



## Department of Energy

Bonneville Power Administration  
P.O. Box 3621  
Portland, Oregon 97208-3621

FREEDOM OF INFORMATION ACT PROGRAM

December 17, 2020

In reply refer to: FOIA #BPA-2021-00057-F

Sarah Arison

(b) (6)

Dear Ms. Arison,

This communication is the final response to your request for Bonneville Power Administration (BPA) records made under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA). Your request was received on October 13, 2020, with a formal acknowledgement letter sent to you on November 4, 2020.

### Request

“...information related to BPA's personnel practices around employee driving history and allowable disciplinary actions. ...include policy references and provide a summary of the disciplinary actions taken by department across the agency including but not limited to the interpretation of employee's motor vehicle forms.”

### Clarification

On October 13, 2020, via email to the agency, you clarified your request as follows: “Please provide a total count of personnel disciplinary actions associated with annual motor vehicle forms over the past five years. Of the total, please provide **by year** how many of the disciplinary actions were male versus female employees.”

### Response

BPA's Human Capital Management (Employee Relations) office located 67 pages of agency records responsive to your request. BPA is releasing 66 pages in full and releasing 1 page with redactions applied under 5 U.S.C. § 552(b)(6) (Exemption 6). An explanation of the applied exemptions is included below.

Please be aware that Employee Relations is unable to query for misconduct that occurred related to a particular form (e.g., the motor vehicle form) in their case management system. To locate

records responsive to your request, Employee Relations explained that they queried for “lack of candor” as the offense, which is described in more detail in Department of Energy (DOE) Order 333.1 (Administering Workforce Discipline), Appendix B, page B-6, within the Table of Penalties, number 28:

28. Misrepresentation, falsification, lack of candor, forgery, plagiarism, data manipulation, or concealment of a material fact in connection with any Government document, database, process, or information system; submitting a false claim; withholding of material facts in connection with matters under official investigation; or refusal to testify or cooperate in an inquiry, investigation, or other official proceeding.

There is broad use of “lack of candor” as a charge, so there may be instances unrelated to the motor vehicle form in the list released to you.

DOE Order 333.1 is also available online in the DOE Directives List, here: <https://www.directives.doe.gov/directives>

### **Explanation of Exemptions**

The FOIA generally requires the release of all government records upon request. However, the FOIA permits or requires withholding certain limited information that falls under one or more of nine statutory exemptions (5 U.S.C. §§ 552(b)(1-9)).

#### Exemption 6

BPA has applied redactions under Exemption 6 to protect the personal privacy of individuals. Exemption 6 to the FOIA protects information about individuals in “personnel and medical files and similar files” when the disclosure of such information “would constitute a clearly unwarranted invasion of personal privacy.” The application of Exemption 6 requires balancing the public’s interest in the information against the individuals’ privacy interests. If a significant privacy interest is found to exist, and there is no FOIA public interest in disclosure, the information is protected. Here, BPA relies on Exemption 6 to withhold a limited amount of information including employee names. There is no public interest in this information as it does not shed light on the workings of the agency. Please be aware that the privacy right asserted belongs to the individual and not to the agency, and thus information that falls under Exemption 6 cannot be discretionarily released.

### **Fees**

There are no fees associated with this request.

### **Certification**

Pursuant to 10 C.F.R. § 1004.7(b)(2), I am the individual responsible for the search, exemption determinations and records release described above. Your FOIA request BPA-2021-00057-F is now closed with all available agency records provided.

**Appeal**

The adequacy of the search may be appealed within 90 calendar days from your receipt of this letter pursuant to 10 C.F.R. § 1004.8. Appeals should be addressed to:

Director, Office of Hearings and Appeals  
HG-1, L'Enfant Plaza  
U.S. Department of Energy  
1000 Independence Avenue, S.W.  
Washington, D.C. 20585-1615

The written appeal, including the envelope, must clearly indicate that a FOIA appeal is being made. You may also submit your appeal by e-mail to [OHA.filings@hq.doe.gov](mailto:OHA.filings@hq.doe.gov), including the phrase "Freedom of Information Appeal" in the subject line. (The Office of Hearings and Appeals prefers to receive appeals by email.) The appeal must contain all the elements required by 10 C.F.R. § 1004.8, including a copy of the determination letter. Thereafter, judicial review will be available to you in the Federal District Court either (1) in the district where you reside, (2) where you have your principal place of business, (3) where DOE's records are situated, or (4) in the District of Columbia.

You may contact BPA's FOIA Public Liaison, Jason Taylor, at the address on this letter header for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road-OGIS  
College Park, Maryland 20740-6001  
E-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
Phone: 202-741-5770  
Toll-free: 1-877-684-6448  
Fax: 202-741-5769

Questions about this communication may be directed to Thanh Knudson, Flux Resources, LLC, at [etknudson@bpa.gov](mailto:etknudson@bpa.gov) or 503.230.5221

Sincerely,



Candice D. Palen  
Freedom of Information/Privacy Act Officer

Responsive agency records accompany this communication.

Empl ID	Name	Dept ID	Disciplinary Type	Description	Report Dt	Close Date	Case Description	ER Specialist	Discp Step	Descr
(b) (6)	(b) (6) (FEMALE)	(b) (6)	751.130	Lack of Candor	8/29/2018	11/28/2018	REDACTED	(b) (6)	M06	Suspension: 14 Days or Less
REDACTED	FEMALE	REDACTED	751.130	Lack of Candor	4/24/2018	6/26/2018	REDACTED	(b) (6)	M12	Admonishment (Written Counsel)
REDACTED	MALE	REDACTED	751.130	Lack of Candor	2/16/2016	11/21/2016	REDACTED	(b) (6)	E01	Retirement
REDACTED	MALE	REDACTED	751.130	Lack of Candor	2/9/2016	6/25/2016	REDACTED	(b) (6)	M25	Multiple Charges
REDACTED	MALE	REDACTED	751.130	Lack of Candor	10/28/2015	11/30/2015	REDACTED	(b) (6)	M12	Admonishment (Written Counsel)
REDACTED	MALE	REDACTED	751.130	Lack of Candor	9/30/2015	2/23/2016	REDACTED	(b) (6)	M06	Suspension: 14 Days or Less
REDACTED	MALE	REDACTED	751.130	Lack of Candor	9/10/2015	11/23/2015	REDACTED	(b) (6)	M06	Suspension: 14 Days or Less
REDACTED	MALE	REDACTED	751.130	Lack of Candor	7/8/2014	1/29/2015	REDACTED	(b) (6)	M06	Suspension: 14 Days or Less

Approved: 5-14-2015

**SUBJECT: ADMINISTERING WORK FORCE DISCIPLINE**

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1. PURPOSE.

- a. To provide requirements and responsibilities for administering work force discipline that includes disciplinary, adverse, and alternative corrective actions in the Department of Energy (DOE).
- b. To maintain high standards of employee integrity, conduct, effectiveness, and service to the public.
- c. To ensure prompt and just corrective action is taken to promote standards of conduct and efficiency in the best interest of the service with line managers bearing responsibility for the good order and conduct of their organizations.
- d. To ensure disciplinary and adverse actions are governed by three basic principles:
  - (1) An employee must be informed in writing specifically why a disciplinary or adverse action is being issued against him or her;
  - (2) An employee must be given a reasonable opportunity to present his or her position of the case;
  - (3) The employee and representative must be free from restraint, interference, coercion, discrimination, or reprisal in discussing, preparing, and presenting their defense to a proposed action and/or filing a grievance over a final action.

2. CANCELLATION. DOE O 3750.1, *Work Force Discipline*, dated 03-23-83.

3. APPLICABILITY.

- a. Departmental Applicability. This Order applies to all Departmental elements, including the Bonneville Power Administration.
- c. Employees covered by collective bargaining agreements may be subject to additional procedures that supplement those described in this Order.
- d. The Administrator of National Nuclear Security Administration (NNSA) must ensure that NNSA employees comply with their responsibilities under this directive. Nothing in this directive will be construed to interfere with the NNSA Administrator's authority under section 3212(d) of P.L. 106-65, *National Nuclear Security Administration Act*, to establish Administration specific policies, unless disapproved by the Secretary.

- e. DOE Contractors. This Order does not apply to contractors.
- f. Equivalencies/Exemptions. Requests for exemption to this Order must be submitted in memorandum form to the Director, Office of Human Capital Policy and Accountability, Office of the Chief Human Capital Officer. The memorandum must include the basis for the exemption, identify the requirement for which the exemption is sought, and request a timeframe, as applicable.
  - (1) Exemption. Persons exempted from this Order are those specifically excluded by law or Executive Order, such as employees excluded from procedural protections under 5 U.S.C. § 7511, to include the following types of appointments:
    - (a) Presidential;
    - (b) Career and Noncareer Senior Executive Service (SES);
    - (c) Schedule C;
    - (d) Re-employed annuitants.
  - (2) Equivalency. In accordance with the responsibilities and authorities assigned by Executive Order 12344, codified at 50 U.S.C. sections 2406 and 2511 and to ensure consistency through the joint Navy/DOE Naval Nuclear Propulsion Program, the Deputy Administrator for Naval Reactors (Director) will implement and oversee requirements and practices pertaining to this directive for activities under the Director's cognizance, as deemed appropriate.

#### 4. REQUIREMENTS.

- a. Disciplinary actions must be taken in accordance with the requirements of the pertinent topical area found in [Appendix A](#) of this Order.
- b. An action covered under this Order must be in conformance with the merit system principles in 5 U.S.C. § 2301 and must not be based on any of the prohibited personnel practices listed in 5 U.S.C. § 2302.
- c. Actions covered under this Order must not be based on prohibited discrimination because of race, color, sex (including pregnancy and gender identity), religion, national origin, age, disability (physical or mental), protected genetic information, sexual orientation, or status as a parent. An action taken under this Order must not be taken against an employee because of marital status or partisan political reasons.
- d. Actions covered under this Order must not be taken as reprisal for the proper exercise of an employee's legal or administrative appeal rights, or exercise of rights guaranteed by 5 U.S.C. § 7102 or other laws.

- e. Protections and entitlements under the Whistleblower Protection Act and the Whistleblower Protection Enhancement Act will be afforded to employees who allege reprisal for having engaged in whistle blowing activities.
- f. In taking actions under this Order, when practicable, like penalties must be considered for like offenses. However, full consideration should be given to the Douglas Factors found at [Appendix B](#), when determining what action is appropriate for an adverse action, including the nature and gravity of the offense, existence of either mitigating or aggravating circumstances, the frequency of the offense and the employee's position and so forth.
- g. Disciplinary actions will be taken on a preponderance of the evidence standard, with the exception of indefinite suspensions which only require a reasonable cause burden of proof.
- h. When practicable, the concept of progressive discipline will be administered. Progressive discipline can include informal and formal disciplinary actions. Informal disciplinary actions which are not considered official discipline at DOE include: oral or written letters of counseling, sick leave restrictions, an oral or written admonishment and other notices/actions of a progressive nature. Formal/official disciplinary actions at DOE include: reprimands, suspensions, demotions and removals.
- i. When applicable, progressive discipline, to include informal and formal disciplinary action, adverse actions, and alternative corrective actions, should be taken for:
  - (1) The purpose of rehabilitating the employee by correcting unacceptable conduct at work;
  - (2) Behavior that adversely affects job performance;
  - (3) Violations of laws, rules or regulations; or
  - (4) Off duty misconduct when there is a nexus between the misconduct and employment with DOE.
- j. All disciplinary and adverse actions must promote the efficiency of the service.
- k. Any applicable provisions of labor-management agreements should be consulted to determine the possible effect on the processing of disciplinary/adverse actions, notices of such actions, and employee rights.
- l. Where necessary, Department elements may supplement this Order with prior approval of the Director, Office of Human Capital Policy and Accountability, Office of the Chief Human Capital Officer. Supplemental policies and procedures

may not conflict with, but may expand upon and/or be more restrictive than, the contents of this Order.

5. RESPONSIBILITIES.

a. Secretary/Under Secretary, or their Designee(s).

- (1) Delegate Human Resources Authority to Chief Human Capital Officer and NNSA Human Capital to ensure compliance with statute, regulation and policy;
- (2) Redesignate disciplinary authority to that level of personnel management that has clearly demonstrated the knowledge, experience and capability to take the action. This shall not preclude, however, the Secretary/Under Secretary from exercising the authority delegated above on a case-by-case basis and/or from serving as the deciding official for any corrective actions.

b. Office of the Chief Human Capital Officer/NNSA Human Capital Management.

