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Description of document: Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) Adverse Action and Discipline ATF O 2140.1A (guide to offenses and penalties) 2019/2024

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Bureau of Alcohol, Tobacco, Firearms and Explosives
Information Privacy and Governance (IPG) Division,
Room 4E.301
99 New York Avenue, NE
Washington, DC 20226
[ATF Online FOIA Portal](#) ([SecureRelease™](#))

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Final Response to ATF FOIA Request 2020-0349

From: timothy.earley@atf.gov (noreply@securerelease.us)

Date: Tuesday, April 30, 2024 at 09:57 AM EDT

04/30/2024

REFER TO: 2020-0349

This responds to your Freedom of Information Act (FOIA) request dated 1/27/2020, and received by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) on the same date, in which you requested a copy of the "ATF Guide to Offenses and Penalties". Your request was assigned ATF tracking number 2020-0349. Please refer to this number in any future correspondence.

In response to your request, we processed a total of 49 pages of responsive material. Individual redactions identify the exemption pursuant to which the redacted material has been withheld. Please be advised that we considered the foreseeable harm standard when reviewing records and applying FOIA exemptions.

(b)(5) DPP

Pursuant to exemption (b)(5) DPP, 0 pages have been withheld in full and 1 pages in part.

Privileged communications within or between agencies, including those protected by the Deliberative Process Privilege (provided the records were created less than 25 years before the date on which they were requested).

(b)(6)

Pursuant to exemption (b)(6), 0 pages have been withheld in full and 1 pages in part.

We are withholding third party information, including the names of ATF employees, under FOIA Exemption (b)(6). To disclose personal information about a living individual to a member of the public, we need the written consent from the persons whose information you requested. Without written consent, proof of death, or an overriding public interest, personal information is exempt from disclosure under the FOIA. The FOIA does not require agencies to disclose information that would constitute a clearly unwarranted invasion of the personal privacy of third parties. 5 U.S.C. § 552(b)(6).

(b)(7)(E)

Pursuant to exemption (b)(7)(E), 0 pages have been withheld in full and 2 pages in part.

Information compiled for law enforcement purposes that would disclose techniques and procedures for law enforcement investigations or prosecutions.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that

is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

You may contact our FOIA Public Liaisons, Lynette Carter and Jasmine Bryant, at 202-648-7390 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, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: <https://doj-foia.entellitrak.com/etk-doj-foia-prod/login.request.do>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Please use the following link to navigate to your documents. This link will be available for 365 days.

To retrieve the records associated with this request use this link [Released Documents for Request 275497](https://www.securerelease.us/request-details/A90D7E10-1B21-421A-B2A4-E78E316E9570/2) or enter <https://www.securerelease.us/request-details/A90D7E10-1B21-421A-B2A4-E78E316E9570/2> in your browser's address bar.

Please login or create a new user account using the email address associated with your records request: mikerav@verizon.net

Sincerely,

Elizabeth A. Wood
Acting Chief
Information and Privacy Governance Division

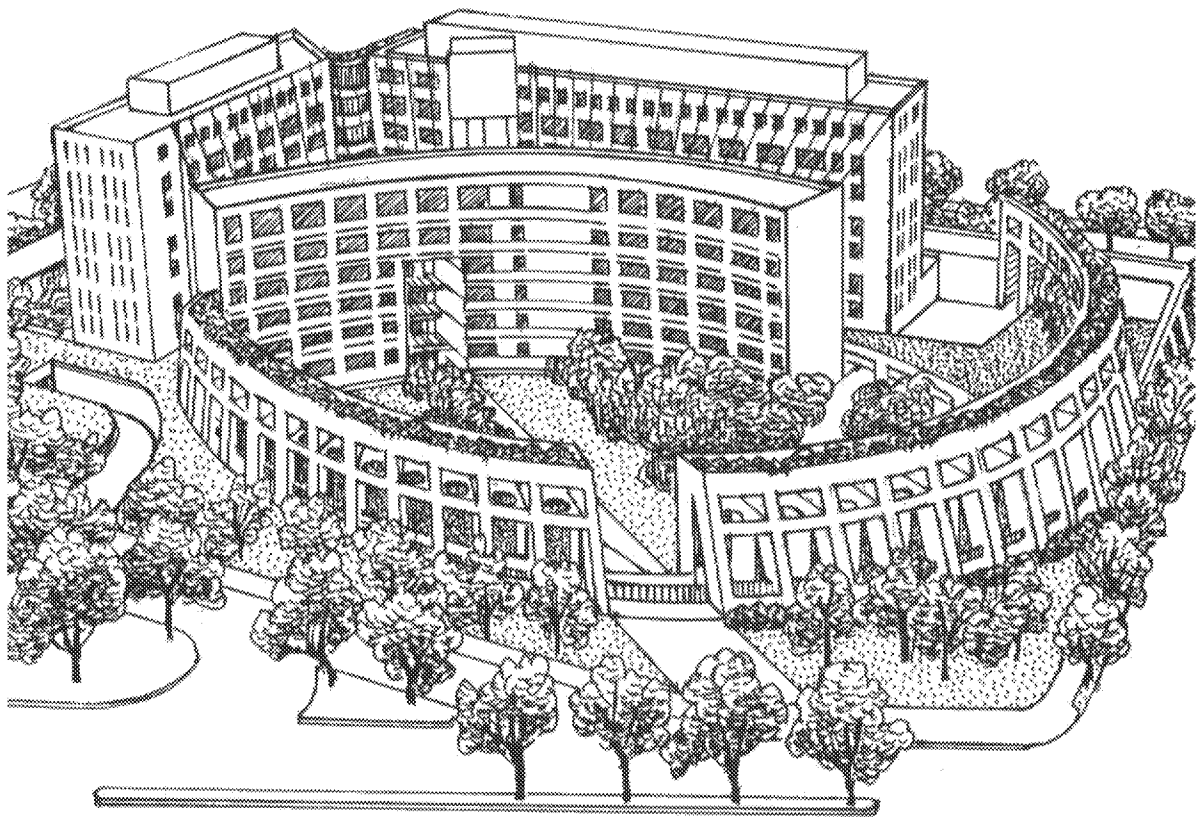
Bureau of Alcohol, Tobacco, Firearms and Explosives

Order

ATF O 2140.1A

SUBJECT: ADVERSE ACTION AND DISCIPLINE

DATE: 06/14/2019
OPI RECERTIFICATION
DATE: 06/14/2024
OPI: 200000
CHANGE 1, DATED 12/2/2019



FOREWORD

TO: All ATF Employees

1. **PURPOSE.** This order states the procedures and policies applicable to proposing and imposing an adverse action and/or discipline against employees of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).
2. **CANCELLATIONS.** The following directive is hereby cancelled, ATF O 2140.1, Adverse Action and Discipline, dated November 29, 2011.
3. **AUTHORITIES.**
 - a. Title 5 U.S.C., Government Organization and Employees, Chapter 75, Adverse Actions.
 - b. Title 5 U.S.C. §3322, Voluntary Separation Before Resolution of Personnel Investigation.
 - c. Title 5 C.F.R., Administrative Personnel, Part 752, Adverse Actions.
 - d. Department of Justice Human Resources Order 1200.1, Part 3-1, Discipline and Adverse Actions and Part 8-1, Performance Management for Senior Executive Service Employees.
 - e. Department of Justice Human Resources Order 1200.1, Appendix 2, Delegations of Personnel Authority.
 - f. Acting Assistant Attorney General for Administration Memorandum to Heads of Components and Executive Officers re: Proper Use of Administrative Leave, dated September 27, 2002.
 - g. ATF O 1100.168C, Delegation Order – Delegation of Authorities Within the Bureau of Alcohol, Tobacco, Firearms and Explosives, dated November 5, 2018.
 - h. ATF O 1710.1F, Identification Media Program, dated March 2, 2017.
4. **DISCUSSION.** This order updates the procedures applicable to proposing and imposing adverse action and discipline to memorialize and consolidate the policies and practices that have evolved over time. The order also includes guidance regarding management referrals.
5. **REFERENCES.**
 - a. ATF O 1850.2F, Property and Fleet Management Program, dated November 29, 2012.
 - b. ATF O 2115.1A, Administrative Grievance Procedures, dated August 2, 2016.
 - c. ATF O 8200.3B, Post Shooting and Critical Incident Policy, dated July 2, 2013.
 - d. ATF O 8610.1C, Integrity and Other Investigations, dated August 19, 2015.
 - e. ATF O 8620.1A, Personnel Security, dated August 30, 2017.
 - f. ATF O 9410.1A, "Giglio Policy", dated September 30, 2014.

6. RECORDS RETENTION REQUIREMENTS. Documents outlined in this order must be retained in accordance with ATF's records retention requirements and guidelines.
7. QUESTIONS. For questions concerning this order, contact the Management Division, Office of Chief Counsel, at (b)(7)(E)

(b)(6)

Acting Deputy Director

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CHAPTER A. GENERAL POLICY

1. SCOPE. This order implements Title 5 U.S.C., Government Organization and Employees, Chapter 75, Adverse Actions, and Title 5 C.F.R., Administrative Personnel, Part 752, Adverse Actions.
2. PROHIBITIONS. Discipline or adverse actions may not be proposed or imposed in any manner not authorized by applicable law, regulation or Department of Justice (DOJ) directive. This prohibition includes proposing or imposing discipline or adverse actions:
 - a. For reasons such as political affiliation or marital status.
 - b. Based on discrimination because of age, sex, race, religion, color, national origin, handicapping condition, veterans status, or sexual orientation.
 - c. In retaliation for an employee's exercise of rights guaranteed by 5 U.S.C. § 7102 or other laws.
3. DEFINITIONS
 - a. Adverse action means a suspension for 15 days or more, a reduction in grade or pay, a furlough for 30 days or less, or a removal.
 - b. Days means calendar days. When, under this Order, an employee is required to perform an act within a period of days, and the final day for such act falls on a Saturday, Sunday or Federal holiday, that deadline to act is extended to the next business day.
 - c. Discipline means a reprimand or a suspension of 14 days or less.
 - d. Furlough means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other non-disciplinary reasons.
 - e. Investigative Leave means the leave status into which an employee who is the subject of investigation is placed. Placing an employee on investigative leave does not cause a loss of or reduction in the employee's pay, leave to which the employee is otherwise entitled, or credit for the employee's time or service.
 - f. Misconduct means any act or pattern of behavior that is contrary to standards of conduct published by the Office of Government Ethics, DOJ, or ATF; that is contrary to Bureau directives or instructions; or that might reflect negatively on the Bureau or bring the Bureau into disrepute.
 - g. Notice Leave means the leave status into which an employee who in a notice period is placed. A notice period begins on the date, which an employee is provided notice of a proposed adverse action against the employee, and ends the date on which ATF may take the adverse action. Placing an employee on notice leave does not cause a loss of or reduction in the employee's pay, leave to which the employee is otherwise entitled, or credit for the employee's time or service.
 - h. Penalty means a reprimand, suspension, reduction in grade or pay, or removal imposed for misconduct.

