

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Human Services

DIVISION: Family Assistance

SUBJECT: Financial Eligibility Standards for Supplemental Nutrition Assistance Program; Resource Eligibility Standards for Families First

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 71-1-105

EFFECTIVE DATES: July 26, 2012 through June 30, 2013

FISCAL IMPACT: The Department estimates that the fiscal impact of this rule to the State will not be significant. The Department reports that the changes required to ACCENT, the eligibility determination system for SNAP, are minimal, consisting primarily of a change in table values and the addition of language to the SNAP approval notice.

STAFF RULE ABSTRACT:

Currently, households applying for the Supplemental Nutrition Assistance Program (SNAP) with liquid resources in excess of \$2,000 (\$3,250 for households with an elderly or disabled member) are not eligible for SNAP benefits. The rule change eliminates the resource limit for all households (with or without an elderly/disabled member) with incomes below 200% of the federal poverty level.

The rule also updates the name of the Title IV-A program to include the current name of the program (Families First) in addition to the prior name (AFDC), and makes the resource level in the rule for that program consistent with the amount (\$2,000) approved by the federal government in the Department's welfare reform waiver in 1996 and which has been in effect since and which is also permitted by federal law.

## Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Date(s), Time(s) and Place(s) of Public Hearing(s): December 29, 2011, 1:30 p.m. Central Time, Department of Human Services, 2<sup>nd</sup> Floor Conference Room 2, Citizens Plaza Building, 400 Deaderick Street, Nashville, Tennessee 37243.

A public hearing was held on the date, time and place noted above by the Department of Human Services to receive comments regarding amendments to the above-referenced rules.

Following are comments received either orally or in writing at the public hearing(s) concerning the above rules or which were received within the time permitted for submission of comments following the hearing, together with the responses of the Department of Human Services. Similar or identical responses have been grouped together for purpose of response:

Community Food Advocates provided comments in writing in support of the proposed rule change as follows:

### Comment One:

The majority of states have already made changes to eliminate the resource limit for most SNAP applicants.

### Response:

The Department does not dispute the fact that the majority of states have either eliminated or modified their SNAP resource limits.

### Comment Two:

Allowing households to retain their savings and receive SNAP benefits promotes long-term self sufficiency

### Response:

The Department is in general agreement that families faced with a sudden loss of ongoing income should not be required to exhaust most of their savings before becoming eligible for assistance. By providing assistance to these families in the form of SNAP benefits, those savings can be utilized in ways that will allow for longer-term stability, such as making mortgage payments.

### Comment Three:

The elimination of the paperwork and time required to determine resource eligibility will reduce the workload burden on DHS eligibility staff.

### Response:

The Department concurs that the verification of resources is burdensome and time consuming. It is anticipated that SNAP applications will be processed more timely and accurately with this requirement removed.

### Comment Four:

The change will not allow households with higher incomes to be eligible for SNAP.

### Response:

DHS concurs that in relative terms this rule change will not increase the caseload significantly, primarily because the existing income limits will remain as they are today.

**Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

The United States Department of Agriculture establishes standards of eligibility for participation by households in the Food Stamp Program pursuant to 7 U.S.C. § 2014. For purposes of Acts 2007, Chapter 464, the Regulatory Flexibility Act, the Department of Human Services certifies that these rulemaking hearing rules substantially codify existing federal law, such that, pursuant to Section 6 of the Regulatory Flexibility Act, the Regulatory Flexibility Act's provisions do not apply to these rules. In addition, these rulemaking hearing rules do not appear to affect small businesses as defined in the Act because these rules are related to the determination of eligibility and provision of benefits to individuals and households who file an application for them. These rules do not regulate or attempt to regulate businesses.

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**For Department of State Use Only**

Sequence Number: 04-24-12  
 Rule ID(s): 5201  
 File Date: 07/27/2012  
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# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205*

<b>Agency/Board/Commission:</b>	Tennessee Department of Human Services
<b>Division:</b>	Family Assistance Division
<b>Contact Person:</b>	Bill Russell
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**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)**

Chapter Number	Chapter Title
1240-01-04	Financial Eligibility Requirements
Rule Number	Rule Title
1240-01-04-.02	Resource Eligibility Standards - Food Stamps/AFDC

Chapter Number	Chapter Title
Rule Number	Rule Title

Chapter 1240-01-04  
Financial Eligibility Requirements

Amendments

Rule 1240-01-04-.02, Resource Eligibility Standards-Food Stamps/AFDC, is amended by deleting the rule in its entirety and by substituting instead the following, so that, as amended, the rule shall read as follows:

1240-01-04-.02 Resource Eligibility Standards - Food Stamps (SNAP)/Families First (AFDC).

- (1) Food Stamps/Supplemental Nutritional Assistance Program Households (SNAP) Only.
  - (a) No resource eligibility test shall be required for households at or below two hundred percent (200%) of the federal poverty level.
  - (b) Households with income above two hundred percent (200%) of the federal poverty level, containing a member who is sixty (60) years of age or older or a disabled person, shall have a resource eligibility limit of three thousand two hundred fifty dollars (\$3,250.00).
- (2) Families First/AFDC Only.
  - (a) Non-exempt resources of a Families First/AFDC aid group, liquid and non-liquid, may not exceed two thousand dollars (\$2,000.00). Resources in excess of this limit result in ineligibility. A person receiving SSI benefits cannot be included in the Families First/AFDC aid group. The SSI recipient's income and resources, including the SSI payment, are disregarded in determining eligibility for the other Families First/AFDC family members.
  - (b) Reserved for future use.

Authority: T.C.A. § 4-5-202; 71-1-105(12); 71-3-157(f); 7 C.F.R. 273.2(j)(2)(i)(B) and (C) and Section 401(a)(1), Social Security Act 42 U.S.C. 601(a)(1).

**"REDLINE VERSION-RULE 1240-01-04-.02 DATED FEBRUARY 14, 2012"**

**RULES  
OF  
TENNESSEE DEPARTMENT OF HUMAN SERVICES  
FAMILY ASSISTANCE DIVISION**

**CHAPTER 1240-01-04  
FINANCIAL ELIGIBILITY REQUIREMENTS**

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**1240-01-04-.02 RESOURCE ELIGIBILITY STANDARDS - FOOD STAMPS/AFDC.** Eligibility shall exist if the value of nonexempt resource, both liquid and non-liquid assets, for the HH/AG do not exceed:

- (1) Food Stamps/Supplemental Nutritional Assistance Program Households (SNAP) Only.
  - ~~(a) \$3,000 for all Food Stamps households with at least one member who is age 60 or older.~~
  - ~~(b) \$2,000 for all other Food Stamp households.~~
  - ~~(a) No resource eligibility test shall be required for households at or below two hundred percent (200%) of the federal poverty level.~~
  - ~~(b) Households with income above two hundred percent (200%) of the federal poverty level, containing a member who is sixty (60) years of age or older or a disabled person, shall have a resource eligibility limit of three thousand two hundred fifty dollars (\$3,250.00).~~
- (2) Families First/AFDC Only
  - (a) Non-exempt resources of an Families First/AFDC aid group, liquid and non-liquid, may not exceed \$4,000 two thousand dollars (\$2,000.00). Resources in excess of this limit result in ineligibility. A person receiving SSI benefits cannot be included in the Families First/AFDC aid group. The SSI recipient's income and resources, including the SSI payment, are disregarded in determining eligibility for the other Families First/AFDC family members.
  - (b) Reserved for future use.

**G.O.C. STAFF RULE ABSTRACT**

DEPARTMENT: Health

DIVISION: Board of Nursing

SUBJECT: Medication Administration by Medication Aides Certified

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 63-7-127

EFFECTIVE DATES: October 12, 2012 through June 30, 2012

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: These rules implement the licensure program and corresponding rules for medication aides certified as set forth in Tennessee Code Annotated, § 63-7-127. These rules change the Board of Nursing's policy and practice by allowing licensed nurses to provide delegation of medication administration in a nursing home or assisted living facility to medication aides certified.

### **Impact on Local Governments**

Pursuant to T.C.A. 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The new rules for Medication Aides Certified are not expected to have an impact on local government.

**Regulatory Flexibility Addendum**

Pursuant to T.C.A. § 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

**REGULATORY FLEXIBILITY ANALYSIS**

Tennessee Board of Nursing; Rule No. 1000-05

- (1) **The extent to which the rule or rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules.**

The proposed rules do not overlap, duplicate, or conflict with other federal, state, or local government rules.

- (2) **Clarity, conciseness, and lack of ambiguity in the rule or rules.**

The proposed rules exhibit clarity, conciseness, and lack of ambiguity.

- (3) **The establishment of flexible compliance and/or reporting requirements for small businesses.**

The proposed rules are not written with special consideration for the flexible compliance and/or reporting requirements because the licensing boards have, as their primary mission, the protection of the health, safety and welfare of Tennesseans. However, the proposed rules are written with a goal of avoiding unduly onerous regulations.

- (4) **The establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses.**

The compliance requirements throughout the proposed rules are as "user-friendly" as possible while still allowing the Division to achieve its mandated mission in licensing nurses.

- (5) **The consolidation or simplification of compliance or reporting requirements for small businesses.**

Compliance requirements are not consolidated or simplified for small businesses in the proposed rules for the protection of the health, safety and welfare of Tennesseans.

- (6) **The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.**

When the health-related licensing boards' rules contain standards, there are always statements included which specify what constitutes compliance with such standards.

- (7) **The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.**

There are no unnecessary entry barriers or other effects in the proposed rules that would stifle entrepreneurial activity or curb innovation.

## STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Tennessee Board of Nursing; Rule No. 1000-05

1. **Name of Board, Committee or Council:** Board of Nursing
2. **Rulemaking hearing date:** October 7, 2010
3. **Type or types of small businesses that will be directly affected by the proposed rules:**
  - (a) Nursing homes and assisted care living facilities who choose to use Medication Aides Certified will be directly affected by the proposed rules.
4. **Types of small businesses that will bear the cost of the proposed rules:**
  - (a) Nursing homes and assisted care living facilities who choose to have a training program for Medication Aides Certified will bear the cost of the proposed rules; and
  - (b) Nurse Aides who choose to become a Medication Aide Certified will bear the cost of the proposed rules.
5. **Types of small businesses that will directly benefit from the proposed rules:**

Nursing homes and assisted care living facilities who choose to use Medication Aides Certified will be directly affected by the proposed rules.
6. **Description of how small business will be adversely impacted by the proposed rules:**

Nursing homes and assisted care living facilities will not be adversely impacted by the proposed rule as hiring personnel from this category of certification could lessen the overall cost of care of residents of these facilities.
7. **Alternatives to the proposed rule that will accomplish the same objectives but are less burdensome, and why they are not being proposed:**

There are no less burdensome means to accomplish the purpose of this new rule.
8. **Comparison of the proposed rule with any federal or state counterparts:**
  - (a) **Federal:** The Board is not aware of any federal counterparts.
  - (b) **State:** The Board's proposed new rule is consistent with the qualifications for licensure in other states regulating the practice of nursing.

## Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. §4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

### PUBLIC HEARING COMMENTS

#### RULEMAKING HEARING- MEDICATION AIDES CERTIFIED RULE 1000-05

#### TENNESSEE BOARD OF NURSING

The rulemaking hearing for the Tennessee Board of Nursing was held on October 7, 2010, in the Department of Health Conference Center's Iris Room on the First Floor of the Heritage Place Building in MetroCenter, Nashville, Tennessee. E. Ashley Carter, Deputy General Counsel presided over the hearing.<sup>1</sup>

Comments were received at the hearing as follows:

1. A letter was received and comments were made requesting less restrictive rules for the program instructors.

Board's Response: The Board voted to revise the language in the proposed rule 1000-05-.07(3)(e) by deleting the requirement for instructors to have experience in medication administration in a nursing home, assisted care living facility or gerontological experience and changing the requirement to only require medication experience with knowledge of the regulations and competency to administer medication in a long-term care setting.

2. A request was made for an increase of the instructor to student ratio of one to six for didactic hours.

Board's Response: The board expressed concern with the short timeframe of training and the amount of information to be learned in that timeframe and felt a larger ratio would not be beneficial. The board voted to keep rule 1000-05-.07(3)(f) as proposed in the Notice and not change it.

3. A comment was made that there appears to be a contradiction with rules 1000-05-.02(9) and 1000-05-.10(1)(f) in the supervisory and assessment requirements. In reference to rule 1000-05-.10(5)(a), it was further stated that it is thought a resident assessment does not need to be made every time an "as needed (PRN)" medication is requested by a resident of an ACLF.

Board's Response: The board voted to clarify the language. The board made no decision to change rule 1000-05-.10(5)(a).

4. A comment was made that there may be some conflict with the proposed rules for MACs and the current rules for assisted care living facilities.

Board's Response: After consultation with the legal counsel for the Board of Nursing and Health Care Facilities from the Office of General Counsel, it was determined no substantive conflict exists.

5. A request was made concerning the language of the peer assistance rule to add the words "referral to" in rule 1000-05-.08(1)(c), and the addition of a new subparagraph (e) to add "ongoing monitoring of recovering professionals."

<sup>1</sup> An earlier rulemaking hearing was held on January 21, 2010, pursuant to T.C.A. § 63-7-127(i)(1). Subsequently, the statute was amended to include subsection (m), effective May 26, 2010. The October 7, 2010, rulemaking hearing implements the provisions of T.C.A. § 63-7-127 as amended.

Board's Response: The board voted to add the suggested language.

6. A written request to include the Prohibited List of Medications and Prohibited Means of Administration in the rules was received.

Board's Response: The board voted to include the Prohibited List of Medications and Prohibited Means of Administration in the rules as specified in T.C.A. § 63-7-127.

7. A letter was received with two requests:

1. A request that a second alternative to schools be considered and included by the board in the rules to allow licensed nursing home and assisted living facilities to establish their own educational courses for the training of Certified Medication Aides;

2. A request that a grandfather clause be considered to enable currently certified CNAs to take only the coursework that was not part of their prior CNA/CNT training; suggesting that the prior CNA training (pursuant to rule 1200-08-06-.15) overlaps with the current education requirements and therefore would be duplicative.

(Also included with the letter was a handout with the language of rule 1200-08-06-.15 and another handout with some examples of "common tasks and education" of CNAs.)

Board's Response: The board voted to keep the rules as proposed.

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At a subsequent meeting of the board on October 5, 2011, the board voted to approve the following rule revisions:

Rule 1000-05-.02(2) was revised to delete the word "drug" in the sentence and replace it with "oral or topical medication for a specified condition." Paragraph (9) was revised by deleting the language "the delegating licensed nurse is to be on site and immediately available to the MAC, unless otherwise specified in these rules" and adding new language to newly renumbered paragraph (23): "The delegating licensed nurse shall be on-site and immediately available where required by law. If not required to be on-site, the delegating nurse shall be immediately available for a two-way telephone conversation." Original paragraph (23) was deleted.

Rule 1000-05-.03(2)(b)7 was deleted and paragraphs 8 and 9 were renumbered.

Rule 1000-05-.06 was revised by adding the words "disciplinary actions and" to the title, new paragraph (1) was added, and paragraphs (2), (3) and (4) were renumbered.

Rule 1000-05-.07(3)(b) was revised by expanding the wording of the subparagraph to be more explicit. Subparagraph (f) was revised by changing "program instructor" to "supervising licensed nurse." Subparagraph (10) was revised by adding the words "denied approval" and "denial" in reference to program approval.

Rule 1000-05-.10 was revised by switching the positions of paragraphs (1) and (2). The words "upon admission, and after any change in status or acuity, or any change in medication" were added to the end of paragraph (3) for clarification. Subparagraph (5)(a) was moved to be part of paragraph (5) and subparagraph (5)(b) was moved to subparagraph (3)(b) and reworded to read "The licensed nurse has determined that it is appropriate for the resident to receive medication from the MAC."

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Upon subsequent review, subparagraph (7)(f) of rule 1200-05-.11 was clarified by adding "or via a two-way telephone conversation" to be consistent with paragraph (23) of rule 1200-05-.02.

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## Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205*

<b>Agency/Board/Commission:</b>	Board of Nursing
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**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)**

Chapter Number	Chapter Title
1000-05	Medication Aides Certified
Rule Number	Rule Title
1000-05-.01	Purpose
1000-05-.02	Definitions
1000-05-.03	Application, Certification and Renewal
1000-05-.04	Reinstatement
1000-05-.05	Fees
1000-05-.06	Disciplinary Actions and Civil Penalties
1000-05-.07	Training Programs
1000-05-.08	Peer Assistance Program
1000-05-.09	Continuing Education
1000-05-.10	Supervision and Delegation
1000-05-.11	Standards of Practice

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Chapter 1000-05  
Medication Aides Certified

New Rules

1000-05-.01	Purpose.
1000-05-.02	Definitions.
1000-05-.03	Application, Certification and Renewal.
1000-05-.04	Reinstatement.
1000-05-.05	Fees.
1000-05-.06	Disciplinary Actions and Civil Penalties.
1000-05-.07	Training Programs.
1000-05-.08	Peer Assistance Program.
1000-05-.09	Continuing Education.
1000-05-.10	Supervision and Delegation.
1000-05-.11	Standards of Practice.

1000-05-.01 Purpose.

The rules in this chapter implement the certification program for medication aides certified, T.C.A. § 63-7-127.

Authority: T.C.A. §§ 63-7-127 and 63-7-207.

1000-05-.02 Definitions.

In addition to the definitions contained in T.C.A. § 63-7-127(a), the following definitions are applicable to this chapter:

- (1) "Applicant" means a person filing an application for a certificate as a MAC.
- (2) "As Needed Medication" means any oral or topical medication for a specified condition that is not scheduled to be administered to a resident at a routine time but is given in response to a resident's complaint or expression of discomfort.
- (3) "Assisted Care Living Facility" shall have the same meaning as set forth in T.C.A. § 68-11-201.
- (4) "Board" means the Tennessee Board of Nursing.
- (5) "Certified Nurse Aide" means an individual who has successfully completed an approved nursing assistant training program and is registered with the department.
- (6) "Clinical Practice Component" means tasks or activities planned as part of a medication aide certified training program to provide MAC students with the opportunity to administer medications in a nursing home or an assisted care living facility setting.
- (7) "Clock Hour or Contact Hour" means fifty (50) to sixty (60) minutes of qualifying or continuing education.
- (8) "Controlled Substances" shall have the same meaning as set forth in T.C.A. § 63-10-204(7).
- (9) "Delegation" means the transfer of responsibility, but not the accountability, for the administration of medication from the delegating licensed nurse to a MAC.
- (10) "Department" means the Tennessee Department of Health.
- (11) "Drug" shall have the same meaning as set forth in T.C.A. § 63-10-204(16).

- (12) "Licensed Nurse" means a registered nurse or licensed practical nurse licensed under T.C.A. § 63-7-101 et. seq., including an advanced practice nurse.
- (13) "Medication Administration" means giving a drug to a resident to be orally ingested by the resident or topically applied to the resident's body.
- (14) "Medication Administration Record" (MAR) means a written or electronic record of the medication ordered for and administered to a patient or resident of a nursing home or assisted care living facility.
- (15) "Medication Aide Certified" (MAC) means a certified nurse aide who holds a current, valid certificate as a medication aide certified issued by the Board and who administers medications (pursuant to T.C.A. § 63-7-127) under the general supervision of a licensed nurse.
- (16) "Medication Aide Certified Training Program" means a formal program of study approved by the Board and required for certification as a medication aide certified.
- (17) "Nursing Home" shall have the same meaning as set forth in T.C.A. § 68-11-201.
- (18) "Patient" or "Resident" means a person receiving the services of a medication aide certified in a nursing home or assisted care living facility.
- (19) "Peer Support Program" means a program that provides monitoring of rehabilitation services to health care professionals who may be impaired by substance abuse or a psychological condition.
- (20) "Person" is defined as an individual, natural person.
- (21) "PHI" means individually identifiable health information (IIHI) created, received, or maintained by a covered entity and transmitted or maintained in any form or medium. 45 C.F.R. Part 160.103; 42 U.S.C. §§ 1320d – 1320d-8 (HIPAA).
- (22) "Qualified Educational Institution" means an institution accredited by the Southern Association of Colleges and Schools (or equivalent regional accredited agency) or the Council on Occupational Education that currently or in the future operates as a fully approved Tennessee School of Registered or Practical Nursing.
- (23) "General Supervision" means a licensed nurse overseeing with authority a MAC who is performing medication administration in a nursing home or assisted care living facility. The delegating licensed nurse shall be on-site and immediately available where required by law. If not required to be on-site, the delegating nurse shall be immediately available for a two-way telephone conversation.

Authority: T.C.A. §§ 63-7-127 and 63-7-207.

1000-05-.03 Application, Certification and Renewal.

- (1) Application.
  - (a) An applicant for certification as a MAC shall complete an application on a form prescribed by the Board. The training program shall submit the application for certification by examination to the Board office.
  - (b) Any application submitted which lacks the required information or fails to meet any requirement for certification will be returned to the applicant with written notification of deficiency and will be held in "pending" status for a reasonable period of time, not to exceed ninety (90) days from the date of application, so that the applicant may cure any deficiency, if possible.
  - (c) An application may be withdrawn unless it has been denied.

(d) Application fees are not refundable.

(2) Certification.

(a) An applicant for certification as a MAC shall submit an application to the Board office along with the required information and application and certification fees.

(b) An applicant shall furnish evidence to the Board office, along with a completed application and applicable fees, that the applicant:

1. Is at least eighteen (18) years of age;
2. Has completed the twelfth (12<sup>th</sup>) grade or its equivalent or has successfully passed the test for and has received a general equivalency diploma;
3. Is a certified nurse aide;
4. Has worked as a certified nurse aide in a nursing home or assisted care living facility for at least 365 days of continuous, uninterrupted, full-time work at no more than two (2) different facilities, at the time the applicant submits an application;
5. Has successfully completed a course of instruction provided by a training program approved by the Board under rule 1000-05-.07 and in compliance with T.C.A. § 63-7-127(i);
6. Has passed a medication aide certification examination approved by the Board;
7. Has caused the results of a criminal background check to be submitted to the Board's administrative office directly from one of the vendors identified in the Board's licensure application materials; and
8. Does not have an encumbrance on any professional license or certificate.

(c) An applicant must take the approved MAC examination.

1. An applicant must become eligible for certification by examination by applying to the board within thirty (30) days after completing a training program;
2. An applicant must then take the examination within ninety (90) days of being made eligible by the board;
3. An applicant taking the examination a second time must re-take the examination and complete the certification process no later than 365 days after filing the initial application; and
4. An applicant not successful after two (2) examination attempts must repeat the training program and reapply.

(3) Renewal.

(a) Certification is valid for two (2) years from the date of its issuance and shall become invalid on such date unless renewed, unless earlier suspended or revoked.

(b) A MAC may renew a current, valid certification by submitting a renewal form approved by the Board, the required renewal fee and regulatory fee, and attestation of having completed six (6) contact hours of Board-approved continuing education each year prior to the expiration date of the certificate.

- (c) A renewal form and the fees must be actually received by the Board office on or before the due date, whether submitted in person, by the U.S. Mail, or other delivery service.

Authority: T.C.A. §§ 63-7-127 and 63-7-207.

1000-05-.04 Reinstatement.

- (1) Any person seeking reinstatement of a certification after the expiration date of the certification is required to reapply for certification, fulfill all of the requirements of initial certification, show proof of having completed all past due continuing education, and may be required to submit proof of additional education or testing to show continued competency.

Authority: T.C.A. §§ 63-7-127 and 63-7-207.

1000-05-.05 Fees.

- (1) Application and Initial Certification Fee by Examination.....\$ 150.00
- (2) An applicant shall pay the examination fee set by the test service directly to the test service designated by the State to administer the examination.
- (3) Renewal Fee.....\$ 125.00
- (4) Replacement/Duplicate Certificate Fee..... \$ 25.00
- (5) State Regulatory Fee..... \$ 10.00
- (6) Training Program Initial Application Fee to offset the cost of two or more survey visits to evaluate the program for board review, consultation by a registered nurse, preparation of reports and other responsibilities as the board may require..... \$ 2,500.00
- (7) Training Program Annual Survey Fee to offset the cost of survey visits, compilation of annual reports and statistics and other duties as required by the Board of Nursing..... \$ 1,500.00
- (8) Peer Assistance Program Fee to offset the added cost of adding medication aides certified to contract for professional assistance..... \$ 15.00
- (9) Name Change Fee..... \$ 25.00
- (10) Reinstatement Fee..... \$ 100.00

Authority: T.C.A. §§ 63-7-127 and 63-7-207.

1000-05-.06 Disciplinary Actions and Civil Penalties

- (1) The Board has the power to discipline medication aides certified based on the grounds set forth in T.C.A. § 63-7-127 and may deny, revoke or suspend any certificate to practice as a medication aide certified, or otherwise discipline a certificate holder, including but not limited to the imposition of civil penalties as are specified below.
- (2) Schedule of Civil Penalties
  - (a) A Type A Civil Penalty may be imposed whenever the Board finds a person who is required to be licensed, certified, permitted, or authorized by the Board, guilty of a violation of Tenn. Code Ann. § 63-7-127 or the regulations pursuant thereto, to such an extent that there is, or likely to be, an imminent, substantial threat to health, safety and welfare of an individual patient or the public. For the purpose of this section, practicing

as a MAC without a certification from the Board is one of the violations of the statute for which a Type A Civil Penalty is assessable.

- (b) A Type B Civil Penalty may be imposed whenever the Board finds a person who is required to be licensed, certified, permitted, or authorized by the Board, guilty of a violation of Tenn. Code Ann. § 63-7-127 or the regulations pursuant thereto in such manner as to impact directly the care of patients of the public.
  - (c) A Type C Civil Penalty may be imposed whenever the Board finds a person who is required to be certified, permitted or authorized by the Board, guilty of a violation of Tenn. Code Ann. § 63-7-127 or the regulations pursuant thereto, which are neither directly detrimental to the patients or public, nor directly impact their care, but have only an indirect relationship to patient care or the public.
- (3) Amount of Civil Penalties
- (a) A Type A Civil Penalty may be assessed in an amount of not less than \$500 or more than \$1,000.
  - (b) A Type B Civil Penalty may be assessed in an amount of not less than \$100 or more than \$750.
  - (c) A Type C Civil Penalty may be assessed in an amount of not less than \$50 or more than \$500.
- (4) In assessing the Civil Penalties pursuant to these rules the Board may consider the following factors:
- (a) Whether the amount imposed will be a substantial economic deterrent to the violator;
  - (b) The circumstances leading to the violation;
  - (c) The severity of the violation and the risk of harm to the public;
  - (d) The economic benefits gained by the violator as a result of non-compliance;
  - (e) The interest of the public; and
  - (f) Willfulness of the violation.

Authority: T.C.A. §§ 63-1-134, 63-7-127 and 63-7-207.

1000-05-.07 Training Programs.

- (1) Any qualified educational institution seeking to conduct a MAC training program shall make application with a letter of intent and submit to the Board any documents, statements and forms as the Board may require and pay a training program application fee and annual fee. The complete application shall be submitted to the Board no later than forty-five (45) days prior to a scheduled Board of Nursing meeting. A representative of the Board shall conduct a site visit to survey the educational and clinical facilities prior to the program presenting a letter of intent to the Board. At a minimum, the institution seeking approval to conduct a training program shall provide the following in the letter of intent:
- (a) Name and address of qualified educational institution;
  - (b) Contact person with address, telephone number, fax number and email address;
  - (c) The name and address of principal clinical facilities;
  - (d) The location(s) of the courses or programs;

- (e) Letters of support;
  - (f) Documentation of need for the program; and
  - (g) Demonstration of the financial ability to support the program.
- (2) After the Board approves the letter of intent and prior to the acceptance of students, the institution shall submit documentation no later than forty-five (45) days prior to a scheduled Board meeting in order to obtain initial approval:
- (a) The number and type of education clock hours requested for each course;
  - (b) The name(s), license number(s), educational credentials and teaching and nursing experience of the director and all instructors;
  - (c) The program catalog;
  - (d) The topic outlines, which list the summarized topics covered in each course and upon request, a copy of any course materials;
  - (e) A summarization of any changes to the curriculum, should the prior approved program be substantially changed. A summarization of any changes should be submitted to the Board office at least forty-five (45) days prior to a scheduled Board meeting; and
  - (f) The submission of any other such information that the Board may deem necessary.
- (3) The qualified educational institution providing the training program shall:
- (a) Provide sufficient numbers of qualified faculty to implement the curriculum;
  - (b) Provide sufficient numbers of qualified faculty to assure that the students receive appropriate training from supervising licensed nurses in the nursing home or assisted care living facility:
    1. with which the training program has a written agreement to provide licensed nurse supervision in the supervised clinical practice component of the training program; and
    2. so that the students are prepared to administer medications as a MAC in a safe and effective manner.
  - (c) Provide financial support and resources adequate to teach the students the curriculum established in T.C.A. § 63-7-127, including, but not limited to classrooms, laboratories, equipment, supplies, and qualified administrative, instructional, and support personnel and services;
  - (d) Employ or contract with a registered nurse with an unencumbered Tennessee license who may teach a course or courses within the scope of practice and areas of competency;
  - (e) Ensure that the training program instructors have an unencumbered license to engage in the practice of nursing as a registered nurse with at least two (2) years of nursing experience and with medication administration experience and knowledge of the regulations and competence to administer medication in the long term care setting.
  - (f) Ensure that for the didactic hours, a ratio of no more than six (6) students for one (1) program instructor must be maintained; however, the ratio while engaged in clinical medication administration shall be one (1) student to one (1) supervising licensed nurse;
  - (g) Inform each student of the requirements for certification;

- (h) Provide a written program grading system policy which reflects a numerical grading system or scaled grading system. Students must make a passing grade in both didactic and clinical courses;
  - (i) Provide a written protocol or policy on the mechanism to evaluate a student's performance. At least one (1) written evaluation is required within the first half of the program;
  - (j) Provide a written policy on the dismissal of students;
  - (k) Provide a copy of a student's transcript to the student upon the student's written request and upon the student's completion of or withdrawal from the program; and
  - (l) Engage in program evaluation that includes, but is not limited to, obtaining feedback from students, instructors, and employers of individuals who have successfully completed the MAC training program.
- (4) The program shall not advertise that it is approved by the Board prior to or after a loss of Board approval.
  - (5) The program shall retain records of attendees of each course and the Board may at any time examine the records.
  - (6) The program shall ensure a first time test taker examination pass rate minimum of eighty-five per cent (85%). The Board will evaluate the program's examination pass rate on a quarterly and annual basis.
  - (7) The program shall file with the Board office an annual report containing, at a minimum, the following information:
    - (a) The number of students currently enrolled;
    - (b) The total enrollment for the year;
    - (c) The attrition and retention rate of students and faculty;
    - (d) The employment placement data;
    - (e) The number of students graduated;
    - (f) The number of students dismissed or withdrawn for the year;
    - (g) The number of students taking the certification examination; and
    - (h) The percentage of students taking the test for the first (1st) time and passing the certification examination.
  - (8) The program shall obtain approval by the Board on an annual basis thirty (30) days before the program commences each year.
  - (9) A representative of the Board shall inspect the institution that provides the program on an annual basis or as directed by the Board or Board's representative and shall submit a written report to the Board. If any deficiencies are noted, the Board may grant the institution a conditional approval of the training program until all deficiencies are corrected. The institution shall have thirty (30) days from the date the conditional approval is granted by the Board to correct the deficiencies. Upon correction of the deficiencies, the Board may grant full approval.
  - (10) If deficiencies are not corrected within the Board's prescribed time frame, the program will be denied approval or removed from approved status and must reapply for approval. Notice will be sent to the program upon denial or removal of approved status.

- (11) In addition to the minimum standard curriculum provided in T.C.A. § 63-7-127(i)(2), the qualified educational institution shall provide courses relative to the following topics:
- (a) Role of the MAC;
  - (b) Federal and state laws and rules relative to nursing homes and assisted care living facilities relative to medication aides certified;
  - (c) Confidentiality of protected health information;
  - (d) Drug mathematics, weights, and measures;
  - (e) Drug side effects;
  - (f) Drug administration requirements;
  - (g) Drug packaging systems;
  - (h) Drug storage, destruction, or return of medication;
  - (i) Documentation of medication administration; and
  - (j) Drug interactions.

Authority: T.C.A. §§ 63-7-127 and 63-7-207.

1000-05-.08 Peer Assistance Program.

- (1) A peer assistance program (approved by the Board) must provide at a minimum the following services to a MAC:
- (a) Referral for assessment of dependency and addiction;
  - (b) Referral to treatment centers and programs;
  - (c) Referral to aftercare treatment and counseling;
  - (d) Referral for psychological issues; and
  - (e) Ongoing monitoring of recovering professionals.

Authority: T.C.A. §§ 63-1-138, 63-7-127 and 63-7-207.

1000-05-.09 Continuing Education.

- (1) As a prerequisite to renewal, all certificate holders shall complete the following continuing education requirements:
- (a) Complete any and all continuing education or continued competency requirements, or both, necessary to maintain nurse aide certification under T.C.A. § 68-11-209(e), and the rules promulgated pursuant thereto; and
  - (b) A total of six (6) contact hours per year of continuing education; five (5) of which shall be in pharmacology provided by a licensed pharmacist or registered nurse and one (1) of which shall be relative to medication administration consistent with the functions of a MAC.
- (2) Each MAC shall attest to the timely attendance and completion of the required continuing education hours on the biennial certificate renewal form.

- (3) Each MAC shall retain independent documentation of attendance and completion of all continuing education courses for a period of two (2) years from the date of attendance. This documentation shall be produced for inspection and verification, if requested in writing by the Board.

Authority: T.C.A. §§ 63-7-127 and 63-7-207.

1000-05-.10 Supervision and Delegation.

- (1) A licensed nurse who provides care to nursing home or assisted care living facility residents may delegate the task of medication administration to a MAC in accordance with T.C.A. § 63-7-127(k)(1)(B) and these rules.
- (2) A licensed nurse who delegates medication administration to a MAC shall supervise the MAC by:
- (a) Reviewing the medication delivery process to assure that there have been no errors in the stocking or preparing the medications;
  - (b) Accepting, transcribing, and reviewing resident medication orders;
  - (c) Monitoring residents to whom medications are administered for side effects or changes in health status;
  - (d) Reviewing documentation completed by the MAC, including, but not limited to the medication administration record;
  - (e) Providing on-site supervision and availability for immediate direction while in a nursing home setting;
  - (f) Providing on-site supervision or immediate and continuous availability through telecommunication while in an assisted care living facility setting; and,
  - (g) Delegating the administration of medication for each resident in writing to the MAC.
- (3) Prior to delegating medication administration to a MAC, a licensed nurse shall evaluate the following upon admission, and after any change in status or acuity, or any change in medication:
- (a) The patient and the medication needs of the patient, including:
    - 1. The patient's mental and physical stability;
    - 2. The medication to be administered;
    - 3. The time frame during which the medication is to be administered;
    - 4. The route or method by which the medication is to be administered; and
  - (b) The licensed nurse has determined that it is appropriate for the resident to receive medication from the MAC.
- (4) When delegating the task of medication administration to a MAC, the licensed nurse shall communicate, in writing, the following to the MAC:
- (a) The patient to whom the MAC shall administer medications;
  - (b) The medications the MAC shall administer;
  - (c) The time frames during which the medications are to be administered; and
  - (d) Any special instructions concerning the administration of medications to specific patients.

- (5) A licensed nurse who is on site at the nursing home or assisted care living facility may delegate the administration of as-needed medications to a MAC provided the licensed nurse completes a nursing assessment of the resident to whom the as-needed medication is to be administered immediately prior to the medication being administered.

Authority: T.C.A. §§ 63-7-127 and 63-7-207.

1000-05-.11 Standards of Practice.

- (1) A MAC shall demonstrate competence and responsibility in the task of medication administration.
- (2) A MAC shall ensure and promote a safe environment for nursing home or assisted care living facility residents.
- (3) A MAC shall accurately document in the patient's or resident's record the following information immediately after the administration of a medication:
  - (a) The name of the medication and the dosage administered;
  - (b) The route of the administration;
  - (c) The date and time of the administration;
  - (d) The name and credentials of the MAC who administered the medication;
  - (e) The name of the licensed nurse who delegated the administration of the medication;
  - (f) The resident's refusal or inability to ingest the medication or comply with the administration of the medication; and
  - (g) Any complaints by the resident about the medication administration or medication administered.
- (4) A MAC shall report the following to the delegating nurse or the delegating nurse's supervisor in a timely manner:
  - (a) The resident's request for an as-needed medication;
  - (b) The resident's refusal or inability to ingest the medication or comply with the administration of the medication;
  - (c) Any deviation from the delegated medication administration; and
  - (d) Any observations or information about the resident's condition that causes concern.
- (5) A MAC shall store drugs in accordance with the pharmacist's instructions.
- (6) A MAC shall remove drugs only from a properly labeled container or packaging that has been dispensed by a licensed pharmacist that contains the drug name; dosage; strength; name of the resident to whom it is to be dispensed; and drug expiration date.
- (7) A MAC shall complete all necessary tasks to ensure safe medication administration to a resident, including, but not limited to the following:
  - (a) Verifying the identify of the resident to whom the medication is to be administered;
  - (b) Ensuring that medication administration for the resident has been delegated and documented by the delegating licensed nurse prior to the administration of the medication;

- (c) Ensuring that the medication is being administered to the resident in accordance with the delegation and prescriber instructions;
  - (d) Ensuring that the correct medication in the correct dosage is administered to the resident;
  - (e) Witnessing the resident swallowing a drug that is to be ingested orally; and
  - (f) Documenting and reporting a medication error to the delegating licensed nurse who is on-site at the nursing home or assisted care living facility, or via a two-way telephone conversation.
- (8) A MAC shall maintain the confidentiality of protected health information obtained in the course of the MAC's duties and responsibilities.
- (9) A MAC shall not delegate the task of medication administration to any other person.
- (10) A MAC shall not falsify any resident record or any other document prepared or utilized in the course of, or in conjunction with, the administration of medication.
- (11) A certified MAC shall maintain professional boundaries with each resident.
- (12) A MAC shall not:
- (a) Administer medications containing a controlled substance, as defined in T.C.A § 63-10-201 et seq.;
  - (b) Administer medications when such administration would require a dosage calculation by the medication aide;
  - (c) Directly receive orders from a physician or other medication prescriber;
  - (d) Administer barium or other contrast media;
  - (e) Administer chemotherapeutic agents;
  - (f) Administer medications administered as drops to the eye, ear or nose;
  - (g) Administer rectal and vaginal medications;
  - (h) Administer medications delivered by metered hand-held inhalers;
  - (i) Administer medications delivered by aerosol/nebulizer;
  - (j) Apply topical medications ordered for the treatment of pressure ulcers or skin grafts; or
  - (k) Change a dosage amount to adhere to a change in a physician's order.
- (13) A MAC shall not, under any circumstances, administer medications by certain methods or routes, or both. These include, but are not necessarily limited to, the following:
- (a) Injection;
  - (b) Intravenous;
  - (c) Central lines;
  - (d) Intrathecal;
  - (e) Colostomy;
  - (f) A surgically placed feeding tube, e.g., gastrostomy, jejunostomy;

- (g) Nasogastric;
- (h) Non-metered inhaler;
- (i) Intradermal;
- (j) Urethral;
- (k) Epidural;
- (l) Endotracheal;
- (m) Intramuscular; or
- (n) Subcutaneous.

Authority: T.C.A. §§ 63-7-127, 63-7-207 and 63-10-201.

