



UNDER SECRETARY OF DEFENSE

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WASHINGTON, DC 20301-5000

INTELLIGENCE

July 8, 2013

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DEPUTY CHIEF MANAGEMENT OFFICER
DIRECTOR, COST ASSESSMENT AND PROGRAM
EVALUATION
DIRECTOR, OPERATIONAL TEST AND EVALUATION
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
ASSISTANT SECRETARIES OF DEFENSE
DEPARTMENT OF DEFENSE CHIEF INFORMATION OFFICER
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DoD FIELD ACTIVITIES

SUBJECT: Directive-type Memorandum (DTM) 13-008, "DoD Implementation of Presidential Policy Directive 19"

References: See Attachment 1

Purpose. This DTM:

- In accordance with the authority in DoD Directive 5143.01 (Reference (a)), establishes policy, assigns responsibilities, and provides procedures for the implementation of Presidential Policy Directive 19 (PPD-19) (Reference (b)), which prohibits retaliation against employees for reporting waste, fraud, and abuse.
- Requires DoD Component heads with Defense Civilian Intelligence Personnel System (DCIPS) positions to certify to the Under Secretary of Defense for Intelligence (USD(I)) by July 8, 2013 that Component-level policies and procedures are in place for the review process required in section A of Reference (b).
- This DTM is effective July 8, 2013; it will be incorporated into DoD Instruction 1400.25, Volume 2001 (Reference (c)) and a DoD manual currently under development. This DTM will expire effective January 8, 2014.

Applicability. This DTM applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense (IG DoD), the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (referred to collectively in this DTM as the “DoD Components”).

Definitions. See Glossary.

Policy. It is DoD policy that Reference (b) be implemented consistently across the Department.

- Section A of Reference (b) prohibits any officer or employee with authority to take, direct others to take, recommend, or approve any personnel action from taking, failing to take, or threatening to take or fail to take a personnel action against any employee serving in an Intelligence Community element as a reprisal for a protected disclosure.
 - DoD will establish processes consistent with Reference (b) for all employees serving in DCIPS positions to seek review of personnel actions they allege to be in violation of section A of Reference (b). These review processes will be consistent, to the fullest extent possible, with the policies and procedures used to adjudicate alleged violations of section 2302(b)(8) of Title 5, United States Code (Reference (d)).
 - This review process applies to personnel actions taken on or after July 8, 2013.
- Section B of Reference (b) prohibits any officer or employee with authority to take, direct others to take, recommend, or approve any action affecting an employee’s eligibility for access to classified information from taking or failing to take, or threatening to take or fail to take such action as a reprisal for a protected disclosure. The DoD review process will be consistent with and integrated into the policies and procedures used by DoD to review security clearance determinations pursuant to section 5.2 of Executive Order 12968, as amended (Reference (e)).
 - Reviews of claims of reprisal for a protected disclosure in the form of an action affecting employee eligibility for access to classified information will be incorporated into DoD’s established and centralized administrative procedures to adjudicate security clearances pursuant to Reference (e).
 - All Defense Office of Hearings and Appeals, Administrative Judges, and personnel security appeal boards will consider and resolve any

claims of a violation of Reference (b) as part of their adjudication of an individual's eligibility.

- Nothing in this DTM should be construed as infringing on the independence of the IG DoD or DoD Component statutory inspectors general (IGs) or fulfillment of his or her duties pursuant to the authority of the Appendix to Reference (d), also known as "The Inspector General Act of 1978, as amended," and DoD issuances.

Responsibilities. See Attachment 2.

Procedures. See Attachment 3.

Releasability. **Unlimited.** This DTM is approved for public release and is available on the DoD Issuances Website at <http://www.dtic.mil/whs/directives>.



Michael G. Vickers
Under Secretary of Defense for Intelligence

Attachments:
As stated

ATTACHMENT 1

REFERENCES

- (a) DoD Directive 5143.01, "Under Secretary of Defense for Intelligence (USD(I)),
November 25, 2005
- (b) Presidential Policy Directive 19 (PPD-19), "Protecting Whistleblowers with Access to
Classified Information," October 10, 2012
- (c) DoD Instruction 1400.25, Volume 2001, "DoD Civilian Personnel Management System:
Volume 2001, Defense Civilian Intelligence Personnel System (DCIPS) Introduction,"
December 29, 2008
- (d) Title 5, United States Code
- (e) Executive Order 12968, "Access to Classified Information," August 2, 1995, as amended
- (f) DoD Instruction 5145.03, "Oversight of the DoD Personnel Security Programs,"
January 10, 2013
- (g) DoD Directive 5106.01, "Inspector General of the Department of Defense," April 20, 2012
- (h) DoD 5240.1-R, "Procedures Governing the Activities of DoD Intelligence Components
that Affect United States Persons," December 7, 1982
- (i) Directive-type Memorandum 08-052, "DoD Guidance for Reporting Questionable
Intelligence Activities and Significant or Highly Sensitive Matters,' June 17, 2009, as
amended
- (j) Executive Order 10865, "Safeguarding Classified Information within Industry,"
February 26, 1960, as amended
- (k) Title 10, United States Code
- (l) Title 50, United States Code

