



Transportation Security Administration

Office of Human Capital

TSA MD 1100.75-3, Handbook

Addressing Unacceptable Performance and Conduct

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Signed

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Transportation
Security
Administration

**TSA HANDBOOK TO
MANAGEMENT DIRECTIVE No. 1100.75-3
ADDRESSING UNACCEPTABLE PERFORMANCE AND CONDUCT**

This Handbook and all related Appendices and/ or Attachments contain stipulations to implement the provisions of [TSA MD 1100.75-3, Addressing Unacceptable Performance and Conduct](#). Until such time as TSA MD 1100.75-3 is rescinded, the Management Directive, Handbook, Appendices, and any Attachments are considered TSA policy, and must be applied accordingly.

Summary of Changes:

Section A, Definitions, redefined Conduct-Based Action, One-Step Process, Performance-based action, and Substantial Evidence; added definitions of Bargaining Unit Employee (BUE), Efficiency of the Service Standard, and National Resolution Center; added reference to Article 1 of the Collective Bargaining Agreement between TSA and the American Federation of Government Employees (AFGE).

Section B, Pre-Decisional Process, clarified.

Section C, Corrective Actions, the retention period for Letters of Counseling changed to five years; added reference to BUEs; removed references to HCM 771-3, *Peer Review*, and added references to HCM 771-4, *National Resolution Center*.

Section D, One and Two-Step Processes, clarified what is required for Letters of Reprimand (LORs); added provisions when using the One-step process; added sleeping on duty while assigned to a security activity and arrests for any offenses listed in Appendix A(2) under one-step removal process.

Section E, Disciplinary Actions, clarified what is required for Letters of Reprimand; removed references to HCM 771-3 and added references to HCM 771-4.

Section J, Appeal Rights and Grievance Procedures, removed references to HCM 771-3 and added references to HCM 771-4.

Appendix A, TSO Offenses for Which Removal is Required/Permitted, modified the list of offenses for which removal is permitted on the first offense; Sleeping on duty while assigned to a security activity moved under TSO offenses for which removal is required.

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A. DEFINITIONS:

- (1) Adverse Action: A suspension of more than 14 days, including an indefinite suspension, an involuntary demotion for performance/conduct, or a removal.
- (2) Aggravating Factors: Considerations that may enhance the severity of the penalty selected, e.g., the employee's prior disciplinary/adverse action record.
- (3) Bargaining Unit Employee (BUE): The following full- and part-time non-supervisory personnel carrying out screening functions under 49 U.S.C. § 44901, as that term is used in the Aviation and Transportation Security Act of 2001, § 111(d). BUEs, as defined in Section II of the Determination, include Transportation Security Officers (TSOs), Lead Transportation Security Officers, and Master and Expert Transportation Security Officers, including Behavior Detection Officers, Security Training Instructors, and Equipment Maintenance Technicians.

NOTE: Coordination Center Officers and Supervisory Transportation Security Officers are not BUEs.

- (4) Charge: A description or labeling of the specific act(s) of unacceptable conduct or performance that form the basis for a proposed adverse or disciplinary action.
- (5) Conduct-based Action: Taking appropriate action when dealing with job-related or off-duty behavior that does not meet communicated and/or expected standards described in laws, rules, regulations and other authoritative policies and guidance, written and unwritten. Conduct-based actions may be held to the preponderance of the evidence standard or the substantial evidence standard, as appropriate.
- (6) Corrective Action: An administrative or non-disciplinary action, such as a Letter of Counseling or a Letter of Guidance and Direction, that informs an employee about unacceptable performance or conduct that should be corrected or improved.
- (7) Day: Calendar day.
- (8) Deciding Official: A management official or an Office of Professional Responsibility (OPR) official, where applicable, with the authority to impose adverse or disciplinary action.
- (9) Demotion: Voluntary or involuntary change to a lower pay band or rate of pay.
- (10) Disciplinary Action: Actions consisting of a Letter of Reprimand to a suspension of 14 days or less.
- (11) Efficiency of the Service Standard: An employee may be subject to corrective, disciplinary, or adverse action for such cause as will promote the efficiency of the service. This standard generally means that the action must be taken to further a legitimate government interest.

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Taking adverse or disciplinary action would promote the efficiency of the service when, for example, an employee fails to perform his or her duties acceptably, interferes with other employees' performance of their duties, or exhibits conduct that adversely affects the agency's ability to accomplish its mission.

NOTE: TSES members may be removed for unacceptable performance, misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment. Refer to [TSA MD 1100.30-24, *Transportation Security Executive Service Program*](#), for additional information.