- (1) Office of the Chief Human Capital Officer (OCHCO):
  - (a) Develop policy and guidance and is responsible for administration of this Order;
  - (b) Disseminate policy initiated by the OCHCO to all Servicing Human Resources Offices (SHRO) and Human Resources Shared Service Centers (SSC) for compliance;
  - (c) Provide staff assistance, advice, and oversight to all non-NNSA SSCs and SHROs;
  - (d) Has the authority to correct any non-NNSA disciplinary or adverse action taken in the Department that does not conform to statute, regulation, or this Order.
- (2) NNSA Human Capital Management (HCM):
  - (a) Develop NNSA specific policy and guidance and is responsible for administration of this Order;
  - (b) Disseminate NNSA human capital policy;
  - (c) Ensure all employee relations staff is appropriately trained;
  - (d) Advise, assist, and ensure consistency in the drafting and reviewing of corrective and adverse actions and decisions;

- (e) Coordinate with NNSA legal to obtain legal advice and review of appropriate disciplinary and all adverse actions. This includes, but is not limited: to all actions appealable to the Merit System Protection Board (MSPB), actions with Equal Employment Opportunity (EEO) implications, requests to OPM to seek judicial review of MSPB decisions, actions resulting from a prohibited personnel practice, violations of statute, regulation, policy, or other legal requirements, and Office of Special Counsel (OSC) investigations;
  - (f) Keep NNSA legal staff informed of developing disciplinary and adverse actions when appropriate;
  - (g) Respond to questions from employees and their representatives regarding the disciplinary process and employee rights and responsibilities;
  - (h) Implement actions directed by Office of Personnel Management (OPM) and/or respond to other outside authorities, such as the OCHCO, MSPB or Equal Employment Opportunity Commission (EEOC), in coordination with advice from NNSA legal staff;
  - (i) Retain records of actions in accordance with applicable federal law and Departmental requirements;
  - (j) Respond to all NNSA reporting requirements;
  - (k) Ensure that documented workplace policies and procedures and other conditions of employment can be made readily available upon request by an employees and their representative.
- c. Office of General Counsel/NNSA Office of General Counsel.
- (1) Office of General Counsel (OGC)-oversight applies to all legal offices with the exception of NNSA:
    - (a) Provide legal advice and assistance to the OCHCO, other legal staffs, and to management officials;
    - (b) Keep the OCHCO and other legal staffs informed of relevant decisions of interest or decisions that may affect policy;
    - (c) Assist other legal staffs in representing their organizations before the MSPB, the EEOC, and the Federal Labor Relations Authority (FLRA);
    - (d) Review and concur on all petitions for payment of attorney's fees for *compliance* with statutory and regulatory requirements;

- (e) Advise on the correction of any disciplinary or adverse action(s) taken that does not conform to statute, regulation, or this Order.

(2) NNSA OGC (applies exclusively to NNSA):

- (a) Provide legal advice and assistance to the NNSA HCM Office, and to NNSA management officials;
- (b) Keep the NNSA HCM and other legal staffs informed of relevant decisions of interest or decisions that may affect policy;
- (c) Represent NNSA before the MSPB, the EEOC, and the FLRA and determine whether to appeal initial third-party decisions (such as a petition for review of an initial MSPB or EEOC decision, or appeal of a decision on such requests);
- (d) Review and concur on all NNSA petitions for payment of attorney's fees for compliance with statutory and regulatory requirements;
- (e) Review and concur on evidentiary standards of all NNSA adverse actions and assist with any other requested legal reviews.
- (f) Advise on the correction of any disciplinary or adverse action(s) taken within NNSA that does not conform to statute, regulation, or this Order.

d. Heads of Departmental Elements/Heads of Organizations/Administrators.

- (1) Ensure all managers and employees are aware of this Order and its requirements with the assistance of the SSC and/or SHRO;
- (2) May issue implementing instructions or supplemental policy with OCHO's approval, in conformance with the provisions of this Order;
- (3) Administer equitable, impartial, and regulatory, and policy compliant corrective actions throughout their element in consultation with their SHRO and legal office, when appropriate;
- (4) Ensure that supervisors and management officials comply with the provisions of this Order and consider the Table of Offenses and Penalties for all actions. Also consider Douglas Factors found at [Appendix B](#) for all adverse actions, and consult with their SHRO when initiating corrective actions;
- (5) Ensure all disciplinary and adverse actions are coordinated with their SHRO and legal office as appropriate.

e. Servicing Human Resources Offices.

- (1) Ensure all labor management and employee relations (LMER) staff is appropriately trained;
- (2) Advise, assist, and ensure consistency in the drafting and reviewing of corrective and adverse actions and decisions;
- (3) Coordinate with servicing legal staff to obtain legal advice and review of appropriate disciplinary and all adverse actions. This includes, but is not limited to: all actions appealable to the MSPB, actions with EEO implications, requests to OPM to seek judicial review of MSPB decisions, actions resulting from a prohibited personnel practice, violations of statute, regulation, policy, or other legal requirements, and OSC investigations;
- (4) Keep the respective legal staff and Insider Threat Program informed of developing disciplinary and adverse actions when appropriate;
- (5) Respond to questions from employees and their representatives regarding the disciplinary process and employee rights and responsibilities;
- (6) Implement actions directed by OPM and/or respond to other outside authorities, such as the MSPB or EEOC, in coordination with advice from the respective legal staff;
- (7) Retain records of actions in accordance with applicable federal law and Departmental requirements;
- (8) Respond to all Departmental reporting requirements;
- (9) Ensure that documented work place policies and procedures and other conditions of employment can be made readily available upon request by employees and their representatives.

f. Office of General Counsel (OGC) and Non-NNSA Chief Counsels of Field Elements.

- (1) Provide legal advice and assistance to the applicable SHRO and management officials; in coordination with the SHRO, represent or participate in the preparation for representation of DOE before the MSPB, EEOC, FLRA and other third party entities;
- (2) In coordination with the OGC, determine whether to appeal initial third-party decisions (such as a petition for review of an initial MSPB or EEOC decision, or appeal of a decision on such requests); keep the applicable SHRO informed of relevant decisions;

- (3) Consult with the OGC when an adverse action involves a Headquarters Deciding Official;
- (4) Ensure legal staffs must review and advise on all adverse actions and supporting evidence, and assist with any other requested legal reviews.

g. Supervisors and Managers.

- (1) Consult with the SHRO and servicing legal staff as appropriate, before initiating alternative corrective actions/alternative discipline, letters of reprimand, notices of proposed disciplinary or adverse actions, and decisions;
- (2) Consider the Table of Offenses and Penalties for all actions and consider relevant Douglas Factors required for adverse actions found at [Appendix B](#), in determining the appropriateness of a penalty;
- (3) Consider an employee's rights and requirements established by law, regulation, policy, and/or the applicable collective bargaining agreement for bargaining unit employees (BUEs) when administering corrective actions;
- (4) Review and approve or disapprove requests for DOE employees to serve as representatives for non-BUEs, based on operational needs;
- (5) Approve or disapprove requests to extend the time to answer notices of proposed action;
- (6) Approve or disapprove requests to extend the effective date of a decision notice;
- (7) Issue proposals and notices of decision for disciplinary and adverse actions in a timely manner.

6. REFERENCES.

- a. P.L. 112-194 *Government Charge Card Abuse Prevention Act of 2012*:  
<http://www.gpo.gov/fdsys/pkg/plaw-112publ194/pdf/plaw-112publ194.pdf>.
- b. Title 5, United States Code (5 U.S.C.), 75 (*Adverse Actions*), and 77 (*Appeals*):  
<http://uscode.house.gov/search/criteria.shtml>.
- c. *Title VII of the Civil Rights Act of 1964*, as amended:  
<http://www.eeoc.gov/laws/statutes/titlevii.cfm>; 29 Code of Federal Regulation Part 1614, *Federal Sector Equal Employment Opportunity*:  
[http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title29/29cfr1614\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title29/29cfr1614_main_02.tpl); and Executive Order 11478,

*Equal Employment Opportunity in the Federal Government:*

<http://www.archives.gov/federal-register/codification/executive-order/11478.html>.

- d. *Title II Genetic Information Non Discrimination Act (GINA) of 2008:*  
<http://www.eeoc.gov/laws/statutes/gina.cfm>.
- e. *Whistleblower Protection Act of 1989 (Public Law 101-12 ):*  
<http://www.gpo.gov/fdsys/pkg/STATUTE-103/pdf/STATUTE-103-Pg16.pdf>;  
*Whistle blower Protection Act expansion of 1994 (Public Law103-424):*  
<http://www.gpo.gov/fdsys/pkg/STATUTE-108/pdf/STATUTE-108-Pg4361.pdf>; 5  
U.S.C. Section 1201: <http://uscode.house.gov/search/criteria.shtml>; and  
*Whistleblower Protection Enhancement Act, (Public Law 112-199):*  
<http://www.gpo.gov/fdsys/pkg/PLAW-112publ199/content-detail.html>.
- f. 31 United States Code 1344 (*Passenger Carrier Use*) and 31 United States Code 1349 (*Adverse Personnel Actions*): <http://uscode.house.gov/search/criteria.shtml>.
- g. Title 5 Code of Federal Regulations (5 CFR) Parts 735 (*Employee Responsibilities and Conduct*), 752 (*Adverse Actions*), and 1201 (*Merit Systems Protection Board Practices and Procedures*):  
<http://www.gpo.gov/fdsys/search/submitcitation.action?publication=CFR>.
- h. 10 CFR, Parts 710 (Eligibility for Access to Classified Information), 712 (Human Reliability Program), 1017 (Identification and Protection of Unclassified Controlled Nuclear Information), and 1045 (Nuclear Classification and Declassification):  
<http://www.gpo.gov/fdsys/search/submitcitation.action?publication=CFR>.
- i. *Office of Personnel Management (OPM) Guide to Personnel Recordkeeping:*  
<http://www.opm.gov/feodata/recguide2011.pdf>.
- j. DOE O 203.1, *Limited Personal Use of Government Office Equipment Including Information Technology*, dated 1-7-2005:  
<https://www.directives.doe.gov/directives/0203.1-BOrder/view>.
- k. DOE O 342.1, *Grievance Policy and Procedures*, dated 2-2-2006:  
<https://www.directives.doe.gov/directives/0342.1-BOrder/view>.
- l. DOE O 471.3, *Identifying and Protecting Official Use Only Information*, dated 4-9-2003: <https://www.directives.doe.gov/directives-documents/400-series/0471.3-BOrder-admchg1>; and DOE M 471.3-1, *Manual for Identifying and Protecting Official Use Only Information*, dated 4-9-2003:  
<https://www.directives.doe.gov/directives-documents/400-series/0471.3-DManual-1-admchg1>.

- m. DOE O 471.1B, *Identification and Protection of Unclassified Controlled Nuclear Information*, dated 3-1-2010: <https://www.directives.doe.gov/directives-documents/400-series/0471.1-BOrder-b>.
- n. DOE O 475.2A, *Identifying Classified Information*, dated 2-1-2011: <https://www.directives.doe.gov/directives-documents/400-series/0475.2-BOrder-a>.
- o. DOE O 343.1, *Federal Substance Abuse Testing Program*, dated 1-30-2014: <https://www.directives.doe.gov/directives-documents/0343.1-BOrder>.
- p. DOE O 470.5, *Insider Threat Program*, dated 6-02-2014: <https://www.directives.doe.gov/directives-documents/400-series/0470.5-BOrder>
- q. Merit Systems Protection Board (MSPB) report, *Navigating the Probationary Period After Van Wersch and McCormick* (2006): <http://www.mspb.gov/netsearch/viewdocs.aspx?docnumber=276106&version=276415&application=ACROBAT>.
- r. Merit Systems Protection Board (MSPB) report, *Alternative Discipline: Creative Solutions for Agencies to Effectively Address Employee Misconduct* (2008): <http://www.mspb.gov/netsearch/viewdocs.aspx?docnumber=373026&version=373689&application=ACROBAT>.
- s. Merit Systems Protection Board (MSPB) report, *Whistleblower Protections for Federal Employees* (2010): <http://www.mspb.gov/netsearch/viewdocs.aspx?docnumber=557972&version=559604&application=ACROBAT>.
- t. Merit Systems Protection Board (MSPB) report, *Prohibited Personnel Practices—A Study Retrospective*. (2010): <http://www.mspb.gov/netsearch/viewdocs.aspx?docnumber=506980&version=508422&application=ACROBAT>.
- u. Merit Systems Protection Board (MSPB) report, *Clean Record Settlement Agreements and the Law*. (2013): <http://www.mspb.gov/netsearch/viewdocs.aspx?docnumber=938820&version=942573&application=ACROBAT>.

## 7. DEFINITIONS.

- a. Abeyance Agreement. A written and signed agreement in which a Deciding Official agrees to withhold implementation of a decision on a disciplinary action in abeyance for a specific period of time, in exchange for terms agreed to by the parties.
- b. Adverse Action. A removal, suspension of more than 14 days, indefinite suspension, furlough for 30 consecutive calendar days (22 discontinuous work days) or less, reduction in grade or pay effected by management for either

disciplinary or non-disciplinary reasons, except for those which are excluded by law or regulation (see 5 CFR Part 752).

- c. Alternative Discipline. An effort, undertaken by a supervisor/manager, to address employee misconduct using a method other than traditional discipline.
- d. Bargaining Unit Employee. A bargaining unit employee (BUE) is an employee who is covered by a collective bargaining agreement recognized by FLRA within the Department.
- e. Breach or Offense. A violation of rules or policies, a failure to observe the terms of employment, or a criminal or civil offense or infraction with a nexus to the DOE's mission.
- f. Charge. A description of the offense in a disciplinary or adverse action, as stated in the proposed action and final decision.
- g. Conflict of Interest. As defined for purposes of this Order, a conflict of interest exists for individuals with a personal interest in the investigation or outcome of the action, or whose position creates the appearance of actual or perceived conflict of interest due to their participation as a representative; conflict of interest also applies to an employee of the Department whose release from his/her official position to act as a representative would give rise to unreasonable costs or whose priority work assignments preclude his/her release.
- h. Crime Provision. An exception to the 30 days' advance written notice when the agency has reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed and is proposing a removal or suspension, including indefinite suspension. This provision may be invoked even in the absence of judicial action.
- i. Day. Calendar day unless otherwise noted.
- j. Deciding Official. The management official designated to make the final decision on a proposed disciplinary or adverse action.
- k. Disciplinary Action. A formal disciplinary action taken to correct misconduct or other offenses and to enforce prescribed rules of behavior. At DOE it includes reprimands and suspensions of 14 days or less.
- l. Douglas Factors. Factors established by the Merit Systems Protection Board (MSPB) via case law, that must be considered by Deciding Officials in determining the appropriate penalty for Federal employee misconduct for adverse actions. *Douglas v. Veterans Administration*, 5 MSPR 280 (at 305-6), 1981.
- m. Duty Status. For the purposes of this order, pay status including authorized overtime, holiday pay, or premium pay.

