it could be argued that management did not devote much time to investigating. Conversely, if months have passed, the argument could be made that the infraction could not be as serious as management is making it out to be if they allowed the TSA employee to work for months.

Be aware that sometimes a pre-disciplinary meeting and discussion with the employee as required by #4 above may be so informal that the TSA employee may not realize it is happening. Anything agreed to, confirmed, or revealed in such a meeting could have an impact on the determination of discipline.

By TSA policy, the TSA employee must comply with the investigation process; refusing to meet or discuss the incident at all can result in further specifications against them. The employee does not have a right to have anyone present at this stage, but should be encouraged to ask that a representative be allowed.

One-step or Two-step

TSA imposes disciplinary actions by using either a one-step or a two-step process. The one-step process consists solely of a final decision. The two-step process consists of a notice of proposed disciplinary action, seven (7) days for the employee to respond, and a final decision. The one-step process may be used for any action taken against a probationary employee. For non-probationary employees, the one-step process may only be used for Letters of Reprimand; Suspensions of three (3) days or less, Removals involving the use of drugs, alcohol, and theft; and Indefinite Suspensions involving allegations of serious misconduct. The two-step process may be used for any level of discipline above a Letter of Reprimand.

Issues Applicable	
One-Step Decision	Two-Step Decision
<ul style="list-style-type: none">• Any action taken against probationary employees• Letter of Reprimand• Suspension of 3 days or less• Removals involving drugs, alcohol, or theft• Indefinite Suspensions involving serious allegations	<ul style="list-style-type: none">• Any disciplinary action other than a Letter of Reprimand

Representation

Employees may be represented by an individual of their choosing in preparing and presenting any reply. Employees must provide the name of the representative to the deciding official in writing and must provide written notice of any change in representation. Have the TSA employee sign a document and submit it with the grievance or appeal.

TSA has recently introduced a new directive – TSA Management Directive No. 1100.63-3 (Official Time) – which allows for up to 8 hours of what they are terming “official time.”¹ Under this directive TSA employees will be compensated with administrative leave in order to assist or represent another TSA employee in a grievance, appeal, or other proceeding. However, unlike true “official time,” in the TSA version management maintains control over the entire proceeding. Management has the final say as to how much time will be granted to the representative – if any – and makes the determination if the representative can even serve. The policy grants management the discretion to deny the choice of a representative if there are operational needs that conflict with the timing of the representation. Further, TSA can also disallow the representative if it decides there is a conflict of interest or position in the selection of the representative.

The policy allows for “up to” 8 hours to represent fellow workers. While this may be sufficient to prepare and represent a grievant in a routine disciplinary matter, it would not begin to scratch the surface of the amount of time necessary to assist with an EEO case. It is still unclear if the 8 hours covers one grievance through the entire first- and second-step process, or if TSA will grant 8 hours for each step.

Despite provisions in the policy that address travel time (primarily denying it as part of the “up to” 8 hours allotted) for those TSA employees representing their co-workers, at one airport employees have been informed that the policy does not apply to employees representing people at other airports. Their requests for “official time” in these instances have been denied.

There are also no provisions allowing for extension of deadlines should the representative be initially denied or called away on the day of the hearing due to operational needs.

As with the Peer Review Panel, we urge the employee to share these experiences with AFGE, if the employee chooses to participate in the program.

Forms the employee may use to request a particular person to represent the employee or to request to be allowed to serve as a representative for another TSA employee are available on the AFGE website: www.tsaunion.net.

¹ Official Time is a term of art developed for use in unionized environments. It refers to time granted to an employee by the agency. This time is used for representational activities on behalf of a labor union. Official time allows an agency employee to use what would otherwise be duty time to assist coworkers with representation, without losing any personal or annual time.

Process for contesting disciplinary action issued through the one-step process

Follows the standard grievance procedure; please see the Grievance section below. Employees have fifteen (15) days to grieve a final decision to deciding official.

Process for contesting disciplinary action issued through the two-step process.

Employees have 7 days from receipt of the proposed notice of disciplinary action to respond. Employees may request an extension from the deciding official. Extensions are granted at management’s discretion. In the case of a proposed removal, employees may only receive 7 days of administrative pay. If the employee requests and receives an extension, the employee can be placed in Leave without Pay (LWOP) status.

Once the decision on the proposed notice has been reached and delivered to the employee, the employee then has either 15 days for the standard grievance process or 30 days through the DRB process to respond.

Contesting Final Decisions

Non-adverse Actions	Suspensions of fourteen (14) days or less and Letters of Reprimand may be grieved pursuant to TSA MD 1100.77-2. Employees have fifteen (15) days to grieve the final decision. See Grievance section.
Adverse Actions	Suspensions of fifteen (15) days or more, Indefinite Suspensions, Demotions, and Removals are appealable to the TSA Disciplinary Review Board. See DRB section.

The Proposed Action

The Notice of Proposed [Discipline] is a written document that outlines each specification, or allegation, against the TSA employee and what factors went into making the disciplinary decision. It is the first concrete list of allegations that TSA is bringing against the employee.

The Response

From the date the TSA employee receives the Proposed Action, the TSA employee has 7 days to prepare and submit a written or oral response to management, which addresses the allegations in the proposed notice and outlines why the discipline should not be imposed. If the TSA employee chooses not to reply, TSA will usually move forward with the initial proposed discipline. Sometimes, a response will result in a reduced level of discipline; it is always worth preparing a statement, and it’s usually better to have it in writing, so that the employee can submit it with any

subsequent grievances or appeals. Responding in writing also creates a definite record of what the TSA employee said in regard to the incident.

There is some thought that a written response is always better than an oral one, particularly if the TSA employee is prone to get overwrought, defensive, or aggressive in an oral situation, which can be an easy situation for management to turn to their advantage by confusing the issues or provoking the TSA employee into angry, unprofessional responses that will do them more harm. The employee should beware situations in which one member of management appears overly friendly to the employee; this can also lead a TSA employee into making unwise admissions in the hope of making the entire situation just go away.

The written response can be in the TSA employee's own words or prepared by someone else. It's a good idea to stick to the facts. Explain what happened and why the punishment is too severe or inappropriate. Include any mitigating circumstances that led to the situation in question. Demonstrating an understanding of the seriousness of the incident (if it was serious) and remorse (if warranted) also can help mitigate disciplinary decisions.

Notice of Decision

At this point, TSA will make the determination that the original discipline is upheld, or that a lesser (or even no penalty) is warranted. The nature and/or duration of the discipline will determine whether the next steps are with the grievance procedure or the Disciplinary Review Board, as outlined below.

Grievances

Employees can grieve agency actions pursuant to TSA MD No. 1100.77-2. Employees have fifteen (15) days from discovery of the contested decision or action to file a written grievance with the first-step official. Discovery means when the employee learned or reasonably can be expected to have learned of the decision or action.

The first-step official is typically the management official who issued the decision, took the action, or failed to take action. If it is unclear or ambiguous who issued the decision, took the action, or failed to take action then the first-step official will most likely be the employee's supervisor.

The second-step official is normally the first-step official's immediate supervisor. **The second-step official cannot have been involved in the initial incident or in the first-step decision.** If they were, ask for someone else to hear the second-step grievance.

- The first-step grievance must contain:
 - The action or matter being grieved;
 - The reasons and any supporting evidence for the grievance;
 - The remedy being sought; and
 - A statement as to whether or not the matter has been raised in another forum.

- The second-step grievance must:
 - Be in writing;
 - Contain:
 - a copy of the original grievance;
 - the date the first-step grievance was filed; and
 - a copy of the first-step decision or a statement that no first-step decision was issued.

The second step decision is final and there is no further right to appeal.

There are numerous matters that are not grievable under TSA policy. Some of the matters that are ***not grievable*** include:

- Shift schedules or shift bidding programs
- Separation or termination of employment during the trial or probationary period
- Notices *proposing* disciplinary or adverse action (though these can be addressed with a written response)
- Decisions made by other agencies (DOL, OWCP, OPM, etc.)
- Oral or written counselings
- Progress reviews under TSA performance management system
- Performance Improvement Plans (PIPs)
- Non-selection for promotion or reassignment from a list of eligibles (competitive position)

- Reduction-in-force
- Monetary amount of performance or incentive award
- Denial of a time extension to file a grievance

See the grievance policy, TSA MD No. 1100.77-2(6)(B), for the entire list of matters excluded from the grievance procedure. Often, leave restrictions are coupled with oral/written counselings; separate them out for grieving, as the former are grievable and the latter are not.

Representation

Employees may be represented by an individual of their choosing in preparing and presenting any reply. Employees must provide the name of the representative to the deciding official in writing and must provide written notice of any change in representation. Also, the new TSA management directive regarding official time applies to presenting grievances. Please see the section on this Official Time initiative at the end of this guide.

TSA Management Directive No. 1100.77-2 GRIEVANCE PROCEDURES (section 6D) states that “[t]he grievant may have a representative of his or her choosing assist in presenting the grievance if a meeting is held with the first or second step official.” However, the policy goes on to state that:

- (3) The grievance official may deny the grievant’s choice of representative if the representation presents a conflict of interest or position, or if the representative is another employee and the employee’s release from duty conflicts with operational needs.
- (4) If the representative is a TSA employee, it is their responsibility to obtain advance approval for any release from duty to present a grievance or to represent an employee in a grievance at either step of the procedure. Official time is available only for attendance at meetings to present grievances.

Therefore, TSA management still has the power to deny a representative’s presence at the actual grievance proceeding due to operational needs.” A skilled representative who works for TSA may find that the better he or she becomes at representation in grievances, the more operational needs develop to keep him or her from the hearings. Work with management to find a time that is acceptable to all if a representative who is also a TSA employee is denied time to represent at the initially proposed meeting time.

GRIEVANCE TIMELINE

The first-step official has fifteen days to provide a written response to the grievance; however, they are not **required** to do so. If the first-step official denies the grievance or fails to provide a timely response then the employee has fifteen (15) days file a second-step grievance with the second-step official.

The timelines play an important role here and should be watched closely.

- The employee only has 15 days from the incident (or when he or she should have known of the incident) to file the first-step grievance.
- Management has 15 days to respond, but they may not respond at all.
- For the second-step, the employee has 15 days either from the denial or from the 15-day mark (starting with the filing of the first-step grievance) - that is, the day by which management should have responded to the first-step grievance.
- It is the responsibility of the grievant to keep track of these dates; many second-step grievance deadlines have been missed because TSA employees assumed management would get back to them eventually with a response to the first-step grievance. If, after 15 days, management has not replied to the first-step grievance, the employee needs to move ahead with the second-step or the second step grievance will be timed out.

Example 1:

August 1: TSO Karen Smith gets a notice of proposed letter of reprimand on August 1. She now has 7 days to reply.

August 8: TSO Smith gets a Notice of Decision on Letter of Reprimand. She now has 15 days to file her first-step grievance.

August 23: TSO Smith turns in her first-step grievance. TSA has 15 days to respond.

August 30: TSA responds and denies the first-step grievance. TSO Smith now has 15 days from this date to file a second-step grievance - it is due September 14.

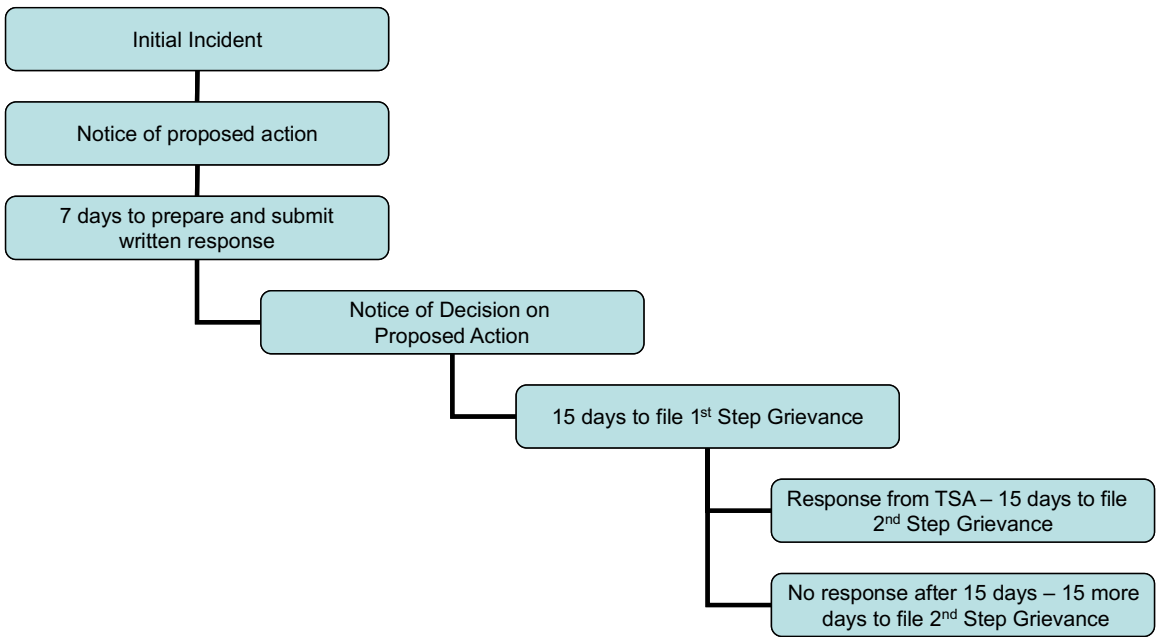
Example 2:

August 1: TSO Karen Smith gets a notice of proposed letter of reprimand on August 1. She now has 7 days to reply.

August 8: TSO Smith gets a Notice of Decision on Letter of Reprimand. She now has 15 days to file her first-step grievance.

August 23: TSO Smith turns in her first-step grievance. TSA has 15 days to respond.

September 7: It has been 15 days since TSO Smith filed her first-step grievance and TSA has *not* responded. She now has 15 more days to file her second-step grievance, which will be due September 22. .



Disciplinary Review Board (DRB)

Certain disciplinary actions may be appealed to the TSA Disciplinary Review Board (DRB) pursuant to TSA MD 1100.77-1. The following actions are appealable:

- 1) Suspensions of fifteen (15) days or more
- 2) Indefinite Suspensions
- 3) Demotions
- 4) Removals

Probationary employees cannot appeal removal actions. DRB appeals must be filed within thirty (30) calendar days of the effective date of the action. Filing can be accomplished by mailing (postmarking) the appeal on the thirtieth day. DRB appeals should be sent by certified mail to establish proof of the date of mailing.

DRB appeals must contain:

- copies of the proposal notice
- the employee's reply (if any)
- the decision notice, any documentary evidence relied on
- relief requested
- a written designation of representation that contains the signature of the TSA employee.
 - A sample statement could be as simple as "I, [name], designate [AFGE/representative's name] as my representative for the purpose of filing an appeal on my behalf with the Disciplinary Review Board." [signature]
 - The DRB is firm about the requirement that the Designation of Representation be signed; it will not accept an email as a designation.

DRB appeals should address the issues contained in the proposal notice as well as the categories listed above, if relevant: the basic criteria (evidentiary standard, nexus, violation of policy, reasonableness of the discipline) in addition to relevant *Douglas* factors and evaluations of the proper application of the doctrine of progressive discipline. It should also include the type of relief requested (reinstatement, back pay, cleared record, etc.) A sample DRB appeal is contained at the end of this handbook.

Representation

Employees may be represented by an individual of their choosing in preparing and presenting any DRB appeal. Representatives must file a signed designation of representation with the DRB appeal. A model designation of representation is included in the Policies and Samples section. Also, the new TSA management directive regarding official time applies to preparing DRB appeals as well. Please see the section on this "Official Time" initiative at the end of this guide.

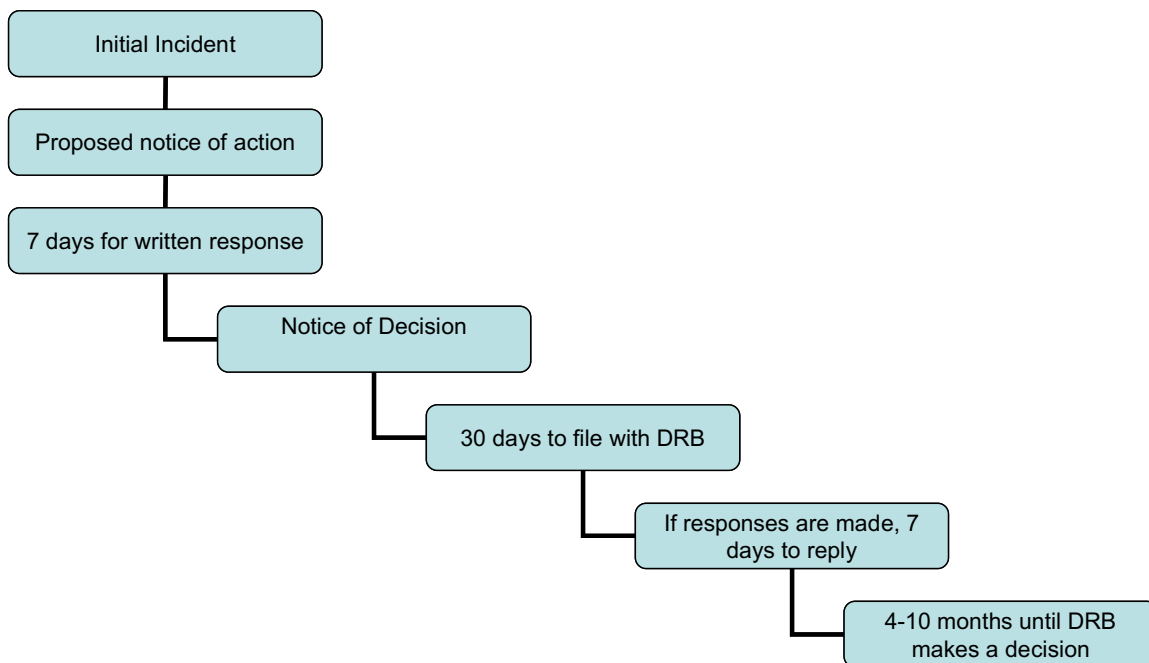
Timeline

First, there will be a Proposed Notice of [Removal/Suspension of 15 days or more/Indefinite Suspension/Demotion]. This is a written document that is delivered to the TSA employee. From

the date the TSA employee receives the document, she/he has 7 days to prepare and submit a written response which addresses the allegations in the proposed notice. After 7 days, TSA management will issue the Notice of Decision on [whatever the discipline is] whether or not a written response has been received from the TSA employee.

If the discipline in the Notice of Decision is still one which must go before the DRB, the TSA employee has 30 days to file an appeal with the DRB. The Notice of Decision usually contains a section on how and where the appeal should be filed. Please note that if the discipline has been mitigated down to a lesser penalty that fits within the grievance procedures, then it is the grievance procedures, and not the DRB procedures, that will determine the next move.

The TSA employee can request an extension with the DRB; they are often granted. Again, make sure to get a copy of the extension that is granted in writing.



Elements Contained in Grievances/Appeals

The Criteria

As stated above, all TSA disciplinary actions must meet four criteria to be legitimate:

- 1) the alleged misconduct must be supported by a preponderance of the evidence (this means that it is **more likely than not** that the alleged misconduct occurred- so 51% or more likelihood that it happened the way TSA management says it did);
- 2) a nexus must exist between a legitimate government interest and the alleged misconduct;
(A “nexus” is a **connection**. For example, the TSA, as a government agency that oversees transportation security, has a legitimate interest in protecting the security of the traveling public. Improper screening procedures at the checkpoint is misconduct that negatively affects this government interest, so a clear connection, or nexus, exists.)
- 3) the alleged misconduct must be a violation of law, statute, rule, TSA policy or procedure; and
- 4) the discipline must be reasonable.

In order to meet the first standard, preponderance of the evidence, the grievance must show that it is **more likely than not** that the employee’s version of events is the correct one. TSA is required to show that it is more likely than not that the TSA employee in question committed the alleged misconduct. A grievance can refute this by providing anything that attacks management’s version of events, whether it may be statements from witnesses, doctor’s notes, reviewing of video footage from the checkpoint, or simple analysis of the policy in question.

The second requirement, the nexus, is not a criterion that a grievant will likely have occasion to attack. Essentially, this requirement means that TSA has to show that the agency has a legitimate interest in preventing the misconduct in question. It’s pretty obvious that TSA has a legitimate interest in preventing stealing, fraud, foul language on the line, etc., so this will not be a likely avenue of success in many appeals or grievances. The sample DRB appeal contained in this handbook demonstrates a particular situation in which such an argument could be made.

The third criterion states that there must be a violation of law, statute, rule, TSA policy or procedure. If the TSA employee has not violated TSA policy, there can be no discipline. It is worth investigating if the TSA employee violated a local TSA policy versus a national TSA policy. If so, did local TSA management impose the local policy in direct violation of national TSA policy?