- (12) Intentional Serious Security Breach: Any action or incident involving the intentional, unauthorized and uncontrolled access of persons or property into a sterile or secured area of an airport or TSA facility that is determined by TSA to pose a serious risk to life, safety, or the security of the transportation network, including the traveling public, and which requires an immediate response by TSA and/or law enforcement personnel.
- (13) Letter of Reprimand (LOR): The least severe form of disciplinary action that may be issued to address unacceptable performance or conduct. LORs must be placed in the employee's electronic Official Personnel Folder (eOPF) for a specified time, not to exceed two years from the date the letter was issued. The affected employee's supervisor may indefinitely maintain a copy for his/her files after it is removed from the eOPF to show that the employee was on notice of the matters referenced in the letter. If OPR issues the LOR, OPR may maintain a copy for the same purpose. Further, the OPR Assistant Administrator or the management official who issued the LOR has the authority to remove the LOR from the eOPF prior to the end of the two-year period.
- (14) Mitigating Factors: Considerations that may lessen the severity of the penalty selected, (e.g., the employee's superior work record).
- (15) National Resolution Center (NRC): The TSA office within the Office of Human Capital (OHC) responsible for managing the Unitary Dispute Resolution System (UDRS), the Integrated Conflict Management System (ICMS), the TSA non-EEO mediation program, and other alternative dispute resolution services.
- (16) Nexus: For the purposes of an adverse or disciplinary action, it is a connection between a legitimate government interest and the employee's unacceptable performance, conduct, or matter that is the basis for the adverse or disciplinary action. Nexus is presumed when the basis for adverse or disciplinary action is an employee's unsatisfactory job performance or on-duty misconduct, or in the case of criminal activity or other egregious or especially notorious misconduct. However, actions also may be taken against an employee because of off-duty misconduct where there is a nexus between the conduct and the TSA mission and/or effective operation of the agency.
- (17) Notice Period: Time frame provided to the employee to provide a response to the proposed adverse or disciplinary action.

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- (18) Non-Disciplinary Action: Certain actions by an employee that are not considered unacceptable performance or conduct may warrant action that promotes the efficiency of the service.
- (19) One-Step Process: The expedited process in which an adverse or disciplinary action may be issued after a meeting with the employee to discuss the allegations/charges, in lieu of a written notice of the proposed action, and an opportunity at the meeting for the employee to respond to the allegations/charges. The one-step process is used only for select actions for TSOs. See Section D for additional information.
- (20) Pay Band: A level in TSA's compensation and position classification framework that sets a minimum and maximum rate of basic pay for an occupation based on position category (e.g., Professional, Technical, Specialized, etc.), duties, competencies, and level of responsibility. TSA uses 13 pay bands representing all of its occupations.
- (21) Performance-based Action: An action taken at any time during the performance appraisal period to address an employee's failure to meet performance expectations at the achieved expectations level. The goal of such action is to improve employee performance. Performance-based actions are held to the substantial evidence standard. (See [TSA MD 1100.43-3, *Employee Performance Management Program*](#), or, for BUEs, see [TSA MD 1100.43-4 *Transportation Officer Performance System*](#), and Article 1 of the Collective Bargaining Agreement (CBA) between TSA and the American Federation of Government Employees, collectively).
- (22) Pre-decisional Process: The process management engages in to determine whether or not a corrective, disciplinary, or adverse action should be proposed or issued. Refer to Section B for additional information.
- (23) Preponderance of the Evidence: That degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a purported fact is more likely to be true than untrue.
- (24) Proposing Official: A management official, or OPR official, where applicable, with the authority to recommend an adverse or disciplinary action.
- (25) Rate of Basic Pay: The rate of pay in the Core Compensation or Transportation Security Executive Service System for the position to which the employee is, or will be, appointed. An employee's rate of basic pay includes a retained rate, but excludes additional pay of any kind (e.g., locality pay, overtime, other forms of premium pay, etc.). Basic pay is also commonly known as base salary.
- (26) Removal: Involuntary separation from TSA employment in order to promote the efficiency of the federal service.
- (27) Reprimand In Lieu of Suspension: A reprimand issued in lieu of a suspension of 1 to 14

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days. Reprimands In Lieu of Suspension are used in situations where a suspension would not be practical (e.g., for excessive absences or AWOL), or in rare instances where the employee's absence during a suspension would create an extreme hardship on the agency's mission. Reprimand In Lieu of Suspension serves the purpose of establishing a record of progressive discipline, at the level of suspension. A copy may be retained indefinitely by the affected employee's supervisor.

- (28) S.M.A.R.T. Agreement: An agreement in which the terms are Specific, Mutually acceptable, Appropriate, Realistic and Time-based. SMART agreements can be used as an alternative to discipline or to hold in abeyance a decision to take an adverse or disciplinary action.
- (29) Specification: The factual narrative describing the details of the unacceptable performance or conduct identified by the charge.
- (30) Substantial Evidence: The degree of relevant evidence that a reasonable person, considering the record as a whole, might accept as adequate to support a conclusion, even though other reasonable persons might disagree. It is a lower standard than preponderance of the evidence.
- (31) Sufficiency Review:
 - (a) A preponderance of the evidence, or substantial evidence, as applicable, that supports the unacceptable conduct or performance occurred;
 - (b) There is a nexus or connection between a legitimate government interest and the misconduct/performance/matter that is the basis for the adverse or disciplinary action; and
 - (c) The penalty is reasonable.
- (32) Two-Step Process: The procedure in which management officials issue a written notice of proposed action to the employee, provide the affected employee with an opportunity to respond, and issue a written notice of decision.
- (33) Suspension: Placement of an employee in a non-duty, non-pay status for conduct reasons or pending certain investigative, judicial, or law enforcement proceedings. A suspension may be imposed for a specified time or for an indefinite period.
- (34) Veterans' Preference Eligibility: For the purposes of this policy, an employee who meets the criteria set forth in 5 U.S.C. § 2108.

B. PRE-DECISIONAL PROCESS:

The following steps, as applicable, must be completed prior to taking any adverse or disciplinary action, with the exception of LORs. However, if corrective action is taken, management officials may take the following steps.