- i. Reckoning period means the length of time that a prior disciplinary or adverse action will be considered for the purpose of determining whether the penalty for a subsequent offense should be aggravated.

4-10 RESERVED

CHAPTER B. ATF INVESTIGATIONS

11. **AUTHORITY TO INVESTIGATE MISCONDUCT.** The Internal Affairs Division (IAD), Office of Professional Responsibility and Security Operations (OPRSO), is authorized to conduct misconduct investigations, as provided in ATF O 8610.1C, Integrity and Other Investigations. IAD shall investigate and report to the Professional Review Board (PRB or Board) on each investigation of employee misconduct in accordance with the policies and procedures set out in ATF O 8610.1C, Integrity and Other Investigations. The DOJ Office of Inspector General (OIG) also is authorized to conduct misconduct investigations of ATF employees.
12. **OTHER ATF REPORTS.** Certain other reports containing information suggesting that an ATF employee may have engaged in misconduct will be directly referred to the PRB:

a.

b.

c.

d.

(b)(5) DPP

13- 20 RESERVED

CHAPTER C. PROFESSIONAL REVIEW BOARD CHAIR

21. **DESIGNATION OF THE PROFESSIONAL REVIEW BOARD CHAIR.** The PRB Chair is a full-time position, within the Office of the Director, selected by the Deputy Director. The Office of the Director may assign to the PRB Chair additional duties that are consistent with his or her responsibilities as the PRB Chair. An employee is not qualified to hold the position of PRB Chair if the employee:
- a. While employed by the Federal government at any time, was subject to adverse action for misconduct (i.e., removal, a suspension for more than 14 days, or a reduction in grade or pay), or is currently subject to a proposal for such action;
 - b. While employed by the Federal government in the preceding 3 years, was subject to discipline (i.e., a reprimand or a suspension of 14 days or less); or is currently subject to a proposal for such action;
 - c. Does not currently have a security clearance and/or in the preceding 3 years received a security clearance Notice of Advisement pursuant to ATF O 8620.1A, Personnel Security, paragraph 25, Notices of Advisement; and/or
 - d. Has been determined by ATF to be subject to impeachment information that is subject to disclosure under ATF O 9410.1A, Giglio Policy.
22. **ALTERNATE PRB CHAIR.** The Deputy Director will designate an alternate PRB Chair in any matter in which the PRB Chair is recused or otherwise unavailable.
23. **RESPONSIBILITIES.** Pursuant to ATF O 1100.168C, Delegation Order - Delegation of Authorities within the Bureau of Alcohol, Tobacco, Firearms and Explosives, Exhibit 1, Table of Delegations, 2100 - Employee and Labor Relations, Adverse Actions and Discipline, the PRB Chair is authorized to propose disciplinary and adverse actions to employees in accordance with the PRB's decisions. The PRB Chair is a voting member of the PRB and has the following specific responsibilities and authorities:
- a. Receiving all Reports of Investigation (ROI) of matters of alleged, reported or apparent ATF employee misconduct, whether investigated by IAD or another authority (for example, the DOJ OIG or other ATF Reports as identified in Chapter B, paragraphs 11 and 12).
 - b. Convening a meeting of the PRB on a regular basis (i.e., approximately every 30 days depending on the number of cases for consideration), and setting an agenda of cases to be considered at the PRB meeting.
 - c. Presenting the ROI for each case to be considered at the PRB meeting and, based on the facts shown by the ROI, deciding on an appropriate disciplinary or non-disciplinary outcome. The PRB may issue official reprimands and cautions without first proposing such actions.
 - d. Maintaining order and decorum during the PRB meeting, leading the PRB in deliberations, and calling votes.
 - e. Documenting the proceedings of each PRB meeting, including the identity of the members and other persons present at the meeting, the cases considered, and the PRB's decision on each matter.

- f. Notifying the appropriate office of any matter referred to it by the PRB, including matters that the PRB determined required further investigation by IAD or a legal opinion from the Office of Chief Counsel.
 - g. Notifying each ATF employee who was the subject of an ROI before the PRB of the PRB's determination in the form of a memorandum, which will also identify the PRB members who deliberated and voted on the matter.
 - h. Notifying the supervisory chain of command of each employee who was the subject of an ROI before the PRB of the PRB's determination (i.e. proposed action, reprimand, caution, clearance).
 - i. Notifying the responsible deciding official (i.e., Bureau Deciding Official, Deputy Director, Office of Attorney Recruitment and Management) of each proposal of discipline and/or adverse action against an employee.
 - j. Notifying the Deputy Director and the AD, OPRSO of each PRB determination (i.e. proposed action, reprimand, caution, clearance).
24. **RECUSAL AND DISQUALIFICATION.** The PRB Chair will recuse him or herself in any matter if there is any reason or circumstance that would give a reasonable person grounds to question the impartiality of the PRB Chair, and includes, but is not limited to, matters in which:
- a. There is a close personal relationship between the subject of the investigation and the PRB Chair.
 - b. The PRB Chair has any substantial interest in the outcome of the matter.
 - c. The PRB Chair is a witness to the acts of misconduct alleged or reported.
 - d. The PRB Chair deems disqualification appropriate.
25. **TECHNICAL ASSISTANCE AND LEGAL ADVICE.** Human Resources specialists and other staff may be assigned to the PRB Chair to provide technical advisory services and support to the PRB Chair as he or she deems appropriate. The PRB Chair has a designated attorney who provides legal advice and support to the PRB Chair and PRB on all PRB-related matters to include recusal and disqualification. The PRB attorney discusses the ROI with the PRB Chair; provides legal advice at PRB meetings; provides an assessment of the appropriate penalty range for offenses; and provides technical assistance and legal advice for the PRB's written proposals and actions.

26 – 30 RESERVED

CHAPTER D. PROFESSIONAL REVIEW BOARD MEMBERS.

31. DESIGNATION AND COMPOSITION OF THE PROFESSIONAL REVIEW BOARD. Except for the PRB Chair, serving as a PRB member is a collateral duty. The Deputy Director selects supervisors and managers for duty as a PRB member, or alternate, for fixed or indefinite terms, and relieves supervisors and managers of such duties, as he or she deems appropriate, subject to the following criteria:
- a. The PRB is composed of the PRB Chair, four PRB members and four or more alternates. All matters within the authority of the PRB shall be decided by a majority vote of a full quorum of five (the PRB Chair and four PRB members or alternates).
 - b. The Deputy Director selects PRB members and alternates from GS-15 and Senior Executive Service (SES) supervisors and managers. When making his/her selections, the Deputy Director will consider the professional experience and judgment of prospective PRB members.
 - c. At least one PRB member must be a member of the SES.
 - d. At least one PRB member must be in the GS-1811 series, or be a member of the SES who previously served in the GS-1811 series in ATF.
 - e. At least one PRB member must be in the GS-1801 series or be a member of the SES who previously served in the GS-1801 or -1854 series in ATF.
 - f. At least one PRB member must not be in the GS-1801 or 1811 series, or be a member of the SES who previously has not served in the GS-1801 or 1811 series.
 - g. An employee may not be a PRB member if he or she falls within any of the disqualification criteria described in paragraph 21.
32. ALTERNATE MEMBERS. The PRB Chair assigns an alternate for a particular matter, PRB meeting or fixed term to replace a PRB member who is recused or otherwise unavailable. The PRB Chair assigns the alternate from among the employees whom the Deputy Director has selected to serve as a PRB alternate. With an alternate, the PRB composition must still meet the requirements set forth in paragraph 31.
33. RESPONSIBILITIES. The PRB has authority to propose discipline and/or adverse action against an ATF employee relative to matters documented in an IAD ROI. Each PRB member has the following specific responsibilities and authorities:
- a. Reviewing each ROI prior to the meeting at which it is to be considered.
 - b. Promptly advising the PRB Chair if the member should be recused from a particular matter.
 - c. Attending and actively deliberating in PRB meetings.
 - d. Giving full consideration during deliberations only to the information before the PRB, and treating each case fairly and consistently.
 - e. Voting on the action that is being considered for each case.

34. **RECUSAL AND DISQUALIFICATION.** The PRB Chair, after consulting with the PRB designated attorney, will recuse or disqualify any PRB member from any matter if there is any reason or circumstance that would give a reasonable person grounds to question the impartiality of the PRB member in that matter. A PRB member who is recused or disqualified with respect to a matter will not vote in that matter, and will not be present during deliberation or voting on that matter. Grounds for recusal include, but are not limited to, matters in which:
- a. The subject of the investigation is a supervisor (immediate or otherwise) of a PRB member.
 - b. There is a close personal relationship between the subject of the investigation and a PRB member.
 - c. A PRB member has any substantial interest in the outcome of the matter.
 - d. A PRB member is a witness to the acts of misconduct alleged or reported.

35 - 40 RESERVED

CHAPTER E. REVIEW AND ADJUDICATION OF REPORTS OF MISCONDUCT

41. **PRB MEMBER REVIEW.** Each PRB member prepares for the PRB meeting by carefully reviewing the ROIs that will be discussed at the upcoming PRB meeting. A PRB member will immediately notify the PRB Chair if, upon review of the ROI, the PRB member determines that he or she should be recused from the matter.
42. **PROCEDURE.** The PRB Chair will present each case according to the following procedures:
 - a. The PRB Chair will lead discussion and deliberation on the question of whether the ROI supports one or more charges of misconduct.
 - b. If the PRB determines by majority vote that the ROI should be returned to IAD as a management referral, the ROI will be returned to IAD and processed as outlined in Chapter H.
 - c. If the PRB determines by majority vote that the factual record is not sufficient, the PRB Chair will withdraw the matter from consideration and refer the matter to IAD for further investigation.
 - d. If the PRB determines that the factual record is sufficient, the PRB Chair will determine, by majority vote, whether the ROI supports a charge of misconduct. The PRB Chair shall call for a separate vote on each separate charge of misconduct as identified by the PRB Chair. The votes shall be expressed and recorded as a charge of misconduct being either "sustained" or "not sustained." The vote tally on each separately identified charge of misconduct shall be memorialized, but shall not specify the individual vote of the PRB Chair or any PRB member.
 - e. A subject of an investigation is cleared of misconduct with respect to each charge of investigated misconduct, which is determined to be not sustained.
 - f. If one or more charges of misconduct are, by majority vote, determined to be sustained, the PRB Chair will lead discussion and deliberation on the question of the appropriate penalty to propose.
 - g. The PRB Chair will determine, by majority vote, the appropriate penalty to propose to the Bureau Deciding Official (BDO). The PRB may propose only such penalty as will promote the efficiency of the service. If the PRB determines, by majority vote, that the appropriate penalty for misconduct is an official reprimand, a written letter of caution or oral admonishment/counseling, the PRB may take such actions without first proposing them.
 - h. The PRB may adjust the duty status of the subject of the proposal in accordance with paragraph 44.
 - i. The reckoning period for prior discipline will be 5 years for offense(s) that are not the same or similar, and indefinite for the same or similar offense(s).
 - j. If an employee is a subject of multiple investigations, the PRB may consider the investigations simultaneously and propose a penalty against the employee for misconduct revealed by any of the investigations.

