



**Transportation
Security
Administration**

OFFICE OF HUMAN CAPITAL

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

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

NOTE: Pursuant to Section 101 of the Aviation and Transportation Security Act (49 U.S.C. 114(n)), this directive, and all related Handbooks, Attachments, and Appendices establish Transportation Security Administration (TSA) policy and supersedes the Federal Aviation Administration (FAA) orders, policies, guidance, and bulletins regarding Addressing Unacceptable Performance and Conduct issued under the FAA Personnel Management System. This directive is TSA policy and must be applied accordingly.

REVISION: This revised directive supersedes TSA MD 1100.75-3, *Addressing Performance and Conduct Problems* dated September 17, 2004. This directive also supersedes TSA Broadcast dated April 08, 2008, *Immediate Change to TSA MD 1100.75-3 (Addressing Performance and Conduct Problems)*.

SUMMARY OF CHANGES: The title has changed; Section 4, Definitions, has been expanded; Section 5, Responsibilities, has been expanded; Section 7, Procedures, has been modified and moved to the handbook; all references to "Douglas Factors" and the Professional Review Board (PRB) were removed. In the TSA Handbook to TSA MD 1100.75-3, *Addressing Unacceptable Performance and Conduct*, Sections F and I, guidance on SMART Agreements and In Lieu of Reprimand respectively, were developed; Section K has been revised to clarify guidance on Indefinite Suspensions; Appendices A and B have been updated; and Appendix C was created to address delegation of authority for non-TSOs.

1. **PURPOSE:** This directive provides TSA policy and procedures for the use of non-disciplinary, disciplinary, and adverse actions to address unacceptable employee performance and conduct.
2. **SCOPE:** This directive applies to all non-TSES TSA employees.
3. **AUTHORITIES:**
 - A. The Aviation and Transportation Security Act, Pub. L. 107-71 (ATSA).
 - B. Sections 403(2) and 423, of the Homeland Security Act of 2002.
4. **DEFINITIONS:** TSA Handbook to TSA MD 1100.75-3, Addressing Unacceptable Performance and Conduct.
5. **RESPONSIBILITIES:**
 - A. The Assistant Administrator for the Office of Human Capital (AA/OHC) is responsible for reviewing requests for delegation of authority related to this directive and rendering a decision. In addition, the AA/OHC is responsible for administering this policy and ensuring that it supports the mission of the agency.
 - B. The Office of Chief Counsel is responsible for providing legal sufficiency review for all disciplinary and adverse actions other than Letters of Reprimand.

C. Management officials are responsible for following this management directive and handbook when addressing unacceptable employee performance or conduct.

6. POLICY:

A. Actions Covered:

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

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

Note: Refer to Section L of the accompanying handbook for applicable appeal and grievance rights.

(2) Non-Disciplinary Actions: This directive applies to the following non-disciplinary actions:

- (a) Letter of Counseling;
- (b) Letter of Guidance and Direction;
- (c) Letter of Leave Restriction; and
- (d) SMART Agreement.

Note: These actions are not grievable with the exception of Letter of Leave Restrictions.

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

- (1) Action taken under involuntary workforce reduction procedures;
- (2) Furlough of any length;
- (3) Involuntary Demotion During Initial Supervisory or Managerial Trial Period, as described in TSA MD 1100.31-1, *Trial Periods* if the reduction is to a pay band or rate of pay no lower than that held by the employee before entering the supervisory or managerial position;