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- (1) Assess the incident/allegation/matter;
- (2) Engage in relevant fact-finding to the extent necessary to make an informed decision (e.g., obtain related evidence, witness statements, etc.). In general, this should be completed within 30 days of the incident/allegation/matter. The fact-finding for matters investigated by the TSA Office of Inspection, which are generally more complicated, should generally be completed within 90 days of the incident/allegation/matter;
- (3) Review all relevant evidence to ensure that the action meets the preponderance of the evidence or substantial evidence standard of proof, as appropriate;
- (4) In a one-step process, management must meet with the employee to discuss the incident or allegation, advise the employee of the possible consequences, and provide the employee with an opportunity to respond orally and/or in writing prior to deciding the action. See Section G, Penalty Determination, for a list of factors that may be used as a guide when considering an appropriate penalty;
- (5) In a two-step process, management officials must follow the procedures set forth in Section H below. Management officials are not required to meet with the employee before proposing the action; and
- (6) Determine whether adverse, disciplinary, or corrective action is appropriate.

C. CORRECTIVE ACTIONS:

- (1) Letters of Guidance and Direction/Letters of Counseling:
 - (a) Content:
 - (i) A description of the employee's unacceptable performance or conduct;
 - (ii) The supporting facts;
 - (iii) A statement of performance or conduct expectations; i.e., what the employee should do to correct the problem;
 - (iv) A statement that the action is not disciplinary. However, in Letters of Counseling, a statement is included informing the employee that if he or she does not correct the performance or misconduct, more severe adverse or disciplinary action, up to and including removal, may be initiated;
 - (v) A statement that a copy of the letter will not be placed in the employee's eOPF, but that a copy may be retained by the supervisor in his/her local files and/or by OPR, if applicable, to document that the employee has been placed on notice

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regarding the unacceptable performance or conduct;

- (vi) A statement that the letter may not be grieved; and
 - (vii) The signature of the management official who issued the letter.
- (b) Delivery and Retention:
- (i) Generally, a letter/notice should be delivered in person by the management official who signed it. Where applicable, OPR will make arrangements to deliver the letter/notice to the employee and the employee's supervisor; such delivery may be accomplished electronically. The employee should be asked to sign an acknowledgment of receipt. If the employee elects not to sign the acknowledgment, the supervisor and/or OPR's copy should be annotated with the delivery time and date, the management official's signature, and a statement that the employee received the letter/notice, but elected not to acknowledge receipt.
 - (ii) A copy is retained in the supervisor's files for up to five years, to show that the employee was on notice of the matters referenced in the letter, but no copy is filed in the employee's eOPF.
- (2) Letters of Leave Restriction:
- (a) Content:
- (i) A description of the circumstances forming the basis for placing the employee on leave restriction;
 - (ii) The requirements of the leave restriction;
 - (iii) **For non-BUEs**, a statement that management officials will review the employee's use of leave within a particular time period, no earlier than 90 days from the date issued, and no later than 180 days from the date issued, and rescind or amend the leave restriction if warranted at that time. If there is a failure to review and amend or rescind at that time, the letter will lapse.
 - (iv) **For BUEs**, leave restriction is used only for issues involving sick leave. The letter will contain a statement advising the employee that medical documentation may be required for each subsequent absence for which sick leave is requested. After a Letter of Leave Restriction is issued, management will review the employee's attendance record at least once every five (5) months. (See CBA, Article 3, Section C.2.f)
 - (v) A statement that the employee has the right to grieve the Letter of Leave Restriction under [HCM 771-4, National Resolution Center](#) or [TSA MD](#)

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[1100.77-2, Grievance Procedures](#), if applicable, and must file within 15 calendar days of receipt of the letter; and

- (vi) The signature of the management official who issued the letter.
- (b) Delivery and Retention:
- (i) Generally, a letter/notice should be delivered in person by the management official who signed it. Where applicable, OPR will make arrangements to deliver the letter/notice to the employee and the employee's supervisor; such delivery may be accomplished electronically. The employee should be asked to sign an acknowledgment of receipt. If the employee elects not to sign the acknowledgment, the supervisor and/or OPR's copy should be annotated with the delivery time and date, the management official's signature, and a statement that the employee received the letter/notice, but elected not to acknowledge receipt.
 - (ii) A copy is retained in the supervisor's files, but no copy is filed in the employee's eOPF.
- (3) SMART Agreements:
- (a) Content:
- (i) Identification of the parties to the agreement;
 - (ii) A brief description of the incident or adverse/disciplinary decision that is the basis for the agreement;
 - (iii) A list of the actions or steps the employee has agreed to take or comply with to ensure that the unacceptable performance or conduct described above is not repeated;
 - (iv) The actions management officials will take, not take, or hold in abeyance in exchange for the employee's agreement;
 - (v) A notice of what action may be taken if the employee fails to comply with the terms of the agreement;
 - (vi) A statement of any grievance or appeal rights the employee may have or, if applicable, the employee's agreement to waive those rights as they pertain to an action being held in abeyance;
 - (vii) A statement regarding how long the agreement will remain in effect. The length shall be relevant to the underlying factors as determined by management officials; and

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(viii) The signatures of the affected employee and management official who have agreed to the terms. The management official is generally the official who issued the action/decision.

(b) Delivery and Retention:

(i) The agreement normally should be delivered to the employee in person by the management official who signed the action/decision letter. Where applicable, OPR will make arrangements to deliver the agreement to the employee and the employee's supervisor; such delivery may be accomplished electronically.

(ii) A copy is retained in the supervisor's files. It is not filed in the employee's eOPF.

D. ONE AND TWO-STEP PROCESSES:

TSA has both one-step and two-step processes for the issuance of adverse or disciplinary actions. The one-step process may only be used for specified actions and only **for TSOs**. The two-step process must be used for all other disciplinary/adverse actions, with the exception of LORs and may also be used for those actions allowed under the one-step procedure.

