Department of Defense
INSTRUCTION

NUMBER 1400.25, Volume 2009
May 20, 2012
Incorporating Change 1, March 21, 2013

USD(P&R)

SUBJECT: DoD Civilian Personnel Management System: Defense Civilian Intelligence Personnel System (DCIPS) Disciplinary, Performance-Based, and Adverse Action Procedures

References: See Enclosure 1

1. PURPOSE

a. Instruction. This Instruction is composed of several Volumes, each containing its own purpose. The purpose of the overall Instruction, in accordance with the authority in DoD Directive (DoDD) 5124.02 (Reference (a)), is to establish and implement policy, establish procedures, provide guidelines and model programs, delegate authority, and assign responsibilities regarding civilian personnel management within the Department of Defense.

b. Volume

(1) 2000 Volume Series. The 2000 Volume series of this Instruction, in accordance with the authority in Reference (a) and DoDDs 5143.01, 1400.25, and 1400.35 (References (b), (c), and (d)), establishes policy, assigns responsibilities, and provides guidance for DCIPS. Hereinafter the 2000 Volume series of this Instruction shall be referred to as "the DCIPS Volumes."

(2) This Volume. This Volume establishes core principles and policies applicable to the administration of DCIPS disciplinary, performance-based, and adverse action procedures and appeals of such actions for all DCIPS employees.

2. APPLICABILITY. This Volume:

a. Applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other

organizational entities within the Department of Defense that employ individuals under DCIPS, hereinafter referred to collectively as the "DoD Components with DCIPS positions."

b. Does NOT apply to employees covered by the Federal Wage System or equivalent, non-appropriated fund employees, employees serving DCIPS trial periods, or foreign national employees. It does not apply to members of the Defense Intelligence Senior Executive Service (DISES) or the Defense Intelligence Senior Level (DISL) unless specifically addressed in other volumes of this Instruction.

3. DEFINITIONS. See Glossary.

4. POLICY. It is DoD policy that the DoD Components with DCIPS positions shall execute disciplinary, performance-based, and adverse actions equitably and impartially. All persons involved in these processes shall be free from restraint, interference, coercion, discrimination, or reprisal.

5. RESPONSIBILITIES

a. Under Secretary of Defense for Personnel and Readiness (USD(P&R)). The USD(P&R), in conjunction with the Under Secretary of Defense for Intelligence (USD(I)), shall establish and maintain DCIPS policies and monitor their effects on DoD-wide personnel readiness.

b. USD(I). The USD(I), in conjunction with the USD(P&R), shall prescribe policies governing the design and administration of DCIPS disciplinary, performance-based, and adverse action programs and monitor compliance with these policies within the DoD Components with DCIPS positions through reporting requirements as necessary.

c. Heads of the DoD Components with DCIPS Positions. The Heads of the DoD Components with DCIPS positions shall provide any necessary guidance implementing DCIPS policy within their Components, monitor compliance with this Volume and internal implementing guidance, and respond to reporting requirements established by the USD(I).

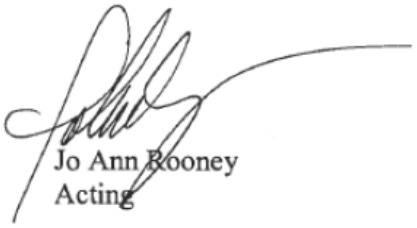
6. PROCEDURES. Enclosure 2 provides DCIPS disciplinary, performance-based, and adverse action procedures. Enclosure 3 provides special termination authority procedures and Enclosure 4 provides post-employment assistance procedures for certain terminated intelligence employees.

7. RELEASABILITY. UNLIMITED. This Volume is approved for public release and is available on the Internet from the DoD Issuances Website at http://www.dtic.mil/whs/directives.

8. EFFECTIVE DATE

a. This Volume is effective on May 20, 2012, pursuant to section 1613 of title 10, United States Code (U.S.C.) (Reference (e)).

b. If this Volume is not otherwise reissued or cancelled in accordance with DoDI 5025.01 (Reference (f)), it will expire effective May 20, 2022 and be removed from the DoD Issuances Website.