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- (4) Termination of a temporary promotion at any time and return of the employee to a position at a pay band no lower than the one from which promoted;
 - (5) Placement of an employee serving on an intermittent or seasonal basis in non-duty and non-pay status in accordance with the conditions of the appointment;
 - (6) Termination during a trial period other than supervisory or managerial trial period;
 - (7) Reassignment to a different position with the same rate of basic pay;
 - (8) Termination of a reemployed annuitant;
 - (9) Termination at any time of a time-limited appointment;
 - (10) Termination at any time of a time-limited appointment associated with salary offset;
 - (11) Expiration of a time-limited appointment;
 - (12) Correction of an erroneous personnel action, including correction of a pay band or rate of pay that is contrary to law, regulation, or TSA policy;
 - (13) Action directed by a court or other competent authority;
 - (14) Voluntary action initiated by the employee, for example, resignation or reduction in pay band; and
 - (15) Last Chance Agreement.
- C. **Matters Involving Senior Employees:** Where conduct or performance of an employee covered by TSA MD 1100.75-6, *Addressing Unacceptable Performance and Conduct for Senior-Level Employees* is the subject of an investigation or management inquiry by a TSA component, by the TSA Office of Inspection, by the Department of Homeland Security Office of the Inspector General, or by a local inquiry, appropriate management official will review the report of investigation and may propose any action he/she deems appropriate in accordance with TSA MD 1100.75-6.
- D. **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.
- E. **Cause:**
- (1) **Efficiency of the Service Standard:** An employee may be suspended, removed, or demoted for such cause as will promote the efficiency of the service. This standard generally means that the action must be taken to further a legitimate government interest. Taking disciplinary action would promote the efficiency of the service when, for example, an employee fails to perform his or her duties acceptably, interferes with other employees'

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performance of their duties, or exhibits conduct that adversely affects 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's unacceptable performance, conduct, 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) **Non-disciplinary adverse actions:** Certain actions by an employee that are not considered unacceptable performance or conduct may warrant non-disciplinary adverse actions that also promote the efficiency of the service. For example, if an employee declines to accept a directed reassignment to another commuting area, the declination would not be considered misconduct, but the employee's removal would nevertheless be taken "for such cause as will promote the efficiency of the service." Similarly, if an employee is medically unable to perform the functions of the position, the employee is not engaging in misconduct, but still may be removed for the efficiency of the service.
 - (4) **Performance-Based Actions:** Actions based on unacceptable performance may be taken under the authority of this directive. In determining the appropriate action, and if the cause can be determined, consideration should be given to whether the unacceptable performance is:
 - (a) **Conduct-based, i.e.,** an intentional refusal to perform, or a negligent failure to perform acceptably due to inattention to duty, or negligence; or
 - (b) **Performance-based, i.e.,** inability to perform. 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 a removal may be appropriate.
- F. **Legal Sufficiency Requirement:** All disciplinary and adverse actions other than Letters of Reprimand must be reviewed by legal counsel to determine legal sufficiency.
- G. **Progressive Discipline:**
- (1) Progressive discipline is the process of using the least severe form of action that may be used to correct a deficiency. When appropriate, TSA will take progressively more severe action until the unacceptable performance or conduct is corrected, or the employee is removed. Management should consider appropriate aggravating factors when making its determination.
 - (2) Removal is required for specific offenses and removal is a permitted penalty for the first violation for other offenses. See Appendix A of the accompanying handbook for additional details. The Deputy Assistant Administrator for Office of Security Operations or designee

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must approve any exception to required removal for listed offenses.

- (3) Nothing in this section or in Appendix A of the accompanying handbook, prevents management from removing an employee after a first offense when the misconduct is so serious as to warrant removal, such as engaging in activity that seriously undermines security interests or poses a threat or danger to TSA employees or to the traveling public, or results in great monetary loss.

H. **Progressive Discipline:** TSA has developed a "One-Step process" to address specific employee issues. This process allows management to impose appropriate disciplinary or adverse 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 F(1) of the accompanying handbook, and can be used as progressive discipline.

I. **Harmful Error:** A failure to comply with the provisions of this directive or related handbook or appendices will not be grounds for reversing an action. The failure might be grounds for reversal if it caused TSA to reach a conclusion different from the one it would have reached in the absence of the failure.

7. **PROCEDURES:** See TSA Handbook to TSA MD 1100.75-3, Addressing Unacceptable Performance and Conduct.

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

APPROVAL



Richard A. Whitford
Assistant Administrator for Human Capital

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Date

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Distribution: Assistant Secretary, Deputy Assistant Secretary, Office Directors, Area Directors, Senior Field Executives, Federal Security Directors, Administrative Officers, TSA Affiliated HR Offices, and Special Agents in Charge.

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