\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Donald Bell, APN	X				
Terri Bowman, LPN				X	
Barbara Brennan, RN	X				
Marilyn A. Dubree, RN	X				
Kathleen Harkey				X	
Deborah Holliday, LPN	X				
Cheryl Stegbauer, RN	X				
Marian Steward, RN	X				
Arthur Thompson, LPN	X				
Betty J. Thompson, RN	X				
Carol Lynn Thompson, APN	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Nursing on 10/07/2010, and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 08/13/10

Rulemaking Hearing(s) Conducted on: (add more dates). 10/07/10

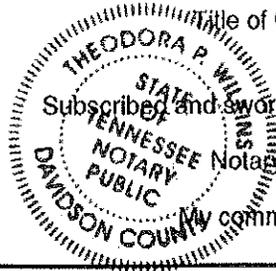
Date: 1/3/12

Signature: Mark S. Waters

Name of Officer: Mark S. Waters

Deputy General Counsel

Title of Officer: Department of Health



Subscribed and sworn to before me on: 1/3/12

Notary Public Signature: Theodora P. Wilkins

My commission expires on: 11/3/15

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.  
 Attorney General and Reporter  
2-17-12  
 Date

Department of State Use Only

Filed with the Department of State on: 5/15/12

**G.O.C. STAFF RULE ABSTRACT**

DEPARTMENT: Comptroller of the Treasury

DIVISION:

SUBJECT: Access to Public Records and Charges for Reproduction of Public Records

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 10-7-503

EFFECTIVE DATES: December 29, 2012 through June 30, 2013

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: These rules establish procedures for allowing access to public records made or received by the Comptroller of the Treasury. These rules also establish procedures and fees to be charged for the reproduction of public records by the Comptroller.

### **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The Office of the Comptroller of the Treasury anticipates that this rule will have no financial impact on local governments.

**Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

The Office of the Comptroller of the Treasury anticipates that this rule will have no financial impact on small businesses.

**Department of State  
Division of Publications**

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**For Department of State Use Only**

Sequence Number: 07-07-12  
Rule ID(s): 5250  
File Date: 7/10/12  
Effective Date: 12/29/12

## Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

<b>Agency/Board/Commission:</b>	Comptroller of the Treasury
<b>Division:</b>	
<b>Contact Person:</b>	Robert T. Lee
<b>Address:</b>	505 Deaderick St., Suite 1700, Nashville, TN
<b>Zip:</b>	37243-1402
<b>Phone:</b>	(615) 401-7779
<b>Email:</b>	robert.t.lee@cot.tn.gov

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)**

Chapter Number	Chapter Title
0380-05-10	Access to Public Records Maintained by the Office of the Comptroller of the Treasury
Rule Number	Rule Title
0380-05-10-.01	Purpose and Scope
0380-05-10-.02	Definitions
0380-05-10-.03	Requests for Access to Records
0380-05-10-.04	Requests for Reproduction of Records
0380-05-10-.05	Fees and Costs for Reproduction of Public Records
0380-05-10-.06	Payment for Reproduction of Public Records
0380-05-10-.07	Waiver of Fees

Rules  
Of  
Comptroller of the Treasury

Chapter 0380-05-10

Access to Public Records Maintained by the Office of the Comptroller of the Treasury

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- 0380-05-10-.02 Definitions
- 0380-05-10-.03 Requests for Access to Records
- 0380-05-10-.04 Requests for Reproduction of Records
- 0380-05-10-.05 Fees and Costs for Reproduction of Public Records
- 0380-05-10-.06 Payment for Reproduction of Public Records
- 0380-05-10-.07 Waiver of Fees

0380-05-10-.01 Purpose and Scope

- (1) These rules are promulgated for the purpose of providing procedures to allow access to those records made or received by the Office of the Comptroller of the Treasury that are subject to inspection and to reproduction pursuant to the Tennessee Public Records Act, T.C.A., Section 10-7-501, et seq., while preserving the confidentiality of confidential records and/or confidential information as provided in Federal or State law. These rules are also promulgated for the purpose of implementing and establishing procedures and standard fees to be charged for the reproduction or duplication of public records maintained by the Office of the Comptroller of the Treasury. These rules do not govern charges for the reproduction or duplication of public records, when separate statutory authority exists establishing the fee to be charged or the formula for charging.

Authority: T.C.A. §§ 8-4-108, 8-4-604, and 10-7-501 et seq.

0380-05-10-.02 Definitions. As used in these rules, the following terms are defined as follows:

- (1) "Comptroller" means the Comptroller of the Treasury.
- (2) "Comptroller's Office" means any of the divisions, sections or offices under the authority of the Comptroller.
- (3) "Confidential record" means any record of the Comptroller's Office that is considered confidential, privileged, or protected under law.
- (4) "OORC" means the Office of Open Records Counsel.
- (5) "Public Record" means any record of the Comptroller's Office that is open to inspection by any citizen of the State of Tennessee under the provisions of the Public Records Act, and is not otherwise considered a confidential record under law.
- (6) "Public Records Act" or "TPRA" means the Tennessee Public Records Act as codified in T.C.A., Section 10-7-501, et seq.
- (7) "Record" means any document or stored information, in any form, that has been generated or received and is maintained by the Comptroller's Office pursuant to law or in

connection with the transaction of the business of the Comptroller's Office; "record" also includes a system of records. A record may or may not be a public record.

- (8) "Records Custodian" means an employee of the Comptroller's Office who has direct supervisory authority over the specific division, section or office of the Comptroller's Office where the requested records are maintained.

Authority: T.C.A. §§ 8-4-108, 8-4-604, and 10-7-501 et seq.

0380-05-10-.03 Request for Access to Records

- (1) A request for access to or inspection of records shall be made during the regular business hours of the Comptroller's Office from 8:00 AM to 4:30 PM, Monday through Friday, except for holidays.
- (2) Requests for access to or inspection of records may be made orally or in writing to the appropriate division within the Comptroller's Office, and shall identify with sufficient detail the record which is requested.
- (3) All requestors are required to present a valid (current) Tennessee driver's license to staff prior to inspection of the records requested. If a requestor does not have a valid Tennessee driver's license, but does have photo identification with a home address that has been issued by a Tennessee governmental entity, such identification will be accepted. If a requestor has government issued photo identification without a home address, then additional documentation of Tennessee citizenship must be presented. The sufficiency of such documentation will be determined on a case by case basis, after consultation with General Counsel for the Comptroller's Office.
- (4) All requests for access to or inspection of records will be processed promptly and in accordance with all applicable time frames enumerated in the TPRA. If the request for access is not sufficiently detailed for the records custodian to determine what records are being requested, the Comptroller's Office will contact the requestor and will not begin complying with the request until an amended request is made that is sufficiently detailed.
- (5) Prior Review and Assessment for Confidential, Privileged or Protected Information or Data.
- (a) Review, Assessment and Redaction of Records Prior to Inspection.
1. Before providing access to the requested record, staff shall review the requested record as quickly as reasonably possible, and make an assessment of the scope and accessibility of the requested record.
  2. Upon review and prior to providing access to any record or portion of a record, staff shall redact any data or information that staff has reason to believe is or may be confidential, privileged or otherwise protected by law. When possible, staff shall provide the requestor the legal basis authorizing the redaction.
- (b) If staff determines after this review and assessment that access to the requested public record can be provided, staff shall do so as promptly as possible.
- (c) If it appears from staff's review and assessment that access to the requested public record cannot be made available for inspection within the time frame enumerated within the TPRA, staff shall notify the requestor in accordance with the provisions of the TPRA.

Authority: T.C.A. §§ 8-4-108, 8-4-604, and 10-7-501 et seq.

0380-05-10-.04 Requests for Reproduction of Records

- (1) A request for reproduction of records shall be made during the regular business hours of the Comptroller's Office from 8:00 AM to 4:30 PM, Monday through Friday, except for holidays.
- (2) Requests for reproduction of records must be made in writing on the request form developed by the OORC and submitted to the appropriate division within the Comptroller's Office. The request must identify with sufficient detail the record which is requested.
- (3) All requestors are required to present a valid (current) Tennessee driver's license to staff at the time the request is submitted. If a requestor does not have a valid Tennessee driver's license, but does have photo identification with a home address that has been issued by a Tennessee governmental entity, such identification will be accepted. If a requestor has government issued photo identification without a home address, then additional documentation of Tennessee citizenship must be presented. The sufficiency of such documentation will be determined on a case by case basis, after consultation with General Counsel for the Comptroller's Office.
- (4) All requests for reproduction of records will be processed promptly and in accordance with all applicable time frames enumerated in the TPRA. If the request for reproduction is not sufficiently detailed for the records custodian to determine what records are being requested, the Comptroller's Office will contact the requestor and will not begin complying with the request until an amended request is made that is sufficiently detailed.
- (5) Prior Review and Assessment for Confidential, Privileged or Protected Information or Data.
  - (a) Review, Assessment and Redaction of Records for Reproduction Request.
    1. Before reproducing the requested record, staff shall review the requested record as quickly as reasonably possible and make an assessment of the scope and accessibility of the requested record.
    2. Upon review and prior to reproducing the record, or portion of the record, staff shall redact any data or information that it has reason to believe is or may be confidential, privileged or otherwise protected by law. When possible, staff shall provide the requestor the legal basis authorizing the redaction.
  - (b) If staff determines after this review and assessment that reproduction of the requested public record can be provided, staff shall do so as promptly as possible in accordance with Section 0380-05-10-.05 below.
  - (c) Staff, consultants, or contractors for the Comptroller's Office are responsible for the reproduction of any requested public record. A requestor does not have the right to reproduce requested public records through use of the requestor's own equipment or supply the necessary equipment or supplies for reproduction of the requested public records.
  - (d) If it appears from staff's review and assessment that reproduction of the requested public record cannot be produced either immediately or within the time

frame enumerated within the TPRA, staff shall notify the requestor in accordance with the provisions of the TPRA.

Authority: T.C.A. §§ 8-4-108, 8-4-604, and 10-7-501 et seq.

0380-05-10-.05 Fees and Costs for Reproduction of Public Records

- (1) Prior to the reproduction of requested public records, staff shall provide the requestor a reasonable estimate of the fees associated with the reproduction of the public record in writing. The estimate shall include the cost of delivery when applicable and any other necessary fee, including labor, which shall be calculated in accordance with the Schedule of Reasonable Charges established by the OORC.
- (2) Per page fees charged shall comport with the fees established in the Schedule of Reasonable Charges.
- (3) Fees charged for reproduction of any public record on any medium not specified in the Schedule of Reasonable Charges shall be the actual cost to the Comptroller's Office for that medium.
- (4) If staff, a consultant, or a contractor is required to create a new or modified computer program or application in order to reproduce requested data or extract requested data or information utilizing an existing computer program, the requestor shall be charged a fee that comports with the Schedule of Reasonable Charges for all necessary labor.

Authority: T.C.A. §§ 8-4-108, 8-4-604, and 10-7-501 et seq.

0380-05-10-.06 Payment for Reproduction of Public Records

- (1) Prior to reproduction of public records, the creation of a new or modified computer program required to reproduce requested data or information, or the extraction of requested information or data, payment of the estimate must be made to the Office of Management Services, Division of Accounts, payable to the Office of the Comptroller of the Comptroller of the Treasury, unless the payment is waived pursuant to Section 0380-05-10-.07 below.
- (2) Payment may only be made by check, cashier's check, or money order.

Authority: T.C.A. §§ 8-4-108, 8-4-604, and 10-7-501 et seq

0380-05-10-.07 Waiver of Fees

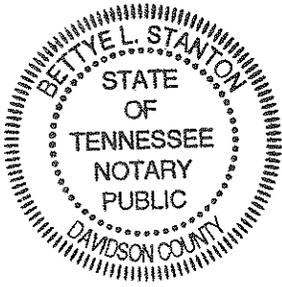
- (1) All fees associated with the reproduction of records, including any delivery and labor fees, will be waived when the total amount of such fees are equal to or less than Twenty-five Dollars (\$25.00). Any fees associated with the reproduction of records above Twenty-five Dollars (\$25.00) shall be charged as otherwise provided by this Chapter, unless waived pursuant to Paragraph (2) below.
- (2) If the Comptroller determines it is in the best interest of the Comptroller's Office, charges above Twenty-five Dollars (\$25.00) may also be waived.

Authority: T.C.A. §§ 8-4-108, 8-4-604, and 10-7-501 et seq.

\* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (board/commission/other authority) on 05/30/2012 (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.



Date: May 30, 2012

Signature: [Handwritten Signature]

Name of Officer: Justin P. Wilson

Title of Officer: Comptroller of the Treasury

Subscribed and sworn to before me on: May 30, 2012

Notary Public Signature: Bettye L. Stanton

My commission expires on: July 6, 2015

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

[Handwritten Signature]  
 Robert E. Cooper, Jr.  
 Attorney General and Reporter  
6-27-12  
 Date

**Department of State Use Only**

Filed with the Department of State on: 7/10/12

Effective on: 12/29/12

[Handwritten Signature]  
 Tre Hargett  
 Secretary of State

RECEIVED  
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**G.O.C. STAFF RULE ABSTRACT**

DEPARTMENT: Human Resources

DIVISION:

SUBJECT: Tennessee Excellence, Accountability, and Management Act

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 8-30-101 et seq.

EFFECTIVE DATES: October 3, 2012 through June 30, 2013

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: These rules make revisions to comply with the statutory changes encompassed by the Tennessee Excellence, Accountability, and Management Act of 2012.

## **Public Hearing Comments**

One copy of a document containing responses to comments made at the public hearing shall accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Please see list of comments and the Department's responses attached hereto.



STATE OF TENNESSEE  
**DEPARTMENT OF HUMAN RESOURCES**  
FIRST FLOOR, JAMES K. POLK BUILDING  
505 DEADERICK STREET  
NASHVILLE, TENNESSEE 37243-0635  
(615) 741-2958

**Bill Haslam**  
GOVERNOR

**Rebecca R. Hunter**  
COMMISSIONER

The following questions and comments were received in response to the Department of Human Resources Notice of Rule Making Hearing filed with the Secretary of State on April 26, 2012. The Department hosted the hearing on June 19, 2012. Below each comment is the Department's response.

Comments from the Tennessee State Employees Association

1. 1120-1-.01 – Definition of Appeal. The appeal should continue to include as grievable the longer list of grievable matters found in the present rules, rather than just disciplinary actions. A reduction in force should be grievable if the RIF plan was not followed or if there were allegations of violation of statute or rule.  
Agency Response: The Department declines to adopt this comment as the Tennessee Excellence, Accountability and Management (T.E.A.M.) Act, T.C.A. §8-30-101 et seq., does not provide for grievable matters.
2. 1120-1-.01 – Definition of Temporary Staffing Agency. Does this represent replacing temporary appointment of state employees with the use of an outside temp agency? If so, why?  
Agency Response: This definition does not represent replacing temporary employees with a temporary employment agency, but rather gives authority to use a temporary staffing agency if necessary.
3. 1120-1-.01 – Definition of Flex-Classification Position. Why take out "entry" level?  
Agency Response: The term was taken out because it is synonymous with "trainee" and, therefore, duplicitous.
4. 1120-1-.01 – Definition of Initial Probation. Put "first" back in the definition of initial probation.  
Agency Response: The rule has been revised to reflect this comment.
5. 1120-1-.01 – Definition of Suspension. Suspensions "pending an investigation or adjudication" have generally been with pay.  
Agency Response: The rule has been revised to reflect this comment. The definition of suspension has been amended to reflect the statutory definition.
6. 1120-02-.03(3) – Notice of removal from an eligible list. An applicant should be able to "appeal" the removal of his/her name from an eligible list.  
Agency Response: The rule has been revised to reflect this comment by adding language which will allow the applicant to submit additional information prior to removal from an eligible list.
7. 1120-02-.05(2) – Allow appeal to Commissioner of denial of admission to assessments. Recommended language may include: "Any person who is denied admission to an assessment on the grounds that he/she does not meet the requirements specified in the public notice and who believes that he or she does, in fact, meet those requirements, may appeal the denial of admission by means of a letter to the Commissioner setting out the grounds for the appeal. The Commissioner shall be the final arbiter of such an appeal."  
Agency Response: The Department declines to adopt this comment. After conversation, it appears that the intent of the comment is to provide an opportunity for the applicant to present

additional information during the determination of minimum qualifications. The rule has been revised pursuant to comment 6 above.

8. 1120-02-.05(11) – Notice of Assessment Results. What qualifies as a “manifest” error? Why not correct any error affecting eligibility?  
Agency Response: Manifest error is statutory language, meaning, the error, if not the fault of the applicant, should not affect the offer of employment.
9. 1120-02-.06 (4)(a)(2) and (3) – Eligibility List. There is not much difference between subsection (2) and (3).  
Agency Response: The rule has been amended to reflect this comment by deleting subsection (2).
10. 1120-02-.06 (4)(a)(4) – Eligibility List. Why reduce seven (7) days to only five (5) days for response time to interview invitation?  
Agency Response: The period is reduced to allow the agency enough time to fill the position within the statutorily required 30 days.
11. 1120-02-.07 (7) – Veterans’ preference. How are Veterans and their spouses given the promised preference in these rules?  
Agency Response: The rule has been amended adopt this comment by adding in the preference language from the statute and indicating that further guidance will be issued by policy .
12. 1120-03-.02 – Classification Plan. Why is the Governor’s approval no longer required for a classification plan?  
Agency Response: The Governor’s approval for the classification plan was removed in the Act. However, the Governor still retains approval for the compensation plan.
13. 1120-03-.05 (4) – Position Classification Actions. Reestablishing the same or essentially similar position after abolishment. The Commissioner has the authority to determine if the position is essentially similar.  
Agency Response: The Department declines to adopt this comment. Without the Commissioner making the decision as to whether a position is essentially similar, there is ambiguity as to who makes that decision. By specifying that the Commissioner makes the determination, there is no confusion that this power does not rest with the agencies. Recommendation was sought on additional language; however, the TSEA agrees that agencies should not be given the latitude to make the determination of substantially similar.
14. 1120-05-.03 – Performance Evaluations. The managerial review of the evaluations (regarding its proper completion and appropriate and logical description) seems to have been dropped. This is an important element.  
Agency Response: The Department declines to adopt this comment, but notes that this review has not been “dropped.” This language will be further reviewed upon review of the performance evaluation system.
15. 1120-05-.03 (1) – Performance Plan. How are employees notified the requirements to achieve ratings above “acceptable” or “good”? What will be required for a rating of “superior” or “outstanding”?  
Agency Response: While not addressed in these rules, each employee is to receive an in-person conference to review the performance plan. The supervisor will explain the expectations of the employee and outline behaviors required to obtain a higher score.
16. 1120-10-.01 – Discipline. The proper description and understanding of the principle of progressive discipline requires the word “lowest” be re-inserted, to read “at the lowest step appropriate to the infraction” or “lowest and most effective”.

Agency Response: The Department declines to adopt this comment. Supervisors should be given authority to impose discipline at the level appropriate to the infraction. This language mirrors the language of the statute.

17. 1120-10-.04 (2)(b) – Written Warning. Language should be added requiring the application itself to be expunged from the employee’s record.

Agency Response: The application is not considered a part of the employee’s human resources file. The rule has been amended to reflect this clarification.

18. 1120-10-.04 (2)(c) – Written Warning. Add language requiring the written warning to be removed from the employee’s file if the agency fails to respond within the prescribed time.

Agency Response: The rule has been amended to reflect this comment.

19. 1120-10-.04 (3)(b)(1) – Suspension without Pay. Add language requiring the agency to cite the statute, rule, or policy that the employee has allegedly violated.

Agency Response: The rule has been amendment to reflect this comment.

20. 1120-10-.04 (4)(b) – Dismissal. Add language requiring the agency to cite the statute, rule or policy that the employee has allegedly violated.

Agency Response: The rule has been amended to reflect this comment.

21. 1120-10-04(4)(b) – Dismissal. The language The fourth sentence should be rewritten to read:

“The date this notification is received by the employee shall serve as the beginning date for the appeal period.”

Agency Response: The Department does not adopt this comment as the definition of “received” is too vague.

22. 1120-11-.03 (3) – Basic Standards. Clarify that an employee can appeal a suspension of less than 3 days to the appointing authority.

Agency Response: The rule has been amended to reflect this comment.

23. 1120-11-.03 (5) – Basic Standards. The rules should state that either party may make an audio tape recording of any step of the grievance procedure.

Agency Response: The Department does not adopt this comment.

24. 1120-11-.03 – Basic Standards. The rules should be amended to state that the agency shall have the burden of proof in the appeal to establish that there was good cause for taking the disciplinary action.

Agency Response: To appeal, the employee must demonstrate the law, rule, or policy that was violated by the agency in taking the disciplinary action. The Department declines to adopt this comment.

25. 1120-11-.04 – Step I. Attorneys should not represent the parties as Step I.

Agency Response: The Department declines to adopt this comment. The rule has been amended to clarify that neither the agency nor the employee may have representation at the hearing.

26. 1120-11-.04(3)(a) – Board of Appeals. The language should state “The complainant or state agency may appeal in writing to the Board not later than fourteen (14) days after receiving written notice of the action taken by the Commissioner of the Department of Human Resources.”

Agency Response: The language has been amended to reflect the statutory language.

27. 1120-14-.03(1) – Mediation. The language should be amended to clarify that either the employee or the agency may request mediation.

Agency Response: The language has been amended to reflect this comment.

28. 1120-14 – Mediation. Allow the representatives to advocate for the parties, under the supervision of and limits set by the Mediator. No one will be able to participate in mediation involving a disciplinary action if the time limits are not tolled while the mediation progresses.  
Both the employee and management ought to agree on the identity of the mediator.  
Agency Response: The Department does not adopt the comments.
29. 1120-11-.04(3)(b) – Appeal Process. The employee should receive the requested relief if the procedural requirement has not been met by the agency during the appeal process.  
Agency Response: The Department declines to adopt this comment, but the rule has been amended to clarify that if a procedural requirement in Step III has not been met, the matter may be dismissed.
30. 1120-11-.04(8) – Appeal Process. A penalty needs to be added back in for agencies who don't pay up after a reasonable time.  
Agency Response: The Department does not adopt this comment.
31. At the end of the second sentence of 1120-10-.01, strike everything after "at the", replacing the stricken language with "lowest step which is both appropriate and likely to be effective in correcting the infraction."  
Agency Response: See response to number 16 above.

#### Tennessee Wildlife Resources Agency

32. Probationary Period – How do we request a probationary period for longer than the minimum one year period?  
Agency Response: How probationary periods are determined are not addressed in the rules, but by policy.
33. Performance Evaluations – Are performance evaluations recommended or mandatory for Executive Service and non-preferred service?  
Agency Response: The rules state that all employees shall receive a performance evaluation. However, certain employees, such as part-time, seasonal, temporary or emergency appointments, are not required to have a performance evaluation. The rules do not specify these issues. The Department will issue a policy clarifying the performance evaluation process.
34. Hiring. Will selective certification still be used?  
Agency Response: Selective certification is defined in proposed rule 1120-02-.08.
35. Eligibility List – I understand that eligible lists will be pass or fail only.  
Agency Response: The Department will provide agencies with a list of applicants meeting the minimum qualifications. The agency must select a minimum of three (3) individuals to interview. See rule 1120-02-.07.
36. Due Process – Is there a requirement for a pre-decision hearing before disciplinary action occurs.  
Agency Response: There is not a requirement for a pre-decision hearing prior to disciplinary action. The employee, however, does have an ability to appeal a suspension, demotion, or termination based on an agency's violation of a law, rule or policy. See rule 1120-11.

#### Tennessee Department of Health

37. 1120-02-.07 – Certification and Use of Eligible Lists. How do our preferred skills, abilities, competencies and knowledge of the person to be appointed affect the announcement (posting) of positions and the rating of applicants for inclusion on an eligible list? How will we determine who on the eligible list has the preferred skills, abilities, competencies and knowledge? What applicant specific information will be included on registers and will we be able to access applications prior to mailing out interview letters?

Agency Response: The Department will issue policy guidance to assist agencies in filling positions.

38. 1120-02.07. Appointment from a Referred List – Is an agency required to fill a position after interviewing?

Agency Response: The rule has been amended to reflect that an agency may make an appointment within the prescribed timeline, but is not required to make an appointment.

39. 1120-02-.15 – Certification of Payrolls. Is it possible to add "knowingly" so that it would read, "Any Appointing Authority who knowingly appoints or employs any person....may be required to pay the agreed upon salary"?

Agency Response: The Department declines to adopt this comment. However, the rule has been amended to reflect the statutory language.

40. 1120-06-.07 – Rest Breaks. Is it possible to change "two (2) rest breaks, of fifteen (15) minutes duration each" to "rest breaks of up to thirty (30) minutes"? We are working on a workplace wellness initiative that would give supervisors the authority to approve employees to take their two allowed 15 minute breaks together as long as they agree to spend that time exercising.

Agency Response: The Department declines to adopt this comment at this time.

41. 1120-11-.04 – Procedural Steps in Appeal. What does "other state agency" mean in the second sentence?

Agency Response: The rule has been amended to reflect this comment.

#### Mental Health and Developmental Disabilities

42. 1120-01-.01(42) – Preferred Service Employee. Is there a "property interest" implicit upon the completion of a probationary period?

Agency Response: A preferred service employee has the ability to appeal, but does not have a property interest in the position.

43. Working Test Period. Does this fall under providing a reasonable accommodation as required by the ADA? Should this provision be revised to specify that the Commissioner may substitute a working test period in lieu of a written assessment for an applicant with a qualified disability as defined by the ADA? If not, should "disability" be defined in 1120-01-.01?

Agency Response: The Department declines to adopt this comment as this rule mirrors the statutory language.

44. 1120-02-.15 – Tenure of Office. Is there an implicit "burden of proof" and/or "level of proof" required of management by which to demonstrate unsatisfactory performance and/or conduct?

Agency Response: The Department declines to adopt this comment.

45. 1120-11-.01 – Appeal. What does it mean "to file an appeal concerning the application of a law, rule, or policy to the employment action"? Does this mean a disciplined employee must demonstrate that management violated some law, rule, or policy? Does it mean that a disciplined employee must recite a law, rule, or policy that they themselves have been charged with violating?

Agency Response: The Department will issue further policies offering guidance on the appeal process.

#### Finance and Administration

46. 1120-02 – Eligible lists. Those provisions, and the TEAM Act at section 25, provide that a person stricken from the eligible list shall be notified. Will there be a procedure for such a person to provide evidence that the decision to delete him or her from the eligible list is erroneous, and that he or she should be reinstated to the list? The regulations provide some relief for erroneous

assessments in 1120-02-.04(11) but that does not seem to apply to persons excluded from the eligible list.

Agency Response: See response to comments number 6 and 7 above.

47. Section 1120-11-.04(3) (c) provides that the judge may decide any procedural question of law, tracking language in the TEAM Act. Section 1120-11-.04(4) (c) provides that the Board of Appeals will rule on dispositive motions. If the State agency wants to file a motion to dismiss on the basis that the grievant is appealing a non-grievable issue would this be ruled on by the administrative judge or by the Board?

Agency Response: The Department will issue further policies offering guidance on the appeal process.

48. Under Step Two of the appeal procedure set forth in Section 1120-11-.04, the Commissioner of Human Resources can reduce or amend a disciplinary action as well as overturn it. Does the Board of Appeals have the same discretion in Step Three or can it only affirm or reverse the Step Two decision?

Agency Response: The rules have been revised to reflect this comment.

49. Section 1120-11-.05 provides for award of attorneys fees in case of successful appeal. Does this include a partially successful appeal, such as if a termination was reduced to a suspension?

Agency Response: The Department will issue further guidance on the appeal process through policy.

#### Department of Intellectual and Developmental Disabilities

50. Bona Fide Offer should be placed back in Definitions, 1120-01-.01, which would allow the department to do certain things, such as drug testing, fingerprints, etc., after an offer of employment is made but before actual employment.

Agency Response: The term Bona Fide Offer used in the previous rules pertained to reduction in force actions. Therefore, the Department declines to adopt this comment.

51. Appointing Authority in the definitions section is not clearly defined and should include heads of institutions.

Agency Response: The Department declines to adopt this comment. The definition of Appointing Authority is the same as the statutory definition.

52. Subsequent Probation should be added back into definitions since it is discussed in the proposed rules at 1120-02-.12(5).

Agency Response: The Department declines to adopt this comment as subsequent probation is described in length elsewhere in the rules.

53. Should be a review right or the right to request some sort of reconsideration when one is removed from an Eligible List in 1120-02-.03 (3).

Agency Response: See response to comment number 6 above.

54. 1120-02-.05 (4) (a) Eligible List, numbers (2) and (3) appear to say the same thing. In the proposed rule it appears to be repetitious.

Agency Response: See response to comment number 9 above.

55. Why is the time to respond to an invitation to interview reduced to five (5) days.

Agency Response: See response to comment number 10 above.

56. In 1120-02-.06 (6), will there be some guidance for the selection of applicants to interview.  
Agency Response: See response to comment number 37 above.
57. Will the spouses of veterans will get preference in promotions as well as the veteran? See 1120-02-.06 (7).  
Agency Response: The rule has been amended to reflect this comment. See response to comment 11 above.
58. In 1120-02-.06 (8), Certification and Use of Eligible Lists, DIDD questions what is to happen if no one on the eligible list is appropriate for or willing to take a position.  
Agency Response: See response to comment number 38 above.
59. DIDD suggests that in 1120-02-.07 (2), Other Lists- Layoff List, that a phrase be added to the second sentence for it to read "Employees so listed shall be notified of any job openings in the same job classification *in counties selected by employee* that the employee served immediately prior to layoff, etc..." This would eliminate unnecessary notifications.  
Agency Response: The Department declines to adopt this comment at this time.
60. DIDD questions whether in 1120-02-.11 Probationary Period, subsection (5), if the term used could be "right" instead of "ability" to appeal a dismissal since "ability" sounds as if someone could have a disability that prevents an appeal.  
Agency Response: The Department declines to adopt this comment.
61. DIDD questions what is meant by "rank" in 1120-02-.13(1) (a), Employee Transfer, etc., when it refers to Appointing Authority may transfer an employee from one position to another in the same classification or *rank*. This term, which is in the Act, needs definition.  
Agency Response: Rank applies to the series of positions in a classification of positions.
62. DIDD believes it should read "performance record" and not "record performance" in 1120-02-.14 (1), Tenure, Employee Reclassification, Suspension and Separation.  
Agency Response: The rule has been amended to reflect this comment.
63. In the above section, DIDD questions in Resignations, 112-02, if the resignation should be provided by the employee at least ten (10) days or ten (10) *workdays* prior to date of separation.  
Agency Response: The Department declines to adopt this comment. Calculation of time is established by Chapter 1120-12.
64. DIDD questions whether in 1120-06-.24 (2), Paid Leave for Excused Absences, if it must be granted for voting in any election, including state, federal, county or municipal.  
Agency Response: The Department declines to adopt the comment at this time. Any clarification on this issue can be addressed through policy issued by the Department.
65. In 1120-10-.04 (2) Written Warning, subsection (b), DIDD HR prefers the rule to say that a "written request" not a "written application" may be submitted by an employee to expunge a written warning.  
Agency Response: The rule has been amended to reflect this comment.
66. DIDD believes that in 1120-11-.04 (1), Procedural Steps in Appeal, Step I of the appeal process does not provide enough time for the Appointing Authority to interview the employee, conduct an

investigation and/or review the facts of allegations found. Fifteen (15) days is not enough time for this process. At the least, the rule should give parties the option to agree to a reasonable extension for good cause.

Agency Response: The Department declines to adopt this comment as the time frames are specified in statute.

67. DIDD questions 1120-02-.15 (2), Suspension, in which a suspension may be for more than thirty (30) days pending an investigation or trial of any charges. This latter phrase needs an explanation.

Agency Response: The rule has been amended to reflect this comment.

68. In 1120-11, Appeals, DIDD notes that there is no mention of legal representation for either side in any step of a disciplinary appeal. Does "representation" in (5), Basic Standards, include legal and does it infer contested or adversarial? If it does, why then does the second sentence discuss "observers" presence being at the discretion of the individual in charge? This is confusing to be placed in same subsection.

Agency Response: See response to comment 25 above.

69. In all appeal steps, up to and including Step III, no mention is made of attorney or legal representation only "parties". Does this preclude attorney representation or does (5) in Basic Standards cover the issue?

Agency Response: Basic Standards covers attorney representation at Step III.

70. In 1120-11 concerning the last step at Board of Appeals, DIDD questions in (3) (b) where it states that the ALJ can dismiss an appeal because procedural steps were missed or not completed properly. Does this mean procedural steps missed by either side or just the employee?

Agency Response: See response to comment number 29 above.

#### Agriculture

71. 1120-10-.04 (1) Oral warning. Is a written follow-up to an oral warning considered a written warning and maintained as a part of the employee's official human resources file?

Agency Response: No, the written follow-up to an oral warning is not considered a written warning and is not a part of the employee's file.

#### Department of Transportation

72. 1120-02-.14(7) Re-employment Recommendation – As in the current Rule 1120-02-.16(7), the appointing authority "may" make a recommendation concerning reemployment. Currently, DOHR requires that each separating employee receive either a rehire "yes" or a rehire "no" recommendation. Under the proposed rules, will DOHR allow agencies the option of making neither a positive nor a negative recommendation? There are occasions when a neutral recommendation would be helpful in resolving a disputed dismissal.

Agency Response: The Department declines to adopt this comment.

73. 1120-10 Disciplinary Action – Consistent with the TEAM Act's repeal of T.C.A. § 8-30-331, the proposed chapter 1120-10 deletes the current rules concerning minimum due process. Section 37 of the TEAM Act provides that preferred service employees who have successfully completed their probationary period may thereafter be dismissed, demoted, or suspended "for cause" or dismissed "for the good of the service" as detailed in the notice of dismissal. Is it DOHR's position that these statutory conditions for dismissal, demotion, or suspension do not confer a property right?

Agency Response: See response to comments number 36 and 42 above.

74. 1120-11-.04(2) Appeals: Does the Board of Appeals have "full authority to overturn, reduce, or amend" the DOHR Commissioner's decision.  
Agency Response: See response to comment 48 above.
75. 1120-11-.04(3) Board of Appeals (Step III Appeals). Allowing the ALJ to hear the facts and make a recommendation to the Board seems inconsistent with the TEAM Act, especially if the intent is to allow the ALJ to hear the evidence in the case without the Board being present.  
Agency Response: The Department declines to adopt this comment.
76. Will the Department be the administrative arm of the Board of Appeals as it is for the current Civil Service Commission?  
Agency Response: The Department will be the administrative arm for the Board of Appeals.
77. 1120-14-.01 Statement of Policy for Mediation Program. What does it mean to say that the mediation program is to provide a "confidential" means of resolving "human resource issues" as an alternative to administrative proceedings? Rule 1120-14-.03(6) acknowledges that settlement agreements are not confidential under the Public Records Act. Under Section 39 of the TEAM Act, the only "human resource issues" subject to appeal through any administrative proceeding are dismissals, demotions, or suspensions without pay for three (3) days or more.  
Agency Response: The mediation program is not designed to only apply to disciplinary actions or action in the appeal process. The rules have been amended to reflect the matters available for mediation. The Department will issue further guidance on the mediation program through policy.
78. Would DOHR's mediation program supersede the current Civil Service mediation administered by the ALJs in the Secretary of State's Administrative Procedures Division?  
Agency Response: No. See response to comment 77 above.
79. Attorneys should be allowed to represent the agency at Step I of the appeal process.  
Agency Response: See response to comment 25 above.

Mark Travis, Center for Workforce Relations

80. 1120-14-.02 – Mediation. Should normal supervisory counseling and management and oral and written reprimands be allowable issues for mediation.  
Agency Response: The rules have been amended to reflect this comment.
81. 1120-14-.02(3)(j) – Mediation. The inability to mediate a rule or policy should be clarified.  
Agency Response: The rule has been amended to reflect this comment.
82. 1120-14-.03 – Mediation process and procedures. The Department should determine if the requested mediation is within the matters allowed to be mediated.  
Agency Response: The rule has been amended to reflect this comment.
83. 1120-14-.04 – Mediation Training and Certification. There should be clarification that the mediators must be affiliated with the state.  
Agency Response: The rule has been amended to reflect this comment.

Department of Human Services

84. 1120-01 Definitions. There should be clarification to the definitions of executive service and legal residence.  
Agency Response: The rules have been amended to reflect these comments.
85. 1120-02 Eligible Lists and Assessments. The applicant should have the ability to review the removal from an eligible list.

Agency Response: See response to comments number 6 and 7 above.

86. 1120-02-.10 The ability appeal actions against interim, temporary and temporary employment of retired state employees should be clarified.

Agency Response: The rules have been amended to reflect this comment.

87. What does the Appointing Authority have to do to notify the employee that he or she has not satisfactorily completed the probationary period before they attain it?

Agency Response: The performance evaluation will be the method for which the agency will notify the employee that he or she has not satisfactorily completed the probationary period. Further guidance on this matter will be developed in policy.

88. 1120-02-.11 Subsequent Probationary Period. A preferred service employee who accepts another preferred service position in the same agency shall serve a subsequent probationary period. Employees serving subsequent probation have the ability to appeal as described herein except when returning to their former classification. Does this exception mean that if they voluntarily or involuntarily return to their former classification, they don't have an ability to appeal that return, or, does it also mean they also can't appeal any disciplinary action after they return to the former classification, i.e., do they have an ability to appeal in the former classification by the fact that they had preferred status previously in the former position? It would help to clarify this.

Agency Response: The rule has been amended to reflect this comment.

89. Voluntary Reduction in Rank 1120-02-.13 is not a demotion. Add clarifying language that it cannot be appealed.

Agency Response: The rule has been amended to reflect this comment.

90. 1120-02-.14 Dismissal. An Appointing Authority may dismiss a preferred employee for either unsatisfactory performance or unsatisfactory conduct. Executive service employees are at-will employees and serve at the pleasure of the Appointing Authority Add "and have no rights to appeal nor to mediate their dismissal."

Agency Response: The rule has been amended to reflect this comment.

91. 1120-08-.05 An employee in continuing education, learning and development will be held to the same attendance and performance standards as other work assignments. An employee must reimburse the State for all costs, including salary, resulting from unexcused absences and incompleteness of a learning and development program.

Agency Response: Pursuant to the rule, collection of reimbursement is the responsibility of the agency.

92. Appeals. Can a transfer be appealed? Can an employee appeal a position or geographic transfer?

Agency Response: The Department declines to adopt this comment as the statute provides that only a suspension, demotion, or termination may be appealed.

## Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The Department of Human Resources has conducted a review of the Rules pursuant to Tennessee Code Annotated §§ 4-5-220 and 4-5-228 to determine if any rules will have an impact on local governments. The Rules of the Department of Human Resources apply only to current state employees and applicants and will not have any impact on local governments.

**Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

The Department of Human Resources has conducted a review of the Rules pursuant to Tennessee Code Annotated §§ 4-5-401 through 4-5-404 to determine if any rules promulgated herein will have an impact on small businesses. The Rules of the Department of Human Resources only apply to current state employees and applicants will not have any effect on small businesses.

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Sequence Number: 07-05-12  
Rule ID(s): 5236-5249  
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# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205*

<b>Agency/Board/Commission:</b>	Department of Human Resources
<b>Division:</b>	
<b>Contact Person:</b>	Danielle Whitworth Barnes
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**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s) Revised (ALL chapters and rules contained in filing shall be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)**

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Rule Number	Rule Title
1120-01-.01	Definitions

Chapter Number	Chapter Title
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Rule Number	Rule Title
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1120-02-.02	Divisions of State Service
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1120-02-.04	Request to Fill a Position
1120-02-.05	Assessments
1120-02-.06	Eligible List
1120-02-.07	Certification and Use of Eligible Lists
1120-02-.08	Other Lists
1120-02-.09	Non-Competitive Classifications
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## STRIKE THROUGH VERSION OF THE RULES OF THE DEPARTMENT OF HUMAN RESOURCES

The previous version of the rules have been repealed in their entirety and replaced with the proposed rules to be consistent with Tennessee Code Annotated § 8-30-101 et seq. effective on October 1, 2012.