Enclosures
1. References
2. DCIPS Disciplinary, Performance-Based, and Adverse Action Procedures
3. Special Termination Authority
4. Post Employment Assistance: Certain Terminated Intelligence Employees

Glossary

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ENCLOSURE 1

REFERENCES

(a) DoD Directive 5124.02, "Under Secretary of Defense for Personnel and Readiness (USD(P&R))," June 23, 2008
(b) DoD Directive 5143.01, "Under Secretary of Defense for Intelligence (USD(I))," November 23, 2005
(c) DoD Directive 1400.25, "DoD Civilian Personnel Management System," November 25, 1996
(d) DoD Directive 1400.35, "Defense Civilian Intelligence Personnel System (DCIPS)," September 24, 2007
(e) Sections 1609, 1611, 1612, and 1613 of title 10, United States Code
(f) DoD Instruction 5025.01, "DoD Directives Program," September 26, 2012
(g) Sections 2105, 2302, 7532 and 7701 of title 5, United States Code
(h) Intelligence Community Policy Guidance 704.1, "Personnel Security Investigative Standards and Procedures Governing Eligibility for Access to Sensitive Compartmented Information and Other Controlled Access Program Information," October 2, 2008
(i) Intelligence Community Policy Guidance 704.2, "Personnel Security Adjudicative Guidelines for Determining Eligibility for Access to Sensitive Compartmented Information and Other Controlled Access Program Information," October 2, 2008

ENCLOSURE 2

DCIPS DISCIPLINARY, PERFORMANCE-BASED, AND ADVERSE ACTION PROCEDURES

1. GENERAL

a. To promote the efficiency of the Federal service, DoD Components with DCIPS positions shall take disciplinary, performance-based, and adverse actions in accordance with this Volume, in the event of employee misconduct or unacceptable performance.

b. Except in situations involving national security matters or serious misconduct where progressive discipline would not be appropriate as determined by the DoD Component with DCIPS positions, DoD Components with DCIPS positions shall normally employ progressive discipline in the event an employee continues to engage in misconduct after having been disciplined. DoD Components with DCIPS positions shall develop and maintain a recommended table of penalties for various offenses.

2. DISCIPLINARY ACTIONS

DoD Components with DCIPS positions shall establish policies to carry out disciplinary actions based on employee misconduct.

a. At a minimum, such policies shall:

(1) Include standards and guidelines for the specific actions to be taken (e.g., written reprimands, or suspensions for 14 days or less) to address an employee's delinquency or misconduct.

(2) Adhere to the basic merit principles identified in section 1612 of Reference (e).

(3) For proposed written reprimands, include specifics regarding the offense and note that the written reprimand may be grieved pursuant to Volume 2014.

(4) For proposed suspensions for 14 days or less, include provisions for:

(a) Advanced written notice to the employee of the proposed action stating the specific reason(s) for the proposed action.

(b) The opportunity to review the documentation upon which the proposed suspension is based.

(c) The opportunity to respond within a timeframe of not less than 24 hours.

(d) A right to representation as outlined in subparagraph 3.c.(2) of this enclosure.

(e) A final written decision.

b. Disciplinary actions may not be further appealed, but may be grieved pursuant to Volume 2014 of this Instruction.

3. PERFORMANCE-BASED ACTIONS. The DoD Components with DCIPS positions shall establish policies that, at a minimum, meet the requirements in paragraphs 3.a. through 3.c. of this enclosure to address unacceptable performance.

a. Actions to address unacceptable performance shall be taken according to the procedures of this Volume, in compliance with Volume 2011 of this Instruction, and in accordance with the merit principles identified in section 1612 of Reference (e).

b. DoD Components with DCIPS positions may reduce an employee's rate of base pay, reduce an employee's work level, reduce an employee's pay band (for organizations operating under the DCIPS banded structure) or grade (for organizations operating under the DCIPS graded structure), and/or remove an employee from employment as a consequence of performance that fails to meet established standards. Such performance must be of a level that it is, or will be, documented as unacceptable performance in accordance with Volume 2011 of this Instruction.