The fourth criterion states that the discipline must be reasonable. It must be in compliance with the doctrine of progressive discipline, and it should line up with discipline imposed on other TSA employees for the same or similar offenses. This standard is usually applied at the airport level. Use caution when applying this argument; prior work history and the doctrine of progressive discipline can undermine this argument.

Example:

If three people are late by the same amount of time on the same morning, and only one is punished with a suspension and the other two receive oral counselings, it could be argued that the suspension is unreasonable. However, if the one employee who received the suspension had been late every day for a month, and she or he had already received oral counseling, writing counseling, and a letter of reprimand, then suspension could be a reasonable punishment.

Progressive Discipline (MD No. 1100.75-3, section 6.D)

Deciding officials are expected to follow the principle of progressive discipline. This means that disciplinary actions should follow an increasingly severe progression with the goal of correcting the problem. Generally, the progression is as follows:

- oral counseling
- written counseling
- letter of reprimand
- suspensions of increasing time
- removal

The nature of the offense and the performance and work history of the employee may be factored into this progression, and therefore, the progression is not set in stone. TSA does not have to follow the progressive discipline stated above exactly, but it should be used as a general guide. For example, removal for the first-ever infraction in 4 years of service for cursing on the line would violate progressive discipline. However, if the TSO has been cursing on the line for 4 years, and has received warnings, letters of reprimand, suspensions from 1 day up to 14 days, and the behavior has not changed, then removal may be imposed.

Note that the policy specifically *requires* immediate removal from federal service as a punishment for specific offenses (any involving theft, drugs, or alcohol). It also allows immediate removal as a penalty for even a first violation, if the situation was so serious as to intentionally undermine security interests, threaten or endanger the traveling public, or result in great monetary loss. Please see the attached policy for a complete list of first-offense removal situations.

The Douglas Factors (TSA MD No. 1100.75-3, section 6.F)

TSA must also consider the *Douglas* factors prior to issuing disciplinary actions. A case called *Douglas v. Veteran's Administration*, 5 M.S.P.R. 280 (1981), outlined the various considerations that could be taken into account when assessing a penalty. Note that **not** all the factors listed in *Douglas* are **required** to be considered. Also, the list is not exhaustive; i.e., other relevant considerations may be taken into account.

- The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical, or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
- The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and the prominence of the position;

- The employee's past disciplinary record;
- The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
- The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties;
- Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
- Consistency of the penalty with any applicable agency table of penalties;
- The notoriety of the offense or its impact upon the reputation of the agency;
- The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
- Potential for the employee's rehabilitation;
- Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
- The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

Contents

Make sure to address the issues contained in the Notice of Decision, whether it's a grievance or a DRB appeal. The grievance/appeal is not the place for personal rants, attacks, unfounded accusations, or general advice on how TSA should be run. Once a written grievance or a meeting on the grievance devolves into a personal rant, the grievance is less likely to be taken seriously. Also, the courtesy and tact provision in the TSA policies still applies here. Try and keep things cool, calm, and collected; focus on the facts and the weak points of their arguments. Introduce evidence and statements that support the case.

Ignoring a key point in their argument, in the hopes that management will not notice, rarely works. For example, a grievance regarding a theft accusation in which a stolen pair of skis was found in a TSO's locker which ignores the evidence of the skis in favor of a discussion of lack of tardiness issues in the employee's past will not go far in convincing management that the TSO in question is innocent.

Quite often, TSA management will make administrative or procedural errors in the preparation or presentation of the discipline which can help the employee's argument. For example, TSA management may neglect certain aspects of the pre-decisional process, or fail to comply with every technical requirement called for by TSA policy. While these oversights can certainly assist the employee's arguments, it is important to address the substantive elements in the allegations as well. Don't let excitement over finding a procedural error regarding an issue like timing result in neglecting to deny the central charge that a TSA employee violated policy.

Grievance/DRB Outline

A basic grievance/DRB appeal outline would be as follows:

1. Paragraph on timeliness (when the incident occurred, when the grievance is being filed)
2. Facts
3. Address each specification from the notice of disciplinary action
4. Address the doctrine of progressive discipline
5. Address the Douglas factors
6. Ask for specific relief

New Initiatives

In August 2007, TSA rolled out two new programs that give the illusion of collective bargaining rights. The Employee Representation initiative is addressed above, and the Peer Review Panel is covered here.

There are definite and real differences and limitations on these new programs that do not make them a substitute for real rights granted by collective bargaining. AFGE encourages participation in these programs as it can be a way to assist coworkers; however, we ask that the employee be wary of the potential pitfalls that exist in the system as these initiatives were created by TSA, not by a collective bargaining agreement.

Peer Review Panel

The Peer Review Panel, unveiled by TSA in August 2007, is a system in which TSOs may take their grievances (and some appeals that previously would have only been heard by the DRB) to a panel at the local airport. The 5-person panel is comprised of 3 “peers” (TSOs for a TSO grievant; LTSOs for an LTSO grievant; and STSO s for an STSO grievant) and 2 members of management. The panel members are selected at random from a pool of volunteers who have applied to sit on the panel. Grievants have the opportunity to strike one peer and one member of management from the panel with no questions asked; the excused members will be replaced by alternates.

Some issues will still only have their appeal rights with the DRB: mandatory removals for charges involving drugs, alcohol or theft; any suspension, removal, or demotion involving an intentional violation of security procedures; removals concerning a suitability determination; felony arrests; and separations for medical reasons.

Procedurally, the grievant still files a first-step grievance with the Step One official at the airport. Should the grievant be dissatisfied with the decision, they can then opt for the traditional second-step grievance, or mediation/peer review panel. Grievants have 20 minutes to present their case to the panel and can receive the decision the same day.

AFGE has concerns with this process. The panel selection pool is entirely at the whim of management. No one with a leave restriction or a disciplinary action on their record for the past one year is eligible to volunteer to be placed in the peer review panel pool. Until collective bargaining is obtained, which will standardize and make fair the imposition of discipline and leave restriction, management controls the pool of which TSOs, LTSOs, and STSOs will be allowed to volunteer for the program. Further, AFGE is concerned about the confidentiality issues that could result from involving 3 peers and 2 members of management hearing sensitive matters.

Other laws/rights applicable to TSA employees

Equal Employment Opportunity (EEO)

Title VII and EEO laws and regulations do apply to TSA employees. TSA employees who wish to file EEO complaints should contact the TSA Office of Civil Rights at (877) 336-4872 within forty-five (45) days of the alleged discriminatory act(s) to start the EEO process. AFGE's Women and Fair Practices Department has extensive experience and can assist with this process. Please contact the AFGE TSA Hotline at (866) 392-6832 for assistance.

Be aware that the employee must fall within the category of a protected class in order to have a valid EEO claim. Just because they are discriminating does not mean it is unlawful. The legally protected classes are as follows:

- Race
- Color
- Religion
- Sex, includes pregnancy discrimination and sexual harassment
- National Origin
- Age
- Disability
- EEO Reprisal

Disability Issues

The law pertaining to disability that applies to federal employees is the Rehabilitation Act. TSA has claimed that parts of the Rehabilitation Act do not apply to TSOs. TSA's position is that the agency is not required to provide an accommodation to disabled employees who are physically unable to meet the physical/medical requirements of the TSO position. Recent EEO law does state that where no conflict exists between TSA-mandated physical job requirements and a disability, then the Rehabilitation Act will apply. In such a case, the TSA may not discriminate on the basis of the disability and must reasonably accommodate. If there is no conflict between the TSA-mandated job qualifications & someone's disability, then the claimant is protected; if there is a conflict, then TSA's position trumps the disability claim. In the *Getzlow*² decision, the EEOC said that "where a complainant's ability to meet a specific ATSA-mandated qualification standard because of a disability is at issue, the standard cannot be challenged and the agency does not have to prove that the standard is 'job-related and consistent with business necessity,' as would otherwise be required under the Rehabilitation Act."

To qualify for coverage under the Rehabilitation Act, the employee must first have a *permanent* disability that substantially limits a major life activity. The Rehabilitation Act does *not* apply to a temporary disability. TSA will review requests for reasonable accommodations for employees if their medical condition is going to improve to the point where they once again meet the minimum physical requirements for the job. For example, if a screener has a permanent disability and as a result of that disability he or she is limited to lifting 10 pounds for a few

² *Getzlow v. Department of Homeland Security*, EEOC Appeal No. 0120053286 (June 26, 2007).

weeks, but they have a definite prognosis for improvement back up to the required lifting weight for the position of TSO (70 pounds), TSA may grant the reasonable accommodation. However, if that screener is never going to meet the minimum lifting requirements again, then TSA will say they do not currently and will not ever meet the minimum Congress-approved TSA physical requirements for the position and terminate them. TSA's argument is that a TSO who cannot meet the essential functions of the position (as defined by TSA) is not a "qualified individual with a disability." Because they cannot perform the essential functions, they are not qualified, and therefore not protected by disability law. While AFGE disagrees, unfortunately, the law as written backs up the agency on this issue. The TSA administrator is allowed to dictate these terms of employment as he sees fit, and Congress is the body who will need to amend the law (or a president can appoint a new TSA administrator to dictate new terms).

Here are a couple of examples to illustrate when the Rehabilitation Act does apply:

Example 1:

A screener with diabetes, who was able to perform her job duties but needed a break every 3 hours to check her blood sugar levels, requested accommodation. TSA was denying her breaks due to "operational needs." Allowing set and scheduled breaks is a situation where the Rehabilitation Act still applies (TSA had argued it did not) and that reasonable accommodation was warranted.

Example 2:

In another case, the TSO needed time to have his medicines regulated for his disability and the Administrative Judge ruled (verbally, not in writing) that TSA should have offered Leave Without Pay (LWOP) /leave of absence for the 3 months to a year it would take until he stabilized as a reasonable accommodation.

HIPAA/Privacy Act Protections

We get a lot of calls regarding what are perceived as Privacy Act or HIPAA violations. In a nutshell, these laws exist to prevent the employer from releasing personal information about the employee to third parties. These laws do not exist to protect medical/personal information from the employer, particularly if the employee is asking for Family and Medical Leave Act (FMLA) time, or extended sick leave, or special consideration due to a medical/personal condition. The employee will have to release the information to the employer if the employee wants the protection. However, the employee can direct that the information be released to human resources at TSA, who will make the determination if the reasons are valid and then direct the local airport management that the leave is approved.

All FMLA information must be maintained in a separate and confidential medical file. If the agency or management releases this information without consent to other co-workers or people without a valid reason to know the information, or fails to secure this information so that its release results in "substantial harm, embarrassment, inconvenience, or unfairness," then the employee might have a case on these grounds.

Whistleblower Rights

A new agreement between the Merit Systems Protection Board (MSPB) and TSA allows TSA employees an independent right to appeal a whistleblower complaint to the MSPB. This is a limited expansion of the already limited protections TSA employees had. Previously, a TSA employee could only take a whistleblower complaint to the Office of Special Counsel, which, in turn, could make a recommendation to TSA but had no ability to enforce that recommendation. Now they have an enforceable avenue via the MSPB when they make a whistleblower complaint. However, TSA employees still lack the protections that all other federal employees receive in this area. They are not permitted to appeal a decision to the federal court system, a right afforded to other federal employees. The new agreement also allows TSA to assist in the formulation of the rules and procedures that apply to the appeals process, which is an unfair advantage for the agency. Therefore, it is a very limited protection for TSA employees, and AFGE is committed to continuing to fight for full protections for all TSA employees in this arena.

Workers' Compensation

TSA follows, albeit very poorly, DOL regulations, procedure, and policy regarding injuries on the job. DOL regulations can be found at 20 CFR 10. Further resources concerning Workers' Compensation can be found at:

<http://www.dol.gov/esa/regs/compliance/owcp/INDEXofResources.htm>.

SAMPLES

1. Designation of Representation
2. First-step Grievance
3. Second-step Grievance
4. Disciplinary Review Board (DRB) Appeal

SAMPLE DESIGNATION OF REPRESENTATION

I, (name of employee), authorize AFGE to file an appeal with the Disciplinary Review Board on my behalf.

(signature)

SAMPLE FIRST-STEP GRIEVANCE

7x/TSA1/239120

September 10, 2008

Jan McCartney
Deputy Assistant Federal Security Director (Acting)
Mineta San Jose International, Monterey Peninsula
U.S. Department of Homeland Security
1735 Technology Drive, Suite 240
San Jose, CA 95110

VIA FACIMILE 408.451.1273

Subject: ██████████, Transportation Security Officer (SJC)
Notice of Decision dated June 13, 2007
Ref: 608467

Dear Madam:

Please accept this letter as a first-step grievance pursuant to TSA Management Directive No. 1100.77-2 (MD 1100.77-2). TSO ██████████'s suspension of three days was made known to her via the Notice of Decision ("Decision") issued on June 13, 2007³ and subsequently amended to reflect proper grievance rather than DRB appeal procedures by an Amendment to Notice of Decision on Proposed Removal by Acting Federal Security Director Jan McCartney ("AFSD McCartney") dated June 14, 2007⁴. The Decision alleges one reason: (1) Failure to Follow Screening SOP. The charge specifically alleges one (1) specification that TSO ██████████ was inattentive to duty in February 14, 2007.

This appeal is timely pursuant to MD 1100.77-2 (7)(A)(1) because it has been filed within the 7 day extension granted that began upon Hampton H. Stennis' receipt of

³ Attached as Exhibit 1.

⁴ Attached as Exhibit 2.

the video on Friday June 29, 2007. TSO [REDACTED] has granted the American Federation of Government Employees (AFGE) power of attorney to pursue this appeal on her behalf.

On February 14, 2007, at 2304 hours, TSO [REDACTED] was seen passing through the ADA gate at Checkpoint 5 without being screened or patted down/hand-wanded by another TSA officer. TSO [REDACTED] believed the checkpoint to be closed. By all standard past practices at the airport in the two years that TSO [REDACTED] has worked there, that checkpoint was closed. The last outbound flight departed at 2155 that day. This is when the closing procedures that were applicable to that checkpoint were completed. TSO [REDACTED] comprehensively outlined the procedures that effectively render a checkpoint closed at SJC in her written statement, and this checkpoint met the criteria in place at that time to denote a closed checkpoint at SJC.⁵

The *Douglas* Factors, as stated in TSA Management Directive 1100.75-3 at (6)(F) clearly state that one factor in penalty assessment is “[t]he clarity with which the employee was on notice of any rules violated in committing the offense or had been warned about the conduct in question.” The policy goes on to state that another factor to consider is “[t]he clarity with which the employee was on notice of performance expectations and problems with his or her performance.” The procedures at SJC vary from standard SOP, and this has been the province of management, not TSO [REDACTED], to address and correct. Several statements by TSA employees (TSOs, LTSOs and STSOs) at SJC are attached⁶ as incontrovertible evidence that there has been a practice in place at SJC regarding the use of the ADA gate when a checkpoint is closed upon which the employees have relied for years, with absolutely no effort made on the part of any management to address what now appears to be categorized as a violation of SOP.

In TSO [REDACTED]'s entire time at SJC, a checkpoint has been considered closed when there are no more departing outbound flights leaving and there is not a ticket checker present. Management has never stepped in to correct this apparent misapprehension on the part of dozens of TSOs, LTSOs, and STSOs who work in the airport. TSO [REDACTED] is being unfairly punished for a breakdown in procedure on the part of management at SJC. The initial letter she received regarding this incident purports to consider the mitigating factor that perhaps her “actions were tolerated by the supervisors in charge of the checkpoint.” They were more than tolerated; they were supported, endorsed, and validated. In AFSD McCartney’s own words, in her Decision, she states that TSO [REDACTED] “accepted that management **sanctioned** the use of the ADA gate despite the lack of evidence to the contrary.” Emphasis added. Merriam-Webster defines “sanction” as “to give effective or authoritative approval or consent to,” and this is precisely what management did. Sanctioning an activity, by its very definition, does not require additional approval or consent. Effective approval and consent was clearly given in that no one in any position of authority could be bestirred to correct this apparent inappropriate use of the ADA gate or bring it to anyone’s attention for years. For this oversight on the part of the management, TSO [REDACTED] is being asked to take the punishment, without proper notice of what is, in effect, a change in active policy at SJC.

⁵ Attached as Exhibit 3.

⁶ Attached as Exhibit 4.

In addition, at checkpoints 3 and 4 at SJC, TSOs do not have to progress through screening when the checkpoints there are closed. It seems that this policy extends beyond checkpoint 5 into other areas of the airport as well; management has done nothing to alter or correct the procedure at these other areas. It would seem that in an effort to correct the airport-wide situation, management has chosen to create several scapegoats to bear the brunt and to carry the message regarding their inaction on education and enforcement of SOP at SJC, rather than to work with employees to correct and educate in a manner that respects TSOs and simultaneously addresses what management clearly believes to be a problem.

AFSD McCartney makes a great deal out of the detail that there is no written SOP doctrine regarding any other use of the ADA gate. However, TSA Management Directive No. 1100.73-5 states, at section (5)(A)(7) that employees are to “[o]bserve and abide by all laws, rules, regulations and other authoritative policies and guidance, written and *unwritten*.” Emphasis added. This certainly seems to state clearly that there are, in fact, unwritten policies, regulations and guidance that is to be obeyed by TSOs, and that to disregard such a directive would in fact be a violation of a management directive. It is quite clear that the TSA employees were presented with unwritten but nevertheless sanctioned management guidance that was uncorrected over several years of duty with no alternate guidance ever proffered.

TSO ██████████ is a good employee with a good record, and she loves her work with the TSA. She is liked and respected by her co-workers and her supervisors. She just wants to do her job to protect the traveling public and help her country. She thought she was doing this job on February 14, 2007, in accordance with uncorrected, unwritten, and unremarked-upon standard procedure, as stated she should in TSA Management Directive No. 1100.73-5 at section (5)(A)(7). Holding her responsible for what was clearly mismanagement on the part of her superiors is unconscionable, and this fact is addressed in the Notice she received when Ms. McCartney states that “you do not bear the same responsibility placed on Leads and Supervisors and it appeared you simply followed the standard set by Supervisors.”⁷ She was not in violation of the procedures in place that have been sanctioned by management at SJC; she put no one at risk and she did not in any way detract from the mission of TSA. She has certainly learned from this experience and her potential for rehabilitation is quite high, particularly as she now – finally – has proper notice of what management at SJC expects of her.

Further, the suspension is inconsistent with the doctrine of progressive discipline. Leaping to a three-day suspension for an employee with an exemplary record as a TSO is unwarranted, particularly when the *Douglas* Factors are also taken into account for this unique situation. It is patently unfair to punish this TSO for doing what she thought was her job with such a serious and possibly career-threatening punishment.

In conclusion, TSO ██████████ respectfully requests that TSA rescind her suspension and restore her with back pay to full duty. If the charge is sustained, TSO

⁷ See Notice, *supra*, p. 3.

██████ requests that the Decision be mitigated to a much lesser penalty, in light of the Douglas Factors and in accordance with the doctrine of progressive discipline. TSO ██████ looks forward to the favorable resolution of this matter. Please do not hesitate to contact me to discuss the issues contained herein. I can be reached at [].

Sincerely,

[]
(T) []
(F) []

SAMPLE SECOND-STEP GRIEVANCE

7x/TSA1/239119

September 10, 2008

[2nd step official]
[address]

Subject: [REDACTED], Transportation Security Officer ([REDACTED])
1st Step Grievance Decision dated [date]
Ref: [REDACTED]

Dear Mr. [Official]:

Please accept this letter as a second-step grievance pursuant to TSA Management Directive No. 1100.77-2 (MD 1100.77-2). TSO [REDACTED]'s [discipline] was made known to him via the Notice of Decision on Proposed Removal ("Decision") issued on [date].⁸ The Decision alleges two reasons: (1) [reason 1], and (2) [reason 2]. The charges specifically allege that TSO [REDACTED] [charges].

This appeal is timely pursuant to MD 1100.77-2 (7)(A)(1) because it has been filed within the 15 day timeframe which began to toll upon our receipt of the 1st Step Decision on [date]. TSO [REDACTED] has granted the American Federation of Government Employees (AFGE) power of attorney to pursue this appeal on his behalf.

The 1st step grievance ("1st Step Grievance") was filed [date] with [1st step official].⁹ Her 1st Step Grievance Decision ("1st Step Decision") was dated and received via facsimile on [date].¹⁰ The 1st Step Decision upholds the specification and the 14 day suspension.

Reason One

On December 1, 2006, at approximately 12:00 hours, TSO [REDACTED] entered terminal one security checkpoint through lane three. TSO [REDACTED] removed his coveralls and boots and placed them in a bin on the x-ray belt. He completed screening

⁸ The Notice of Decision on Proposed Removal is attached as Exhibit 1.

⁹ The 1st Step Grievance is attached as Exhibit 2.