- k. In the event that the Office of Chief Counsel advises the PRB Chair that the decision of the PRB is contrary to law, regulation, or DOJ directive, the PRB Chair shall vacate the vote of the PRB in that matter and return the matter to the PRB for reconsideration.
43. **PROPOSAL NOTICE.** The PRB Chair, or his/her designee, will prepare, sign, and provide, to an employee who was the subject of a PRB vote, written notice of having been cleared of misconduct or, if a charge of misconduct has been sustained, the discipline or adverse action proposed. The PRB will provide a copy of the proposal notice to the BDO if discipline or an adverse action is proposed. Except as otherwise provided by law or this order, employees against whom an adverse action for misconduct is proposed (i.e., suspension for 15 days or more, reduction in grade or pay, removal) will receive at least 30 days' advance written notice of the proposed action, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed. Except as otherwise provided by law or this order, employees against whom discipline (i.e., a suspension of 14 days or less) is proposed will receive at least 7 days' advance written notice of the proposed discipline. The written notice of a proposed disciplinary or adverse action will:
- a. Identify the PRB Chair and members who deliberated and voted on the matter.
 - b. Address each charge of misconduct and the basis for the determination(s).
 - c. Include a copy of, or otherwise make available, the ROI and any other material relied upon by the PRB.
 - d. Include notice of the employee's rights and the procedures for responding to the proposal. The employee will be allowed no less than 7 days in which to make his or her response to the BDO in the form of a written and/or oral response. The employee may be represented by an attorney or other representative.

EXCEPTION: In the case of a proposal to remove or suspend for more than 14 days an ATF attorney (i.e., a person employed by ATF in a position classified in the 0905 job series), the PRB Chair will deliver a copy of the written notice to the Chief Counsel. The Chief Counsel will refer the written notice to the DOJ Office of Attorney Recruitment and Management.

44. **DUTY STATUS AFTER PROPOSAL.**
- a. An employee against whom discipline or adverse action is proposed remains in an active-duty status after receipt of notice of the proposal unless the notice of the proposal states otherwise.
 - b. When proposing discipline or adverse action, the PRB may by majority vote adjust the duty status of the subject of the proposal upon a determination that such adjustment is in the interests of the government, including, but not limited to, circumstances where it appears that adjustment of duty status is necessary to protect ATF employees, government property or the public.
 - c. Adjustments to duty status may include limiting the types of assignments or duties that the employee may perform, and/or barring access to particular information, equipment or locations.
 - d. Where removal is proposed, the employee will be directed to surrender identification media, any Bureau-issued firearm, and any assigned vehicle, and

instructed to work from home on administrative projects that will be assigned by the employee's supervisor. If the employee's supervisor so decides, the subject of the proposal may retain a Bureau-issued computer, cell phone and similar equipment for purposes of work assignments and the response to the proposal.

- e. When, after issuance of a proposal, circumstances require adjustment (or further adjustment) of duty status, the PRB Chair, after consulting with the immediate supervisor of the subject of the proposal, may adjust (or further adjust) duty status. In this event, the PRB will consider, and by majority vote ratify, modify or rescind the proposal.
45. **REPRIMAND.** The PRB Chair shall issue an official reprimand or a written letter of caution, and shall refer an oral admonishment/counseling, to the employee through his/her supervisory chain of command. In the case of an official reprimand for misconduct, the following policies and procedures apply:
- a. The official reprimand will be placed in the employee's electronic Official Personnel File (eOPF) for a period not to exceed 2 years from the date of the official reprimand, at which time it expires and must be removed.
 - b. The official reprimand may be removed prior to its expiration. A decision whether to remove an official reprimand issued by the PRB prior to its expiration may only be made by the PRB Chair, Deputy Director, or Director.
 - c. The official reprimand must be removed from the employee's eOPF when the employee leaves government service or transfers to another agency.
 - d. A reprimand may be grieved as described in paragraph 65 (below). A decision not to remove an official reprimand prior to expiration is not a grievable matter.
 - e. These procedures also apply when a proposed penalty is mitigated to an official reprimand.
46. **RESCISSION OF A NOTICE.** The PRB may rescind or cancel any notice of proposed discipline or adverse action, a written letter of caution, or a clearance for good cause for reasons including, but not limited to, factual or procedural errors, the discovery of new, material information related to the offense(s), or an employee engaging in additional misconduct. If circumstances warrant, the PRB may replace a rescinded or cancelled notice with one that includes additional and/or revised charges of misconduct and/or carries a different penalty than initially proposed.

47-50 RESERVED

CHAPTER F. BUREAU DECIDING OFFICIAL

51. **DESIGNATION OF THE BUREAU DECIDING OFFICIAL.** The BDO is a full-time position within the Office of the Director. An employee may not be the BDO if he or she falls within any of the disqualification criteria described in paragraph 21. The Office of the Director may assign to the BDO additional duties that are consistent with his or her responsibilities as the BDO.
52. **RESPONSIBILITIES.** Unless a proposal falls under an exclusion described in paragraph 53, the BDO is the deciding official for proposals issued by the PRB. The BDO will ensure consistent and prompt adjudication of proposals issued by the PRB. Except as otherwise provided in this chapter, or by law, the BDO is responsible for considering all discipline and adverse action proposed against an ATF employee, giving full consideration to the information relied on in the proposal, and any response submitted by the employee to the BDO, and issuing a decision thereon.
53. **EXCLUSIONS.**
 - a. In accordance with 5 U.S.C. § 7515(b), the Director is the deciding official for matters in which a supervisor is alleged to have committed a prohibited personnel action (as defined by 5 U.S.C. § 7515(a)(2)), to include whistleblower retaliation; retaliation for the exercise of an appeal, grievance, or complaint right granted by law, rule, or regulation; and accessing the medical records of another employee in furtherance of a prohibited personnel practice. The Director may not delegate authority for determining whether a supervisor has committed a prohibited personnel action.
 - b. The Deputy Director or his or her designee is the deciding official in a case in which a proposal is made against a member of the SES. The Deputy Director may designate another member of the SES as the deciding official in such a case. When the PRB determines that proposals against both SES and non-SES employees arise from the same investigation or from a common set of facts, the Deputy Director, or his or her designee, will be the deciding official for all of the related proposals.
 - c. The DOJ Office of Attorney Recruitment and Management has sole authority to hear and decide a proposal to remove or suspend for more than 14 days an ATF GS 0905 attorney (i.e., a person employed by ATF in a position classified in the GS 0905 job series).
54. **RECUSAL AND DISQUALIFICATION.** The BDO will recuse or disqualify him or herself in any matter if there is any reason or circumstance that would give a reasonable person grounds to question the impartiality of the BDO. This includes, but is not limited to, matters in which:
 - a. There is a close personal relationship between the subject of the investigation and the BDO;
 - b. The BDO has any substantial interest in the outcome of the matter;
 - c. The BDO is a witness to the acts of misconduct alleged or reported; and/or
 - d. The BDO deems disqualification to be appropriate.
55. **ALTERNATE BUREAU DECIDING OFFICIAL.** The Deputy Director will designate an alternate BDO for any matter in which the BDO is recused or otherwise unavailable.

56. TECHNICAL ASSISTANCE AND LEGAL ADVICE. Human Resources specialists and other staff may be assigned to the BDO to provide such technical assistance as he or she deems appropriate. The BDO has a designated attorney that provides legal advice and support to the BDO on all BDO-related matters. The BDO attorney discusses the ROI and PRB proposal with the BDO; schedules and participates in oral replies; ensures that mitigating and aggravating matters are considered by the BDO; provides an assessment of the appropriate penalty range for offenses; and provides technical assistance and legal advice for the BDO's written final decisions.

57-60 RESERVED

Change 1

CHAPTER G. BUREAU DECIDING OFFICIAL REVIEW AND ADJUDICATION OF REPORTS OF MISCONDUCT

61. EMPLOYEE REPRESENTATION.

- a. An employee against whom discipline or adverse action is proposed may be represented by an attorney or other representative. The employee must designate his or her representative in writing to the BDO. If an employee changes representatives, he or she must notify the BDO in writing.
- b. An employee against whom discipline or adverse action is proposed may designate another ATF employee to be his or her representative. The ATF employee must consent to being so designated as the representative. ATF supervisors cannot serve as representatives. The Bureau will allow an ATF employee who is designated as a representative a reasonable amount of duty time to prepare and present the written and/or oral response of the person he or she represents.
- c. The BDO, after consultation with the chain of command of an ATF employee designated as a representative, may disallow the designation if the BDO has reason to believe that the ATF employee representative cannot be spared from his or her official duties, or that there is incompatibility between the representation functions and his or her official duties. The following procedures apply to the disallowance of a designation of an ATF employee representative:
 - (1) The BDO will issue a notice to the employee after receipt of the designation of an ATF employee as the representative. The notice will advise the employee of the reasons why the ATF employee representative was disallowed; that the employee has the right to choose another representative; and that the employee has the right to appeal the disallowance directly to the Deputy Director, or his or her designee. If the ATF employee representative was disallowed due to incompatibility between the representation functions and an ATF employee representative's official duties, a description of those duties must be included in the notice.
 - (2) If the employee wishes to appeal the disallowance, he or she must submit a written appeal to the Deputy Director, or his or her designee, stating his or her objections to the disallowance within 5 days of receipt of the disallowance notice.
 - (3) The Deputy Director, or his or her designee, will issue a final decision on the disallowance appeal within 10 days of receipt of a timely appeal.