### **RULES OF THE TENNESSEE DEPARTMENT OF HUMAN RESOURCES**

#### **Chapter 1120-1 DEFINITIONS**

~~1120-1-.01 DEFINITIONS.~~ The following definitions shall apply to terms as they appear in these Rules, unless the context clearly requires otherwise:

- ~~(1) Act.~~ Tennessee Civil Service Act as codified in Tennessee Code Annotated.
- ~~(2) Active Pay Status.~~ Term applied to an employee who is actually working or who is using paid leave other than paid terminal leave or sick leave bank leave.
- ~~(3) Affirmative Action Plan.~~ A statistical document which identifies and analyzes patterns in the participation and utilization of women and minorities in the workforce.
- ~~(4) Agency.~~ Any entity that employs and exercises authority over any employee in state service in the executive branch.
- ~~(5) Appointing Authority.~~ An officer having power to make appointments to and separations from positions in state service.
- ~~(6) Appointment.~~ The official designation of a person to fill a position in state service as an employee.
- ~~(7) Bona Fide Offer.~~ An offer of employment to a career employee affected by a reduction in force to a position at a comparable level and in a location previously declared acceptable by the employee.
- ~~(8) Career Employee.~~ An employee who holds a position in an agency in state service in which the employee has obtained career status.
- ~~(9) Career Service.~~ All positions in state service subject to the civil service provisions of the Act.
- ~~(10) Career Status.~~ The status granted an employee by an agency upon completion of any probationary period required for the job classification in that agency.
- ~~(11) Classification/Class of Positions.~~ A group of positions sufficiently alike in duties, authority and responsibilities such that the same general qualifications may reasonably be required and the same schedule of pay equitably applied to all positions in the group.
- ~~(12) Classification Specification.~~ A description of a class of positions including classification title, summary, distinguishing features, examples of duties and responsibilities, minimum qualifications, necessary special qualifications, and examination method.
- ~~(13) Commission.~~ The Tennessee Civil Service Commission.
- ~~(14) Commissioner.~~ The Commissioner of the Department of Human Resources.

- ~~(15) Compensation Plan. A series of salary ranges to which classes of positions are assigned so that classifications evaluated as substantially equal are assigned to the same salary range.~~
- ~~(16) Demotion. The change of an employee to a position in a classification at a lower salary grade for causes related to performance of duties or conduct which affects an employee's ability to successfully fulfill the requirements of the job.~~
- ~~(17) Department. The Department of Human Resources.~~
- ~~(18) Dismissal. The termination from state service of an employee for causes related to performance of duties or conduct which may affect an employee's ability to successfully fulfill the requirements of the job.~~
- ~~(19) Eligible. A person who has qualified for appointment to a position in the career service.~~
- ~~(20) Eligible List. A list of names of all qualified applicants for positions in the career service.~~
- ~~(21) Emergency Appointment. The appointment of a person to a position in the career service, for a period not to exceed one hundred twenty (120) days, when an emergency makes it impractical or impossible to fill the position through standard appointment procedures.~~
- ~~(22) Examination. A test or series of tests designed to assess the relative fitness of individuals to perform the duties associated with a particular class of positions.~~
- ~~(23) Executive Service. All positions in the state service not subject to the civil service provisions of the Act.~~
- ~~(24) Executive Service Employee. An employee who holds a position in the executive service.~~
- ~~(25) Flex Class Position. A position in a job classification series which may be filled with an employee qualified to perform the job at the trainee, entry, intermediate or working level.~~
- ~~(26) Full-Time. A position or an employee budgeted for or scheduled to work a full-time schedule as defined by the Commissioner and the Commissioner of Finance and Administration, usually one thousand nine hundred and fifty (1,950) hours or more per year.~~
- ~~(27) Grievance. An unresolved complaint concerning a condition, act or omission that an employee alleges adversely affects the employee's condition of employment that is within the discretion, jurisdiction, or control of the appointing authority or Commission.~~
- ~~(28) Gross Misconduct. Any job related misconduct which may subject an employee to criminal prosecution.~~
- ~~(29) Initial Probation/Initial Probationary Period. The first probationary period an employee serves in a continuous period of employment in an agency prior to becoming a career employee in that agency.~~
- ~~(30) Interim Appointment. The appointment of a person to a position in the career service for a period of one (1) year.~~
- ~~(31) Involuntary Reduction in Rank. The change of an employee to a position in a classification at a lower salary grade as a result of a reduction in force or in compliance with T.C.A. § 8-30-212.~~

- ~~(32) Lateral Reclassification. A change from a position in one classification to a position in another classification with the same salary grade and similar duties, authority, responsibilities, and qualification requirements.~~
- ~~(33) Layoff. A separation of an employee from state service as the result of a reduction in force.~~
- ~~(34) Legal Residence. The county in which an individual's home is located and to which the individual plans to return if temporarily absent.~~
- ~~(35) Limited Term Appointment. The governor, the governor's cabinet, and members of boards, commissions, agencies and authorities receive limited executive service appointments. Limited term appointments do not require the use of eligible lists.~~
- ~~(36) List. A compilation of eligibles who may be appointed to positions in accordance with these Rules, such as appointment list, promotional list, layoff list, reemployment list, and transfer list.~~
- ~~(37) Major Portion of a Month. One-tenth (0.1) of one (1) hour over fifty percent (50%) of the regularly scheduled working hours.~~
- ~~(38) Manager. An employee who supervises, plans and coordinates the work of other supervisors or an employee who serves in a staff policy making or recommending capacity in an agency. Managers may conduct and/or review performance evaluations.~~
- ~~(39) Merit Factor. An employee's job performance, conduct, or any knowledge, skill, ability, or competency on which administrative actions can be based.~~
- ~~(40) Non-Career Employee. Employees who fall outside of T.C.A. § 8-30-208 and serve in one of the following appointment types: interim, emergency, part-time, seasonal, temporary, temporary provisional or temporary employment of retired state employees. Employees in this category do not gain career status and are not considered career employees.~~
- ~~(41) Non-Merit Factor. Any factor not defined in item thirty-nine (39) above on which an administrative action can be based.~~
- ~~(42) Official Duty Station. The town or city where the majority of the employee's duties are performed.~~
- ~~(43) Organizational or Business Unit. Any agency, board, commission, department, or subdivision recognized as a unit for purposes of administration.~~
- ~~(44) Part Time. A position or an employee budgeted or scheduled to work a part-time schedule as defined by the Commissioner and the Commissioner of Finance and Administration, usually less than sixteen hundred (1,600) hours per year.~~
- ~~(45) Position. A job consisting of assigned duties, authority, and responsibilities typically performed by one (1) person.~~
- ~~(46) Position Reclassification. A change in a job classification, typically resulting from a significant reassignment in job duties and responsibilities.~~
- ~~(47) Probationary Period. A period of at least six (6) months duration used to provide an employee with the opportunity to demonstrate ability to adequately perform the duties of the job.~~
- ~~(48) Promotion. The change of an employee to a position in a classification at a higher salary grade.~~

- ~~(49) Reallocation/Reallocated. A change from one classification to a new or existing classification based on a change in the nature or structure of the classification plan.~~
- ~~(50) Reduction in Force. Any job action due to a shortage of work or funds, or the abolition of a position or other material change in duties or organization that may result in the layoff of a career employee.~~
- ~~(51) Reemployment/Reappointment List. A list of persons who may be appointed to a class of positions without further certification or examination due to their prior career status in the classification or related classification.~~
- ~~(52) Referred List. The document or record containing the names of the highest ranking available eligibles for a class of positions for consideration by an appointing authority in filling a vacancy.~~
- ~~(53) Regular Appointment. The appointment of a person to a regular position in either the career or executive service for an indeterminate period of time.~~
- ~~(54) Regular Position. A position which is funded on an annual basis and is expected to continue to receive funding.~~
- ~~(55) Salary Grade. A numeric value which defines the level of the job classification and designates the salary range for a class of positions.~~
- ~~(56) Salary Range. The minimum to the maximum rates of pay established for a class of positions.~~
- ~~(57) Seasonal Appointment. An executive service appointment of a person for an indeterminate period of time to be scheduled to work for a certain period usually recurring each year and generally not exceeding sixteen hundred (1,600) hours per year.~~
- ~~(58) Seasonal Position. An executive service position which is funded for a specific period of time, typically less than one (1) year, and is expected to continue to receive funding.~~
- ~~(59) Sick Leave Bank. A pool of sick leave hours donated by member employees for use by qualifying members who are medically certified as unable to perform the duties of their jobs as a result of a personal illness, injury, accident, disability, medical condition, or quarantine.~~
- ~~(60) State. The State of Tennessee.~~
- ~~(61) State Employee. A person employed in a position in state government. For the purposes of these Rules only, "state employee" excludes employees of state universities and local education agencies.~~
- ~~(62) State Service. All officers and positions of trust or employment in the executive branch and all boards, commissions and agencies in state government except those specifically excluded by the Act.~~
- ~~(63) Subsequent Probation. Any probationary period served by a career employee in an agency after the successful completion of an initial probationary period in that agency or after the employee obtains career status in that agency.~~
- ~~(64) Supervisor. An employee who directly plans and evaluates the work of one or more employees, including the performance evaluation process.~~
- ~~(65) Suspension. An enforced leave of absence without pay for disciplinary purposes or pending an investigation or adjudication of charges made against an employee.~~

- ~~(66) Temporary Appointment. The appointment of a person to an executive service position for a temporary period, usually less than six (6) months.~~
- ~~(67) Temporary Provisional Appointment. The appointment of a person to a position in the career service, for a period not to exceed four (4) months, when there is an insufficient referred list or no established eligible list.~~
- ~~(68) Terminal Leave. The annual leave balance of a retiring employee. Any leave balance remaining after the employee's last actual workday is considered terminal leave.~~
- ~~(69) Termination. Any action taken that officially separates an employee from state service. This includes employees who elect to resign, retire or who are dismissed from state service.~~
- ~~(70) Time Period. Time period for most employees is defined as the work week beginning on Sunday and ending Saturday.~~
- ~~(71) Transfer. A change from one position in a classification to another position in the same classification.~~
- ~~(72) Voluntary Reduction in Rank. The change of an employee to a position in a classification at a lower salary grade based on an employee's request and the concurrence of the appointing authority.~~
- ~~(73) Workday. A scheduled day of work exclusive of holidays or other authorized leave days.~~
- ~~(74) Work Test Period. The probationary period served by an employee with a disability when substituted for a written and/or performance examination required for appointment or promotion to a class of positions.~~

**Authority:** T.C.A. § 8-30-201.

**RULES  
OF THE  
TENNESSEE DEPARTMENT OF HUMAN RESOURCES**

**Chapter 1120-2  
EMPLOYMENT PRACTICES**

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<del>1120-2-.10</del>	<del>Other Matters Related to Lists</del>	<del>1120-2-.18</del>	<del>Records and Reports</del>

~~**1120-2-.01 RESPONSIBILITY.** The Commissioner is responsible for administering the Act, these Rules, and establishing policies and procedures.~~

~~**Authority:** T.C.A. § 8-30-202, T.C.A. § 8-30-203, and T.C.A. § 8-30-204.~~

~~**1120-2-.02 DIVISIONS OF STATE SERVICE.** The state service is divided into the career service and the executive service.~~

~~**Authority:** T.C.A. § 8-30-208.~~

~~**1120-2-.03 APPLICATION FOR EMPLOYMENT.**~~

~~(1) **Applying for Positions in the Career Service.** All applications for employment in career service positions must be made in a manner prescribed by the Commissioner.~~

~~(2) **Disqualification of Applicants.** The Commissioner may refuse to examine or, after examination, may disqualify an applicant or remove an applicant's name from an eligible or referred list for a period of time as prescribed by the Commissioner, if the applicant:~~

~~(a) is found to lack any of the minimum or special qualification requirements established for the class of positions;~~

~~(b) has willfully or intentionally submitted false information or documents in support of any application or has intentionally omitted information in any application which materially affects score, position on a list, or eligibility for employment consideration;~~

~~(c) has previously been dismissed from any public service for delinquency, gross misconduct, or other similar cause;~~

~~(d) has used or attempted to use political pressure or bribery to secure an advantage in examination or appointment;~~

- ~~(e) has directly or indirectly obtained information regarding an examination to which the applicant was not entitled;~~
  - ~~(f) has failed to submit an application correctly or within the prescribed time limit;~~
  - ~~(g) has taken part in the compilation, administration, or correction of the examination; or~~
  - ~~(h) has otherwise violated provisions of this Rule or related policies established and distributed by the Commissioner.~~
- ~~(3) Appeal of Removal from Eligible Lists. An eligible whose name has been removed from an eligible list for any of the reasons specified in T.C.A. § 8-30-305, by Rule, or by policy may appeal to the Commissioner for reconsideration. Such appeal must be filed in writing with the Commissioner within fifteen (15) calendar days after the date of the notification. The Commissioner, after consideration, shall make a decision and notify the applicant accordingly.~~
- ~~(4) Equal Employment Opportunities. The provisions of this section shall be administered consistent with the State's equal employment opportunities policies and obligations. All actions taken pursuant to this section shall be in strict compliance with all applicable state and federal civil rights laws.~~

~~Authority: T.C.A. § 8-30-222, T.C.A. § 8-30-302, T.C.A. § 8-30-304, and T.C.A. § 8-30-305.~~

**1120-2-.04 EXAMINATIONS.**

- ~~(1) Notice of Examinations. The Commissioner will give public notice of all examinations, at least two (2) weeks in advance of the closing date for receipt of applications, by posting notices throughout the State. Public notice of examinations will specify the title and salary range of the class of positions, examples of duties to be performed, the minimum or desirable qualifications required, the final date on which applications will be received, and other conditions of competition, including the relative weights assigned to the various parts in the examination.~~
- ~~(2) Promotional Examinations. Promotional examinations may be limited to employees of a defined organizational unit or may be open to all employees in the career service. The Commissioner shall determine and specify in the notice of examinations the classifications in an organizational unit or units eligible to compete. Any career employee in such classification(s) in the organizational unit(s) shall be eligible to compete in the promotional examination, provided the employee possesses the minimum qualifications required for the class of positions for which the examination is held. The Commissioner will grant additional performance bonus points to the examination scores of career employees who attain good, superior, or exceptional ratings on their probationary or annual performance evaluation as follows:~~
- ~~(a) Good overall performance..... 1 performance bonus point~~
  - ~~(b) Superior overall performance..... 2 performance bonus points~~
  - ~~(c) Exceptional overall performance..... 3 performance bonus points~~

~~Performance bonus points are granted to employees only on a promotional list of eligibles.~~

- ~~(3) Admission to Examinations. Examinations will be open to all persons who meet the requirements specified in the respective public notices. Each applicant admitted to an examination will be notified of the time, date and place of the examination. Applicants not meeting the requirements for a class of positions may appeal the decision by requesting that the Commissioner reevaluate their~~

~~qualifications based on documents submitted during the application process which were received during the open examination period. The Commissioner may also request other documents from the applicant. Applicants reevaluated as meeting the requirements may then be admitted to the examination at the discretion of the Commissioner.~~

- ~~(4) Employees in Positions Added to the Career Service. An employee in a position which is added to the career service may, within one (1) year after the establishment of such positions in the career service, be given a noncompetitive test prescribed by the Commissioner to determine if the employee is fit to satisfactorily perform the duties of the position. The Commissioner shall certify whether each employee tested has met a reasonable standard of fitness qualifying such employee to retain such position, and each person so certified shall be deemed to be a career employee.~~
- ~~(5) Conduct of Examinations. All examinations will be approved by the Commissioner with every precaution taken to prevent unauthorized persons from gaining knowledge of the nature or content of the tests. Examinations will be conducted in locations that are practical for proper administration. All applicants admitted to sit for civil service examinations must adhere to the Department's established testing rules and procedures. The Commissioner may take any appropriate action, up to and including criminal prosecution, against applicants who do not adhere to these established Rules and procedures.~~
- ~~(6) Scoring Examinations. The Commissioner will determine a final examination score for each applicant in accordance with the weights established on the announcement of the examination. Failure in one part of any examination may disqualify the applicant from the entire examination.~~
- ~~(7) Reapplying for Examination. Applicants rejected for not meeting minimum qualifications may reapply during an open examination period provided they can furnish evidence that they meet the required education, experience, or special qualifications. Applicants failing a written or performance test or wanting to improve their current score may retake the examination in accordance with established policy. An applicant's score is based on the latest examination results. Applicants may reapply for examination when changes in job minimum qualifications or examination method results in the abolishment of an eligible list and the establishment of a new eligible list.~~
- ~~(8) Promotional Rating Update. The Commissioner may establish a procedure and develop the manner by which state employees may update scores based on a rating of education and experience after gaining additional education or experience.~~
- ~~(9) Rating Training and Experience. When education, training and/or experience form a part or all of an examination, the Commissioner will establish a procedure for the evaluation of the education, training, and experience qualifications, including licenses, certifications, approved Continuing Education Units (CEU's), and other merit factors as deemed appropriate by the Commissioner.~~
- ~~(10) Work Test Period. With input from the Division of Rehabilitation Services, Department of Human Services, the Commissioner may substitute a working test period in lieu of a written examination for an applicant with a disability. Such test period shall be the same as the individual's established probationary period.~~
- ~~(11) Investigations. The Commissioner or any appointing authority may investigate an applicant's education, training, and experience to verify the statements contained in the application form or to verify statements regarding the applicant's character and fitness. If this investigation shows any falsification, including false information or documents submitted in support of any application or intentionally omitted information in any application which materially affects score, position on a list, or eligibility for employment consideration, the applicant may be removed from consideration for employment or, if employed, may be dismissed and disqualified from future examinations. Lesser~~

~~discrepancies in applicant information may result in a reevaluation of examination scores as necessary.~~

- ~~(12) Oral Examinations. When an oral examination is part of the examination for a class of positions, the Commissioner will appoint or approve one or more oral examination boards as needed.~~
- ~~(13) Notice of Examination Results. The Commissioner will notify an applicant in writing of their examination results as soon as scoring has been completed. Scores based on the rating of an employment application including education, experience, and other merit factors as deemed appropriate shall be reported to the applicant within ninety (90) calendar days or a reasonable time period thereafter when the number of applicants applying for a particular job class prevents the scoring process from being completed within the ninety (90) calendar day period. An error in the scoring of any phase of an examination will be corrected, if called to the attention of the Commissioner; however, such correction will not invalidate any appointment previously made to a class of positions.~~
- ~~(14) Examination Records. The Commissioner will maintain all records pertinent to an examination program. The retention of applications and other necessary examination records shall be maintained as prescribed by law.~~
- ~~(15) Rescheduling Examinations. When an applicant is unable to appear for an examination, the applicant may, upon satisfactorily showing the cause of his failure to appear, be granted permission by the Commissioner to take the examination at a later date.~~

~~**Authority:** T.C.A. § 8-30-222, T.C.A. § 8-30-301, T.C.A. § 8-30-302, T.C.A. § 8-30-303, T.C.A. § 8-30-305, T.C.A. § 8-30-307 and T.C.A. § 10-7-504.~~

#### ~~1120-2-05 ELIGIBLE LIST.~~

- ~~(1) Establishment of Eligible List. The Commissioner will establish an eligible list for competitive career service job classifications no later than four (4) months after the date on which the test was held, unless such time is extended by the Commissioner for reasons which the Commissioner shall record in the official records of the Department. The Commissioner may establish a promotional eligible list or roster of employee names in addition to or in lieu of an employment eligible list. A promotion list or employment list which has been in force for six (6) months or more shall be deemed cancelled upon the establishment of a new promotion list or employment list, as the case may be, for the same class of positions.~~
- ~~(2) Supplementing Eligible Lists. The Commissioner will routinely review existing employment eligible lists to determine whether there is an adequate number of eligibles available to meet the needs of the service. When the Commissioner determines that a particular eligible list is inadequate or is likely to become inadequate, the Commissioner may order a supplemental examination for the class of positions. The public announcement for supplemental examinations will give notice of the dates when applications will be accepted and, where applicable, when written examinations will be administered.~~

~~Eligible lists for job classifications examined on a continuous basis are supplemented daily as applicants are scored.~~
- ~~(3) Duration of Eligible Lists. All scores based on a rating of an applicant's education, training, and experience will be in effect for two (2) years unless the score is otherwise ruled ineligible or unless the eligible list is abolished. All scores derived as a result of a written examination will remain in effect until such time as prescribed by the Commissioner. Subject to the limitations of the Act and~~

~~these Rules, the Commissioner may consolidate or cancel an eligible list at any time after it has been established.~~

~~(4) Removal and Notification of Names from an Eligible List. Any applicant whose name is removed from an eligible list for any reason shall receive written notice of such action within ten (10) days of the date of removal.~~

~~(a) The name of an eligible may be removed or made inactive on an eligible list for a class of positions for any of the following:~~

- ~~(1) an eligible receives a regular appointment to a vacancy in that class of positions;~~
- ~~(2) the agency advises the Commissioner that the eligible is unwilling to accept appointment;~~
- ~~(3) an eligible declines an appointment offered under conditions the eligible had previously indicated would be acceptable;~~
- ~~(4) an eligible fails to respond within seven (7) days of the date of an invitation to interview;~~
- ~~(5) an eligible cannot be located;~~
- ~~(6) an eligible falsifies his legal residence;~~
- ~~(7) An eligible has been convicted of a crime related to the position or class of positions for which he or she has applied; or~~
- ~~(8) any cause occurs as specified in the Act or Rules regarding the rejection or disqualification of applicants.~~

~~(5) Removal of Names from a Referred List. The Commissioner may remove the name of an eligible from a referred list who has been considered and rejected for three (3) different positions in the same classification in an agency.~~

~~(6) Reinstatement to an Eligible List. An eligible's name may be reinstated to an eligible list upon showing of satisfactory cause to the Commissioner.~~

~~Authority: T.C.A. § 8-30-307, T.C.A. § 8-30-308, and T.C.A. § 8-30-309.~~

#### **1120-2-06 CERTIFICATION OF ELIGIBLES.**

~~(1) Eligible List. The Commissioner shall certify an eligible list containing qualified applicants for the position to be filled by the requesting agency.~~

~~(2) Request for a Referred List. When a vacancy occurs, the agency shall request a referred list.~~

~~(3) Referred List. If requested by the agency, a list of eligibles may be narrowed by the geographic area, organizational unit, or promotional criteria. The Commissioner shall issue a policy that agencies may use to establish a referred list.~~

~~Authority: T.C.A. § 8-30-307, T.C.A. § 8-30-308, and T.C.A. § 8-30-309.~~

#### **1120-2-07 VETERANS PREFERENCE POINTS.**

~~The Commissioner will grant additional points to eligible veterans attaining a passing examination score in compliance with T.C.A. § 8-30-306 and any other applicable statutes, rules, or policies.~~

**Authority:** T.C.A. § 8-30-306 and T.C.A. § 8-30-310.

#### **~~1120-2-.08 CERTIFICATION AND USE OF REFERRED LISTS.~~**

- ~~(1) Request for Certification. When a vacancy occurs in one (1) or more established positions in a classification in the career service, the appointing authority may request a list to fill the position(s) in a manner prescribed by the Commissioner.~~
- ~~(2) Methods of Certification. The Commissioner will certify to the appointing authority the names of eligibles from the appropriate referred list for the classification. When requesting a referred list for a flexibly staffed position, the appointing authority may request a referred list for the working level or one of the trainee level classifications.~~
- ~~(3) Appointment from a Referred List. An appointment made from a referred list must be made from the five (5) highest ranking eligibles plus any other eligible with a score equal to the score of the fifth ranked eligible. An appointing authority is not required to consider a referred list that contains the names of less than three (3) eligibles.~~
- ~~(4) Promotion from a Referred List. A promotion made from a referred list must be made from the three (3) highest ranking eligibles plus any other eligible with a score equal to the score of the third ranked eligible. An appointing authority is not required to consider a promotional list that contains the names of less than three (3) eligibles.~~
- ~~(5) Contacting Eligibles on a Referred List. The appointing authority must invite in writing all eligibles in the original top five (5) on a referred list for appointment and the original top three (3) on a referred list for promotion to interview for the position prior to the final selection of a candidate for appointment or promotion. All eligibles who are interviewed but not selected will be notified in writing that they were not selected.~~

**Authority:** T.C.A. § 8-30-307, T.C.A. § 8-30-308, and T.C.A. § 8-30-309.

#### **~~1120-2-.09 OTHER LISTS.~~**

- ~~(1) Transfer List. An agency may request a list of career employees in career service positions who wish to transfer to other agencies or locations in their current job classification.~~
- ~~(2) Layoff List. All career employees affected by a reduction in force shall be placed on a layoff list. Employees so listed shall have a priority right to transfer, promotion, or reappointment to the location or job classification held prior to any reduction in force.~~
- ~~(3) Reemployment/Reappointment. A person may be appointed to a class of positions without further certification or examination because that employee previously held career status in the classification or a related classification.~~
- ~~(4) Selective Certification. An individual position or group of positions in a classification may, under special circumstance, be placed into a sub-classification because the group requires unique or special qualifications. Requests for selective certification must be made in writing and approved by the Commissioner. Appointments must be made from the top five (5) or, if promotional, top three (3) eligibles possessing the special qualifications.~~

**Authority:** T.C.A. § 8-30-318, T.C.A. § 8-30-322, and T.C.A. § 8-30-323.

#### **~~1120-2-.10 OTHER MATTERS RELATED TO LISTS.~~**

- ~~(1) Reinstatement on an Eligible List. Any career employee who leaves state service in good standing may have his name reinstated to the eligible list for the job classification from which appointed or promoted, provided:~~
- ~~(a) the eligible list has not been abolished or expired; and~~
  - ~~(b) the applicant's score is not older than the time for which the score would have been otherwise eligible.~~
- ~~(2) Three Considerations. Any applicant who has been considered for three (3) different positions in the same classification in an agency will be ineligible to be referred for other positions in that classification to that agency. This ineligibility will last until one of the following occurs:~~
- ~~(a) the expiration of the score in effect at the time of the third consideration;~~
  - ~~(c) the eligible list from which the eligible was certified is abolished;~~
  - ~~(d) the appointing authority requests that the three (3) considerations be removed from the eligible's record; or~~
  - ~~(e) the applicant re-applies for that classification.~~
- ~~(3) Non-Competitive Classifications. The Commissioner may designate unskilled or semi-skilled classifications as non-competitive. Generally, appointments to non-competitive classifications do not require a referred list; however, the Commissioner may require the use of a referred list for certain non-competitive classifications. Applicants for all non-competitive classifications must meet the minimum qualifications for the class of positions.~~

~~Authority: T.C.A. § 8-30-209, T.C.A. § 8-30-308, T.C.A. § 8-30-309, T.C.A. § 8-30-311, T.C.A. § 8-30-313, and T.C.A. § 8-30-317.~~

#### **1120-2-11 FILLING POSITIONS.**

- ~~(1) Career Service Positions. All career service positions are regular full-time positions. These positions may be filled on a regular full-time basis by persons who have been successful in a competitive process by being among the top available eligibles on a referred list or who have achieved career status in a classification and have the right to be reemployed or reappointed to that classification or to a related classification to which they could be reclassified without further examination or certification as determined by the Commissioner.~~

~~Certain unskilled and semi-skilled classifications are designated "non-competitive" by the Commissioner. Qualified persons may be employed in these classifications on a regular full-time basis without competition.~~

~~Career service positions may be filled on a full-time temporary basis outside the competitive process by qualified persons as determined by the Commissioner by temporary provisional appointment, emergency appointment, or interim appointment. Career service positions may also be filled on a part-time temporary basis outside the competitive process by a regular part-time appointment or on a temporary basis with a seasonal appointment.~~

- ~~(2) Executive Service Positions. Referred lists are not required to fill executive service positions. Executive service positions may be filled in the following manner:~~

~~(a) Regular full-time positions may be filled by one (1) of the following appointment types:~~

- ~~(1) regular full-time;~~
- ~~(2) regular part-time;~~
- ~~(3) temporary full-time;~~
- ~~(4) temporary part-time;~~
- ~~(5) seasonal full-time;~~
- ~~(6) seasonal part-time; or~~
- ~~(7) limited term appointment.~~

~~(b) Regular part-time positions may be filled by one (1) of the following appointment types:~~

- ~~(1) regular part-time;~~
- ~~(2) temporary part-time;~~
- ~~(3) seasonal part-time; or~~
- ~~(4) limited term part-time appointment.~~

~~(c) Seasonal part-time positions may be filled on that basis alone.~~

~~(3) Overlap. An appointing authority may place more than one (1) employee in a single position in an overlap status subject to budgetary limitations and the approval of the Commissioner.~~

~~(4) Job Sharing. An appointing authority may place more than one (1) part-time employee in a single full-time position in a job-sharing status subject to budgetary limitations and the approval of the Commissioner. Agencies are responsible for ensuring that the number of hours worked by all employees assigned to the position number do not exceed the maximum number of full-time hours assigned to that position in a fiscal year. Positions used for job sharing are considered to be in the executive service.~~

~~(5) Mismatch. An appointing authority may request approval from the Commissioner to appoint an employee to a classification different from the classification of the position, provided the employee's classification is not higher than the classification of the position.~~

~~For career service appointments the mismatch should be in the same or related classification series. The employee appointed should be able to meet the qualifications for the classification of the position upon attainment of additional education, experience or credentials. Career service mismatches should not exceed one (1) year except for employees in lower level flex classes with probationary periods longer than one (1) year.~~

~~Authority: T.C.A. § 8-30-201, T.C.A. § 8-30-202, T.C.A. § 8-30-203, T.C.A. § 8-30-204, T.C.A. § 8-30-208, T.C.A. § 8-30-309, T.C.A. § 8-30-311, T.C.A. § 8-30-315, T.C.A. § 8-30-316, T.C.A. § 8-30-317, T.C.A. § 8-30-318, T.C.A. § 8-30-322, and T.C.A. § 8-30-323.~~

#### **1120-2-12 APPOINTMENTS.**

~~(1) Regular Appointment. A regular appointment is an appointment to either a career or executive service position for an indeterminate period of time. A regular appointment is expected to continue contingent upon satisfactory performance and behavior by the employee and upon continued funding, classification and utilization of the position by the State. In the executive service, a regular appointment continues at the pleasure of the appointing authority.~~

~~(2) Temporary Provisional Appointment. A temporary provisional appointment is an appointment to a full-time career position for a period not to exceed four (4) months and may be made when there is an insufficient referred list or no established eligible list. Temporary provisional appointees must~~

~~meet the minimum qualifications for the class of positions to which appointed. A temporary provisional appointment may not be renewed and no person can receive more than one (1) temporary provisional appointment in a twelve (12) month period. Temporary provisional appointments do not require the use of eligible lists.~~

~~(3) Emergency Appointment. An emergency appointment is an appointment to a full-time career service position for a period of service not to exceed one hundred twenty (120) days and may be made when conditions exist that necessitate an immediate short term appointment. Emergency appointees must meet the minimum qualifications for the class of positions to which appointed. An emergency appointment may not be renewed and no person may receive more than one (1) emergency appointment in a twelve (12) month period. Emergency appointments do not require the use of eligible lists. Time served in an emergency appointment does not constitute creditable service for sick and annual leave accrual or service credit except for the purpose of longevity payments. Emergency appointments are not eligible for participation in the state insurance plan, but may be eligible for participation in the Tennessee Consolidated Retirement System (TCRS) as outlined in TCRS rules and policies.~~

~~(4) Interim Appointment. Based on written justification submitted by an appointing authority, the Commissioner may approve an interim appointment to a full-time career service position for a period not to exceed one (1) year. Based on written justification submitted by an appointing authority, the Commissioner may approve, up to a one (1) year extension, after determining that such an extension is in the best interest of the State.~~

~~To be eligible for an interim appointment, the employee must meet the minimum qualifications for the job classification to which the employee is appointed. If the interim appointment is made using a referred list, the appointing authority may grant the employee a regular appointment in the position using the referred list from which the interim appointment was made, provided:~~

~~(a) the employee was within the original top five (5) or top three (3) eligibles on a referred list, and~~

~~(b) the rules for contacting eligibles were followed and applicants on the eligible list were notified that the interim appointment could change to a regular appointment at a later time.~~

~~(5) Seasonal Appointment. Seasonal appointments may be made to seasonal positions in the executive service. Seasonal appointments do not require the use of eligible lists.~~

~~(6) Temporary Appointment. A temporary appointment is an appointment to an executive service position for a limited period, usually less than six (6) months, and does not require the use of eligible lists.~~

~~(7) Limited Term Appointment. The governor, the governor's cabinet, and members of boards, commissions, agencies and authorities receive limited term appointments pursuant to statute. Limited term appointments do not require the use of eligible lists.~~

~~(8) Temporary Employment of Retired State Employees. Retired State employees may temporarily return under certain conditions as outlined in the temporary employment form obtained from the Retirement Division of the Treasury Department. The retired employee may accept employment with a covered employer for up to one hundred twenty (120) days (900 hours for employees on a seven and a half (7.5) hour work day or 960 hours for employees on an eight (8) hour work day) during a twelve (12) month period.~~

~~(9) Reemployment of Former Career Employees. Unless otherwise stated in statute, an appointing authority may reappoint a former career employee without further examination or certification under the following provisions:~~

~~(a) Reappointment to any classification in which the employee formerly held career status or to any related classification to which the employee could have been demoted, reduced in rank, or transferred without further examination or certification, provided the employee returns to the career service within three (3) years of the date of separation from State employment. The three (3) year reemployment eligibility period commences with the employee's separation from State government and expires three (3) years later, regardless of subsequent State employment; or~~

~~(b) A former career employee who obtained career status in a classification and held that same career service classification in State government for five (5) or more years has permanent reemployment eligibility to that classification and to any related classification to which the employee could have been demoted, reduced in rank, or transferred without further examination or certification. Permanent reemployment eligibility is based on an employee's cumulative periods of employment in classification and not on a continuous employment period.~~

~~Note that this Rule does not provide a right to reappointment for any employee. Any decision to reappoint a former career employee in accordance with this Rule is solely at the discretion of the appointing authority.~~

~~(10) Reappointment of Current State Employees. Any State employee who is a current or former career employee is eligible for appointment to any classification in which the employee formerly held career status or to any related classification to which the employee could have been demoted, reduced in rank, or transferred without further examination or certification, provided the employee has not had a break in State government employment.~~

~~(11) Appointments to Flex Class Positions. To fill the vacancy of a flex class position, the appointing authority must request from the Commissioner a referred list of applicants for either one of the trainee level classifications or the working level class. Any eligible appointed to a flex class position from the referred list for either the trainee or working level class shall serve a period of probationary employment as prescribed by the Commissioner for the classification. During the last month of the probationary period, the appointing authority shall certify to the Commissioner whether the employee has successfully completed the period of probationary employment and should, therefore, be made a career employee in the position in the working level classification without further examination or certification. The employee must be removed from the position if the probationary period has not been successfully completed. Such notification should be made in the same manner as prescribed for any other period of probationary employment.~~

~~Authority: T.C.A. § 8-30-202, T.C.A. § 8-30-203, T.C.A. § 8-30-204, T.C.A. § 8-30-208, T.C.A. § 8-30-309, T.C.A. § 8-30-311, T.C.A. § 8-30-315, T.C.A. § 8-30-316, T.C.A. § 8-30-323, T.C.A. § 8-50-801, and T.C.A. § 8-50-802.~~

#### **1120-2-13 PROBATIONARY PERIOD.**

~~(1) Purpose of the Probationary Period. The probationary period is an essential part of the employment process, and is used for the adjustment of an employee to a new position and to provide an employee with the opportunity to demonstrate ability to perform the job.~~

~~(2) Probationary Period for the Career Service. For career service positions, a probationary period of at least six (6) months is required for all employees who receive regular appointments from a referred list. An appointing authority also has discretion to impose a probationary period for employees who receive regular appointments through reemployment, reappointment, demotion, voluntary reduction in rank, or interdepartmental transfers. The probationary period for a regular appointment may be reduced by the amount of time served in a temporary provisional, emergency~~

~~or interim appointment provided the appointment is for the same appointing authority in the same class of positions and there is no break in service. Employees serving temporary provisional, emergency or interim appointments do not serve a probationary period. Successful completion of a probationary period in a trainee, entry, or intermediate level classification satisfies the probationary period requirement necessary for career status when the position is deemed to be the working level classification.~~

~~(3) Duration of the Probationary Period. A period of probation is completed at the close of business or shift on the day the employee completes the number of months of probationary status required for the class of positions.~~

~~(4) Initial Probationary Period. The initial probationary period is the first probationary period an employee serves in a department or agency in a continuous period of employment prior to becoming a career employee in that agency.~~

~~An employee on initial probation may not be dismissed for cause relating to performance of duties before completion of one (1) month's service. Employees dismissed during their initial probationary period have neither right of appeal nor right of hearing. The appointing authority must submit a written reason for dismissal to the Commissioner. Initial probationary employees not terminated or otherwise removed from the classification by the end of the probationary period become career employees.~~

~~(5) Subsequent Probationary Period. Any probationary periods served by an employee who holds career status in that agency are considered subsequent probations. Career employees serving subsequent probations retain grievance rights except when demoted to their former classification. Employees serving a subsequent probationary period retain career status in the classification in which that status was most recently attained.~~

~~(6) Promotion During Probation. The probationary period for the class of positions to which an employee on probation is promoted begins with the date of appointment to such higher classification. If the newly promoted employee was on initial probation at the time of promotion, the new probationary period will be considered to be the initial probationary period. An employee on subsequent probation who is promoted to a position in a different agency where they have not attained status will be placed on initial probation in that agency. Names of employees on initial probation will not appear on promotional lists.~~

~~(7) Work Test Period. The Commissioner may substitute a working test period in lieu of a written examination for any applicant with a disability, with input from the Division of Rehabilitation Services and the Department of Human Services. Such test period shall be the same as the individual's established probationary period.~~

~~Authority: T.C.A. § 8-30-302, T.C.A. § 8-30-208, T.C.A. § 8-30-312, and T.C.A. § 8-30-314.~~

#### ~~1120-2-14 PROMOTIONS.~~

~~(1) Methods of Making Promotions. A vacancy may be filled by the promotion of a qualified employee with the approval of the Commissioner. Promotions between departments or agencies must be approved by the appointing authorities concerned. Promotions of employees to regular career service appointments will be made by a competitive process as determined by the Commissioner. Any employee who has been demoted or reduced in rank may, at the discretion of the appointing authority and with the approval of the Commissioner, be promoted to a career service position in a classification without additional examination or certification if the employee was a career employee in that classification.~~

~~(2) Promotion by Competitive Examination. The Commissioner and the appointing authority may fill a vacancy by a promotional examination. The promotional list resulting from such examination will be established in accordance with the applicable provisions of this Rule.~~

~~Authority: T.C.A. § 8-30-302, T.C.A. § 8-30-309, and T.C.A. § 8-30-311.~~

#### ~~1120-2-15 EMPLOYEE TRANSFER, LATERAL RECLASSIFICATION, DEMOTION AND REDUCTION IN RANK.~~

~~(1) Transfer. A transfer is authorized in accordance with the following:~~

~~(a) An appointing authority may transfer an employee from one position to another position in the same classification in the same agency with the approval of the Commissioner.~~

~~(b) An employee may be transferred from a position in one agency to a position in the same classification in another agency with the approval of both appointing authorities and the Commissioner.~~

~~(c) The Commissioner will not approve a transfer from the executive service to the career service unless the employee is eligible for reemployment in the career service in the classification or is appointed from a referred list.~~

~~(2) Lateral Reclassification. A lateral reclassification is authorized in accordance with the following:~~

~~(a) An appointing authority may laterally reclassify any qualified employee from one position to another position in another classification in the same agency with the approval of the Commissioner.~~

~~(b) A qualified employee may be laterally reclassified from a position in one agency to a position in another classification in another agency with the approval of both appointing authorities and the Commissioner.~~

~~(c) The Commissioner will not approve a lateral reclassification from the executive service to the career service unless the employee is eligible for reemployment in the career service in the classification or is appointed from a referred list.~~

~~(3) Demotion. With the approval of the Commissioner, an agency may demote an employee who has failed to render satisfactory service in a position held but is considered worthy of employment. The agency must meet any applicable minimum due process requirements and give the employee written notice prior to the effective date.~~

~~(4) Involuntary Reduction in Rank. An involuntary reduction in rank occurs when the position occupied by an employee is affected by a reduction in force or in compliance with T.C.A. § 8-30-212. An involuntary reduction in rank is not a demotion.~~

~~Employees receiving an involuntary reduction in rank do not serve an additional probationary period. Under an involuntary reduction in rank, an employee's salary may be reduced only to the top step of the salary range of the new job classification unless otherwise specified by statute. Subject to budgetary limitations, employees receiving involuntary reductions in rank may retain a salary rate above the salary range for the new job classification with the approval of the appointing authority and the Commissioner.~~

~~(5) Voluntary Reduction in Rank. A voluntary reduction in rank occurs when an employee requests assignment to a position at a lower salary grade and the appointing authority concurs. A voluntary~~

reduction in rank may require a salary reduction and a requirement for the completion of an initial or subsequent probationary period. A voluntary reduction in rank is not considered a demotion.