¹⁰ The 1st Step Decision is attached as Exhibit 3.

without issue, and while putting his coveralls and boots back on, TSO [REDACTED] discovered the 3 ¼ inch blade folding knife, that he used to open boxes as a baggage screener, in his coveralls. TSO [REDACTED] immediately informed LTSO [REDACTED] and surrendered the knife to her. LTSO [REDACTED] and the TSO on duty, [REDACTED], reviewed the x-ray images. LTSO [REDACTED] then returned the knife to TSO [REDACTED], knowing that he was going to the training lab and had to pass through the sterile area and the Air Operation Area (AOA).

Reason Two

On January 23, 2007, TSO [REDACTED] and TSO [REDACTED] got into a verbal disagreement and used inappropriate language in terminal one baggage. Their altercation was witnessed by co-workers and Airport Stakeholders. In a March 1, 2007, interview, TSO [REDACTED] admitted that he used offensive language and that he acted inappropriately during the incident.¹¹ He elaborated in his Description of the Incident¹² that TSO Dennis intentionally interfered in his assigned duty. Then, TSO [REDACTED] followed him to zone two, after being instructed by LTSO [REDACTED] to stay away from TSO [REDACTED],¹³ and provoked the argument.

The Douglas factors, as stated in TSA Management Directive 1100.75-3 at (6)(F), clearly state that one factor in penalty assessment is “[t]he employee’s job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position.”¹⁴ The policy goes on to state that other factors to consider are “[c]onsistency of the penalty with those imposed upon other employees for the same or similar offenses; [t]he employee’s past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability; and [p]otential for the employee’s rehabilitation.”

TSO [REDACTED] is a certified dual function officer and cannot be held to the same standards as a supervisor or lead. On December 1, 2006, TSO [REDACTED] was in a hurry to attend training, but brought the missed knife to the Checkpoint Lead TSO [REDACTED]’s attention and tried to turn it over to her as soon as he discovered it, in compliance with SOP. LTSO [REDACTED] gave the knife back to TSO [REDACTED] and did not report the incident, choosing instead to “keep things on a lower level by counseling TSO [REDACTED] [her]self”¹⁵ in violation of SOP. She did not instruct TSO [REDACTED] to leave the area and dispose of the knife. Instead, she told him to “take care of it,” a broad and ambiguous instruction at best. TSO [REDACTED] has been honest and forthcoming about his actions during both the incident on December 1, 2006, and the incident with TSO [REDACTED] on January 23, 2007.

¹¹ TSO [REDACTED]’s Pre-Decisional Discussion Transcript is attached as Exhibit 4.

¹² TSO [REDACTED]’s Description of the January 23, 2007 Incident is attached as Exhibit 5.

¹³ LTSO [REDACTED]’s Witness Statement is attached as Exhibit 6.

¹⁴ Douglas v. Veterans Administration, 5 MSPR 280 (1981).

¹⁵ LTSO [REDACTED]’s Witness Statement is attached as Exhibit 7.

The Decision imposes a harsh punishment on TSO [REDACTED] that is inconsistent with the punishments imposed on the other actors involved in these incidents. LTSO [REDACTED] failed to follow the proper SOP by returning the knife to TSO [REDACTED] without clear instructions and by not reporting the incident to her supervisor. As a Lead, LTSO [REDACTED] should be held to a higher standard than a TSO, yet she only received a three day suspension for her actions. Two of those days were her regular days off. FSD Smith acknowledges that TSO [REDACTED] “is not held to the same standard as a STSO or LTSO,” but TSO [REDACTED]’s punishment was much greater than that of the LTSO involved in the same incident.

TSO [REDACTED] displayed the same inappropriate behavior as TSO [REDACTED] during their altercation and only received a Memo of Counseling for his actions. In the 1st Step Decision, FSD Smith states that he is “not aware of any other employee charged with the same two offenses as TSO [REDACTED], under the same circumstances, and treated more lenient.” FSD Smith fails to address the fact that two of the other actors involved in these incidents, LTSO [REDACTED] and TSO [REDACTED] received lax punishments by comparison and both of their punishments together do not equal TSO [REDACTED]’s 14 day suspension.

TSO [REDACTED] has been a loyal and dedicated TSA employee for five years. He has made many positive contributions to the TSA, which include working as a Code 505 (Breach) Instructor/Developer for three years, developing the RDO Calendar, and working as a Special Projects Supervisor.¹⁶ He is well-known and respected by his co-workers. His alleged misconduct was not committed with malicious intentions. It was not for personal gain. His potential for rehabilitation is high; nothing like this will ever happen again. TSO [REDACTED] is regretful of his actions and has been cooperative with all TSA staff members who investigated these incidents. Proper consideration of all the relevant Douglas factors in this case clearly demonstrates that the punishment is not warranted and should be rescinded immediately.

Further, the suspension is inconsistent with the doctrine of progressive discipline. As FSD Smith points out in his Decision on Proposed Removal, TSO [REDACTED] does have disciplinary incidents in his past; however, the most recent one that has bearing on the instant matter dates from July of 2005, and none of the incidents from 2004 and 2005 merited more than a memorandum of counseling. TSO [REDACTED] has learned from and applied the lessons learned from these incidents to his professional skillsets. Dredging these 2- and 3-year old incidents out as a justification for leaping from memoranda of counseling to a fourteen day suspension – one day short of necessitating review by the Disciplinary Review Board – is unconscionable.

In conclusion, TSO [REDACTED] respectfully requests that TSA rescind his suspension and restore him with back pay to full duty. If the charge is sustained, TSO [REDACTED] requests that the Decision be mitigated to a much lesser penalty, in light of the *Douglas* Factors and in accordance with the doctrine of progressive discipline. TSO [REDACTED] looks forward to the favorable resolution of this matter. Please do not hesitate to contact me to discuss the issues contained herein. I can be reached at [].

¹⁶ TSO [REDACTED]’s Positive Contributions to the TSA attached as Exhibit 8.

Sincerely,

[REDACTED]

SAMPLE DRB APPEAL

7x/TSA1/xxxxx

[Date]

Assistant Administrator for Human Resources
Transportation Security Administration – TSA-30
ATTN: Disciplinary Review Board Coordinator
601 S. 12th St.
Arlington, VA 22202-4204

Subject: [TSO ____]
Removal Decision dated [date]

Dear Sir or Madam:

Introduction

On behalf of [TSO ____], please accept this letter as an appeal pursuant to TSA Management Directive No. 1100.77-1. [TSO ____] was assigned to the [airport]. [TSO ____] removal became effective on [date] per the Decision on Proposed Removal (“Decision”) issued on [date] by [management official]. Exhibit 1. [Management official] issued a Notice of Proposed Removal (“Notice”) on [date]. Exhibit 2. [TSO ____], through his representative, submitted a timely response on [date]. Exhibit 3. [TSO ____] as a resolution to this appeal that the proposed removal be rescinded or mitigated and that he be restored to full duty.

Describe charges and/or facts.

The Decision alleges two charges: (1) [charge 1] and (2) [charge 2]. The first charge alleges that [TSO ____] [description of charge 1]. The second charge alleges that [TSO ____] [description of charge 2].

State relevant policy.

TSA Management Directive No. 1100.75-3 (MD 1100.75-3) at (6)(G) states that any disciplinary action imposed must be legally sufficient. To be legally sufficient, a suspension must establish that 1) the alleged misconduct is supported by a preponderance of the evidence; 2) a nexus exists between a legitimate government interest and the alleged misconduct; 3) the alleged misconduct is a violation of law, statute, rule, TSA policy or procedure; and 4) the discipline is reasonable. MD 1100.75-3(6)(D) states that TSA follows the doctrine of progressive discipline and that “[m]anagement shall take the

appropriate level of action that is likely to correct the problem[.]” MD 1100.75-3 (6)(F) states that management should consider the “Douglas Factors” is assessing the appropriate penalty.

Attack facts and evidence for each charge.

The Decision mischaracterizes statements made by other screeners and draws unsubstantiated conclusions from those statements. TSO Doe simply stated that [TSO ____] removed a bottle of liquor from a passenger’s bag. Exhibit 4. TSO Doe made no other statement or allegation that would indicate that [TSO ____]’s intention was to steal that bottle of liquor. TSO Smith merely stated that he saw [TSO ____] set aside a bottle of liquor and called TSO Jones to look at it and that he overheard either [TSO ____] or TSO Jones state that they were no longer removing open bottles due to STSO Jane’s instructions. Exhibit 5. TSO White stated only that she heard [TSO ____] call out to TSO Jones, “I have a bottle here.” Exhibit 6. STSO Jane states that she saw Mr. Abrams remove a bottle of liquor from a passenger’s bag and place it on US Air’s counter. None of the statements attached to the termination letter support the charge of theft. The statements merely demonstrate that [TSO ____] was acting pursuant to his superiors’ instructions. He was instructed by his superiors to work with the airlines. Employees from US Air requested that screeners removed opened bottles of liquor. The attached statements only indicate that [TSO ____] removed bottles of liquor from passengers’ bags. None of the screeners who gave statements ever allege that they saw [TSO ____] place a bottle in his personal bag, remove a bottle from the airport, or discuss stealing bottles of liquor.

Attack nexus (rare).

MD 1100.75-3 (6)(G) requires that a nexus exist between a legitimate government interest and the alleged misconduct. In this matter, there would need to be a legitimate government interest in disciplining an employee for statements made during the private conversation between a doctor and a patient. The conversation between [TSO ____] and his doctor was for the purposes of medical diagnosis and treatment only and had no bearing on [TSO ____]’s ability to fulfill his duties as an employee of TSA. Indeed, having thorough and honest communications during the course of a medical consultation are needed for [TSO ____] to receive the best medical care. However, such communications made during the medical consultation do not in any way adversely affect the job performance of [TSO ____] nor does it directly affect the ability of TSA to fulfill its mission. The Decision failed to assert or explain a legitimate government interest in the contents of the doctor-patient conversation between [TSO ____] and his doctor. Moreover, the facts do not support a finding of nexus in this matter. Thus, TSA has not shown that a clear and direct relationship existed between the communications made during the medical consultation and the promotion of the efficiency of the service.

Attack management official’s interpretation of policy; failure to charge a policy violation; application of policy to facts; etc.

[TSO ____] is charged with making “defamatory statements that attack the integrity of other persons and organizations.” Specifically, he is charged with stating that the individual’s reputation was not on par with his standards. To be defamatory, statements must be false and they must be published to a third person. In this matter, the statements were neither false nor published to a third party and are therefore not defamatory. [TSO ____]’s statement that the individual’s reputation was not on par with his standards is an opinion. It makes no factual assertions. Opinions are neither true nor false and cannot be defamatory. Further, [TSO ____] privately conveyed his sentiments directly to the individual. [TSO ____] did not publish his statement to a third party. Therefore the alleged statements cannot be defamatory as the preponderance of the evidence does not show they were published to a third party and that they were false. Moreover, the statement did not attack the integrity of other persons or organizations. The statements did not attack the honesty or credibility of the individual. At most, the statements questioned the competence of the individual. Integrity and competence are not synonymous. Thus, the Decision failed to show by a preponderance of evidence that [TSO ____] made “defamatory statements that attacked the integrity of other persons and organizations” and should be rescinded

Raise failure to follow progressive discipline.

Even if the charges are sustained, removal is not warranted. The concept of progressive discipline was not followed in this case. [TSO ____] received a 3 day suspension for conduct that occurred in June 2004. [TSO ____] has performed his job without incident until the alleged misconduct on July 4, 2006. Jumping from a two-year old 3 day suspension to removal is not progressive and it is not reasonable.

Raise relevant Douglas Factors.

- Nature and seriousness
- Job level & type of employment
- Past disciplinary record
- Past work record
- Effect of offense
- Consistency of penalty with 1) other employees for same/similar 2) agency table of penalties
- Notoriety
- Clarity of rules/policy – on notice
- Rehabilitation
- Mitigating circumstances
- Deterrence in the future

[TSO ____] is a veteran with five years of military service. [TSO ____] has received three cash bonuses over the past two years. [TSO ____] received a perfect attendance award for the period from July 2005 to February 2006. [TSO ____] has an

exemplary attendance record during his four years of service. Imposing [] on a TSO with this record is inconsistent with TSA policy and the Douglas Factors.

Conclude

In conclusion, [TSO ____] respectfully requests that TSA rescind the Decision on Proposed Removal, award him back pay, and restore him to full duty. If one or both charges are sustained [TSO ____] requests that the Decision be mitigated to a lesser penalty. [TSO ____] looks forward to the favorable resolution of this matter. Please do not hesitate to contact me to discuss the issues contained herein. I can be reached at [number].

Sincerely,

[name]
AFGE

POLICIES

1. TSA Guidance on Union Activity
2. TSA Management Directive No. 1100.73-5
Employee Responsibilities and Conduct
3. TSA Management Directive No. 1100.73-2
TSO Dress and Appearance Responsibilities
4. TSA Management Directive No. 1100.75-3
Addressing Performance and Conduct
Problems
5. TSA Management Directive No. 1100.77-1
Disciplinary Review Board
6. TSA Management Directive No. 1100.77-2
Grievance Procedures
7. TSA Management Directive No. 1100.63-3
Representation
8. Douglas Factors



Note: Pursuant to Section 101 of the Aviation and Transportation Security Act (49 U.S.C. 114(n)), this directive establishes Transportation Security Administration (TSA) policy and supersedes Federal Aviation Administration (FAA) orders, policies, guidance, and bulletins regarding Employee Responsibilities and Conduct issued under the FAA Personnel Management System.

1. PURPOSE: This directive provides TSA policy, procedures, and standards for employee responsibilities and conduct within the Transportation Security Administration (TSA) that conform to generally accepted standards of behavior and ethical conduct for Federal employees. This directive supersedes HRM Letter, 735-1, dated January 9, 2003, Interim Policy on Employee Responsibilities and Conduct.

OVERVIEW: Employees' conduct at work directly impacts the proper and effective accomplishment of their official duties and responsibilities. Employees must perform their duties in a professional and business-like manner throughout the workday. Employees are also expected to behave professionally and in accordance with this directive and/or other applicable guidance while in a temporary duty travel status (e.g. while attending training) or otherwise away from their regularly assigned post of duty (e.g. while attending meetings at a local off-site location). Employees in direct contact with the public bear a heavy responsibility as their conduct and appearance have a significant impact on the public's attitude toward the Federal Service and the TSA.

While on or off-duty, employees are expected to conduct themselves in a manner that does not adversely reflect on the TSA or negatively impact its ability to discharge its mission, cause embarrassment to the agency, or cause the public and/or TSA to question the employee's reliability, judgment or trustworthiness. Failure to fully comply with the provisions of this directive or related laws, rules, and regulations may result in corrective action, including discipline, up to and including an employee's removal.

Employees are also required to comply with the *Standards of Ethical Conduct for Employees of the Executive Branch* (5 C.F.R. Part 2635) (the "Standards") and related conflict-of-interest statutes (18 U.S.C. §§ 201-209) and regulations. Nor may they use their office or position for their own personal advantage or the advantage of others.

Employees are responsible for seeking advice and guidance through their supervisory chain concerning their responsibilities under this and other policies governing employee conduct. Guidance may also be sought through the Office of Human Capital (OHC).

2. SCOPE: This directive applies to all TSA organizational elements and all TSA employees.

3. AUTHORITIES:

A. Sections 101 and 111(d) of the Aviation and Transportation Security Act (Public Law 107-71; 115 Stat. 597)

- B. Sections 403(2) and 423, of the Homeland Security Act of 2002 (Public Law 107-296; 116 Stat. 2185)
 - C. [TSA MD 1100.73-2, *Uniformed Employees Appearance and Responsibilities*](#)
 - D. DHS MD 11041, *Protection of Classified National Security Information*
 - E. [TSA MD 2800.8, *Information Security \(INFOSEC\) Program*](#)
 - F. DHS MD 11042.1, *Safeguarding Sensitive But Unclassified (For Official Use Only) Information*
 - G. DHS MD 0460.1, *Freedom of Information Act Compliance*
 - H. DHS MD 0470.2, *Privacy Act Compliance*
 - I. DHS MD 0550.1, *Records Management*
 - J. [TSA MD 200.7, *Records Management*](#)
 - K. [DHS MD 4600.1, *Personal Use of Government Office Equipment*](#)
 - L. [TSA MD 1000.5, *Government Travel Cards*](#)
 - M. [TSA MD 1000.7, *U.S. Debit Card Policy*](#)
 - N. [TSA MD 1100.73-3, *Prevention and Elimination of Sexual Harassment in the Workplace*](#)
 - O. [TSA MD 1100.75-3, *Addressing Performance and Conduct Problems*](#)
 - P. [TSA MD 1100.75-4, *Addressing Employee Driving Under the Influence \(DUI\) and Driving While Intoxicated \(DWI\) Offenses*](#)
 - Q. [TSA MD 1100.30-2, *TSA Employment of Relatives*](#)
 - R. [TSA Drug and Alcohol-Free Workplace Program](#)
 - S. [Drug and Alcohol Program Employee Notification](#)
4. DEFINITIONS: The terms of the provisions of this directive will be given the meanings provided in this and other relevant TSA policies, directives, and SOPs.
5. RESPONSIBILITIES:
- A. TSA employees are responsible to behave in a way that does not bring discredit upon the Federal Government or TSA including the responsibility to observe the following basic on-the-job rules:

- (1) Report for work on time and fit for duty (i.e., free from any effects of alcohol and/or drugs that may impair job performance or conduct; physically fit as needed by job requirements; in appropriate clothing and/or outfitted with required tools or equipment and in a mentally alert condition to perform the duties of his/her position).
- (2) Respond promptly to and fully comply with directions and instructions received from their supervisor or other identified or appropriate management officials.
- (3) Exercise courtesy and tact in dealing with fellow workers, supervisors, contract personnel (whether on or off duty) and the public. Support and assist in creating a productive and hospitable model work environment.
- (4) Maintain a clean and neat personal appearance during working hours. Employees are expected to dress appropriately in order to reflect the level of professionalism commensurate with their duties and responsibilities. TSA uniformed employees will comply with all policies relating to uniformed employees' appearance and responsibilities.
- (5) Safeguard and handle appropriately all classified national security information, Sensitive Security-information (SSI), and Sensitive But Unclassified (For Official Use Only) information to prevent unauthorized disclosure to persons not having a need to know the information. Further, employees must report security violations, release of non-public information, or misuse of such information to the Office of Security, INFOSEC Program Manager.
- (6) Conserve, protect and ensure appropriate use of Federal resources, time, information and personnel (both Federal and contract).
- (7) Observe and abide by all laws, rules, regulations and other authoritative policies and guidance, written and unwritten.
- (8) Report all personal arrests, excluding routine traffic citations not requiring court appearance (that do not involve suspicion of Driving Under the Influence (DUI) or illegal drug use) to the immediate supervisor or anyone in the chain of command within 24 hours of the arrest or as soon as possible.
- (9) Report any known or suspected violation of law, rule, regulation, or Standard Operating Procedure (SOP) by a person to someone in the chain of command and/or to the Office of Inspection (OI), whenever such violation may affect TSA operations or occur in the workplace.
- (10) Report waste of funds, fraud, abuse of authority or a substantial and specific danger to the public health and safety to the immediate supervisor or anyone in the chain of command, or to any other appropriate authority such as the affected program office, the OI, or Department of Homeland Security (DHS) Office of the Inspector General (OIG).

- (11) Uphold, with integrity, the public trust involved in the position to which assigned, and avoid the appearance of using public office for private gain.
- (12) Timely file a financial disclosure (public or confidential) and participate in and complete ethics training when required.

B. Supervisors and Managers are responsible to:

- (1) Ensure all new employees undergo an initial orientation in which they receive and acknowledge receipt of a personal copy of this policy. This directive will be part of the initial orientation package. The receipt and reading of this directive will be done along with other required orientation documents. As outlined in applicable provisions, employees will be provided one hour of official duty time annually to review this directive and the *Standards of Ethical Conduct for Employees of the Executive Branch* (5 C.F.R. § 2635, et sec.) or a comprehensive summary of the *Standards*. A written record of receipt should be signed by each new employee.
- (2) Ensure that, when this directive is revised employees receive a personal copy of the revised directive. This also requires each employee to acknowledge receipt of the revised directive. This acknowledgement can be accomplished on an individual basis by having the employee sign a document that may be developed locally.

Note: The acknowledgement of receipt form described in paragraphs B(1) and B(2) above will be filed in the employee's Employee Performance File (EPF).