62. WRITTEN AND ORAL RESPONSE TO BUREAU DECIDING OFFICIAL. An employee who elects to respond in writing and/or orally will be afforded a reasonable opportunity of no less than 7 days to prepare and present such responses. While an employee may provide affidavits voluntarily submitted by others and other documentary evidence in support of his/her response, there is no right to a trial, discovery period, or a formal hearing with the examination of witnesses. The employee may request of the BDO an extension of time to submit oral and/or written responses to the proposal; however, the BDO is not obligated to grant an extension. There is no right to present an oral response in-person, and oral responses ordinarily will be conducted via telephone, unless the BDO in his or her discretion determines that there is good cause for conducting the proceeding in-person. Oral responses shall be recorded or transcribed in the manner determined by the BDO.

Change 1

63. BUREAU DECIDING OFFICIAL REVIEW

- a. The BDO will give full and fair consideration to the proposed action and the employee's timely submitted written/oral response, including all supporting materials, information and exhibits.
- b. The BDO will determine whether all the information before him or her presents a sufficient factual record upon which he or she can issue a decision.
 - (1) If the BDO determines that the factual record is not sufficient, he or she may refer the matter to IAD for further investigation. The employee against whom the action is proposed must be informed of the further investigation and afforded a reasonable opportunity to prepare and present a further written and/or oral response.
 - (2) If the BDO determines that the factual record is sufficient, he or she shall issue a final decision. The decision must be based solely on the factual record, and the BDO shall not consider any facts outside the record in reaching that decision.
- c. The BDO may not impose a penalty that is greater than the penalty proposed by the PRB, and may impose only such penalty as will promote the efficiency of the service.

64. BUREAU DECIDING OFFICIAL FINAL DECISION. The BDO will issue his or her final decision in writing at the earliest practicable date and provide a signed copy to the employee, via the employee's chain of command. The final decision will include the following:

- a. With respect to each reason and specification of misconduct that was proposed, a statement whether it is sustained or not;
- b. The reasons for the BDO's final decision; and
- c. Notice of the employee's rights and the procedures for appealing and/or grieving the final decision.

65. GRIEVANCE RIGHTS. An employee cannot grieve a BDO final decision that is or was appealable to the Merit Systems Protection Board (MSPB), or that is otherwise exempted from grievance rights under law, regulation or DOJ directive. In cases in which the Deputy Director is the BDO, a final decision that is grievable must be grieved to the Director. In all other cases, a final decision that is grievable must be grieved to the Deputy Director, or his or her designee. All such grievances will be governed by ATF O 2115.1.A, Administrative Grievance Procedures.

66-70 RESERVED

CHAPTER H. MANAGEMENT REFERRALS

71. **INTERFERENCE IN MANAGEMENT REFERRALS.** ATF employees are prohibited from interfering in the review and adjudication of misconduct investigations and from directing or encouraging any other person to do so. Interference is any intentional or unintentional act or failure to act, not authorized by this order or by applicable law, regulation or DOJ directive, which would reasonably be expected to potentially affect the outcome of the review and adjudication.
72. **ADVERSE OR DISCIPLINARY ACTION RESULTING FROM MANAGEMENT REFERRALS.** With respect to matters that IAD refers to management, first-line supervisors are expected to review and resolve the matter with the advice and input from the Office of Chief Counsel. First-line supervisors or above will be the proposing official and second-line supervisors or above will be the deciding official on any proposed adverse action or disciplinary actions.
73. **ROLE OF COUNSEL IN MANAGEMENT REFERRAL.** The Management Division of the Office of Chief Counsel is responsible for providing legal advice and services to supervisors who are proposing or deciding adverse action or disciplinary action as a result of a management referral from IAD.
74. **PROCESS TO ENGAGE COUNSEL.** When proposing adverse action or discipline, the first-line supervisor will contact the Associate Chief Counsel, Management, who will assign an attorney to assist the supervisor.
75. **SPECIFIC RESPONSIBILITIES OF COUNSEL.** The assigned attorney will be responsible for:
 - a. Assisting the supervisor in determining an appropriate course of action to resolve the matter;
 - b. Advising the supervisor on the collection of documentation to support a disciplinary action;
 - c. Assisting the first-line supervisor in the preparation of documents related to a non-disciplinary action (e.g., a clearance or caution);
 - d. Assisting the first-line supervisor in the preparation of a proposal of a disciplinary or adverse action or the issuance of an official reprimand; and
 - e. Assisting the second-line or higher level supervisor in the preparation of a decision on a proposal;
76. **PROPOSING AND DECIDING ADVERSE ACTION OR DISCIPLINARY ACTION.** Supervisors shall propose and decide disciplinary and adverse actions in accordance with the policies set out in Department of Justice Human Resources Order 1200.1, Part 3-1, Discipline and Adverse Actions and Part 8-1, Performance.
77. **NOTICE OF PROPOSAL.** The proposing official will prepare, sign and deliver (or arrange for delivery) to an employee written notice of the discipline or adverse action proposed. Except as otherwise provided by law or this order, employees against whom an adverse action (i.e., suspension for 15 days or more, reduction in grade or pay, removal) is proposed will receive at least 30 days' advance written notice of the proposed action unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed. Except as otherwise provided by law or this order, employees against whom discipline (i.e., a suspension of 14 days or less) is proposed will receive at least 7 days' advance written notice of the proposed discipline. The written notice of a proposed disciplinary or adverse action will:

- a. Address each charge of misconduct and the basis for the determination(s).
- b. Include a copy of, or otherwise make available, all material relied upon by the proposing official.
- c. Include notice of the employee's rights and the procedures for responding to the proposal. The employee will be allowed no less than 7 days in which to make his or her response in the form of a written and/or oral response. The employee may be represented by an attorney or other representative.
- d. Be provided to the deciding official, except that in the case of a proposal to remove or suspend for more than 14 days against an ATF attorney (i.e., a person employed by ATF in a position classified in the 0905 job series), the proposing official will deliver a copy of the written notice to the Chief Counsel, and the Chief Counsel will refer the written notice to the DOJ Office of Attorney Recruitment and Management.

78. DUTY STATUS AFTER PROPOSAL.

- a. An employee against whom discipline or adverse action is proposed as a result of a management referral from IAD remains in an active- duty status after receipt of notice of the proposal unless the notice of the proposal states otherwise.
- b. When proposing discipline or adverse action, the first-line supervisor or other management proposing official may adjust the duty status of the subject of the proposal upon a determination that such adjustment is in the interests of the government, including, but not limited to, circumstances where it appears that adjustment of duty status is necessary to protect ATF employees, government property or the public.
- c. Adjustments to duty status may include limiting the types of assignments or duties that the employee may perform, and/or barring access to particular information, equipment or locations.
- d. Where removal is proposed, the employee will be directed to surrender identification media, any Bureau-issued firearm, and any assigned vehicle, and instructed to work from home on administrative projects that will be assigned by the employee's supervisor. If the employee's supervisor so decides, the subject of the proposal may retain a Bureau-issued computer, cell phone and similar equipment for purposes of work assignments and preparing a response to the proposal.
- e. When, after issuance of a proposal, circumstances require adjustment (or further adjustment) of duty status, the first-line supervisor, or other management proposing official, may adjust (or further adjust) duty status.

79. EMPLOYEE REPRESENTATION.

- a. An employee against whom discipline or adverse action is proposed may be represented by an attorney or other representative. The employee must designate his or her representative in writing to the deciding official. If an employee changes representatives, he or she must notify the deciding official in writing.
- b. An employee against whom discipline or adverse action is proposed may designate another ATF employee to be his or her representative. The ATF employee must consent to being so designated as the representative. ATF supervisors cannot serve as representatives. The Bureau will allow an ATF employee who is

designated as a representative a reasonable amount of duty time to prepare and present the written and/or oral response of the person he or she represents.

- c. The deciding official, after consultation with the chain of command of an ATF employee designated as a representative, may disallow the designation if the deciding official has reason to believe that the representative cannot be spared from his or her official duties, or that there is incompatibility between the representation functions and an employee's official duties. The following procedures apply to the disallowance of a designation of an ATF employee representative:
 - (1) The deciding official will issue a notice to the employee after receipt of the designation of a representative. The notice will advise the employee of the reasons why the ATF employee representative was disallowed; that the employee has the right to choose another representative; and that the employee has the right to appeal the disallowance to a deciding official. If the ATF employee representative was disallowed due to incompatibility between the representation functions and his or her official duties, a description of those duties must be included in the notice.
 - (2) If the employee wishes to appeal the disallowance, he or she must submit a written appeal to the deciding official stating his or her objections to the appeal disallowance within 5 days of receipt of the disallowance notice.
 - (3) The deciding official will issue a final decision on the disallowance appeal within 10 days of receipt of a timely appeal.

80. **WRITTEN AND ORAL RESPONSE TO DECIDING OFFICIAL.** An employee who elects to respond in writing and/or orally will be afforded a reasonable opportunity of no less than 7 days to prepare and present such responses. While an employee may provide affidavits voluntarily submitted by others and other documentary evidence in support of his/her response, there is no right to a trial, discovery period, or a formal hearing with the examination of witnesses. The employee may request of the deciding official an extension of time to submit oral and/or written responses to the proposal; however, the deciding official is not obligated to grant an extension. Oral responses may be conducted via telephone and recorded or transcribed as determined by the deciding official. There is no right to present an oral response in-person, and oral responses ordinarily will be conducted via telephone, unless the deciding official in his or her discretion determines that there is good cause for conducting the proceeding in-person. Oral responses shall be recorded or transcribed in the manner determined by the deciding official.

81. **DECIDING OFFICIAL REVIEW.**

- a. The deciding official will give full and fair consideration to the proposed action and the employee's written/oral response, including all supporting materials, information and exhibits.
- b. The deciding official will determine whether all the information before him or her presents a sufficient factual record upon which he or she can issue a decision.
 - (1) If the deciding official determines that the factual record is not sufficient, he or she may refer the matter to the proposing official for further inquiry and development of the facts. The employee against whom the action is proposed must be informed of such further inquiry and afforded a

reasonable opportunity to prepare and present a further written and/or oral response.

(2) If the deciding official determines that the factual record is sufficient, he or she shall issue a final decision. The decision must be based solely on the factual record, and the deciding official shall not consider any facts outside the record in reaching that decision.

c. The deciding official may not impose a penalty that is greater than the penalty proposed by the proposing official, and may impose only such penalty as will promote the efficiency of the service.