(1) DoD Components with DCIPS positions may determine that an employee's overall performance is unacceptable at any time during the performance evaluation period. Supervisors and managers shall notify the employee of the performance objectives and elements for which performance is unacceptable, and inform the employee of the performance requirements or standards that must be attained to demonstrate acceptable performance in his or her position and provide the employee a reasonable opportunity to improve and demonstrate acceptable performance.

(2) If, in the rating official's judgment, an employee's performance is unacceptable, the rating official shall document feedback sessions with the employee. Documentation shall be provided to the employee and shall include, at a minimum, a statement of the performance requiring improvement, the performance improvement actions that the supervisor and employee have agreed to implement, and the consequences of failure to demonstrate acceptable performance improvement within an established period of time.

(3) Once an employee has failed to demonstrate acceptable performance after a reasonable opportunity, a DoD Component with DCIPS positions may propose a reduction in an employee's work level, pay band (for organizations operating under the DCIPS banded structure), grade (for organizations operating under the DCIPS graded structure), or base pay rate; or removal on the basis of unacceptable performance.

(4) When an employee is moved involuntarily to a lower work level, pay band (for organizations operating under the DCIPS banded structure), grade (for organizations operating under the DCIPS graded structure), or base pay rate as a result of unacceptable performance, the

authorizing management official may reduce the employee's base salary to an amount not less than the minimum for the pay band (for organizations operating under the DCIPS banded structure) or grade (for organizations operating under the DCIPS graded structure) to which the employee is reduced. In no case may the employee's salary exceed the maximum for the pay band (for organizations operating under the DCIPS banded structure) or grade (for organizations operating under the DCIPS graded structure) to which the employee is reduced. An employee's annual compensation may not be reduced under involuntary procedures more than once in a 12-month period.

c. An employee whose removal or reduction in work level, pay band (for organizations operating under the DCIPS banded structure), grade (for organizations operating under the DCIPS graded structure), or base pay rate on the basis of unacceptable performance is entitled to:

(1) A 30 calendar-day advance written notice of the proposed action. This notice shall identify the specific performance objectives and/or performance elements against which performance has been found to be unacceptable, and cite specific examples of unacceptable performance. This advance notice may be made at any time during the performance evaluation period.

(2) Request to have a representative assist in preparing and/or presenting a reply to the notice of proposed action. If such representative is desired, an employee must advise the DoD Component with DCIPS positions in writing, providing such information as the Component requires. An employee's choice of a representative may be declined by the Component when such representation would result in a conflict of interest or position; conflict with the priority needs of the Component, compromise classified activities of the Government, or give rise to additional cost to the Government.

(3) A reasonable period (typically 7 to 15 calendar days) to reply to the notification orally or in writing.

(4) A written final decision that specifies the instances of unacceptable performance on which the decision is based and, unless proposed by the head of the agency, includes statement that the action has been concurred with by a manager who is in a higher position than the manager who initiated the action.

(5) Notification of the right to appeal the final decision in accordance with section 5 of this enclosure.

4. ADVERSE ACTIONS. DoD Components with DCIPS positions shall issue policies for effecting adverse actions consistent with the requirements of this Volume. At a minimum, such policies shall entitle the employee to:

a. At least 30 calendar-days' advance written notice of the proposed action unless the component 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 notice shall identify the specific reasons for the proposed action and include specific examples, where applicable.

b. Request to have a representative assist in preparing and presenting a reply to the notice of proposed action. If such representation is desired, an employee must advise the DoD Component with DCIPS positions in writing, providing such information as the Component requires. An employee's choice of a representative may be declined by the Component when such representation would result in a conflict of interest or position, conflict with the priority needs of the Component, compromise classified activities of the Government, or give rise to additional cost to the Government.

c. A reasonable period (typically 7 to 15 calendar days) to reply to the notification of the proposed action orally and in writing.