- n. Duty Time for Employee Reply. Often referred to as official time, is time granted to an employee and/or employee non-labor representative, to review the material relied on to support a proposed action, to prepare an answer and secure affidavits while the employee or non-labor representative is otherwise in a pay status.
- o. Furlough. The placing of an employee in a temporary status without duties and pay due to lack of work or funds, or other non-disciplinary reasons.
- p. Heads of Departmental Elements/Heads of Organizations/Administrators. For purposes of this order, this person is the Senior Management Official for a departmental element/organization/administration.
- q. Indefinite Suspension. The placement of an employee in an involuntary, non-pay status for a temporary indeterminate period of time pending investigation, inquiry, or further management action.
- r. Last Chance Agreement. A written agreement executed by the employee and agency where the employee agrees to refrain from future specified misconduct in exchange for the agency's agreement not to remove them for the offense being settled.
- s. Official Time. For the purposes of this order, is paid time off from assigned Government duties to represent a union or a BUE.
- t. Pay. The rate of basic pay fixed by law or administrative action, for the position held by the employee.
- u. Preponderance of the Evidence Standard. A burden of proof where it is more likely than not that the charged misconduct occurred (i.e. more than 50% likely the misconduct occurred).
- v. Probationary Employee under a:
  - (1) *Probationary Period*: in competitive service, is the first year of employment after initial appointment during which an individual is generally excluded from the definition of "employee" in 5 U.S.C. § 7511(a)(1)(A). During this probationary period, these individuals generally do not have appeal rights to the MSPB for adverse actions.
  - (2) *Trial Period*: in excepted service, this period generally may last from one year (or up to two years for certain excepted appointments). During an individual's trial period, the individual is generally excluded from the definition of "employee" in 5 U.S.C. § 7511(a)(1)(C). During this probationary period, these individuals generally do not have appeal rights to the MSPB for adverse actions.

- w. Progressive Discipline. A system of escalating communications (both oral and written) for behavior that does not meet expected and communicated work conduct standards and/or has a nexus to employment with the Department. Progressive discipline may or may not be considered formal disciplinary action and is applied where practicable to place employee on notice of desired behavior and/or rehabilitate the employee. Examples of informal progressive discipline include, but are not limited to: letters of counseling; oral and/or written admonishments; leave restrictions; and Absent Without Leave (AWOL) notices. Examples of formal progressive discipline include, but are not limited to: a reprimand, various levels of suspension and a removal from federal service.
  - x. Proposing Official. The management official (normally the first line supervisor) who issues a notice of proposed disciplinary or adverse action (*i.e.* suspension, removal, reduction in pay or grade, or furlough for 30 days or less).
  - y. Reasonable Cause. A standard of proof that is applied to a set of facts or actions to prove whether a reasonable person would have come to the same conclusion or acted in the same way given the totality of the circumstances.
  - z. Reprimand. A formal written letter of censure for misconduct normally issued by the employee's immediate supervisor and placed in the temporary area of an employee's official personnel file.
  - aa. Removal. Discharge from Federal service. This occurs when an employee is separated as a result of adverse action procedures, to include poor performance and misconduct issues; the loss of a security clearance; and in some special circumstances, such as furlough.
  - bb. Suspension. The placement of an employee in a temporary non-pay status non-duty (or absence from duty) for a disciplinary reason not covered under 5 U.S.C. sections 7521 or 7532.
  - cc. Termination. A decision to terminate from Federal service probationary or trial-period employees, temporarily appointed employees, and employees removed due to background investigation determinations of negative suitability.
8. CONTACT. Questions concerning this Order should be addressed to the Office of Human Capital Policy, Accountability and Technology, Office of Chief Human Capital Officer, at 202-586-9239.

BY ORDER OF THE SECRETARY OF ENERGY:



ELIZABETH SHERWOOD-RANDALL  
Deputy Secretary



## **APPENDIX A. ADMINISTERING WORK FORCE DISCIPLINE**

This Appendix establishes the U.S. Department of Energy (DOE) procedural requirements for taking disciplinary and other related actions



**SECTION I. DISCIPLINARY AND ADVERSE ACTIONS  
UNDER TITLE 5 GENERAL INFORMATION**

1. GENERAL. Disciplinary and adverse actions are taken to maintain high standards of employee integrity, conduct, effectiveness, and service to the public. The purpose of disciplinary and adverse actions is to ensure prompt and just corrective action is taken in order to promote the efficiency of the service.
  - a. All disciplinary and adverse actions, to include progressive discipline considered informal actions, will be taken in accordance with paragraph 4. Requirements, of this Order.
  - b. While the reply period after a proposed action entitles employee to a reasonable time to provide a reply, orally and/or in writing, and to furnish affidavits or other documentary evidence in support of their answer, the employee reply period does not provide a right to conduct a hearing or depose witnesses.
  - c. Applicable labor management agreements should be consulted to determine the possible effect on the processing of disciplinary/adverse actions, notices of such actions, and employee rights.
2. GENERAL PROHIBITIONS (a not-all inclusive list). Employees are prohibited from:
  - a. Engaging in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government at any time;
  - b. Conducting or participating in any gambling activity, including operating a gambling device, conducting a lottery or pool, playing a game for money or property, or selling or purchasing a numbers slip or ticket while on Government-owned or Government-leased property or while on duty for the Government. This does not preclude:
    - (1) Activities necessitated by an employee's official duties; or
    - (2) Fundraising permitted under section 7 of Executive Order 12353 and similar agency-approved authorities;
  - c. Engaging in, teaching, lecturing, or writing, with or without compensation, to prepare a person or class of persons for an examination administered by the Office of Personnel Management (OPM) or the Board of Examiners for the Foreign Service that depends on information obtained as a result of the employee's government employment. This does not preclude such teaching, lecturing, or writing if:
    - (1) Prior written authorization is obtained from the Director of OPM, or his or her designee, or by the Director General of the Foreign Service or his

or her designee, as applicable. Employees should seek advice from the Office of General Counsel concerning the application of the restrictions on compensated teaching, speaking, and writing under the Standards (5 CFR §2635.807); or

- (2) The information upon which the preparation is based has been made available to the general public or will be made available to the general public on request;
- d. Using or possessing alcohol on Government-owned or Government-leased property without proper authorization from the element head;
  - e. Using or possessing substances illegal under federal law on or off duty.
  - f. Harassing employees by word or action, engaging in any threatening or intimidating behavior, or knowingly making false accusations against employees;
  - g. Unauthorized monitoring or recording telephone/digital conversations (not limited to video conference, Instant Message, and so forth). Recording of telephone/digital conversations by the use of any recording device (voice, video, image, or otherwise), or authorizing or permitting others under their administrative control to monitor or record conversations by the use of any device (voice, video, image or otherwise), except:
    - (1) As authorized by law, regulation or policy.
    - (2) As authorized by the Inspector General or his or her designee, with the prior consent of one party to a telephone conversation and when necessary in a criminal investigation;
    - (3) When all parties agree in advance; or
    - (4) In the context of a telephone/digital call center (not limited to video conference, Instant Message and so forth) or similar operations (i.e. energy trade centers). In such situations, supervisors may monitor or record conversations for the purpose of evaluating performance of employees with proper notice to all parties to the communication.
  - h. Utilizing any device (voice, video, image, or otherwise), to monitor, record, or capture the likeness of others except:
    - (1) As authorized by law, regulation or policy.
    - (2) As authorized by the Inspector General or his or her designee, with the prior consent of one party to a non-telephone conversation and when necessary in a criminal investigation;
    - (3) When all parties agree in advance; or

- (4) When in the context of telephone/digital call center (not limited to video conference, Instant Message and so forth), or similar operation. In such situations, supervisors may monitor or record conversations for the purpose of evaluating performance of employees with proper notice to all parties to the communication.
- i. Soliciting for the sale of any article, or selling any article, including but not limited to candy or other items for schools or charities, kitchenware or other home furnishings, paper products, cosmetic products; or any other items whatsoever, in person or by distributing or posting literature, advertising material, or any other graphic matter, in or on Government-owned or leased property, or property occupied by DOE, unless authorized by law or regulation;
  - j. Engaging in sexual misconduct including, but not limited to, unwelcomed sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when submission to or rejection of this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment;
  - k. Failing to take appropriate action on complaints or proven acts of sexual harassment (this applies to supervisors or managers who know or should have known of those acts);
  - l. Displaying discourteous or disrespectful conduct to a coworker, another Federal employee, or a member of the public when acting in an official capacity;
  - m. Failing to wear or use specified safety equipment, or failing to report obvious unsafe conditions while on official duty;
  - n. Making threats against other employees, members of the public, or Government property;
  - o. Unless specifically authorized, every employee is prohibited from storing Government-owned or Government-leased motor vehicles at or near their private residence or at other unauthorized locations including, but not limited to, homes of relatives or friends, or from using such vehicles for transportation between their residence and place of employment;
  - p. Using Government-owned or Government-leased vehicles to transport unauthorized passengers;
  - q. Using Government-owned or Government-leased vehicles to transport firearms, other weapons or explosives, unless authorized to do so in the performance of official duties;

- r. Accessing any DOE or Federal government electronic, laser, or magnetic system of storing information, or computer software, not expressly identified for public or general access, unless provided with specific authorization in the course of his/her duties and the purpose of the access is pursuant to that authorization. This prohibition includes, but is not limited to computers of all types, floppy diskettes, compact or laser discs, and magnetic tapes, shared drives, cloud storage and any other information storing system. Employees without specific authorization may be subject to disciplinary or adverse action regardless of whether they use, damage, or make alterations to the stored information;
- s. Retaliating against another employee, by word or action, for filing complaints about safety problems, for filing grievances under either the negotiated or administrative grievance system, for filing complaints of discrimination, for assisting the investigators of DOE, or for engaging in any other protected activity;
- t. Knowingly possessing or causing the presence of a firearm or other weapon in a Federal facility (i.e. a building or part thereof, owned, or leased by the Federal government), where Federal employees are regularly present except for the purpose of performing their official duties, as set forth in 18 USC §930;
- u. Violating 5 U.S.C. §2302 (b), which applies to employees who have the authority to take, direct others to take, recommend, or approve any personnel action, by:
  - (1) Discriminating on the basis of race, color, sex (including pregnancy and gender identity), religion, national origin, age disability (physical or mental), protected genetic information, sexual orientation, status as a parent, marital status, or political affiliation;
  - (2) Soliciting or considering employment recommendations based on factors other than personal knowledge or records of job-related abilities or characteristics;
  - (3) Coercing the political activity of any person;
  - (4) Deceiving or willfully obstructing any person from competing for employment;
  - (5) Influencing any person to withdraw from job competition for the purpose of improving or injuring the prospects of any other person for employment;
  - (6) Granting any preference or advantage not authorized by law, rule, or regulation to improve or injure the prospects of any particular person for employment;
  - (7) Engaging in nepotism (hiring, promoting, or advancing relatives);

- (8) Taking reprisal for whistleblowing;
  - (9) Taking reprisal for the exercise of an appeal;
  - (10) Discriminating based on personal conduct which does not adversely affect the performance of the employee, applicant, or others;
  - (11) Violating veteran's preference requirements; and/or
  - (12) Violating any law, rule, or regulation implementing or directly concerning merit system principles.
- v. Engaging in any prohibited political activities as set forth in the Hatch Act and current law, regulation and policy;
  - w. Discrimination based on genetic information (Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA)); on the basis of handicapping condition, as prohibited under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791);
  - x. Discrimination on the basis of marital status or political affiliation.
3. OBLIGATIONS (a not-all inclusive list). Employees are required to:
- a. Observe designated duty hours and be punctual in reporting for work and returning from lunch periods. Tardiness can result in employees being placed in a non-pay status for unauthorized absence; i.e., absence without leave (AWOL).
  - b. Obtain advance authorization for any absence from duty. In most cases approval of leave is a discretionary matter reserved to the supervisor and an employee is required to notify his or her supervisor or other appropriate person as soon as possible in accordance with applicable leave request procedures. When an employee fails to properly notify his or her supervisor, the absence may be charged as AWOL.
  - c. Safeguard and protect classified and other restricted information (confidential, FOUO, and so forth) from unauthorized disclosure or compromise.
  - d. Safeguard and protect from unauthorized disclosure personally identifiable information (PII) of other employees, contractors, or the general public accessed through the course of his or her employment at DOE.
  - e. Report immediately any known or suspected breach of the PII safeguards or policies, or actual unauthorized disclosure of PII to his or her supervisor.
  - f. Follow prohibitions on texting and using hand held communication or entertainment devices or any government handheld device while driving a government owned, leased or rented vehicle; while driving a privately owned

- vehicle while on government business; or when using government supplied electronic equipment.
- g. Wear seat belts whenever riding as an operator or as a passenger in a truck, automobile or other passenger vehicle in the performance of official duties or while on official time.
  - h. Report actions by other employees that they know, or have a reasonable basis to believe, are violations of law or regulation. A report may be made to the DOE Office of Inspector General, DOE's Office of General Counsel, the employee's supervisor, or any appropriate DOE management official. Violations may include but are not limited to:
    - (1) Fraud, waste, and abuse of Government resources;
    - (2) Criminal activity of any kind;
    - (3) Violations of Federal personnel rules;
    - (4) Sexual harassment;
    - (5) Prohibited personnel practices; and
  - i. Account for, deposit, appropriately secure, properly maintain, or otherwise dispose of in accordance with established procedures any money, property, or other item of value received by or coming into the custody of an employee in connection with the discharge of his or her duties. Fiscal responsibility includes the proper use of Government-issued credit cards and the timely payment of claims, statements or indebtedness.
  - j. Provide all information he or she possesses to authorized representatives of DOE when called upon, if the inquiry relates to official matters and the information is obtained in the course of employment or as a result of relationships incident to such employment. Such activities include participating in interviews requested by authorized representatives of DOE and furnishing signed sworn/affirmed statements to the authorized representatives. Failure to respond to requests for information, including the furnishing of signed sworn/affirmed statements in a timely manner, or failure to appear as a witness in official proceedings may result in disciplinary action. (Nothing set forth herein shall be deemed to infringe upon an employee's right to invoke the protection of the Fifth Amendment to the United States Constitution with respect to self-incrimination in a criminal investigation or for a bargaining unit employee to request union representation in accordance with his or her rights under 5 U.S.C. §7114 (a)(2)(B), known as Weingarten Rights.)
  - k. Provide OPM, MSPB, EEOC, OSC, FLRA and any other appropriate third party and their authorized representatives, all information and testimony in regard to matters arising under laws, rules, and regulations administered by OPM, MSPB,

EEOC, OSC, FLRA, and other appropriate third party, the disclosure of which is not otherwise prohibited by law or regulation.