82. **FINAL DECISION.** The deciding official will document his or her final decision in writing and, at the earliest practicable date, deliver a signed copy to the employee. The final decision will address each instance of misconduct that was proposed and provide a statement of the reasons for the final decision, including the following:

- a. With respect to each reason and specification of misconduct that was proposed, a statement whether it is sustained or not;
- b. The reasons for the deciding official's final decision; and
- c. Notice of the employee's rights and the procedures for appealing and/or grieving the final decision.

83. **REPRIMAND.** Instead of proposing discipline or adverse action, a supervisor may decide to issue an official reprimand or a written letter of caution, or to deliver oral admonishment/counseling, directly to an employee. When a supervisor decides to issue a Letter of Reprimand, the following policies and procedures apply:

- a. The official reprimand will be placed in the employee's eOPF for a period not to exceed 2 years from the date of the official reprimand, at which time it expires and must be removed.
- b. The official reprimand may be removed prior to its expiration by the employee's first-level supervisor or above.
- c. The official reprimand must be removed from the employee's eOPF when the employee leaves government service or transfers to another agency.
- d. A reprimand may be grieved as described in paragraph 84 (below). A decision not to remove an official reprimand prior to expiration is not a grievable matter.
- e. These procedures also apply when a proposed penalty is mitigated to an official reprimand.

84. **GRIEVANCE RIGHTS.** An employee cannot grieve a final decision that is or was appealable to the MSPB or that is otherwise exempted from grievance rights under law, regulation or DOJ directive. A final decision that may be grieved must be grieved to the higher-level supervisor above the deciding official, and such grievance will be governed by ATF O 2115.1A, Administrative Grievance Procedures. A final decision will not be disturbed unless it is shown to be clearly erroneous. The management official deciding the grievance may request from the Office of Chief Counsel such legal advice and

recommendations he or she considers necessary and proper for resolution of the grievance.

85. **INDEFINITE SUSPENSION CRIME PROVISION.** In a case where there is reasonable cause to believe the employee has committed a crime that could result in a sentence of imprisonment, the Deputy Assistant Director (DAD) in the employee's chain of command or his or her designee may propose the indefinite suspension without pay of that employee. An employee against whom an indefinite suspension is proposed shall immediately be placed on non-duty status with pay for no longer than 10 days pending a decision on the proposal. Extension of the 10-day period requires approval of the Deputy Assistant Attorney General for Human Resources and Administration. The DAD of the Directorate of the Employee or his or her designee shall prepare, sign and deliver written notice of the proposed indefinite suspension as follows:
- a. The written notice will address the reasons why the indefinite suspension is proposed.
 - b. Written notice must be delivered to the employee not less than seven days in advance of the effective date of the indefinite suspension.
 - c. Written notice will include a copy of, or otherwise make available, the incident report, and/or any other material relied upon by the DAD.
 - d. Written notice will include a statement of the event that will terminate the indefinite suspension and the employee's rights and the procedures for responding to the proposal.

86-90 RESERVED

CHAPTER I. INVESTIGATIVE LEAVE AND NOTICE LEAVE.

91. AUTHORITY. An ATF supervisor may, in accordance with 5 U.S.C. § 6329b(b)(2), place a subordinate employee in:

- a. Investigative leave if the employee is the subject of an investigation;
- b. Notice leave if the employee is in a notice period; or
- c. Notice leave following a placement in investigative leave if, not later than the day after the last day of the period of investigative leave—
 - (1) ATF proposes or initiates an adverse action against the employee, and
 - (2) The supervisor determines that the employee continues to meet one or more of the criteria described in paragraph 92.a(1), below.

92. REQUIREMENTS.

- a. An ATF supervisor may place a subordinate employee on Investigative or Notice Leave only if the supervisor has—
 - (1) Made a determination with respect to the employee that the continued presence of the employee in the workplace during an investigation of the employee or while the employee is in a notice period, as applicable, may—
 - (a) Pose a threat to the employee or others;
 - (b) Result in the destruction of evidence relevant to an investigation;
 - (c) Result in loss of or damage to Government property; or
 - (d) Otherwise jeopardize legitimate Government interests;
 - (2) Considered—
 - (a) Assigning the employee to duties in which the employee no longer poses a threat described in (a) through (d) in paragraph 92.a(1);
 - (b) Allowing the employee to take leave for which the employee is eligible;
 - (c) If the employee is absent from duty without approved leave, carrying the employee in absence without leave status; and
 - (d) For an employee subject to a notice period, curtailing the notice period if there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed; and
 - (3) Determined that none of the available options under paragraph 92.a(2) is appropriate.

- b. Other than the Director, the Deputy Director or an AD, an ATF supervisor may place a subordinate employee on Investigative or Notice Leave only after consulting with the Management Division of the Office of Chief Counsel, and with the concurrence of the employee's supervising AD.
93. DURATION OF LEAVE.
- a. INVESTIGATIVE LEAVE. Upon the expiration of the 10 work days of administrative leave described in 5 U.S.C. §6329a(b)(1) with respect to an employee, and if ATF determines that an extended investigation of the employee is necessary, ATF may place the employee in investigative leave for a period of not more than 30 work days.
 - b. NOTICE LEAVE. Placement of an employee in notice leave shall be for a period not longer than the duration of the notice period.
94. EXPLANATION OF LEAVE TO THE EMPLOYEE. An ATF supervisor who places an employee on investigative or notice leave under this chapter shall provide the employee a written explanation whether the employee was placed in investigative leave or notice leave. This written notice describes the limitations of the leave placement, including:
- a. The applicable limitation on the duration of leave, as described at paragraph 93; above, and
 - b. In the case of a placement in investigative leave, an explanation that, at the conclusion of the period of leave, that ATF shall take an action, as described at paragraph 95, below.
95. ATF ACTION. An ATF supervisor who places an employee on investigative leave shall, no later than the conclusion of the period of investigative leave—
- a. Return the employee to regular duty status;
 - b. Take one or more of the actions described at paragraph 92.a(2), above;
 - c. Propose or initiate an adverse action against the employee as provided under law; or
 - d. Extend the period of investigative leave under paragraphs 97 and 98, below.
96. RULE OF CONSTRUCTION. Nothing in paragraph 95 shall be construed to prevent the continued investigation of an employee, except that the placement of an employee in investigative leave may not be extended for that purpose except as provided in paragraphs 97 and 98, below.
97. INITIAL EXTENSION OF INVESTIGATIVE LEAVE. Upon the approval of the Deputy Assistant Attorney General for Human Resources and Administration, or his or her designee, and following consultation with the investigator responsible for the pending investigation of the employee, the period of investigative leave may be extended for a period of not more than 30 work days. The total period of this initial extension of investigative leave for an employee cannot exceed 90 workdays.

98. FURTHER EXTENSION OF INVESTIGATIVE LEAVE. ATF may not further extend a period of investigative leave beyond 30 calendar days after the completion of the investigation of the employee by OIG or IAD.

99-100 RESERVED

CHAPTER J. VOLUNTARY SEPARATION BEFORE RESOLUTION OF PERSONNEL INVESTIGATION

101. **APPLICABILITY.** This chapter implements 5 U.S.C. §3322, Voluntary separation before resolution of personnel investigation. The pending personnel investigation (as defined below) of any ATF employee occupying a position in the competitive service or the excepted service who resigns or retires from Government employment may, notwithstanding that resignation or retirement, proceed to include completion of a report of investigation and, if warranted, submission of the matter to the PRB in accordance with the procedures set out at paragraph 42, above. If, with respect to such matter, the PRB determines, by majority vote, that the ROI supports one or more findings of misconduct against an employee who resigned or retired while that personnel investigation was pending, it shall not proceed to deliberate on an appropriate penalty, but instead will propose that the Bureau Deciding Official make a permanent notation in the employee's official personnel record file, in accordance with the procedures set out in paragraph 102, below.
102. **PROCEDURES.**
- a. The PRB Chair shall notify the employee in writing within five days of the resolution of the investigation, provide such separated employee a copy of the adverse finding and any supporting documentation, and provide the employee a reasonable time, but not less than 30 days, to respond in writing and to furnish affidavits and other documentary evidence to show why the adverse finding was unfounded (a summary of which shall be included in any notation made to the employee's personnel file).
 - b. The BDO shall review any response, affidavits and other documentary evidence submitted by the employee, and provide a written decision and the specific reasons therefore to the employee at the earliest practicable date. If the written decision is adverse to the employee, it shall also include a description of the employee appeal rights.
103. **EMPLOYEE APPEAL RIGHTS.** An employee is entitled to appeal a decision to make a permanent notation under this chapter to the Merit Systems Protection Board under 5 U.S.C. § 7701.
- a. The Associate Chief Counsel, Litigation Division, shall inform the Chief, Human Resources Operations Division (HROD), when an ATF employee files an appeal with the Merit Systems Protection Board regarding an adverse finding under this chapter, and the Chief, HROD shall make a notation in the employee's official personnel record file indicating that an appeal disputing the notation of an adverse finding is pending. The notation of an appeal shall be made not later than two weeks after the date on which such appeal was filed.
 - b. The Associate Chief Counsel, Litigation Division, shall inform the Chief, HROD, if ATF is the prevailing party on appeal, and the Chief, HROD shall remove the notation of an appeal from the employee's official personnel record file. The notation of an appeal shall be removed not later than two weeks after the date that the Board issues the appeal decision.
 - c. The Associate Chief Counsel, Litigation Division, shall inform the Chief, HROD, if the employee is the prevailing party on appeal, and the Chief, HROD shall remove the notation of an adverse finding and the notation of an appeal from the employee's official personnel record file. The notations shall be removed not later than two weeks after the date that the Board issues the appeal decision.

104. PERSONNEL INVESTIGATION. In this section, the term "personnel investigation" includes—
- a. An investigation by OIG or IAD; and
 - b. An adverse personnel action as a result of performance, misconduct, or for such cause as will promote the efficiency of the service under chapter 43 or chapter 75.

105-110 RESERVED

Change 1

EXHIBIT 1. ATF GUIDE FOR PENALTIES AND OFFENSES

The ATF Guide for Offenses and Penalties is advisory in nature. The list of potential charges is not inclusive of all charges that may be used in a proceeding and in no way acts to limit a proposing or deciding official as to conduct that may be the subject of discipline or adverse action. Likewise, the penalties listed are advisory, not mandated. In all cases, the Professional Review Board or management, as applicable, will retain the discretion to charge, propose, and impose discipline as deemed appropriate and in keeping with the policies and procedures contained in ATF O 2140.1A, Adverse Action and Discipline.