ATTACHMENT 2
RESPONSIBILITIES

1. USD(I): The USD(I):
 - a. Is responsible for implementation of PPD-19 in the DoD.
 - b. Establishes and maintains DCIPS policies implementing Reference (b) in conjunction with the Under Secretary of Defense for Personnel and Readiness (USD(P&R)).
 - c. As the principal staff assistant for security, establishes and maintains security policies implementing Reference (b).
 - d. Directs, administers, and oversees the DoD Personnel Security Program to ensure it is consistent, cost-effective, and efficient, and balances the rights of individuals with the interests of national security in accordance with DoD Instruction 5145.03 (Reference (f)).

2. USD(P&R). The USD(P&R) establishes and maintains DCIPS policies implementing Reference (b) in conjunction with the USD(I).

3. GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE. In coordination with the USD(I), the General Counsel of the Department of Defense oversees the DoD Personnel Security Program in accordance with Reference (f).

4. IG DoD. The IG DoD:
 - a. Maintains a whistleblower protection program in the Department of Defense that encourages personnel to report fraud, waste, abuse and reprisal, in accordance with DoDD 5106.01 (Reference (g)), and provides hotlines on three networks: http://www.dodig.mil/Hotline/filing_info.html, <http://www.dodig.smil.mil/hotline>, and <http://www.dodig.ic.gov/hotline/index.html> as avenues for such reporting.
 - b. Investigates or provides oversight on investigations conducted by DoD Components into allegations of reprisal made by civilian appropriated-fund employees, in accordance with Reference (g). Such allegations include those from DCIPS employees, actions affecting security clearance determinations, actions relating to access to classified information, and recommendations for actions affecting security clearances.
 - c. Serves on the Inspector General of the Intelligence Community (IGIC) external review panel in accordance with section C of Reference (b).

5. DOD COMPONENT HEADS WITH DCIPS POSITIONS. The DoD Component heads with DCIPS positions in their organizations:

a. Ensure that Component-level policies and implementing guidance conform to this DTM in support of Reference (b).

b. Certify by July 8, 2013, to the USD(I) that Component personnel policies provide a process consistent with Reference (b) for employees to seek review of personnel actions they allege to be in violation of Reference (b).

c. Furnish USD(I) and IG DoD with copies of Component personnel policies and procedures implementing Reference (b) to support reviews detailed in Attachment 3.

d. Designate, as applicable, any DCIPS positions that are of a confidential, policy determining, policy making, or policy advocating character, and are not to be included in the definition of personnel action of Reference (b).

ATTACHMENT 3

PROCEDURES

1. PROHIBITION OF RETALIATION. Personnel policies for DCIPS will include the prohibition of reprisal against an employee serving in a DCIPS position for protected disclosures. Prohibitions on reprisal by affecting eligibility for access to classified information will be incorporated into administrative procedures as required by Reference (b).

2. IG DoD REVIEW OF DCIPS EMPLOYEE ALLEGATIONS. Consistent with section A of Reference (b), which specifies agency IG review, the IG DoD will review a personnel action to determine if it violated Reference (b) if the request for review from a DCIPS employee is filed with the DoD Hotline. If a request for review is filed with a DoD Component IG, IG DoD will:

a. Receive notification from a DoD Component IG of all reprisal allegations from DCIPS employees submitted to that Component pursuant to section A.

b. Review and approve the determination by a DoD Component IG that investigation of an allegation submitted to that Component is not warranted.

c. Expeditiously initiate or request the DoD Component with a statutory IG to initiate an investigation when IG DoD determines that sufficient evidence exists to warrant an investigation. When the IG DoD requests a Component with a statutory IG to conduct an investigation, ensure that the IG conducting the investigation is outside the supervisory chain of the employee submitting the allegation(s) as well as the individual(s) alleged to have taken the reprisal action.

d. Review and approve the results of investigations conducted by DoD Component statutory IGs. Initiate a follow-up investigation to correct inadequacies or ensure that the DoD Component statutory IG corrects them, if the review determines that an investigation is inadequate.

e. In substantiated cases, recommend that the DoD Component take specific corrective action to return the employee, as nearly as practicable and reasonable, to the position such employee would have held had the reprisal not occurred.

f. Ensure the standards of proof applied in the investigation are a preponderance of evidence for establishing that a protected disclosure was a factor in the personnel action and clear and convincing evidence for establishing that the action would have occurred absent the protected disclosure.

3. DoD COMPONENT IG ACTION

a. Consistent with section A of Reference (b), the IGs of the DoD Components with DCIPS positions will establish internal procedures for receiving and reporting allegations of reprisal pursuant to Reference (b). Further, they will:

(1) Notify the IG DoD within 10 working days of receiving any allegation of reprisal from a DCIPS employee pursuant to Reference (b) and provide a copy of the written complaint to the IG DoD, ensuring that classified materials are submitted through appropriate channels.