1. Accept a transfer, detail, or reassignment whenever the employee's supervisor deems it necessary to meet mission accomplishment, subject to applicable regulations and collective bargaining agreement provisions. Failure to accept a transfer, detail, or reassignment may result in an adverse action including removal from federal service.
4. PROGRESSIVE DISCIPLINE.

When appropriate and/or applicable to the particular circumstances of an action, supervisors may administer informal actions such as oral or written letters of counseling, sick leave restrictions, AWOL notices, and/or an oral or written admonishment to put the employee on notice of inappropriate conduct. However, there will be occasions where such progressive discipline does not promote the efficiency of the Federal service and formal disciplinary or adverse action will be administered without its use.



**SECTION II. DISCIPLINARY AND ADVERSE ACTIONS  
UNDER TITLE 5 PROBATIONARY/TRIAL PERIOD EMPLOYEES**

1. GENERAL. Non-probationary employees in the competitive service who have completed more than one year of current continuous service are subject to the procedures of Section III of this Order for both non-adverse and adverse actions.

Employees in the excepted service, serving in a trial period are generally not afforded adverse action procedural rights unless:

- a. They have completed two years of current continuous service; or
  - b. They are a preference eligible employee who has completed one year of current continuous service.
2. TERMINATIONS OF PROBATIONERS/TRIAL PERIOD EMPLOYEES FOR UNSATISFACTORY PERFORMANCE AND/OR CONDUCT.
    - a. If the employee fails to demonstrate fitness for or qualifications for continued employment because of poor work performance or misconduct, the probationary/trial period employee shall be terminated.
    - b. Probationary/trial period employment must be terminated by notifying employee in writing as to why he/she is being separated and the effective date of the action. The termination notice must set forth the performance and/or conduct inadequacies for the termination.
    - c. The probationary/trial period ends when the employee completes his/her scheduled tour of duty on the last business day of the employee's probationary/trial period as defined by 5 C.F.R. 315.802.
  3. TERMINATION OF PROBATIONER/TRIAL PERIOD EMPLOYEES FOR CONDITIONS ARISING BEFORE AN APPOINTMENT.
    - a. When terminating a probationary/trial period employee for reasons in whole or in part for conditions arising before employment, the probationer is entitled to a specific and detailed Notice of Adverse Action and is entitled to provide a timely written reply, including affidavits or other evidence in support of his/her reply. The deciding official must consider this reply in reaching his/her decision. The probationary employee is entitled to the deciding official's written decision at the earliest practicable date. In addition, a termination decision for conditions arising before appointment must inform the probationary employee of the time limits by which his/her appeal must be submitted to the Merit System Protection Board (MSPB), as provided for under 5 C.F.R. §315.806 (d).

4. PROBATIONARY/TRIAL PERIOD EMPLOYEE APPEAL RIGHTS TO THE MSPB.

- a. A probationary/Trial Period employee has limited appeal rights, but may appeal in writing to the MSPB the Department's decision to terminate him/her for unsatisfactory performance and/or conduct for discrimination based on partisan political reasons and/or marital status.
- b. Or, may appeal in writing to the MSPB the Department's decision to terminate him/her for conditions arising before appointment not effected in accordance to the procedural requirements of 5 C.F.R. 315.805.

5. OTHER PROBATIONARY/TRIAL EMPLOYEE APPEAL RIGHTS.

- a. A probationary employee served a termination notice has the right to file, when appropriate, an EEO complaint, or a request for corrective action with the OSC.
- b. Normally selection of a specific venue of appeal/redress constitutes an "election of remedy" that may limit or preclude other review options.

**SECTION III. DISCIPLINARY AND ADVERSE ACTIONS  
UNDER TITLE 5 DISCIPLINARY ACTIONS**

1. LETTER OF REPRIMAND. A reprimand is a written letter of censure for misconduct, normally issued by the employee's immediate supervisor, although, on occasion, circumstances or delegations of authority may dictate a reprimand by a higher level official. The letter of reprimand is placed in the employee's electronic personnel file (eOPF) for no more than three (3) years after issuance of the letter. This is the Department's lowest form of formal disciplinary action.
  - a. A reprimand must be in the form of an official memorandum or letter, as appropriate, to the employee describing the reason for the action.
  - b. The supporting documentation/evidence file must be provided upon request to the employee where available and practicable.
  - c. The reprimand must advise the employee that a copy of the action will be placed in the temporary area of the employee's personnel folder.
  - d. The reprimand must contain a statement of avenues of appeal under the Department's administrative grievance procedure or the negotiated grievance procedure, as appropriate.
  - e. The reprimand must also contain a statement informing the employee of when the reprimand will be withdrawn and give the name and telephone number of the person in the servicing human resources office who may be contacted for procedural information.
  - f. The retention period begins the day the reprimand is delivered to the employee, even if it is not actually filed in the eOPF until later.
  - g. Reprimands may be retained for no longer than three (3) years in the eOPF and will be withdrawn from the eOPF after that time period or whatever timeframe is specified in any applicable bargaining unit employee labor-management agreement. Reprimands that have expired may only be considered for clarity of notice and not be considered as a step for progressive discipline in selection of a subsequent penalty.
  - h. A reprimand may be withdrawn early by the employee's supervisory official for good cause. In determining whether a reprimand should be withdrawn early, consideration should be given to the fact that after its withdrawal, it may not be used as a basis for progressive discipline in connection with any future proposed disciplinary or adverse actions.
  - i. A reprimand may be grieved under the Department's administrative grievance procedure or under the negotiated grievance procedure as appropriate.

- j. Because the reprimand may be grieved and because it is automatically removed from the employee's eOPF upon expiration of the reprimand timeframe (or when the employee leaves government service or transfers to another agency, whichever occurs first); a grievance may not be filed on a supervisor's decision not to remove the reprimand early.
  - k. Any applicable provisions of a negotiated labor-management agreement must be consulted and applied for BUE's.
  - l. Copies of removed reprimands may be maintained for statistical purposes by the SHRO, and can be used in certain circumstances (i.e. notice) to support more serious discipline for later offenses.
2. SUSPENSION OF 14 DAYS OR LESS. The placement of an employee in a temporary non-pay status (or absence from duty) for a disciplinary reason not covered under 5 U.S.C. § 7532 (suspension and removals for national security).
- a. An employee is entitled to advance notice, stating the reason for proposed suspension. Absent extraordinary circumstances, this advance notice period should be no less than 7 days.
  - b. Under ordinary circumstances an employee whose suspension has been proposed will remain in a duty status in his/her regular position during the advance notice period. Where the Department determines that the employee's continued presence in the workplace during the notice period may become disruptive, pose a threat to the employee or others, result in the loss of or damage to Government property, or otherwise jeopardize legitimate government interests, the organization/element may elect one or a combination of the following alternatives:
    - (1) Assigning the employee to duties where he/she is no longer a threat to safety, to the Department's mission, or to Government property;
    - (2) Allowing the employee to take leave, or carrying him/her in an appropriate leave status (annual, sick, leave without pay –if requested) or AWOL if the employee has absented him/herself from the worksite without properly requesting leave;
    - (3) Placing the employee on paid administrative leave. Where possible, every consideration should be made to ensure the employee remains in a work status before providing paid administrative leave, and even while on paid administrative leave, the employee should be required to be available for contact/work at the Department's request.
  - c. An employee is entitled to a reasonable time to provide a reply (7 calendar days after issuance of the proposal), orally and/or in writing, and to furnish affidavits or other documentary evidence in support of the answer. Extensions may be requested and granted for good cause.

- d. An employee is entitled to be represented by an attorney or other representative, at his/her own cost. A bargaining unit employee is entitled to union representation, when desired and requested. Where an employee is represented by another DOE employee in a non-negotiated capacity, the priority needs of the service and conflict of interest will be assessed by the deciding official.
- e. All designations of representative/Privacy Act Waiver Notice must be received in writing by the deciding official prior to the representative acting in any way on behalf of the employee.
- f. An employee has the right to review evidence relied upon to support the proposed action (evidence that is not disclosed to the employee or the employee's representative may not be used to support the proposed suspension). The suspension file and evidence must be maintained by the local SHRO.
- g. A reasonable amount of duty time, often referred to as official time, must be afforded to the employee, if requested, for reviewing and responding to the material relied upon to support the proposed action, and for preparing and presenting a written and/or oral reply. This also applies to the employee's representative, if a DOE employee. Union representatives will request and use official time in accordance with their CBA requirements. While the complexity of the case and amount of evidence to review should be taken into consideration when assessing what is a reasonable amount of review time, normally 4-8 hours is reasonable, depending on the complexity of the allegations.
- h. A deciding official will make his/her decision only after considering all evidence included to support the proposal and provided to the employee, and only after considering the employee's oral and/or written reply(ies), if provided. If additional information/evidence not previously provided to the employee or his/her representative is considered, the deciding official must provide that information/evidence to the employee and his/her representative and re-open a reasonable reply period to address any concerns on the new evidence. A deciding official must remain objective to the action and evidence and not be improperly influenced by any person to include the proposing official. If a deciding official feels that he/she has been improperly influenced or tainted, he/she must recuse him/herself and another deciding official who has authority to make or recommend a final decision should be assigned to review and decide upon the proposed action.
- i. A decision will contain:
  - (1) A statement of the deciding official's determinations regarding what charges were sustained and/or what charges were not sustained.
  - (2) If a record of prior disciplinary action(s) was cited in the advance notice, a statement that the action takes the past record, as cited, into consideration in determining proper action. Disciplinary actions no longer in the

employee's eOPF may not be considered in determining appropriate penalty for the current action, however such prior disciplinary actions can be considered for purposes of notice.

- (3) A statement that an employee's reply(ies) have been considered if timely submitted.
  - (4) A statement of the suspension date(s) where practicable.
  - (5) A statement advising the employee that a further explanation of the employee's grievance rights or other avenues of redress may be obtained by consulting the local operational SHRO Employee Relations (ER) Specialist or union in the case of a BUE.
- j. Before a suspension decision is issued, it must be reviewed by the SHRO ER and legal staff if appropriate.
  - k. Deciding officials may consider mitigation of the actions where appropriate. The deciding official must ensure the purpose of the discipline is served to assist in rehabilitating the employee, as well as promoting the efficiency of the service.
  - l. The decision will be delivered to the employee at least five (5) days prior to the effective date of the suspension whenever possible.
  - m. Any applicable provisions of a negotiated labor-management agreement must be consulted and applied for BUE's.
  - n. A suspension of 14 days or less may be grieved under the administrative grievance procedure or under the negotiated grievance procedure as appropriate.

## **SECTION IV. DISCIPLINARY AND ADVERSE ACTIONS UNDER TITLE 5 ADVERSE ACTIONS**

1. ADVERSE DISCIPLINARY ACTIONS. The provisions of this section apply to removals to include separations for medical inability to perform, suspension of more than 14 days, indefinite suspensions, furlough for 30 consecutive work days (22 discontinuous work days) or less, reduction in grade or pay effected by management for either disciplinary or non-disciplinary reasons, except for those which are excluded by law or regulation (see 5 CFR Part 752).

- a. A Suspension of More than 14 Calendar Days. A suspension for more than 14 calendar days is an enforced temporary non-pay status and absence from duty. Such action is given for serious misconduct. It may also be given for continued repeated acts of misconduct of a less serious nature.
- b. Reduction in Grade for Disciplinary Reasons. A reduction in grade imposed for disciplinary reasons is proper when such an action would be effective in correcting a situation and thus serve to retain a trained and valuable employee. For example, a reduction in grade may be appropriate when the offense indicates unsuitability for supervisory duties but not for duties of a non-supervisory nature.