I. Attendance

Type of Misconduct	Explanation of Offense	Penalty for First Offense	Penalty for Second Offense	Penalty for Third Offense
a. Unexcused or unauthorized absence on scheduled day of work (AWOL in increments of 15 minutes or more)	This absence does not have to be consecutive. Includes tardiness relating to reporting for duty, returning from lunch or break, and returning from an authorized absence from the workstation.	Reprimand to 1-day Suspension	3-Day Suspension to 5-Day Suspension	10-Day Suspension to Removal
b. Recurring, excessive, unexcused or unauthorized absence	To include absences of five consecutive days or more.	Reprimand to 3-Day Suspension	3-Day Suspension to 5-Day Suspension	14-Day Suspension to Removal
c. Violation of Leave Policy	Employee violating DOJ/ATF leave policy, including improper use of sick leave.	Reprimand to 1-Day Suspension	3-Day Suspension to 5-Day Suspension	14-Day Suspension to Removal
d. Violation of Leave Restriction	Employee violation of formal leave restriction. May be charged in addition to AWOL.	Reprimand to 5-Day Suspension	3-Day Suspension to 5-Day Suspension	14-Day Suspension to Removal
e. Failure to Report for Duty as Detailed, Transferred, or Reassigned	This is not limited to employees who are under a mobility agreement. [Ramos v. Federal Aviation Administration, 4 M.S.P.R. 388, 4 M.S.P.B. 446 (1980); Boykin v. United States Postal Service, 1995 U.S. App. LEXIS 2183 (Fed. Cir. 1995) (nonpresidential)]	Removal		

II. Government Property and Resources

Type of Misconduct	Explanation of Offense	Penalty for First Offense	Penalty for Second Offense	Penalty for Third Offense
a. Unauthorized Use of Government Property	Employee misuse of government property to access or transfer sexually explicit or other inappropriate material. Penalties are influenced by frequency inappropriate material accessed; types of material accessed, and if material is transferred to others, among other things.	Reprimand to Removal	5-Day Suspension to Removal	10-Day Suspension to Removal
	Employee misuse of government computer or other device to access law enforcement or other restricted government databases without authorization and/or for personal reasons. Includes directing subordinates or others to access such databases not knowing that access is for personal reasons.	1-Day Suspension to Removal	5-Day Suspension to Removal	10-Day Suspension to Removal
	Employee misuse of government property, including, but not limited to, using government computer or other device to operate a privately owned business, or extensive use of computer or other device for personal use. Does not include permissible minor personal use of government cell phone or computer to access internet.	Reprimand to 3-Day Suspension	5-Day Suspension to Removal	7-Day Suspension to Removal
b. Unauthorized/Improper Taking or Possession of Government or Other Property	Employee taking or possessing government property or the property of others without permission or in an improper manner. (May include an attempt to take or possess property without permission. All but the most minor instance will receive the high end of the penalty range.)	1-Day Suspension to Removal	5-Day Suspension to Removal	14-Day Suspension to Removal

Type of Misconduct	Explanation of Offense	Penalty for First Offense	Penalty for Second Offense	Penalty for Third Offense
<p>c. Unauthorized/Improper Taking or Use of Government Funds</p>	<p>Includes, but is not limited to, misappropriation of government funds, including theft of agent cashier funds, failure to properly expend allocated resources, expenditure of allocated funds in excess of funds available and using government purchase authority to obtain items for personal use. (May include an attempt to take or use government funds. All but the most minor instances will received the high end of the penalty range.)</p>	<p>Reprimand to 5-Day Suspension</p>	<p>5-Day Suspension to 14-Day Suspension</p>	<p>14-Day Suspension to Removal</p>
<p>d. Misuse of Government Charge Card</p>	<p>Employee misuse of Government-issued credit card (Travel Card, Undercover Credit Card or other purchase card). Including, but not limited to, unauthorized cash advances when not in travel status and/or charges for personal items. OPRSO Report of Investigation (ROI) shows 1-8 instances totaling less than \$2,000.</p>	<p>Reprimand to 5-Day Suspension</p>	<p>5-Day Suspension to 14-Day Suspension</p>	<p>14-Day Suspension to Removal</p>
	<p>Employee misuse of Government-issued credit card (Travel Card, Undercover Credit Card or other purchase card). Including, but not limited to, unauthorized cash advances when not in travel status and/or charges for personal items. ROI shows more than 8 instances and/or total in excess of \$2,000.</p>	<p>7-Day Suspension to Removal</p>	<p>14-Day Suspension to Removal</p>	<p>Removal</p>
<p>e. Misuse of Public Transit Subsidy</p>	<p>Employee transferring or selling government provided Public Transportation Incentive Program (PTIP) subsidy, reimbursements, or claiming PTIP transit subsidy when not entitled. Penalty dependent on the degree and severity of the misuse.</p>	<p>Reprimand to Removal</p>	<p>3-Day Suspension to Removal</p>	<p>10-Day Suspension to Removal</p>

Type of Misconduct	Explanation of Offense	Penalty for First Offense	Penalty for Second Offense	Penalty for Third Offense
f. Failure to Properly Account for Agent Cashier Funds	Employee failure to follow Bureau policy for maintaining records, perform regular audits of accounts, ensuring disbursements are properly documented, and that funds are properly secured.	Reprimand to 3-Day Suspension	3-Day Suspension to 7-Day Suspension	7-Day Suspension to 14-Day Suspension
g. Failure to Adequately Secure/Protect Government Property	Employee failure to adequately secure/protect an ATF-issued firearm lost, stolen, or damaged through simple, gross, or willful negligence or failure to follow Bureau procedures for proper storage.	5-Day Suspension to 14-Day Suspension	10-Day Suspension to 30-Day Suspension	30-Day Suspension to Removal
	Employee failure to adequately secure/protect an ATF-issued LEO/IOI badge and/or credentials lost, stolen, or damaged through simple, gross, or willful negligence or failure to follow Bureau procedures for proper storage.	Reprimand to 3-Day Suspension	1-Day Suspension to 5-Day Suspension	10-Day Suspension to 14-Day Suspension
	Employee failure to adequately secure/protect an ATF issued ID media, other than LEO/IOI badge and/or credentials, lost, stolen, or damaged through gross or willful negligence or failure to follow Bureau policy.	Reprimand	Reprimand to 1-Day Suspension	1-Day Suspension to 3-Day Suspension
	Failure to adequately secure/protect an ATF-issued computer or other device containing sensitive data lost, stolen, or damaged through gross or willful negligence or failure to follow policy.	Reprimand to 5-Day Suspension	5-Day Suspension to 14-Day Suspension	10-Day Suspension to Removal
	Failure to adequately secure/protect other ATF-issued property lost, stolen, or damaged through gross or willful negligence or failure to follow Bureau policy.	Reprimand to 5-Day Suspension	2-Day Suspension to 14-Day Suspension	5-Day Suspension to Removal

Type of Misconduct	Explanation of Offense	Penalty for First Offense	Penalty for Second Offense	Penalty for Third Offense
h. Failure to Timely Report Loss of or Damage to Government Property	Employee failure to timely report damage to or loss of GOV, computer or other device, firearm, badge, credentials, PIV, media ID and other government property.	Reprimand to 3-Day Suspension	2-Day Suspension to 5-Day Suspension	5-Day Suspension to 14-Day Suspension

III. Harassment and Discrimination

Type of Misconduct	Explanation of Offense	Penalty for First Offense	Penalty for Second Offense	Penalty for Third Offense
a. Committing Personnel Action Prohibited by Kirkpatrick Whistleblower Protection Act of 2017 and the determination made by the agency head, agency OIG, MSPB, Special Counsel, administrative law judge, or U.S. judge	Supervisor committing a prohibited personnel action (as defined by 5 U.S.C. § 7515(a)(2)), to include whistleblower retaliation; retaliation for the exercise of an appeal, grievance, or complaint right granted by law, rule, or regulation; and accessing the medical records of another employee in furtherance of a prohibited personnel practice.	3-Day Suspension to Removal, and any other action, including a reduction in grade or pay, that the head of the agency determines appropriate.	Removal	
b. Retaliation against an Employee for Engaging in Protected Activity	Employee or supervisor committing retaliation for reasons including, but not limited to, an employee's participation in an EEO process, opposition to discrimination or harassment, or whistleblower activity.	3-Day Suspension to Removal	Removal	
c. Sexual Harassment or Misconduct with Aggravating Factors	Employee or supervisor making unwelcome or unwanted sexual advances, requesting sexual favors, or engaging in other verbal or physical conduct of a sexual nature while on or off duty. This could include pinup calendars or sexually demeaning pictures, telling sexual oriented jokes, making sexually offensive remarks, engaging in unwanted sexual teasing, subjecting another employee to pressure for dates,	15-Day Suspension to Removal	Removal	

Type of Misconduct	Explanation of Offense	Penalty for First Offense	Penalty for Second Offense	Penalty for Third Offense
	<p>sexual advances, or unwelcome touching.</p> <p>If the sexual harassment or sexual misconduct involves sexual assault, stalking, supervisory role vis-à-vis the victim, repetition, quid pro quo for official actions, any form of voyeurism (such as peeping), retaliation for reporting prior misconduct and prior discipline for sexual harassment or misconduct.</p>			
<p>d. Sexual Harassment or Misconduct Without Aggravating Factors</p>	<p>.Employee or supervisor making unwelcome or unwanted sexual advances, requesting sexual favors, or engaging in other verbal or physical conduct of a sexual nature while on or off duty. This could include pinup calendars or sexually demeaning picture, telling sexually oriented jokes, making sexually offensive remarks, engaging in unwanted sexual teasing, subjecting another employee to pressure for dates, sexual advances, or unwelcome touching.</p> <p>If the sexual harassment or sexual misconduct does not involve sexual assault, stalking, supervisory role vis-à-vis the victim, repetition, quid pro quo for official actions, any form of voyeurism (such as peeping), retaliation for reporting prior misconduct and prior discipline for sexual harassment or misconduct.</p>	<p>3-Day Suspension to Removal</p>	<p>5-Day Suspension to Removal</p>	<p>14-Day Suspension to Removal</p>
<p>e. Failure by Supervisor to Report Allegation of Sexual Harassment</p>	<p>Supervisor failure to report allegation of sexual harassment after having been made aware of the existence of such allegation.</p>	<p>2-Day Suspension to Removal</p>	<p>5-Day Suspension to Removal</p>	<p>14-Day Suspension to Removal</p>

