

STATE OF OHIO  
ADJUTANT GENERAL'S DEPARTMENT  
2825 West Dublin Granville Road  
Columbus, Ohio 43235-2789

NGOH-HRZ

31 January 2020

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: HRO Policy # 19-002, Supervisory Performance Standard:  
Whistleblower Protection

**I. References.**

a. Public Law 151-91 Sec. 1097, 12 December 2018, "National Defense Authorization Act for 2018"

d. Title 5 United States Code §2302, "Prohibited Personnel Practices"

c. Title 5 United States Code §4302, "Establishment of performance appraisal systems"

d. Title 5 United States Code §7515, "Discipline of supervisors based on retaliation against whistleblowers"

e. Defense Civilian Personnel Advisory Service (DCPAS) Reference Guide, 19 April 2019, "Implementation of Section 1097 of the NDAA of Fiscal Year 2018"

f. CNGB Instruction 1400.25, Vol. 431, 24 January 2018, "National Guard Technician Performance Appraisal Program"

g. CNGB Notice 1404, 18 June 2018, "Technician Personnel Interim Post-Conversion Labor Relations and Performance Appraisal Guidance"

**2. Purpose.** To establish Ohio National Guard (OHNG) policy that is in accordance with (IAW) published law and guidance from the Defense Civilian Personnel Advisory Service and the Chief of the National Guard Bureau, regarding whistleblower protection standards and discipline for OHNG Title 32 Technicians (dual-status) and Title 5 National Guard (civilian) Employees who are designated as supervisors and/or have been assigned supervisory duties and responsibilities.

**3. Background.** Congress passed the National Defense Authorization Act (NDAA) for Fiscal Year 2018 (reference 1a) on 12 December 2017. Section 1097 of that NDAA was

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codified in sections 2302, 4302, and 7515 of Title 5 United States Code (USC) (references 1b, 1c, and 1d respectively). These statutes require all federal-agency heads to establish a supervisory whistleblower protection performance standard and to define disciplinary actions for supervisors who violate the standard.

#### 4. Agency Requirements.

a. Implement and enforce a policy that requires the establishment of performance standards – regarding compliance with and adherence to Congressionally mandated whistleblower protection laws – for all federal-employee supervisors and/or those federal employees, to whom supervisory duties and responsibilities have been assigned, and who are also in one of the following federal-employee categories:

(1) Title 32 National Guard Technicians (dual status).

(2) Title 5 National Guard Employees (civilian).

b. Implement and enforce a policy that clearly defines the disciplinary actions that will be implemented against supervisors and/or employees performing assigned supervisory duties, who are employed in one of the federal-employee categories listed in paragraph 4a of this memorandum.

c. Provide information about the Whistleblower Protection Program to each new employee no later than 180 days after the new employee's appointment date. Information provided will include the following:

(1) Whistleblower protections available to employees during a probationary period;

(2) The role of the Office of Special Council (OSC) and the Merit System Protection Board (MSPB) with respect to whistleblower protections; and

(3) The means by which an employee may make a lawful disclosure of the information to the OSC, the DoD Inspector General, Congress, or another employee of the agency, who is designated to receive such a disclosure; specifically with respect to information that is otherwise required by law or executive order to remain classified, in the interest of national defense or the conduct of foreign affairs.

**5. Required Supervisory Performance Standard.** To promote whistleblower protection, supervisory performance plans will be established or modified, during 2020-2021, appraisal cycle, to include a standard IAW requirements in CNGBI 1400.25, Vol 431, Section 4.N. Changes to supervisory performance plans may be made after the cycle has begun or

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during mid-cycle in the Defense Performance Management and Appraisal Program (DPMAP). The requirements in 5a and 5b of this memorandum shall be followed, for all OHNG supervisors and employees assigned and performing supervisory duties, who are employed as Title 32 National Guard Technicians and Title 5 National Guard Employees.

a. During the 2020 to 2021, appraisal cycle, a whistleblower-protection performance standard shall be included for all supervisors and employees performing supervisory duties. The title and description of this performance standard shall read as follows:

(1) Standard Title: "*Whistleblower Protection*"

(2) Standard Description: "*Supports the Whistleblower Protection Program by responding constructively to employees who make protected disclosures under sections 2302(b)(8), 2302(b)(9), or 2302(b)(14) of Title 5, United States Code; takes responsible and appropriate actions to resolve such disclosures; and creates an environment in which employees feel comfortable making such disclosures.*"

b. The evaluation/appraisal of the supervisory whistleblower protection standards must include the degree to which a supervisor:

(1) Responds constructively to employees when they make a protected disclosure;

(2) Takes responsible action to resolve such disclosures; and

(3) Fosters an environment in which employees feel comfortable making such disclosures to supervisory employees or other management officials.

c. The requirements in 5a and 5b of this memorandum shall be enforced, regardless of the category of employee(s) that these employees supervise (e.g. National Guard Technicians, Title 5 National Guard Employees, AGR members, etc.).

## 6. Discipline Procedure.

a. Disciplinary and/or adverse action will be administered against supervisors and/or employees performing supervisory duties, who violate the whistleblower protections or any other protections within sections 2302(b)(8), 2302(b)(9), or 2302(14) of Title 5 USC. Such disciplinary action shall be taken if there is substantiated evidence that they have:

(1) taken any personnel action against an employee or applicant for employment that is in violation of these statutes;

(2) threatened to take any personnel action against an employee or applicant for employment that is in violation of these states; or

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(3) failed to take any personnel action against an employee or applicant for employment that is in violation of these statutes.

b. Determination of a violation will be made by The Adjutant General (TAG), an administrative law judge, or the Merit Systems Protection Board (MSPB) – as the case may be – and the following personnel actions shall be administered for such violations:

(1) For supervisors who commit a first offense in violation of the Whistleblower Protection standard, no less than a three (3) day suspension shall be proposed by the Head of the Agency (TAG). Dependent upon the severity, the head of the Agency has the discretion to propose an additional action to include reduction of grade or pay.

(2) For supervisors who commit a second offense in violation of the Whistleblower Protection standard, the head of the Agency (TAG) shall propose removal for the supervisor.

(3) All supervisors, accused of violating the Whistleblower Protection standard, will be afforded due process rights, associated with proposed discipline, IAW section 7515 (b)(2) of Title 5 USC.

7. Questions related to this memorandum should be directed to Mrs. Dana Mowery, Deputy Director for HRO, at [dana.a.mowery.civ@mail.mil](mailto:dana.a.mowery.civ@mail.mil) or (614) 336-7054/DSN 346-7054.

FOR THE ADJUTANT GENERAL:



GREGORY J. BETTS  
COL, AG, OCHARNG  
Director of Human Resources

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