- (3) Provide positive leadership and serve as a role model for subordinates by complying with all employee responsibilities and demonstrating a commitment and sense of responsibility to their job and high ethical standards.
- (4) Treat employees with dignity, respect, and in a fair and equitable manner. Supervisors and managers will communicate to their staff that discrimination, harassment, a hostile work environment, retaliation, or the appearance thereof, will not be condoned or tolerated.
- (5) Promptly take action to ensure that OI and the Personnel Security Division of the Office of Security are notified of known or suspected arrests or criminal activity on the part of employees. Also, in accordance with TSA's Personnel Security Program, supervisors must report any information that raises doubts about an employee's continued eligibility for access to sensitive information as described above in Section 5A(5).
- (6) Fully support and comply with all TSA directives, policies and programs and, where applicable, DHS directives, policies and programs. Investigate and, when necessary, take corrective action when an employee commits an offense in violation of those regulations, policies or programs.

6. **POLICY:** As described in this directive, every TSA employee is responsible for complying with all standards established by this directive and for reporting any violation(s) of this directive to appropriate officials. Failure to comply with this directive and/or failure to report violations of this directive may result in appropriate corrective action, including discipline up to and including removal.

7. PROCEDURES

A. Safeguarding and Use of Information, Documents, and Records

- (1) Employees shall ensure the proper handling of government records and shall not disclose or discuss the content of any classified documents, SSI, or "For Official Use Only" information unless specifically authorized to do so.
- (2) Classified information shall not be disclosed to anyone without the appropriate security clearance and an official need to know the information.
- (3) No procurement official or other employee shall disclose proprietary or source-selection information directly or indirectly to any person other than a person authorized by the Assistant Secretary or the contracting officer to receive such information. An employee who does not know whether information is proprietary or source-selection information, or who does not know whether he or she may disclose or receive such information, has an affirmative obligation to inquire of the contracting officer or the OCC whether the information is proprietary or source-selection-sensitive.
- (4) In addition, employees shall not:
 - (a) Release any official information in advance of the time prescribed for its authorized issuance.
 - (b) Use for private purposes, or permit others to use or have access to, any official information not available to the general public.
 - (c) Remove official documents or records from files for personal or inappropriate reasons. Falsification, concealment, mutilation, destruction, or unauthorized removal of official documents or records, either electronic or hard copy, is prohibited by law and is subject to disciplinary action, arrest, and/or prosecution.
 - (d) Disclose information, the release of which would be covered under the provisions of the Privacy Act (5 U.S.C. § 552a), or Freedom of Information Act, (5 U.S.C. § 552, as amended) except as authorized.

B. Safeguarding Public Funds

- (1) All employees whose duties involve the expenditure of public funds must have knowledge of and observe all applicable legal requirements and restrictions. In addition, employees are expected to exercise sound judgment in the expenditure of such funds.
- (2) Unauthorized Commitments: Only contracting officers and other designated employees, acting within the scope of their authority, may enter into contracts or other agreements and expend funds on behalf of the Government. An agreement entered into by a TSA employee without authority to enter into agreements on behalf of TSA is an unauthorized commitment. Unauthorized commitments are a serious violation of fiscal law and statutes. Persons who enter into unauthorized commitments will be held accountable. Supervisors and managers shall make every effort to prevent unauthorized commitments.
- (3) If a legal determination is required on these matters, contact the OCC.

C. Use of Federal Equipment, Property, and Personnel

Employees may not use or permit others to use Federal equipment, property, time or personnel, including but not limited to typing assistance, computer hardware, software, telecommunication capabilities, duplicating services, mail services (internal and external), TSA letterhead or chauffeur services, for other than official business or officially approved or sponsored activities or purposes.

- (1) Telephones: Government telephones are for conducting official business. Employees are permitted to make occasional and reasonable personal calls that are of limited duration and that do not interfere with an employee's official duties or result in unreasonable cost to the Government such as brief calls within the local commuting area to locations that can only be reached during working hours (e.g., car repair shop, doctor) or to their residence within the local commuting area (e.g., to arrange transportation, check on a sick family member). Employees may not make personal long distance calls except in an emergency.
- (2) Personal Mail: Employees may not have personal mail directed to their place of employment.¹
- (3) Government Postage: Personal use of U.S. Government-furnished postage - either metered or stamps - is prohibited. Personal use of other mailing services paid for by TSA is also prohibited. Employees may not use any form of government supplied postage or mailing service for any personal or other non-approved purpose, including submitting job applications or for mailing holiday or greeting cards.

¹ An exception to this prohibition is for employees posted or on temporary duty in foreign locations where government mail services have been established for security and safety reasons. See [DHS MD 0590, Mail Management Program](#).

- (4) Employee organizations and their members are also prohibited from using government or TSA paid mailing services to distribute organizational information or conduct organizational business.
- (5) Fiduciary Cards: Employees are prohibited from using government provided purchase cards, fleet cards or travel cards for personal use or other non-official or unauthorized purposes. Employees to whom such cards have been issued should become familiar with the provisions of applicable TSA, DHS, and federal government policies.
 - (a) Employees should seek reimbursement of legitimate official business expenses within five (5) working days after completion of a trip or period of travel, or every thirty (30) days if the employee is on continuous travel status.
 - (b) Employees are required to maintain their government credit card accounts in good standing and to make timely payment in full of outstanding balances.
- (6) Internet and electronic media access or use (Internet access/use) by TSA employees
 - (a) While on duty and/or while using government supplied resources:
 - (i) Internet access/use shall be consistent with assigned duties and responsibilities or consistent with the official business interests of TSA or other authorized purposes. Incidental or non-governmental purpose Internet access/use is permissible if it is reasonable, does not interfere with official business, does not result in congestion, delay, or disruption and involves minimal additional expense to the Government. Reasonable access/use must not violate any Federal or TSA rules, regulations or policies.
 - (ii) All employees are subject to unannounced periodic monitoring, including their Internet access/use, to ensure that the employee is not using government time, equipment, property or personnel in any prohibited activity, including activity that would discredit TSA.
 - (iii) Non-permissible access/use includes, but is not limited to:
 - f* Seeking, transmitting, collecting, storing, or viewing material that is discriminatory, defamatory or of a sexual and/or harassing nature.
 - f* Propagating chain letters or broadcasting inappropriate or unsolicited messages or materials that ridicule, or may be offensive to others on the basis of race, religion, color, sex, age, disability, national origin, sexual orientation, marital or parental status, or genetic information.
 - f* Concealing or misrepresenting user identity or affiliation.
 - f* Pursuing private commercial activities or profit-making ventures, fundraising, or partisan political activities.

- f* Divulging any information related to DHS or TSA on non-government websites.
- (b) While off-duty and/or while using non-governmental supplied resources (off-duty Internet access/use):
- (i) An employee's off-duty Internet access/use must not adversely reflect on TSA or negatively impact its ability to discharge its mission, cause embarrassment to the agency, or cause the public and/or TSA to question the employee's reliability, judgment or trustworthiness.
 - (ii) When an employee's off-duty Internet access/use is identified with, or contains references to, TSA in a manner that may reasonably imply a connection between the Internet access/use and TSA, non-permissible use includes, but is not limited to:
 - f* Seeking, transmitting, collecting, storing, or viewing material that is discriminatory, defamatory or of a sexual and/or harassing nature.
 - f* Propagating chain letters or broadcasting inappropriate or unsolicited messages or materials that ridicule, or may be offensive to others on the basis of race, religion, color, sex, age, disability, national origin, sexual orientation, marital or parental status, or genetic information.
 - f* As defined elsewhere in this MD, participating in Hate Groups or Organizations that engage in criminal or other notorious activity.
 - f* Concealing or misrepresenting user identity or affiliation.
 - f* Divulging any information related to DHS or TSA on non-government websites.
 - f* Creating personal web pages or participating in 'blogs' or other types of internet communication the content of which constitutes non-permissible use.
- (7) Government Vehicles: Employees who willfully use or authorize the use of a passenger carrier, motor vehicle or aircraft owned or leased by the United States Government for other than official purposes shall be suspended without pay for at least one month (30 days) or longer as warranted, or removed from office in accordance with 31 U.S.C § 1349. Passenger carrier includes motor vehicle, aircraft, boat, ship, or other similar means of transportation owned or leased by the U.S. Government.

- (8) Employee Identification Badges, Credentials, Facility Access Cards, and other Similar Media (for the purposes of this sub-section “identification media”):
- (a) Employees will use official (TSA or DHS issued or authorized) identification media only for official purposes. Employee use of official identification media must comply with applicable requirements and restrictions, including DHS MD 11010.1, Issuance and Control of Credentials, and those issued by the program office responsible for the media in question. Examples of “applicable requirements and restrictions” include, but are not limited to, a prohibition against allowing another individual to use an employee’s identification badge, a requirement to wear and visibly display an employee identification badge while on duty, or a prohibition from facility access during non-duty hours.
 - (b) Employees are prohibited from using private identification media for purposes other than those for which the media was issued. In this context, private identification media means identification media issued by a non-governmental entity in connection with that entity’s legitimate interests. An example of use prohibited by this sub-section is attempting to use a private employer’s airport access card to gain facility access as a TSA employee.
 - (c) Employees must not obtain, possess, display, transfer to another, or otherwise use fraudulent identification media.
- D. Observing Safety Regulations: Employees must observe all rules, signs and instructions relating to personal safety in the workplace. Employees must report potentially unsafe or unhealthy working conditions and/or practices to their immediate supervisor (or any supervisor or management official in the chain of command) or the appropriate safety and health official, and cooperate fully with TSA’s safety staff. Employees must:
- (1) Report accidents involving injury to persons or damage to property or equipment.
 - (2) Use required protective clothing or equipment.
 - (3) Ensure the safety of, and prevent injury to personnel or damage to property or equipment through negligence.
 - (4) Wear available safety/seat belt while using a motor vehicle for official government business.
 - (5) Report any operational error or deviation from safety regulations.
 - (6) Evacuate the premises during a fire alarm/drill or other order to vacate a work site and otherwise abide by the directions of a Floor Warden, safety, security or management official.
 - (7) Perform work-related activities in a safe and prudent manner.

E. Providing Statements and/or Testimony

- (1) Employees must cooperate fully with all TSA and Department investigations and inquiries. This includes providing truthful, accurate, and complete information² in response to matters of official interest and providing a written statement, if requested to do so. Established TSA and DHS procedures must be followed for responding to such requests for information or testimony.
- (2) It is TSA policy to cooperate fully with Congress and other duly authorized investigative bodies regarding matters under their jurisdiction. All employees must give complete and truthful information in response to requests from such bodies for information or assistance. Prior to responding, employees must advise their supervisor, or their second-level supervisor of any such request.
- (3) When directed by the Assistant Secretary (or designee), or by other appropriate authority, an employee shall take an oath or make an affirmation about his/her testimony or written statement before an agent authorized by law to administer oaths. If requested, the employee, after reviewing the document, shall sign his/her name to the transcript of testimony, affidavit or written statement which the employee provided. No employee may refuse to testify or provide a written statement or information pertinent to matters under investigation or inquiry. However, if the employee is being questioned as the subject of an investigation that could result in criminal prosecution, the employee shall be advised of this fact and his/her rights against self-incrimination. (In such cases, management should consult with OCC Headquarters.)
- (4) If the employee is in the custody of law enforcement officials, no action should be taken to question him or her without contacting OCC.

F. Letters and Petitions To Congress

- (1) Employees, in their official capacity, may not engage in “grass roots” lobbying by encouraging persons or entities outside the government (third parties, special interest groups, or members of the public) to contact members of Congress in support of, or in opposition to, a legislative matter before or after its introduction.
- (2) An employee, either individually or collectively, in his or her personal capacity, may petition Congress or any member thereof, or may furnish information to any committee or member of Congress unless the information furnished is prohibited by law from disclosure.

² The requirement to provide information in an inquiry does not, in all cases, take precedence over a promise of confidentiality given under authority of government law, regulation, or policy, such as that given by an EEO counselor, an Ombudsman, or a TSA Model Workplace Conflict Coach. However, a promise of confidentiality does not extend to information that reveals criminal activity, a threat of harm to a person or persons, a breach of transportation security, or other similarly serious matter (such as an offense listed in the attachment to TSA MD 1100.75-3, *Addressing Conduct and Performance Problems*). Questions concerning confidentiality matters, including promises of confidentiality, should be referred by management to OCC.

- (3) Employees may not use agency facilities, supplies, equipment, personnel and/or duty time to contact any committee or member of Congress about personal business.
- (4) While TSA desires that employees seek to resolve any problem or grievance within the agency, any employee exercising the right to correspond with a member of Congress shall be free from restraint, reprisal or coercion.

G. Recording or Monitoring of Telephone Calls or Covert Recording or Monitoring of Conversations, Meeting, etc.

- (1) Recording of telephone conversations in connection with performance of TSA duties without prior approval of the Chief Information Officer (CIO) is prohibited. The use of recording devices, portable or otherwise, on telephones shall be for official purposes and generally limited to areas involving transportation security.
- (2) Covert/secret taping of any conversation or meeting occurring at the workplace or off-site that deals with workplace issues and matters of official concern is generally prohibited. This prohibition applies regardless of any state law that may permit covert/secret tape recording.
- (3) These prohibitions do not preclude openly using recording equipment in areas involving transportation security, official investigations, or under circumstances wherein the prior willing concurrence of all parties is clearly and specifically indicated and understood. Further, covert recording may be conducted by OI agents during their investigations as specifically allowed by law.

H. Defamatory or Irresponsible Statements: Employees are accountable for the statements they make and the views they express. An employee's public criticism of TSA, its management or employees on matters of public concern (defined as a matter of political, social, or other concern to the community) may be constitutionally protected. However, this protection may be limited to the extent that the speech in question disrupts the orderly conduct of official business, concerns protected information, or where such statements adversely affect the efficiency of the service. For example, defamatory, irresponsible, false or disparaging statements about employees may disrupt the orderly conduct of official business or adversely affect the efficiency of the service.

I. Sexual Harassment and Misconduct of a Sexual Nature is prohibited. TSA is committed to providing a workplace free of sexual harassment or misconduct of a sexual nature. All employees have a right to work in an environment where they are treated with dignity and respect.

- (1) Sexual harassment is sex discrimination in violation of Title VII. Sexual harassment is defined as unwelcome sexual advances (actions will be determined as "unwelcome" if the employee did not solicit the action and the employee regarded the conduct as undesirable and/or offensive), requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- (a) Submission to such conduct is made either explicitly or implicitly a term of an individual's employment,
 - (b) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions,
 - (c) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.
- (2) Misconduct of a Sexual Nature. This is conduct that may not rise to the legal definition of sexual harassment, but is nonetheless inappropriate for the workplace and will not be tolerated. For instance, viewing, posting, copying, sharing, distributing and/or printing material of a sexual nature from the Internet or other source is prohibited while on duty, while on TSA premises, or when using a TSA computer or server.
- (3) Misconduct in Violation of the Agency's Policy. All employees have a responsibility to behave in a proper manner and to take appropriate action to eliminate sexual harassment or other misconduct of a sexual nature in the workplace. Examples of actions which are considered violations of the TSA's policy include, but are not limited to:
- (a) Sexual teasing, jokes, remarks or questions.
 - (b) Sexually suggestive or offensive looks, gestures or actions.
 - (c) Unwelcome letters, cards, e-mail messages and/or telephone calls of a sexually suggestive or offensive nature.
 - (d) Posting, distributing, showing, viewing, accessing through the Internet or other electronic media sources, materials of a sexual nature. Sexually explicit materials are prohibited at the worksite, regardless of whether or not a specific complaint is filed.
 - (e) Unwelcome repeated pressure to socialize outside the workplace.
 - (f) Inappropriate physical touching.
 - (g) Promise of benefit in exchange for sexual favors.
 - (h) Threat or act of reprisal for refusal to provide sexual favors.
- J. Workplace Violence: Violent, threatening, harassing and/or confrontational behavior is unacceptable and will not be tolerated. Threatening behavior may include harassment, intimidation, or any oral and/or written remarks or gestures that communicate a direct or indirect threat of physical harm or which otherwise frighten or cause an individual concern for his or her personal safety. Such irresponsible and inappropriate behavior includes actions, gestures, language or any other intimidating or abusive action that creates a reasonable

apprehension of harm. Employees, supervisors, and managers are responsible for enforcing the highest standards of personal safety and welfare at the workplace. Employees must immediately report threats of violence, violent incidents or other inappropriate behavior to their supervisors.

K. Eliminating Discrimination and Creating a Model Work Environment (MWE)

- (1) TSA is committed to providing a work environment free from unlawful discrimination and where the contributions of all employees are supported and encouraged without regard to non-merit factors. All conduct must be appropriate and supportive of a model work environment. For instance, engaging in discriminatory conduct, making disparaging remarks or expressing stereotypical views that reflect negatively on a particular group or individual, or displaying and/or distributing offensive materials that ridicule or defame a particular group is prohibited in the workplace.
- (2) Every level of management, including supervisors, team leaders, etc., is required to provide positive leadership and support for TSA's and DHS' Equal Employment Opportunity (EEO) policies and programs by ensuring that all agency programs, practices and activities are developed and administered in accordance with pertinent laws and agency policy prohibiting discrimination. Managers and supervisors must not engage in unlawful discrimination or inappropriate behavior in exercising their authority to take, direct others to take, recommend or approve any personnel action with respect to TSA employees and applicants. Managers and supervisors are responsible for ensuring a hospitable workplace free of discrimination, intimidation, and other offensive behaviors and materials, and may be subject to corrective action for failing to take prompt appropriate action to correct intimidating and/or offensive activity in the workplace.
- (3) TSA prohibits reprisal and illegal discrimination against anyone on the basis of race, color, national origin, religion, age, sex, disability, sexual orientation, political affiliation, marital or parental status, or genetic information. However, TSA may establish physical ability or gender-based employment criteria when necessary to meet TSA's legal and operational mandate to perform security screening functions. In addition, TSA will not tolerate disparate treatment of individuals on the basis of characteristics not bearing on job performance or the statutory qualifications of the job.
- (4) It is a violation of TSA policy to coerce, threaten, retaliate against, or interfere with any person in the exercise of his or her right to file a claim of illegal discrimination or to oppose any discriminatory practices or behavior. No employee shall be subject to retaliation for making a charge of discrimination, giving testimony, assisting, or otherwise participating in the EEO process; nor shall an employee be retaliated against for filing a grievance or participating in the grievance process, or raising his or her concerns in the workplace through other available means (e.g., Office of the Ombudsman, Office of Special Counsel, OIG). Note: TSA's Office of Civil Rights and Liberties is responsible for the EEO process at TSA.

L. Possession of Firearms or Other Weapons:

- (1) No employee, while in or on TSA or General Services Administration (GSA) owned, leased or controlled property, including while in a government vehicle at any time or while in a personal vehicle when on TSA/GSA owned, leased, or controlled property, may have in his or her possession firearms or other weapons unless authorized by TSA. Additionally, no employee may have in his or her possession firearms or other weapons while in an airport terminal, other airport building, or airport parking lot (including off site parking where employee parking fees are subsidized by TSA) unless authorized by TSA in accordance with TSA policy.
- (2) Employees who have been authorized to travel with firearms must ensure that such items are packed in the employee's checked baggage pursuant to 49 C.F.R. § 1540.111(c), or, with respect to other weapons, ensure that such items are packed in the employee's checked baggage. These prohibitions apply whether the employee is on or off-duty and regardless of any state law that may permit the carrying of firearms or other weapons.

M. Alcohol and Drugs

- (1) TSA prohibits the use of illegal substances and the inappropriate use of legal substances. Illegal substances include, but are not limited to, cocaine, marijuana, opiates, amphetamines, and phencyclidine. Legal substances include, but are not limited to, alcohol and prescription or over-the-counter medications. These substances can negatively affect:
 - (a) the employee's work performance and/or conduct;
 - (b) the ability of other employees to perform their duties effectively; or
 - (c) the ability of TSA to accomplish its mission.
- (2) As an employer with responsibility for transportation security, TSA is especially concerned when an employee's actions could negatively affect the security of the public or detract from public confidence. Public confidence depends upon trust in the integrity of the nations' systems and in the employees who maintain the security of the traveling public. Accordingly, employees will be subject to the following requirements:
 - (a) Employees are prohibited from using illegal drugs both on and off-duty.
 - (b) Employees are prohibited from possessing, distributing or trafficking in controlled and/or illegal substances in violation of federal, state or local law. This prohibition applies to employees both on and off-duty.
 - (c) Employees who inappropriately use legal substances will not be allowed to perform any safety or security-sensitive duties. TSA shall consider the circumstances of the inappropriate use and determine whether an employee may be returned to duty. An

employee will not be returned to duty unless TSA has determined that such employee is not a risk to public safety or security.

- (d) An employee arrested for drug or alcohol-related crimes for which a term of imprisonment could be imposed will not be allowed to perform any safety or security-sensitive duties unless TSA determines that the employee is not a risk to public safety or security. Employees may be subject to an investigation of the circumstances giving rise to the arrest and discipline in appropriate cases.
- (e) Employees occupying Testing Designated Positions (TDPs) are prohibited from consuming or being under the influence of alcohol while on duty or consuming alcohol for a minimum of four (4) hours preceding performance of security-related functions. Employees are responsible for ensuring that they are fit for duty and free of any alcohol impairment upon reporting for, and carrying out their security functions.
- (f) Employees in non-TDPs are prohibited from consuming or being under the influence of alcohol while on duty.
- (g) Employees are prohibited from endangering themselves and the public by driving while under the influence of alcohol.