Type of Misconduct	Explanation of Offense	Penalty for First Offense	Penalty for Second Offense	Penalty for Third Offense
<p>f. Discrimination against an Employee or Applicant for Employment Based on Membership in Protected Class</p>	<p>Discrimination in the Federal Government is prohibited by Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on race, color, religion, sex, or national origin; the Equal Pay Act of 1963, which protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination; the Age Discrimination in Employment Act of 1967, which protects individuals who are 40 years of age or older; Title I and Title V of the Americans with Disabilities Amendment Act of 1990, and Genetic Information Nondiscrimination Act, among other laws and regulations.</p>	<p>3-Day Suspension</p>	<p>5-Day Suspension</p>	<p>14-Day Suspension to Removal</p>
<p>g. Creating and/or Fostering a Discriminatory Hostile Work Environment</p>	<p>To include: intimidating employees by speech, behavior, gestures, etc. A hostile work environment is created when the conduct is sufficiently severe or pervasive as to affect a term, condition or privilege of employment.</p>	<p>3-Day Suspension</p>	<p>5-Day Suspension</p>	<p>14-Day Removal</p>

IV. Misconduct Connected to Performance of Duties

Type of Misconduct	Explanation of Offense	Penalty for First Offense	Penalty for Second Offense	Penalty for Third Offense
a. Inappropriate Behavior	Employee engaging in inappropriate behavior, including, but not limited to, arguing, fighting, quarrelling in the workplace (e.g., yelling, striking another person), teasing, joking, making inappropriate gestures, and displaying inappropriate material. Conduct may be inappropriate due to its sex-based, sexual, gender-based, sexual-orientation-based, religious, race-based, ethnicity-based, age-based, intimidating and/or offensive nature.	Reprimand to Removal	5-Day Suspension to Removal	14-Day Suspension to Removal
b. Inappropriate Workplace Relationships	Employee engagement in inappropriate workplace relationships while on or off duty, including relationships between supervisors and their subordinates without proper notifications to management, relationships with witnesses, and relationships with subjects of official interest.	Reprimand to Removal	3-Day Suspension to Removal	14-Day Suspension to Removal
c. Failure to Follow Supervisory Order or Instruction	Employee refusal or failure to comply with a supervisor's lawful order or instruction.	Reprimand to Removal	5-Day Suspension to Removal	14-Day Suspension to Removal
d. Failure to Follow Rules, Regulations, Policies or Procedures	Employee failure to comply with rules, regulations, policies and/or procedures applicable to DOJ/ATF.	Reprimand to 3-Day Suspension	3-Day Suspension to Removal	14-Day Suspension to Removal
e. Using Government Time for Unofficial Purposes	Expending time on duty for non-work-related purposes (e.g., excessive use of internet for personal reasons, performing non-work related tasks on duty, taking excessive breaks from work, spending excessive time idle).	Reprimand to Removal	3-Day Suspension to Removal	14-Day Suspension to Removal

Type of Misconduct	Explanation of Offense	Penalty for First Offense	Penalty for Second Offense	Penalty for Third Offense
f. Failure to Report Matters of Official Interest	Employee failure to timely notify supervisor/OPRSO of matters of official interest, including, but not limited to, contact with LE officials not resulting in arrest; failure to timely report integrity violations.	Reprimand to 1-Day Suspension	1-Day Suspension to 5-Day Suspension	5-Day Suspension to 14-Day Suspension
g. Sleeping on Duty	Employee sleeping on duty without authorization.	Reprimand to 3-Day Suspension	3-Day Suspension to 14-Day Suspension	14-Day Suspension to Removal

V. Falsification and Lack of Candor

Type of Misconduct	Explanation of Offense	Penalty for First Offense	Penalty for Second Offense	Penalty for Third Offense
a. Falsification	Employee knowingly providing incorrect, material information, with the intent to deceive or mislead the Agency, for personal gain.	1-Day Suspension to Removal	7-Day Suspension to Removal	14-Day Suspension to Removal
b. Lack of Candor	Employee knowingly providing incorrect or incomplete information. Includes knowingly withholding information or knowingly providing less than candid, truthful, accurate or complete information.	1-Day Suspension to Removal	7-Day Suspension to Removal	14-Day Suspension to Removal

VI. General Integrity-Related Misconduct

Type of Misconduct	Explanation of Offense	Penalty for First Offense	Penalty for Second Offense	Penalty for Third Offense
a. Poor Judgment and/or Conduct Unbecoming a Federal Employee/ Special Agent	Employee conduct or decision that was improper or detracted from the employee's character or reputation. Includes, but is not limited to, off-duty misconduct resulting in arrest or other adverse law enforcement contact, conviction of a criminal offense (including plea bargain and no contest pleas), contempt of court, violation of probation, failure to appear in court, violation of court order, provoking an altercation with private citizen/police off-duty, shoplifting, gambling on duty, domestic violence, and aiding and abetting criminal activity.	Reprimand to Removal	7-Day Suspension to Removal	14-Day Suspension to Removal
b. Engaging in or Soliciting Prostitution	Employee prostitution, solicitation of prostitution, or facilitation of prostitution while on- or off-duty, regardless of whether the activity is legal or tolerated in a particular jurisdiction, foreign or domestic.	3-Day Suspension to Removal	14-Day Suspension to Removal	Removal
c. Misuse of Official Position/Identification	Employee use of official position for preferential treatment or personal gain. Includes inappropriate display of badge/credentials/ATF employee ID/Undercover ID.	Reprimand to 5-Day Suspension	3-Day Suspension to 10-Day Suspension	14-Day Suspension to Removal
d. Association with Disreputable Persons	Employee personal association with disreputable persons, including, but not limited to, improper personal relationships with convicted felons, informants and subjects of investigations.	1-Day Suspension to Removal	14-Day Suspension to Removal	Removal

Type of Misconduct	Explanation of Offense	Penalty for First Offense	Penalty for Second Offense	Penalty for Third Offense
e. Unauthorized Disclosure of Confidential Informant	Employee unauthorized intentional disclosure or disclosure through willful or gross negligence, or reckless disregard, of sensitive or confidential information about a CI.	14-Day Suspension to Removal	Removal	
f. Unauthorized Solicitation or Acceptance of Gifts, Gratuities, or Favors	Employee improper solicitation or acceptance of prohibited gifts, gratuities, or favors.	Reprimand to Removal	3-Day Suspension to Removal	14-Day Suspension to Removal
g. Engaging in Outside Employment without Approval	Employee engagement in employment outside the Federal Government without approval, in violation of Bureau policy on outside employment.	Reprimand to 5-Day Suspension	Reprimand to 10-Day Suspension	5-Day Suspension to 14-Day Suspension
h. Authorizing, Directing, or Condoning Subordinate to Violate Policies, Procedures or Instructions	Supervisor authorization, direction, or condoning of subordinate violation of policies, procedures or supervisory instructions in accordance with law, including failure to curtail inappropriate behavior of subordinates.	1-Day Suspension to Removal	3-Day Suspension to Removal	7-Day Suspension to Removal
i. Failure to Timely Report Employee Misconduct	Employee failure to report employee misconduct to a supervisor or OPRSO in a timely manner.	Reprimand to Removal	3-Day Suspension to Removal	7-Day Suspension to Removal
j. Failure to Timely Report Arrest, Criminal Charge, Conviction or Issuance of Temporary Restraining Order in a Domestic Dispute	Employees failure to report to their immediate supervisor any incident involving contact with any law enforcement authority in which their conduct or that of their recent associates or family members, when such associates or family members are accompanied by the ATF employee, becomes subject to official scrutiny, excluding routine traffic stops.	Reprimand to 1-Day Suspension	1-Day Suspension to 5-Day Suspension	5-Day Suspension to 14-Day Suspension

Type of Misconduct	Explanation of Offense	Penalty for First Offense	Penalty for Second Offense	Penalty for Third Offense
k. Failure to Cooperate with an Official Investigation or Inquiry	Employee failure to cooperate in an Internal Affairs Division or Office of Inspector General investigation, or any other official inquiry when required to do so by policy, rule or regulation.	Removal		
l. Failure to Settle Financial Obligations in a Proper and Timely Manner	Employee failure to settle financial obligations in a proper and timely manner, to include failure to make proper and timely payment on Government travel card balances.	Reprimand to 14-Day Suspension	5-Day Suspension to Removal	14-Day Suspension to Removal
m. Engaging in or Failing to Report Possible Conflict of Interest Relating to Employee's Position or Duties	Employee failure to report a potential or actual conflict of interest, including, but not limited to, failure to report a financial interest in a company which ATF regulates and/or failing to divest of such interests if notified by Chief Counsel that a conflict of interest exists, or improper negotiation for future employment while still employed as a Federal employee.	Reprimand to Removal	5-Day Suspension to Removal	14-Day Suspension to Removal
n. Inappropriate Use of Social Media or Online Presence	Employee inappropriate use of any social media platform, blog, or other internet-based outlet, in violation of ATF 8800.5A, <i>Social Media - Conduct and Accountability</i> .	Reprimand to 10-Day Suspension	3-Day Suspension to 14-Day Suspension	14-Day Suspension to Removal

VII. Drugs and Alcohol

Type of Misconduct	Explanation of Offense	Penalty for First Offense	Penalty for Second Offense	Penalty for Third Offense
a. Under the Influence of Alcohol on Duty without Authorization	Employee under the influence of alcohol while on duty or while on assigned availability status without authorization.	5-Day Suspension to Removal	14-Day Suspension to Removal	Removal
b. Unauthorized Use of Alcohol on Duty	Employee use of alcohol while on duty without appropriate authorization.	Reprimand to 3-Day Suspension	5-Day Suspension to 10-Day Suspension	14-Day Suspension to Removal
c. Possession, Use, or Distribution of Illegal Drugs or Controlled Substances while On or Off Duty	Employee wrongful possession, use, or distribution of illegal drugs or controlled substances.	10-Day Suspension to Removal	Removal	
d. Failure to Submit to a Properly Ordered or Authorized Drug Test	Employee failure to submit to or interference with a properly ordered or authorized drug test.	Removal		
e. Failure to Pass an ATF-Ordered or Authorized Drug Test	Employee testing positive for controlled substances in a properly ordered or authorized drug test without innocent explanation.	10-Day Suspension to Removal	Removal	
f. DUI in POV Off-Duty	Employee off-duty driving while under the influence of an intoxicant, while impaired, or similar charge relating to a personally owned vehicle. Penalty will be aggravated by usual factors as well as if the employee routinely operates a Government vehicle. Employee need not receive citation.	10-Day Suspension to Removal	14-Day Suspension to Removal	15-Day Suspension to Removal