d. A written final decision that specifies the instances of unacceptable conduct or behavior on which the decision is based, the effective date of the action, and unless proposed by the head of the agency, includes a statement that the action has been concurred with by a manager who is in a higher position than the manager who initiated the action.

e. Notification of the right to appeal the final decision. Employees have the right to appeal an adverse action based on conduct or behavior in accordance with section 5 of this enclosure.

f. If the adverse action is a suspension and removal in the interests of national security a Component may immediately suspend an employee in accordance with section 7532 of title 5, U.S.C. (Reference (g)), and at a minimum, Component implementing guidance shall include the following requirements:

(1) Within 30 calendar days from the date of notification of suspension, the employee has a right to submit documentation to show why he or she should be restored to duty.

(2) If the employee has a permanent or indefinite appointment, has completed his or her trial period, and is a United States citizen, the employee is entitled, after suspension and before removal to:

(a) Within 30 calendar days, a written notice of the charges against him or her, which shall be stated as specifically as security considerations permit. This notice may be amended within 30 days after the original notice;

(b) Thirty calendar days to respond to the charges and submit documents, and an additional 30 calendar days if the charges are amended;

(c) A hearing if requested by the employee;

(d) A review of his or her case by the head of the agency or his designee, before a decision adverse to the employee is made final.

(e) A written final decision.

5. APPEALS

a. Except for terminations under section 1609 of Reference (e) and Enclosure 3 of this Volume, employees to whom this Volume applies who have successfully completed a DCIPS trial period and who are employed under other than a temporary appointment of 2 years or less may appeal adverse or performance-based actions within their Component in accordance with this Volume. Such appeals must be based upon a final written decision issued by the Component. Appeals in which an employee alleges illegal discrimination cannot be brought through a Component appeals process and should be processed through the Component's equal employment opportunity office. Generally, disputes regarding performance evaluations of record should be addressed only through the administrative reconsideration process provided in Volume 2011 of this Instruction, except as to adverse or performance-based actions resulting from the performance evaluation of record, which may be appealed under this Volume. Disciplinary actions cannot be appealed but may be grieved under Component grievance procedures pursuant to Volume 2014 of this Instruction.

b. Preference-eligible employees may appeal adverse actions within their DoD Component with DCIPS positions prior to the completion of their trial period provided they have completed 1 year of current continuous service in the same or similar positions.

c. DoD Components with DCIPS positions appeals procedures shall provide for equitable treatment, high standards of integrity and efficiency, and freedom from favoritism and arbitrary action.

d. DoD Components with DCIPS positions shall apply the standard of "substantial evidence" in section 7701(c)(1)(A) of Reference (g) in adjudicating employee appeals of actions resulting from unacceptable performance.

e. DoD Components with DCIPS positions shall apply the standard of "preponderance of the evidence" in section 7701(c)(1)(B) of Reference (g) in adjudicating employee appeals of actions resulting from unacceptable conduct.

f. Preference-eligible employees who have completed 1 year of current continuous service in the same or similar positions may appeal adverse and performance-based actions to the U.S. Merit Systems Protection Board (MSPB). However, if the employee bypasses the DoD Component with DCIPS position's appeals process and appeals directly to the MSPB, the employee may not subsequently appeal the same action in the Component process.

g. Employees covered by section 1612(b) of Reference (e) may appeal adverse or performance-based actions to the MSPB. However, if the employee bypasses the DoD Component with DCIPS position's appeals process and appeals directly to the MSPB, the employee may not subsequently appeal the same action in the Component process.

h. In a case in which the employee alleges that an action taken against him or her was the result of a prohibited personnel practice as defined in section 2302(b) of Reference (g), the employee may either appeal the action; make a complaint to the DoD Component's Inspector General; or take other appropriate actions in accordance with paragraph 5.a. of this enclosure, which in the case of an employee who is not in the Defense Intelligence Agency, National Geospatial-Intelligence Agency, or National Security Agency, includes filing a complaint with the U.S. Office of Special Counsel.

i. The employee may request to have a representative assist in preparing and presenting an appeal. If such representation is desired, an employee must advise the DoD Component with DCIPS positions in writing, providing such information as the Component requires. An employee's choice of a representative may be declined by the Component when such representation would result in a conflict of interest or position; conflict with the priority needs of the Component, compromise classified activities of the Government, or give rise to additional cost to the Government.

j. There is no entitlement to a hearing.