N. Membership or Participation In Hate Groups or Organizations that Engage in Criminal or Other Notorious Activity

- (1) Membership or participation in hate groups is inconsistent with TSA's policy that employees not engage in activities that may reflect unfavorably on TSA and the federal government. An employee who knowingly becomes or remains a member of, or participates in a hate group, or otherwise knowingly associates himself with the hate-motivated activities of others, proceeds at the risk that his or her membership, participation, or association could reasonably be taken as tacit approval of the prejudice-related aspects of those groups or activities. As used here, "hate group" or "hate-motivated activities" is defined as an organization, association, event, or activity, the sole or primary purpose of which is to advocate or promote hate, violence, or invidious prejudice against individuals or groups based on race, color, religion, national origin, sex, sexual orientation, age, or disability where such association, conduct, or speech adversely affects the efficiency of the service.
- (2) Similarly, membership or participation in organizations that condone violence against others or engage in criminal or other notorious activity, whether or not the employee himself or herself engages in such activity, is inconsistent with the mission of TSA and the Department to ensure the safety of our nation's transportation systems and the security of our country. Therefore, employees who associate with such organizations run the risk that their membership, participation, or association could reasonably be taken as approval of the organization's notorious activities. They may, under certain circumstances, be required to terminate their relationship with such organizations and/or may be subject to administrative action.

- O. Subversive Activity: In accordance with 5 U.S.C., Chapter 73, no employee shall advocate, or become a member of any organization which the employee knows advocates the overthrow of the Government of the United States, or which seeks by force or violence to deny other persons their rights under the Constitution of the United States.
- P. Partisan Political Activity and Holding Partisan Political Office:
- (1) Employees are responsible for complying with the restrictions on partisan political activity contained in the Hatch Act (5 U.S.C. § 7321, et seq, 5 C.F.R. Parts 733-734).
 - (2) Employees are responsible for complying with the restrictions on partisan political activity contained in the Hatch Act (5 U.S.C. § 7321 et seq; 5 C.F.R. Parts 733, 734). No employee shall run for nomination to or as a candidate for a partisan political office, except as expressly provided in 5 C.F.R Part 733. Employees may not conduct partisan political activities in the Government workplace or while on duty, in a Government vehicle or while wearing an official uniform. In addition, employees may not solicit, accept, or receive partisan political campaign contributions or host a partisan political fundraiser. Employees are urged to seek the advice of the OCC or the U.S. Office of Special Counsel to determine if a particular partisan political activity is permissible under the Hatch Act.
- Q. Work Strikes and Slowdowns: Employees are prohibited from engaging in, or encouraging another federal employee to engage in a strike, work stoppage, work slowdown or sickout involving the Federal government.
- R. Canvassing, Soliciting, or Selling: Employees shall not engage in private activities involving the use of government time, the time of a subordinate, or equipment or resources for personal gain or the gain of others or any other unauthorized purpose while on duty or on government owned or leased property.
- (1) This prohibition applies specifically, but is not limited to, such activities as:
 - (a) Canvassing, soliciting, or selling, particularly for personal or private monetary gain.
 - (b) Promoting or buying (group or otherwise), when such action could reasonably be interpreted as involving the improper use of government facilities, equipment, and personnel.
 - (c) Canvassing or soliciting membership, except in connection with organized, sanctioned employee groups as authorized by law, regulation, or directive.
 - (d) Soliciting contributions from other employees for a gift to anyone in a superior official position in contravention of law (5 U.S.C. § 7351) or regulation (5 C.F.R. §§ 2635.301 – 2635.304).
 - (2) This prohibition governs conduct involving the use of government time and/or property.

- (3) This prohibition does not apply to:
 - (a) Specifically authorized activities.
 - (b) Soliciting contributions for authorized charitable, health, welfare and similar organizations (e.g., Combined Federal Campaign) as outlined in 5 C.F.R. Part 950.
 - (c) Activities of voluntary groups of federal employees commonly accepted as normal social, welfare or recreational functions of such groups.
 - (d) A spontaneous, voluntary collection for an employee experiencing a significant life event where the collection is conducted by co-workers of approximately equal status to the employee. In this context, a significant life event includes such events as marriage, childbirth, transfer, separation, retirement, illness or death in the family.
- S. **Gambling and Related Activities:** An employee shall not conduct or participate in any gambling activity while on duty or while on government-owned or leased property. This prohibition also covers employees while they are on the premises of any airport. Gambling activity includes, but is not limited to, operating a gambling device, conducting a lottery or pool, conducting a game for money or property, or selling or purchasing a numbers slip or ticket.
- T. **Borrowing and Lending Money**
 - (1) Managers, supervisors, or supervisory team leaders shall not borrow money from subordinates or have a subordinate act as an endorser or co-maker of a note given as security for a personal loan. Employees shall not lend money to any other employee, superior official or peer for monetary profit or other gain. These prohibitions do not apply to the operation of recognized credit unions or to employee welfare plans.
 - (2) Managers and supervisors should also not engage in any financial agreement or joint business ventures, including, but not limited to, general or limited partnerships, landlord-tenant relationships, or ongoing contractual relationships for providing goods or services, that could affect the financial interests of a subordinate or a supervisor, or otherwise create a conflicting financial interest or create an appearance of lack of impartiality as defined by 5 C.F.R. § 2635.502.
- U. **Meeting Financial Obligations:** Employees shall satisfy in good faith all just financial obligations, especially those such as federal, state, or local taxes, and other valid debts, including personal commercial debts, government-provided credit card debts, claims based on court judgments, federally insured student loans and tax delinquencies, and shall make and adhere to arrangements for settlement of debts.
- V. **Accepting Notarial Fees:** An employee who is a notary public shall not charge or receive fees for performing notarial acts in connection with his or her official duties. The prohibition on acceptance of fees does not apply to notarial acts performed in an unofficial capacity during off-duty hours and off-government property.

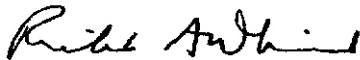
- W. **Accepting or Soliciting Gifts From Non-Federal Sources:** Employees are prohibited from soliciting or accepting, either directly or indirectly, any gift from a prohibited source, or a gift that is offered because of the employee's government position, unless an exception or exclusion applies to gifts that are offered pursuant to 5 C.F.R. Part 2635, Subpart B. Gifts may not be solicited even if an exclusion or exception would apply if the gift was offered to the employee. Employees may not accept cash under any circumstances. Generally, a prohibited source includes any person or organization seeking official action by, doing or seeking to do business with, or whose activities are regulated or substantially affected by TSA or its employees, and includes the traveling public. See 5 C.F.R. § 2635.203(d) for the regulatory definition of a prohibited source. A gift includes any favor, gratuity, discount, entertainment, hospitality, loan, forbearance, or any other thing of monetary value, including free transportation and free attendance.
- X. **Outside Employment and Outside Activities**
- (1) TSA employees may not engage in outside employment or an outside activity that conflicts with their official duties. See 5 C.F.R. § 2635.802. Outside employment or an outside activity will conflict with an employee's official duties if the employment or activity violates the law or any agency supplemental regulation, or will cause the employee to disqualify himself from participating in matters that are so central or critical to the performance of the employee's official duties that the employee's ability to perform the duties of his position will be materially impaired. Examples of conflicting outside activities or employment include those matters that will create a financial conflict of interest for an employee, or cause an appearance of lack of impartiality in the performance of their official duties, such as outside employment with entities that are regulated by TSA.
 - (2) Employees are urged to seek guidance from their Field Counsel or a headquarters' Ethics Official in advance to determine whether an outside activity or employment will conflict with the employee's official duties.
 - (3) Employees who engage in conflicting outside employment or activities may be subject to disciplinary action, may be forced to resign the conflicting outside position or activity, or may be subject to civil or criminal prosecution if the outside activity or employment violates the criminal conflict of interest ethics statutes at 18 U.S.C. §§ 201-209, or other laws.
- Y. **Advertisements, Endorsements, and Referrals:** Employees shall not use their government position or title or any authority associated with their public office to endorse any product, service, or enterprise, except in furtherance of the statutory authority, or as a result of documentation of compliance with agency requirements or standards, or as the result of recognition for achievement given under an agency program of recognition.

Z. **Unauthorized Absences and Tardiness**

- (1) Employees are expected to schedule and use earned leave in accordance with established procedures. Employees must, whenever possible, obtain prior approval for all absences from duty including leave without pay (LWOP). Employees are required to contact their supervisor as far in advance of their scheduled tour of duty as possible, or by the time established in the call in procedures for their organization, to request and explain the need for unscheduled leave. Exceptions to this requirement include when the employee is incapacitated or there are other exigent circumstances. In such instances, the employee, a family member or other individual should, as soon as is reasonably practical, notify the employee's supervisor of the unplanned leave. Repeated unscheduled absences may negatively reflect on the employee's dependability and reliability, and may adversely affect TSA's mission. Unapproved absences will be charged as absent without leave (AWOL). AWOL may form the basis for administrative action, including discipline, up to and including removal from Federal Service.
- (2) Tardiness includes delay in reporting to work at the employee's scheduled starting time, returning late from lunch or scheduled break periods, or overdue return to the employee's work site after leaving the workstation on official business or leave. Unexplained and/or unauthorized tardiness will be charged to AWOL.

8. **EFFECTIVE DATE AND IMPLEMENTATION:** This policy is effective immediately upon signature.

APPROVAL



8/16/2006

Richard A. Whitford Date
Assistant Administrator for Human Capital

Filing Instructions: File 200.1.1

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Distribution: Administrator, Deputy Administrator, Associate Administrator, Assistant Administrators, Office Directors, Area Directors, and Federal Security Directors, and all TSA employees

Point-of-Contact: Office of Human Capital Policy



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 establishes Transportation Security Administration (TSA) policy and supersedes the Federal Aviation Administration (FAA) orders, policies, guidance, bulletins regarding uniformed employees appearance and responsibilities issued under the FAA personnel management system. This directive is TSA policy and must be applied accordingly.

REVISION: This revised directive supersedes TSA MD 1100.73-2, Uniformed Employees Appearance and Responsibilities, dated April 27, 2007.

SUMMARY OF CHANGES: The directive title has changed; the title “Officer” has been added to refer to employees in the positions of TSO, LTSO and STSO; Section 5, Responsibilities, enhances supervisor and manager responsibilities; and Section 7, Procedures, clarifies the wearing of ties, name tag placement, the wearing of coveralls and shorts, limitations on wearing earrings, and hair length/wear while on duty and adds standards for tie tacks/tie bars, baseball caps, and wrist watches.

1. **PURPOSE:** This directive provides TSA policy and procedures for proper wearing of the TSA uniform, and for personal appearance and conduct while in uniform. It establishes procedures for acquiring, wearing, maintaining, retrieving, and disposing of the official TSA uniform. The directive also authorizes the payment of uniform allowances.
2. **SCOPE:** This directive applies to all TSA Officers in the job categories of Transportation Security Officer (LTSO), and SuperOfficer (TSO), Lead Transportation Security Officer (STSO) who are required to be in uniform while on duty.
3. **AUTHORITIES:**
 - A. **Sections 101 and 111(d) of the Aviation and Transportation Security Act, Pub. L. 107-71 (ATSA), November 19, 2001 (49 U.S.C. §§ 114(n), 40122, 44935, and 44935 note)**
 - B. **Applicable TSA and U.S. Department of Homeland Security delegations of authority**
4. **DEFINITIONS:**
 - A. **Exemption** An exception to policy or procedure; e.g., for religious or medical reasons
 - B. **Officers** Members of the TSA TSO workforce required to own and wear uniforms.
 - C. **Personal Appearance Standard:** The TSA standard for Officers that requires a neat, clean appearance, to reflect the required level of professionalism while in the performance of duties and/or while wearing a uniform.

- D. Personal Electronic Equipment** Non-TSA issued electronic equipment that is not required to perform official TSA duties, including but not limited to, cell phones, pagers, MP3 players, smart phones, CD players, and laptop computers.
- E. Personal Funds** An Officer's own money that may be used to purchase additional uniform items.
- F. Reasonable Person Standard** An objective determination made by someone who exercises average care, skill, and judgment in conduct and determines the standard. For purposes of this directive, the FSD shall make the final determination when necessary.
- G. Retrieval and Disposal of Uniforms**: Returning and discarding of uniforms that are no longer suitable for continued use because of damage or normal wear and tear. Employees must return uniforms when they leave TSA employment. TSA insignia from personally purchased uniform items must also be returned to TSA for disposal.
- H. TSA Insignia** The TSA badge, emblem, patch, or other unique marking on a uniform that identifies an employee as part of the TSA TSO workforce.
- I. TSO Workforce** TSA employees in the job categories of STSO, LTSO, and TSO.
- J. Uniform Allowance** An annual monetary amount provided to each Officer to purchase authorized TSA uniform items.

5. RESPONSIBILITIES:

A. Federal Security Directors (FSDs), or their designee, are responsible for:

- (1) Authorizing the designation of Officer uniform items to be worn at an airport, including on airport property or grounds when not on duty, based on job assignment, time of year, and geographic considerations;
- (2) Ensuring that Officers comply with this directive and that they possess the required number of uniforms that will result in a professional appearance; and

NOTE: The FSD may authorize, but not require, Officers to wear optional uniform items, such as, coveralls, shorts and short sleeve polo shirts. These items are authorized only in those areas outside the view of the public, or when performing Aviation Direct Access Screening Program (ADASP) duties outside of the airport building.

- (3) Providing a copy of this directive and [TSA Form 1175, TSO Dress and Appearance Responsibilities Acknowledgment](#) to all Officers; posting the directive in a prominent, accessible, and appropriate area in the workplace; and informing all Officers of the posting.

B. Supervisors and Managers are responsible for:

- (1) Ensuring Officers under their supervision are in compliance with this directive;**
- (2) Obtaining a signed TSA Form 1175 from the Officer acknowledging that they have received and read this directive;**
- (3) Initiating appropriate corrective action when one of their employees violates any of the provisions outlined herein; and**
- (4) Ensuring that the signed TSA Form 1175 is filed in the employee's Employee Performance File (EPF).**

C. Officers are responsible for:

- (1) Reading and adhering to this directive;**
- (2) Seeking clarification from their supervisor in cases of doubt or misunderstanding as to its application, and for knowing the consequences of violating this directive; and**
- (3) Signing TSA Form 1175, stating they have received and read this policy and returning the form to their supervisor or manager.**

6. POLICY

- A. TSA Officers will wear a standardized uniform as a readily identifiable symbol of the security mission and role of the TSA Officer. The uniform is designed to enhance employee pride, to project the professional image of the organization, and to instill trust and confidence in the traveling public.**
- B. All Officers shall adhere to the personal appearance standard to reflect the level of professionalism commensurate with their duties and responsibilities. The FSD, or designee, shall ensure all Officers meet the appearance standard. Failure to meet the uniform and appearance requirements may result in appropriate corrective action. Repeated violations of this policy may result in disciplinary action, up to and including removal from duty.**
- C. All Officers shall wear properly fitted uniforms on duty. The contract for issuing uniforms includes provisions for obtaining proper fit. Uniforms that do not fit should be returned to the uniform contractor for replacement prior to being worn. If standard sizes do not provide a proper fitting uniform, the Officer should call the uniform contractor's customer service office (currently VF Solutions) at 1-800-334-9087, to request special measurement uniforms.**
- D. Officers may wear their uniform while commuting to and from work without an over-garment. Officers should not wear their TSA uniform while participating in activities outside of work. However, brief stops that are a part of the normal work commute are permitted while in uniform.**

- (1) **Examples of permitted stops while in uniform include dropping off and picking up children from day care or school, or stopping to buy a cup of coffee.**
- (2) **Examples of activities *not* permitted while in uniform include, but are not limited to, grocery or other shopping, going out to dinner, or meeting friends for a drink after work.**

NOTE: The activities stated above are merely examples and do not represent a comprehensive list of permitted/not permitted activities. If there is any question as to a specific activity, Officers should discuss it with their supervisors.

- (3) **It is important that employees understand the public will view an employee in uniform as representing TSA, even if the employee is off duty.**

E. Only TSA Headquarters authorized insignia and accessories may be worn on or with the uniform.

7. PROCEDURES:

A. Standard Uniforms: Officers are initially provided with a standard TSA uniform package. Current standard issue consists of 3 trousers, 3 short sleeve shirts, 3 long sleeve shirts, 2 neckties, 1 sweater vest, 1 team jacket, 2 pairs of shoulder boards, 1 belt, 3 pairs of socks, and 1 nametag.

- (1) **Shirts: Officers shall wear only TSA issued long or short sleeved shirts. Shirts will be worn with collar buttons closed and ties properly affixed. Shirt collars should fit comfortably around the neck. Long sleeved shirts will cover the wrists.**

NOTE: All undergarments shall be neutral in color and concealed from view, with the exception of short-sleeved, crew-neck white undershirts that may be worn with open collar short sleeve shirts. No lettering or design shall be visible through the uniform shirt.

- (2) **Tie: Only TSA issued ties may be worn.**
 - (a) **Officers will wear the issued male or female style ties. Female Officers can wear either style tie. If a female Officer chooses to wear the male style tie and she has already been issued the female style tie, she may exchange it for a male style tie.**
 - (b) **The FSD, or designee, is authorized to exempt Officers from wearing ties with a short sleeved shirt while performing screening duties based on the time of year, geographic considerations, and heat and humidity conditions.**
 - (c) **A tie is mandatory with a long sleeve shirt.**
- (3) **Trousers: Officers will wear only TSA issued trousers. Trousers will have a front crease that meets the top of the shoe with a slight break and the back crease stops one inch (1") above the heel. Trousers will not be tailored for cuffs or narrowness of pant legs.**

- (4) **Skirts:** may be considered for female Officers whose religious beliefs do not permit them to wear trousers. If an exemption is approved, it would permit such employees to wear an appropriate, approved skirt that does not interfere with their ability to perform their duties. See Section 7D regarding the request of an exemption.

NOTE: If the TSA issued skirt has not been delivered, the Officer is authorized to wear a personally purchased skirt that conforms to TSA's uniform appearance standard. This would be an A-line or similar style navy blue skirt that is similar in appearance to the uniform trousers. The skirt shall fall below the knee when seated and the fit/length must not interfere with the physical performance of the employee's duties.

- (5) **Belt:** Officers will wear only the TSA issued black belt or a belt that is similar in appearance to the TSA issued black belt.
- (6) **Socks:** Officers are issued three pairs of socks. Additional Officer provided socks must be black and/or navy blue matched pairs of socks.
- (7) **Shoes/Boots:** Shoes/boots must cover the entire foot and be all black in color with no adornments. Shoes/boots must be plain toe style, clean, and polished. Heel height should be no more than two inches (2"). Black sneakers or tennis shoes are not permitted.
- (a) Shoes/Boots are not part of the standard TSA uniform package. Shoes/Boots are a personal item of apparel that must be purchased at the employee's own expense.
- (b) TSA will not reimburse employees for the cost of shoes/boots, but allowance money may be used to purchase black shoes from the uniform contractor.
- (8) **Nametags:** Officers shall wear a TSA issued nametag. The nametag will be worn on the right side of the chest. On the white shirt, should be worn centered on the right pocket flap and aligned with the top of the flap. On the sweater vest and optional sweater, there is a nametag holder on the right front breast with round eyelets for the clutch pins. Nametags will not be worn on the polo shirt, coverall, or jacket.
- (9) **Shoulder Boards:** Officers shall wear the appropriate TSA issued shoulder boards. Shoulder boards identify rank as follows: TSO shoulder boards have one stripe, LTSO have two stripes, and STSO have three stripes.

B. Optional Uniform Items: In addition to the standard uniform package issued to Officers, employees may purchase several optional uniform items for their particular work environments.

- (1) **Optional uniform items include long sleeve sweaters, 3-season jackets, parkas, knit caps, coveralls, polo shirts, shorts, nametags with magnetic fasteners, and shoes.** FSD, or designee, may authorize, but not require, Officers to wear optional uniform items.