Removal for disciplinary reasons is an involuntary separation from Federal service, taken for serious misconduct or for continued and repeated acts of misconduct of a less serious nature.

- c. Non-Disciplinary Reasons Resulting in Removal or Reduction in Grade or Pay. An action may be non-disciplinary but at the same time adverse to the employee. For example, removal of an employee for refusal to accompany an activity to a new location is an adverse action even though no disciplinary element is involved. Demotion or separation for failure to meet the physical requirements of the position is another example of an adverse action that did not grow out of a disciplinary situation. Removal of an employee due to his or her medical inability to perform duties is also an adverse action that is not a result of misconduct.
- d. Indefinite Suspension. The placing of an employee in a temporary status without duties and pay pending investigation, inquiry, or further agency action. The indefinite suspension continues for an indeterminate period of time and ends with the occurrence of the pending conditions set forth in the notice of action which may include the completion of any subsequent administrative action. The use of indefinite suspensions is generally limited to three types of situations. These include situations where: (1) the agency has reasonable cause to believe an employee has committed a crime for which a sentence of imprisonment could be imposed, pending the outcome of the criminal proceeding or any subsequent agency action following the conclusion of the criminal process; (2) the agency has legitimate concerns that an employee's medical condition makes his or her continued presence in the workplace dangerous or inappropriate, pending a determination that the employee is fit for duty; or (3) an employee's access to

classified information has been suspended and the employee must have such access to perform his or her job, pending a final determination on the employee's access to classified information.

- e. Demotion or Removal Based on a Combination of Performance and Non-Performance Related Factors. Adverse actions based on a combination of performance and either misconduct or an inability to do the work of the position may be processed as Chapter 75 actions, please note performance matters taken under Chapter 75 must meet Chapter 43 procedures if performance is at the fails to meet expectations (FME) performance level in compliance with the Department's performance policy.
- f. Furlough for 30 Days or Less. This is a non-disciplinary adverse action taken on the basis of an emergency situation, lack of work or funds, or other non-disciplinary reason. See staffing procedures or discuss with a staffing specialist how to identify employees for furlough and furlough authority.

## 2. ADVERSE ACTION PROCEDURES.

- a. Prior to initiating an adverse action, officials involved in making that determination should, upon advice of the SHRO and legal office, consider the burden of proof which must be met in order to sustain the adverse action on appeal. That burden of proof lies with the Department and must meet the requirements of 5 U.S.C. § 7701(c) (1) on all reasons and issues that form the basis of the adverse action.
- b. An employee is entitled to advance notice, supplied in the Notice of Proposed Action, which states the reason(s) for the proposed adverse action. The advance notice will set forth the charges and specifications that provide sufficient detail for the employee to understand the reasons for the proposed action. The employee will then have a minimum 30 day advance notice before the adverse action can be implemented, unless the Department invokes the crime provision, places the employee on indefinite suspension, or requires furloughs without pay due to unforeseeable circumstances.
- c. Under ordinary circumstances, with the exception of removals, an employee whose adverse action has been proposed will remain in a duty status in his/her regular position during the advance notice period. Where the Department determines that the employee's continued presence in the workplace during the notice period may be disruptive, pose a threat to the employee or others, result in the loss of or damage to Government property, or otherwise jeopardize legitimate government interests, the organization/element may elect one or a combination of the following alternatives:
  - (1) Assign the employee to duties where he/she is no longer a threat to safety, the Department's mission, or to Government property;

- (2) Allow employee to take leave, or carrying him/her in an appropriate leave status (annual, sick, leave without pay –if requested) or absence without leave (AWOL) if the employee has absented him/herself from the worksite without properly requesting leave;
  - (3) Curtail the notice period if the crime provision applies;
  - (4) Place the employee on paid administrative leave. Where possible, every consideration should be made to ensure the employee remains in a work status before considering paid administrative leave, and even while on paid administrative leave, the employee should be required to be available for contact/work at the Department's request.
- d. An employee is entitled to a reasonable time to provide a reply (no less than 7 calendar days after issuance of the proposal), orally and/or in writing, and to furnish affidavits or other documentary evidence in support of the answer. Extensions may be requested and granted for good cause.
  - e. An employee is entitled to be represented by an attorney or other representative, at his/her own cost. A BUE is entitled to union representation, as provided for under 5 U.S.C. Chapter 71 or under the applicable CBA. Where a non-bargaining unit employee seeks to be represented by another DOE employee, the priority needs of the service and potential conflict of interest will be assessed by the deciding official to allow such representation.
  - f. All designations of representative/Privacy Act waiver notice must be received in writing by the deciding official prior to the representative acting in any way on behalf of the employee.
  - g. An employee has the right to review evidence relied upon to support the proposed action (evidence that is not disclosed to the employee or the employee's representative may not be used to support the proposed action). The action file and evidence must be maintained by the local operational SHRO.
  - h. A reasonable amount of duty time, often referred to as official time, must be afforded to the employee for reviewing and responding to the material relied upon to support the proposed action, and for preparing and presenting a written and/or oral reply. This also applies to the employee's representative, if a DOE employee. Union representatives will request and use official time in accordance with their CBA requirements. While the complexity of the case and amount of evidence to review should be taken into consideration when assessing what is a reasonable amount of review time, normally eight (8) hours is reasonable.
  - i. A deciding official will make his/her decision only after considering 1) all evidence used to support the proposal and that was provided to the employee; 2) the employee's oral and/or written reply(ies), if provided; and, 3) relevant *Douglas* Factors. If additional information/evidence not previously provided to

the employee or his/her representative is considered, the deciding official must provide that information/evidence to the employee and his/her representative and re-open a reasonable reply period to address any concerns on evidence. A deciding official must remain objective to the action and evidence and not be unduly influenced by any person to include the proposing official. If a deciding official feels that he/she has been unduly influenced or tainted, he/she must recuse him/herself and another deciding official who has authority to make or recommend a final decision should be assigned to review and decide upon the proposed action.

- j. A decision will contain:
- (1) A statement of the deciding official's determinations regarding what charges were sustained and/or what charges were not sustained.
  - (2) If a record of prior disciplinary action(s) was cited in the advance notice, a statement that the action takes the past record, as cited, into consideration in determining proper action. Disciplinary actions no longer in the employee's eOPF may not be considered in determining a penalty for the current action.
  - (3) A statement that an employee's reply(ies) have been considered if timely submitted.
  - (4) A statement regarding the aggravating and mitigating *Douglas* Factors considered in making the decision
  - (5) A statement of the effective date of the action (not less than 30 days after receipt of notice of the proposed action), if the penalty imposed is a demotion or removal; or the inclusive date(s) if the penalty is a suspension. In the case of an indefinite suspension, the ending date is determined by the completion of specified conditions and/or events.
  - (6) A statement advising the employee that a further explanation of the employee's grievance rights or other avenues of appeal may be obtained by consulting the local operational SHRO ER Specialist or union in the case of a BUE.
  - (7) A statement concerning the employee's appeal rights to MSPB and/or rights under a negotiated grievance procedure, if that procedure covers appeals of adverse actions and the member is a BUE; and/or a statement on appeal rights for a discrimination complaint under 29 CFR Part 1614 of the EEOC regulations if the employee has raised an allegation of discrimination during the advance notice period of the adverse action. Only one of the above options may be elected. An employee shall be deemed to have made an election to raise a matter under one of the procedures when the employee timely files in one of these venues.

- k. With the exception of removals, the decision will be delivered to the employee at least five (5) days prior to the effective date of the action whenever possible. The five day period does not apply in cases where it is believed the employee has committed a crime for which a sentence of imprisonment may be imposed.
- l. Deciding officials may mitigate the proposed adverse action where appropriate. The deciding official must ensure the purpose of the discipline is served to promote the efficiency of the service.
- m. Before an adverse action decision is issued, it must be reviewed by the local operational SHRO ER and field legal counsel.
- n. Any applicable provisions of a negotiated labor-management agreement must be consulted and applied.



**SECTION V. DISCIPLINARY AND ADVERSE ACTIONS  
UNDER TITLE 5 OTHER DISCIPLINARY ACTION CONSIDERATIONS**

**GENERAL: The use of alternative discipline is not mandatory, but instead may be evaluated as a Douglas Factor consideration for mitigation or used as a settlement tool. However, if utilized, alternative discipline actions should contain the below minimum requirements.**

1. LETTERS OF ALTERNATIVE DISCIPLINE. When considered as part of the Douglas Factors analysis in an effort to address employee misconduct in lieu of using traditional discipline, or when considered as an option for settlement of a grievance or claim, considerations for using alternative discipline must include the efficiency and best interest of the service, adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee, the need to maintain an established past disciplinary record, the severity of the misconduct, and fairness to the employee.
  - a. In most cases alternative discipline should be offered with the decision notice of the sustained misconduct. This way the evidence of the misconduct and the employee's response have already been considered (due process) and it is clear that a decision was reached as to which charges were supported by the evidence, and the specific penalty the deciding official has determined is appropriate.
  - b. The following criteria must be met to establish conditions for alternative discipline (due process):
    - (1) The employee was informed of the disciplinary action in writing;
    - (2) The disciplinary action is a matter of record; and
    - (3) The employee was given the opportunity to dispute the charges to a higher level official than the official who proposed the discipline.
  - c. A letter of alternative discipline must at minimum contain:
    - (1) The specific offense that was committed and is therefore covered by the agreement (state the charges/ specifications sustained);
    - (2) The specific form of alternative discipline that will be used and its duration;
    - (3) Any expiration date for the record of discipline;
    - (4) The employee's agreement that the employee was offered an opportunity to seek advice from an attorney or representative and is voluntarily entering the agreement free from duress and coercion. NOTE: Agreements entered into with persons 40 years and older require compliance with the Older Worker Benefit Protection Act (29 U.S.C. § 626(f)), including a 21-day consideration period and a 7-day revocation period;

- (5) A statement that the letter of alternative discipline is non-precedential;
  - (6) The employee's agreement that he or she understood what the traditional penalty would have been and understood that he or she could have elected to proceed with the traditional penalty but chooses to waive the traditional discipline and any appeal rights that went with it;
  - (7) The employee's agreement that should he/she repeat the behavior that is the subject of the letter of alternative discipline and/or commit another act of misconduct, the letter of alternative discipline will serve as proof of the sustainment of the original disciplinary action and may be used as consideration for progressive discipline in determining the appropriate penalty for the newly committed misconduct;
  - (8) A clear statement of all the deciding official's requirements of the employee in addition to satisfactory conduct;
  - (9) Where the record of the discipline and alternative discipline will be kept (generally the disciplinary action is removed from the employee's eOPF and is replaced with the letter of alternative discipline which will remain in the eOPF for the agreed duration);
  - (10) What will happen to all records of the action if the employee leaves the organization or the Department (be clear if offering to remove records from the eOPF or supervisory files and/or provide a clean reference, etc.)
- d. Early removal of the letter of alternative discipline may only be considered after sufficient time has passed for the employee to truly prove the offense is unlikely to reoccur and only if the supervisor or deciding official believes removing the action is in the Department's best interest. Once removed, the letter of alternative discipline or original disciplinary action cannot be used in a future action to establish the repeated nature of an employee's offense or to demonstrate the employee's lack of capacity for rehabilitation.
- MSPB guidelines recommend not using the phrase "clean record" in an agreement; instead relay that specific records will be removed from a specific location (i.e. eOPF) and leave room for records kept by SHRO for statistical purposes.
- e. A letter of alternative discipline cannot commit the Department to concealing or not reporting a crime (there is an affirmative obligation to do so), and cannot promise confidentiality or non-disclosure of incident for purposes of security clearance investigations. Promises of confidentiality should be carefully weighed and at least provide a caveat for those exposed to the letter of alternative discipline in the course of their normal duties.