Generally, employees who receive a voluntary reduction in rank will have their salary reduced equivalent to one-half (1/2) the difference between the salary grades of the new and the current classification. Employees who receive a voluntary reduction in rank must be paid within the salary range for the new classification even if this results in a salary reduction greater than one-half (1/2) the difference between the salary grades of the new and the current classification.

**Authority:** T.C.A. § 8-30-214, T.C.A. § 8-30-318, and T.C.A. § 8-30-320.

#### **1120-2-16 TENURE, EMPLOYEE RECLASSIFICATION, SUSPENSION AND SEPARATION.**

- (1) ~~Tenure of Office.~~ The service of career employees is contingent on both satisfactory performance and satisfactory conduct. Satisfactory performance is evidenced by the employee's current performance evaluation. This provision, however, does not prevent the layoff of an employee in accordance with a reduction in force plan approved by the Commissioner.
- (2) ~~Suspension.~~ An appointing authority must provide any applicable minimum due process requirements and give written notice before suspending a career employee without pay for disciplinary purposes. Cumulative suspensions without pay shall not exceed thirty (30) workdays in a twelve (12) month period. With approval of the Commissioner, an appointing authority may suspend an employee without pay for a period greater than thirty (30) workdays, pending an investigation or trial of any charges. The agency shall place a copy of the written notice of the suspension in the employee's human resources file.
- (3) ~~Layoff/Reduction in Force.~~ After written notice to the Commissioner, an appointing authority may implement a layoff/reduction in force, in accordance with the provisions of T.C.A. § 8-30-101, T.C.A. § 8-30-320, and T.C.A. § 8-30-322. Performance evaluation ratings of employees affected by reductions in force may be considered in determining the order of layoff only when the seniority calculations produce an order of layoff difference of less than one year.
- (4) ~~Resignations.~~ An employee who resigns may state the reasons in writing to the appointing authority. A copy of the resignation must be placed in the employee's human resources file.
- (5) ~~Job Abandonment.~~ Any employee who is absent from duty for more than three (3) consecutive work days without giving notice to the appointing authority or appropriate manager concerning the reason for such absence and without securing permission to be on leave, or who fails to report for duty to the immediate supervisor or the appointing authority within two (2) work days after the expiration of any authorized leave of absence, is considered as having resigned not in good standing, absent exigent circumstances causing the employee's absence or preventing the employee's return. A career employee who is designated resigned in accordance with these circumstances shall have the right to appeal such action through the grievance procedure and to be reviewed by the Commission.
- (6) ~~Dismissal.~~ An appointing authority may dismiss a career employee for either unsatisfactory performance or unsatisfactory conduct after ensuring minimum due process requirements are met. Executive service employees serve at the pleasure of the appointing authority.
- (7) ~~Reemployment Recommendation.~~ When an employee leaves State government, the appointing authority may make a recommendation concerning reemployment. All separating employees not recommended for reemployment must be informed in writing by the appointing authority of the recommendation and its effect on future employment in state service.

~~Authority: T.C.A. § 8-30-320, T.C.A. § 8-30-322, T.C.A. § 8-30-325, and T.C.A. § 8-30-326.~~

**~~1120-2-17 CERTIFICATION OF PAYROLLS.~~**

- ~~(1) Certification of Payrolls. All payments for personal service to any person holding a position in the state service must be submitted by the appointing authority to the Commissioner in a manner prescribed by the Commissioner and the Commissioner of Finance and Administration. The Commissioner must certify the payroll before it may be honored by the Department of Finance and Administration. The Commissioner shall determine that the persons named on the payroll have been appointed or employed in accordance with the Act and applicable rules, and that the salary rate is in accordance with the compensation plan before certification of that payroll for payment.~~
- ~~(2) Refusal to Certify. If the Commissioner determines that a person on the payroll has not been appointed or paid in conformity with the provisions of the Act and these Rules, the Commissioner will refuse to certify payment for that employee. The removal of a name or item from the payroll shall serve as official notification to the Department of Finance and Administration that the drawing, signing, or issuing of any warrant by any disbursing officer of the State for the payment of salary or compensation to such person is unlawful.~~
- ~~(3) Illegal Payments. Any appointing authority who appoints or employs any person in violation of the Act and these Rules may be required to pay the agreed upon salary. Any such amount so paid will not be reimbursed by the State.~~

~~Authority: T.C.A. § 8-30-216 and T.C.A. § 8-30-217.~~

**~~1120-2-18 RECORDS AND REPORTS.~~**

- ~~(1) Employee Records. The Commissioner will maintain employee records as necessary to carry out the intent and purpose of the Act and these Rules and cause to be maintained in each agency a human resources file on each active employee. These files shall be maintained in accordance with policy established by the Commissioner.~~
- ~~(2) Reports from Appointing Authorities. The appointing authorities will report to the Commissioner in a manner prescribed by the Commissioner all permanent changes in the status of employees under their jurisdiction. Upon request, the appointing authorities may also be required to make other reports regarding their employees to the Commissioner.~~
- ~~(3) Investigations. The Commissioner has the right of the records, books, papers and other documents of any organizational unit pertinent to any investigation which may be necessary or which the Governor or the Commission may direct to be conducted.~~

~~Authority: T.C.A. § 8-30-202, T.C.A. § 8-30-203 and T.C.A. §10-7-504.~~

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**Chapter 1120-3  
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~~**1120-3-.01 CREATING A CLASSIFICATION PLAN.** The Department will create a classification plan, which groups positions sufficiently alike in duties, authority, and responsibilities such that the same general qualifications may reasonably be required and the same schedule of pay equitably applied to all positions in the group.~~

~~**Authority:** T.C.A. § 8-30-202, T.C.A. § 8-30-203, T.C.A. § 8-30-204, and T.C.A. § 8-30-209.~~

~~**1120-3-.02 CLASSIFICATION PLAN.** The classification plan established and maintained by the Commissioner, in consultation with the appointing authorities, is a compilation of the officially authorized classes of positions for the state service. The plan contains the classification specification for each classification in the career service which may be subdivided, grouped, or ranked as deemed proper by the Commissioner. The classification plan, as recommended by the Commissioner, shall take effect when approved by the Governor, or on the thirtieth (30<sup>th</sup>) day after it is recommended to the Governor, if prior to that time it has not been disapproved by him.~~

~~**Authority:** T.C.A. § 8-30-209.~~

~~**1120-3-.03 CLASSIFICATION SPECIFICATIONS.** Classification specifications for the career service include the following:~~

- ~~(1) classification title;~~
- ~~(2) summary;~~
- ~~(3) distinguishing features;~~
- ~~(4) examples of duties and responsibilities;~~
- ~~(5) minimum qualifications;~~
- ~~(6) necessary special qualifications; and~~
- ~~(7) examination method.~~

~~**Authority:** T.C.A. § 8-30-209.~~

~~**1120-3-.04 USE OF CLASSIFICATION TITLES.** The classification titles in the classification plan are used to designate all positions in the state service in all official records, vouchers, and communications concerning these positions. No person shall be appointed to, or employed in, a position in state service under a class title which has not been approved by the Commissioner. This requirement does not preclude the use of working titles by employees in those positions where the use of working titles is helpful in the employee's performance of duties, authority, and responsibilities as long as such working titles are authorized by the employee's appointing authority.~~

~~**Authority:** T.C.A. § 8-30-213.~~

~~**1120-3-.05 POSITION CLASSIFICATION ACTIONS.**~~

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- (1) ~~If an appointing authority makes a significant or permanent change to the duties, authority, and/or responsibilities assigned to a position, the appointing authority should notify the Commissioner so that the Commissioner can determine if a position reclassification is necessary. If no appropriate classification exists, the Commissioner may establish a new classification.~~
  - (2) ~~If a change in assigned duties, authority, and responsibilities results in reclassification of the position, the employee in the position must be certified as eligible on a civil service eligible list and meet all requirements for an original appointment, reappointment, promotion, mismatch, reclassification, or reduction in rank. If ineligible to continue in the position, the employee must be transferred, reclassified or separated by appropriate action in accordance with the provisions of these Rules and the Act.~~
  - (3) ~~The Commissioner may make changes to the classification plan as necessary to reflect changes to the duties, authority, or responsibilities of a job classification. If a career service classification is changed due to a modification in the structure of the classification plan, positions are reallocated. Employees who have attained career status in the reallocated positions may continue in those positions without further examination or certification. Those employees who do not have career status must meet the minimum qualifications of the new classification and must appear on a referred list.~~
  - (4) ~~If a position is abolished which results in a career employee being laid off and a new position is then reestablished with the same or essentially similar duties within two (2) years of the date of the layoff, the career employee shall be offered the newly established position without further competition.~~

**Authority:** ~~T.C.A. § 8-30-202, T.C.A. § 8-30-203, T.C.A. § 8-30-204, T.C.A. § 8-30-210, T.C.A. § 8-30-211, T.C.A. § 8-30-212, and T.C.A. § 8-30-320.~~

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~~**1120-4-.01 THE COMPENSATION PLAN.** The Commissioner will prepare a comprehensive compensation plan for all classes of positions in the state service. The plan will be developed after consultation with appointing authorities and will take into consideration the State's financial condition and fiscal policies, experience in recruiting and retaining employees for positions in the state service, the prevailing rates of pay for services performed and for comparable services in public and private employment within the State and outside the State, living costs, maintenance, and other benefits received by employees.~~

~~**Authority:** T.C.A. § 8-30-202 and T.C.A. § 8-30-214.~~

~~**1120-4-.02 CHANGES TO THE COMPENSATION PLAN.** The Commissioner will, as needed, review the ability of the State to recruit and retain employees for the classes of positions in the state service and may also survey prevailing rates of pay, both within and outside the State. The Commissioner may also make such changes to the compensation plan as the reviews and surveys indicate are prudent, subject to budgetary limitations and as approved by the Commissioner of Finance and Administration.~~

~~**Authority:** T.C.A. § 8-30-202 and T.C.A. § 8-30-214.~~

~~**1120-4-.03 APPOINTMENTS.** The minimum rate of pay in the applicable salary range represents the typical entry rate payable to a person on first appointment to a position in a classification. However, the Commissioner may authorize appointments above the range minimum when experience in recruiting and retaining employees for the classification or prevailing salary market data indicate persons are not available at lower rates or when appointing persons exceptionally qualified for the position including reappointments.~~

~~**Authority:** T.C.A. § 8-30-202, T.C.A. § 8-30-203, T.C.A. § 8-30-204, and T.C.A. § 8-30-214.~~

~~**1120-4-.04 PROMOTIONS.** An employee who is promoted may receive a promotional salary increase equivalent to one-half (1/2) the difference between the salary grades of the current and the new classification, provided however, that no employee may be paid at a rate less than the range minimum in the salary range for the new classification and that no career employee shall receive a promotional salary increase which exceeds the range maximum in the salary range for the new classification. Employees~~

may receive promotional increases of greater or lesser amounts upon recommendation of the appointing authority, subject to the approval of the Commissioner and budgetary limitations. The Commissioner shall establish a policy regarding promotions for persons in flexibly staffed positions.

**Authority:** T.C.A. §8-30-202, T.C.A. §8-30-203, T.C.A. §8-30-204, and T.C.A. §8-30-214.

~~**1120-4-05 DEMOTIONS.** An employee who is demoted may receive a salary reduction equivalent to one-half (1/2) the difference between the salary grades of the current and the new classification. Employees who are demoted must be paid within the salary range for the new classification even if this results in a salary reduction greater than one-half (1/2) the difference between the salary grades of the current and the new classification. Demoted employees may receive a salary reduction of a greater or lesser amount upon recommendation of the appointing authority, subject to the approval of the Commissioner and budgetary limitations.~~

~~**Authority:** T.C.A. § 8-30-202, T.C.A. § 8-30-203, T.C.A. § 8-30-204, T.C.A. § 8-30-214, and T.C.A. § 8-30-318.~~

~~**1120-4-06 INVOLUNTARY REDUCTION IN RANK.** Unless otherwise specified by law, the Commissioner may approve an appointing authority's recommendation that an employee who receives an involuntary reduction in rank be paid at a rate above the range maximum for the new classification or the employee's salary be reduced to the maximum of the salary range for the new classification. Unless otherwise specified by law, the salary of an employee who receives an involuntary reduction in rank may not be reduced if it falls within the salary range of the lower classification.~~

~~**Authority:** T.C.A. § 8-30-202, T.C.A. § 8-30-203, T.C.A. § 8-30-204, T.C.A. § 8-30-214, T.C.A. § 8-30-318, and T.C.A. § 8-30-320.~~

~~**1120-4-07 VOLUNTARY REDUCTION IN RANK.** An employee voluntarily reduced in rank typically experiences a reduction in salary in accordance with established policy.~~

~~**Authority:** T.C.A. § 8-30-202, T.C.A. § 8-30-203, T.C.A. § 8-30-204, T.C.A. § 8-30-214, and T.C.A. § 8-30-318.~~

~~**1120-4-08 EMPLOYEE TRANSFER AND LATERAL RECLASSIFICATION.** An employee who is transferred or laterally reclassified does not receive a salary change as a result of such action.~~

~~**Authority:** T.C.A. § 8-30-202, T.C.A. § 8-30-203, T.C.A. § 8-30-204, T.C.A. § 8-30-214, and T.C.A. § 8-30-318.~~

~~**1120-4-09 RATES ABOVE SPECIFIED SALARY RANGE.** Employees who receive salary adjustments required by law or who receive salary differentials authorized by these Rules may be paid at a salary rate higher than the maximum of the salary range of their classification. Employees who receive a reduction in rank may have a salary rate above the maximum if recommended by the appointing authority and approved by the Commissioner. Such employees are eligible for longevity pay and other increases as specified by law or rule.~~

~~**Authority:** T.C.A. § 8-30-214.~~

~~**1120-4-10 SALARY GRADE ADJUSTMENTS.** The Commissioner may adjust the salary grades of classifications to recognize changes in the duties, responsibilities, and authority. The Commissioner may also establish new salary ranges as a result of a competitive market analysis or a study focusing on recruiting and retaining employees in specific job classifications. The salary grade changes are subject to budgetary limitations and approval by the Commissioner of Finance and Administration. Any employee whose salary is below the minimum of the new salary range will be adjusted at least to the new minimum.~~

~~Any employee whose salary is above the maximum of the new salary range will not receive an increase. Based on the appointing authority's written justification, the Commissioner may waive the reduction in salary of an employee whose salary is above the maximum of the new salary range.~~

~~Employees in classifications receiving a salary grade increase shall receive a salary increase in accordance with the promotional policy as defined in these Rules. Employees in classes receiving a salary grade decrease shall receive the same salary considerations as employees who receive an involuntary reduction in rank.~~

~~Authority: T.C.A. § 8-30-212 and T.C.A. § 8-30-214.~~

~~**1120-4-11 SALARY INCREASES FOR OBTAINING PROFESSIONAL CERTIFICATION.** Any employee who obtains a nationally recognized professional certification within their occupational field may be eligible for a salary increase as approved by both the Commissioner and the Commissioner of Finance and Administration. Any clerical-secretarial or clerical-management employee in the state service who passes all parts of either the Certified Professional Secretary Examination or the Certified Administrative Professional Examination, sponsored by the International Association of Administrative Professionals will be granted the salary increase prescribed by law.~~

~~Authority: T.C.A. § 8-50-102.~~

~~**1120-4-12 LONGEVITY.** Longevity is a lump sum payment intended to reward employees for service to the State and to encourage those employees to remain employed by the State. The Commissioner shall establish a policy concerning the calculation and payment of longevity.~~

~~Authority: T.C.A. § 8-23-206.~~

~~**1120-4-13 MERIT PAY OR SALARY STEP ADJUSTMENTS.** Career employees may be eligible for a program of periodic salary step adjustments subject to the availability of funds as provided in the general appropriations act for each fiscal year. Nothing in this subsection shall be construed to preclude salary increases for employees in the executive service.~~

~~If such merit pay or salary step adjustments are funded, the Department will establish guidelines pursuant to T.C.A. § 8-30-214 and make such guidelines available for public inspection.~~

~~Authority: T.C.A. § 8-30-202, T.C.A. § 8-30-203, T.C.A. § 8-30-204, and T.C.A. § 8-30-214.~~

~~**1120-4-14 SALARY DIFFERENTIALS.** The Commissioner, in consultation with appointing authorities and the Commissioner of Finance and Administration, may approve salary differentials. In approving such plans, the Commissioner shall specify the terms and conditions under which such differentials may be paid.~~

~~Authority: T.C.A. § 8-30-202, T.C.A. § 8-30-203, and T.C.A. § 8-30-204.~~

~~**1120-4-15 ASSIGNING DUTIES OF A HIGHER LEVEL CLASSIFICATION.** No career employee shall be assigned to perform the majority of the duties and responsibilities of a position in a higher level classification without the approval of the appointing authority. When an employee is so assigned, the duration cannot exceed ninety (90) days without the approval of the Commissioner. The total length of the assignment will be limited to a period of twelve (12) months.~~

~~An affected employee must be compensated for all time spent performing these higher level duties after the initial ninety (90) days. Compensation for performing these duties shall be in accordance with the standard promotional pay policy and is effective on the ninety-first (91<sup>st</sup>) day of the assignment.~~

~~Authority: T.C.A. § 8-30-202, T.C.A. § 8-30-203, T.C.A. § 8-30-204, and T.C.A. § 8-30-224.~~

~~1120-4-16 FAIR LABOR STANDARDS ACT. The Commissioner, in compliance with the Fair Labor Standards Act, shall designate the classifications which receive cash overtime, classifications which receive compensatory overtime, and classifications which receive no overtime.~~

~~Authority: T.C.A. § 8-30-202, T.C.A. § 8-30-203, and T.C.A. § 8-30-204.~~

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~~**1120-5-.01 EVALUATIONS.** Each agency shall provide formal written evaluations of the performance of major job duties and responsibilities for all employees, except as noted below, on dates and in such manner as prescribed by the Commissioner.~~

~~**Authority:** T.C.A. § 8-30-319.~~

~~**1120-5-.02 EMPLOYEES TO BE EVALUATED.** The performance of all employees in the state service will be evaluated in a manner subject to this Rule, except for:~~

- ~~(1) Seasonal employees;~~
- ~~(2) Part-time employees;~~
- ~~(3) Limited term employees;~~
- ~~(4) Temporary employees;~~
- ~~(5) Employees of the Governor's office;~~
- ~~(6) Deputy Commissioners, Assistant Commissioners and employees in equivalent positions;~~
- ~~(7) Emergency employees;~~
- ~~(8) Temporary provisional employees;~~
- ~~(9) Interim employees; and~~
- ~~(10) Executive service employees.~~

~~**Authority:** T.C.A. § 8-30-319.~~

~~**1120-5-.03 EVALUATION PROCESS.** An agency shall conduct, at a minimum, the following evaluation process:~~

- ~~(1) An initial discussion between the supervisor and the employee for the purpose of explaining and clarifying the performance evaluation process, major job duties and responsibilities for which performance will be assessed, and the performance necessary to maintain or achieve a high rating.~~
- ~~(2) Periodic reviews of job performance to provide constructive performance feedback, discuss means of enhancing performance and, if appropriate, to discuss the consequences of mediocre or unsatisfactory performance.~~
- ~~(3) A formal written assessment of the employee's performance which provides the employee with the opportunity to agree or disagree and comment upon the assessment.~~
- ~~(4) A managerial review of the evaluation of each employee, confirming that the evaluation process has been properly completed and appropriately and logically described.~~

~~(5) A review of the formal written evaluation of each employee by the appointing authority or designee, which when signed, becomes the official record of the performance of the major job duties and responsibilities of the employee.~~

~~Authority: T.C.A. § 8-30-319.~~

~~**1120-5-.04 USE IN MAKING HUMAN RESOURCES DECISIONS.** When employee performance of major job duties, authority and responsibilities is deemed to be a relevant factor in determining eligibility to compete in promotional examinations, satisfactory or unsatisfactory completion of a probationary period, eligibility to receive merit pay or lump sum performance bonuses, or as a factor in reduction in force, demotions, suspensions, or dismissals, the performance evaluation described in this Rule will be the evaluation serving as the basis for such decisions. Nothing in this Rule should be construed to imply that performance of major job duties and responsibilities as evaluated in the job performance planning and evaluation system is the only relevant factor that may be used in making the decisions described in this Rule.~~

~~Authority: T.C.A. § 8-30-202, T.C.A. § 8-30-203, T.C.A. § 8-30-204, T.C.A. § 8-30-214, T.C.A. § 8-30-304, T.C.A. § 8-30-314, T.C.A. § 8-30-319, T.C.A. § 8-30-320, T.C.A. § 8-30-325, and T.C.A. § 8-30-326.~~

~~**1120-5-.05 RECORDS.** Each agency shall record the formal evaluation of each employee in that employee's human resources file in a manner prescribed by the Commissioner.~~

~~Authority: T.C.A. § 8-30-319.~~

~~**1120-5-.06 TRAINING.** The appointing authority shall ensure that persons responsible for conducting and/or reviewing the performance evaluation of any employee have completed a training program specified by the Commissioner.~~

~~Authority: T.C.A. § 8-30-202, T.C.A. § 8-30-203, and T.C.A. § 8-30-204.~~

~~**1120-5-.07 APPEAL.** An employee who receives a job evaluation pursuant to this Rule may file a grievance within fifteen (15) workdays after the receipt of any final performance evaluation on procedural grounds under the provisions of T.C.A. § 8-30-328 (k)(1). Such grievances are limited to the provisions of the informal procedure with the final step being the appointing authority. Employees who are dissatisfied with the appointing authority's decision may submit such decision, with all documentation, to the Commissioner for review. Notwithstanding any law or regulation to the contrary, the decision of the Commissioner shall be final and not subject to further review.~~

~~Authority: T.C.A. § 8-30-328.~~

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<del>1120-6-.13</del> Boreavement Leave	<del>1120-6-.25</del> Responsibility for Records and Reports

~~**1120-6-.01 RESPONSIBILITY.** It is the employee's responsibility to request appropriate leave and the immediate supervisor shall be responsible for approving such leave.~~

~~**Authority:** T.C.A. § 8-30-215.~~

~~**1120-6-.02 REGULAR WORK SCHEDULE.** The regular schedule for most employees is 8:00 a.m. to 4:30 p.m., Monday through Friday. Local conditions may cause these hours to vary, but an employee scheduled to work seven and a half (7.5) hours per day, Monday through Friday, is considered to be on a regular work schedule. Any agency may use irregular work schedules and vary its work hours and workdays at the discretion of the appointing authority. Any work schedule can be modified as necessary to provide a reasonable accommodation for an employee with a disability, as determined by the appointing authority. Any full-time schedules other than thirty seven and a half (37.5) hours per week must be approved in advance by the Commissioner and the Commissioner of Finance and Administration.~~

~~**Authority:** T.C.A. § 4-4-105 and T.C.A. § 8-30-215.~~

~~**1120-6-.03 WORKWEEK.** The standard workweek for accounting purposes begins at 12:01 a.m. Sunday and runs one hundred sixty eight (168) continuous hours with seven (7) consecutive twenty four (24) hour periods to 12:01 a.m. the following Sunday. Variation to this standard workweek must be submitted to and approved by the Commissioner.~~

~~**Authority:** T.C.A. § 4-4-105 and T.C.A. § 8-30-215.~~

~~**1120-6-.04 CASH OVERTIME AND/OR ACCRUAL OF COMPENSATORY TIME.** The Fair Labor Standards Act (FLSA) mandates that non-exempt employees receive additional compensation in certain circumstances. In addition, T.C.A. § 8-23-201 provides that additional compensation may be paid to certain state employees who work in excess of regularly scheduled hours at the direction of an~~

~~appropriate manager. The Commissioner will establish policy and procedures for administering overtime payments to include the following:~~

- ~~(1) Exempt Non-Compensatory Time Employees. Employees defined as "exempt non-compensatory time" by the Commissioner will not be eligible to receive any compensation for hours worked beyond their regular schedule. However, if an exempt non-compensatory time employee is scheduled to work on a legal holiday, the appointing authority may grant discretionary leave with pay equal to the hours worked on a legal holiday.~~
- ~~(2) Exempt Employees. Employees defined as "exempt" by the FLSA may receive regular compensatory time for hours worked beyond their regular schedule provided that it was at the direction of the appointing authority or other appropriate supervisor or manager. The Commissioner shall determine the exempt classes that are eligible for this regular compensatory time. Exempt employees may accumulate a maximum of four hundred and eighty (480) hours of regular compensatory time. Regular compensatory time is earned on an hour-for-hour basis and is distinct from premium compensatory time authorized by the FLSA.~~
- ~~(3) Non-Exempt Employees. Employees defined as "non-exempt" by the FLSA must receive compensation for all hours spent performing the principle duties assigned to them provided that it was at the direction of the appointing authority or other appropriate supervisor or manager. Non-public safety employees who are non-exempt may accumulate no more than two hundred and forty (240) hours of premium compensatory time. Their total compensatory time (regular and premium compensatory time) may not exceed four hundred and eighty (480) hours. Public safety employees who are non-exempt may accumulate a maximum of four hundred and eighty (480) hours of premium compensatory time.~~
- ~~(4) Exceptions. Individual exceptions to this rule must be recommended by the appointing authority and approved in advance by the Commissioner and the Commissioner of Finance and Administration. Such recommended exceptions must be consistent with state and federal law and in consultation with the Comptroller of the Treasury and the Attorney General's Office.~~

~~Authority: T.C.A. § 8-23-201.~~

~~**1120-6-.05 COMPENSATORY TIME.** Compensatory time is leave credit earned by an exempt or non-exempt employee when hours are worked beyond their regular schedule and not compensated in cash. Compensatory time is generally accrued on a weekly basis. The Commissioner will establish policy and procedures to include the following:~~

- ~~(1) Use of Compensatory Time. The use of compensatory time is subject to the approval of the appointing authority or a designated manager in the same manner as annual leave. An employee who has accrued compensatory time and requests use of that time shall be permitted to use such time off within a reasonable period after making the request. When a request for compensatory time off is received, it shall be honored unless to do so would be unduly disruptive to the agency's operations. Mere inconvenience is an insufficient basis for denial. An agency should reasonably and in good faith anticipate that the employee's request would impose an unreasonable burden on the agency's ability to provide services of acceptable quality and quantity for the public during the time requested without the use of the employee's services.~~

~~Reasonable period will be determined by considering the customary work practices within the agency based on the facts and circumstances in each case. Such practices include, but are not limited to (a) the normal schedule of work, (b) anticipated peak workloads based on past experience, (c) emergency requirements for staff and services, and (d) the availability of qualified substitute staff.~~

The use of compensatory time in lieu of cash payment for overtime by non-exempt employees must be pursuant to some form of agreement or understanding between the employer and the employee (or the representative of the employee) reached prior to the performance of the work.

- ~~(2) Compensatory Time Transferable. An employee's compensatory time shall be transferred between state service agencies. If an employee in a state service agency transfers to another state agency outside the state service which will not accept the employee's compensatory time balance, the state service agency must compensate the transferring employee for the value of the employee's compensatory time balance. The value of the compensatory time accrued by an exempt employee is calculated based on the employee's regular hourly rate in the state service agency at the time of transfer.~~
- ~~(3) Use of Compensatory Time Before Annual Leave. Accumulated compensatory time must be used before annual leave unless an employee's accumulated annual leave balance is within two (2) days of the maximum accrual allowed for the employee as provided in these Rules.~~
- ~~(4) Payment of Compensatory Time at Separation. Generally, an agency must make a lump sum payment for accrued compensatory time when an employee separates from state service. If, however, a retiring employee requests terminal leave, that employee must use accrued compensatory time prior to terminal leave. Terminal leave is the annual leave balance of a retiring employee. Any annual leave balance remaining after the employee's last working day is considered terminal leave.~~
- ~~(5) Amount Earned and Maximum Accumulation. Non-public safety employees who are non-exempt may accumulate a maximum of two hundred and forty (240) hours of premium compensatory overtime. Public safety employees who are non-exempt may accumulate a maximum of four hundred and eighty (480) hours of premium compensatory overtime. Totals for regular and premium compensatory overtime will be added together and no employee will be allowed to exceed a total accumulation of both regular and/or premium compensatory overtime over four hundred and eighty (480) hours. Any variation to this maximum accrual limit must be approved in advance by the Commissioner and the Commissioner of Finance and Administration.~~

~~Any exempt or non-exempt employee who earns authorized overtime credit in excess of the maximum accrual must be paid cash for those hours on an hour-for-hour basis unless the Fair Labor Standards Act requires payment at a premium rate.~~

~~Non-exempt employees are permitted to receive premium (time and one-half) compensatory overtime in lieu of premium cash overtime if the agency lacks the necessary funds or if the employee requests compensatory time instead of cash and the appointing authority approves the request. Premium compensatory overtime occurs when a non-exempt employee, who is authorized to receive compensatory overtime in lieu of cash, physically works more than forty hours (40) during a work week, the employee shall be compensated at one and half times the hours actually worked above forty (40).~~

**Authority:** T.C.A. § 8-23-201, T.C.A. § 8-30-214 and T.C.A. § 8-50-801.

~~**1120-6-.06 LUNCH PERIOD.** All employees, except those specifically excluded in T.C.A. § 4-4-105, are allowed a one (1) hour unpaid lunch (meal) period. If a supervisor requires an employee to work during any part of their one (1) hour meal period, the employee is considered to be at work and must be compensated accordingly.~~

~~The authorized meal period must be taken during the work shift and may not be used to alter arrival or departure time by not using the meal period or any part thereof.~~

~~Certain employees cannot be relieved of duties to have a meal period during their work shift. The employee situation usually results from "fixed post" assignments in which employees may not leave their~~

~~work station. These employees are considered to be at work even if they are able to eat a meal during their work shift and must be compensated accordingly.~~

~~Authority: T.C.A. § 4-4-105, T.C.A. § 8-30-202, and T.C.A. § 8-30-215.~~

~~**1120-6-.07 REST BREAKS.** Appointing authorities, at their discretion, may allow their employees two (2) rest breaks, of fifteen (15) minutes duration each, during a workday. These rest breaks are a privilege and not a right and should be taken at times that do not interfere with service to the public. A rest break may not be used to alter arrival or departure time, used in conjunction with the lunch hour, used with any type of leave, or be accumulated for usage at a later time.~~

~~Authority: T.C.A. § 8-30-215.~~

~~**1120-6-.08 ABSENCE DUE TO SPECIFIC CIRCUMSTANCES.** The Commissioner will establish policy concerning absences for:~~

- ~~(1) Inclement weather;~~
- ~~(2) Public health emergency;~~
- ~~(3) State emergency; and~~
- ~~(4) Uninhabitable building.~~

~~Authority: T.C.A. § 8-30-215.~~

~~**1120-6-.09 ELIGIBILITY TO ACCRUE LEAVE.** An eligible employee accrues annual and sick leave based upon hours worked, excluding overtime, pursuant to T.C.A. § 8-50-801 and T.C.A. § 8-50-802.~~

~~Leave is accrued on a regular workday basis. One day of leave is equivalent to seven and one half (7.5) hours for employees on a thirty-seven and one half (37.5) hour per workweek schedule. One day of leave is equal to eight (8) hours for employees on a forty (40) hour per workweek schedule. Employees on other workweek schedules as approved by the Commissioner accrue based on those schedules.~~

~~Employees changing from one schedule to another will have their hourly balances adjusted accordingly.~~

~~Employees who work sixteen hundred (1,600) hours in a year and work the major portion of the month are eligible to accrue leave, except for those listed in T.C.A. § 8-50-801(e).~~

~~Authority: T.C.A. § 8-23-101, T.C.A. § 8-50-801, and T.C.A. § 8-50-802.~~

~~**1120-6-.10 ANNUAL LEAVE.** The Commissioner will establish policy and procedures for administering annual leave in accordance with T.C.A. § 8-50-801.~~

~~(1) Amount Earned and Maximum Accumulation. Annual leave is earned with maximum accumulation as follows:~~

- ~~(a) Employees with less than five (5) years of full-time service accrue annual leave at the rate of one (1) day for each month or major fraction of a month of active service and may accumulate a maximum of thirty (30) workdays.~~
- ~~(b) Employees with five (5) years and less than ten (10) years of full-time service accrue annual leave at the rate of one and one-half (1½) days for each month or major fraction of a month of active service and may accumulate a maximum of thirty-six (36) workdays.~~

- ~~(c) Employees with ten (10) years and less than twenty (20) years of full-time service accrue annual leave at the rate of one and three-fourths (1 ¾) days for each month or major fraction of a month of active service and may accumulate a maximum of thirty-nine (39) workdays.~~
- ~~(d) Employees with twenty (20) years or more of full-time service accrue annual leave at the rate of two (2) days for each month or major fraction of a month of active service and may accumulate a maximum of forty-two (42) workdays.~~
- ~~(2) Creditable Service. Any month, which was a part of a sixteen hundred (1,600) hour or greater annual schedule, in which an employee is scheduled to work a full month, and actually works one-tenth of one hour more than half the scheduled hours, shall be creditable for maximum accumulation purposes.~~
- ~~(3) Transfer of Annual Leave to Sick Leave. Leave earned in excess of the maximum allowable accumulation based on years of service as defined in T.C.A. § 8-50-801 will be transferred to the employee's sick leave account annually in the month of the employee's last hire date.~~
- ~~(4) Annual Leave Paid as a Lump Sum. When separating from state employment, an employee shall be paid for any annual leave accumulation in a lump sum unless that employee is dismissed or terminated from state service for gross misconduct, or resigns from state service to avoid dismissal for gross misconduct, or was guilty of gross misconduct prior to leaving state service. In cases involving gross misconduct, the employee forfeits his annual leave.~~
- ~~(5) Annual Leave as Terminal Leave Prior to Retirement. An employee may use annual leave as terminal leave when retiring from state employment or may receive a lump sum payment for annual leave balances.~~
- ~~(6) Annual Leave May Not Be Advanced. Annual leave may not be taken until earned.~~
- ~~(7) Employee Meetings. Annual leave may be used to attend meetings of employee associations which are qualified for payroll dues deduction. Except as enumerated in T.C.A. § 8-50-110, leave allowed for this purpose cannot exceed two (2) days per year.~~
- ~~(8) Annual Leave Transferable. Unless there is a break in service, annual leave must be transferred to and will be accepted from, state agencies and higher education institutions, legislative and judicial branches.~~

~~**Authority:** T.C.A. § 8-50-110, T.C.A. § 8-50-801, T.C.A. § 8-50-803, and T.C.A. § 8-50-807.~~

~~**1120-6-11 SICK LEAVE.** Sick leave is accrued by an employee at the rate of one (1) day for each month or major fraction of a month of active service. The Commissioner will establish policy and procedures governing the use of sick leave.~~

- ~~(1) Use of Sick Leave. An appointing authority may grant an eligible employee sick leave for any of the following reasons:
  - ~~(a) personal illness;~~
  - ~~(b) disability due to accident;~~
  - ~~(c) exposure to a contagious disease;~~
  - ~~(d) medical and dental appointments;~~
  - ~~(e) illness or death in the immediate family, or others who, at the discretion of the appointing authority, have a relationship which merits similar consideration;~~
  - ~~(f) birth and care of an infant child (up to thirty (30) workdays); and~~
  - ~~(g) adoption (up to 30 working days if the child is one year old or less).~~~~

- ~~(2) Reinstatement of Accumulated Sick Leave. Employees who work on a full-time continuous basis for one full year or more, leave in good standing, and return to work shall be credited with and may use paid sick leave accumulated prior to separation immediately upon certification of the previous balance from the appropriate agency. Persons hired from state higher education institutions and persons who were teachers with local school boards in Tennessee are also included under this provision.~~
- ~~(3) Sick Leave Transferable. Unless there is a break in service, sick leave must be transferred to and will be accepted from state agencies and higher education institutions, legislative and judicial branches.~~
- ~~(4) Required Documentation. Any employee may be required to present evidence to an appointing authority, the Commissioner, or any other appropriate authority, to support the reason for any absence for which sick leave was taken.~~
- ~~(5) Doctor's Certification of Absence. Sick leave may not be denied to any employee who furnishes a statement of a licensed physician or accredited Christian Science practitioner in support of the reason for such absence. Additional documentation may be required if there is substantial evidence of sick leave abuse by the employee.~~
- ~~(6) Sick Leave Restrictions.~~
- ~~(a) Sick Leave During Terminal Leave. Sick leave may not be used as terminal leave. An employee presenting evidence of an illness during terminal leave may utilize sick leave up to the original separation date.~~
- ~~(b) Sick Leave may not be Advanced. Sick leave may not be taken until earned.~~

~~Authority: T.C.A. § 4-21-408, T.C.A. § 8-50-802, T.C.A. § 8-50-803, T.C.A. § 8-50-804, T.C.A. § 8-50-806, and T.C.A. § 8-50-807.~~

**~~1120-6-12 BEREAVEMENT LEAVE.~~**

- ~~(1) The officers and employees of the various agencies, boards, and departments of state government shall be granted three (3) days paid leave in the event of death of such officers' or employees' spouse, child, step-child, parents, siblings, grandparents, grandchildren, stepparents, foster parents, or parents-in-law without charge to the affected officers' or employees' accumulated leave accounts. One (1) day of leave is equivalent to seven and a half (7.5) hours for employees on a thirty-seven and a half (37.5) hour per workweek schedule. One (1) day of leave is equivalent to eight (8) hours for employees on a forty (40) hour per workweek schedule. One (1) day of leave is equivalent to twelve (12) hours for the Department of Military firefighters.~~
- ~~(2) This section shall not be construed to increase the total number of leave days provided in rules of the Department of Human Resources for the death of a family member as defined in this section.~~

~~Authority: T.C.A. § 8-50-113.~~

**~~1120-6-13 SPECIAL LEAVE.~~** ~~Special leave is leave without pay. At the discretion and upon recommendation of the appointing authority, the Commissioner may approve requests for special leave in accordance with policy and procedure.~~

~~Authority: T.C.A. § 8-30-215.~~

**~~1120-6-14 HOLIDAYS.~~** ~~The General Assembly, by law, establishes legal holidays which are observed by the closing of State offices. The Governor, upon request by the Commissioner, may also establish~~

additional time off for observance of holidays. The following days have been designated by the General Assembly as legal holidays:

New Year's Day	January 1
Martin Luther King, Jr. Day	Third Monday in January
President's Day	Third Monday in February
Good Friday	Friday before Easter
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Columbus Day	Second Monday in October
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Christmas Day	December 25

The Governor may, at his discretion, substitute the Friday after the fourth (4<sup>th</sup>) Thursday in November for Columbus Day. Employees who are ineligible to accrue leave are not eligible for holiday pay.

**Authority:** T.C.A. § 15-1-101.

~~1120-6-15 CIVIL LEAVE.~~ The Commissioner will establish policy and procedures for state employees to be excused from their job duties when involved in civil or criminal proceedings as a juror.

**Authority:** T.C.A. § 22-4-106.

~~1120-6-16 EDUCATIONAL LEAVE.~~ The Commissioner will establish policy and procedures for state employees to be placed on educational leave for participation in full-time continuing education as defined in Rules of the Department of Human Resources 1120-8.