- (2) If authorized by the FSD, or designee, coveralls, polo shirts, and shorts may only be worn on ADASP activities that are outside by Officers performing baggage screening functions of the airport building.
- (3) Maternity uniforms are available for pregnant Officers. A maternity uniform allotment request form is available on the uniform contractor's web site at www.vfsolutions.com/tsa, and must be approved/certified by the FSD or designee. Once approved, the Officer will be issued a set of maternity uniforms, at TSA's expense, consisting of 3 long sleeve maternity shirts, 3 short sleeve maternity shirts, and 3 maternity pants.
- (4) Tie Tacks/Tie Bars: If authorized by the FSD, Officers may purchase, at their expense, and wear tie tacks/tie bars. Tie tacks may be button or stud style tie tacks that do not exceed ½ inch diameter and must be plain gold or silver in color. Tie bars must not exceed 3/8 inch in width and be plain gold or silver tone metal. Tie tacks/ bars with logos or emblems must be of TSA/DHS or other Federal Government organizations.
- (5) Baseball Cap: If authorized by the FSD, Officers may purchase, at their expense, and wear baseball caps. The baseball cap must be navy blue in color with a DHS or TSA patch affixed to the front of the cap. The baseball cap must be worn with the brim facing forward. Baseball caps may only be worn by Officers performing baggage screening functions in a baggage screening room outside the view of the public or curbside and by Officers performing ADASP activities outside the airport building.

C. Accessories and Grooming:

- (1) Eyewear: Only plain frame style prescription eyeglasses with neutral colored lenses may be worn with the uniform. Sunglasses or eyeglasses that are faddish in style or color (e.g., mirrored, opaque, iridescent or fluorescent colors, etc.) shall not be worn while on duty. Sunglasses or darkly tinted glasses shall not be worn inside the building.
- (2) Jewelry:
 - (a) Officers may wear only stud style earrings that do not exceed ¼ inch in diameter and are made of plain gold or silver tone metal, pearl, or other gemstone, and earrings may only be worn in the ear lobe. Female Officers may not wear more than two (2) earrings per ear lobe and male Officers may wear only one (1) stud style earring per ear lobe. Earrings must not detract from the professional appearance of an Officer.
 - (b) Necklaces may be worn if not visible to the public.
 - (c) Other than earrings, no other jewelry, including tongue piercing, shall be worn on or about the face, head or mouth. Body piercing, except for earrings, may not be visible to the public.
 - (d) Rings or ring sets on fingers shall be limited to no more than two per hand.

- (e) **Beads, chains, bracelets, and similar jewelry while on duty are prohibited due to safety compliance.**
 - (f) **Medical identification bracelets/necklaces may be worn.**
 - (g) **Wrist watches may be worn while on duty. Watches should be of a style that minimizes sliding up the arm and are not of a size that could create a safety issue. Watches must not detract from the professional appearance of an Officer.**
- (3) **Facial Hair: Male Officers must be neatly shaven or maintain neatly trimmed and well kept facial hair not more than ½ inches in length.**
- (4) **Hair:**
- (a) **Hairstyles and hair colors must be judged by a reasonable person standard (ultimately determined by the FSD) and present a neat, clean, professional appearance. Hair shall be kept clean and the style shall not present a ragged, unkempt or extreme appearance.**
 - (b) **Hair length for male Officers shall not extend below the bottom of the back of the collar. Hair retainers, e.g., hair clips, hair nets, or rubber bands, may not be used to meet this standard for male Officers.**
 - (c) **Hair length for female Officers shall not extend beyond 2 inches below the bottom of the back of the collar while on duty. Hair accessories used to pin up hair shall be concealed as much as possible and should not distract from the uniform.**
 - (d) **Hair and/or hairpieces, whether dyed or natural, must appear natural in color.**
- (5) **Make-up: Make-up and make-up colors must present a neat, clean, and professional appearance to be judged by a reasonable person standard (ultimately determined by the FSD).**
- (6) **Tattoos: Tattoos must be covered at all times and not visible to the general public. Officers whose tattoos are visible when wearing a short sleeve shirt must wear a long sleeve shirt on duty. Officers with visible arm tattoos should order long sleeve shirts when placing their initial uniform orders. Exceptions may be granted by the FSD only when the tattoo is covered by an acceptable band that does not detract from the uniform.**
- (7) **Fingernails: Fingernails shall not extend further than ¼ inch beyond the tip of the finger. Fingernail colors must be judged by a reasonable person standard (ultimately determined by the FSD) and present a neat, clean and professional appearance.**
- (8) **Chewing Gum and Tobacco: Officers are prohibited from chewing gum or tobacco while on duty.**
- (9) **Personal Electronic Equipment: Display and use of personal electronic devices is prohibited in identified TSA screening areas. Personal electronic devices may only be**

used during an employee's rest or meal break in a designated area that is not co-located with the TSA screening area.

D. Exemption to Uniform Requirement:

- (1) An exemption to the uniform requirements may be considered for appropriate, documented reasons, such as religious beliefs or medical reasons.**
- (2) Employees seeking an exemption shall make a written request to their FSD stating the basis for the exemption.**
- (3) The FSD will review and approve or disapprove the request, in writing, after consulting with their local Field Counsel and, when appropriate, with the Office of Human Capital.**
- (4) If an exemption is approved, the employee may then purchase and wear any authorized item that deviates from the standard uniform package with their uniform allowance (if available from the contractor) or personal funds.**
- (5) An approved exemption will be documented in the employee's EPF and will continue to be applicable if the employee transfers within the airport or to another airport.**

E. Uniform Allowance:

- (1) Officers receive an annual monetary uniform allowance. The allowance is posted on their individual accounts on the TSA uniform contractor's website (currently VF Solutions at www.vfsolutions.com/tsa). Annual funds may be used to purchase any needed uniform item from the complete list of authorized uniform items, including standard and/or optional items. If an employee has a significant weight loss/gain that causes the uniform to no longer fit properly, they may use their uniform allowance to purchase the necessary uniform replacements.**
- (2) Personal funds: Officers may use personal funds to purchase additional uniform items from the contractor. The contractor accepts orders directly from Officers.**
 - (a) Officers must report uniform purchases made with personal funds to their FSD, the uniform coordinator, or other designee, so that items may be recorded for future disposition.**
 - (b) Officers will not be reimbursed for items they elect to purchase with their own funds. Additionally, in the event TSA uniforms have not been delivered prior to the start of Officers' reporting for duty, TSA will not reimburse Officers who wear their personal attire to perform their duties.**
- (3) Alterations: Officers shall not make alterations to their uniforms. The uniform contract includes provisions for obtaining proper fit. Uniforms that do not fit should be returned to the contractor for replacement prior to being worn. Measuring instructions and an**

order form with sizing guides are available at the uniform contractor's website at www.vfsolutions.com/tsa.

F. Retrieval and Disposal of TSA Patches, Badges and Other Insignia from Officer Uniforms:

(1) Retrieval of TSA Patches, Badges and Other Insignia:

(a) Officers are required to return for disposal all TSA patches, badges, and other insignia from TSA purchased uniform items when they leave TSA employment, are reassigned to a non-screening position, or when the uniform items are no longer suitable for continued use.

(b) Officers are required to remove and return for disposal all TSA patches, badges, and other insignia from self-purchased uniform items when they leave TSA employment or when the uniform items are no longer suitable for continued use.

(c) The above items are to be returned to the FSD, the uniform coordinator, or other designee, at the employee's airport. Returned items that are serviceable shall be retained and safeguarded at the airport or other appropriate facility for use by TSA employees. [TSA MD 1100.30-10, *Employee Exit-Clearance Procedures*](#) provides guidance on procedures for empl

(d) Officers may keep uniform items from which the TSA patches, badges, and other insignia have been removed and all uniform items that do not include TSA insignia (e.g., trousers, belts, ties, socks), regardless of whether TSA or the Officer purchased the items.

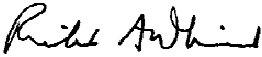
(2) Officers on extended leave from TSA (e.g., military duty) are not required to return their uniforms while on leave. Employees are responsible for safeguarding their uniform from theft and unauthorized use during their absence.

(3) Employees who separate and fail to return TSA patches, badges, and other insignia shall, after reasonable attempts by TSA to retrieve the items, be issued a letter by the FSD notifying them that they may be subject to civil and/or criminal penalties if they fail to return items within ten (10) days from the date of the letter. (See Attachment)

G. Storage of Uniforms in Vehicles: All TSA employees must ensure the safekeeping of sensitive accountable property. Employees must not store any TSA uniforms, patches, credentials, or other identification media in their personal vehicle in accordance with Operations Directive, [OD-400-25-1, *Prohibition Against the Storage of Uniforms and Identification Media in Vehicles*](#).

8. EFFECTIVE DATE AND IMPLEMENTATION: **This policy is effective immediately upon signature.**

APPROVAL



6/21/2007

Richard A. Whitford
Assistant Administrator for Human Capital

Date

Filing Instructions: File200.1.1

Effective Date: Date of Signature

Review Date: Two years from Effective Date

Distribution: Assistant Secretary, Deputy Assistant Secretary, Associate Administrator, Assistant Administrators, Area Directors, Office Directors, Federal Security Directors, and TSA Officers

Point of Contact: Office of Human Capital

SAMPLE LETTER

[Date]

[Addressee]

RE: TSA-Issued, U. S. Government Property

Dear [Mr. /Mrs.] [Name]:

On **[enter date]**, TSA required you to return TSA-issued, U. S. Government property uniform items to your supervisor, including your identification badge, as well as TSA training materials and operations manuals. To date, you have failed to return **[state specifically the items that need to be returned]**. You must return this property to **[put name and telephone number of TSA person at your airport that the former employee should contact]** immediately.

Your failure to return this TSA-issued, U. S. Government property item(s) within ten (10) days from the date of this letter may result in civil and/or criminal enforcement actions against you. These enforcement actions could subject you to civil penalties of up to \$10,000 for each day beyond the ten-day grace period noted above that you fail to return the property, and/or criminal penalties.

If you have any questions, please contact the TSA representative named above.

Sincerely,

[FSD name and signature]
Federal Security Director



1. **PURPOSE:** This directive sets forth the Transportation Security Administration (TSA) policies and procedures on the use of disciplinary and adverse actions to address employee performance and conduct problems. These policies and procedures recognize that TSA employees have the responsibility to perform functions critical to the safety and security of the United States. HRM Letter No. 752-1, "Interim Policy for Addressing Performance and Conduct Problems," dated July 29, 2002, was cancelled and superseded by MD 1100.75-1, issued on March 4, 2004. This Directive rescinds MD 1100.75-1.
2. **SCOPE:** This directive applies to all TSA organizational elements.
3. **AUTHORITIES:**
 - A. Sections 101 and 111(d) of the Aviation and Transportation Security Act.
 - B. Sections 403(2) and 423, of the Homeland Security Act of 2002.
 - C. Applicable TSA and U.S. Department of Homeland Security delegations of authority.
4. **DEFINITIONS:**
 - A. Adverse Action: A suspension (of any length), including an indefinite suspension; a removal; or a reduction in pay band or rate of pay.
 - B. Day: Calendar day.
 - C. Disciplinary Action: A letter of reprimand or an adverse action.
 - D. Letter of Counseling/Letter of Guidance and Direction: A non-disciplinary written notice that sets forth management expectations and documents that an employee has been informed about conduct or performance that should be corrected or improved and what must be done to correct the deficiency(ies).
 - E. Letter of Reprimand: The least severe form of disciplinary action that may be issued to address a conduct or performance problem. A letter of reprimand may be placed in the employee's Official Personnel Folder (OPF) for a specified time, not to exceed two years. A supervisor may maintain a copy for their files.
 - F. Pay Band: The scale in which an employee's basic rate of pay is set.
 - G. Rate of Pay: The basic pay fixed by law or administrative action for the position held by the employee; that is, the rate of pay before any deductions and exclusive of additional pay of any kind, e.g., locality pay, night differential, or other premium pay.

- H. Screener: An employee (Transportation Security Screener (TSS), Lead TSS, and Supervisory TSS) who occupies a position in the SV-0019 series.
- I. Suspension: The placement of an employee in a non-duty, non-pay status for disciplinary reasons or during the pendency of certain investigatory or law enforcement proceedings (includes Indefinite Suspensions).
5. **RESPONSIBILITIES**: As necessary and appropriate, supervisors and managers are responsible for employing the personnel actions and procedures set forth in this directive to assist in maintaining workplace order, efficiency and productivity.
6. **POLICIES & PROCEDURES**:
- A. Coverage:
1. **Employees Covered**: For the purpose of initiating appropriate disciplinary action, the requirements and procedures of this directive apply to all TSA employees (screeners and non-screeners), including those employees in Transportation Senior Executive Service (TSES) positions.
 2. **Employees Not Covered**: The requirements and procedures of this directive do not apply to screener personnel while serving an initial period of training or orientation.
 3. **Actions Covered**:
 - a. Letter of counseling or a letter of guidance and direction;
 - b. Letter of reprimand;
 - c. Suspension of any length, including indefinite suspension;
 - d. Removal; and
 - e. Reduction in pay band or rate of pay.
 4. **Actions Not Covered**:
 - a. Reduction in force, including furlough of any length;
 - b. Reduction in pay band or rate of pay of a supervisor or manager serving a supervisory or managerial trial period as provided in TSA MD No. 1100.31-1, 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;
 - c. Termination of a time-limited promotion at any time and return of the employee to a position at a pay band or rate of pay no lower than the one from which promoted;
 - d. 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;
 - e. Termination during a trial period other than supervisory or managerial trial period;
- Note**: Generally, employees who were hired prior to March 4, 2004, are subject to a one-year probationary period, and employees hired on or after March 4, 2004, are subject to a two-year trial period. See MD 1100.31-1, to determine trial period status.

- f. Termination of a reemployed annuitant;
- g. Termination at any time of a time-limited appointment of two years or less;
- h. Expiration of a time-limited appointment of more than two years;
- i. 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;
- j. Action directed by a court or other competent authority; and
- k. Voluntary action initiated by the employee.

- 5. Matters Reviewed by the Professional Review Board (PRB):** Where conduct of an employee covered by MD 1100.75-2, is the subject of an investigation or management inquiry by a TSA line component, by the Office of the Assistant Administrator for Internal Affairs and Program Review, or by the Office of the Inspector General, the PRB will review the report of investigation and may propose any action it deems appropriate in accordance with MD 1100.75-2.
- 6. Consequences:** In addition to demonstrating that the employee was on notice about the performance or conduct in question, or to rebut a claim that the employee had no prior history of conduct or performance problems, actions covered by this Directive may have adverse collateral consequences, such as when making decisions on awards, promotions, or workforce reductions.

B. Cause

- 1. Efficiency of the Service Standard:** An employee may be suspended, removed, or reduced in pay band or rate of pay for such cause as will promote the efficiency of the service. This standard generally means that the action against an employee must be taken to further a legitimate government interest, e.g. because of the employee's (1) failure to accomplish his or her duties or fulfill his or her employment obligations satisfactorily, (2) interference with other employees' performance of their duties, or (3) detrimental effect on the agency's ability to accomplish its mission.
- 2. Nexus:** Disciplinary action may be taken when there is a nexus, or connection, between a legitimate government interest and the employee misconduct or matter that is the basis for the disciplinary action. Nexus is presumed when the basis for disciplinary action is an employee's unsatisfactory job performance or on-duty misconduct, or in the case of criminal activity or other egregious or especially notorious misconduct. However, actions also may be taken against an employee because of off-duty misconduct where there is a nexus between the conduct and the TSA mission and/or effective operation of the agency.
- 3. Actions Not Involving Misconduct:** Certain actions by an employee that are not considered misconduct or poor performance may also promote the efficiency of the service. For example, if an employee declines to accept a directed reassignment or transfer of function to another commuting area, the declination would not be considered misconduct, but the employee's termination would nevertheless be taken "for such cause as will promote the efficiency of the service."

4. **Performance Based Actions:** Actions based on deficient or unacceptable performance may be taken under the authority of this directive. In determining the appropriate action, consideration should be given to whether the performance problem is because of a refusal or failure to perform acceptably, inattention to duty, negligence, inability to perform, etc., if the cause can be determined. For example, a suspension may be appropriate in the case of refusal to perform properly, but may be inappropriate if the employee is unable to perform acceptably. In either case, reduction in pay band or rate of pay or a removal may be appropriate.
- C. Consequences: In addition to demonstrating that the employee was on notice about the performance or conduct in question, or to rebut a claim that the employee had no prior history of conduct or performance problems, actions covered by this directive may have adverse collateral consequences. For example, such actions may be considered by management when making decisions on awards, promotions, or workforce reductions.
- D. Progressive Discipline:
1. Management shall take the appropriate level of action that is likely to correct the problem and is consistent with such considerations as effective security operations, the nature and severity of the offense, and the performance and conduct history of the particular employee. When appropriate, TSA will take progressively more severe action until the problem is corrected or the employee is removed.
 2. As noted in the Attachment to this directive, removal is required for specific offenses listed and removal is a permitted penalty for the first violation for other offenses listed in the Attachment. Any exception to the required removal for listed offenses requires the approval of the Deputy Assistant Administrator for Aviation Operations, or designee.
 3. Nothing in this section prevents removal as the first action taken against any employee where the misconduct, performance or other circumstances are so serious as to warrant removal, such as engaging in any activity that seriously undermines security interests, poses a threat or danger to the traveling public, or results in great monetary loss.
 4. TSA has also developed a “One-Step process” to address specific employee issues and disciplinary issues that are not properly the subject of progressive discipline. This process allows management to impose appropriate disciplinary action in an expedited manner. As described herein, this process only applies to specific actions, must be imposed only after engaging in the process described in Section 6.E. below, and can be used as progressive discipline.

E. TSA Pre-Decision Process:

Prior to taking any disciplinary action, management must follow these steps:

1. Assess the incident or allegations;
2. Engage in relevant fact-finding to the extent necessary to make an informed decision (obtain related evidence, witness statements, etc.);
3. Review all relevant evidence to ensure that the action meets standards of proof;
4. Meet and discuss the matter with the employee, advise the employee of the allegation and possible consequences, and provide the employee an opportunity to respond orally and/or in writing; and
5. After meeting with the employee, management must determine if corrective and/or disciplinary action will be taken.

F. Penalty Determination:

The following factors should be considered to determine an appropriate penalty. These considerations are often referred to as the “Douglas factors,” based on a Merit Systems Protection Board (MSPB) case where these considerations were set forth. See Douglas v. Veteran’s Administration, 5 M.S.P.R. 280 (1981). Not all of the factors are relevant in all cases, and other factors relevant to the case may also be considered.

- The nature and seriousness of the offense, and its relationship to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated.
- The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position. For example, certain employees such as supervisors or law enforcement officers may be held to higher standards than other employees.
- The employee's past disciplinary record. If past discipline is used, it must be mentioned in the notice of proposed action.
- The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability.
- The effect of the offense upon the employee's ability to perform at a satisfactory level, and its effect upon supervisors’ confidence in the employee's ability to perform assigned duties.

- Consistency of the penalty with those imposed upon other employees for the same or similar offenses.
- The notoriety of the offense or its impact upon the reputation of the agency.
- The clarity with which the employee was on notice of any rules violated in committing the offense or had been warned about the conduct in question.
- The clarity with which the employee was on notice of performance expectations and problems with his or her performance.
- Potential for the employee's rehabilitation.
- Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice, or provocation on the part of others involved in the matter.
- The adequacy and effectiveness of alternative actions to deter such conduct or improve performance in the future by the employee or others.

G. Legal Sufficiency Requirement:

Actions greater than letters of reprimand must be reviewed by legal counsel to determine legal sufficiency. Legal sufficiency means:

1. A preponderance of the evidence supports that the misconduct or performance deficiency occurred;
2. There is a nexus or connection between a legitimate government interest and the misconduct/matter that is the basis for the disciplinary action;
3. The misconduct/matter is in violation of law, statute, rule, TSA policy or procedure; and
4. The disciplinary action is reasonable.

H. Procedures for Corrective and Disciplinary Actions:

1. Letters of Counseling or Letters of Guidance and Direction:

a. Content

Letters of Counseling and Letters of Guidance and Direction should contain the following information:

- (1) Description of the performance or conduct about which the employee is being counseled;
- (2) Supporting facts;
- (3) A description of the correct, required conduct or performance; i.e., what the employee should have done or should do to correct the problem or avoid it in the future;
- (4) Statement that the letter is not a disciplinary action, but if the employee does not correct the performance or misconduct, formal disciplinary action may be initiated which may result in discipline up to and including removal;
- (5) Statement that a copy will not be placed in the employee's OPF, but that a copy may be retained by the supervisor to demonstrate that the employee has been placed on notice regarding the misconduct or performance;
- (6) Statement that the letter may not be grieved.
- (7) A letter of counseling or a letter of guidance and direction must be signed by the supervisor or manager who issues the letter.

b. Delivery and Retention:

- (1) The letters should normally be delivered in person by the supervisor who signs the letter. The employee should be asked to sign an acknowledgment of receipt. If he or she refuses to sign, the supervisor's copy should be annotated with the delivery time and date, the supervisor's signature, and a statement that the employee received the letter, but refused to acknowledge receipt.
- (2) A copy is retained in the local files, but no copy is filed in the employee's OPF.
- (3) An employee has no right to grieve a letter of counseling or a Letter of Guidance and Direction.