NOTE: LORs are not subject to the one- or two-step process, although they are subject to steps 1, 2, 3 and 6 of the pre-decisional process as described in Section B.

(1) One-Step Process:

(a) Prior to imposing a one-step adverse or disciplinary action, OPR or management officials must ensure that the pre-decisional meeting described in Section B(4) is held with the employee and the employee is afforded the opportunity to respond to the allegations orally and/or in writing.

(b) The one-step process may be used only for the following actions issued to TSOs. The one-step actions in (i), (ii) and (iii) below must meet the preponderance of evidence standard of proof. The one-step actions in (iv) below must meet the substantial evidence standard of proof.

(i) Reprimands In Lieu of Suspension (for three days or less);

(ii) Suspensions of three days or less;

(iii) Indefinite suspensions relating to misconduct by TSOs that necessitates immediate action under the conditions set forth in Section I; and

(iv) Removals involving the following:

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- (a) Validated failure of drug test;
- (b) Validated failure of alcohol test (on duty);
- (c) Refusal to submit to TSA-ordered drug or alcohol testing;
- (d) Cases involving theft, illegal drug use, possession of illegal drugs, on-duty alcohol use, or being under the influence of drugs or alcohol while on duty;
- (e) Intentional serious security breaches;
- (f) Sleeping on duty while assigned to a security activity; and
- (g) Arrests for any of the offenses listed in Appendix A, Section (2)(g).

NOTE: Section (2) of Appendix A includes all disqualifying offenses listed in 49 C.F.R. § 1542.209(d).

- (c) The decision must be issued in accordance with the procedures set forth in Sections H(4) and (5).
- (d) When considering using the one-step process for a removal under D(1)(b)(iv)(g), OPR or the responsible management official shall consider the following factors, as appropriate:
 - (i) Whether the employee has been indicted, or there is equivalent legal process (such as a criminal information or sworn criminal complaint);
 - (ii) Whether the employee has been arrested pursuant to a warrant issued by a judge or magistrate;
 - (iii) Whether the employee has been released on his/her own recognizance;
 - (iv) Whether bail has been denied;
 - (v) Whether any information, including but not limited to, police reports or witness statements were made available to TSA;
 - (vi) Whether the arrest was made based solely on uncorroborated assertions of a third party whose veracity is questionable.

NOTE: An employee subject to a one-step removal issued under D(1)(b)(iv)(g) based on an arrest, prior to conviction, for whom all criminal charges are ultimately dropped by the prosecuting authority, or who is later acquitted of such charges, may seek reconsideration of his/her removal by the AA/OHC. Whether to grant the request is

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within the sole discretion of TSA. This NOTE is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable by any party against TSA.

(2) Two-Step Process:

- (a) The two-step process requires the issuance of a written notice of proposed action and notice of decision. A pre-decisional meeting is optional under this process. The content of the proposal and decision notices are described in Section H.
- (b) The following actions are subject to the two-step process:
 - (i) Reprimand In Lieu of Suspension of more than three days for TSOs and any length for non-TSOs;
 - (ii) Suspension of 1-14 days (for non-TSOs); Suspension of 4-14 days (for TSOs); and
 - (iii) Adverse actions.
- (c) Designation of Proposing and Deciding Officials for two-step adverse or disciplinary actions: In general, the proposing official is a management official within the employee's chain of supervision, while the deciding official is a management official in the employee's chain of supervision higher than the proposing official. Refer to Appendices B and C for additional information.

NOTE: OPR will issue the proposal and decision notices in matters it adjudicates. See [TSA MD 1100.75-7, Office of Professional Responsibility](#), for additional information.

E. DISCIPLINARY ACTIONS:

(1) Letters of Reprimand (LORs):

- (a) Content:
 - (i) A description of the unacceptable performance or conduct that is the basis for the LOR;
 - (ii) The supporting facts;
 - (iii) A statement that repetition of the unacceptable performance or conduct may lead to additional, more severe adverse or disciplinary action, up to and including removal;
 - (iv) A statement that the letter will be placed in the employee's eOPF for up to two years, and that it may be cited as a prior formal disciplinary action in any future

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disciplinary matter;

- (v) A statement that, following removal of the letter from the employee's eOPF, the supervisor may retain a copy of the letter in his/her local files as documentation that the employee was on notice regarding the performance or conduct referenced in the letter;
 - (vi) A statement that the employee has the right to grieve the LOR in accordance with [HCM 771-4, National Resolution Center](#), or [TSA MD 1100.77-2, Grievance Procedures](#), if applicable, and must file within 15 calendar days of receipt of the letter.
 - (vii) The signature of the management official who issued the letter.
- (b) Delivery and Retention:
- (i) Generally, the LOR should be delivered in person by the management official who signed it. Where applicable, OPR will make arrangements to deliver the LOR to the employee and the employee's supervisor; such delivery may be accomplished electronically. The employee should be asked to sign an acknowledgment of receipt. If the employee elects not to sign the acknowledgment, the supervisor and/or OPR's copy should be annotated with the delivery time and date, the management official's signature, and a statement that the employee received the letter/notice, but elected not to acknowledge receipt.
 - (ii) A copy of the LOR may be retained in the employee's eOPF for up to two years, and upon removal from the eOPF, may be retained indefinitely by the supervisor and/or OPR, as applicable.
- (2) Reprimand In Lieu of Suspension: The one-step process may be used for Reprimands In Lieu of Suspension of one to three days for TSOs only; the two-step process must be used in all other cases.
- (a) Prior to effecting a Reprimand In Lieu of Suspension under this process, the procedures outlined in Sections B and G must be followed.
 - (b) The proposal and/or decision will be issued in accordance with Section H.
 - (c) Delivery of Proposal and Decision Notices:
 - (i) Both the proposal and decision notices should be delivered in person, and the employee should be asked to sign an acknowledgment of receipt. Where applicable, OPR will make arrangements to deliver the letter/notice to the employee and the employee's supervisor; such delivery may be accomplished electronically. If the employee elects not to sign, the file copy shall be annotated

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with the delivery time and date, the signature of the individual who delivered the notice, and a statement that the employee received the notice, but elected not to acknowledge receipt.