**Authority:** T.C.A. § 8-30-202, T.C.A. § 8-30-203, and T.C.A. § 8-30-204.

~~1120-6-17 MILITARY LEAVE.~~

(1) ~~Military Leave with Pay.~~ A leave of absence with pay, not to exceed twenty (20) working days in any one year, will be granted to employees who are members of the reserve components of the Armed Forces of the United States, including members of the Tennessee National Guard, for periods they are engaged in the performance of duty or training activities in the service of the State or the Federal Government while under orders. Holidays and scheduled off duty days do not count toward the twenty (20) days allowed. During the period of approved paid military leave, the employee incurs no loss of service time and continues to earn regular annual leave and sick leave. There shall be no loss of rights or benefits to which the employee is otherwise entitled. Military leave with pay will not be granted for regularly scheduled monthly training for reservists or national guardsmen.

(2) ~~Military Leave without Pay.~~ Leave without pay will be granted for periods of active duty or training activity with the Armed Forces of the United States, its reserve components, or the Tennessee National Guard for authorized periods beyond the twenty (20) days of paid leave in a calendar year. In addition, leave without pay will be granted to employees entering the regular components of the Armed Forces of the United States as a result of military conscription or for a period of voluntary enlistment. During the period of leave without pay for military service, the employee retains all accumulated annual and sick leave, retirement status, and continues to earn time toward seniority, retirement and longevity pay. Continuation in the State's insurance programs, if elected, shall be granted subject to appropriate state insurance program provisions.

~~(3) Air Force Auxiliary Civil Air Patrol Leave. A leave of absence with pay, not to exceed fifteen (15) working days in any one calendar year, will be granted to employees who are members of the United States Air Force Auxiliary Civil Air Patrol and who participate in a training program for the civil air patrol, or in emergency and disaster services, as defined in T.C.A. § 58-2-101, if the leave of absence is at the request of the employee's wing commander or the wing commander's designated representative.~~

~~Authority: T.C.A. § 8-33-105, T.C.A. § 8-33-109, and T.C.A. § 42-7-102.~~

~~**1120-6-18 ADMINISTRATIVE LEAVE FOR DISASTER.** A state employee who is a certified disaster service volunteer of the American Red Cross may be granted leave from work with pay for a period not to exceed fifteen (15) workdays in each year to participate in special disaster relief services for the American Red Cross. The employee shall be released from work for this function upon written request of the American Red Cross for the services of that employee, and upon written approval of that employee's appointing authority.~~

~~Authority: T.C.A. § 8-50-810.~~

~~**1120-6-19 PARENTAL LEAVE.**~~

~~(1) An employee who has been employed for at least twelve (12) consecutive months as a full-time employee, may be absent from such employment for a period not to exceed four (4) months for adoption, pregnancy, childbirth and nursing an infant, where applicable. With regard to adoption, the four (4) month period shall begin at the time an employee receives custody of the child.~~

~~(2) An employee may use up to thirty (30) sick leave workdays for parental leave. In the event both parents are state employees, the aggregate sick leave used is limited to thirty (30) days.~~

~~(3) In incidents of adoption, an appointing authority has the discretion to grant additional special leave not to exceed one (1) year.~~

~~(4) The Commissioner will establish procedures pertaining to parental leave.~~

~~Authority: T.C.A. § 4-21-408, T.C.A. § 8-30-215, T.C.A. § 8-50-802, and T.C.A. § 8-50-806.~~

~~**1120-6-20 FAMILY AND MEDICAL LEAVE.** The Commissioner shall establish procedures for implementing the provisions and requirements of the Family and Medical Leave Act (FMLA).~~

~~Authority: T.C.A. § 8-30-215.~~

~~**1120-6-21 DIVISION OF CLAIMS ADMINISTRATION LEAVE.** The Division of Claims Administration is responsible for determining whether an employee is eligible for workers' compensation due to a job related injury or illness.~~

~~(1) Workers' Compensation Pay. An employee may not receive workers' compensation pay for any period that the employee used sick, annual, or compensatory leave.~~

~~(2) Effect on Anniversary Dates. Time served on Division of Claims Administration leave will not affect the employee's longevity, salary or service anniversary date.~~

~~(3) Assault Pay. Employees who are injured in the line of duty, as the result of an assault which disables them from performing their jobs, will be allowed to remain on the regular payroll for a period not to exceed twenty-eight (28) calendar days subject to approval by the Commissioner. Such disability must have occurred no later than twenty-eight (28) calendar days from the date of injury. If the same injury results in an employee being unable to perform his job for more than twenty-eight (28) calendar days and provided that a proper claim has been filed with the Division of~~

~~Claims Administration within ten (10) calendar days of the date of injury, the employee may receive the difference between his regular salary and the weekly compensation rate awarded by the Division of Claims Administration for an additional sixty two (62) calendar days. Thus, an employee who is disabled as a result of an assault may receive full pay through a combination of regular payroll and Division of Claims Administration compensation for a total of ninety (90) calendar days before being reduced to the usual lost time rate of the Division of Claims Administration or using accumulated sick, annual or compensatory leave.~~

- ~~(4) Injured in the Line of Duty. A commissioned member of the Tennessee Department of Safety, a driver's license examiner, correctional officer or youth service officer who is injured in the line of duty, and whose injury disables him from performing his regular duties, whether such disability is temporary or permanent, shall be retained upon the regular payroll until the employee's claim for compensation for such disability is determined by the Division of Claims Administration. The Governor and the Attorney General must approve the request of the appointing authority.~~

~~Authority: T.C.A. § 8-50-111 and T.C.A. § 68-102-402.~~

~~**1120-6-22 TERMINAL LEAVE.** A retiring employee may elect terminal leave unless the employee is retiring from state service to avoid dismissal for gross misconduct.~~

- ~~(1) Employees Subject to State Retirement. Employees who are members of the Tennessee Consolidated Retirement System and are entitled to terminal leave must be compensated for their terminal leave prior to the effective date of their retirement.~~

- ~~(2) Termination of Benefits. On the date terminal leave begins, an employee will:~~

~~(a) Cease to be in a leave-earning status.~~

~~(b) Cease to be eligible for salary increases or salary adjustments. The salary rate in effect on the day before the employee begins terminal leave will be used to determine terminal leave payments.~~

- ~~(3) Accounting for Terminal Leave:~~

~~(a) Saturdays, Sundays and Legal Holidays. Saturdays, Sundays and official holidays shall not be used in computing terminal leave unless such days are considered as workdays for the employee in the employee's job assignment. To be paid for a holiday while on terminal leave an employee must be on terminal leave past the holiday.~~

~~(b) Beginning and Ending of Terminal Leave Period. Terminal leave must begin the next workday following the last day in active pay status. Active pay status is a term applied to an employee who is actually working or who is using paid leave other than paid terminal leave or sick leave bank leave. The day after the last day of terminal leave will be the employee's official date of separation.~~

~~Authority: T.C.A. § 8-50-801, T.C.A. § 8-50-807, and T.C.A. § 8-50-808.~~

~~**1120-6-23 ACCRUED LEAVE BALANCES PAID AT DEATH.** Leave balances of deceased employees shall be paid as lump sum payments. Any outstanding leave balance (sick, annual, or compensatory) will be paid to a beneficiary designated by the employee or, if none, the beneficiary designated for receipt of retirement benefits with the Tennessee Consolidated Retirement System, or, when appropriate, the deceased employee's estate.~~

~~Authority: T.C.A. § 8-50-807 and T.C.A. § 8-50-808.~~

~~1120-6-24 PAID LEAVE FOR EXCUSED ABSENCES.~~ A full-time employee may be granted leave with pay for the following excused absences:

- ~~(1) State Examination or State Job Interview.~~ An agency may require written verification that the employee was at a state administered examination or at a state job interview.
- ~~(2) Elections.~~ Any person entitled to vote in an election held in this state must be granted paid leave on the day of the election not to exceed three (3) hours in accordance with established procedures. If the work schedule of an employee begins three (3) or more hours after the opening of the polls or ends three (3) or more hours before closing of the polls of the county where the employee is registered to vote, paid leave will not be granted. The Commissioner may specify the hours during which the employee may be absent. Application for such absence shall be made to the employee's appointing authority before twelve o'clock (12:00) noon of the day before the election.
- ~~(3) Discretionary.~~ An appointing authority may grant discretionary leave with pay to an employee for a period of time not to exceed ten (10) working days when it is considered necessary for the welfare of the employee or the proper operation of the agency. The Commissioner must approve any period of discretionary leave that exceeds ten (10) working days. The appointing authority must submit such requests in writing directly to the Commissioner.

~~Authority: T.C.A. § 2-1-106 and T.C.A. § 8-30-215.~~

~~1120-6-25 RESPONSIBILITY FOR RECORDS AND REPORTS.~~ The Commissioner will designate a manner for documenting official attendance and leave information for employees in state service.

~~Authority: T.C.A. § 8-30-101, T.C.A. § 8-30-202, T.C.A. § 8-30-203, T.C.A. § 8-30-204 and T.C.A. § 10-7-504.~~

**RULES  
OF THE  
TENNESSEE DEPARTMENT OF HUMAN RESOURCES**

**Chapter 1120-7  
EQUAL EMPLOYMENT OPPORTUNITIES**

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**1120-7-.01 STATEMENT OF POLICY.**

The State of Tennessee is firmly committed to the principle of fair and equal employment opportunities for its citizens and strives to protect the rights and opportunities of all people to seek, obtain, and hold employment without being subjected to illegal discrimination or illegal harassment in the workplace. It is the state's policy to provide an environment free of discrimination or harassment of an individual because of that person's race, color, national origin, age (40 and over), sex, pregnancy, religion, creed, disability, veteran's status, or any other category protected by state and/or federal civil rights laws.

**Authority:** T.C.A. § 8-30-202, T.C.A. § 8-30-221, T.C.A. § 8-50-103 and T.C.A. § 8-50-104.

**1120-7-.02 AGENCY RESPONSIBILITIES.**

In demonstrating the agency's commitment to the equal employment opportunities policy, each appointing authority in state service shall:

- (1) Be held responsible for compliance with the state law, policy, and executive orders pertaining to equal employment opportunities (EEO), Americans with Disabilities (ADA) and Affirmative Action (AA);
- (2) Develop an equal employment opportunity compliance policy statement and inform employees of the agency's commitment to that policy;
- (3) Designate an employee to coordinate EEO, ADA, and AA programs within that agency;
- (4) Inform supervisory personnel of their role in carrying out the agency's equal employment opportunities policies;
- (5) Maintain processes for internal investigations of workplace discrimination or harassment complaints; and
- (6) Submit to the Commissioner a completed affirmative action plan annually in a manner prescribed by the Commissioner.

**Authority:** T.C.A. § 8-30-202, T.C.A. § 8-30-221, and T.C.A. § 8-50-104.

**1120-7-.03 DEPARTMENT OF HUMAN RESOURCES RESPONSIBILITIES.**

- (1) The Commissioner shall represent the Governor in matters relating to equal employment opportunities in state service;

- ~~(2) The Department shall periodically review employment practices to insure that these practices are not discriminatory;~~
- ~~(3) The Commissioner will establish appropriate guidelines and procedures governing the preparation, submission and review of the affirmative action plan by each agency;~~
- ~~(4) The Department will provide training and technical assistance in the development, implementation and monitoring of agencies' affirmative action plans and equal employment programs;~~
- ~~(5) The Department will provide training and technical assistance to employees and agencies regarding compliance with the ADA;~~
- ~~(6) The Department will inform any person claiming unlawful discrimination or harassment of the appropriate procedures for pursuing a complaint.~~
- ~~(7) The Department will report to the Governor the equal employment opportunity activities of each department, agency and commission in the state service; and~~
- ~~(8) The Department will inform the Governor when instances occur of non-compliance or failure to demonstrate good faith efforts under this rule.~~

~~Authority: T.C.A. § 8-30-202 and T.C.A. § 8-30-203.~~

**RULES  
OF THE  
DEPARTMENT OF HUMAN RESOURCES**

**CHAPTER 1120-8  
LEARNING AND DEVELOPMENT**

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~~**1120-8-.01 LEARNING AND DEVELOPMENT PROVIDED BY THE DEPARTMENT.** Structured learning and development is a process which provides agencies with programs and activities linked to their goal achievement and performance improvement.~~

- ~~(a) The Department provides learning and development in the areas of leadership development, talent management, performance management, and professional skills. Learning and development activities in each agency will be coordinated through an agency designee.~~
- ~~(b) The Department may grant Continuing Education Units (CEUs) for learning and development which meets national standards. One (1) CEU unit shall be granted for each ten (10) hours of instruction.~~
- ~~(c) The Commissioner must approve agency requests for learning and development not offered by the Department and related to agency job requirements.~~
- ~~(d) The Commissioner must approve requests for CEUs for the learning and development not offered by the Department and related to agency job requirements.~~

~~**Authority:** T.C.A. § 8-30-202, T.C.A. § 8-30-203, T.C.A. § 8-30-204, and T.C.A. § 8-30-205.~~

~~**1120-8-.02 REQUESTS FOR CONTINUING EDUCATION AND LEARNING.** Upon the identification of a specialized technical need by the agency, an employee may be eligible for continuing education from higher education, vocational, and professional institutions. Employees, in consultation with the agency, may select one of the following continuing education options:~~

- ~~(1) Full-time Education. Full-time education lasts for more than eighty (80) workdays and may require residency at an institution or facility. During the program, the employee is relieved of regular job responsibilities;~~
- ~~(2) Part-time Education. Part-time education lasts for less than eighty (80) workdays and is held during the employee's regular work hours. The employee maintains regular job responsibilities during this program;~~
- ~~(3) Short-term Learning. Short-term learning consists of seminars, short courses, and educational workshops that last for less than eighty (80) workdays. The employee maintains regular job responsibilities during this program; and~~
- ~~(4) After Work Hours Education or Learning. After work hours education or learning consists of seminars, short courses, and educational workshops and is held outside the employee's scheduled shift. The employee maintains regular job responsibilities during this program.~~

~~**Authority:** T.C.A. § 8-30-202, T.C.A. § 8-30-203, T.C.A. § 8-30-204, and T.C.A. § 8-30-205.~~

~~**1120-8-.03 CONTINUING EDUCATION AND LEARNING.** All state employees are eligible to participate in continuing education and learning related to their current job assignment, subject to the~~

~~recommendation of the appointing authority and the approval of the Commissioner and the Commissioner of Finance and Administration.~~

~~(1) Criteria. The Commissioner may approve continuing education and learning based on any of the following criteria:~~

- ~~(a) Lack of availability of programs offered by the Department;~~
- ~~(b) Job relatedness;~~
- ~~(c) Cost effectiveness; or~~
- ~~(d) Availability of programs in public Tennessee higher education institutions;~~

~~(2) Appointing Authority Responsibilities. The appointing authority must:~~

- ~~(a) Submit to the Commissioner, in advance, an approval request for each employee to attend continuing education and learning;~~
- ~~(b) Monitor employee attendance and performance; and~~
- ~~(c) Document completion and maintain a public record.~~

~~(3) Salary and Related Expenses. In the event the appointing authority grants reimbursement to the employee for salary and related expenses, the appointing authority must approve, in advance, reimbursement for the following and submit the authorization to the Commissioner:~~

- ~~(a) Travel. Reimbursement shall be for travel in accordance with the State's comprehensive travel regulations;~~
- ~~(b) Tuition. The appointing authority shall approve tuition reimbursement subject to the approval of Finance and Administration; and~~
- ~~(c) Salary. Salary payment is based on the following types of continuing education and learning:~~

- ~~(i) Full-time. Employees in full-time education shall receive seventy five percent (75%) of their regular salary. When the State requires an employee to obtain additional education, employee compensation is possible at full salary with the prior approval of the Commissioner and the Commissioner of Finance and Administration. If an employee receives salary assistance through scholarships, fellowships, grants or other outside sources, the total amount received from the State and outside sources during the continuing education period shall not exceed the employee's regular salary. The employee must submit a notarized statement of salary funding and sources to the appointing authority.~~

- ~~(ii) Part-time. Employees in part-time education shall receive their regular salary.~~

- ~~(iii) Short-term. Employees in short-term learning shall receive their regular salary.~~

- ~~(iv) After work hours. An employee in after work hours education or learning is not eligible for additional salary payment.~~

- ~~(d) Distribution of salary. The appointing authority is responsible for payment of the employee's reimbursement for salary. Distribution is contingent upon completion of the learning and development program and must be documented by the attended institution.~~

~~(4) Employment status during full-time continuing education and learning.~~

- ~~(a) Leave Status. An employee engaged in authorized full-time continuing education and learning is on educational leave during the period approved by the appointing authority. The appointing authority must approve any extension of this leave. An employee will not accrue sick and annual leave during this period.~~
- ~~(b) Salary Increases and Adjustments. If eligible, an employee in full-time continuing education and learning will continue to receive any salary increases or adjustments.~~
- ~~(c) Continuous Service. Full-time continuing education and learning will not interrupt continuous service for purposes of longevity.~~
- ~~(d) Payroll Deductions. All prior authorized deductions will continue during full-time continuing education and learning provided the adjusted salary covers the deductions.~~
- ~~(e) State Contributions. Contributions from the State to the employee's insurance premiums and retirement account will continue.~~

~~(5) Employee's responsibilities:~~

- ~~(a) An employee in full-time continuing education and learning must contractually agree to work for the agency for twelve (12) months or twice the total educational leave, whichever is greater. If the employee fails to fulfill the contract, the employee must reimburse the State for expenses incurred during the full-time continuing education and learning, including salaries and wages paid by the State. Neither sick nor terminal leave can be used to reduce the reimbursement period.~~
- ~~(b) An employee in continuing education and learning will be held to the same attendance and performance standards as other work assignments. An employee must reimburse the State for all costs, including salary, resulting from unexcused absences and incompleteness of a learning and development program. Collection of reimbursement is the responsibility of the agency.~~
- ~~(c) If an activity in continuing education and learning is terminated prior to completion, either at the convenience of the State or because of death, prolonged illness, disability, or similar conditions beyond the control of the employee, neither the employee nor the employee's estate may be responsible for reimbursement of expenses.~~
- ~~(d) If an employee is discharged for any cause from the State or the educational institution, relief of financial obligation is not automatic.~~

~~Authority: T.C.A. § 8-30-202, T.C.A. § 8-30-203, T.C.A. § 8-30-204, and T.C.A. § 8-30-205.~~

~~**1120-8-.04 EXCLUSIONS.** Annual conferences, symposiums, conventions, official meetings, summits, and expositions do not require approval by the Commissioner.~~

~~Authority: T.C.A. § 8-30-202, T.C.A. § 8-30-203, T.C.A. § 8-30-204, and T.C.A. § 8-30-205.~~

**RULES  
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**Chapter 1120-9  
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~~1120-9-.01 TENNESSEE EMPLOYEES CHARITABLE CAMPAIGN.~~ The Tennessee Employees Charitable Campaign will be coordinated annually by the Department. The Governor and the Commissioner will be designated as chair and co-chair respectively.

Employees may contribute through payroll deduction to social services and health agencies authorized by the Commissioner. Procedures and methods for deductions of monies are at the discretion of the Governor, the Commissioner and the Commissioner of Finance and Administration.

**Authority:** T.C.A. § 8-30-202, T.C.A. § 8-30-203, and T.C.A. § 8-30-204.

~~1120-9-.02 SICK LEAVE BANK.~~ The Department will administer a bank which grants paid sick leave to qualifying members who are medically certified as unable to perform the duties of their jobs as a result of a personal illness, injury, accident, disability, medical condition, or quarantine and who have exhausted all their personal sick, compensatory, and annual leave balances.

**Authority:** T.C.A. §§ 8-50-901 through 8-50-910.

**1120-9-.03 EMPLOYEE SERVICE AWARDS.**

- ~~(1) The Department will provide a consistent and uniform system through which employees will receive appropriate recognition for their service to state government. Each participating agency will verify eligible employees' length of service and submit a request for awards to the appropriate vendor.~~
- ~~(2) Service award credit will be given for the same periods of employment in state government as are recognized by the Tennessee Consolidated Retirement System for retirement credit, excluding any service credit recognized by the Tennessee Consolidated Retirement System for service in local governments or the public school systems other than State owned and operated schools.~~
- ~~(3) Service awards will be presented following five (5) years of creditable service and at each increment of five (5) years thereafter.~~
- ~~(4) Awards provided by the Department will be at the discretion of the Commissioner.~~

**Authority:** T.C.A. § 8-30-202, T.C.A. § 8-30-203, and T.C.A. § 8-30-204.

~~1120-9-.04 EMPLOYEE SUGGESTION AWARD PROGRAM.~~ The Department will administer the Employee Suggestion Award Program in accordance with guidelines set forth in T.C.A. § 4-27-101, et seq. Under this program, cash or honorary awards may be made to state employees and retired state employees whose adopted suggestions result in substantial savings or improvement in state operations.

~~Authority: T.C.A. §§ 4-27-101 through 4-27-105, T.C.A. § 8-30-202, T.C.A. § 8-30-203, and T.C.A. § 8-30-204.~~

**RULES  
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**Chapter 1120-10  
DISCIPLINARY ACTION**

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<del>1120-10-.04 Causes for Disciplinary Action</del>	<del>1120-10-.08 Executive Service Employee</del>

~~**1120-10-.01 POLICY.** The intent of this chapter is to establish fair and uniform standards for the application of disciplinary procedures among agencies and institutions subject to the provisions of these Rules. A career employee may be warned, suspended, demoted, or dismissed by the appointing authority whenever just or legal cause exists. The degree and kind of action is at the discretion of the appointing authority, but must be in compliance with the intent of the provisions of this Rule and the Act.~~

~~**Authority:** T.C.A. § 8-30-202, T.C.A. § 8-30-203, T.C.A. § 8-30-204, T.C.A. § 8-30-318, T.C.A. § 8-30-325, T.C.A. § 8-30-326, and T.C.A. § 8-30-330.~~

~~**1120-10-.02 MINIMUM DUE PROCESS.**~~

~~(1) Career employees obtain a property right to a position in the classification in which they currently hold career status. Therefore, no suspension, demotion, dismissal or any other action which deprives a career employee of this property right will become effective until minimum due process is provided as outlined in this Rule.~~

~~(2) Minimum due process consists of the following:~~

~~(a) The employee shall be notified of the charges. Such notification shall detail times, places, and other pertinent facts concerning the charges and shall be in writing.~~

~~(b) The notification must provide an opportunity for the employee to have a pre-decision discussion with an appropriate manager and must state the mechanism through which such a discussion may be arranged. The employee should be given a reasonable period of time to prepare to answer charges and present information relevant to the charges presented.~~

~~(c) The manager conducting such discussions must be an appointing authority or manager who has direct access to an appointing authority for this purpose.~~

~~(d) The discussion process outlined herein shall be for the purpose of allowing the employee to present information to the manager regarding the disciplinary action under consideration.~~

~~(e) The discussion shall be informal. The employee shall have the right to present written statements of witnesses or any other information with regard to the charges. Attendance and participation by persons other than the manager and the employee shall be at the sole discretion of the manager.~~

~~(f) If the employee declines the opportunity to have the discussion or present information, the provisions of this section are deemed to have been met.~~

~~(g) The due process discussion is not considered to be a contested case hearing as defined under the Uniform Administrative Procedures Act.~~

~~(h) The Commission shall determine, as a preliminary matter to the merits of a grievance, a grievant's allegation that the employee was denied minimum due process.~~

**Authority:** T.C.A. § 8-30-202, T.C.A. § 8-30-203, T.C.A. § 8-30-204, and T.C.A. § 8-30-331.

~~**1120-10-.03 EXCEPTION TO MINIMUM DUE PROCESS.** When an employee is acting in a dangerous or otherwise threatening manner and must be removed from the workplace immediately, it is not necessary for the agency to provide minimum due process prior to removing the employee from the workplace. In such case, the appointing authority shall place the employee on administrative leave with pay, in accordance with policies established by the Commissioner, pending due process. Minimum due process is required as quickly as practicable after removing the employee from the workplace.~~

**Authority:** T.C.A. § 8-30-202, T.C.A. § 8-30-203, and T.C.A. § 8-30-204.

~~**1120-10-.04 CAUSES FOR DISCIPLINARY ACTION.** Causes for disciplinary action fall into two categories:~~

~~(1) causes relating to performance of duties; or~~

~~(2) causes relating to conduct which may affect an employee's ability to successfully fulfill the requirements of the job.~~

**Authority:** T.C.A. § 8-30-202, T.C.A. § 8-30-203, and T.C.A. § 8-30-204.

~~**1120-10-.05 EXAMPLES OF DISCIPLINARY OFFENSES.** The following are examples of acts that may warrant disciplinary action. This list is not all inclusive and shall not limit an appointing authority's discretion in disciplinary matters:~~

~~(1) Inefficiency in the performance of duties;~~

~~(2) Incompetency in the performance of duties;~~

~~(3) Negligence in the performance of duties;~~

~~(4) Misconduct involving public officials and employees pursuant to T.C.A., Title 39, Chapter 16, Part 4;~~

~~(5) Careless, negligent, or improper use of state property or equipment;~~

~~(6) Failure to maintain satisfactory and harmonious working relationships with the public and fellow employees;~~

~~(7) Habitual improper use of sick leave;~~

~~(8) Habitual pattern of failure to report for duty at the assigned time and place;~~

~~(9) Failure to obtain or maintain a current license or certificate or other qualification required by law or rule as a condition of continued employment;~~

~~(10) Gross misconduct;~~

~~(11) Conduct unbecoming an employee in state service;~~

- ~~(12) Conviction of a felony;~~
- ~~(13) Willful abuse or misappropriation of state funds, property or equipment;~~
- ~~(14) Falsification of an official document relating to or affecting employment;~~
- ~~(15) Participation in any action that would in any way seriously disrupt or disturb the normal operation of the agency, institution, department, or any other segment of the state service or that would interfere with the ability of management to manage;~~
- ~~(16) Trespassing on the property of any state officer or employee for the purpose of harassment;~~
- ~~(17) Damage or destruction of state property;~~
- ~~(18) Acts that would endanger the lives and property of others;~~
- ~~(19) Possession of unauthorized firearms, lethal weapons, alcohol or illegal drugs on the job;~~
- ~~(20) Brutality in the performance of duties;~~
- ~~(21) Refusal to accept a reasonable and proper assignment from an authorized supervisor  
—— (insubordination);~~
- ~~(22) Reporting to work under the influence of alcohol or illegal drugs, or partaking of such on the job;~~
- ~~(23) Sleeping or failure to remain alert during duty hours;~~
- ~~(24) Unauthorized disclosure of confidential information;~~
- ~~(25) Garnishment of wages for more than one indebtedness;~~
- ~~(26) Political activity prohibited by T.C.A., Title 2, Chapter 19 (the "Little Hatch Act") or by U.S.C., Title 5, Chapter 15 (the "Federal Hatch Act"); and~~
- ~~(27) For the good of the service as outlined in T.C.A. § 8-30-326.~~

**Authority:** T.C.A. § 8-30-203, T.C.A. § 8-30-202, T.C.A. § 8-30-203, T.C.A. § 8-30-326, and T.C.A. §§ 2-19-201 through 2-19-208.

#### **~~1120-10-06 PROGRESSIVE DISCIPLINARY ACTION.~~**

~~The supervisor is responsible for maintaining the proper performance level, conduct and discipline of the employees under his supervision. When corrective action is necessary, the supervisor should administer disciplinary action at the lowest appropriate step for each area of performance issues and/or misconduct. Corrective actions include:~~

- ~~(1) Oral Warning.
  - ~~(a) The supervisor will meet privately with the employee to:
    - ~~(1) Review with the employee exact job expectations and the reasons for those expectations.~~
    - ~~(2) Explain to the employee how a job requirement has not been met and detail how the present performance or conduct is unacceptable.~~
    - ~~(3) Allow the employee to give reasons for such inappropriate actions or failures.~~~~~~

~~(4) — Make suggestions for correction.~~

~~(5) — Provide the employee with documentation of the date of the discussion and other necessary information for future reference.~~

~~(b) Written follow-up to the discussion may be forwarded to the employee but is not required. Written follow-up to an oral warning should not be construed as a written warning as described below and shall not be maintained as part of the employee's official human resources file.~~

~~(2) — Written Warning.~~

~~(a) The supervisor will meet with the employee and:~~

~~(1) — Review the points covered in the oral warning, if an oral warning was administered.~~

~~(2) — Review with the employee exact job expectations and the reasons for those expectations.~~

~~(3) — Explain to the employee how job requirements have not been met and detail how the present performance or conduct is unacceptable.~~

~~(4) — Allow the employee to give reasons for such inappropriate actions or failures.~~

~~(5) — Make suggestions for correction.~~

~~(6) — Indicate that failure to improve will lead to further disciplinary action.~~

~~(7) — Tell the employee the discussion will be documented in a letter which shall cover the significant points of the discussion.~~

~~(b) A copy of the written warning may be placed in the employee's human resources file in the agency human resources office at the discretion of the appointing authority. Written warnings do not become a part of an employee's human resources file until the review process established in 1120-10-.07 is complete or thirty (30) calendar days have passed.~~

~~(3) — Suspension Without Pay.~~

~~(a) After the agency has met minimum due process requirements, an appointing authority may suspend a career employee without pay for disciplinary purposes, for such length of time as the authority considers appropriate, not to exceed thirty (30) workdays in a rolling twelve (12) month period. With approval of the Commissioner, a career employee may be suspended for a longer period pending the investigation or trial of any charges against the employee.~~

~~(b) Any employee who is suspended will receive a written notice from the appointing authority that will contain the following:~~

~~(1) — an account of the circumstances which led to the decision to issue the suspension;~~

~~(2) — the beginning and ending dates of the suspension; and~~

~~(3) — information to the employee concerning appeal rights as outlined in Chapter 1120-11 of these Rules. A copy of the notice will be placed in the employee's human resources file and a copy shall be forwarded to the Department.~~

~~(4) — Dismissal.~~

- ~~(a) After the agency has met minimum due process requirements, an appointing authority may dismiss a career employee for unacceptable performance or conduct.~~
- ~~(b) Before a career employee is dismissed, the appointing authority must provide to the employee a written notification detailing the circumstances leading to the decision to dismiss. The notice will indicate the effective date of the dismissal and inform the employee of his rights to appeal as outlined in Chapter 1120-11 of these Rules. A copy of the notice will be placed in the employee's human resources file and a copy will be sent to the Department.~~
- ~~(c) Before a career employee can be dismissed, the agency must provide ten (10) calendar days paid notice. During the notice period an employee will not be required to report for duty. The employee's accumulated annual leave balance may be used during this notice period only if dismissal was for gross misconduct.~~
- ~~(5) Transfer or Demotion. If the appointing authority determines that a career employee's ability to satisfactorily perform the required duties of the position is beyond the capabilities of the employee or the employee has been compromised by notorious conduct to the extent that the employee is rendered ineffective in his position, the appointing authority may choose to demote or transfer the career employee to another position. The appointing authority may not demote or transfer a career employee more than fifty (50) miles until after the agency has met minimum due process requirements as outlined herein.~~

~~Authority: T.C.A. § 8-30-202, T.C.A. § 8-30-203, T.C.A. § 8-30-204, T.C.A. § 8-30-318, T.C.A. § 8-30-325, T.C.A. § 8-30-326, and T.C.A. § 8-30-330.~~

#### ~~1120-10-07 REVIEW OF WRITTEN WARNING.~~

- ~~(1) A career employee who wishes to contest a written warning may request a review of that warning by the agency appointing authority or designee for this purpose. The employee must submit a written request for review to the appointing authority no later than thirty (30) calendar days from receipt of a written warning. The request for review should include documentation of any mitigating circumstances causing the employee to believe that the warning is undeserved.~~
- ~~(2) The appointing authority or designee will review the warning and all documentation submitted by the employee and make a decision which may be one of the following:
  - ~~(a) There is sufficient cause for written warning and it stands as issued. The request for review and the response become a part of the employee's human resources file.~~
  - ~~(b) There is sufficient cause for an oral warning and the appointing authority reduces the written warning to an oral warning.~~
  - ~~(c) There is insufficient cause for disciplinary action of any kind resulting in retraction of the written warning.~~~~
- ~~(3) The appointing authority or designee will communicate the written decision to the employee within fifteen (15) workdays of receipt of request for review.~~
- ~~(4) The appointing authority's written decision is final.~~
- ~~(5) Any written warning issued to an employee and a request for review and findings shall be automatically expunged from the employee's human resources file after a period of two (2) years, provided that the employee has had no further disciplinary actions with respect to the same area of performance, conduct, and discipline.~~

~~Authority: T.C.A. § 8-30-202, T.C.A. § 8-30-203, T.C.A. § 8-30-204, and T.C.A. § 8-30-330.~~

~~1120-10-08 EXECUTIVE SERVICE EMPLOYEE. An executive service employee serves at the will and pleasure of the appointing authority.~~

~~Authority: T.C.A. § 8-30-202, T.C.A. § 8-30-203 and T.C.A. § 8-30-208.~~

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**Chapter 1120-11  
GRIEVANCE**

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**~~1120-11-.01 POLICY.~~**

- ~~(1) Career employees will be given every opportunity to resolve bona fide grievances through established procedures. Every reasonable effort will be made to resolve grievances at the lowest possible step in the procedure.~~
- ~~(2) Employees using this procedure are entitled to process grievances without fear, interference, discrimination, or reprisal.~~

~~Authority: T.C.A. § 8-30-328.~~

**~~1120-11-.02 RESPONSIBILITY.~~**

- ~~(1) The Commissioner is responsible for providing and maintaining the basic standards and guidelines for implementing this chapter.~~
- ~~(2) Appointing authorities are responsible for the proper implementation of this chapter throughout their respective agencies. Modification of these procedures may be made in order to satisfy unusual circumstances within an agency if such modification is approved by the Commissioner.~~
- ~~(3) Appointing authorities are responsible for ensuring that all employees and supervisory staff are aware of the provisions of this chapter.~~

~~Authority: T.C.A. § 8-30-328.~~

**~~1120-11-.03 BASIC STANDARDS.~~**

- ~~(1) A grievance must be filed at the appropriate step in the grievance procedure within fifteen (15) standard workdays (Monday - Friday, 8:00 a.m. - 4:30 p.m.) of the action which is the basis for the grievance; otherwise it will be considered untimely and invalid.~~
- ~~(2) Although no standard grievance forms are provided, agencies may develop and make available such forms to employees. An agency may not deny an employee's grievance because a standard form was not used. Grievances must be expressed in reasonable terms. Each grievance submitted should contain:
  - ~~(a) the basis for the grievance;~~
  - ~~(b) the settlement or corrective action desired by grievant; and~~~~

- ~~(c) sufficient facts or other information to begin an investigation.~~
- ~~(3) A grievant may represent himself or be represented by a state employee representative of the employee's choice at any step of the grievance procedure prior to a Level 4 hearing. The grievant and the agency may have counsel present at the informal discussion or hearing of facts prior to Level 5, but counsel may not participate in the discussion or hearing. The presence of any other observer is at the discretion of the manager or supervisor in charge of the discussion or hearing.~~
- ~~(4) At the informal hearing before the appointing authority (i.e., the Level 4 hearing), an attorney or a representative of an employee may speak on behalf of the employee. The presence of any other observer at this discussion is at the discretion of the appointing authority or designee in charge of that discussion.~~
- ~~(5) The grievant and the agency may be represented by counsel in actions before the Civil Service Commission, which is the final step of this procedure. The presence of additional observers at this step is at the discretion of the presiding Administrative Law Judge.~~
- ~~(6) Grievants may present grievances during the standard workday or other mutually agreeable hours as work situations may require. Grievance discussions held during the scheduled off duty hours for a grievant, witness, or representative will be considered the same as hours worked, including overtime if applicable. Grievants or employees who are required to appear as witnesses or representatives will not be required to use leave for such periods and shall be reimbursed for travel and other expenses in accordance with the comprehensive travel regulations.~~
- ~~(7) Grievances concerning suspension without pay, demotion, dismissal, or any other loss of a property right must be filed directly with the appointing authority, warden, or superintendent.~~
- ~~(8) An employee who believes that a disciplinary action or layoff is the result of discrimination prohibited by T.C.A. § 8-50-103 or T.C.A. § 4-21-401 may file a grievance directly with the appointing authority, warden, or superintendent. A grievant may also proceed directly to the Tennessee Human Rights Commission as provided in T.C.A. §§ 4-21-401 and 8-50-103.~~
- ~~(9) The agency must communicate grievance decisions in writing directly to the grievant in a timely manner as outlined in Chapter 1120-11-.04. Agencies must use certified or registered mail if mailing the written decision. If hand delivered, a grievance decision must include a written heading indicating "Hand Delivered" with a place for the employee's signature. No other form of communication is acceptable.~~

**Authority:** T.C.A. § 8-30-326 and T.C.A. § 8-30-328.

**1120-11-.04 PROCEDURES.** Procedures shall not be more than five (5) steps to finality, as follows:

~~(1) Step I - Grievant's Immediate Supervisor~~

- ~~(a) The employee presents a written grievance to the supervisor within fifteen (15) workdays of the action which is the basis for the grievance.~~
- ~~(b) The supervisor investigates and issues a written decision to the grievant within fifteen (15) workdays of the discussion.~~

~~(2) Step II - Next Appropriate Higher Level of Management~~

- ~~(a) The employee submits a written grievance to the appropriate manager within fifteen (15) workdays of receipt of the Step I written decision.~~

~~(b) The manager conducts an informal discussion or hearing of facts and allegations, investigates and issues a written decision to the grievant within thirty (30) workdays of the receipt of the grievance.~~

~~(3) Step III - Next Appropriate Higher Level of Management~~

~~(a) The employee submits a written grievance to the appropriate manager within fifteen (15) workdays of receipt of the Step II written decision.~~

~~(b) The manager conducts an informal discussion or hearing of facts and allegations, investigates and issues a written decision to the grievant within thirty (30) workdays of the receipt of the grievance.~~

~~(4) Step IV - Appointing Authority Level~~

~~(a) The employee submits a written grievance to the appointing authority or designee within fifteen (15) workdays of receipt of the Step III written decision.~~

~~(b) The appointing authority or designee conducts an informal discussion or hearing of facts, allegations, and testimony. Whenever possible, a manager who had no input or involvement in the original decision to discipline shall conduct the fourth step hearing. The informal discussion or hearing is not a contested case hearing pursuant to the Uniform Administrative Procedures Act.~~

~~(c) The appointing authority or designee investigates and issues a written decision to the grievant. The appointing authority shall have sixty (60) workdays, from the receipt of the grievance, to complete the hearing and issue a written decision.~~

~~(d) The appointing authority shall have full authority to overturn, reduce, or alter any disciplinary action based on information gathered at the Step IV hearing, including reinstatement of leave and awards of back pay, if appropriate, which may be offset by income earned from alternative employment or unemployment insurance payments received.~~

~~(5) Step V (Formal - Career Employee only)~~

~~(a) The employee submits a written grievance, all relevant documentation, and a copy of the Step IV written decision within thirty (30) calendar days of receipt of the Step IV decision to:~~

~~Secretary, Civil Service Commission  
Tennessee Department of Human Resources  
First Floor, James K. Polk Building  
505 Deaderick Street  
Nashville, TN 37243~~

~~(b) Hearings will be held pursuant to T.C.A. § 8-30-328 and the Uniform Administrative Procedures Act.~~

~~(c) An agency or employee may appeal the decision of the Administrative Law Judge to the Civil Service Commission. Administrative reviews before the Civil Service Commission shall be limited to the technical records from the administrative procedures division, which may include transcripts from the fifth level hearing. Parties may submit additional proposed findings of fact and conclusions of law to the Commission no later than ten (10) workdays prior to the scheduled review.~~

- ~~(6) By written agreement, the manager involved and employee may extend the time limits set herein not in excess of six (6) months.~~
- ~~(7) Failure of management to proceed within any established time limits entitles the grievant to proceed to the next step in this procedure.~~
- ~~(8) Hearings conducted at Step V will conform to the model rules of the Secretary of State for contested cases and the Department hereby adopts Secretary of State Rule 1360-4-1 in statutory compliance.~~