2. **Letters of Reprimand:**

a. Content:

Letters of Reprimand should contain the following:

- (1) Description of the reasons why the reprimand is being issued;
- (2) Supporting facts;
- (3) Statement that repetition of the misconduct or deficient performance may lead to further, more severe disciplinary action, up to and including removal;
- (4) Statement that the letter may be placed in the employee's OPF for up to two years, and that it may be cited as a prior formal disciplinary action in any future disciplinary matter;
- (5) Statement that, following removal from the OPF, the supervisor may retain a copy of the document as evidence that the that the employee was on notice regarding the performance or conduct in question, or to rebut a claim that the employee had no prior history of conduct or performance problems;

- (6) Statement that the employee has the right to grieve the Letter of Reprimand under the grievance procedure established by HRM Letter 771-1, and must file within 15 calendar days of receipt of the letter; and
- (7) A Letter of Reprimand should be signed by the supervisor or manager who issues the letter.

b. Delivery and Retention:

- (1) Letters of Reprimand should normally be delivered in person. The employee should be asked to sign an acknowledgment of receipt. If he or she refuses to sign, the file copy should be annotated with the delivery time and date, the supervisor's (or other deliverer's) signature, and a statement that the employee received the letter, but refused to acknowledge receipt.
- (2) A copy may be retained in the employee's OPF for up to two years and upon removal from the OPF, may be retained by the supervisor.

3. **Adverse Actions** (Suspensions, including Indefinite Suspensions, Reductions in Pay Band or Rate of Pay, Removals):

Important Note: Adverse Actions are initiated under a "One-Step" or "Two-Step" process. As described below, the One-Step process is used for specific actions. The One-Step process is not mandatory. The Two-Step process can be used for any action, excluding Letters of Reprimand.

a. Two-Step process

The Two-Step process requires the issuance of a proposal and a final written decision.

(1) Content of Proposal:

The notice of proposed adverse action must include the following information:

- (a) The charge(s) and specification(s) for each charge, and describe the evidence that supports the charge(s).
- (b) The proposed penalty.
- (c) A discussion of any aggravating factors that were considered in determining the proposed penalty, including the employee's disciplinary history (Note: The letters should also discuss any mitigating factors that may have been considered).
- (d) The employee has the right to present an oral and/or written reply to the proposal within seven calendar days. This time limit may be extended for good cause shown. A request for reconsideration may be presented orally, in writing, or both.

(e) The employee may be represented by an individual of the employee's choosing in preparing and presenting any reply. If the employee elects to have a representative, the employee must provide the name of the representative to the deciding official in writing and must provide written notice of any change in representation.

(f) The employee's chosen representative may be disallowed if the representation creates a conflict of interest or position or, where the representative is another TSA employee, he/she may also be disallowed if he/she cannot be spared because of critical TSA work. (Note: The deciding official will make this determination in consultation with the Office of Human Resources and/or a TSA attorney.)

(g) Costs associated with the employee's representation, including any travel expenses, will be borne by the employee.

(h) The employee and the representative (if a TSA employee) will be allowed a reasonable amount of official time to review the material relied upon, prepare and present the reply(ies).

(i) The employee should be provided a copy of the material relied upon to support each charge and specification with the letter. Alternatively, if the material is voluminous or contains sensitive information, the employee shall be given the opportunity to review the material at a designated TSA location.

(j) Material relied upon will be released only to the employee and/or the designated representative.

(k) The name of the deciding official and the individual the employee may contact to make arrangements for a reply or to ask any questions.

(l) The action will not be taken until after the reply is received and considered; or, if no reply is received, after the reply period expires; or until after the employee informs management that he/she does not intend to reply.

(m) Statement informing the employee of any change in employment status.

(2) Employee status during the notice period for proposed removals and proposed indefinite suspensions:

In most cases the employee will remain in a duty status during the notice period. However, if the proposing official determines that keeping the employee in his or her current duty status would be a threat to life, property, safety or the efficient operation of the organization, one of the following alternatives may be used:

(a) If the employee requests, and it is appropriate, allow the employee to use annual or sick leave, compensatory time, or leave without pay;

- (b) Detail the employee to another work unit;
- (c) Place the employee on administrative leave using current approval guidelines; or
- (d) Continue the employee on an indefinite suspension if one has previously been effected.

(3) The Deciding Official:

- (a) Must be a higher level official in the employee's chain of command than the official who proposed the action except (i) for actions proposed by the Chair of the PRB or (ii) where the Assistant Secretary proposes the action, in which case the Assistant Secretary may also serve as the deciding official.
- (b) May consider only charges and evidence contained in the proposal notice and the employee's reply. However, if the deciding official is or becomes aware of additional evidence other than the evidence provided to the employee, and wishes to consider such evidence in reaching a determination, the deciding official must inform the employee and give him or her additional time to reply to the additional evidence before reaching a decision on the proposed action.
- (c) Shall hear the oral reply, unless circumstances prevent him or her from doing so. If the deciding official's designee hears the oral reply, he or she shall prepare written notes or a written summary of the reply.
- (d) Should decide the appropriate penalty after considering the factors listed in section 6.F., "Penalty Determination".

(4) Content of Decision:

- (a) The decision must address each charge and inform the employee of the deciding official's determination on each charge including the basis for the determination.
- (b) The decision should inform the employee that the employee's reply was considered and should discuss any defenses raised by the employee.
- (c) If the decision is to impose an adverse action, the notice should discuss the penalty determination including any relevant mitigating and aggravating factors considered, as appropriate.
- (d) If the decision is to suspend (including indefinitely suspend), remove or reduce payband/rate of pay, the decision must provide the effective date of the action.

- (e) The decision must state any applicable appeal or grievance rights including time limits, where to send the appeal or grievance, and include a copy of any procedure or regulations where required.
- (f) The decision must include a statement of Equal Employment Opportunity rights.
- (g) If a removal, the decision must include statements regarding the obligation to protect Sensitive Security Information, and a direction to return all TSA property and uniforms.

(5) Delivery of proposal and decision notices:

(a) Both the proposal and decision notices should be delivered in person, and the employee should be asked to sign an acknowledgment of receipt. If the employee refuses to sign, the file copy should be annotated with the delivery time and date, the signature of the individual who delivered the notice, and a statement that the employee received the notice, but refused to acknowledge receipt.

(b) If the employee is not on duty or otherwise available to receive it in person, the notice should be delivered both by first class mail and by a delivery method where a signed receipt is requested (e.g., express mail delivery or certified mail with a return receipt requested). TSA will consider that the employee received a regular mailing five days from the day on which the notice was sent, and may use that date as the delivery date or the date on which the employee signed for the express delivery or certified notice, whichever is earlier.

(6) Indefinite Suspensions

An indefinite suspension is appropriate where evidence (more than a mere suspicion or allegation) exists to demonstrate misconduct. Indefinite Suspensions may be imposed only under the following conditions:

- a. Employee has been indicted, or there is equivalent legal process, for a crime for which a sentence of imprisonment may be imposed;
- b. Employee has been arrested pursuant to a warrant issued by a judge or magistrate for a crime for which a term of imprisonment may be imposed; or
- c. TSA is conducting an investigation of conduct that it reasonably believes was committed by the employee and is so serious that if it proves to be true, the employee's continued presence at the worksite would represent a threat to life, property, safety or the effective operation of the workplace.

Note: Once an indefinite suspension is imposed, management must determine if subsequent action, i.e., termination, is justified. If justified, management should initiate appropriate action to propose the termination.

b. One-Step Process

(1) Prior to effecting a disciplinary action under this process management **must** follow the procedures outlined in sections 6.E, F, and G.

(2) After engaging in the procedures outlined in section 6.E, F, and G, a final decision will be prepared and issued in accordance with the procedures set forth in sections 6.H.3.a.(4) and (5) above.

(3) The One-Step process may be used only for the following actions:

- (a) Suspensions of three days or less (Screener Personnel Only).
- (b) Terminations involving the use of Drugs, Alcohol, and Theft (Screener Personnel Only). Examples of these offenses include, but are not limited to:
 - (i) Validated failure of drug test;
 - (ii) Validated failure of alcohol test (on duty);
 - (iii) Refusal to submit to drug or alcohol testing; and
 - (iv) Cases involving clear and convincing evidence (e.g., video surveillance, credible witness statements, admissions) of theft.
- (c) Any suspension, removal, or reduction in pay band or rate of pay for any employee serving in a trial period.
- (d) Indefinite Suspensions relating to serious misconduct by screeners that necessitate immediate action under the conditions set forth in section 6.H.3.a(6).

[**Note:** All Indefinite Suspensions, under either the One or Two-Step process, **MUST** be reviewed for legal sufficiency by a TSA counsel and may be coordinated with a designated Employee Relations Specialist prior to issuance. As these actions often are connected with on-going investigations (administrative, civil, or criminal) it is important not to disclose information or evidence that could undermine or jeopardize any ongoing investigation or potential criminal prosecution.]

(4) Reconsideration of Indefinite Suspensions under the One-Step process:

- (a) Once an indefinite suspension has been imposed under the One-Step process, the employee has seven calendar days to submit a written request for reconsideration. The reconsideration must also include any supporting evidence. This time limit may be extended for good cause shown. A request for reconsideration may be made orally and/or in writing.

(b) Upon receipt of a timely request for reconsideration, the deciding official has seven calendar days to determine if the indefinite suspension should be continued, or if the employee should be returned to duty status.

(c) If the decision is to return the employee to duty, the deciding official will also determine if back pay for the suspension period, or any portion thereof, is appropriate. Back pay may be appropriate if failure to pay back pay would result in an injustice to the employee because of the employee's lack of culpability in the incident for which he/she was suspended. Indefinite suspensions based on an indictment or an arrest warrant will not normally result in an award of back pay.

(d) The decision will be prepared and issued in accordance with the procedures set forth in sections 6.H.3.a (4) and (5) above.

(e) An employee may request reconsideration of an indefinite suspension at any time based upon newly acquired information that was not available at the time of the decision to impose the indefinite suspension.

H. Appeal and Grievance Rights:

1. Suspensions of 15 days or more (including indefinite suspensions), Removals, and Reductions in pay and/or pay band.
 - a. Non-screener personnel with veterans' preference who have at least one year of current continuous service in the same or similar position may appeal to the MSPB.
 - b. Other non-screener personnel (non-preference eligible) who have at least two years of current continuous service in the same or similar position may appeal to the MSPB.

Note: MSPB regulations are at Part 1201 of title 5 of the Code of Federal Regulations and on the MSPB website at www.mspb.gov.

- c. Screener personnel who are not serving in a trial period or who have completed two years or more in a time-limited appointment of more than two years, may appeal to the TSA Disciplinary Review Board (DRB), in accordance with TSA MD No. 1100.77-1.

2. Suspensions of 14 days or less and Letters of Reprimand

Screener and non-screener employees may obtain review in accordance with the process outlined in HRM Letter 771-1 (Grievance Procedures).

3. TSES

Members of the TSES may appeal adverse actions to the TSES Executive Review Board (ERB).

7. EFFECTIVE DATE AND IMPLEMENTATION:

This policy is effective immediately upon signature.



Richard A. Whitford
Assistant Administrator for Human Resources

9-17-2004
Date

Filing Instructions: File with OHR Management Directives
This directive rescinds MD 1100.75-1, dated March 4, 2004. HRM Letter
No. 752-1 dated July 29, 2002 was previously cancelled and superseded.

Effective Date:
Review Date:
Distribution: TSA Affiliated HR Offices, Associate Administrators,
Assistant Administrators, and Office Directors
Point of Contact: PG&S/OHR, Paul H. Sheldon, 571-227-2828

Attachment: Screener Offenses For Which Removal is Permitted for the First Offense

Attachment

Screener Offenses For Which Removal Is Required*

Terminations involving the use of Drugs, Alcohol, and Theft

*An FSD may seek an exception to removal by submitting a written request explaining the exculpatory facts and circumstances to the Deputy Assistant Administrator for Aviations Operations.

Screener Offenses For Which Removal Is Permitted for the First Offense

- Knowingly operating checkpoint and baggage equipment that is either not working or not turned on;
- Intentionally conducting improper screening procedures or allowing persons or property to bypass required screening;
- Falsification of security logs;
- Failure to conduct an operational check at the start of a shift;
- Sleeping on duty while engaged in a security activity;
- Failure to pass annual re-certification requirement (Annual Proficiency Review);
- Any intentional act that undermines security operations and the trust and confidence of the traveling public in the integrity of the nation's transportation system;
- Interference with air navigation, 49 U.S.C. § 46308;
- Aircraft piracy, 49 U.S.C. § 46502;
- Interference with flight crewmembers or flight attendants, 49 U.S.C. § 46504;
- Carrying a weapon or explosive aboard an aircraft, 49 U.S.C. § 46505;
- Unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements, 49 U.S.C. § 46314; and
- Any felony conviction regardless of nexus to employment.



1. **PURPOSE:** This directive establishes the Transportation Security Administration (TSA) Disciplinary Review Board (DRB or Board) to provide transportation security screeners (screeners) a procedure for obtaining review of certain disciplinary actions.
2. **SCOPE:** This directive applies to all screeners in permanent positions, including lead screeners and supervisory screeners, who are not serving a TSA trial or probationary period; and screeners in temporary positions who have completed two years or more of current continuous service in a time-limited appointment of more than two years.
3. **AUTHORITIES:** Section 111(d) of the Aviation and Transportation Security Act; Sections 403(2) and 423 of the Homeland Security Act of 2002; applicable TSA and U.S. Department of Homeland Security delegations of authority.
4. **DEFINITIONS:** Not Applicable
5. **RESPONSIBILITIES:**
 - A. The Assistant Administrator for Aviation Operations, the Assistant Administrator for Human Resources (HR), and the Assistant Administrator for Workforce Performance and Training shall each designate one member to serve on the DRB. DRB members must hold managerial positions at the K level or above.
 - B. DRB members are responsible for determining how the DRB will proceed with appeals within the Board's jurisdiction and for reaching a decision on appeals consistent with this directive.
 - C. The DRB Member designated by the Assistant Administrator for HR shall serve as the Board Chair.
 - D. The Office of HR will provide administrative support to the DRB.
 - E. The Office of Chief Counsel will provide legal support to the DRB.
6. **POLICIES & PROCEDURES:**
 - A. Jurisdiction:
 1. Actions Covered:
 - a. Suspension of more than 14 days, including indefinite suspension;
 - b. Reduction in pay band or rate of basic pay; and
 - c. Removal.

2. Actions Not Covered:

- a. Letter of counseling or instruction;
- b. Letter of warning;
- c. Suspension of 14 days or less;
- d. Reduction in force (including furlough of any length);
- e. Reduction in pay band of a supervisor or manager serving a supervisory or managerial trial period as provided for in TSA MD No. 1100.31-1 if the reduction is to a pay band or basic pay level no lower than the pay band or basic pay level held before entering the supervisory or managerial position;
- f. Termination of a time-limited promotion at any time and return of the employee to a position at a pay band or pay level no lower than the one from which promoted;
- g. 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;
- h. Termination of appointment of a reemployed annuitant;
- i. Termination during a basic trial period;
- j. Termination at any time of a time-limited appointment of two years or less;
- k. Expiration of a time-limited appointment of more than two years;
- l. 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;
- m. Action directed by a court or other competent authority;
- n. Voluntary action initiated by the employee;
- o. Appeal alleging discrimination for which the discrimination complaints procedure would be the appropriate forum, unless the issues can be separately adjudicated, as determined by the DRB in consultation with the Office of Civil Rights; and
- p. An action that has been or is being raised in any other forum.

B. Filing of Appeal:

1. Place of Filing. Appeals to the DRB must be filed with:

Assistant Administrator for Human Resources
Transportation Security Administration – TSA-21
Attention: Disciplinary Review Board Coordinator
601 S. 12th Street
Arlington, VA 22202-4204

2. Method of Filing. Filing must be made by U.S. mail, by facsimile to (571) 227-2318, by personal delivery or by commercial overnight delivery.
3. Time of Filing. An appeal must be filed following receipt of the notice of decision, but no later than 30 calendar days after the action is effected. Failure to file within 30 calendar days without good cause will result in denial of the appeal as untimely.

C. Computation of Time:

1. In computing the time period for filing an appeal, the first day after the effective date of the action is day 1 of the 30-day filing period.

2. If the filing period ends on a Saturday, Sunday, or Federal holiday, the end of the period is extended to the next business day.

D. Contents of Appeal. The appeal must contain:

1. A copy of the proposal notice, employee's reply, if any, and decision notice;
2. The date the decision was received;
3. A description of the factual, legal or policy issues in dispute, i.e., why the appellant believes the action is improper;
4. Any documentary evidence available to the appellant relative to the action being appealed;
5. Whether any informal attempts, including mediation, have been made to resolve issues raised in the appeal; and
6. The relief requested.

NOTE: The attached Appeal Form may be used to meet the requirements of this paragraph.

F. Right to Representation:

1. An appellant has a right to have a representative of his or her choosing to assist in preparing and presenting an appeal to the DRB. An appellant who elects to be represented must file a written designation with the DRB identifying the representative and must notify the DRB in writing of any change in representation. The appellant and the representative, if TSA employee(s), will be allowed a reasonable amount of official time to prepare and present the appeal. Costs associated with the representation, including any travel expenses, will be the responsibility of the appellant.
2. The DRB may disallow an appellant's chosen representative if the representation creates a conflict of interest or position or the representative, if a TSA employee, cannot be spared because of critical TSA work. If the appellant's representative is disallowed, the appellant will be given a reasonable amount of time to obtain a new representative.

G. Procedures of the DRB:

1. Upon receipt of an appeal, the DRB coordinator in the Office of HR will:
 - a. Determine whether the appeal is timely filed;
 - b. Determine whether the appeal package is complete or further documentation is needed from the appellant;
 - c. Refer the case to the DRB Chair; and
 - d. assist with facilitating the review and appeal process.
2. The DRB Chair will convene the DRB to determine how the DRB will proceed with the appeal. If the DRB cannot make a determination on the documentation already submitted, the Board may take additional action, including:

**TSA MANAGEMENT DIRECTIVE No. 1100.77-1
DISCIPLINARY REVIEW BOARD**

- a. Requesting the appellant to submit further information;
- b. Requesting information and/or documentation from agency officials;
- c. Ordering fact-finding;
- d. Requesting the appellant and involved management officials to engage in mediation;
- e. Convening a conference with the appellant and involved management officials;
- f. Scheduling a hearing; or
- g. Dismissing the appeal for untimely filing, failure to meet jurisdictional requirements, or failure of the appellant to provide necessary information after being requested to do so.

3. Conferences:

- a. The DRB may convene a conference when the DRB believes it will materially advance the appeal process. The primary purpose of a conference is to exchange views about the appeal.
- b. Conferences may be conducted in person, by phone, or other appropriate methods, as determined by the DRB.
- c. The DRB will determine who may participate in the conference.
- d. Conference participants may present their views of the issues involved in the appeal. Documentary evidence, also, may be presented and will be treated as submitted in the regular course of the appeal process.
- e. There will be no transcript of the conference, but notes may be taken.
- f. The DRB may render a final decision following the conference or take other appropriate action to process the appeal.

4. Hearings:

- a. The DRB may schedule a hearing when the DRB determines that a hearing is likely to materially advance the appeal. The determination to schedule a hearing may be upon the Board's own initiative or upon request of the appellant.
- b. Hearings may be conducted in person, by phone, or other appropriate methods, as determined by the DRB.
- c. The appellant may request permission to present witnesses. The request for witnesses must include a description of the relevant testimony each witness will provide.
- d. The DRB may call additional witnesses, if the DRB determines the testimony will be helpful to the decision-making process.
- e. The Chair of the DRB will preside at the hearing.
- f. Hearings will not be open to the public.
- g. The DRB may limit testimony and the introduction of documentary evidence if it deems such submissions to be repetitious or not material. The DRB has the sole authority to determine the admissibility of any evidence offered. Adherence to the Rules of Evidence shall not be required.
- h. Witnesses will be required to affirm that they will tell the truth.
- i. Witnesses may be subject to cross-examination.

Attachment

Disciplinary Review Board
APPEAL FORM

Part 1: Appellant Identification

Name: (Last, First, Middle Initial): _____

Social Security Number: _____

Mailing Address: _____

IMPORTANT: YOU MUST NOTIFY THE DISCIPLINARY REVIEW BOARD OF ANY CHANGE OF YOUR ADDRESS. FAILURE TO DO SO MAY RESULT IN THE DISMISSAL OF YOUR APPEAL.

Telephone Number(s): (home) _____ (work) _____

Signature of Appellant: _____ Date: _____

Part 2: Designation of Representative (if applicable)

I hereby designate _____ to serve as my representative during the course of this appeal. I understand that my representative is authorized to act in my behalf. In addition, I specifically delegate to my representative the authority to settle this appeal on my behalf. I understand that any change in the status of my representative or limitation on this settlement authority must be filed in writing with the Disciplinary Review Board.