(2) If IG DoD does not retain the allegation for investigation, expeditiously determine whether there is sufficient evidence to warrant an investigation of an allegation of reprisal pursuant to Reference (b).

(3) Forward to the IG DoD for review any determination that there is not sufficient evidence to warrant investigation. If the IG DoD concurs with the determination of the DoD Component IG that there is not sufficient evidence to warrant investigation, the Component IG will notify the employee making the allegation.

(4) Report as appropriate pursuant to DoD 5240.1-R (Reference (h)) and DTM 08-052 (Reference (i)) any allegation of reprisal that qualifies as a questionable intelligence activity.

b. Consistent with section A of Reference (b), statutory IGs of DoD Components with DCIPS positions will also establish internal procedures for investigating allegations of reprisal pursuant to Reference (b). Those procedures will include:

(1) Expeditiously initiating an investigation when it has been determined that an investigation is warranted or upon receiving a request to do so from the IG DoD.

(2) Forwarding reports of investigation of such allegations to the IG DoD for approval.

(3) In substantiated cases, recommending that the DoD Component take specific corrective action to return the employee, as nearly as practicable and reasonable, to the position such employee would have held had the reprisal not occurred.

(4) Ensuring the standards of proof applied in the investigation are a preponderance of evidence for establishing that a protected disclosure was a factor in the personnel action, and clear and convincing evidence for establishing that the action would have occurred absent the protected disclosure.

4. IG DoD REVIEW OF SECURITY ACTIONS. Pursuant to section B of Reference (b), the IG DoD will determine whether an action affecting eligibility for access to classified information violated Reference (b).

a. Upon receipt of an allegation from an employee or notice from any DoD personnel security adjudication facility, Defense Office of Hearings and Appeals, or Personnel Security Appeals Boards that an employee has alleged an action affecting eligibility for access to classified information violated Reference (b), IG DoD will review the allegation, determine whether an investigation of the allegation is warranted and, as appropriate, may initiate its own investigation expeditiously or review a fully developed record following completion of DoD established administrative procedures used to review security clearance determinations in accordance with section 5.2 of Reference (e).

b. The IG DoD will ensure the standards of proof applied in determining whether reprisal occurred are a preponderance of the evidence for establishing that a protected disclosure was a factor in the security clearance determination and clear and convincing evidence for establishing that the action would have been taken absent the protected disclosure.

c. In substantiated cases, the IG DoD may recommend the DoD Component head reconsider the employee's eligibility for access to classified information consistent with national security and Reference (e).

d. The IG DoD may recommend that the DoD Component take any appropriate corrective action to return the employee, as nearly as practicable and reasonable, to the position the employee would have held had the reprisal not occurred, and the DoD Component head will carefully consider the findings and actions recommended.

5. PARTICIPATION IN THE IGIC EXTERNAL REVIEW PANEL. The IG DoD will serve on the IGIC external review panel in accordance with Reference (b).

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

DCIPS	Defense Civilian Intelligence Personnel System
DTM	directive-type memorandum
IG	inspector general
IG DoD	Inspector General of the Department of Defense
IGIC	Inspector General of the Intelligence Community
PPD	Presidential policy directive
USD(I)	Under Secretary of Defense for Intelligence
USD(P&R)	Under Secretary of Defense for Personnel and Readiness

PART II. DEFINITIONS

These terms and their definitions are for the purposes of this DTM.

eligibility for access to classified information. The result of the determination whether an employee is:

Eligible for access to classified information in accordance with Reference (e) (relating to access to classified information) and Executive Order 10865 (Reference (j)) (relating to safeguarding classified information with industry), and

Possesses a need to know under such orders.

Intelligence Community element. Includes the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, the National Security Agency, and the National Reconnaissance Office, and any other DoD Component determined by the President pursuant to section 2302(a)(2)(C)(ii) of Reference (d), to have as its principal function the conduct of foreign intelligence or counterintelligence activities.

personnel action. An appointment, promotion, detail, transfer, reassignment, demotion, suspension, termination, reinstatement, restoration, reemployment, or performance evaluation; a decision concerning pay, benefits, or awards; a decision concerning education or training if the education or training may reasonably be expected to lead to an appointment, reassignment, promotion, or performance evaluation; a decision to order psychiatric testing or examination; and any other significant change in duties, responsibilities, or working conditions. Does not include:

Any actions taken prior to October 10, 2012.

Actions taken with respect to a member of the Military Services, as used in section 1034 of Title 10, United States Code (Reference (k)).

Actions taken with respect to an employee in a DCIPS position that the DoD Component head has designated, prior to the action, as being of a confidential, policy determining, policy making, or policy advocating character.

Terminations of an employee pursuant to section 1609 of Reference (k).

Certain terminations of an employee pursuant to sections 3024(m) and 3036(e) of Title 50, United States Code (Reference (l)) or section 7532 of Reference (d).

protected disclosure. Defined in Reference (b).

statutory IG. An IG with authority pursuant to the Appendix to Reference (d).