ENCLOSURE 3

SPECIAL TERMINATION AUTHORITY

Notwithstanding any other provisions, pursuant to section 1609 of Reference (e) and consistent with Reference (d):

a. The Secretary of Defense, Deputy Secretary of Defense, the Heads of the DoD intelligence components with respect to their employees, and the Secretaries of the Military Departments, as delegated, may terminate the employment of their DCIPS employees only if they consider the action to be in the interests of the United States and determine that the procedures prescribed in other provisions of law that authorize termination of employment of such an employee cannot be invoked in a manner consistent with the national security. This authority shall not be further delegated. These officials shall:

(1) Determine the appropriate delegation procedures within their DoD Components with DCIPS positions for proposing such termination actions for DCIPS employees.

(2) Conduct a thorough and timely incident or case investigation including review by their General Counsels and with their DoD Component with DCIPS positions human resources specialists before requesting authority to issue a proposed notice to terminate employment pursuant to this authority.

(3) Prior to invoking the extraordinary authority of section 1609 of Reference (e), the proposing official will notify the USD(I) of the intended use of this authority and request authority to proceed. An action officer should be identified by the USD(I) for related actions, as needed.

(4) Provide the employee written notification of the decision to terminate. This notification shall be signed by the appropriate official listed in paragraph a. of this enclosure and shall:

(a) Specify the effective date of termination.

(b) Inform the employee of the DoD Component with DCIPS positions' exit process and points of contact pertinent to the termination.

(c) When the decision to terminate is made by an official other than the Secretary of Defense, advise the employee of the right to appeal to the Secretary of Defense following procedures outlined in paragraph e. of this enclosure.

(5) Maintain all documentation and all communication with the employee consistent with applicable security and counterintelligence standards.

(6) Where determined to be warranted by the DoD Component with DCIPS positions, request authorization for postemployment assistance from the USD(I).

b. The decision to terminate the employment of an employee under the Special Termination Authority is final and may not be appealed or reviewed outside the Department of Defense.

c. The Secretary of Defense, through the Director, Human Capital Management Office in the Office of the USD(I), shall promptly notify the congressional oversight committees of any termination using this authority.

d. Termination of employment does not affect the right of the removed employee to seek or accept employment with any other department or agency of the United States if the Director of the Office of Personnel Management declares the employee eligible for such employment.

e. The following procedures apply to appeals of such actions to the Secretary of Defense:

(1) The employee, or his or her designated representative, may present information in support of his or her case.

(2) Appeals must be in writing and state specific reasons why the termination action should not have been taken and should include all matters the employee wishes the Secretary to consider in deciding the appeal including, but not limited to, copies of any documents in the employee's possession related to the termination decision. The appeal must state the specific relief requested.

(3) Appeals must be submitted to the Secretary of Defense through his or her designated representative at the address and fax number that will be provided for this purpose within 30 calendar days of the termination decision, and must be signed and dated. An appeal submitted after the 30 calendar-day deadline shall be considered untimely unless good cause is shown as to the reason such appeal could not be submitted within the time provided.

(4) If the employee requires an extension to the time limit for filing an appeal, he or she directly, or through their representative, may make a written request to the designated point of contact at the address or fax number provided. The request must include the basis for the extension and the period of additional time requested. The request for an extension to the time limit must be received within the 30 calendar-day period provided for the employee to submit the appeal.

(5) Appeals shall provide the written address to which the Secretary's decision should be sent. After the Secretary of Defense considers the employee's appeal, the employee will be notified of the Secretary's decision, in writing, at the address identified in his or her appeal.