- f. An admission of wrongdoing is preferred but not required for a letter of alternative discipline.
  - g. The duration of a letter of alternative discipline replacing a permanent eOPF action (suspension/adverse action) should be considered for a minimum five years, to account for the seriousness of replacing an otherwise permanent action in the eOPF.
  - h. Recommendations by the Office of General Counsel or element legal staffs to deviate from any of the minimum requirements of a letter of alternative discipline will override this Order.
  - i. Considerations of waiver for grievance, current EEOC appeal rights, Older Worker Benefit Protection Act (for those 40 and older), actionability of related MSPB cases or other avenues of redress and/or appeal should be included when applicable.
  - j. Any applicable provisions of a negotiated labor-management agreement must be consulted and applied.
2. ABEYANCE AGREEMENTS. An abeyance (period before instituting an action decision) must be based on equity, good will and best interest of the Department.
- a. Such letters are generally used to allow time for the employee to seek counseling or treatment for a condition covered under the Rehabilitation Act of 1973 (see 29 U.S.C. Section 701). If an abeyance is considered for this reason:  
  
An employee must provide acceptable documentation for this request, which at a minimum, establishes both a qualifying disabling condition and a connection between the disabling condition and the cited misconduct and/or deficiency in performance.
  - b. A letter of abeyance must at minimum contain:
    - (1) The action penalty and sustained charge(s)/specification(s) that were sustained and are being held in abeyance;
    - (2) The specific duration time of the abeyance;
    - (3) A citation as to the considerations for the abeyance;
    - (4) The employee's agreement that the employee was offered an opportunity to seek advice from an attorney or representative and is voluntarily entering the abeyance agreement free from duress and coercion. Agreements entered into for persons 40 years and older require compliance with the Older Worker Benefit Protection Act (29 U.S.C. § 626(f)), including a 21-day consideration period and a 7-day revocation period;

- (5) A statement that the abeyance letter is non-precedential;
  - (6) The employee's agreement that he or she understands that upon completion of the abeyance period the sustained action will be instituted and the employee has waived his/her right to appeal/redress the action;
  - (7) The employee's agreement that he/she understands there will be no extensions of the abeyance period;
  - (8) The employee's agreement that any misconduct will result in immediate termination of the abeyance period and will result in immediate implementation of the action placed in abeyance;
  - (9) A clear statement of all the deciding official's requirements of the employee in addition to satisfactory conduct;
  - (10) Where the record of the discipline and abeyance letter will be kept (the record of discipline should be maintained in the employee's eOPF along with the abeyance letter);
  - (11) What will happen to all records of the action if the employee leaves the organization or the Department (be clear that discipline records will remain in the eOPF and be clear whether the abeyance letter will follow the employee to another organization/element within DOE and advise that the abeyance agreement will be presumed completed and the action effected if the employee leaves the Department prior to completion of the abeyance period);
- c. A letter of abeyance should not exceed six months.
  - d. Justifications for abeyance actions in excess of six months must be submitted to the Human Capital Policy & Accountability Division, LMER for review and concurrence.
  - e. Recommendations by the Office of General Counsel or element legal staff to deviate from any of the minimum requirements of the abeyance letter will override this Order.
  - f. Considerations of waiver for grievance, current EEOC appeal rights, Older Worker Benefit Protection Act (for those 40 and older), future actionability of related MSPB cases or other avenues of redress and/or appeal should be included when applicable.
  - g. Any applicable provisions of a negotiated labor-management agreement must be consulted and applied.
3. LAST CHANCE AGREEMENTS . A last chance agreement is normally offered in lieu of instituting a removal action, and is normally offered as settlement for actions pending

before MSPB. In considering a last chance agreement, the efficiency and best interest of the Department and Federal civil service, the severity of the misconduct, and fairness to the employee must be considered.

- a. The following criteria must be met to establish conditions for a last chance agreement:
  - (1) The employee was informed of the removal in writing;
  - (2) The removal is a matter of record; and
  - (3) The employee was given the opportunity to dispute the charges to a higher level than the official who imposed the discipline.
  
- b. Last chance agreements must contain the following:
  - (1) Statement of the specific adverse action and offense that was committed and is covered by the agreement (state the charges/ specifications sustained);
  - (2) Any expiration date for the last chance agreement;
  - (3) The employee's agreement that the employee was offered an opportunity to seek advice from an attorney or representative and is voluntarily entering the agreement free from duress and coercion. Agreements entered into for persons 40 years and older require compliance with the Older Worker Benefit Protection Act (29 U.S.C. § 626(f)), including a 21-day consideration period and a 7-day revocation period;
  - (4) A statement that the last chance agreement is non-precedential;
  - (5) The employee's agreement that he or she understood what the traditional penalty would have been and understood that he or she could have elected to proceed with the traditional penalty but chooses to waive the traditional discipline and any appeal rights that went with it;
  - (6) The employee's agreement that should he/she repeat the behavior which is subject of the last chance agreement and/or commit another act of misconduct, the last chance agreement will be considered revoked and the employee will be immediately removed without further avenue of redress or appeal for the current misconduct as well as the original action misconduct;
  - (7) A clear statement of all the deciding official's requirements of the employee in addition to satisfactory conduct.
  - (8) Where the record of the discipline and last chance agreement will be kept (generally the disciplinary action is removed from the employees eOPF

and is replaced with the last chance agreement which will remain in the eOPF for the agreed duration, violation of the last chance agreement will result in effectuation of the original removal action giving rise to the last chance agreement);

- (9) What will happen to all records of the action if the employee leaves the organization or the Department (be clear if offering to remove records from the eOPF and/or provide a clean reference, be clear if there is a debarment from the Department/Federal service, etc.);
- c. Early removal of the last chance agreement may only be considered after sufficient time has passed for the employee to truly prove the offense is unlikely to recur and if the deciding official believes removing the action is in the Department's best interest. Once removed, the last chance agreement or original disciplinary action cannot be used in a future action to establish the repeated nature of an employee's offense or to demonstrate the employee's lack of capacity for rehabilitation.

It is recommended to not use the phrase "clean record" in an agreement, instead relay that specific records will be removed from a specific location (i.e. eOPF) and leave room for records kept by SHRO for statistical purposes.

- d. A last chance agreement cannot commit the Department to concealing or not reporting a crime (there is an affirmative obligation to do so), and cannot promise confidentiality or non-disclosure of the incident for purposes of security clearance investigations. Promises of confidentiality should be carefully weighed and at least provide a caveat for those exposed to the last chance agreement in the course of their normal duties.
- e. An admission of wrongdoing is preferred but not required for a last chance agreement.
- f. The duration of a last chance agreement replacing a permanent eOPF action (suspension/adverse action) should be considered for a minimum five years, to account for the seriousness of replacing an otherwise permanent action in the eOPF.
- g. Recommendations by the Office of General Counsel or element legal staff to deviate from any of the minimum requirements of a last chance agreement will override this Order.
- h. Considerations of waiver for grievance, current EEOC appeal rights, Older Worker Benefit Protection Act (for those 40 and older), future actionability of related MSPB cases or other avenues of redress and/or appeal should be included when applicable.

- i. Any applicable provisions of a negotiated labor-management agreement must be consulted and applied when applicable.
4. CRIME PROVISION. Invoking the crime provision overrides the minimum 30 day advance notice period to whatever is reasonable under the circumstances, but not less than seven (7) days, to allow the employee to reply orally and/or in writing to a notice of proposed adverse action.
  - a. If there is need for immediate action and it is in the public interest to keep the employee off duty, he/she may be placed in a non-duty status with pay during the advance notice period of a proposed indefinite suspension or removal, including any period of investigation. To invoke the crime provision and process a removal or indefinite suspension with a curtailed notice period, the following actions must be taken:
    - (1) Notify the employee in writing that he/she is being put immediately in a non-duty status with pay.
    - (2) Give the employee a notice of either proposed indefinite suspension pending further investigation or disposition of a criminal action, or of proposed removal where there is sufficient evidence to warrant removal. The notice must advise the employee of the reasonable period to respond orally and/or in writing (not less than 7 days).
    - (3) Issue a decision on the proposed action after the employee has had the stated opportunity to respond orally and/or in writing, and the response has been considered.
    - (4) With the exception of the shortened notice period and any enforced non-duty status, the proposed adverse action and decision notices must conform in all other aspects to the requirements for initiating and taking adverse actions.
  - b. All actions involving the crime provision must be taken in consultation with your SHRO and element legal staff before implementation.
  - c. Any applicable provisions of a negotiated labor-management agreement must be consulted and applied.
5. OTHER DISCIPLINARY ACTION CONSIDERATIONS.
  - a. Threat Assessment. When determining whether a threat has been made, consult workplace violence or related policies and conduct a threat assessment. Determine whether the words used would constitute a threat to a reasonable person and consider the:
    - (1) Listener's reaction;

- (2) Listener's apprehension of harm;
  - (3) Speaker's intent;
  - (4) Conditional nature of the statements; and
  - (5) Attendant circumstances.
- b. Prior Offenses. Whenever a prior offense(s) is used to support a more severe penalty, the offense(s) must be cited in the notice of proposed action.
- c. Service of Documents. Absent an unusual circumstance, a reasonable attempt must be made to personally deliver a letter of reprimand or notice of a proposed disciplinary or adverse action or decision to the employee and obtain the employee's dated written acknowledgement.
- (1) If the employee refuses to sign, the supervisor or deciding official, should so note on the acknowledgement copy.
  - (2) In those instances where the letter cannot be personally delivered to the employee, it should be sent by certified or registered mail, return receipt requested, or by other means which provide proof or confirmation of delivery with a copy sent via regular mail. Date of service will be presumed 5 days after posting of the letter. In addition to mailing, when possible, an encrypted email and/or FAX copy may also be sent.
- d. Recordkeeping. All documentation related to any actions taken under this Order must be sent to the SHRO ER for retention including, but not be limited to,
- (1) A copy of the notice or letter of proposed action, with supporting evidence that was relied upon in proposing the action;
  - (2) The employee's written response to the proposed action;
  - (3) The decision notice;
  - (4) A complete record of all relevant information about the case, including the sequence of any pertinent events; and
  - (5) Any other supporting material.
- e. Substance Abuse/Medical Considerations. Alcohol and drug addiction are considered diseases and may be subject to reasonable accommodation. However, not all persons with alcoholism are "individuals with disabilities." Furthermore, current illegal users of drugs are not "individuals with disabilities" under the ADAAA. Alcoholics and persons addicted to drugs who are no longer using drugs illegally and are receiving treatment for drug or alcohol addiction or who have

been rehabilitated successfully, are protected by the ADAAA from discrimination on the basis of past alcohol or drug addiction.

- (1) Neither alcohol nor drug abuse excuse misconduct; however, it is important to consider non-traditional disciplinary measures aimed at rehabilitation. If the employee refuses to accept assistance offered or to otherwise correct conduct, disciplinary measures should be invoked on the basis of the specific misconduct of the employee.
  - (2) In offering rehabilitative assistance, the employee should not be confronted with the belief that he/she has a drinking or drug abuse problem. Instead the employee should be made aware in writing that a problem exists with his/her conduct by providing a description of the problem and any related observations, and advising that he/she seek assistance through the Employee Assistance Program (EAP).
  - (3) There may be situations where a meaningful offer of assistance is not possible and appropriate disciplinary action, to include removal, is required (e.g. employee is incarcerated for a significant period of time, or misconduct is egregious and/or places others in harm's way). Some cases may justify immediate removal from the workplace while the action is investigated. However, normally an employee will remain in a paid duty status until a decision is made.
  - (4) Continuing misconduct while an employee is in a rehabilitation program may be dealt with by taking appropriate disciplinary or adverse action. However, the length of time in the program, the employee's demonstrable progress in treatment and the type of rehabilitation program undertaken by the employee, may be considered as possible mitigating or aggravating factors.
  - (5) When appropriate (i.e. employee holds DOE access authorization (security clearance)), Personnel Security organizations with a need to know, should be notified of employee substance abuse in accordance to statute, regulation and policy.
- f. Processing of Disciplinary and Related Actions. All actions will be processed and placed into the eOPF in accordance with law, regulation and departmental policy. Relevant Standard Form 52's and 50's will be processed and contain remarks in accordance to the Guide for Processing Personnel Actions.



## **APPENDIX B. ADMINISTERING WORK FORCE DISCIPLINE**

This Appendix establishes the U.S. Department of Energy (DOE) Guide for Disciplinary Penalties.



**APPENDIX B**  
**DOE GUIDE - TABLE OF OFFENSES AND PENALTIES**

1. GENERAL.

This table is to be used as a guide for proposing and deciding officials to select the appropriate penalty for formal disciplinary or adverse actions to include demotions or removals. While this guide does not cover every possible offense, it does provide the more common types of offenses and the penalties usually assessed. Except when penalty is dictated by statute, alternative discipline may be considered, if appropriate.

In addition to procedural considerations, deciding officials must consider the Douglas Factors established by the MSPB in *Douglas v. Veterans Administration*, 81 FMSR 7037, 5 MSPR 280 (MSPB 1981), for adverse actions.

- a. 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;
- b. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
- c. The employee's past disciplinary record;
- d. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
- e. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon the supervisor's confidence in the employee's ability to perform assigned duties;
- f. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
- g. Consistency of the penalty with the Table of Offenses and suggested Penalties at Appendix B;
- h. The notoriety of the offense or its impact upon the reputation of the Department;
- i. 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;
- j. Potential for the employee's rehabilitation;
- k. Mitigating circumstances surrounding the offense, such as unusual job tension, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and

1. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

When considering past offenses, oral counseling sessions, written admonishments or expired disciplinary actions may not be counted as prior offenses in determining an adverse action. These may be cited, however, to show that the employee was informed of acceptable level of conduct and performance.

2. OFFENSE COLUMN.

The OFFENSE column is not exhaustive and does not list all potential situations requiring corrective action/discipline. Notices need not exactly replicate the language from the OFFENSE column, and should more appropriately describe the offense instead of trying to make the misconduct fit a specific offense. All element(s) of an offense/charge will have to be proven and the factors considered and an offense/charge/specification selection should be cited.

3. ACTION (PENALTY) COLUMNS.

The ACTION section establishes a range of penalties from minimum to maximum for a specific OFFENSE and is divided into columns for FIRST OFFENSE, SECOND OFFENSE, and THIRD OFFENSE. *When appropriate, a penalty may be less than the minimum or more than the maximum suggested in the table and the organizational/element/administration mission and sensitivities of that mission will also be considered in determining the appropriate penalties, notwithstanding the table of penalties.* Penalties for offenses not listed in the table are determined by the supervisor in consultation with SHRO and element legal counsel.

Note that certain offenses, such as misuse of a Government vehicle, have penalties that are set forth in law or regulation. When an employee has committed a combination or a series of offenses, a greater penalty than that for the single offense may be appropriate.