- (ii) If the employee is not on duty or otherwise available to receive it in person, the notice should be delivered both by first class mail and by a delivery method where a signed receipt is requested (e.g., express mail delivery or certified mail with a return receipt requested). TSA will consider that the employee received a regular mailing five days from the date on which the notice was sent, and may use that date as the delivery date or the date on which the employee signed for the express delivery or certified notice, whichever is earlier.
- (3) Suspensions of 14 days or less: The one-step process (for TSOs only) may be used for suspensions of three days or less. The two-step process must be used for all other suspensions, with the exception of certain cases of indefinite suspensions under Section I.
- (a) Prior to effecting a suspension under this process, the procedures outlined in sections B and G must be followed.
 - (b) The proposal and/or decision must be issued in accordance with the procedures set forth in Section H.
 - (c) Delivery of Proposal and Decision Notices:
 - (i) Both the proposal and decision notices should be delivered in person, and the employee should be asked to sign an acknowledgment of receipt. Where applicable, OPR will make arrangements to deliver the letter/notice to the employee and the employee's supervisor; such delivery may be accomplished electronically. If the employee elects not to sign, the file copy shall be annotated with the delivery time and date, the signature of the individual who delivered the notice, and a statement that the employee received the notice, but elected not to acknowledge receipt.
 - (ii) If the employee is not on duty or otherwise available to receive it in person, the notice should be delivered both by first class mail and by a delivery method where a signed receipt is requested (e.g., express mail delivery or certified mail with a return receipt requested). TSA will consider that the employee received a regular mailing five days from the date on which the notice was sent, and may use that date as the delivery date or the date on which the employee signed for the express delivery or certified notice, whichever is earlier.

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F. ADVERSE ACTIONS:

- (1) Adverse actions must be issued under the two-step process, which requires the issuance of a written notice of proposed action and notice of decision. A pre-decisional meeting is optional under this process.
- (2) Exception: The one-step process may be used for indefinite suspensions relating to alleged misconduct by TSOs that necessitates immediate action under the conditions set forth in Section I, and for TSO removals described in Section D(1) above.
- (3) Designation of proposing and deciding officials: In general, the proposing official is a management official within the employee's chain of supervision, while the deciding official is a management official in the employee's chain of supervision higher than the proposing official.

NOTE: OPR will issue the proposal and decision notices in matters it adjudicates. See [TSA MD 1100.75-7, *Office of Professional Responsibility*](#), for additional information.

G. PENALTY DETERMINATION:

The penalty factors below provide guidance for determining the appropriate penalty. Not all of the factors are relevant in all cases, and other factors relevant to the case may also be considered. [The Table of Offenses and Penalties \(Table\)](#) provides guidance in determining the appropriate penalty. The proposal and decision notices, and any document comprising a corrective action, should refer to the relevant part of the Table, if applicable.

NOTE: These factors do not apply to mandatory removals described in Appendix A or actions involving unacceptable performance, or non-disciplinary removals such as an employee's medical inability to perform or failure to accept a directed reassignment.

- (1) The nature and seriousness of the offense, and its relationship to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated.
- (2) The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position. For example, certain employees such as supervisors or law enforcement officers may be held to higher standards than other employees.
- (3) The employee's past adverse or disciplinary action record. If past discipline is used, it must be mentioned in the notice of proposed action.
- (4) The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability.

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- (5) The effect of the offense upon the employee's ability to perform at a satisfactory level, and its effect upon the supervisors' confidence in the employee's ability to perform assigned duties.
- (6) Consistency of the penalty with those imposed upon similarly situated employees for the same or similar offenses.
- (7) The notoriety of the offense or its impact upon the reputation of the agency.
- (8) The clarity with which the employee was on notice of any rules violated in committing the offense or had been warned about the conduct in question.
- (9) The clarity with which the employee was on notice of performance expectations and problems with his or her performance.
- (10) Potential for the employee's rehabilitation.
- (11) Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice, or provocation on the part of others involved in the matter.
- (12) The adequacy and effectiveness of alternative actions to deter such conduct or improve performance in the future by the employee or others.