ENCLOSURE 4

POST-EMPLOYMENT ASSISTANCE: CERTAIN TERMINATED INTELLIGENCE EMPLOYEES

1. As provided by section 1611 of Reference (e), the Secretary of Defense may provide post-employment assistance to certain terminated employees when such assistance is essential to maintain the judgment and emotional stability of the qualified former intelligence employee and is essential to avoid circumstances that might lead to the unlawful unauthorized disclosure of classified information. This authority is intended to address highly unusual personnel situations where the national security is demonstrably threatened, and is not meant as authority, for example, to provide monetary assistance to former employees solely because they are experiencing personal difficulties once they leave employment. The DoD Components with DCIPS positions shall request such assistance from the USD(I) through the Director, Human Capital Management Office.

2. In the request for such post-employment assistance on behalf of the former employee, the Head of the DoD Component with DCIPS positions shall certify to the USD(I) that such assistance is essential to maintain the judgment and emotional stability of the qualified former intelligence employee and to avoid circumstances that might lead to the unlawful disclosure of classified information and the threat to national security is demonstrable.

3. In making the certification, the Head of the DoD Component with DCIPS positions shall consider and provide to the USD(I):

a. Assessment(s) by appropriate psychological and/or psychiatric medical professional(s) of the judgment and emotional stability of the former employee.

b. Assessment by DoD Component with DCIPS positions security and counter-intelligence professionals of the threat to national security if the former employee were to unlawfully disclose classified information. In weighing the risk of unlawful disclosure, Components shall apply the principles and elements of Intelligence Community Policy Guidance 704.1 (Reference (h)) and the standards and adjudicative guidelines of Intelligence Community Policy Guidance 704.2 (Reference (i)).

c. Assessment of any documentation, correspondence, or statements provided by the former employee, for credible evidence that such assistance is essential to avoid circumstances that may threaten national security.

d. The nature, duration (not to exceed 5 years from the date of the termination of the qualified former intelligence employee), and funding required for such post-employment assistance.

e. The plan for assuring appropriate follow-up and monitoring of former employee progress.

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

DCIPS	Defense Civilian Intelligence Personnel System
DISES	Defense Intelligence Senior Executive Service
DISL	Defense Intelligence Senior Level
DoDD	DoD Directive
MSPB	Merit Systems Protection Board
U.S.C.	United States Code
USD(I)	Under Secretary of Defense for Intelligence
USD(P&R)	Under Secretary of Defense for Personnel and Readiness

PART II. DEFINITIONS

Unless otherwise stated, the following terms and their definitions apply to this Volume of this Instruction and serve as the basic disciplinary, performance-based, and adverse action taxonomy for DoD Components with DCIPS positions.

acceptable performance. Performance that meets an employee's objectives, requirements, or standards at a level of performance above the unacceptable level.

adverse action. A removal, suspension for more than 14 calendar days, furlough of 30 calendar days or less, or involuntary reduction in work level, pay band (for organizations operating under the DCIPS banded structure), grade (for organizations operating under the DCIPS graded structure), or base pay taken by management. These actions do not include those resulting from adjustments in force pursuant to Volume 2004 of this Instruction, to furloughs of more than 30 days, or performance-based actions taken consistent with section 2 of Enclosure 2; or separations consistent with section 1609 of Reference (e), which are not adverse actions.

disciplinary action. A management action taken to correct improper or inappropriate behavior or conduct and intended to be corrective in nature.

DoD Components with DCIPS positions. Defined in Volume 2001 of this Instruction.

employee. Any Federal civilian employee as defined in section 2105 of Reference (g) who is covered by DCIPS, except for DISES and DISL employees.

performance-based action. A removal, reduction in base pay, or reduction in work level, pay band (for organizations operating under the DCIPS banded structure), or grade (for organizations operating under the DCIPS graded structure) as a consequence of performance that fails to meet established standards and has been properly documented as unacceptable.

progressive discipline. A series of actions ranging from counseling, oral admonishment, letter of caution, and written reprimand, to suspension designed to correct repeated acts of inappropriate behavior or misconduct.

unacceptable performance. Performance of an employee that fails to meet established performance standards or requirements, and would result in an evaluation of "Unacceptable" ("1") under DCIPS performance management.