**GUIDE TABLE OF OFFENSES AND PENALTIES**

<b>OFFENSE</b>	<b>First Offense</b>	<b>Second Offense</b>	<b>Third Offense</b>
	Minimum to Maximum	Minimum to Maximum	Minimum to Maximum
<b>ATTENDANCE</b>			
1. Unexcused tardiness.	Reprimand	Suspension	Higher Grade Suspension to Removal
2. Unexcused or Unauthorized absence of  (a) up to 1 work day, i.e., the employee's tour of duty;  (b) more than 1 work day  <b>NOTE:</b> When an employee fails to report for duty and fails to notify management of his or her intentions and management has been unable to ascertain the employee's intentions concerning reporting to duty, and the employee has been documented as absent without approved leave (AWOL), a removal may be initiated in accordance with merit and procedural requirements after the passage of a reasonable time, i.e. 30 days under some circumstances.	(a) Reprimand to 5 day  (b) Reprimand to 14 day	5 day to 14 day  More than 14 day to Removal	More than 14 days to Removal  Removal
3. Failure to request leave according to established procedures or failure to abide by a valid denial of leave request.	Reprimand	Suspension	Higher Grade Suspension to Removal
4. Leaving job or DOE premise during working hours, without proper permission.	Reprimand	Reprimand to 7 day	More than 14 day to Removal
5. Obtaining or requesting leave under a false pretense.	Reprimand	Reprimand to 7 day Suspension	More than 14 day to Removal
6. Falsifying attendance record for self or another employee.	Reprimand to 7 day	7 day to 14 day	More than 14 day to Removal

OFFENSE	First Offense	Second Offense	Third Offense
	Minimum to Maximum	Minimum to Maximum	Minimum to Maximum
<b>GENERAL MISCONDUCT</b>			
7. Delay, failure, or refusal to comply with or to carry out orders, directions, assigned work, or instructions in a reasonable period of time.	Reprimand	Reprimand to 7 day	More than 14 day to Removal
8. Noncompliance/failure to follow policies, procedures, or rules; insubordination.	Reprimand to 7 day	7 day to 14 day	More than 14 day to Removal
9. Defiance of authority or wanton disregard of or disrespectful response to directions; insolence; or impertinence.	Reprimand to 7 day	7 day to 14 day	More than 14 days to Removal
10. Avoidance of work including, but not limited to, loafing, sleeping, watching television, “surfing” the Internet, or reading non-work-related material while on duty.	Reprimand to 7 day	7 day to 14 day	More than 14 day to Removal
11. Carelessness, inattention to duty, or negligence.  <b>NOTE:</b> Consider whether these actions/inactions resulted in a hazard to personnel or property; injury or loss and the extent of the injury or loss; disruption of mission; or created an environment where one’s credibility, competence, or effectiveness is questioned.	Reprimand to Removal	Suspension to Removal	Removal
12. Rude or boisterous play or other improper behavior which adversely affects mission accomplishment or morale; use of abusive or offensive language; or interfering with the production of others.	Reprimand to 5 day	5 day to 14 day	More than 14 day to Removal
13. Fighting, quarreling, acting aggressively, intimidating, baiting, harassing, threatening, hitting, pushing, kicking or other acts which may or may not inflict bodily harm on another.  <b>NOTE:</b> Penalty depends on such factors such as provocation, extent of any injuries and whether actions were offensive or defensive in nature.	5 day to Removal	Removal	
14. Inappropriate teasing, remarks, jokes, gestures, communications, and touching including, but not limited to, those of a sexual nature.	Reprimand to Removal	10 day to Removal	Removal
15. Discourteous or inappropriate conduct involving a co-worker, subordinate, or the public, including, but not limited to, domestic violence, sexual assault, or stalking.	Reprimand to Removal	10 day to Removal	Removal

<b>OFFENSE</b>	<b>First Offense</b>	<b>Second Offense</b>	<b>Third Offense</b>
	Minimum to Maximum	Minimum to Maximum	Minimum to Maximum
16. Inappropriate conduct/conduct unbecoming a Federal employee.  <b>NOTE:</b> This offense should not be used if other offenses provide a more specific description of the misconduct.	Reprimand to Removal	Suspension to Removal	Removal
17. Making false, unfounded, malicious, disparaging, or highly irresponsible statements against others or DOE; making disparaging references or expressing stereotypical views that have a detrimental effect or impact.	Reprimand to 7 day	7 day to Removal	Removal
<b>SAFETY</b>			
18. Use of all tobacco products to include prohibited e-cigarette vapor products in unauthorized places.	Reprimand to 7 day	7 day to 14 day	More than 14 days to Removal
19. Failure to work in a safe manner and/or to use required safety equipment.	Reprimand to Removal	7 day to Removal	Removal
20. Failure to carry out environmental or safety responsibility or failure to obey environmental or safety law, rule, regulation, or policy.  <b>NOTE:</b> Consider whether there is possible or actual danger to the environment or public health or safety and whether an attempt is made to conceal the violation.	Suspension to Removal	Removal	
21. Failure to report personal injury or accident which occurred while on duty.	Reprimand to 7 day	7 day to 14 day	More than 14 days to Removal
22. Failure to observe precautions for personal safety, posted rules, signs, written or oral safety instructions; failure to use protective clothing or equipment; or carrying of flammable materials into a hazardous area.	Reprimand to 14 day	More than 14 day to Removal	Removal
23. Violating traffic regulations, reckless driving, or improper operation of a motor vehicle while on DOE premises or while in a duty status.	Reprimand to 14 day	More than 14 day to Removal	Removal
24. Endangering the safety of or causing injury to anyone on DOE premises.	Reprimand to Removal	More than 14 day to Removal	Removal
<b>INFORMATION &amp; SECURITY</b>			
25. Failure to safeguard confidential matter or access to such.	Reprimand to Removal	More than 14 day to Removal	Removal
26. Unauthorized use, removal, possession, disclosure or failure to safeguard Government information, documents,	Reprimand to	Suspension to Removal	Removal

OFFENSE	First Offense	Second Offense	Third Offense
	Minimum to Maximum	Minimum to Maximum	Minimum to Maximum
<p>or materials, including classified or controlled information, i.e., Controlled Unclassified Information (CUI) and Official Use Only (OUO) (which includes, but is not limited to, Personally Identifiable Information (PII), Privacy Act information, Export Controlled information, and commercial/proprietary information); or infraction(s) of security regulations, which includes, but is not limited to, the following occurrences:</p> <ul style="list-style-type: none"> <li>(a) improper storage of classified or controlled documents or materials;</li> <li>(b) failure to secure a classified container (safe or vault);</li> <li>(c) transmission of classified documents or materials to a non-approved facility;</li> <li>(d) failure to observe procedures for handling of classified or controlled documents or materials;</li> <li>(e) failure to transmit classified documents via a classified network or to encrypt controlled documents when required;</li> <li>(f) removal of classified documents or materials to private residences or otherwise endangering the security of classified information; and</li> <li>(g) Unauthorized release or compromise of security information.</li> </ul> <p><b>NOTE:</b> Actions involving classified or CUI that are contrary to the requirements found in DOE and national directives may result in additional civil or criminal penalties, depending on the nature and severity of the action.</p>	Removal		
27. An attempt to conceal defective work or negligence in performing work, or an unauthorized attempt to remove or destroy work.	Reprimand to Removal	Removal	
<p>28. Misrepresentation, falsification, lack of candor, forgery, plagiarism, data manipulation, or concealment of a material fact in connection with any Government document, database, process, or information system; submitting a false claim; withholding of material facts in connection with matters under official investigation; or refusal to testify or cooperate in an inquiry, investigation, or other official proceeding</p> <p>(a) through carelessness or negligence.</p>	<p>(a) Reprimand to 5 day</p> <p>(b) 10 day to Removal</p>	<p>10 day to Removal</p> <p>Removal</p>	Removal

OFFENSE	First Offense	Second Offense	Third Offense
	Minimum to Maximum	Minimum to Maximum	Minimum to Maximum
(b) through maliciousness or intent.			
29. Except as specifically authorized, disclosing or using indirect or direct information obtained as a result of employment in DOE, which is of a confidential nature or which represents a matter of trust; or any other information obtained of such character that its disclosure or use would be contrary to the best interests of the Government, DOE, or the rate payers or other DOE beneficiaries being served by it.	Reprimand to Removal	Removal	
30. Violation of any law, regulation or policy pertaining to information disclosure.	Reprimand to 7 day	7 day to 14 day	More than 14 day to Removal
<b>USE OF GOVERNMENT PROPERTY</b>			
31. Misuse of Government issued equipment, i.e., computers, laptops, cellular telephones, blackberries, copiers, or printers, including downloading unauthorized software.	Reprimand to Removal	Suspension to Removal	Suspension to Removal
32. Loss of, damage to, unauthorized use, endangerment, removal, alteration or destruction of Government property, Government time, equipment, personnel, funds, resources, services  (a) through carelessness or negligence. (b) through maliciousness or intent.	(a) Reprimand to 14 days  (b) 10 day to Removal	More than 14 day to Removal  Removal	Removal
33. Unauthorized taking and/or possession of Government property or the property of others or colluding with others to commit such acts; giving control of Government property to others for unofficial use.	7 day Suspension to Removal	More than 14 day to Removal	
34. Attempt to bypass cyber security protections or violation of established cybersecurity procedures.  <b>NOTE:</b> Consider whether the violation results in damage or a compromise to security.	Reprimand to Removal	Suspension to Removal	Removal
35. Failure to report or address intentional cyber security infractions.	Reprimand to Suspension	Suspension to Removal	Removal
36. Accessing pornographic or offensive websites; viewing or storing offensive, pornographic or sexually explicit	Suspension to Removal	Removal	

OFFENSE	First Offense	Second Offense	Third Offense
	Minimum to Maximum	Minimum to Maximum	Minimum to Maximum
material on Government-issued equipment (i.e., computers, laptops, cellular telephones, blackberries, and printers) and/or on non-Government equipment during work hours.			
37. Circulation of non-mission-related email which contains a virus or results in loss or damage to system integrity or availability.	Reprimand to Removal	Suspension to Removal	Suspension to Removal
<b>OUTSIDE ACTIVITIES/FINANCIAL INTEREST</b>			
38. Indebtedness; lack of good faith in paying just financial obligations.	Reprimand	Reprimand to 7 day	7 day to Removal
39. Gambling, unlawful betting, or the promotion thereof on DOE premises.	Reprimand to 14 day	More than 14 day to Removal	Removal
40. Participating in a strike, work stoppage, sick-out, slow-down or other job action.	Reprimand to Removal	Removal	
41. Borrowing money from, or lending money to any subordinate, rate payer, grant recipient or other person obtaining a benefit from DOE.	Reprimand to Removal	Removal	
42. Soliciting for the sale of any article, or selling any article, including but not limited to candy or other items for schools or charities, kitchenware or other home furnishings, paper products, cosmetic products; or any other items whatsoever, in person or by distributing or posting literature, advertising material, or any other graphic matter, in or on Government-owned or leased property, or property occupied by DOE, unless authorized by law or regulation.	Reprimand to 7 day	7 day to Removal	More than 14 day to Removal
43. Violations of the Standard of Ethics for accepting gifts or gratuities (whether in the form of goods, money, services, discounts, entertainment or similar favors) from beneficiaries, rate payers of DOE, or any individuals or firms doing business with or having contractual relationships with DOE.	Reprimand to Removal	Removal	
44. Participation in or conflict of interest with any type of outside activities, relationships with contractors, lenders, builders or others engaged in business with DOE, or relationships with those seeking contracts, which would be contrary to standards set by the U.S. Office of Government Ethics.	Reprimand to 7 day	7 day to Removal	Removal

OFFENSE	First Offense	Second Offense	Third Offense
	Minimum to Maximum	Minimum to Maximum	Minimum to Maximum
<p><b>NOTE:</b> Penalty action will be determined on the basis of whether the activities or relationships might result in a conflict between the private interest of the employee and his/her duty or obligation to DOE, or tend to create in the mind of others a suspicion of prejudice or favoritism.</p>			
<p>45. Owning any interest in, or receiving any wages, salary dividends, profits, gratuities or services from any educational institution operating for profit, where it is determined that detriment to the United States or to eligible rate payers or DOE grant recipients or other beneficiaries may occur.</p> <p><b>NOTE:</b> Seek legal counsel when using this offense.</p>	Reprimand to 7 day	7 day to Removal	Removal
<b>ALCOHOL &amp; DRUG RELATED</b>			
<p>46. Offenses related to intoxicants.</p> <p><u>Alcohol Related:</u></p> <p>(1) Unauthorized possession of alcoholic beverages while on DOE premises, and/or DOE leased premises.</p> <p>(2) Unauthorized use of alcoholic beverages while on DOE premises, and/or DOE leased premises.</p> <p>(3) Reporting to or being on duty while under the influence of alcohol.</p> <p>(4) Sale or transfer of an alcoholic beverage while on DOE premises, and/or DOE leased premises or in a DOE duty status, or while any person involved is in a duty status.</p> <p><u>Drug-Related:</u></p> <p>(1) Possession of an illegal drug or unauthorized possession of a controlled substance while on DOE premises, and/or DOE leased premises.</p>	<p>Reprimand to 7 days</p> <p>Reprimand to 14 days</p> <p>Reprimand to Removal</p> <p>14 days to Removal</p> <p>More than 7 days to Removal</p>	<p>More than 14 days to Removal</p> <p>More than 14 days to Removal</p> <p>More than 14 days to Removal</p> <p>Removal</p> <p>More than 14 days to Removal</p>	<p>Removal</p> <p>Removal</p> <p>Removal</p> <p>Removal</p> <p>Removal</p>