H. ADJUDICATION PROCESS / PROPOSAL AND DECISION:

- (1) The notice of proposed adverse or disciplinary action should, in general, be issued within 30 days of the completion of the fact-finding inquiry, and must include the following information:
 - (a) The charge(s) and specification(s) for each charge including a description of the evidence that supports the charge(s);
 - (b) The proposed penalty;
 - (c) A discussion of any aggravating or mitigating factors that were considered in determining the proposed penalty;
 - (d) A statement that the employee has the right to present an oral and/or written reply to the proposal within seven calendar days. This time limit may be extended for good cause shown. A request for reconsideration may be presented orally or in writing;
 - (e) A statement that the employee may be represented by an individual of the employee's choosing in preparing and presenting any reply. If the employee elects to have a representative, the employee must provide the name of his/her representative to the

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deciding official in writing, and must provide written notice of any subsequent change in representation;

- (f) A statement that the employee's chosen representative may be disallowed if the representation creates a conflict of interest or position, e.g., the representative may not be in the employee's chain of supervision. If the representative is another TSA employee, he/she also may be disallowed if he/she cannot be spared because of critical TSA work. (**NOTE:** The deciding official will make this determination in consultation with OHC and/or a TSA attorney.) Refer to [TSA MD 1100.63-3, *Employee Representation*](#) for additional information. In instances where OPR is adjudicating the case, it will make this determination at its discretion;
- (g) A statement that costs associated with the employee's representation, including any travel expenses, will be borne by the employee;
- (h) A statement that the employee and the representative (if a TSA employee) will be allowed a reasonable amount of official time to review the material relied upon, and to prepare and to present the reply(ies);
- (i) A statement that the employee will be provided a copy of the material relied upon to support each charge and specification with the proposal letter. Alternatively, if the material is voluminous or contains SSI, the employee shall be given the opportunity to review the material at a designated TSA location;

NOTE: Any release or review of SSI documents must be coordinated with the SSI Office, and with field counsel/OCC.

- (j) A statement that the material relied upon will be released only to the employee and/or the employee's designated representative;
 - (k) The name of the deciding official and the individual the employee may contact to make arrangements for a reply or to ask any questions;
 - (l) A statement that the action will not be taken until after any timely reply is received and considered; or, if no reply is received, after the reply period expires; or until after the employee informs management officials that he/she does not intend to reply;
 - (m) A statement informing the employee of any change in duty status; and
 - (n) A listing of all the documents relied upon which supported the action.
- (2) Duty Status: In most cases, the employee will remain in a duty status during the notice period. However, if the proposing official determines that keeping the employee in his/her current duty status would be a threat to life, property, safety, or the efficient operation of the organization, one of the following alternatives may be used:

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- (a) If the employee requests, he/she may be allowed to use accrued annual leave, leave without pay, or previously earned compensatory time. Additionally, if appropriate, and in accordance with [TSA MD 1100.63-1, *Absence and Leave*](#), the employee may use accrued sick leave;
 - (b) The employee remains in a duty status which may include being detailed to another work unit or assigned other duties; or
 - (c) The employee is placed on administrative leave using current approval guidelines.
- (3) The Deciding Official:
- (a) Will consider the charges and specifications contained in the proposal notice, the supporting documentation that the employee was provided or had an opportunity to review, and the employee's reply. If the deciding official is or becomes aware of additional evidence other than the evidence the employee had an opportunity to review, and wishes to consider such evidence in reaching a determination, the deciding official must inform the employee and provide him or her an opportunity to review such material and reply to the additional evidence before reaching a decision on the proposed action.
 - (b) Will consider the employee's written reply, and if applicable, the employee's oral reply. If the deciding official's designee hears the oral reply, he or she shall prepare written notes or a written summary of the reply which will be given due consideration by the deciding official.
 - (c) Will decide the appropriate penalty.
- (4) Content of Decision:
- (a) The decision should, in general, be issued within 21 days of the employee's reply to the proposed action, and must address each charge and specification and inform the employee of the deciding official's determination on each charge including the basis for the determination;
 - (b) The decision must inform the employee that the employee's reply was considered and should discuss defenses raised by the employee;
 - (c) If the decision is to impose the proposed action, the notice will discuss the penalty determination including any relevant mitigating and aggravating factors considered, as appropriate;
 - (d) The decision must provide the effective date of the action, as appropriate; and

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- (e) The decision must provide applicable grievance procedures or appeal rights including time limits, information where to send the grievance or appeal, and must include a copy of any procedures or regulations where required; and
- (f) If the decision is a removal, the decision must include statements regarding the employee's obligation to protect SSI, and directions to return all TSA property and uniforms.

(5) Delivery of Proposal and Decision Notices:

- (a) Both the proposal and decision notices should be delivered in person, and the employee should be asked to sign an acknowledgment of receipt. Where applicable, OPR will make arrangements to deliver the letter/notice to the employee and the employee's supervisor; such delivery may be accomplished electronically. If the employee elects not to sign, the file copy shall be annotated with the delivery time and date, the signature of the individual who delivered the notice, and a statement that the employee received the notice, but elected not to acknowledge receipt.
- (b) If the employee is not on duty or not available to receive it in person, the notice should be delivered both by first class mail and by a delivery method where a signed receipt is requested (e.g., express mail delivery or certified mail with a return receipt requested). TSA will consider that the employee received a regular mailing five days from the date on which the notice was sent, and may use that date as the delivery date or the date on which the employee signed for the express delivery or certified notice, whichever is earlier.

I. INDEFINITE SUSPENSIONS: An indefinite suspension is appropriate when evidence (i.e., more than a mere suspicion or allegation) exists to demonstrate misconduct. The mere fact of an employee being investigated does not automatically result in indefinite suspension. For example, an employee being investigated for alleged discrimination would not necessarily result in an indefinite suspension unless the alleged discrimination impacted the safety of other employees.