~~Authority: T.C.A. § 8-30-328 and T.C.A. § 4-5-219.~~

#### ~~1120-11-.05 SCOPE OF PROCEDURE.~~

- ~~(1) The Commission will serve as the final step for all grievances by career employees.~~
- ~~(2) The agency appointing authority will serve as the final step for all grievances by executive service employees.~~

~~Authority: T.C.A. § 8-30-328.~~

#### ~~1120-11-.06 GRIEVABLE MATTERS.~~

- ~~(1) Disciplinary suspension or demotion;~~
- ~~(2) Disciplinary dismissal;~~
- ~~(3) Any disciplinary action or layoff that the employee believes is the result of discrimination prohibited by T.C.A. § 8-50-103 or T.C.A. § 4-21-401. The employee may file such grievance directly with the appointing authority, warden, or superintendent;~~
- ~~(4) Involuntary geographical transfer of an employee or official duty station more than fifty (50) miles. Distance will be determined by drawing a circle, with a fifty (50) mile radius, centered on the previous official duty station;~~
- ~~(5) Non-compliance with an approved reduction in force plan by an appointing authority;~~
- ~~(6) Prohibited political activity as outlined in T.C.A. Title 2, Chapter 19 (the "Little Hatch Act");~~
- ~~(7) Coercion of an employee to waive his right to consideration on an eligibles list;~~
- ~~(8) Final performance evaluations based on procedural grounds to the fourth step; and~~
- ~~(9) Other matters determined at the sole discretion of the appointing authority to be grievable, but not included in section 1120-11-.07 below.~~

~~Authority: T.C.A. § 8-30-328.~~

#### ~~1120-11-.07 EXCEPTIONS AND NON-GRIEVABLE MATTERS.~~

- ~~(1) Actions that affect employees who are not career employees;~~
- ~~(2) Actions that affect employees who are not covered under T.C.A. § 41-22-407 (d)(3);~~

- ~~(3) — Actions that affect an employee serving an initial probationary period;~~
- ~~(4) — Normal supervisory counseling and management;~~
- ~~(5) — Non-selection for promotion when the appointment was in compliance with these Rules and the Act;~~
- ~~(6) — Oral and written reprimands;~~
- ~~(7) — Performance evaluation ratings;~~
- ~~(8) — Actions resulting from suggestions adopted by the State Employee Suggestion Award Board;~~
- ~~(9) — Actions resulting from reductions in force when the actions by the appointing authority were in compliance with statutes and rules;~~
- ~~(10) — Shift, post, and overtime assignments;~~
- ~~(11) — Reasonable work assignments outside those normally associated with the employee's assigned job classification;~~
- ~~(12) — Salary range assigned to classifications;~~
- ~~(13) — Administration of salary increases established and funded by the legislature;~~
- ~~(14) — Classification of position;~~
- ~~(15) — Denial of leave requests except as provided for in T.C.A. § 8-50-110 and T.C.A. § 8-50-802;~~
- ~~(16) — Matters relating to internal agency or program management based on discretionary decision making;~~
- ~~(17) — Demotions during subsequent probation when the demotion is to the job classification the employee held prior to the promotion and at a salary rate no lower than the salary rate had the promotion not occurred;~~
- ~~(18) — Agency rules or policies which do not conflict with statutes, rules, or policies of the Department of Human Resources; and~~
- ~~(19) — Any other matter over which an appointing authority or the Commission has no control or jurisdiction or is without the authority to grant requested relief.~~

~~Authority: T.C.A. § 8-30-328.~~

#### ~~1120-11-08 TECHNICAL ADVICE AND ASSISTANCE.~~

- ~~(1) — Technical questions regarding this rule may be resolved by referring questions to the agency human resources office.~~
- ~~(2) — Unresolved technical questions to an agency human resources office may be resolved by referring such to the Department's Employee Relations Division.~~
- ~~(3) — Disputes over grievability may be resolved by an agency's appointing authority or by the Civil Service Commission. The Commission may review such determinations and, at its discretion, take whatever action it deems appropriate.~~

- ~~(4) The intent of this policy is to legally, efficiently, and fairly resolve bona fide grievances. The initiation of a grievance should not be considered as a negative reflection against an employee, supervisor, or agency management, but should be considered as an effort to communicate and seek resolution of work related problems.~~
- ~~(5) Management should consider grievances objectively, fairly, and expeditiously while maintaining a helpful, cordial, and professional attitude throughout the process of redress.~~

~~Authority: T.C.A. § 8-30-328~~

**RULES  
OF THE  
TENNESSEE DEPARTMENT OF HUMAN RESOURCES**

**Chapter 1120-12  
AWARDS OF ATTORNEY'S FEES AND COST**

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~~1120-12-.01 Policy~~

~~**1120-12-.01 POLICY.** The Civil Service Commission may, at its discretion, award reasonable fees and costs to a successfully appealing employee's attorney in accordance with the following terms and conditions:~~

~~(1) The maximum hourly rate for attorneys representing successfully appealing employees before the Commission shall be as follows:~~

~~(a) Appeals of disciplinary suspension of less than ten (10) days and all other grievable matters:~~

~~(i) Thirty five percent (35%) of the maximum hourly rate established by the Commission for time spent in hearings before the Commission;~~

~~(ii) Twenty five percent (25%) of the maximum hourly rate established by the Commission for reasonable time spent in preparation for such a hearing; and~~

~~(iii) In no case shall attorney's fees exceed two hundred dollars (\$200) per day, nor shall such fees exceed two thousand dollars (\$2,000) per appeal.~~

~~(b) Appeal of disciplinary dismissal, demotion, or suspension of ten (10) days or more:~~

~~Attorney's fees awarded by the Commission shall be awarded at the same rates established by Guidelines for the Defense of Individual Employees issued by the State of Tennessee Office of the Attorney General and Reporter.~~

~~(2) All awards of costs shall be limited to reasonable costs actually incurred. Awards of costs for travel shall be subject to the provisions of the comprehensive travel regulations in effect at the time the claim is made.~~

~~(3) The request for attorney's fees and costs shall be supported by affidavit from the prevailing attorney. All claims for attorney's fees and costs shall be submitted to the following address after the Commission has rendered its decision.~~

~~Secretary, Civil Service Commission  
Tennessee Department of Human Resources  
First Floor, James K. Polk Building  
505 Deaderick Street  
Nashville, TN 37243~~

~~Such claim shall specify the hours of preparation, in hours and tenths of hours, the nature of services performed during such preparation, the hours of hearing time, and a complete itemized statement of costs claimed.~~

~~(4) In no event shall a claim be paid which is not received by the Secretary of the Commission within sixty (60) days of the effective date of the Commission's order.~~

~~(5) The Secretary of the Commission shall review all such claims for compliance with these Rules, the law, and the Commission's decision. The Secretary is authorized to approve payment of such claims for any amount up to and including the amount claimed.~~

~~Authority: T.C.A. § 8-30-328.~~

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**Chapter 1120-13  
RULES AND REGULATIONS FOR ACCESS TO PUBLIC RECORDS**

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**~~1120-13-.01 PRODUCTION COSTS.~~**

~~Upon request for records under Tennessee's Public Records Act, T.C.A. § 10-7-501, et seq., the Department shall charge the requesting party a reasonable charge for production costs, including labor, duplication and delivery, based on the most current Schedule of Reasonable Charges issued by the Office of Open Records Counsel, available at <http://tennessee.gov/comptroller/openrecords>.~~

~~Authority: T.C.A. § 8-30-202, T.C.A. § 8-30-203, and T.C.A. § 10-7-501, et seq.~~

**~~1120-13-.02 PAYMENT OF PRODUCTION COSTS.~~** ~~The Department shall provide the requesting party an estimate of the production costs, including labor, duplication and delivery, before the initial production of the requested documents. The Department shall require the requesting party to provide full payment of the production costs before copies of the requested records are delivered or otherwise made available.~~

**~~1120-13-.03 WAIVER OF PRODUCTION COSTS.~~**

- ~~(1) The Department shall waive production cost if the total production cost, including labor, duplication and delivery, is less than ten dollars (\$10).~~
- ~~(2) When the requesting party is a federal, state or local government agency, the Department shall provide the requested copies of public records without charge. A request made by a federal, state, or local government agency on behalf of a citizen under the Tennessee Public Records Act shall be treated as a request by a citizen and charged accordingly.~~

~~Authority: T.C.A. § 8-30-202, T.C.A. § 8-30-203, and T.C.A. § 10-7-501, et seq.~~

**~~1120-13-.04 REDUCTION OF FEES.~~** ~~The Commissioner may reduce any part of the fees calculated under these rules upon a determination that such reduction is in the best interest of the public.~~

~~Authority: T.C.A. § 8-30-202, T.C.A. § 8-30-203, and T.C.A. § 10-7-501, et seq.~~

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Chapter 1120-01  
DEFINITIONS

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1120-01-.01 Definitions

1120-1-.01 DEFINITIONS. The following definitions shall apply to terms as they appear in these Rules, unless the context clearly requires otherwise:

- (1) Act. Tennessee Excellence, Accountability, and Management ("T.E.A.M") Act as codified in Tennessee Code Annotated.
- (2) Active Pay Status. Term applied to an employee who is actually working or who is using paid leave other than paid terminal leave or sick leave bank grants.
- (3) Affirmative Action Plan. A statistical document which identifies and analyzes patterns in the participation and utilization of women and minorities in the workforce.
- (4) Agency. Any entity that employs and exercises authority over any employee in the state service in the executive branch.
- (5) Appeal. A written complaint by a preferred employee concerning a disciplinary dismissal, demotion or suspension or by a state agency concerning a decision of the Commissioner in Step II of the appeals process.
- (6) Applicant Assessment. An assessment designed to determine the qualifications, fitness, and ability of the applicant to perform the duties of the classification for which the applicant has applied. The assessment may consist of a written, oral, or physical exam, or a demonstration of skills, or any combination of such types. The assessment may also consist of an evaluation of education, experience, skill, ability, competency, knowledge, aptitude, capacity, character, and other qualifications as, in the judgment of the Commissioner or agency, may determine and measure the relative ability of the applicant.
- (7) Appointing Authority. A commissioner, department, officer or agent having power to make appointments to, and separations from, positions in state service;
- (8) Appointment. The official designation of a person to fill a position in the state service as an employee.
- (9) Board. The Board of Appeals as established in T.C.A. § 8-30-108.
- (10) Classification/Class of Positions. A group of positions sufficiently alike in duties, authority and responsibilities such that the same general qualifications may reasonably be required and the same schedule of pay equitably applied to all positions in the group.
- (11) Classification Specification. A description of a classification, including classification title, summary, distinguishing features, examples of duties and responsibilities, minimum qualifications, necessary special qualifications, and assessment method.

- (12) Commissioner. The Commissioner of the Department of Human Resources.
- (13) Compensation Plan. A series of salary ranges to which a class of positions are assigned so that classifications evaluated as substantially equal are assigned to the same salary range.
- (14) Demotion. The change of an employee to a position in a classification at a lower salary grade for causes related to performance of duties or conduct which affects an employee's ability to successfully fulfill the requirements of the job.
- (15) Department. The Department of Human Resources.
- (16) Dismissal. The termination from the state service of an employee for causes related to performance of duties or conduct which may affect an employee's ability to successfully fulfill the requirements of the job.
- (17) Eligible. A person who has qualified for appointment to a position in the preferred service.
- (18) Eligible List. A list of names of all qualified applicants for a position in the preferred service.
- (19) Emergency Appointment. The appointment of a person to a position for a period, not to exceed one hundred twenty (120) days, in the event of an emergency.
- (20) Executive Service. All positions in the state service not subject to the preferred service provisions of the Act.
- (21) Executive Service Employee. An employee who holds a position in the executive service. Executive Service employees serve at the pleasure of the Appointing Authority and do not have the ability to appeal a suspension, demotion, or dismissal as defined in Rule 1120-11.
- (22) Flex-Classification Position. A position in a classification series which may be filled with an employee qualified to perform the job at the trainee, intermediate or working level.
- (23) Full-Time. A position or an employee budgeted for or scheduled to work a full-time schedule as defined by the Commissioner and the Commissioner of Finance and Administration, usually one thousand nine hundred and fifty (1,950) hours or more per year.
- (24) Gross Misconduct. Any job related misconduct which may subject an employee to criminal prosecution.
- (25) Initial Probation/Initial Probationary Period. The first probationary period an employee serves in an agency in a continuous period of employment prior to becoming a preferred employee in that agency.
- (26) Interim Appointment. The appointment of a person to a position for a period not to exceed one (1) year.
- (27) Involuntary Reduction in Rank. The change of an employee to a position in a classification at a lower salary grade as a result of a reduction in force or in compliance with T.C.A. § 8-30-312.
- (28) Lateral Reclassification. A change from a position in one classification to a position in another classification with the same salary grade and similar duties, authority, responsibilities, and qualification requirements.
- (29) Layoff. A separation of an employee from state service as the result of a reduction in force.

- (30) Legal Residence. The county or state in which an individual's home is located and to which the individual plans to return if temporarily absent.
- (31) Limited Term Appointment. The governor, the governor's cabinet, and members of boards, commissions, agencies and authorities receive limited executive service appointments. Limited term appointments do not require the use of eligible lists.
- (32) List. A compilation of eligibles who may be appointed to positions in accordance with these Rules, such as appointment list, promotion list or layoff list.
- (33) Major Portion of a Month. One-tenth (0.1) of one (1) hour over fifty percent (50%) of the regularly scheduled working hours.
- (34) Manager. An employee who supervises, plans and coordinates the work of other supervisors or an employee who serves in a staff policy making or recommending capacity in an agency. Managers may conduct and/or review performance evaluations.
- (35) Non-Preferred Employee. Employees who fall outside the provisions of the Act and serve in one of the following appointment types: interim, emergency, part-time, seasonal, temporary, or temporary employment of retired state employees. Employees in this category do not become preferred service employees.
- (36) Official Duty Station. The town or city where the majority of the employee's duties are performed.
- (37) Organizational or Business Unit. Any agency, board, commission, department, or subdivision recognized as a unit for purposes of administration.
- (38) Part-Time. A position or an employee budgeted or scheduled to work a part-time schedule as defined by the Commissioner and the Commissioner of Finance and Administration, usually less than sixteen hundred (1,600) hours per year.
- (39) Position. A job consisting of assigned duties, authority, and responsibilities typically performed by one (1) person.
- (40) Position Reclassification. A change in a job classification, typically resulting from a significant reassignment in job duties and responsibilities.
- (41) Preferred Service. All offices and positions of employment in the state service that have been placed under the preferred service provisions of the Act.
- (42) Preferred Service Employee. An employee who holds a position in an agency in the state service, in which the employee has successfully completed the requisite probationary period.
- (43) Probationary Period. A period of at least twelve (12) months' duration used to provide an employee with the opportunity to demonstrate ability to successfully adhere to the standards of performance and expected work outcomes required for the position.
- (44) Promotion. The change of an employee to a position in a classification at a higher salary grade.
- (45) Reallocation/Reallocated. A change from one classification to a new or existing classification based on a change in the nature or structure of the classification plan.

- (46) Reduction in Force. Any job action due to a lack of funds, a reduction in spending authorization, lack of work, efficiency or other material change in duties or organization that may result in the layoff of one or more preferred service employees.
- (47) Referred List. The document or record containing the names of the applicants meeting minimum qualifications for a class of positions for consideration by an Appointing Authority in filling a vacancy.
- (48) Regular Appointment. The appointment of a person to a regular position in either the preferred or executive service for an indeterminate period of time.
- (49) Regular Position. A position which is funded on an annual basis and is expected to continue to receive funding.
- (50) Salary Grade. A numeric/alpha value which defines the level of the job classification and designates the salary range for a class of positions.
- (51) Salary Range. The minimum to the maximum rates of pay established for a class of positions.
- (52) Seasonal Appointment. A part-time appointment of a person for an indeterminate period of time, typically scheduled to work for a certain period and generally not exceeding sixteen hundred (1,600) hours per year.
- (53) Seasonal Position. A part-time position which is funded for a specific period of time, typically less than one (1) year, and is expected to continue to receive funding. These employees are considered to be non-preferred employees.
- (54) Sick Leave Bank. A pool of sick leave hours donated by member employees for use by qualifying members who are medically certified as unable to perform the duties of their jobs as a result of a personal illness, injury, accident, disability, medical condition, or quarantine.
- (55) State. The State of Tennessee.
- (56) State Employee. A person employed in a position in state government. For the purposes of these Rules only, "state employee" excludes employees of state universities and local education agencies.
- (57) State Service. All officers and positions of trust or employment in the executive branch and all boards, commissions and agencies in state government except those specifically excluded by the Act.
- (58) Supervisor. An employee who oversees, directs, or manages the work, work flow, or employees in the performance of their daily duties. A supervisor shall be physically present in Tennessee while supervising employees working within Tennessee unless business reasons require out-of-state travel.
- (59) Suspension. An enforced leave of absence for disciplinary purposes for such length of time as the appointing authority considers appropriate, not exceeding thirty (30) days in any twelve (12) month period.
- (60) Terminal Leave. The annual leave balance of a retiring employee. Any leave balance remaining after the employee's last actual workday is considered terminal leave.

- (61) Termination. Any action taken that officially separates an employee from the state service. This includes employees who elect to resign, retire or who are dismissed from the state service.
- (62) Temporary Appointment. The appointment of a person to a preferred service position for a temporary period, not to exceed six (6) months, until an appropriate list has been established by the Department.
- (63) Temporary Staffing Service. The utilization of a temporary staffing service vendor having a contract with the State to provide short-term temporaries to perform the duties, for a period not to exceed ninety (90) days, of an existing preferred service position.
- (64) Time Period. Time period for most employees is defined as the work week beginning on Sunday and ending Saturday.
- (65) Transfer. A change from one position in a classification to another position in the same classification.
- (66) Voluntary Reduction in Rank. The change of an employee to a position in a classification at a lower salary grade based on an employee's request and the concurrence of the Appointing Authority.
- (67) Workday. A scheduled day of work exclusive of holidays or other authorized leave days.

Authority: T.C.A. § 8-30-101 et seq.

RULES  
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TENNESSEE DEPARTMENT OF HUMAN RESOURCES

Chapter 1120-02  
EMPLOYMENT PRACTICES

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1120-02-.01 RESPONSIBILITY. The Commissioner is responsible for administering the Act, these Rules, and establishing policies and procedures.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-107.

1120-02-.02 DIVISIONS OF STATE SERVICE. The state service is divided into the preferred service and the executive service.

Authority: T.C.A. § 8-30-201.

1120-02-.03 APPLICATION FOR EMPLOYMENT.

- (1) Applying for Positions in the Preferred Service. All applications for employment in preferred service positions shall be made in a manner prescribed by the Commissioner.
- (2) Disqualification of Applicants. The Commissioner may strike the name of a person from the list, if the Department determines that the applicant:
  - (a) is found to lack any of the required minimum qualification requirements established for the position;
  - (b) has previously been dismissed from state service for cause or gross misconduct;
  - (c) has willfully or intentionally submitted false information or documents in support of any application or has intentionally omitted information in any application which materially affects eligibility for employment consideration;
  - (d) has committed or attempted to commit a fraud or deception in connection with submitting an application or attempting to secure an appointment to state service;
  - (e) has used or attempted to use political pressure or bribery to secure an advantage in assessment or appointment;

- (f) has directly or indirectly obtained information regarding an assessment to which the applicant was not entitled;
  - (g) has failed to submit an application correctly or within the prescribed time limit;
  - (h) has taken part in the compilation, administration, or correction of the assessment; or
  - (i) has otherwise violated provisions of this Rule or related policies established and distributed by the Commissioner.
- (3) Notice of Removal from Eligible List. An applicant who is removed from a list for any reason shall be notified in writing. An applicant may submit additional information and/or documentation to clarify any discrepancies within a time prescribed by the Commissioner to avoid removal from an eligible list.
- (4) Equal Employment Opportunities. The provisions of this section shall be administered consistent with the State's equal employment opportunities policies and obligations. All actions taken pursuant to this chapter shall be in strict compliance with all applicable state and federal civil rights laws.

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Authority: T.C.A. § 8-30-101, T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-301, T.C.A. § 8-30-303, T.C.A. § 8-30-304, and T.C.A. § 8-30-305.

1120-02-.04 REQUEST TO FILL A POSITION. Whenever an Appointing Authority proposes to fill a position in the preferred service, the authority shall submit to the Commissioner a statement showing the position to be filled, the duties for such position, the official station, the minimum qualifications, and preferred skills, abilities, competencies and knowledge of the person to be appointed.

Authority: T.C.A. § 8-30-306.

#### 1120-02-.05 ASSESSMENTS.

- (1) Notice of Assessments. The Commissioner shall give public notice of all assessments, at least one (1) week in advance of the closing date for receipt of applications, by posting notices throughout the State. Public notice of assessments shall specify the job title, minimum salary for the position, the minimum or preferred qualifications, the final date on which applications will be received, and other conditions of assessment necessary for the position.
- (2) Evaluating Assessments. The Commissioner shall determine whether an applicant meets the minimum qualifications for the position. Applicants who meet the minimum qualifications shall be approved for placement on an eligible list.
- (3) Determining Minimum Qualifications. The Commissioner shall establish a procedure for the evaluation of the education, training, and experience qualifications, including licenses, certifications, approved Continuing Education Units (CEU's), and other factors as deemed appropriate by the Commissioner.
- (4) Admission to Assessments. Assessments shall be open to all persons who meet the minimum qualifications and requirements specified in the respective public notices. Each applicant admitted to an assessment shall be notified of the time, date and place of the assessment. The Commissioner may request additional documentation from the applicant prior to the assessment.
- (5) Conducting Written Assessments. A written assessment will be approved by the Commissioner with every precaution taken to prevent unauthorized persons from gaining knowledge of the nature or content of the tests. Written assessments shall be conducted in locations that are practical for

proper administration. All applicants admitted to a written assessment shall adhere to the Department's established testing rules and procedures. The Commissioner may take any appropriate action, up to and including criminal prosecution, against applicants who do not adhere to these established rules and procedures.

- (6) Employees in Positions Added to the Preferred Service. If an executive service position is reassigned to the preferred service, the incumbent employee may, within one (1) year, be given an assessment in a manner prescribed by the Commissioner.
- (7) Oral Assessments. When an oral evaluation is part of the assessment method for a position or class of positions, the Commissioner shall work with the Appointing Authority in establishing the examiners as needed.
- (8) Notice of Assessment Results. The Commissioner shall notify each applicant in writing of the results of the assessment as soon as practicable. A manifest error in the assessment shall be corrected, if called to the attention of the Commissioner no later than one (1) month after the establishment of the list of eligibles. The correction, however, will not invalidate any appointment previously made from such list.
- (9) Rescheduling Assessments. When an applicant is unable to appear for a written assessment, the applicant may, upon satisfactorily showing the cause of his failure to appear, be granted permission by the Commissioner to take the written assessment at a later date.
- (10) Working Test Period. With input from the Division of Rehabilitation Services, Department of Human Services, the Commissioner may substitute a working test period in lieu of a written assessment for an applicant with a disability. The test period shall not exceed one (1) year. The work test period runs concurrently with the employee's probationary period as defined in 1120-02-.11.
- (11) Investigations. The Commissioner or any Appointing Authority may investigate an applicant's education, credentials, training, and experience to verify the statements contained in the application form or to verify statements regarding the applicant's character and fitness. If this investigation shows any falsification, including false information or documents submitted in support of any application or intentionally omitted information in any application which materially affects eligibility for employment consideration, the applicant may be removed from consideration for employment or, if employed, may be dismissed and disqualified from future assessments. Lesser discrepancies in applicant information may result in a reevaluation of the assessment if necessary.
- (12) Assessment Records. The Commissioner shall maintain all records pertinent to an assessment program. The retention of applications and other necessary assessment records shall be maintained as prescribed by law.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-301, T.C.A. § 8-30-302, T.C.A. § 8-30-303, T.C.A. 8-30-304, and T.C.A. § 10-7-504.

#### 1120-02-.06 ELIGIBLE LIST.

- (1) Establishment of Eligible List. Upon request by the Appointing Authority, the Commissioner shall establish an eligible list for preferred service job classifications within a time prescribed by the Commissioner. The Commissioner shall establish and maintain lists of eligibles to meet the needs of the service.
- (2) Supplementing Eligible Lists. The Commissioner shall routinely review existing eligible lists to determine whether there are an adequate number of eligibles available to meet the needs of the service. When the Commissioner determines that a particular eligible list is inadequate or is likely

to become inadequate, the Commissioner may order a supplemental assessment for the class of positions. The public announcement for supplemental assessments shall give notice of the dates when applications will be accepted and, when applicable, when written assessments will be administered.

Eligible lists for job classifications assessed on a continuous basis are supplemented as applicants are evaluated.

- (3) Duration of Eligible Lists. At the time a list of eligibles is established, the Commissioner shall determine the period during which such list shall remain in force. Subject to the limitations of the Act and these Rules, the Commissioner may consolidate or cancel an eligible list at any time after it has been established.
- (4) Removal and Notification of Names from an Eligible List. Any applicant whose name is removed from an eligible list for any reason shall receive written notice of such action within ten (10) days of the date of removal.
  - (a) The name of an eligible may be removed or made inactive on an eligible list for a class of positions for any of the following:
    - (1) an eligible receives a regular appointment to a vacancy in that class of positions;
    - (2) an eligible declines an employment offer for the announced position;
    - (3) an eligible fails to respond within five (5) days of the date of an invitation to interview;
    - (4) an eligible cannot be located;
    - (5) an eligible falsifies his legal residence;
    - (6) An eligible has been convicted of a crime related to the position or class of positions for which he or she has applied; or
    - (7) any cause occurs as specified in the Act or Rules regarding the rejection or disqualification of applicants.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-305, and T.C.A. § 8-30-306.

#### 1120-02-.07 CERTIFICATION AND USE OF ELIGIBLE LISTS.

- (1) Certification of an Eligible List. The Commissioner shall certify an eligible list containing applicants meeting the minimum qualifications for the position to be filled by the requesting agency.
- (2) Referred List. Upon the request of the Appointing Authority, the Commissioner may establish employment, promotional, statewide, departmental, divisional, unit or any other list of eligibles deemed necessary or appropriate. The Commissioner shall issue a policy that agencies may use in establishing referred lists.
- (3) Request for Certification. When a vacancy occurs in one (1) or more established positions in a classification in the preferred service, the Appointing Authority may request a list to fill the position(s) in a manner prescribed by the Commissioner.
- (4) Methods of Certification. The Commissioner shall certify to the Appointing Authority the names of eligibles from the appropriate referred list for the classification. When requesting a referred list for a

flex-classification position, the Appointing Authority may request a referred list for the trainee, intermediate or working level classifications.

- (5) Interviewing Candidates from a Referred List. If three (3) or more applicants are on the list of eligibles, the Appointing Authority shall offer an invitation to interview a minimum of three (3) applicants from the referred list of eligible. If less than three (3) applicants are on the list of eligibles, the Appointing Authority shall invite each person on the list to interview.
- (6) Veterans' Preference. When invitations to interview candidates are extended, whether for appointment or promotion, and the list contains eligible Veterans or Veteran spouses in compliance with T.C.A. § 8-30-307, such persons shall be invited to interview. If a veteran is on the list of eligibles, and if the minimum qualifications and the skills, abilities, competencies and knowledge of the veteran and any another applicant being interviewed for the position are equal, preference shall be given to the veteran for the position. The Department shall adopt policy pertaining to Veterans' preference.
- (7) Appointment from a Referred List. Within thirty (30) days after being referred a list of eligibles, the Appointing Authority may appoint one (1) of the applicants on the list of eligibles. If no appointment is made from a referred list, the list shall expire upon the thirty-first (31<sup>st</sup>) day.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-306, and T.C.A. § 8-30-307.

#### 1120-02-.08 OTHER LISTS.

- (1) Layoff List. The Department shall maintain a list of all preferred service employees affected by a reduction in force for a period of one (1) year following the employee's date of layoff. Employees so listed shall be notified of any job openings in the same job classification that the employee served immediately prior to layoff, shall be extended an invitation to apply for the job, and shall be granted an interview by the hiring agency upon application.
- (2) Selective Certification. An individual position or group of positions in a classification may, under special circumstances, be placed into a sub-classification because the group requires unique or special qualifications. Requests for selective certification shall be made in writing and approved by the Commissioner.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-305, T.C.A. § 8-30-306, and T.C.A. § 8-30-314.

1120-02-.09 NON-COMPETITIVE CLASSIFICATIONS. For positions involving basic clerical, unskilled or semi-skilled labor, domestic, attendant or custodial work, when the character or place of the work makes it impracticable to supply the needs of the service by appointments made in accordance with the provisions of the Act, the Commissioner may adopt, or authorize the use of, such other procedures as the Commissioner determines to be appropriate in order to meet the needs of the service.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-311.

#### 1120-02-.10 FILLING POSITIONS.

- (1) Preferred Service Positions. All preferred service positions are regular full-time positions which may be filled by persons who are among the available eligibles on a referred list.

Preferred service positions may be filled on a full-time temporary basis outside the competitive process by qualified persons as determined by the Commissioner by temporary appointment, emergency appointment, or interim appointment. Preferred service positions may also be filled on a part-time basis with a seasonal appointment.

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- (2) Executive Service Positions. Referred lists are not required to fill executive service positions. Executive service employees are at-will employees and serve at the pleasure of the Appointing Authority.
  - (3) Overlap. An Appointing Authority may place more than one (1) employee in a single position in an overlap status subject to budgetary limitations and the approval of the Commissioner.
  - (4) Job Sharing. An Appointing Authority may place more than one (1) part-time employee in a single full-time position in a job sharing status subject to budgetary limitations and the approval of the Commissioner. Agencies are responsible for ensuring that the number of hours worked by all employees assigned to the position number do not exceed the maximum number of full-time hours assigned to that position in a fiscal year. Positions used for job sharing and employees who job share are not classified as preferred service.
  - (5) Mismatch. An Appointing Authority may request approval from the Commissioner to appoint an employee to a classification different from the classification of the position, provided the employee's classification is not higher than the classification of the position.

For preferred service appointments, the mismatch should be in the same or related classification series. The employee appointed should be able to meet the qualifications for the classification of the position upon attainment of additional education, experience or credentials. Preferred service mismatches should not exceed one (1) year except for employees in a lower level flex-classification position with a probationary period longer than one (1) year.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-201, and T.C.A. § 8-30-309.

#### 1120-02-.11 APPOINTMENTS.

- (1) Regular Appointment. A regular appointment is an appointment to either a preferred, non-preferred or executive service position for an indeterminate period of time. A regular appointment is expected to continue contingent upon satisfactory performance and behavior by the employee and upon continued funding, classification and utilization of the position by the State. In the executive service, a regular appointment is at-will and continues at the pleasure of the Appointing Authority.
- (2) Emergency Appointment. An emergency appointment is an appointment to a full-time preferred service position for a period of service not to exceed one hundred twenty (120) days and may be made when conditions exist that necessitate an immediate short term appointment. An emergency appointment may not be renewed, and no person may receive more than one (1) emergency appointment in a twelve (12) month period. Emergency appointments do not require the use of eligible lists, however, emergency appointees shall meet the minimum qualifications for the class of positions appointed. Time served in an emergency appointment does not constitute creditable service for sick and annual leave accrual or service credit except for the purpose of longevity payments. Emergency appointments are not eligible for participation in the state insurance plan, but may be eligible for participation in the Tennessee Consolidated Retirement System (TCRS) as outlined in TCRS rules and policies.
- (3) Interim Appointment. Based on written justification submitted by an Appointing Authority, the Commissioner may approve an interim appointment for a period not to exceed one (1) year. Based on written justification submitted by an Appointing Authority, the Commissioner may approve an extension, up to a one (1) year, if the Commissioner determines that such an extension is in the best interest of the State.

To be eligible for an interim appointment, the employee shall meet the minimum qualifications for the job classification to which the employee is appointed. If the interim appointment is made using a referred list, the Appointing Authority may grant the employee a regular appointment in the position using the referred list from which the interim appointment was made. Interim employees accrue leave under T.C.A. § 8-50-101 et seq. Interim employees are not considered to be in the preferred service.

- (4) Seasonal Appointment. Seasonal appointments do not require the use of eligible lists. Seasonal employees are not considered to be in the preferred service.
- (5) Temporary Appointment. A temporary appointment is the appointment of a person to a preferred service position for a temporary period until an appropriate list has been established. The term of a temporary appointment shall not to exceed six (6) months. Temporary employees accrue leave under T.C.A. § 8-50-101 et seq. Temporary employees are not considered to be in the preferred service.
- (6) Limited Term Appointment. The governor, the governor's cabinet, and members of boards, commissions, agencies and authorities receive limited-term appointments pursuant to statute. Limited term appointments do not require the use of eligible lists and are classified as executive service.
- (7) Temporary Employment of Retired State Employees. Retired State employees may temporarily return under certain conditions as outlined in the temporary employment form obtained from the Retirement Division of the Treasury Department. The retired employee may accept employment with a covered employer for up to one hundred twenty (120) days during a twelve (12) month period. These employees accrue leave under T.C.A. § 8-50-101 et seq., but are not considered to be in the preferred service.
- (8) Appointments to Flex-Classification Positions. To fill the vacancy of a flex-classification position, the Appointing Authority shall request from the Commissioner a referred list of applicants for either the trainee level classifications or the working level classification. Any eligible appointed to a flex-classification position from the referred list for either the trainee or working level classification shall serve a period of probationary employment as prescribed by the Commissioner for the classification. During the last month of the probationary period, the Appointing Authority shall certify to the Commissioner whether the employee has successfully completed the period of probationary employment and should, therefore, become a preferred employee in the position in the working level classification without further assessment or certification. The employee shall be removed from the position if the probationary period is not successfully completed. Such notification should be made in the same manner as prescribed for any other period of probationary employment.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-201, T.C.A. § 8-30-202, T.C.A. § 8-30-308, T.C.A. § 8-30-309, and T.C.A. § 8-30-310.

#### 1120-02-.12 PROBATIONARY PERIOD.

- (1) Purpose of the Probationary Period. The probationary period is an essential part of the employment process used for the adjustment of an employee to a new position and to provide an employee with the opportunity to demonstrate to the appointing authority the employee's ability to perform the defined work outcomes and behavior expectations.
- (2) Probationary Period for the Preferred Service.

- (a) For preferred service positions, a probationary period of at least twelve (12) months is required for all employees who receive regular appointments from a referred list. An Appointing Authority also has discretion to impose a probationary period for employees who receive regular appointments through demotion, voluntary reduction in rank, or interdepartmental transfers.
  - (b) The probationary period for a regular appointment may be reduced by the amount of time served in an emergency or interim appointment provided the appointment is for the same Appointing Authority in the same classification of positions and there is no break in service.
  - (c) Non-preferred employees do not serve a probationary period.
  - (d) Successful completion of a probationary period in a trainee, or intermediate level classification satisfies the probationary period requirement necessary for a preferred employee when the position is deemed to be the working level classification.
- (3) Duration of the Probationary Period. A period of probation is completed at the close of business or shift on the day the employee completes the number of months of probation required.
- (4) Initial Probationary Period.
- (a) Every person appointed to a position in the preferred service shall be subject to a probationary period of employment. The probationary period shall commence immediately upon appointment and shall continue for such time, not less than one (1) year, as shall be established by the Commissioner. At any time during the employee's probationary period the Appointing Authority may remove the employee if, in the opinion of the Appointing Authority, the employee's performance or conduct during the probationary period indicates that such employee is unable or unwilling to satisfactorily perform or is not satisfactorily performing the defined work outcomes and behavior expectations, or that the employee's habits, dependability, or conduct do not merit continuance in the service.
  - (b) During the last month of an employee's probationary period, the Appointing Authority shall notify the Commissioner in writing whether the performance and conduct of the employee have been satisfactory and whether continued employment is recommended.
- (5) Subsequent Probationary Period. A preferred service employee who accepts another preferred service position in the same agency shall serve a subsequent probationary period for a period of time, not less than one (1) year. Employees serving a subsequent probationary period have the ability to appeal a suspension, demotion, or separation as described herein, except when a demotion returns to the employee to his or her former classification.
- (6) Promotion during Probation. The probationary period for the classification of positions to which an employee on probation is promoted begins with the date of appointment to such higher classification.
- (7) Working Test Period. The probationary period for an employee with a disability who is granted a substitution of the written and/or performance assessment shall run concurrently with the working test period as defined in Rule 1120-02-.04.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-201, T.C.A. § 8-30-303, and T.C.A. § 8-30-308.

#### 1120-02-.13 PROMOTIONS.

- (1) Methods of Making Promotions. A vacancy may be filled by the promotion of a qualified employee with the approval of the Commissioner. Promotions between departments or agencies shall be approved by the respective appointing authorities. Promotions of employees to preferred service appointments shall be made by a process as determined by the Commissioner. Any employee who

has been demoted or reduced in rank may be promoted, at the discretion of the Appointing Authority and with the approval of the Commissioner, to a preferred service position in a classification without additional assessment or certification if the employee was a preferred employee in that classification in that agency.

- (2) Promotion by Competitive Assessment. The Commissioner and the Appointing Authority may fill a vacancy by a promotional assessment. The promotional list resulting from such assessment shall be established in accordance with the applicable provisions of this chapter.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-303, and T.C.A. § 8-30-306.

1120-02-.14 EMPLOYEE TRANSFER, LATERAL RECLASSIFICATION, DEMOTION, AND REDUCTION IN RANK.

- (1) Transfer. A transfer is authorized in accordance with the following:

- (a) An Appointing Authority may transfer an employee from one position to another position in the same classification or rank in the same agency.
- (b) An employee may be transferred from a position in one agency to a position in the same classification in another agency with the approval of both appointing authorities and the Commissioner.

- (2) Lateral Reclassification. A lateral reclassification is authorized in accordance with the following:

- (a) An Appointing Authority may laterally reclassify any qualified employee from one position to another position in another classification in the same agency with the approval of the Commissioner.
- (b) A qualified employee may be laterally reclassified from a position in one agency to a position in another classification in another agency with the approval of both appointing authorities and the Commissioner.

- (3) Demotion. With the approval of the Commissioner, an agency may demote an employee who has failed to render satisfactory service in a position held but is considered worthy of employment. The agency shall notify the employee in writing of the effective date of the demotion and the appeal process, if applicable. The change of an employee from a position in one classification to a position in another classification is not considered a demotion if the change is the result of:

- (a) the employee's request, with the concurrence of the department or agency;
- (b) a change in the organizational structure of the government entity;
- (c) because of the abolishment of a position;
- (d) a reduction in force;
- (e) organizational necessity; or
- (f) compliance with T.C.A. § 8-30-205.

- (4) Involuntary Reduction in Rank. An involuntary reduction in rank occurs when the position occupied by an employee is affected by a reduction in force or in compliance with T.C.A. § 8-30-312. An involuntary reduction in rank is not a demotion.

Employees receiving an involuntary reduction in rank shall not serve an additional probationary period. Under an involuntary reduction in rank, an employee's salary may be reduced pursuant to policy.

- (5) Voluntary Reduction in Rank. A voluntary reduction in rank occurs when an employee requests assignment to a position at a lower salary grade and the Appointing Authority concurs. A voluntary reduction in rank may require a salary reduction and the completion of an initial or subsequent probationary period. A voluntary reduction in rank is not considered a demotion and cannot be appealed.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-312, and T.C.A. § 8-30-313.

1120-02-.15 TENURE, EMPLOYEE RECLASSIFICATION, SUSPENSION, AND SEPARATION.