VIII. Government Vehicles

Type of Misconduct	Explanation of Offense	Penalty for First Offense	Penalty for Second Offense	Penalty for Third Offense
a. Willful Misuse of a Government Vehicleⁱⁱ	Employee operation or authorization of the use of a government vehicle for unofficial purposes with knowledge of or reckless disregard for the fact the use is for other than official purposes. Does not include minor personal use as stated in ATF O 2130.1B, Conduct and Accountability. Penalty for first offense is mandated by 31 U.S.C. § 1349(b).	30-Day Suspension to Removal	45-Day Suspension to Removal	Removal
b. Inappropriate Use of a Government Vehicle	Employee operation or authorization of the use of a government vehicle for unofficial purposes not rising to the definition of willful misuse as stated in ATF O 2130.1B, Conduct and Accountability.	3-Day Suspension to 14-Day Suspension	7-Day Suspension to 30-Day Suspension	14-Day Suspension to Removal
c. Failure to Timely Report an Accident or Damage Involving a Government Vehicle	Employee or supervisor failure to timely report accident or damage involving a government vehicle as per Bureau policy.	1-Day Suspension to 3-Day Suspension	3-Day Suspension to 7-Day Suspension	7-Day Suspension to 14-Day Suspension
d. Leaving the Scene of an Accident Involving a Government Vehicle and Another Vehicle, Person or Property	Employee inappropriately leaving the scene of an accident involving a government vehicle and another vehicle, person, or property.	1-Day Suspension to Removal	14-Day Suspension to Removal	Removal
e. Operating a Government Vehicle without a Valid License	To include operating a government vehicle with an expired, suspended or revoked license.	Reprimand to 10-Day Suspension	1-Day Suspension to 14-Day Suspension	5-Day Suspension to Removal
f. Operating a Government Vehicle after Consuming Alcohol or Other Intoxicant	Employee operating a government vehicle (or personally owned vehicle when mileage will be claimed for reimbursement) after consuming alcohol or other intoxicant in violation of policy as stated in ATF O 2130.1B, Conduct and Accountability.	3-Day Suspension to Removal	15-Day Suspension to Removal	Removal

Type of Misconduct	Explanation of Offense	Penalty for First Offense	Penalty for Second Offense	Penalty for Third Offense
g. Operating a Government Vehicle While Intoxicated	Employee operating a government vehicle (or personally owned vehicle when mileage will be claimed for reimbursement) while under the influence of, or impaired by, an intoxicant.	45-Day Suspension to Removal	Removal	
h. Improper Operation of a Government Vehicle	Employee operation of a government vehicle in an improper, reckless, or dangerous way, or contrary to Bureau policy. Need not result in traffic citation.	Reprimand to Removal	1-Day Suspension to Removal	2-Day Suspension to Removal
i. Failure to Timely Report Moving Violation Involving a Government Vehicle	Employee failure to timely report a citation for any moving violation involving a government vehicle as per Bureau policy.	Reprimand to 1-Day Suspension	1-Day Suspension to 3-Day Suspension	3-Day Suspension to 5-Day Suspension

IX. Firearms and Other Weapons

Type of Misconduct	Explanation of Offense	Penalty for First Offense	Penalty for Second Offense	Penalty for Third Offense
a. Unintentional Discharge of Firearm	Employee failure to exercise proper safety practices resulting in unintentional discharge.	Reprimand to 1-Day Suspension	3-Day Suspension to 5-Day Suspension	5-Day Suspension to Removal
b. Failure to Timely Report Discharge of a Firearm	Employee failure to timely report the intentional discharge of an ATF firearm outside of authorized activities or any unintentional discharge of a firearm. Includes supervisory failure to report to OPRSO.	Reprimand to 5-Day Suspension	5-Day Suspension to 7-Day Suspension	8-Day Suspension to Removal
c. Inappropriate Display of Firearm	Employee display of firearm for inappropriate reason or for reason other than ATF official business, in violation of policy.	Reprimand to Removal	3-Day Suspension to Removal	10-Day Suspension to Removal

Type of Misconduct	Explanation of Offense	Penalty for First Offense	Penalty for Second Offense	Penalty for Third Offense
d. Improper Intentional Discharge of Firearm	Employee intentional discharge of an ATF-issued firearm in manner that does not constitute use of force as defined by ATF policy.	14-Day Suspension to Removal	Removal	
e. Improper or Unauthorized Use or Possession of a Firearm or Other Weapon	Employee improper or unauthorized use or possession of a firearm or any other weapon, including, but not limited to, non-law enforcement officer employees carrying firearms or other weapons while conducting official ATF business.	1-Day Suspension to Removal	5-Day Suspension to Removal	Removal
f. Carrying or Transporting a Firearm, Explosives, Flammable Products After Consuming Alcohol	Carrying or transporting a firearm, explosives, or flammable product in violation of policy as stated in ATF O 2130.1B, Conduct and Accountability, by an employee who carries or manages, handles or transports firearms, explosives, or flammable products under authority of his/her official position.	1-Day Suspension to 5-Day Suspension	3-Day Suspension to 10-Day Suspension	14-Day Suspension to Removal
g. Inappropriate Use of Force with Firearm	Employee using force by discharging a firearm in a manner inconsistent with ATF O 3020.2B, Use of Force and Response to Resistance.	14-Day Suspension to Removal	Removal	
h. Inappropriate Use of Force Other than Firearm	Employee using force in a manner inconsistent with ATF O 3020.2B, Use of Force and Response to Resistance. Does not include use of force by discharging a firearm.	1-Day Suspension to Removal	7-Day Suspension to Removal	Removal

X. Searches, Seizures, and Evidence/Property Taken into Bureau Custody

Type of Misconduct	Explanation of Offense	Penalty for First Offense	Penalty for Second Offense	Penalty for Third Offense
a. Improper Seizure of Property	Employee conducting search and/or seizure in manner inconsistent with DOJ/ATF policy. Penalty determination may vary depending upon whether violation committed intentionally, in reckless disregard of policy, or negligently.	Reprimand to Removal	14-Day Suspension to Removal	14-Day Suspension to Removal
b. Improper Handling of Evidence/Property Taken into Bureau Custody	Employee failure to handle evidence or property taken into custody in accordance with DOJ/ATF policy, includes, but is not limited to, loss or improper destruction of evidence through inattention or simple, willful, gross negligence.	Reprimand to 3-Day Suspension	3-Day Suspension to 5-Day Suspension	5-Day Suspension to 14-Day Suspension

XI. Security

Type of Misconduct	Explanation of Offense	Penalty for First Offense	Penalty for Second Offense	Penalty for Third Offense
<p>a. Failure to Maintain the Level of Security Clearance Required for a Position or to Maintain the Required Clearance Eligibility</p>	<p>Unfavorable adjudication of a background investigation, failure or refusal to submit the required security background investigation paperwork, and/or failure to cooperate with the background investigator.</p>	<p>Removal</p>		
<p>b. Loss of Certification and/or Failure to Satisfy the Requirements of a Position</p>	<p>Employee failure to maintain required certification or credential. Includes failure to satisfy firearms qualification requirements for LEO positions; failure to maintain certification or credential, such as a specific professional license required by a position; failure to maintain a valid driver's license when operation of a motor vehicle is required; restrictions placed on an employee due to an arrest and/or conviction, which prohibits the employee from performing assigned duties.</p>	<p>Removal</p>		
<p>c. Failure to Follow Information Systems Security Policy</p>	<p>Employee failure to follow department/agency information security policies. Includes, but not limited to, sharing or fraudulent use of another user's password; improperly safeguarding passwords; processing classified or sensitive information on unsecure systems; hacking into ATF IT systems; attempting to access system information without proper authorization; tampering with the integrity of ATF IT system security configurations or data; adding unauthorized peripheral devices or unauthorized software/hardware to ATF IT systems.</p>	<p>Reprimand to Removal</p>	<p>2-Day Suspension to Removal</p>	<p>5-Day Suspension to Removal</p>

Type of Misconduct	Explanation of Offense	Penalty for First Offense	Penalty for Second Offense	Penalty for Third Offense
d. Failure to Adhere to Classified National Security Information (NSI) Mandates, Policies and/or Procedures	Unauthorized disclosure of Classified NSI.	1-Day Suspension to Removal	10-Day Suspension to Removal	30-Day Suspension to Removal
e. Refusal to Sign or Acknowledge Non-Disclosure Agreement for Access to Unclassified Sensitive Information	Intentional/deliberate refusal to sign/acknowledge the Non-Disclosure Agreement for Access to Unclassified Sensitive Information	Removal		
f. Failure to Adhere to Unclassified Sensitive Information Policies or Procedures	Unauthorized disclosure of unclassified sensitive information.	1-Day Suspension to Removal	10-Day Suspension to Removal	30-Day Suspension to Removal
g. Breach or Violation of Physical Security Policy	Employee failure to follow department/agency physical security procedures/policies.	Reprimand to Removal	2-Day Suspension to Removal	5-Day Suspension to Removal

ⁱ These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this guide and are controlling.

ⁱⁱ "Government Vehicle" is defined as any government-owned, leased, or furnished vehicle.

CHANGE 1, DATED 12/2/2019, SIGNED BY THE ACTING DIRECTOR

SUBJECT: ADVERSE ACTION AND DISCIPLINE – SPECIFIC CHANGES TO POLICY LOCATED IN CHAPTER G AND EXHIBIT 1

1. PURPOSE. This change clarifies the adverse action and discipline process within ATF O 2140.1A, Adverse Action and Discipline, dated 06/14/2019.
2. DISCUSSION/BACKGROUND FOR CHANGES.
 - a. The Table of Contents, as revised, adds an Exhibits section, which contains the revised ATF Guide for Penalties and Offenses.
 - b. Chapter G, subparagraph 61.c. (1), as revised, adds that the disallowance of a representative can be appealed to the Deputy Director, or his or her designee.
 - c. Chapter G, subparagraph 61.c. (2), as revised, adds that the appeal of the disallowance of a representative must be submitted in writing to the Deputy Director or his or her designee.
 - d. Chapter G, subparagraph 61.c. (3), as revised, adds that the final decision on a disallowance appeal will be made by the Deputy Director, or his or her designee.
 - e. Chapter G, subparagraph 65, as revised, adds that grievable final BDO decisions must be grieved to the Deputy Director, or his or her designee.
3. SPECIFIC PAGE CHANGES AND UPDATES.
 - a. Table of Contents, Page 4
 - b. Chapter G, subparagraph 61.c.(1), Page 17
 - c. Chapter G, subparagraph 61.c.(2), Page 17
 - d. Chapter G, subparagraph 61.c.(3), Page 17
 - e. Chapter G, subparagraph 65, Page 18
 - f. Exhibit 1; Page 29
4. QUESTIONS. Questions regarding this change should be directed to the Management Division, Office of Chief Counsel, at: (b)(7)(E)