(1) Conditions under which indefinite suspensions may be imposed:

- (a) Employee has been indicted, or there is equivalent legal process (such as a criminal information or bench appearance), for a crime for which a sentence of imprisonment may be imposed;
- (b) Employee has been arrested pursuant to a warrant issued by a judge or magistrate for a crime for which a sentence of imprisonment may be imposed;
- (c) An investigation being conducted on serious allegations against an employee that represents a threat, which is so serious that if it proves to be true, the employee's continued presence at the worksite would represent a threat to life, property, safety or the effective operation of the workplace. This could include investigation into or

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allegations of theft, fraud or falsification, for example, where there is substantial evidence for which removal would be the likely outcome; or

- (d) An employee's security clearance has been suspended, denied, or revoked, and a security clearance is a condition of employment or is otherwise required for the employee's position.

NOTE: Once an indefinite suspension is imposed, management officials must determine if subsequent action, e.g., removal, is justified. If justified, management officials should initiate appropriate action to propose, or issue (if one-step is appropriate), the removal. If it is determined that further action is not warranted, the indefinite suspension will be terminated and the employee returned to duty.

(2) General:

- (a) TSA may take action to discharge an employee during the period of an indefinite suspension, if warranted, whether or not criminal charges have been resolved, and whether or not such charges have been resolved in favor of the employee. Such action must be for such cause as will promote the efficiency of the service.
- (b) As these actions often are connected with on-going investigations (administrative, civil, or criminal) it is important not to disclose information or evidence that could undermine or jeopardize any ongoing investigation or potential criminal prosecution.

(3) Reconsideration of Indefinite Suspensions Under the One-Step Process:

- (a) Once an indefinite suspension has been imposed under the one-step process, the employee has seven calendar days from the effective date to submit a written request for reconsideration. This time limit may be extended for good cause shown. The reconsideration must include any supporting evidence. A request for reconsideration may be made orally and/or in writing.
- (b) Upon receipt of a timely request for reconsideration, the deciding official should, in general, issue a decision within seven days of the filing of the request for reconsideration to determine if the indefinite suspension should be continued, or if the employee should be returned to duty status.
- (c) If the decision is to return the employee to duty, the deciding official will also recommend if back pay for the suspension period, or any portion thereof, is appropriate. Back pay may be appropriate if failure to pay back pay would result in an injustice to the employee because of the employee's lack of culpability in the incident for which he/she was suspended. AA/OHC shall determine if back pay is appropriate. Indefinite suspensions based on a criminal indictment or an arrest warrant normally will not result in payment of back pay.

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- (d) The decision regarding the reconsideration shall be prepared and issued in accordance with the procedures set forth in Sections H(3), (4), and (5) above.
- (e) An employee may request reconsideration of an indefinite suspension at any time based upon newly acquired information that was not available at the time of the decision to impose the indefinite suspension.

J. APPEAL RIGHTS AND GRIEVANCE PROCEDURES:

- (1) Disciplinary Actions: Upon receipt of a disciplinary action, employees may file a grievance under the procedures set forth in [HCM 771-4, National Resolution Center](#), or [TSA MD 1100.77-2, Grievance Procedures](#), if applicable.
- (2) Adverse actions:
 - (a) Non-TSOs with veterans' preference (preference-eligible) who have at least one year of current continuous service in the same or similar position may appeal to the Merit Systems Protection Board (MSPB).
 - (b) Non-TSOs (non-preference eligible) who have at least two years of current continuous service in the same or similar position may appeal to the MSPB.

NOTE: MSPB regulations can be found in 5 CFR, Part 1201, and on the MSPB website at www.mspb.gov.
 - (c) TSOs with veterans' preference (preference-eligible) who have at least one year of current continuous service in the same or similar position may appeal to the OPR Appellate Board, in accordance with [TSA MD 1100.77-1, OPR Appellate Board](#).
 - (d) TSOs (non-preference eligible) who are not serving in a trial period or who have completed two years or more in a time-limited appointment of more than two years, may appeal to the OPR Appellate Board.
- (3) Indefinite suspensions: The basis for continuing an indefinite suspension may be appealed to MSPB or to the OPR Appellate Board, where applicable, at any time during the suspension period but no later than 30 days after its termination. However, the basis for the decision imposing an indefinite suspension may not be appealed after 30 days from its effective date.

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APPENDIX A: TSO OFFENSES FOR WHICH REMOVAL IS REQUIRED/PERMITTED

(1) TSO Offenses For Which Removal Is **Required**¹:

- (a) Failure to maintain TSO certification requirements;
- (b) Validated failure of drug test;
- (c) Validated failure of alcohol test (on duty);
- (d) Refusal to submit to TSA-ordered drug or alcohol testing;
- (e) Cases involving theft, illegal drug use, possession of illegal drugs, on-duty alcohol use, or being under the influence of drugs or alcohol while on duty;
- (f) Sleeping on duty while assigned to a security activity;
- (g) Intentional serious security breaches, including:
 - (i) Knowingly operating checkpoint and baggage equipment that is either not working or not turned on; and
 - (ii) Intentionally conducting improper screening procedures or intentionally allowing persons or property to bypass required screening.

(2) TSO Offenses For Which Removal Is Permitted for the First Offense:

- (a) Any intentional act that undermines security operations and the trust and confidence of the traveling public in the integrity of the nation's transportation system;
- (b) Any action involving the intentional and unauthorized disclosure of SSI;
- (c) Falsification of security logs;
- (d) Failure to conduct an operational check at the start of a shift;
- (e) Any felony conviction regardless of nexus to employment;
- (f) Misuse of TSO metal badge, including impersonating a federal or other law enforcement officer, or use of the metal badge in an attempt to gain special favor or privilege; and

¹ A Federal Security Director (FSD) may seek an exception to mandatory removal by submitting a written request explaining the exculpatory facts and circumstances through the appropriate Regional Director to the Deputy Assistant Administrator for the Office of Security Operations. For OPR cases, the exception may be filed with the OPR Director.