- (1) Tenure of Office. The service of preferred employees is contingent on both satisfactory performance and satisfactory conduct. Satisfactory performance is evidenced by the employee's record of performance. This provision, however, does not prevent the layoff of an employee in accordance with a reduction in force plan approved by the Commissioner.
- (2) Suspension. An Appointing Authority shall provide written notice upon suspending a preferred employee without pay for disciplinary purposes. Cumulative suspensions without pay shall not exceed thirty (30) work days in a twelve (12) month period. With approval from the Commissioner, an Appointing Authority may suspend an employee without pay for a period greater than thirty (30) work days, pending the appeal or the processing of an appeal or investigation. The agency shall place a copy of the written notice of the suspension in the employee's human resources file.
- (3) Reduction in Force. After written notice to the Commissioner, an Appointing Authority may implement a reduction in force, in accordance with the provisions of the Act. The Commissioner shall establish policies pertaining to reduction in force procedures.
- (4) Resignations. An employee who resigns shall state the reasons in writing to the Appointing Authority. To resign in good standing, the employee shall provide the resignation at least ten (10) days prior to the effective date of separation, unless such period is waived by the Appointing Authority or Commissioner, who shall notify the Commissioner in writing. Any employee who does not provide such notice may be designated as not eligible for rehire within that agency. A copy of the resignation shall be placed in the employee's human resources file.
- (5) Job Abandonment. Any employee who is absent from duty for more than three (3) consecutive work days without giving prior written or electronic notice to the appointing authority or appropriate manager that specifies the reason for such absence, and without securing permission to be on leave, or who fails to report for duty or to the immediate supervisor or the appointing authority within two (2) work days after the expiration of any authorized leave of absence, is considered as having resigned not in good standing, absent extenuating circumstances beyond the control of the employee causing the employee's absence or preventing the employee's return. An employee deemed to have resigned in accordance with these circumstances shall have the right to appeal such action through the appeal procedure described herein.
- (6) Dismissal. An Appointing Authority may dismiss a preferred employee for either unsatisfactory performance or unsatisfactory conduct. Executive service employees are at-will employees who serve at the pleasure of the Appointing Authority and do not have the ability to appeal a dismissal.
- (7) Re-employment Recommendation. When an employee leaves State government, the Appointing Authority may make a recommendation concerning re-employment. All separating employees not recommended for re-employment shall be informed in writing by the Appointing Authority of the recommendation and its effect on future employment in the state service.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-313, T.C.A. § 8-30-314, T.C.A. § 8-30-315, and T.C.A. § 8-30-316.

#### 1120-02-.16 CERTIFICATION OF PAYROLLS.

- (1) Certification of Payrolls. All payments for personal service to any person holding a position in the state service shall be submitted by the Appointing Authority to the Commissioner in a manner prescribed by the Commissioner and the Commissioner of Finance and Administration. The Commissioner shall certify the payroll before it may be honored by the Department of Finance and Administration. The Commissioner shall determine that the persons named on the payroll have been appointed or employed in accordance with the Act and applicable rules and that the salary rate is in accordance with the compensation plan before certification of that payroll for payment.
- (2) Refusal to Certify. If the Commissioner determines that a person on the payroll has not been appointed or paid in conformity with the provisions of the Act and these Rules, the Commissioner shall refuse to certify payment for that employee. The removal of a name or item from the payroll shall serve as official notification to the Department of Finance and Administration that the drawing, signing, or issuing of any warrant by any disbursing officer of the State for the payment of salary or compensation to such person is unlawful.
- (3) Illegal Payments. The Commissioner may bring an action to recover any sum paid contrary to any provisions of the Act or of any rule, regulation or order thereunder from:
  - (a) Any employee who made, approved or authorized such payment or who signed or countersigned a voucher, payroll, check or warrant for such payment;
  - (b) The sureties on the official bond of any such officer; or
  - (c) Any employee who incorrectly or improperly received any payment from the state.

All moneys recovered in any such action shall be paid into the state treasury.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-210, and T.C.A. § 8-30-211.

#### 1120-02-.17 RECORDS AND REPORTS.

- (1) Employee Records. The Commissioner shall maintain employee records as necessary to carry out the intent and purpose of the Act and these Rules and shall cause to be maintained in each agency a human resources file on each active employee. These files shall be maintained in accordance with policy established by the Commissioner. The Commissioner may audit these files as necessary.
- (2) Reports from Appointing Authorities. The appointing authorities shall report to the Commissioner in a manner prescribed by the Commissioner all changes in the employment status of employees under their jurisdiction. Upon request, the appointing authorities may also be required to make other reports regarding their employees to the Commissioner.
- (3) Investigations. The Commissioner has the right to access, and if necessary, subpoena, the records, books, papers and other documents of any organizational unit pertinent to any investigation, which may be necessary.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 10-7-504.

#### 1120-02-.18 Repealed.

RULES  
OF THE  
TENNESSEE DEPARTMENT OF HUMAN RESOURCES

Chapter 1120-03  
CLASSIFICATION

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1120-03-.01 CREATING A CLASSIFICATION PLAN. The Department shall create a classification plan, which groups positions sufficiently alike in duties, authority, and responsibilities such that the same general qualifications may reasonably be required and the same schedule of pay equitably applied to all positions in the group.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A § 8-30-203, T.C.A. § 8-30-204, T.C.A. § 8-30-205, and T.C.A. § 8-30-206.

1120-03-.02 CLASSIFICATION PLAN. The classification plan established and maintained by the Commissioner, in consultation with the appointing authorities, is a compilation of the officially authorized classifications of positions for the state service. The plan contains the classification specification for each classification in the preferred service which may be subdivided, grouped, or ranked as deemed proper by the Commissioner.

Authority: T.C.A. § 8-30-203.

1120-03-.03 CLASSIFICATION SPECIFICATIONS. Classification specifications for the preferred service include the following:

- (1) classification title;
- (2) summary;
- (3) distinguishing features;
- (4) examples of duties and responsibilities;
- (5) minimum qualifications;
- (6) necessary special qualifications; and
- (7) assessment method.

Authority: T.C.A. § 8-30-203.

1120-03-.04 USE OF CLASSIFICATION TITLES. The classification titles in the classification plan are used to designate all positions in the state service in all official records, vouchers, and communications concerning those positions. No person shall be appointed to, or employed in, a position in state service under a classification title which has not been approved by the Commissioner. This requirement does not preclude the use of working titles by employees in those positions when the use of working titles is helpful in the employee's performance of duties, authority, and responsibilities as long as such working titles are authorized by the employee's Appointing Authority.

Authority: T.C.A. § 8-30-206.

1120-03-.05 POSITION CLASSIFICATION ACTIONS.

- (1) If an Appointing Authority makes a significant or permanent change to the duties, authority, and/or responsibilities assigned to a position, the Appointing Authority should notify the Commissioner so that the Commissioner can determine if a position reclassification is necessary. If no appropriate classification exists, the Commissioner may establish a new classification.
- (2) If a change in assigned duties, authority, and responsibilities results in reclassification of the position, the employee in the position shall be certified as eligible on an eligible list and meet all requirements for an original appointment, reappointment, promotion, mismatch, reclassification, or reduction in rank. If ineligible to continue in the position, the employee shall be transferred, reclassified or separated by appropriate action in accordance with the provisions of these Rules and the Act.
- (3) The Commissioner may make changes to the classification plan as necessary to reflect changes to the duties, authority, or responsibilities of a job classification. If a preferred service classification is changed due to a modification in the structure of the classification plan, positions are reallocated. Employees who have become preferred employees in the reallocated positions may continue in those positions without further assessment or certification. Those employees who are not preferred employees shall meet the minimum qualifications of the new classification and shall appear on a referred list.
- (4) A position in the preferred service shall not be considered to have been abolished if the same or essentially similar duties, as determined by the Commissioner, are incorporated in a new position in the same agency within one (1) year after the effective date of the layoff that resulted in the position abolishment. Any preferred service employee so affected by the abolishment of the position shall be offered the newly established position upon application. The newly established position to which the employee returns shall not be placed in the executive service but shall remain in the preferred service.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-202, T.C.A. § 8-30-205, and T.C.A. § 8-30-314.

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1120-04-.01 THE COMPENSATION PLAN. The Commissioner shall prepare a comprehensive compensation plan for all classifications in the state service. The plan shall be developed after consultation with appointing authorities and shall take into consideration the State's ability to effectively recruit, prevailing rates of pay for the services performed, comparable services in public and private employment, living costs, other benefits received by the employee, and the State's financial condition and fiscal policies.

Authority: T.C.A. § 8-30-104 , T.C.A. § 8-30-105, and T.C.A. § 8-30-207.

1120-04-.02 CHANGES TO THE COMPENSATION PLAN. The Commissioner shall, as needed, review the ability of the State to recruit and retain employees for the classifications in the state service and may also survey prevailing rates of pay, both within and outside the State. The Commissioner may also make such changes to the compensation plan as the reviews and surveys indicate are prudent, subject to budgetary limitations and as approved by the Commissioner of Finance and Administration.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-207.

1120-04-.03 APPOINTMENTS. The minimum rate of pay in the applicable salary range represents the typical entry rate payable to a person on first appointment to a position in a classification. However, the Commissioner may authorize appointments above the range minimum, when experience in recruiting and retaining employees for the classification or prevailing salary market data indicate persons are not available at lower rates or when appointing persons exceptionally qualified for the position, including reappointments.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-207.

1120-04-.04 PROMOTIONS. An employee who is promoted may receive a promotional salary increase pursuant to policy, provided however, that no employee may be paid at a rate less than the range minimum in the salary range for the new classification and that no preferred employee shall receive a promotional salary increase which exceeds the range maximum in the salary range for the new

classification. Employees may receive promotional increases of greater or lesser amounts upon recommendation of the Appointing Authority, subject to the approval of the Commissioner and budgetary limitations. The Commissioner shall establish a policy regarding promotions for persons in a flex-classification position.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-207.

1120-04-.05 DEMOTIONS. An employee who is demoted may receive a salary reduction pursuant to policy. Employees who are demoted shall be paid within the salary range for the new classification. Demoted employees may receive a salary reduction of a greater or lesser amount upon recommendation of the Appointing Authority, subject to the approval of the Commissioner and budgetary limitations.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-207, T.C.A. § 8-30-312, and T.C.A. § 8-30-313.

1120-04-.06 INVOLUNTARY REDUCTION IN RANK. Unless otherwise specified by law, the Commissioner may approve an Appointing Authority's recommendation that an employee who receives an involuntary reduction in rank be paid at a rate above the range maximum for the new classification or the employee's salary be reduced to the maximum of the salary range for the new classification. Unless otherwise specified by law and subject to budgetary limitations, the salary of an employee who receives an involuntary reduction in rank may not be reduced if it falls within the salary range of the lower classification.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-207, and T.C.A. § 8-30-312.

1120-04-.07 VOLUNTARY REDUCTION IN RANK. An employee voluntarily reduced in rank typically experiences a reduction in salary in accordance with established policy.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-312.

1120-04-.08 EMPLOYEE TRANSFER AND LATERAL RECLASSIFICATION. An employee who is transferred shall not receive a salary change as a result of such action. An employee who is laterally reclassified shall not receive a salary increase unless the lateral reclassification results in a career path change as determined by the Commissioner. Those making a career path change may receive a one (1) step salary increase as long as agency funds are available and the employee's salary does not exceed range maximum.

Authority: T.C.A. § 8-30-104 and T.C.A. § 8-30-312.

1120-04-.09 RATES ABOVE SPECIFIED SALARY RANGE. The Commissioner may approve payment at a rate above that assigned to the employee's position in the compensation plan when he or she determines it to be in the interest of the state. Employees who receive salary adjustments required by law or who receive salary differentials authorized by these Rules may be paid at a salary rate higher than the maximum of the salary range of their classification. Employees who receive a reduction in rank may have a salary rate above the maximum if recommended by the Appointing Authority and approved by the Commissioner. Such employees are eligible for longevity pay and other increases as specified by law or rule.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-207.

1120-04-.10 SALARY GRADE ADJUSTMENTS. The Commissioner may adjust the salary grades of classifications to recognize changes in the duties, responsibilities, and authority. The Commissioner may also establish new salary ranges as a result of a competitive market analysis or a study focusing on recruiting and retaining employees in specific job classifications. The salary grade changes are subject to

budgetary limitations and approval by the Commissioner of Finance and Administration. Any employee whose salary is below the minimum of the new salary range shall be adjusted at least to the new minimum. Any employee whose salary is above the maximum of the new salary range shall not receive an increase, unless approved by the Commissioner.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-207.

1120-04-.11 SALARY INCREASES FOR OBTAINING PROFESSIONAL CERTIFICATION OR COLLEGE DEGREE. Subject to budgetary limitations, any employee who obtains a nationally recognized professional certification or a college degree from an accredited college or university within their occupational field may be eligible for a salary increase as approved by both the Commissioner and the Commissioner of Finance and Administration. Any clerical-secretarial or clerical-management employee in the state service who passes all parts of either the Certified Professional Secretary Examination or the Certified Administrative Professional Examination, sponsored by the International Association of Administrative Professionals shall be granted the salary increase as outlined in T.C.A. § 8-50-102 and policy.

Authority: T.C.A. § 8-50-102.

1120-04-.12 LONGEVITY. Longevity is a lump sum payment intended to reward employees for service to the State and to encourage those employees to remain employed by the State. The Commissioner shall establish a policy concerning the calculation and payment of longevity.

Authority: T.C.A. § 8-23-206.

1120-04-.13 SALARY ADJUSTMENTS. The Commissioner shall establish a policy for adjusting an employee's salary rate based on equity or for permanently assuming duties of greater scope and complexity. Subject to budgetary limitations, the Commissioner may approve such permanent salary adjustments based upon justification submitted by the Appointing Authority.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-207, and T.C.A. § 8-30-214.

1120-04-.14 TEMPORARY ADJUSTMENTS TO SALARY OR BONUS PAYMENTS. Subject to budgetary limitations, the Commissioner may approve temporary salary differentials or bonus payments for employees assuming duties of greater scope or complexity. Salary differentials shall be periodically reviewed and approved by the Commissioner.

Subject to budgetary limitations, the Commissioner may approve incentive bonus payments based upon justification submitted by the Appointing Authority. Such payments shall not be made to compensate the employee for additional work hours.

The Commissioner shall establish a policy specifying the terms and conditions under which such temporary salary differentials or bonus payments may be paid.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-207.

1120-04-.15 ASSIGNING DUTIES OF A HIGHER LEVEL CLASSIFICATION. No preferred service employee shall be assigned to perform the majority of the duties and responsibilities of a position in a higher level classification than that of the position occupied by the employee, without the approval of the Appointing Authority. When an employee is so assigned, the duration cannot exceed ninety (90) days without the approval of the Commissioner. The total length of the assignment shall be limited to a period of twelve (12) months.

The Commissioner, in consultation with the Commissioner of Finance and Administration, shall establish a policy under which an employee who is assigned to perform the majority of the duties and responsibilities of a higher level classification shall receive additional compensation for such assignment.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-209.

1120-04-16 FAIR LABOR STANDARDS ACT. The Commissioner, in compliance with the Fair Labor Standards Act, shall designate the classifications which receive cash overtime, classifications which receive compensatory overtime, and classifications which receive no overtime.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-208, 29 U.S.C. § 201 et seq., and 29 C.F.R. Part 5.

1120-04-17 MERIT PAY. The Commissioner shall establish guidelines to govern the distribution of any funds which may be available for merit pay for members of the state service.

- (1) The guidelines shall establish objectively measurable criteria, which ensure that the merit pay system:
  - (a) rewards above-average performance;
  - (b) improves efficiency;
  - (c) encourages participation in programs that improves job performance and skills; and
  - (d) does not permit, facilitate or promote discrimination on account of race, color, national origin, gender, age, disability, religion or creed, veteran's status or political opinions or affiliations.
- (2) Such guidelines shall also provide that merit pay funds are consistently distributed in a fair and equitable manner.
- (3) All employees shall be eligible for merit pay if the employee satisfies the criteria established in the guidelines.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-207.

RULES  
OF THE  
TENNESSEE DEPARTMENT OF HUMAN RESOURCES  
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1120-05-.01 EVALUATIONS. Each agency shall provide written plans detailing the standards of performance and the expected outcomes for all employees and shall periodically evaluate the results on dates and in such manner as prescribed by the Commissioner.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-313.

1120-05-.02 EMPLOYEES TO BE EVALUATED. The performance of all employees in the state service shall be evaluated in a manner subject to this Rule and the policies of the department.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-313.

1120-05-.03 EVALUATION PROCEDURE. An agency shall conduct, at a minimum, the following evaluation procedure:

- (1) Performance Plan. The supervisor and the employee shall have an initial discussion for the purpose of explaining and clarifying the performance evaluation process, defined work outcomes and behavioral expectations for which performance shall be evaluated, and the performance necessary to maintain or achieve an acceptable rating. Defined employee work outcomes and behavior expectations shall be specific, measurable, achievable, relevant to the strategic objective of the employee's state agency or division and time sensitive.
- (2) Periodic Reviews. Supervisors shall provide periodic reviews of performance to provide constructive feedback, discuss means of enhancing performance results and, if appropriate, to discuss the consequences of unsatisfactory performance. Employees shall receive a minimum of two (2) periodic reviews during the review cycle.
- (3) Evaluation of Performance. Employees shall receive a formal written evaluation of the expected performance standards at the end of the performance cycle which grants the employee the opportunity to comment.
- (4) Official Review. An official review of the performance evaluation shall occur in accordance with policy. Once approved, the evaluation becomes the record of the employee's performance.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-313.

1120-05-.04 USE IN MAKING HUMAN RESOURCES DECISIONS. Performance evaluations may be used as follows:

- (1) to determine salary increases and decreases within the limits established by the compensation plan;
- (2) as a factor in making or denying promotions; and
- (3) as a means of determining employees:
  - (a) who are candidates for promotion or transfer; or
  - (b) who, because of a low job performance evaluation, are candidates for demotion, suspension, dismissal or reduction in force.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-313.

1120-05-.05 RECORDS. Each agency shall record the evaluation of each employee in a manner prescribed by the Commissioner. Performance evaluations of all employees shall not be considered public records under T.C.A. § 10-7-503. Nothing in this section shall be construed to limit access to these records by law enforcement agencies, courts, or other governmental agencies performing official functions.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-313.

1120-05-.06 TRAINING. The Appointing Authority shall ensure that persons responsible for conducting and/or reviewing the performance evaluation of any employee complete a training program specified by the Commissioner.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-313.

1120-05-.07 ADMINISTRATIVE REVIEW. An employee who receives a completed performance evaluation may file a request for administrative review based on procedural violations as follows:

- (1) Appointing Authority. Within fourteen (14) days of receipt of the evaluation, an employee may file a written request for review, along with all relevant documentation, to the Appointing Authority. The Appointing Authority shall respond in writing to the employee within fifteen (15) days.
- (2) Department Review. Within fourteen (14) days of the receipt of the Appointing Authority's written decision, an employee may file a written request for review, along with all relevant documentation, to the Commissioner. The Commissioner shall issue a written response within fifteen (15) days. The decision of the Commissioner shall be final and not subject to further review.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-313.

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1120-06-.01 RESPONSIBILITY. It is the employee's responsibility to request appropriate leave and the immediate supervisor shall be responsible for approving such leave.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-406.

1120-06-.02 REGULAR WORK SCHEDULE. The regular schedule for most employees is 8:00 a.m. to 4:30 p.m., Monday through Friday. Local conditions may cause these hours to vary, but an employee scheduled to work seven and a half (7.5) hours per day, Monday through Friday, is considered to be on a regular work schedule. Any agency may use irregular work schedules and vary its work hours and work days at the discretion of the Appointing Authority. Any work schedule can be modified as necessary to provide a reasonable accommodation for an employee with a disability, as determined by the Appointing Authority. Any full-time schedules other than thirty-seven and a half (37.5) hours per week shall be approved in advance by the Commissioner and the Commissioner of Finance and Administration.

Authority: T.C.A. § 4-4-105, T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-406.

1120-06-.03 WORKWEEK. The standard workweek for accounting purposes begins at 12:01 a.m. Sunday and runs one hundred sixty eight (168) continuous hours with seven (7) consecutive twenty-four (24) hour periods to 12:01 a.m. the following Sunday. Variation to this standard workweek shall be submitted to and approved by the Commissioner.

Authority: T.C.A. § 4-4-105, T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-406.

1120-06-.04 CASH OVERTIME AND/OR ACCRUAL OF COMPENSATORY TIME. The Fair Labor Standards Act (FLSA) mandates that non-exempt employees receive additional compensation in certain circumstances. In addition, T.C.A. § 8-23-201 provides that additional compensation may be paid to certain state employees who work in excess of regularly scheduled hours at the direction of an

appropriate manager. The Commissioner shall establish policy and procedures for administering overtime payments to include the following:

- (1) Exempt Non-Compensatory Time Employees. Employees defined as "exempt non-compensatory time" by the Commissioner shall not be eligible to receive any compensation for hours worked beyond their regular schedule. However, if an exempt non-compensatory time employee is scheduled to work on a legal holiday, the Appointing Authority may grant discretionary leave with pay equal to the hours worked on a legal holiday.
- (2) Exempt Employees. Employees defined as "exempt" by the FLSA may receive regular compensatory time for hours worked beyond their regular schedule provided that it was at the direction of the Appointing Authority or other appropriate supervisor or manager. The Commissioner shall determine the exempt classifications that are eligible for this regular compensatory time. Exempt employees may accumulate a maximum of four hundred and eighty (480) hours of regular compensatory time. Regular compensatory time is earned on an hour-for-hour basis and is distinct from premium compensatory time authorized by the FLSA.
- (3) Non-Exempt Employees. Employees defined as "non-exempt" by the FLSA shall receive compensation for all hours spent performing the principal duties assigned to them provided the assignment was at the direction of the Appointing Authority or other appropriate supervisor or manager. Non-public safety employees who are non-exempt may accumulate no more than two hundred and forty (240) hours of premium compensatory time. Their total compensatory time (regular and premium compensatory time) may not exceed four hundred and eighty (480) hours. Public safety employees who are non-exempt may accumulate a maximum of four hundred and eighty (480) hours of premium compensatory time.
- (4) Exceptions. Individual exceptions to this rule shall be recommended by the Appointing Authority and approved in advance by the Commissioner and the Commissioner of Finance and Administration. Such recommended exceptions shall be consistent with state and federal law and established after consultation with the Comptroller of the Treasury and the Attorney General's Office.

Authority: T.C.A. § 8-23-201, T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-208, and 29 U.S.C. § 201 et seq.

1120-06-.05 COMPENSATORY TIME. Compensatory time is leave credit earned by an exempt or non-exempt employee when hours are worked beyond their regular schedule and not compensated in cash. Compensatory time is generally accrued on a weekly basis. The Commissioner shall establish policy and procedures to include the following:

- (1) Use of Compensatory Time. The use of compensatory time is subject to the approval of the Appointing Authority or a designated manager in the same manner as annual leave. An employee who has accrued compensatory time and requests use of that time shall be permitted to use such time off within a reasonable period after making the request. When a request for compensatory time off is received, it shall be honored unless to do so would be unduly disruptive to the agency's operations. Mere inconvenience is an insufficient basis for denial. An agency should reasonably and in good faith anticipate that the employee's request would impose an unreasonable burden on the agency's ability to provide services of acceptable quality and quantity for the public during the time requested without the use of the employee's services.

A "reasonable period" shall be determined by considering the customary work practices within the agency based on the facts and circumstances in each case. Such practices include, but are not limited to, the following:

- (a) the normal schedule of work,

- (b) anticipated peak workloads based on past experience,
- (c) emergency requirements for staff and services, and
- (d) the availability of qualified substitute staff.

The use of compensatory time in lieu of cash payment for overtime by non-exempt employees shall be pursuant to some form of agreement or understanding between the employer and the employee (or the representative of the employee) reached prior to the performance of the work.

- (2) Compensatory Time Transferable. An employee's compensatory time shall be transferred between state service agencies. If an employee in a state service agency transfers to another state agency outside the state service which does not accept the employee's compensatory time balance, the state service agency shall compensate the transferring employee for the value of the employee's compensatory time balance. The value of the compensatory time accrued by an exempt employee is calculated based on the employee's regular hourly rate in the state service agency at the time of transfer.
- (3) Use of Compensatory Time Before Annual Leave. Accumulated compensatory time shall be used before annual leave unless an employee's accumulated annual leave balance is within two (2) days of the maximum accrual allowed for the employee as provided in these Rules.
- (4) Payment of Compensatory Time at Separation. Generally, an agency shall make a lump sum payment for accrued compensatory time when an employee separates from state service. If, however, a retiring employee requests terminal leave, that employee shall use accrued compensatory time prior to terminal leave. Terminal leave is the annual leave balance of a retiring employee. Any annual leave balance remaining after the employee's last working day is considered terminal leave.
- (5) Amount Earned and Maximum Accumulation. Non-public safety employees who are non-exempt may accumulate a maximum of two hundred and forty (240) hours of premium compensatory overtime. Public safety employees who are non-exempt may accumulate a maximum of four hundred and eighty (480) hours of premium compensatory overtime. Totals for regular and premium compensatory overtime shall be added together and no employee shall be allowed to exceed a total accumulation of both regular and/or premium compensatory overtime over four hundred and eighty (480) hours. Any variation to this maximum accrual limit shall be approved in advance by the Commissioner and the Commissioner of Finance and Administration.

Any exempt or non-exempt employee who earns authorized overtime credit in excess of the maximum accrual shall be paid cash for those hours on an hour-for-hour basis unless the Fair Labor Standards Act requires payment at a premium rate.

Non-exempt employees are permitted to receive premium (time and one-half) compensatory overtime in lieu of premium cash overtime if the agency lacks the necessary funds or if the employee requests compensatory time instead of cash and the Appointing Authority approves the request. Premium compensatory overtime occurs when a non-exempt employee, who is authorized to receive compensatory overtime in lieu of cash, physically works more than forty hours (40) during a work week. The employee shall be compensated at one and half times the hours actually worked above forty (40).

Authority: T.C.A. § 8-23-201, T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-406, T.C.A. § 8-50-801, and 29 U.S.C. § 201 et seq.

1120-06-.06 LUNCH PERIOD. All employees, except those specifically excluded in T.C.A. § 4-4-105, are allowed a one (1) hour unpaid lunch (meal) period. If a supervisor requires an employee to work during any part of their one (1) hour meal period, the employee is considered to be at work and shall be compensated accordingly.

The authorized meal period shall be taken during the work shift and shall not be used to alter arrival or departure time by not using the meal period or any part thereof.

Certain employees cannot be relieved of duties to have a meal period during their work shift. An employee on a "fixed post" assignment may not leave their work station. These employees are considered to be at work even if they are able to eat a meal during their work shift and shall be compensated accordingly.

Authority: T.C.A. § 4-4-105, T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-406, and 29 U.S.C. § 201 et seq.

1120-06-.07 REST BREAKS. Appointing authorities, at their discretion, may allow their employees two (2) rest breaks, of fifteen (15) minutes duration each, during a workday. These rest breaks are a privilege and not a right and should be taken at times that do not interfere with service to the public. A rest break shall not be used to alter arrival or departure time, used in conjunction with the lunch hour, used with any type of leave, or be accumulated for usage at a later time.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-406.

1120-06-.08 BREAK TIME FOR NURSING MOTHERS. An employee who needs to express breast milk for the nursing child shall be allowed a reasonable break time and a space to do so that is not a bathroom, is shielded from view, and is free from intrusion from coworkers and the public. Break time for nursing mothers shall be allowed in addition to other breaks provided for in the law and shall not be used to alter the employee's scheduled arrival or departure time.

Authority: T.C.A. § 4-4-105, T.C.A. § 8-30-215, T.C.A. § 50-1-305, and Patient Protection and Affordable Care Act (P.L. 111-148).

1120-06-.09 ABSENCE DUE TO SPECIFIC CIRCUMSTANCES. The Commissioner shall establish policy concerning absences for:

- (1) Inclement weather;
- (2) Public health emergency;
- (3) State emergency; and
- (4) Uninhabitable building.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-406.

1120-06-.10 ELIGIBILITY TO ACCRUE LEAVE. An eligible employee accrues annual and sick leave based upon hours worked, excluding overtime, pursuant to T.C.A. § 8-50-801 and T.C.A. § 8-50-802.

Leave is accrued on a regular workday basis. One day of leave is equivalent to seven and one-half (7.5) hours for employees on a thirty-seven and one-half (37.5) hour per workweek schedule. One day of leave is equal to eight (8) hours for employees on a forty (40) hour per workweek schedule. Employees on other workweek schedules as approved by the Commissioner accrue based on those schedules.

Employees changing from one schedule to another shall have their hourly balances adjusted accordingly.

Employees who work sixteen hundred (1,600) hours in a year and work the major portion of the month are eligible to accrue leave, except for those listed in T.C.A. § 8-50-801(e).

Authority: T.C.A. § 8-23-101, T.C.A. § 8-50-801, and T.C.A. § 8-50-802.

1120-06-.11 ANNUAL LEAVE. The Commissioner shall establish policy and procedures for administering annual leave in accordance with T.C.A. § 8-50-801.

- (1) Amount Earned and Maximum Accumulation. Annual leave is earned with maximum accumulation as follows:
  - (a) Employees with less than five (5) years of full-time service accrue annual leave at the rate of one (1) day for each month or major fraction of a month of active service and may accumulate a maximum of thirty (30) work days.
  - (b) Employees with five (5) years and less than ten (10) years of full-time service accrue annual leave at the rate of one and one-half (1 ½) days for each month or major fraction of a month of active service and may accumulate a maximum of thirty-six (36) workdays.
  - (c) Employees with ten (10) years and less than twenty (20) years of full-time service accrue annual leave at the rate of one and three-fourths (1 ¾) days for each month or major fraction of a month of active service and may accumulate a maximum of thirty-nine (39) work days.
  - (d) Employees with twenty (20) years or more of full-time service accrue annual leave at the rate of two (2) days for each month or major fraction of a month of active service and may accumulate a maximum of forty-two (42) work days.
- (2) Creditable Service. Any month, which was a part of a sixteen hundred (1,600) hour or greater annual schedule, in which an employee is scheduled to work a full month, and actually works one-tenth of one hour more than half the scheduled hours, shall be creditable for maximum accumulation purposes.
- (3) Transfer of Annual Leave to Sick Leave. Leave earned in excess of the maximum allowable accumulation based on years of service as defined in T.C.A. § 8-50-801 shall be transferred to the employee's sick leave account annually in the month of the employee's last hire date.
- (4) Annual Leave Paid as a Lump Sum. When separating from the state service, an employee shall be paid for any annual leave accumulation in a lump sum unless that employee is dismissed or terminated from state service for gross misconduct, or resigns from the state service to avoid dismissal for gross misconduct, or was guilty of gross misconduct prior to leaving the state service. In cases involving gross misconduct, the employee forfeits all accumulated annual leave.
- (5) Annual Leave as Terminal Leave Prior to Retirement. An employee may use annual leave as terminal leave when retiring from state employment or may receive a lump sum payment for annual leave balances.
- (6) Annual Leave Shall Not Be Advanced. Annual leave shall not be taken until earned.
- (7) Employee Meetings. Annual leave may be used to attend meetings of employee associations which are qualified for payroll dues deduction. Except as enumerated in T.C.A. § 8-50-110, leave allowed for this purpose cannot exceed two (2) days per year.
- (8) Annual Leave Transferable. Unless there is a break in service, annual leave shall be transferred to and shall be accepted from state agencies and higher education institutions, legislative and judicial branches.

Authority: T.C.A. § 8-50-110, T.C.A. § 8-50-801, T.C.A. § 8-50-803, and T.C.A. § 8-50-807.

1120-06-.12 SICK LEAVE. Sick leave is accrued by an employee at the rate of one (1) day for each month or major fraction of a month of active service. The Commissioner shall establish policy and procedures governing the use of sick leave.

- (1) Use of Sick Leave. An Appointing Authority may grant an eligible employee sick leave for any of the following reasons:
  - (a) personal illness;
  - (b) disability due to accident;
  - (c) exposure to a contagious disease;
  - (d) medical and dental appointments;
  - (e) illness or death in the immediate family, or others who, at the discretion of the Appointing Authority, have a relationship which merits similar consideration;
  - (f) birth and care of an infant child (up to thirty (30) work days); and
  - (g) adoption (up to thirty (30) work days).
- (2) Reinstatement of Accumulated Sick Leave. Employees who work on a full-time continuous basis for one full year or more, leave in good standing, and return to work shall be credited with and may use paid sick leave accumulated prior to separation immediately upon certification of the previous balance from the appropriate agency. Persons hired from state higher education institutions and persons who were teachers with local school boards in Tennessee are also included under this provision.
- (3) Sick Leave Transferable. Unless there is a break in service, sick leave shall be transferred to and shall be accepted from state agencies and higher education institutions, legislative and judicial branches.
- (4) Required Documentation. Any employee may be required to present evidence to an Appointing Authority, the Commissioner, or any other appropriate authority, to support the reason for any absence for which sick leave was taken.
- (5) Doctor's Certification of Absence. Sick leave may not be denied to any employee who furnishes a statement of a licensed physician or accredited Christian Science practitioner in support of the reason for such absence. Additional documentation may be required if there is substantial evidence of sick leave abuse by the employee.
- (6) Sick Leave Restrictions.
  - (a) Sick Leave During Terminal Leave. Sick leave may not be used as terminal leave. An employee presenting evidence of an illness during terminal leave may utilize sick leave up to the original separation date.
  - (b) Sick Leave Shall not be Advanced. Sick leave shall not be taken until earned.

Authority: T.C.A. § 4-21-408, T.C.A. § 8-50-802, T.C.A. § 8-50-803, T.C.A. § 8-50-804, T.C.A. § 8-50-806, and T.C.A. § 8-50-807.

1120-06-.13 BEREAVEMENT LEAVE.

- (1) The officers and employees of the various agencies, boards, and departments of state government shall be granted three (3) work days paid leave in the event of death of such officers' or employees' spouse, child, step-child, parents, siblings, grandparents, grandchildren, stepparents, foster parents, or parents-in-law without charge to the affected officers' or employees' accumulated leave accounts. One (1) day of leave is equivalent to seven and a half (7.5) hours for employees on a thirty-seven and a half (37.5) hour per workweek schedule. One (1) day of leave is

equivalent to eight (8) hours for employees on a forty (40) hour per workweek schedule. One (1) day of leave is equivalent to twelve (12) hours for the Department of Military firefighters.

(2) This rule shall not be construed to increase the total number of leave days provided in Rules of the Department of Human Resources for the death of a family member as defined herein.

Authority: T.C.A. § 8-50-113.

1120-06-.14 SPECIAL LEAVE. Special leave is leave without pay. At the discretion and upon recommendation of the Appointing Authority, the Commissioner may approve requests for special leave in accordance with policy and procedure.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-406.

1120-06-.15 HOLIDAYS. The General Assembly, by law, establishes legal holidays which are observed by the closing of State offices. The Governor, upon request by the Commissioner, may also establish additional time off for observance of holidays. The following days have been designated by the General Assembly as legal holidays:

<u>New Year's Day</u>	<u>January 1</u>
<u>Martin Luther King, Jr. Day</u>	<u>Third Monday in January</u>
<u>President's Day</u>	<u>Third Monday in February</u>
<u>Good Friday</u>	<u>Friday before Easter</u>
<u>Memorial Day</u>	<u>Last Monday in May</u>
<u>Independence Day</u>	<u>July 4</u>
<u>Labor Day</u>	<u>First Monday in September</u>
<u>Columbus Day</u>	<u>Second Monday in October</u>
<u>Veteran's Day</u>	<u>November 11</u>
<u>Thanksgiving Day</u>	<u>Fourth Thursday in November</u>
<u>Christmas Day</u>	<u>December 25</u>

The Governor may, at his discretion, substitute the Friday after the fourth (4<sup>th</sup>) Thursday in November for Columbus Day. Employees who are ineligible to accrue leave are not eligible for holiday pay.

Authority: T.C.A. § 8-30-406 and T.C.A. § 15-1-101.

1120-06-.16 CIVIL LEAVE. The Commissioner shall establish policy and procedures for state employees to be excused from their job duties when involved in civil or criminal proceedings as a juror.

Authority: T.C.A. § 22-4-106.

1120-06-.17 EDUCATIONAL LEAVE. The Commissioner shall establish policy and procedures for state employees to be placed on educational leave for participation in full-time continuing education as defined in Rules of the Department of Human Resources 1120-08.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-406.

1120-06-.18 MILITARY LEAVE.

(1) Military Leave with Pay. A leave of absence with pay, not to exceed twenty (20) working days in any one year, shall be granted to employees who are members of the reserve components of the Armed Forces of the United States, including members of the Tennessee National Guard, for periods they are engaged in the performance of duty or training activities in the service of the State or the Federal Government while under orders. Holidays and scheduled off duty days do not count toward the twenty (20) days allowed. During the period of approved paid military leave, the

employee incurs no loss of service time and continues to earn regular annual leave and sick leave. There shall be no loss of rights or benefits to which the employee is otherwise entitled. Military leave with pay shall not be granted for regularly scheduled monthly training for reservists or national guardsmen.

- (2) Military Leave without Pay. Leave without pay shall be granted for periods of active duty or training activity with the Armed Forces of the United States, its reserve components, or the Tennessee National Guard for authorized periods beyond the twenty (20) days of paid leave in a calendar year. In addition, leave without pay may be granted for regularly scheduled monthly training for reservist or national guardsmen and to employees entering the regular components of the Armed Forces of the United States as a result of military conscription or for a period of voluntary enlistment. During the period of leave without pay for military service, the employee retains all accumulated annual and sick leave, retirement status, and continues to earn time toward seniority, retirement and longevity pay. Continuation in the State's insurance programs, if elected, shall be granted subject to appropriate state insurance program provisions.
- (3) Air Force Auxiliary Civil Air Patrol Leave. A leave of absence with pay, not to exceed fifteen (15) working days in any one calendar year, shall be granted to employees who are members of the United States Air Force Auxiliary Civil Air Patrol and who participate in a training program for the civil air patrol, or in emergency and disaster services, as defined in T.C.A. § 58-2-101, if the leave of absence is at the request of the employee's wing commander or the wing commander's designated representative. In addition, leave without pay shall be granted to employees on Civil Air Patrol Leave. During the period of leave without pay, the employee retains all accumulated annual and sick leave, retirement status, and continues to earn time toward seniority, retirement and longevity pay. Continuation in the State's insurance programs, if elected, shall be granted subject to appropriate insurance program provisions.

Authority: T.C.A. § 8-33-105, T.C.A. § 8-33-109, and T.C.A. § 42-7-102.

1120-06-19 ADMINISTRATIVE LEAVE FOR DISASTER. A state employee who is a certified disaster service volunteer of the American Red Cross may be granted leave from work with pay for a period not to exceed fifteen (15) workdays in each year to participate in special disaster relief services for the American Red Cross. The employee shall be released from work for this function upon written request of the American Red Cross for the services of that employee, and upon written approval of that employee's Appointing Authority.

Authority: T.C.A. § 8-50-810.

1120-06-20 PARENTAL LEAVE.

- (1) An employee who has been employed for at least twelve (12) consecutive months as a full-time employee, may be absent from such employment for a period not to exceed four (4) months for adoption, pregnancy, childbirth and nursing an infant, where applicable. With regard to adoption, the four (4) month period shall begin at the time an employee receives custody of the child.
- (2) An employee may use up to thirty (30) sick leave days for parental leave. In the event both parents are state employees, the aggregate sick leave used is limited to thirty (30) days.
- (3) When an employee adopts a child, an Appointing Authority has the discretion to grant additional special leave not to exceed one (1) year.
- (4) The Commissioner shall establish procedures pertaining to parental leave.

Authority: T.C.A. § 4-21-408, T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-406, T.C.A. § 8-50-802, and T.C.A. § 8-50-806.

1120-06-21 FAMILY AND MEDICAL LEAVE. The Commissioner shall establish procedures for implementing the provisions and requirements of the Family and Medical Leave Act (FMLA).

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-406, 29 U.S.C. 2601 et seq., and 29 C.F.R. Part 825.

1120-06-22 DIVISION OF CLAIMS ADMINISTRATION LEAVE. The Division of Claims Administration is responsible for determining whether an employee is eligible for workers' compensation due to a job related injury or illness.