Name of Representative: _____ Telephone Number: _____

Address of Representative: _____

If a TSA Employee, Duty Station & Supervisor's Name: _____

Signature of Appellant: _____ Date: _____

Signature of Representative: _____ Date: _____

Part 3: Appealed Action

Briefly describe the agency action you are appealing. Attach the proposal and decision letters regarding the action being appealed, and any documentation or argument you submitted to the deciding official regarding the action being appealed.

Name and location of the official taking the action (if not on the notice of decision):

Date you received the decision notice: _____

Date action was effected: _____

Part 4: Information About the Appellant

Position title and duty station : _____

Pay band at the time the action was effected: _____

Salary at the time the action was effected: _____

Employment status at time of action being appealed:

Permanent Employee ____ Reemployed annuitant ____

Temporary (Time limited) ____ Term ____ Seasonal ____

Length of Government Service: ____ Length of TSA Service: ____

Were you serving a trial or probationary period at the time the action was effected? Yes ____
No ____

If available, attach a copy of your most recent SF-50, Notice of Personnel Action.

Part 5: Attempts at Resolution

Have there been any attempts at informal resolution of the issues related to the action being appealed, including mediation? Yes ____ No ____

If yes, were any agreements reached? _____ If so, provide a copy of the agreement(s).

Part 6: Appellant's Position and Defenses

Describe why you believe the action taken in your case was improper. (The written material, if any, that you submitted to the deciding official may be sufficient.)

What action do you want the Disciplinary Review Board to take?

Have you raised the issues in your appeal with any other agency or in any other complaint procedure? Yes ____ No ____

If yes, name of agency or office: _____

Address: _____

Phone number of agency or office: _____

Date filed: _____

What additional documentary evidence, if any, do you believe the Disciplinary Review Board needs to consider regarding your appeal? Specifically, identify such evidence to which you do not have access, but that is in the possession of the Transportation Security Administration.

Part 7: Additional Information

Describe any other information you believe the Disciplinary Review Board should take into account in its consideration of your appeal:

Part 8: Address To Be Used In Filing An Appeal

Appeals to the Disciplinary Review Board should be addressed to:

Assistant Administrator for Human Resources
Transportation Security Administration – TSA-21
Attention: Disciplinary Review Board
601 South 12th Street
Arlington, VA 22202-4204

NOTE: AN APPEAL MUST BE FILED AFTER THE APPELLANT RECEIVES THE DECISION NOTICE ON THE ACTION BEING APPEALED, BUT NO LATER THAN 30 CALENDAR DAYS AFTER THE EFFECTIVE DATE OF THE ACTION. FILING MAY BE ACCOMPLISHED BY U.S. MAIL, BY FACSIMILE TO (571) 227-2318, BY PERSONAL DELIVERY, OR BY COMMERCIAL OVERNIGHT DELIVERY.

If you believe you were discriminated against by the agency, in connection with the matter being appealed, because of your race, color, gender, religion, national origin, disability, age, or sexual orientation you may contact an EEO counselor within 45 days of the effective date of the action being appealed. The Disciplinary Review Board will not process appeals in which allegations of discrimination are raised. However, if the discrimination allegations can be clearly separated from other issues being raised, the Disciplinary Review Board has the discretion to process those issues.



NOTE: Pursuant to Section 101 of the Aviation and Transportation Security Act (49 U.S.C. 114(n)), this directive establishes Transportation Security Administration (TSA) policy and supersedes Federal Aviation Administration (FAA) orders, policies, guidance, and bulletins regarding Grievance Procedures issued under the FAA Personnel Management System.

1. **PURPOSE:** This directive provides TSA policy and procedures for filing a grievance. This directive cancels and supersedes Human Resources Management (HRM) Letter 771-1, Interim Policy on Grievance Procedures, dated July 29, 2002, and HRM Letter 771-2, Policy on Grievance Procedure, dated March 1, 2005.
2. **SCOPE:** The provisions of this directive apply to all TSA organizational elements, to all permanent TSA employees (including Transportation Security Officers (TSO) and non-TSOs), to TSA employees who have completed two years of continuous service on a temporary appointment of more than two years, and to employees in Transportation Security Executive Service (TSES) positions.
3. **AUTHORITIES:**
 - A. Aviation and Transportation Security Act, Public Law 107-71, dated November 19, 2001
 - B. Applicable TSA and U.S. Department of Homeland Security delegations of authority
4. **DEFINITIONS:**
 - A. Adverse Action: A suspension of any length, including indefinite suspension; a removal; or a reduction in pay band or rate of pay.
 - B. Alternative Dispute Resolution: An alternative method to traditional, formal means of resolving disputes of workplace issues by using a variety of approaches to arrive at resolution mutually acceptable to the parties.
 - C. Avenues of Redress: Procedures available to address an employee's complaint or grievance.
 - D. Day: Calendar day.
 - E. Fact-Finder: A neutral party appointed by the second step official to conduct a more formal review of the matter being grieved.
 - F. First Step Official: The first line supervisor or other official with the authority to resolve the grievance.

- G. Grievance: A request by an employee for personal relief in a matter of concern or dissatisfaction relating to his/her employment with TSA that is subject to the control of management.
- H. Grievance File: A file that must be established for each grievance, containing all documents related to the grievance.
- I. Grievance System: A formal process in which management adjudicates matters of employee concern or dissatisfaction relating to employment.
- J. Grievant: The employee who files a grievance.
- K. Peer Review Process: An alternative dispute resolution method that engages the use of a panel, which includes peer-employees as well as management officials, to review a grievance and render a decision.
- L. Remedy: The specific personal relief directly benefiting the grievant. It may not include a disciplinary or other action affecting another employee, including the employment or reassignment of another employee.
- M. Second Step Official: A higher-level official than the First Step Official who was not involved in the issue(s) being grieved and who has the authority to resolve the matter.

5. RESPONSIBILITIES:

- A. Supervisors and/or designated management officials, upon receipt of a grievance, are responsible for complying with the procedures in this directive, including responding to the grievance in writing.
- B. Employees are responsible for complying with the procedures established by this directive, including furnishing sufficient detail to clearly identify the matter being grieved, and specifying the remedy being sought.

6. POLICY:

- A. General
 - (1) Except as stated in Section 6B, the grievance procedure is a formal two-step process that allows an employee to grieve matters of concern or dissatisfaction relating to his or her employment, if the matter is subject to the control of TSA management.
 - (2) An employee who files a grievance shall not be subject to restraint, coercion, discrimination, or reprisal as a result of, or in connection with, having filed the grievance.
 - (3) The filing of a grievance does not stay any personnel action being grieved pending final decision on the grievance.

B. Matters Excluded: The grievance procedure does NOT apply to the following matters.

- (1) Decisions made by other agencies or third parties, such as, courts, the Office of Personnel Management, or the Office of Workers' Compensation;
- (2) Matters for which there is another avenue of redress, including but not limited to:
 - (a) Appeals to the Merit Systems Protection Board (MSPB),
 - (b) Appeals to the TSA Disciplinary Review Board (DRB),
 - (c) Decisions of the TSES Performance Review Board (PRB),
 - (d) Concerns that allege prohibited discrimination which are processed in accordance with TSA's discrimination complaint procedure administered by the Office of Civil Rights (OCR), and
 - (e) Complaints which have been filed with the Office of Special Counsel (OSC);
- (3) Retirement, or life or health insurance;
- (4) Adjudication of the results of personnel security investigations and suitability determinations made by the Office of Security;
- (5) Oral or written counseling(s);
- (6) Progress reviews (i.e., quarterly and/or mid-year) under the TSA performance management system;
- (7) Performance Improvement Plans (PIP) that put employees on notice of deficient or questionable performance;
- (8) The content of performance elements and standards;
- (9) Notices proposing a disciplinary or adverse action;
- (10) Non-selection for promotion or reassignment from a list of eligibles;
- (11) Failure to receive a non-competitive promotion or reassignment when documented evidence exists that policies and procedures have been appropriately applied;
- (12) Reassignment without loss in band or rate of pay from one position to another. This includes a reassignment from a supervisory to a non-supervisory position, within or outside the local commuting area, in connection with a reorganization and/or realignment;

- (13) Removal from a supervisory or managerial position during the supervisory or managerial probationary period;
- (14) Change of position or organizational title;
- (15) Reduction in force;
- (16) Failure to receive a performance or incentive award when documented evidence exists that policies and procedures have been appropriately applied;
- (17) Monetary amount of a performance or incentive award;
- (18) Non-adoption of a suggestion;
- (19) Shift schedules or shift bidding programs;
- (20) The content of any law, rule, regulation, policy, instruction, or directive; although the TSA's implementation as it relates to an employee may be grieved by that employee;
- (21) The termination or expiration of a time-limited (i.e., temporary or term) appointment, or promotion; and
- (22) Separation or termination of employment during the trial or probationary period.

C. Relationship with Alternative Dispute Resolution

- (1) An employee who has a matter of concern or dissatisfaction covered under the grievance system may request to use less formal methods to resolve the complaint, including methods of alternative dispute resolution made available by TSA.
- (2) Use of an alternative dispute resolution process does not automatically extend the time limit for pursuing a matter under the grievance procedure. Therefore, if an employee believes that he/she may subsequently file a grievance, the employee should request an extension of time, from the first step official, in writing, within the normal time period for filing the grievance (15 calendar days).
- (3) TSA has established a "Peer Review" Procedure at selected airports. For those airports in which the "Peer Review" Procedure is available for eligible employees, that procedure completely replaces the Grievance Procedure provided by this directive.

D. Representation

- (1) The grievant may have a representative of his or her choosing assist in presenting the grievance if a meeting is held with the first or second step official.

- (2) The grievant must inform the grievance official(s), in writing, of the name of the representative, with the representative's title and contact information (address/phone number), and if employed by TSA, the representative's work location.
- (3) The grievance official may deny the grievant's choice of representative if the representation presents a conflict of interest or position, or if the representative is another employee and the employee's release from duty conflicts with operational needs.
- (4) If the representative is a TSA employee, it is their responsibility to obtain advance approval for any release from duty to present a grievance or to represent an employee in a grievance at either step of the procedure. Official time is available only for attendance at meetings to present grievances.
- (5) If an employee designates a representative, all written communication between management and the employee will include a copy for the representative.

E. Time Limits: Grievances are considered timely filed when they are hand-delivered, postmarked, or faxed to the appropriate official on or before the due date.

7. PROCEDURES:

A. First Step

- (1) An employee who wishes to grieve a matter under the grievance procedure must file a written grievance with the first step official within 15 days of the action or decision being grieved or within 15 days of when the grievant first learned or may reasonably have been expected to learn of the decision or action. The first step official may waive the time limit on a showing of unusual circumstances. A first step official's decision not to waive the time limit is not grievable. [TSA Form 1115, Grievance Form](#) may be used when filing a grievance.
- (2) The first step official is the management official who made the decision, took the action, or failed to take the action that the grievant is challenging. In most cases, it will be the grievant's supervisor, but it could be a management official higher in the chain of command or an official outside the chain of command.
- (3) The grievance must include a statement of:
 - (a) the action or matter being grieved;
 - (b) the reasons and any supporting documentation for the grievance;
 - (c) the remedy being sought; and
 - (d) if the matter has already been raised in another forum.

- (4) The first step official has 15 days to respond, in writing, to the grievance. If the first step official does not have the authority to resolve the matter, he/she must refer it to the appropriate management or supervisory official who can resolve it, and that person will then be the first step official. The grievant should be notified, in writing, when the grievance has been referred to another management official.
- (5) The first step official may meet with the grievant to obtain additional information or to explore possible resolution of the grievance.
- (6) The decision will be in writing and will state the decision and provide reasons for that decision. If the employee submitted TSA Form 1115, the first step official must complete and return the form to the employee along with his/her decision.
- (7) If the first step official denies the grievance in whole or in part, the written decision must advise the grievant that he/she may advance the grievance to the second step. The notice must provide the name and address of the second step official and state the 15 day time limit for advancing the grievance to the second step.
- (8) If the first step official does not issue a decision within 15 days of receipt of the grievance, the grievant may proceed to the second step.

B. Second Step

- (1) The second step official is a higher-level official than the first step official and, in most cases, is the first step official's immediate supervisor. He/she must have the authority to resolve the grievance and must not have been involved in the decision or action that gave rise to the grievance, or in the first step grievance decision.
- (2) The grievant must file with the second step official within 15 days after receiving the first step decision, or after 15 days of when the first step grievance decision was due, if no first step decision was received. The second step official may waive the time limit on a showing of unusual circumstances. A second step official's decision not to waive the time limit is not grievable.
- (3) The second step grievance must be in writing, must include a copy of the original grievance, the date the first step grievance was filed, and a copy of the first step decision or, if applicable, a statement that no first step decision was received.
- (4) If the second step official does not have the authority to resolve the grievance, or has been directly involved in the matter being grieved or in the first step grievance decision, the second step official must refer the grievance to another second step official. That other second step official may be a peer of the second step official, but not a subordinate; or may be a higher level official either inside or outside the local airport/office.

- (5) The grievance will normally be resolved based on the written record, but the second step official may meet with the grievant and/or may personally or through a fact-finder conduct an informal inquiry to ascertain sufficient information necessary to make a decision.
- (6) A fact finder conducts an inquiry which may consist of securing documentary evidence, conducting personal interviews, convening a group meeting, etc., a combination of the above, or other appropriate actions. If a fact finder is appointed, a written report will be prepared and will be made part of the second step official's decision.
- (7) The second step official has 15 days from the receipt of the grievance to issue a written decision. If this is not possible (i.e., ongoing fact-finder inquiry), the grievant should be informed and kept apprised of the status of the grievance decision at 15-day intervals. However, under normal circumstances, the second step official should not extend issuing the grievance decision beyond 30 days or beyond 15 days from the completion of the fact-finder inquiry.
- (8) The second step official will issue a written decision on the grievance, which sets forth the decision, the reasons for the decision, and any supporting documentation including the fact-finder's report, if a fact-finder was appointed. If the employee submitted TSA Grievance Form 1115, the second step official must complete and return the form to the employee along with his/her decision.
- (9) **The second step decision is the final decision, and there is no further right to review.**

C. Cancellation of a Grievance

- (1) The employee may request cancellation of the grievance at any stage of the procedure.
- (2) The first or second step official, as applicable, may cancel a grievance under the following circumstances:
 - (a) If the employee terminates employment with TSA, unless the grievance concerns relief which may be granted after termination of employment;
 - (b) If the employee dies, unless the grievance concerns a financial consideration which may have been due the employee;
 - (c) For failure to pursue, if the employee fails to furnish required information within the timeframes and procedures contained in this directive; or
 - (d) Because the matter is excluded from the grievance procedure. If the matter is excluded and if an alternative procedure is appropriate for addressing the matter, the notice canceling the grievance will so inform the employee.

D. Record Keeping

(1) The local airport/office shall maintain a grievance file on each grievance in a secured location. These are Privacy Act records and must be maintained in accordance with 5 U.S.C. § 552a.

(2) Grievance files shall be maintained for at least four years, but not longer than seven years.

8. EFFECTIVE DATE AND IMPLEMENTATION: This directive is effective immediately upon signature.

APPROVAL



04-05-06

Richard A. Whitford
Assistant Administrator for Human Capital

Date

Filing Instructions: File 200.1.1

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Distribution: Assistant Secretary, Deputy Administrator, Associate Administrator,
Assistant Administrators, Area Directors, Federal Security Directors, and
all TSA Employees

Point-Of-Contact: Office of Human Capital



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 establishes Transportation Security Administration (TSA) policy and supersedes Federal Aviation Administration (FAA) orders, policies, guidance, and bulletins regarding employee representation issued under the FAA Personnel Management System. This directive is TSA policy and must be applied accordingly.

1. **PURPOSE:** This directive provides TSA policy and procedures for employee designation of a representative to assist in the preparation and presentation of grievances and/or to respond to certain administrative actions.
2. **SCOPE:** This directive applies to all TSA organizational elements and to all TSA employees (including Transportation Security Officers).
3. **AUTHORITIES:** Sections 101 and 111(d) of the Aviation and Transportation Security Act, Pub. L. 107-71 (ATSA), November 19, 2001 (49 U.S.C. §§ 114(n), 40122, 44935, and 44935 note)
4. **DEFINITIONS:**
 - A. **Official Time:** Time authorized by a TSA supervisor or manager to allow an employee when in a duty status, to participate in certain authorized activities that are not related to the employee's official duties.
 - B. **Representative:** An individual designated by the employee to present or to assist the employee in presenting a grievance, responding to an administrative action, or participating in a representational meeting when authorized to do so.
5. **RESPONSIBILITIES:** Employees, supervisors and/or designated management officials are responsible for complying with the procedures of this directive.
6. **POLICY:**
 - A. It is the policy of TSA to allow an employee to have representation in connection with or to assist an employee with respect to certain activities, as follows:
 - (1) Presenting a grievance to management;
 - (2) Responding to an adverse action;
 - (3) Participating in the Equal Employment Opportunity (EEO) process;
 - (4) Participating in EEO mediation or facilitation or other agency approved mediation or facilitation activity;
 - (5) Presenting a peer panel appeal;

- (6) Participating in appeals to the Merit Systems Protection Board or the Disciplinary Review Board (DRB), as appropriate;
 - (7) Other activities and meetings when authorized by appropriate TSA management officials in the employee's chain of command or in accordance with other TSA policies.
- B. Employees have no right to representation with respect to meetings with management, during investigations, or any other workplace matter not referenced in Section 6A or as provided in other TSA policies.
- C. An employee may choose anyone to be his/her representative as long as that individual is willing and available to serve in that capacity. If the employee's choice of representative is a TSA employee, management may disallow the representative for the following reasons:
- (1) **Operational Needs of TSA:** Management will consider whether the individual's proposed absence may be approved based on operational workload for the time the representation is needed and/or for the amount of time required for appropriate representation. This determination will be made using criteria similar to those used to determine if discretionary leave could be approved.
 - (2) **Conflict of Interest or Position:** This refers to an incompatibility between the chosen representative's official duties or position and the employee's position or duties. If management must disallow a representative because of conflict of interest or position, management will notify the employee, in writing, of the reason as soon as possible after receiving the notification of representation. The employee should provide the name of a new representative as soon as possible, usually within 48 hours. Examples of conflict of interest or position include, but are not limited to:
 - (a) An employee's supervisor could not serve as the employee's representative because that would undermine the employer/employee relationship.
 - (b) A situation where a chosen representative has a schedule conflict and cannot represent the employee within the time period provided or a reasonable time thereafter.
- D. An employee's representative, if a TSA employee, may request official time for activities connected with representing the employee in the matter or case for which representation is authorized. Official time for such representation may be granted, if necessary, up to eight (8) hours. Any time in excess of the eight (8) hours, will be charged as annual leave, compensatory time off, or LWOP. In limited circumstances, additional official time may be granted upon sufficient written justification to management that includes an explanation as to why the activity cannot be conducted during non-duty time. Travel time in excess of the eight hours associated with representation activities is not considered to be official time (unless approved by management) and must be accounted for by the representative's personal time and/or the appropriate leave category (e.g., annual leave, compensatory time off, or LWOP). All official time must be annotated on the affected employee's Time and Attendance records.

- E. Management has an unrestricted right to communicate directly with employees except in matters where there is a statutory or regulatory requirement to inform the employees' representative regarding a pending matter (e.g., certain adverse actions or EEO complaints).

7. PROCEDURES:

- A. An employee must provide his/her supervisor or other appropriate management official with the name of his/her representative in writing. The employee must indicate the matter or activity for which the representative is authorized to serve. The employee must also provide the representative's title and contact information (address and telephone number), and if employed by TSA, the representative's work location.
- B. The employee must designate his/her representative before the expiration of any reply period, if applicable, or as designated by management.
- C. If an employee changes representatives, he/she must notify management in writing of the change.
- D. Employees are responsible for the payment of any expenses related to their representatives' activities, which include, but are not limited to travel expenses.
- E. An employee seeking to act as a representative must, as far in advance as possible, request permission from his/her supervisor to perform the representational function. The request should include the date, time of day, and expected duration of the representational activity. The employee must also comply with any additional TSA requirements regarding the approval and documentation of the absence. Management should approve the request unless the employee cannot be spared for the specific time or the duration of time necessary for the representation because of the operational needs of TSA. In such case, management should inform the employee of an approximate time or date when the employee may be allowed to leave the worksite. (See Section 6C above.)

- 8. EFFECTIVE DATE AND IMPLEMENTATION:** This policy is effective immediately upon signature.

APPROVAL



8/29/2007

Richard A. Whitford
Assistant Administrator for Human Capital

Date

Filing Instructions: File 200.1.1
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