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- (g) An arrest for any of the following offenses:
 - (i) Forgery of certificates, false marking of aircraft, and other aircraft registration violation; 49 U.S.C. 46306;
 - (ii) Interference with air navigation; 49 U.S.C. 46308;
 - (iii) Improper transportation of a hazardous material; 49 U.S.C. 46312;
 - (iv) Aircraft piracy; 49 U.S.C. 46502;
 - (v) Interference with flight crew members or flight attendants; 49 U.S.C. 46504;
 - (vi) Commission of certain crimes aboard aircraft in flight; 49 U.S.C. 46506;
 - (vii) Carrying a weapon or explosive aboard aircraft; 49 U.S.C. 46505;
 - (viii) Conveying false information and threats; 49 U.S.C. 46507;
 - (ix) Aircraft piracy outside the special aircraft jurisdiction of the United States; 49 U.S.C. 46502(b);
 - (x) Lighting violations involving transporting controlled substances; 49 U.S.C. 46315;
 - (xi) Unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements; 49 U.S.C. 46314;
 - (xii) Destruction of an aircraft or aircraft facility; 18 U.S.C. 32;
 - (xiii) Murder;
 - (xiv) Assault with intent to murder;
 - (xv) Espionage;
 - (xvi) Sedition;
 - (xvii) Kidnapping or hostage taking;
 - (xviii) Treason;

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- (xix) Rape, aggravated sexual abuse, or any offense of sexual misconduct or exploitation involving a minor or child pornography;
- (xx) Unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon;
- (xxi) Extortion;
- (xxii) Armed or felony unarmed robbery;
- (xxiii) Distribution of, or intent to distribute, a controlled substance;
- (xxiv) Felony arson;
- (xxv) Felony involving a threat;
- (xxvi) Felony involving—
 - (a) Willful destruction of property;
 - (b) Importation or manufacture of a controlled substance;
 - (c) Burglary;
 - (d) Theft;
 - (e) Dishonesty, fraud, or misrepresentation;
 - (f) Possession or distribution of stolen property;
 - (g) Aggravated assault;
 - (h) Bribery; or
 - (i) Illegal possession of a controlled substance punishable by a maximum term of imprisonment of more than one year;
- (xxvii) Violence at international airports; 18 U.S.C. 37; and

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(xxviii) Conspiracy or attempt to commit any of the criminal acts listed in subsection (2)(g) of this Appendix.

NOTE: Nothing in this Handbook or related MD prevents management officials from removing an employee after a first offense when the misconduct is so serious as to warrant removal, such as engaging in activity that seriously undermines security interests or poses a threat or danger to TSA employees or to the traveling public, or results in significant monetary loss.

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APPENDIX B: DELEGATION OF AUTHORITY FOR TSOs

FSDs have the authority to impose suspensions, including indefinite suspensions, involuntary demotions for performance/conduct, and removals for any TSO in the FSD's chain of supervision.

An FSD **may** delegate certain authority related to non-disciplinary, disciplinary, and adverse actions as summarized below.

NOTE: This delegation does not apply to matters adjudicated by OPR².

Letter of Guidance/Direction, Letter of Counseling, and Letter of Leave Restriction	Supervisory TSO (STSO) or higher.
Letter of Reprimand	STSO or higher.
Deciding Official (Suspension of 1-3 days/Reprimand in Lieu of Suspension for 1-3 days)	Transportation Security Manager (TSM) or higher.
Proposing Official (Suspension of 4-14 days/Reprimand in Lieu of Suspension for more than 3 days)	STSO or higher.
Deciding Official (Suspension of 4-14 days/ Reprimand in Lieu of Suspension for more than 3 days)	TSM or higher.
Proposing Official (Suspension of 15 days or more, including Indefinite Suspension, Involuntary Demotion for Performance /Conduct, and Removal)	TSM or higher.*
Deciding Official (Suspension of 15 days or more, including Indefinite Suspension, Involuntary Demotion for Performance /Conduct, and Removal)	AFSD or higher, above the Proposing Official.*

² If OPR refers a case to local management for action, it must be initiated by the FSD, but this may be delegated to a level no lower than the AFSD.

* An FSD may request to delegate this authority to the next lower level by submitting a request to the Assistant Administrator for TSA Human Capital.

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APPENDIX C: DELEGATION OF AUTHORITY FOR NON-TSOs

AAs, FSDs, and Supervisory Air Marshals in Charge (SACs) have the authority to impose suspensions, including indefinite suspensions, involuntary demotions for performance/conduct, and removals.

AAs, FSDs, and SACs **may** delegate certain authority related to adverse, disciplinary, and corrective actions, as summarized below.

NOTE: This delegation does not apply to matters adjudicated by OPR.

Letter of Guidance/Direction, Letter of Counseling, and Letter of Leave Restriction	Employee's immediate supervisor or other designated official.
Letter of Reprimand	Employee's immediate supervisor or other designated official.
Reprimand in Lieu of Suspension	Employee's immediate supervisor or other designated official.
Proposing Official (Suspension of 14 days or less)	Employee's immediate supervisor or other designated official.
Proposing Official (Suspension of 15 days or more, including Indefinite Suspension, Involuntary Demotion for Performance /Conduct, and Removal)	Employee's chain of supervision or other designated official.
Deciding Official	Employee's chain of supervision but higher than the Proposing Official.