OFFENSE	First Offense	Second Offense	Third Offense
	Minimum to Maximum	Minimum to Maximum	Minimum to Maximum
<p>(2) Unauthorized use of an illegal or controlled substance while on DOE premises, and/or DOE leased premises.</p> <p>(3) Reporting to or being on duty while under the influence of an illegal drug or unauthorized controlled substance.</p> <p>(4) Sale or transfer of an illegal drug or controlled substance while on DOE premises, and/or DOE leased premises. or in a DOE duty status, or while any person involved is in a duty status.</p> <p>(5) Refusal to take a drug test when properly directed to do so.</p> <p>(6) Drug use incompatible with Federal law.</p>	<p>More than 14 days to Removal</p> <p>More than 14 days to Removal</p> <p>More than 14 days to Removal</p> <p>Removal</p> <p>7 days to Removal</p>	<p>Removal</p> <p>Removal</p> <p>Removal</p> <p>Removal</p> <p>More than 14 days to Removal</p>	<p>Removal</p>
<p>47. A verified positive result to any test for use of illegal drugs.</p> <p><b>NOTE:</b> This offense pertains to employees who are in or applicants for Testing Designated Positions (TDPs) and employees who are not in TDPs who are tested for reasonable suspicion or as a result of a post-accident or an occurrence (in very specific situations), or volunteer to be tested. An employee having a verified positive test result for use of an illegal drug must be relieved of sensitive duties until cleared for return by appropriate authorities. Such employees may be issued a notice of removal from employment if he/she cannot be retained in his/her position because of a specific job requirement to perform such sensitive duties and there is no alternate work assignment available.</p> <p>Because of the serious nature that illegal drug activity can have on the Department's mission and its employees,</p>	<p>More than 14 days to Removal</p>	<p>Removal</p>	

OFFENSE	First Offense	Second Offense	Third Offense
	Minimum to Maximum	Minimum to Maximum	Minimum to Maximum
supervisors should strongly consider taking the most firm action believed necessary to prevent further misconduct.			
<b>DISCRIMINATION/EEO/PROTECTED ACTIVITY</b>			
<p>48. Reprisal against an employee for providing information to an Office of Inspector General (or equivalent), or Office of Special Counsel, or to an EEO investigators, or for testifying in an official proceeding.</p> <p><b>NOTE:</b> If the Office of Special Counsel has initiated an investigation, according to 5 U.S.C. 1214(f), agencies must seek approval from the Special Counsel to discipline employees. HR staffs must consult their legal staffs.</p>	More than 14 days Removal	Removal	
49. Discrimination based on race, color, sex, religion, age, marital status, political affiliation, or disability.	Reprimand to Removal	7 days to Removal	Removal
50. Sexual harassment.	Reprimand to Removal	7 days to Removal	Removal
51. Reprisal against an employee for exercising a right provided under 5 U.S.C. 71 (Federal Labor Management Relations Statute.)	Reprimand to Removal	7 days to Removal	More than 14 days to Removal
<b>OFFENSE PROSCRIBED BY STATUTE OR BY PRESIDENTIAL EXECUTIVE ORDER/MEMORANDUM</b>			
<p>52. Engaging in a prohibited personnel practice (see 5 U.S.C. 2302).</p> <p><b>NOTE:</b> OSC has the authority to investigate and, prosecute claims of prohibited personnel practices, including reprisal for whistle blowing. HR staffs must consult their legal staffs.</p>	Suspension to Removal	Removal	
<p>53. Violations of the Standards of Conduct under 5 CFR 2635 and 3301, or violations of Federal ethics laws pertaining to, but not limited to, conflicts of interest, the Ethics in Government Act of 1978, the Hatch Act (5 U.S.C. 1501-1508), gifts and travel, and outside employment.</p> <p><b>NOTE 1:</b> HR staffs must consult with their respective legal staffs.</p> <p><b>NOTE 2:</b> If the Office of Special Counsel has initiated an investigation, according to 5 U.S.C. 1214(f), agencies must seek approval from the Special Counsel to discipline</p>	Reprimand to Removal	Suspension to Removal	Removal

OFFENSE	First Offense	Second Offense	Third Offense
	Minimum to Maximum	Minimum to Maximum	Minimum to Maximum
employees. HR staffs must consult their legal staffs.”			
54. Compromise or discrediting of examination materials or a selection process due to a discussion of a specific question(s) or available information with another employee(s) or applicant(s).	Suspension to Removal	Removal	
55. Nepotism (5 U.S.C. 3110(b) and 5 C.F.R. 2635.702).	Suspension to Removal	Removal	
56. Willfully using or authorizing the use of Government passenger motor vehicle or aircraft for other than official purposes (31 U.S.C. 1349 (b)).  <b>NOTE:</b> An officer or employee who <u>willfully uses</u> or <u>authorizes the use of a passenger motor vehicle or aircraft owned or leased by the United States Government (except for an official purpose authorized by section 1344 of this title) or otherwise violates section 1344 shall be suspended without pay by the head of the agency. The officer or employee shall be suspended for at least one month, and when circumstances warrant, for a longer period or summarily removed from office.</u>	30 days to Removal	Removal	
57. Finding by MSPB of refusal to comply with MSPB order or violation of the statute causing issuance of Special Counsel Complaint ((5 U.S.C. 1204(a) (2) and 1212(a)).  <b>NOTE:</b> Penalty needs to be coordinated with Office of Special Counsel.	Reprimand to Removal	7 day to Removal	More than 14 day to Removal
58. Prohibited Political Activity:  (a) Violation of prohibitions for the solicitation of political contributions (5 U.S.C. 7323).  (b) Violation of prohibition for influencing elections (5 U.S.C. 7324)  <b>NOTE 1:</b> Subject to the Hatch Act Modernization Act of 2012, violations of 5 U.S.C. 7323 and 7324, no longer require MSPB unanimous vote for a 30 day suspension penalty and a variety of lesser penalties to include: removal, reduction in grade, debarment from Federal	(a) Reprimand to Removal  (b) Reprimand to Removal	Removal with debarment from Federal employment not to exceed 5 years	

OFFENSE	First Offense	Second Offense	Third Offense
	Minimum to Maximum	Minimum to Maximum	Minimum to Maximum
<p>employment for a period not to exceed 5 years, suspension, reprimand, or an assessment of a civil penalty not to exceed \$1,000 have been added.</p> <p><b>NOTE 2:</b> If the Office of Special Counsel has initiated An investigation, according to 5 U.S.C. 1214(f), agencies must seek approval from the Special Counsel to discipline employees. HR staffs must consult their legal staffs.</p>			
<p>59. Violations of the Standards of Ethics for soliciting contributions for a gift for a superior; making a donation to a gift of a superior; accepting a gift from an employee receiving less pay. (5 U.S.C. 7351)</p>	Reprimand to Removal	More than 14 day to Removal	Removal
<p>60. Directing, expecting, or rendering services not covered by appropriations (5 U.S.C. 3103)</p>	Removal		
<p>61. Action against National security. (5 U.S.C. 7532)</p>	30 days to Removal	Removal	
<p>62. Willful concealment, removal or mutilation of public records, as defined by 18 U.S.C. 2071.</p>	Removal		
<p>63. Entering into an unauthorized procurement commitment (FAR 1.602-3) or personal services contract (FAR 37.104); or unauthorized disclosure of proprietary source selection information (FAR 2.101 and 3.104).</p> <p><b>NOTE:</b> HR staffs must consult their legal staffs.</p>	Reprimand to Removal	7 day to Removal	More than 14 day to Removal
<p>64. Failure to operate a motor vehicle in a safe manner due to text messaging while driving resulting in possible or actual damage to property when:</p> <p>(a) Driving Government owned, Government leased, or Government rented vehicles, or when driving privately owned vehicles while on official Government business.</p> <p>(b) When using electronic equipment supplied by the government.</p> <p>(Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving-Oct 2009)</p>	<p>(a) Reprimand to Removal</p> <p>(b) 5 day to Removal</p>	<p>5 day to Removal</p> <p>Removal</p>	Removal
<p>65. <b>NOTE:</b> All offenses for misuse or failure to adhere to the rules governing the use of a government issued charge</p>	Consult-travel card/fleet/purchase	Consult-travel card/fleet/purchase	Consult-travel card/fleet/purchase

<b>OFFENSE</b>	<b>First Offense</b>	<b>Second Offense</b>	<b>Third Offense</b>
	Minimum to Maximum	Minimum to Maximum	Minimum to Maximum
card (purchase, travel, fleet) and convenience checks, to include the delay or failure to pay the balance on time must take into consideration the travel card/fleet/purchase /convenience check card table of penalties found in Appendix C.	/convenience/ check card table of penalties found in Appendix C	/convenience/ check card table of penalties found in Appendix C	urchase /convenienc e/ check card table of penalties found in Appendix C

## **APPENDIX C. ADMINISTERING WORK FORCE DISCIPLINE**

This Appendix establishes the U.S. Department of Energy (DOE) Guide for Disciplinary Penalties.



**APPENDIX C. TRAVEL/PURCHASE/FLEET CARDS AND CONVENIENCE CHECKS  
TABLE OF OFFENSES AND PENALTIES GUIDE**

This table is a supplement to the Table of Penalties found in Appendix B. The below points system has been added to ensure greater consistency of penalty for similar travel/purchase/fleet card and convenience check misconduct. Similar to Appendix B, this table is to be used as the guide for proposing and deciding officials to select the appropriate penalty for formal disciplinary or adverse actions to include demotions or removals. While this table does not cover every possible offense, it does provide the more common types of travel/purchase/fleet card and convenience check offenses and the penalties usually assessed. Except when penalty is dictated by statute, alternative discipline may be considered, if appropriate.

In addition to procedural considerations, deciding officials must consider the Douglas Factors established by the MSPB in Douglas v. Veterans Administration, 81 FMSR 7037, 5 MSPR 280 (MSPB 1981), for adverse actions.

<b>NATURE OF OFFENSE</b>	<b>POINTS</b>
<b>TRAVEL CARD</b>	
Payment of bill is 60 days or up to 120 days past due	1-to-2
Payment of bill is more than 120 past due	2-to-4
Inappropriate Usage for Less than \$200	2-to-5
Inappropriate Usage for more than \$200	6-to-8
Inappropriate Usage for Less than \$200 <u>AND</u> employee is delinquent in payment (60 days or more past due)	5-to-7
Inappropriate Usage for More than \$200 <u>AND</u> employee is delinquent in payment (60 days or more past due)	7-to-8
Failure to safeguard, monitor, or allowing/enabling another to use cardholder's card or account	7-to-8
Failure to Report misuse, abuse and/or fraudulent use of travel card by management official and/or Program Coordinator	7-to-8
<b>PURCHASE CARD/CONVENIENCE CHECK/FLEET CARD</b>	
Splitting purchases	1-to-2
Cardholders not completing reconciliation of monthly cycle statement within time frame in DOE Policies and Operating Procedures	1-to-2
Approving Officials not completing reconciliation of their cardholder statements within time frame in DOE Policies and Operating Procedures	1-to-2
Cardholder making purchases without required approvals	1-to-2
Inappropriate Usage for Less than \$200	4-to-7
Inappropriate Usage for more than \$200	6-to-8
Failure to safeguard, monitor, or allowing/enabling another to use cardholder's card or account	4-to-8
Unauthorized commitments: Employees who lack authority to obligate the Government and requests cardholder to make purchases without proper reviews and approvals	6-to-8
Cardholder making purchases without funds being available (Ratification)	4-to-7

Failure to report misuse, abuse and/or fraudulent use of purchase card by management official and/or Program Coordinator	4-to-7
False statements on purchase card records by cardholders and Approving Officials	4-to-7
Convenience Checks written for 'Cash'	Reimbursement to Gov & 7-to-8
Misuse and/or conversion of Government funds for personal use	Reimbursement to Gov & 7-to-8

<b>POINTS CONVERSION TABLE</b>			
<b>POINTS</b>	<b>PENALTY</b>	<b>POINTS</b>	<b>PENALTY</b>
1 pt	Written Admonishment or other non formal action (not considered formal disciplinary action)	5 pts	4 to 6 Workday Suspension
2 pts	Reprimand	6 pts	6 to 8 Workday Suspension
3pts	Reprimand to 2 Workday Suspension	7 pts	8 to 10 Workday Suspension
4 pts	2 to 4 Workday Suspension	8 pts	10 Workday suspension to Removal

\*Previous Discipline equals 4 pts (Aggravating/Mitigating Douglas Factors should be considered and explained when varying recommended ranges of penalty)

\*Retraining and/or Card Suspension will normally follow a violation

\*Upon request, any misuse, abuse or fraudulent use of the Government purchase card is to be reported to the Level 3 Organizational Program Coordinator or directly to the Level 1 Agency Program Coordinator. At a minimum, the report must provide the following:

- A summary description of confirmed violations involving misuse of a purchase card, following the completion of agency or Inspector General Review.
- A summary description of all adverse personnel actions, disciplinary actions, or other actions taken in response to each reportable violation involving misuse of a purchase card.
- How the violation was discovered (e.g., Approving Official review, data mining, etc.).
- The dollar amount of violation.
- No Personally identifiable information will be included in this report