- (1) Workers' Compensation Pay. An employee may not receive workers' compensation pay for any period that the employee used sick, annual, or compensatory leave.
- (2) Effect on Anniversary Dates. Time served on Division of Claims Administration leave shall not affect the employee's longevity, salary or service anniversary date.
- (3) Assault Pay. Employees who are injured in the line of duty, as the result of an assault which disables them from performing their jobs, shall be allowed to remain on the regular payroll for a period not to exceed twenty-eight (28) calendar days subject to approval by the Commissioner. Such disability shall have occurred no later than twenty-eight (28) calendar days from the date of injury. If the same injury results in an employee being unable to perform his job for more than twenty-eight (28) calendar days and provided that a proper claim has been filed with the Division of Claims Administration within ten (10) calendar days of the date of injury, the employee may receive the difference between his regular salary and the weekly compensation rate awarded by the Division of Claims Administration for an additional sixty-two (62) calendar days. Thus, an employee who is disabled as a result of an assault may receive full pay through a combination of regular payroll and Division of Claims Administration compensation for a total of ninety (90) calendar days before being reduced to the usual lost time rate of the Division of Claims Administration or using accumulated sick, annual or compensatory leave.
- (4) Injured in the Line of Duty. A commissioned member of the Tennessee Department of Safety, a driver's license examiner, correctional officer or youth service officer who is injured in the line of duty, and whose injury disables him from performing his regular duties, whether such disability is temporary or permanent, shall be retained upon the regular payroll until the employee's claim for compensation for such disability is determined by the Division of Claims Administration. The Governor and the Attorney General shall approve the request of the Appointing Authority.

Authority: T.C.A. § 8-50-111 and T.C.A. § 68-102-402.

1120-06-23 TERMINAL LEAVE. A retiring employee may elect terminal leave unless the employee is retiring from state service to avoid dismissal for gross misconduct.

- (1) Employees Subject to State Retirement. Employees who are members of the Tennessee Consolidated Retirement System and are entitled to terminal leave shall be compensated for their terminal leave prior to the effective date of their retirement.
- (2) Termination of Benefits. On the date terminal leave begins, an employee shall:
  - (a) Cease to be in a leave earning status.
  - (b) Cease to be eligible for salary increases or salary adjustments. The salary rate in effect on the day before the employee begins terminal leave shall be used to determine terminal leave payments.
- (3) Accounting for Terminal Leave:

(a) Saturdays, Sundays and Legal Holidays. Saturdays, Sundays and official holidays shall not be used in computing terminal leave unless such days are considered as workdays for the employee in the employee's job assignment. To be paid for a holiday while on terminal leave an employee shall be on terminal leave past the holiday.

(b) Beginning and Ending of Terminal Leave Period. Terminal leave shall begin the next workday following the last day in active pay status. Active pay status is a term applied to an employee who is actually working or who is using paid leave other than paid terminal leave or sick leave bank leave. The day after the last day of terminal leave shall be the employee's official date of separation.

Authority: T.C.A. § 8-50-801, T.C.A § 8-50-807, and T.C.A. § 8-50-808.

1120-06-.24 ACCRUED LEAVE BALANCES PAID AT DEATH. Leave balances of deceased employees shall be paid as lump sum payments. Any outstanding leave balance (sick, annual, or compensatory) will be paid to a beneficiary designated by the employee or, if none, the beneficiary designated for receipt of retirement benefits with the Tennessee Consolidated Retirement System, or, when appropriate, the deceased employee's estate.

Authority: T.C.A § 8-50-807 and T.C.A. § 8-50-808.

1120-06-.25 PAID LEAVE FOR EXCUSED ABSENCES. A full-time employee may be granted leave with pay for the following excused absences:

- (1) State Assessment or State Job Interview. An agency may require written verification that the employee was at a state administered assessment or at a state job interview.
- (2) Elections. Any person entitled to vote in an election held in this state shall be granted paid leave on the day of the election not to exceed three (3) hours in accordance with established procedures. If the work schedule of an employee begins three (3) or more hours after the opening of the polls or ends three (3) or more hours before closing of the polls of the county where the employee is registered to vote, paid leave shall not be granted. The Commissioner may specify the hours during which the employee may be absent. Application for such absence shall be made to the employee's Appointing Authority before twelve o'clock (12:00) noon of the day before the election.
- (3) Discretionary. An Appointing Authority may grant discretionary leave with pay to an employee for a period of time not to exceed ten (10) working days when it is considered necessary for the welfare of the employee or the proper operation of the agency. The Commissioner shall approve any period of discretionary leave that exceeds ten (10) working days. The Appointing Authority shall submit such requests in writing directly to the Commissioner.

Authority: T.C.A. § 2-1-106 and T.C.A. § 8-30-406.

1120-06-.26 RESPONSIBILITY FOR RECORDS AND REPORTS. The Commissioner shall designate a manner for documenting official attendance and leave information for employees in state service.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-406, and T.C.A. § 10-7-504.

RULES  
OF THE  
TENNESSEE DEPARTMENT OF HUMAN RESOURCES

Chapter 1120-07  
EQUAL EMPLOYMENT OPPORTUNITIES

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1120-7-.01 STATEMENT OF POLICY. The State of Tennessee is firmly committed to the principle of fair and equal employment opportunities for its citizens and strives to protect the rights and opportunities of all people to seek, obtain, and hold employment without being subjected to illegal discrimination or illegal harassment in the workplace. It is the state's policy to provide an environment free of discrimination or harassment of an individual because of that person's race, color, national origin, age (40 and over), sex, pregnancy, religion, creed, disability, veteran's status, or any other category protected by state and/or federal civil rights laws.

Authority: T.C.A. § 8-30-101, T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-303, T.C.A. § 8-30-307, T.C.A. § 8-50-103, T.C.A. § 8-50-104, 29 U.S.C. § 623, 29 U.S.C. § 794, 38 U.S.C. § 4311(a), 42 U.S.C. § 2000e et seq., 42 U.S.C. 2000ff et seq., 42 U.S.C. 12101 et seq., 20 C.F.R. Part 1002.210, 29 C.F.R. Parts 1600 through 1699.

1120-7-.02 AGENCY RESPONSIBILITIES. In demonstrating the agency's commitment to the equal employment opportunities policy, each Appointing Authority in state service shall:

- (1) Be held responsible for compliance with the state law, policy, and executive orders pertaining to equal employment opportunities (EEO), Americans with Disabilities Amendments Act (ADAAA), Affirmative Action (AA), and Uniformed Services Employment and Reemployment Act (USERRA);
- (2) Develop an equal employment opportunity compliance policy statement and inform employees of the agency's commitment to that policy;
- (3) Designate an employee to coordinate equal employment programs within that agency;
- (4) Inform supervisory personnel of their role in carrying out the agency's equal employment opportunities policies;
- (5) Maintain processes for internal investigations of workplace discrimination or harassment complaints conducted pursuant to the state's policy; and
- (6) Submit to the Commissioner a completed affirmative action plan annually in a manner prescribed by the Commissioner.

Authority: T.C.A. § 8-30-101, T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-303, T.C.A. § 8-30-307, T.C.A. § 8-50-103, T.C.A. § 8-50-104, 29 U.S.C. § 623, 29 U.S.C. § 794, 38 U.S.C. § 4311(a), 42 U.S.C. § 2000e et seq., 42 U.S.C. 2000ff et seq., 42 U.S.C. 12101 et seq., 20 C.F.R. Part 1002.210, 29 C.F.R. Parts 1600 through 1699.

1120-7-.03 DEPARTMENT OF HUMAN RESOURCES' RESPONSIBILITIES.

- (1) The Commissioner shall represent the Governor in matters relating to equal employment opportunities in the state service;
- (2) The Department shall periodically review employment practices to insure that these practices are not discriminatory;
- (3) The Commissioner shall establish appropriate guidelines and procedures governing the preparation and submission of the affirmative action plan by each agency;
- (4) The Department shall provide training and technical assistance in the development, implementation and monitoring of agencies' affirmative action plans and equal employment programs;
- (5) The Department shall provide training and technical assistance to employees and agencies regarding compliance with EEO, ADA, AA and USERRA;
- (6) The Department shall inform any person claiming unlawful discrimination or harassment of the appropriate procedures for pursuing a complaint.
- (7) The Department shall report to the Governor the equal employment opportunity activities of each department, agency and commission in the state service; and
- (8) The Department shall inform the Governor when instances occur of non-compliance or failure to demonstrate good faith efforts under this rule.

Authority: T.C.A. § 8-30-101, T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-303, T.C.A. § 8-30-307, T.C.A. § 8-50-103, T.C.A. § 8-50-104, 29 U.S.C. § 623, 29 U.S.C. § 794, 38 U.S.C. § 4311(a), 42 U.S.C. § 2000e et seq., 42 U.S.C. 2000ff et seq., 42 U.S.C. 12101 et seq., 20 C.F.R. Part 1002.210, 29 C.F.R. Parts 1600 through 1699.

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CHAPTER 1120-08  
LEARNING AND DEVELOPMENT

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1120-08-.01 LEARNING AND DEVELOPMENT PROVIDED BY THE DEPARTMENT. The Department shall serve as the state's exclusive provider of learning and development programs for state employees.

- (1) The Department shall exclusively provide education which:
  - (a) Improves productivity, effectiveness, and efficiency of government service by enhancing employee performance through performance management;
  - (b) Assists employees in developing professional skills;
  - (c) Offers agencies talent management; and
  - (d) Develops managers and supervisors in effective management and leadership practices.
- (2) The Department shall approve any training and education provided by an agency prior to implementation to determine if the programs can be offered by the Department.
- (3) The Department shall approve any requests for out-service training or continuing education as described herein.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-313.

1120-08-.02 RESPONSIBILITY FOR LEARNING AND DEVELOPMENT. The Department is responsible for statewide planning, coordination, and review of learning and development programs as well as direct delivery of initiatives, trainings, conferences and/or workshops as identified herein.

Each state agency shall maintain a record of every employee's learning and development activities in a manner identified by the Commissioner. Such records shall be submitted to the Department on a regular basis as established by policy.

Authority: T.C.A. § 8-30-104 and T.C.A. § 8-30-105.

1120-08-.03 MANDATORY EDUCATION. Employees are required to attend certain learning and development workshops provided by the Department as identified in policy.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-313.

1120-08-.04 REQUESTS FOR CONTINUING EDUCATION, LEARNING AND DEVELOPMENT. Upon the identification of a specialized technical need by the agency, an employee may be eligible for continuing education from higher education, vocational, and professional institutions. Agencies shall

submit requests for continuing education for courses not offered by the Department to the Commissioner for approval.

Employees, in consultation with the agency, may select one of the following continuing education options:

- (1) Full-time Education. Full-time education lasts for more than eighty (80) work days and may require residency at an institution or facility. During the program, the employee is relieved of regular job responsibilities;
- (2) Part-time Education. Part-time education lasts for less than eighty (80) work days and is held during the employee's regular work hours. The employee maintains regular job responsibilities during this program;
- (3) Short-term Learning. Short-term learning consists of seminars, short courses, and educational workshops that last for less than eighty (80) work days. The employee maintains regular job responsibilities during this program; and
- (4) After Work Hours Education or Learning. After work hours education, learning and development consists of seminars, short courses, and educational workshops and is held outside the employee's scheduled shift. The employee maintains regular job responsibilities during this program.

Authority: T.C.A. § 8-30-104 and T.C.A. § 8-30-105.

1120-08-05 CONTINUING EDUCATION, LEARNING AND DEVELOPMENT. All state employees are eligible to participate in continuing education, learning, and development related to their current job assignment, subject to the recommendation of the Appointing Authority and the approval of the Commissioner and the Commissioner of Finance and Administration.

- (1) Criteria. The Commissioner may approve continuing education, learning, and development based on any of the following criteria:
  - (a) Lack of availability of programs offered by the Department;
  - (b) Job relatedness;
  - (c) Cost-effectiveness; or
  - (d) Availability of programs in public Tennessee higher education institutions;
- (2) Appointing Authority Responsibilities. The Appointing Authority shall:
  - (a) Submit to the Commissioner, in advance, an approval request for each employee to attend continuing education, learning, and development;
  - (b) Monitor employee attendance and performance; and
  - (c) Document completion and maintain a public record.
- (3) Salary and Related Expenses. In the event the Appointing Authority grants reimbursement to the employee for salary and related expenses, the Appointing Authority shall approve, in advance, reimbursement for the following and submit the authorization to the Commissioner:
  - (a) Travel. Reimbursement shall be for travel in accordance with the State's comprehensive travel regulations;
  - (b) Tuition. The Appointing Authority shall determine and approve tuition reimbursement subject to the approval of Finance and Administration; and
  - (c) Salary. Salary payment is based on the following types of continuing education and learning:

- (i) Full-time. Employees in full-time education shall receive seventy-five percent (75%) of their regular salary. When the State requires an employee to obtain additional education, employee compensation is possible at full salary with the prior approval of the Commissioner and the Commissioner of Finance and Administration. If an employee receives salary assistance through scholarships, fellowships, grants or other outside sources, the total amount received from the State and outside sources during the continuing education period shall not exceed the employee's regular salary. The employee shall submit a notarized statement of salary funding and sources to the Appointing Authority.
  - (ii) Part-time. Employees in part-time education shall receive their regular salary.
  - (iii) Short-term. Employees in short-term learning shall receive their regular salary.
  - (iv) After work hours. An employee in after work hours education or learning is not eligible for additional salary payment.
- (d) Distribution of salary. The Appointing Authority is responsible for payment of the employee's reimbursement for salary. Distribution is contingent upon completion of the program and shall be documented by the attended institution.
- (4) Employment status during full-time continuing education, learning and development.
  - (a) Leave Status. An employee engaged in authorized full-time continuing education, learning, and development is on educational leave during the period approved by the Appointing Authority. The Appointing Authority must approve any extension of this leave. An employee shall not accrue sick or annual leave during this period.
  - (b) Salary Increases and Adjustments. If eligible, an employee in full-time continuing education, learning, and development shall continue to receive any salary increases or adjustments permitted by law.
  - (c) Continuous Service. Full-time continuing education, learning, and development shall not interrupt continuous service for purposes of longevity.
  - (d) Payroll Deductions. All prior authorized deductions shall continue during full-time continuing education, learning, and development provided the adjusted salary covers the deductions.
  - (e) State Contributions. Contributions from the State to the employee's insurance premiums and retirement account shall continue.
- (5) Employee's responsibilities.
  - (a) An employee in full-time continuing education, learning and development shall contractually agree to work for the agency for twelve (12) months or twice the total educational leave, whichever is greater. If the employee fails to fulfill the contract, the employee shall reimburse the State for expenses incurred during the full-time continuing education, learning and development, including salaries and wages paid by the State. Neither sick nor terminal leave shall be used to reduce the reimbursement period.
  - (b) An employee in continuing education, learning and development shall be held to the same attendance and performance standards as other work assignments. An employee shall reimburse the State for all costs, including salary, resulting from unexcused absences and incompleteness of a learning and development program. Collection of reimbursement is the responsibility of the agency.

- (c) If an activity in continuing education, learning and development is terminated prior to completion, either at the convenience of the State or because of death, prolonged illness, disability, or similar conditions beyond the control of the employee, neither the employee nor the employee's estate may be responsible for reimbursement of expenses.
- (d) If an employee is discharged for any cause from the State or the educational institution, relief of financial obligation is in the sole discretion of the Appointing Authority, and is not subject to appeal.

Authority: T.C.A. § 8-30-104 and T.C.A. § 8-30-105.

1120-08-.06. CONTINUING EDUCATION UNITS. The Department may grant Continuing Education Units (CEUs) for continuing education, learning and development which meets national standards. One (1) CEU unit shall be granted for each ten (10) hours of instruction. Agencies shall apply to the Commissioner for approval of CEU credit for courses not offered by the Department.

Authority: T.C.A. § 8-30-104 and T.C.A. § 8-30-105.

1120-08-.07. CERTIFICATION. The Department shall provide certifications as established by law and as determined by the Department.

Authority: T.C.A. § 8-30-104 and T.C.A. § 8-30-105.

1120-08-.08. EXCLUSIONS. Attendance at conferences, symposiums, conventions, official meetings, and expositions provided by profession-based organizations or associations does not require approval by the Commissioner.

Authority: T.C.A. § 8-30-104 and T.C.A. § 8-30-105.

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1120-09-.01 TENNESSEE EMPLOYEES' CHARITABLE CAMPAIGN. The Tennessee Employees Charitable Campaign shall be coordinated annually by the Department. The Governor and the Commissioner shall be designated as chair and co-chair respectively.

Employees may contribute through payroll deduction to social services and health agencies authorized by the Commissioner. Procedures and methods for deductions of monies are at the discretion of the Governor, the Commissioner and the Commissioner of Finance and Administration.

Authority: T.C.A. § 8-30-104 and T.C.A. § 8-30-105.

1120-09-.02 SICK LEAVE BANK. The Department shall administer a bank which grants paid sick leave to qualifying members who are medically certified as unable to perform the duties of their jobs as a result of a personal illness, injury, accident, disability, medical condition, or quarantine and who have exhausted all their personal sick, compensatory, and annual leave balances.

Authority: T.C.A. §§ 8-50-901 through 8-50-910.

1120-09-.03 EMPLOYEE SERVICE AWARDS.

- (1) The Department shall provide a consistent and uniform system through which employees shall receive appropriate recognition for their service to state government. Each participating agency shall verify eligible employees' length of service and submit a request for awards to the appropriate vendor.
- (2) Service award credit shall be given for the same periods of employment in state government as are recognized by the Tennessee Consolidated Retirement System for retirement credit, excluding any service credit recognized by the Tennessee Consolidated Retirement System for service in local governments or the public school systems other than State owned and operated schools.
- (3) Service awards shall be presented following five (5) years of creditable service and at each increment of five (5) years thereafter.
- (4) Awards provided by the Department shall be at the discretion of the Commissioner.

Authority: T.C.A. § 8-30-104 and T.C.A. § 8-30-105.

1120-09-.04 EMPLOYEE SUGGESTION AWARD PROGRAM. The Department shall administer the Employee Suggestion Award Program in accordance with T.C.A. § 4-27-101 et seq.

Authority: T.C.A. §§ 4-27-101 through 4-27-105, T.C.A. § 8-30-104, and T.C.A. § 8-30-105.

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1120-10-.01 Discipline  
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1120-10-.03 Examples of Disciplinary Offenses  
1120-10-.04 Types of Disciplinary Actions

1120-10-.01 DISCIPLINE. The supervisor is responsible for maintaining the proper job performance level, conduct, and discipline of the employees under his or her supervision. When corrective action is necessary, the supervisor should administer disciplinary action at the step appropriate to the infraction, conduct, or performance, as determined by the supervisor.

Authority: T.C.A. § 8-30-104, T.C.A. 8-30-105, T.C.A. § 8-30-313, T.C.A. § 8-30-315, T.C.A. § 8-30-316, T.C.A. § 8-30-318, and T.C.A. § 8-30-319.

1120-10-.02 CAUSES FOR DISCIPLINARY ACTION. Causes for disciplinary action fall into two categories:

- (1) causes relating to performance of duties; or
- (2) causes relating to conduct which may affect an employee's ability to successfully fulfill the requirements of the job.

Authority: T.C.A. § 8-30-104, T.C.A. 8-30-105, T.C.A. § 8-30-313, T.C.A. § 8-30-315, T.C.A. § 8-30-316, T.C.A. § 8-30-318, and T.C.A. § 8-30-319.

1120-10-.03 EXAMPLES OF DISCIPLINARY OFFENSES. The following are examples of acts that may warrant disciplinary action. This list is not exclusive and shall not be construed to limit an Appointing Authority's discretion in disciplinary matters:

- (1) Inefficiency in the performance of duties;
- (2) Incompetency in the performance of duties;
- (3) Negligence in the performance of duties;
- (4) Misconduct involving public officials and employees pursuant to T.C.A. Title 39, Chapter 16, Part 4;
- (5) Careless, negligent, or improper use of state property or equipment;
- (6) Failure to maintain satisfactory and harmonious working relationships with the public and fellow employees;
- (7) Habitual improper use of sick leave;
- (8) Habitual pattern of failure to report for duty at the assigned time and place;
- (9) Failure to obtain or maintain a current license or certificate or other qualification required by law or rule as a condition of continued employment;
- (10)Gross misconduct;

- (11) Conduct unbecoming of an employee in state service;
- (12) Conviction of a felony;
- (13) Willful abuse or misappropriation of state funds, property or equipment;
- (14) Falsification of an official document relating to or affecting employment;
- (15) Participation in any action that would in any way seriously disrupt or disturb the normal operation of the agency, institution, department, or any other segment of the state service or that would interfere with the ability of management to manage;
- (16) Trespassing on the property of any state officer or employee for the purpose of harassment;
- (17) Damage or destruction of state property;
- (18) Acts that would endanger the lives and property of others;
- (19) Possession of unauthorized firearms, lethal weapons, alcohol or illegal drugs on the job;
- (20) Brutality in the performance of duties;
- (21) Refusal to accept a reasonable and proper assignment from an authorized supervisor (insubordination);
- (22) Reporting to work under the influence of alcohol or illegal drugs, or partaking of such on the job;
- (23) Sleeping or failure to remain alert during duty hours;
- (24) Unauthorized disclosure of confidential information;
- (25) Political activity prohibited by T.C.A., Title 2, Chapter 19 (the "Little Hatch Act") or by U.S.C., Title 5, Chapter 15 (the "Federal Hatch Act"); and
- (26) For the good of the service as outlined in T.C.A. § 8-30-316.

Authority: T.C.A. § 8-30-104, T.C.A. 8-30-105, T.C.A. § 8-30-313, T.C.A. § 8-30-315, T.C.A. § 8-30-316, T.C.A. § 8-30-318, T.C.A. § 8-30-319, and 5 U.S.C. § 1501 – 1508.

1120-10-.04 TYPES OF DISCIPLINARY ACTIONS. Corrective actions may include the following:

(1) Oral Warning.

(a) The supervisor shall meet with the employee to:

- (1) Review with the employee the expected performance and/or conduct.
- (2) Explain to the employee why the employee's performance and/or conduct does not meet expectations.
- (3) Provide the employee an opportunity to explain his or her performance and/or conduct.
- (4) Make suggestions for employee action to correct the performance and/or conduct.

- (5) Provide the employee with written follow-up documenting the date of the discussion and other necessary information regarding expectations for improvement.

(b) Written follow-up to an oral warning should not be construed as a written warning as described in paragraph (2) of this rule and shall not be maintained as part of the employee's official human resources file.

## (2) Written Warning.

(a) The supervisor shall meet with the employee and shall:

- (1) Review the points covered in the oral warning, if an oral warning was issued.
- (2) Review with the employee the expected performance and/or conduct.
- (3) Explain to the employee why the employee's performance and/or conduct does not meet expectations.
- (4) Provide the employee an opportunity to explain his or her performance and/or conduct.
- (5) Make suggestions for employee action to correct the performance and/or conduct.
- (6) Explain to the employee that future performance and/or conduct issues may lead to further disciplinary action.
- (7) Tell the employee that the discussion shall be documented in a letter covering the significant points of the discussion.

(b) A copy of the written warning shall be placed in the employee's human resources file. After a period of two (2) years, an employee may submit a written request to expunge the written warning from the employee's file. Such request shall be granted, provided that the employee has had no further disciplinary actions with respect to the performance, conduct, and/or discipline during the two (2) year period. The request shall not be considered a part of the employee's human resources file.

(c) Request for Review of a Written Warning. A preferred employee who wishes to contest a written warning may request a review of the warning. The employee shall submit a written request for review to the Appointing Authority no later than fourteen (14) days from receipt of the written warning. The request for review should include documentation of any mitigating circumstances causing the employee to believe that the warning is undeserved. The Appointing Authority shall provide a written decision to the employee within fifteen (15) days of receipt of request for review. The Appointing Authority's written decision is final and not subject to appeal. If the Appointing Authority fails to provide a written decision within the prescribed time, the written warning shall be removed from the employee's file.

## (3) Suspension Without Pay.

(a) An Appointing Authority may suspend an employee without pay, for disciplinary purposes, for such length of time as the authority considers appropriate, not to exceed thirty (30) days in any twelve-month period. With the approval of the Commissioner, an employee may be suspended for a longer period pending the appeal or the processing of an appeal in accordance with this chapter.

(b) Any employee who is suspended shall receive a written notice from the Appointing Authority that contains the following:

- (1) an account of the circumstances which led to the suspension, including the statute, rule or policy that the employee allegedly violated;
- (2) the beginning and ending dates of the suspension; and
- (3) information to the employee concerning the appeal process as outlined in these rules.
- (c) A copy of the notice shall be placed in the employee's human resources file.
- (d) The ability to appeal for suspensions of less than three (3) days is limited to the Appointing Authority under Step I and the Commissioner under Step II of the appeal process. An employee shall not be entitled to appeal a suspension of less than three (3) days to the Board of Appeals.

(4) Dismissal.

- (a) An Appointing Authority may dismiss any employee for performance and/or conduct.
- (b) The Appointing Authority shall submit written notice to the employee and copy the Department at the time a preferred employee is dismissed. The notice shall specify the circumstances leading to the dismissal, including the statute, rule or policy that the employee allegedly violated, and inform the employee of the appeal process, if any. The notice shall become part of the employee's human resource's file.

The date of this written notification shall serve as the beginning date for the appeal period. An employee shall continue to receive compensation for ten (10) days following the date of notification but is not required to report to work during this period. The employee's accumulated annual leave balance may be used during this period only if the dismissal was for gross misconduct.

- (c) When the dismissal is for gross misconduct, the written notice shall describe the job-related misconduct and provide applicable section(s) of Tennessee Code Annotated or other relevant law under which the employee may be criminally prosecuted.

(5) Transfer or Demotion. If the Appointing Authority determines that a preferred employee's ability to satisfactorily perform the required duties of the position is beyond the capabilities of the employee or the employee has been compromised by conduct that renders the employee ineffective, the Appointing Authority may choose to demote or transfer the preferred employee to another position. An employee who is demoted shall receive written information concerning the appeal process as outlined in these rules. An employee who is transferred does not have the ability to appeal.

Authority: T.C.A. § 8-30-104, T.C.A. 8-30-105, T.C.A. § 8-30-313, T.C.A. § 8-30-315, T.C.A. § 8-30-316, T.C.A. § 8-30-318, and T.C.A. § 8-30-319.

1120-10-.05 Repealed.

1120-10-.06 Repealed.

1120-10-.07 Repealed.

1120-10-.08 Repealed.

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1120-11-.01 APPEAL.

- (1) A preferred service employee who is dismissed, demoted, or suspended may file an appeal concerning the application of a law, rule, or policy to the employment action.
- (2) An executive service employee does not have standing to file an appeal under this chapter.

Authority: T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-318.

1120-11-.02 RESPONSIBILITY.

- (1) The Commissioner is responsible for providing and maintaining the basic standards and guidelines for implementing this chapter.
- (2) Appointing authorities are responsible for the proper implementation of this chapter throughout their respective agencies and are responsible for ensuring that all employees and supervisory staff are made aware of the provisions of this chapter.
- (3) The Appointing Authority shall notify an employee of the appeal process and relevant time limits.

T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-318.

1120-11-.03 BASIC STANDARDS.

- (1) An employee who files a complaint under this chapter shall do so no later than fourteen (14) calendar days after the date the employee receives written notice of a dismissal, demotion, or suspension. If an employee fails to file the complaint within the fourteen-day period, the ability to appeal as defined in this chapter lapses and is deemed to have been waived in its entirety by the employee.
- (2) A complaint is considered as filed when the Appointing Authority, the Commissioner or the Board, depending on whether the complaint is being made under Step I, II or III as provided in Rule 1120-11-.04, receives a written or electronic copy of the complaint.
- (3) If the term of the suspension is less than three (3) days, the ability to appeal is limited to an appeal to the Appointing Authority under Step I and the Commissioner under Step II as provided in this chapter. An employee shall not be able to appeal a suspension of less than three (3) days to the Board.

- (4) A complaint filed under this chapter shall identify the following:
  - (a) the employment action taken against the employee;
  - (b) the specific law, rule, or policy that was allegedly violated by the agency; and
  - (c) the corrective action sought by the employee.
- (5) Appeal discussions held during the scheduled off-duty hours for a complainant, witness, or representative shall be considered the same as hours worked, including overtime if applicable. Employees who are required to appear as witnesses or representatives shall not be required to use leave for such periods and shall be reimbursed for travel and other expenses in accordance with the state's comprehensive travel regulations.
- (6) All decisions rendered in accordance with this chapter shall be in writing and communicated as outlined herein.
- (7) Written communication shall be considered received upon actual receipt as indicated by signature if hand delivered or three (3) days after a decision is sent via certified mail, return receipt requested to the employee's legal residence.
- (8) When awarding back pay pursuant to an order of reinstatement, the award shall be offset by income earned from alternative employment if earned during the employee's normal state working hours when employed by the state. Additionally, awards of back pay may be offset by unemployment insurance payments received.

T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-318.

1120-11-.04 PROCEDURAL STEPS IN APPEAL. There shall be three (3) steps in the appeal process as follows:

(1) Step I – Appointing Authority Level

- (a) The employee submits a written complaint to the Appointing Authority within fourteen (14) days after the date the employee receives written notice of a dismissal, demotion, or suspension. The written complaint shall identify the specific law, rule, or policy that was allegedly violated by the agency along with any relevant documentation.
- (b) The Appointing Authority or designee shall conduct any investigation considered necessary, meet with the complainant in person, and issue a written decision not later than fifteen (15) days after the date the Appointing Authority receives the complaint.
- (c) The Appointing Authority shall have full authority to overturn, reduce, or amend the disciplinary action based on information gathered at the Step I hearing, including reinstatement of leave and awards of back pay, if appropriate.
- (d) If the Appointing Authority does not issue a decision within fifteen (15) days after the Appointing Authority receives the complaint, the complainant may appeal to the Commissioner by filing the complaint in accordance with Step II.
- (e) The presence of observers is in the discretion of the Appointing Authority. Representatives and attorneys may not represent the parties at the Step I appeal.

(2) Step II – Commissioner of the Department of Human Resources

(a) If the Appointing Authority does not find in favor of the employee, the employee may appeal to the Commissioner by submitting a written complaint and all relevant documentation no later than fourteen (14) days after receipt of the Appointing Authority's written decision to:

Commissioner  
Tennessee Department of Human Resources  
First Floor, James K. Polk Building  
505 Deaderick Street  
Nashville, TN 37243

(b) The written complaint shall identify the specific law, rule, or policy that was allegedly violated by the agency and include a copy of the Appointing Authority's Step I decision, if one was issued.

(c) The Commissioner or designee shall review the complaint, any relevant accompanying documentation, and the Appointing Authority's decision, if any. The Commissioner shall issue a decision, in writing, not later than thirty (30) days after the date the complaint was filed with the Commissioner. The Commissioner shall have full authority to overturn, reduce, or amend the disciplinary action based on the information submitted for consideration, including reinstatement of leave and awards of back pay, if appropriate.

(d) If the Commissioner does not issue a decision within thirty (30) days after the Commissioner receives the complaint, the agency or the employee may appeal to the Board in accordance with Step III.

### (3) Step III – Board of Appeals

(a) The complainant or state agency may appeal in writing to the Board of Appeals not later than fourteen (14) days after the date the complainant, or in the case of a state agency, the state agency receives written notice of the action taken by the Commissioner. The written complaint shall state the specific law, rule or policy allegedly violated by the agency or the employee, along with all relevant documentation and the Step II decision to:

Board of Appeals  
First Floor, James K. Polk Building  
505 Deaderick Street  
Nashville, TN 37243

(b) Within ten (10) days after the receipt of the appeal, the Administrative Law Judge (ALJ) assigned to assist the Board shall determine whether all procedural requirements were completed properly and in a timely manner. If a procedural requirement was not been met, the appeal shall be dismissed. If the procedural requirements have been met, the Board shall conduct proceedings in accordance with the Uniform Administrative Procedures Act as modified herein, to determine if the law, rule, or policy specified in the complaint was violated.

(c) For purposes of this section, procedural requirements shall be construed to mean the procedural requirements at Step III of the appeal process.

(d) Each hearing under this chapter shall occur before a panel of at least three (3) members of the Board, assisted by one (1) ALJ. The ALJ shall assist at the hearing by ruling on questions of the admissibility of evidence, swearing witnesses, advising members of the Board on the law of the case, and ensuring that the proceedings are carried out in accordance with this chapter and other applicable law. An ALJ, upon timely motion, may decide any procedural question of law.

At no time shall the ALJ take part in the determination of a question of fact. However, the Board may request an ALJ to hear the facts of the case and issue a recommendation to the Board. The

Board shall convene as described herein to make a determination of the question of fact based upon the recommendation of the ALJ.

- (e) The Board shall issue its final decision in each proceeding no later than one hundred twenty (120) days after the date of the filing of the appeal with the Board.
- (f) The Board shall have full authority to overturn, reduce, or amend the disciplinary action based on the information submitted for consideration, including reinstatement of leave and awards of back pay, if appropriate.

(4) In order to ensure that the Board issues its final decision no later than one hundred twenty (120) days after the date of the filing of the appeal, the following conditions shall be imposed on hearings before the Board:

- (a) The parties shall participate in a pre-hearing conference no later than twenty (20) days after the filing of the appeal. At the pre-hearing conference, a hearing date shall be set.
- (b) All discovery shall be completed no later than sixty (60) days after the filing of the appeal.
- (c) All motions, both dispositive and non-dispositive, shall be ruled on no later than thirty (30) days before the date of the hearing.
- (d) Extensions on the deadlines provided herein are only to be granted in extraordinary circumstances. In any event, the granting of an extension shall not extend the one hundred twenty (120) day time period for the Board to issue its decision.
- (e) Neither party shall be entitled to file a petition for reconsideration under T.C.A. § 4-5-317.

(5) The Board hearing shall serve as the final administrative step in the appeals procedure for preferred service employees. Decisions of the Board are subject to judicial review in accordance with the Uniform Administrative Procedures Act, title 4, chapter 5.

(6) If the employee is successful in obtaining reinstatement to a position from which the employee has been terminated, the employee shall be reinstated to a position in the county in which he or she was employed at the time of termination. The Commissioner may grant exceptions on a case-by-case basis.

(7) In any case in which a successful complainant has been awarded reinstatement, back pay, or attorney's fees, the agency involved shall have a period of thirty (30) days from the date of the order within which to provide reinstatement, back pay and/or attorney's fees.

Authority: T.C.A. § 4-5-301 et seq., T.C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-318.

1120-11-.05 ATTORNEY FEES. The Board of Appeals may, at its discretion, award reasonable fees and costs upon successful appeal to an employee's attorney in accordance with the following terms and conditions.

- (1) Attorney's fees awarded by the Board shall be awarded at the same rates established by Guidelines for the Defense of Individual Employees issued by the State of Tennessee Office of the Attorney General and Reporter.
- (2) All awards of costs shall be limited to reasonable costs actually incurred. Awards of costs for travel shall be subject to the provisions of the state's comprehensive travel regulations in effect at the time the claim is made.

(3) If the Board awards attorney fees, the prevailing attorney shall submit an affidavit detailing the hours of preparation, in hours and tenths of hours, the nature of services performed during such preparation, the hours of hearing time, and a complete itemized statement of costs claimed. Claims shall be submitted to the following address:

Board of Appeals  
c/o Tennessee Department of Human Resources  
First Floor, James K. Polk Building  
505 Deaderick Street  
Nashville, TN 37243

(4) In no event shall a claim be paid which is not received by the Board of Appeals within thirty (30) days of the effective date of the final order.

(5) A designee for the Board shall review all such claims for compliance with these rules, the applicable guidelines, and the Board's decision. The designee is authorized to approve payment of such claims for any amount up to and including the amount claimed.

Authority: T. C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-318.

1120-11-.06 Repealed.

1120-11-.07 Repealed.

1120-11-.08 Repealed.

1120-11-.09 Repealed.

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1120-12-.01 Computation of Time

1120-12-.01 COMPUTATION OF TIME. Unless specified otherwise, in computing any period of time prescribed or allowed by Rule 1120, the date of the act or event after which the designated period of time begins to run is not to be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday as defined in §15-1-101, or, when the act to be done is the filing of a paper, a day on which the office where the paper to be filed is closed or on which weather or other conditions have made the office inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

Authority: T. C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. § 8-30-407.

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1120-13-.01 PRODUCTION COSTS.

Upon request for records under Tennessee's Public Records Act, T.C.A. § 10-7-501, et seq., the Department shall charge the requesting party a reasonable charge for production costs, including labor, duplication and delivery, based on the most current Schedule of Reasonable Charges issued by the Office of Open Records Counsel, available at <http://tennessee.gov/comptroller/openrecords>.

Authority: T. C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. §10-7-501, et seq.

1120-13-.02 PAYMENT OF PRODUCTION COSTS. The Department shall provide the requesting party an estimate of the production costs, including labor, duplication and delivery, before the initial production of the requested documents. The Department shall require the requesting party to provide full payment of the production costs before copies of the requested records are delivered or otherwise made available.

Authority: T. C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. §10-7-501, et seq.

1120-13-.03 WAIVER OF PRODUCTION COSTS.

- (1) The Department shall waive production cost if the total production cost, including labor, duplication and delivery, is less than ten dollars (\$10).
- (2) When the requesting party is a federal, state or local government agency, the Department shall provide the requested copies of public records without charge. A request made by a federal, state, or local government agency on behalf of a citizen under the Tennessee Public Records Act shall be treated as a request by a citizen and charged accordingly.

Authority: T. C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. §10-7-501, et seq.

1120-13-.04 REDUCTION OF FEES. The Commissioner may reduce any part of the fees calculated under these rules upon a determination that such reduction is in the best interest of the public.

Authority: T. C.A. § 8-30-104, T.C.A. § 8-30-105, and T.C.A. §10-7-501, et seq.

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Chapter 1120-14  
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1120-14-.01 STATEMENT OF POLICY.

- (1) It is the policy of the State of Tennessee to encourage the use of mediation as a valuable tool for all state employees to resolve workplace issues. Mediation is a process whereby the parties themselves, with the assistance of a third party neutral, seek to develop and agree upon solutions to issues in the workplace. The primary purpose of the Tennessee Employee Mediation Program ("the program") is to provide a responsive, informal, confidential, and effective means of resolving human resource issues.
- (2) Mediation is designed to supplement and not to limit or replace the appeal procedures detailed in the Act. Participation in mediation will not toll the filing deadlines for appeal as described in these rules. Mediation may not be used to circumvent state or departmental policies.
- (3) The Commissioner is responsible for providing and maintaining the basic standards and guidelines for implementation and administration of this program. Appointing authorities are responsible for proper implementation of this program throughout their respective agencies and for ensuring that all employees are aware of the provisions of this program.

Authority: T.C.A. § 8-30-104 and T.C.A. § 8-30-105.

1120-14-.02 COVERAGE.

- (1) Access to Mediation. Access to mediation services under this rule is available to any employee in the state service. Access to mediation services under this rule shall not be available to those employees excepted under the terms of T.C.A. § 8-30-102(b).
- (2) Definition of Workplace Issues. For purposes of this rule, "workplace issues" may include, but is not limited to, the following:
  - (a) Disciplinary action taken against an employee involving suspensions, demotions, and terminations.
  - (b) Workplace harassment and discrimination as defined by the Department.
  - (c) Involuntary geographical transfer of an employee or official duty station more than fifty (50) miles. Distance will be determined by drawing a circle, with a fifty (50) mile radius, centered on the previous official duty station;
  - (d) Prohibited political activity as outlined in T.C.A. Title 2, Chapter 19 (the "Little Hatch Act");

- (e) Other workplace issues involving a relational, communication, or values conflict in state government employment.
- (3) Matters not eligible for Mediation. The following actions are not considered matters eligible for mediation:
  - (a) Actions that affect an employee serving an initial probationary period;
  - (b) Non-selection for promotion when the appointment was in compliance with these rules and the Act;
  - (c) Actions resulting from reductions in force when the actions by the Appointing Authority were in compliance with statutes and rules;
  - (d) Shift, post, and overtime assignments;
  - (e) Reasonable work assignments outside those normally associated with the employee's assigned job classification;
  - (f) Salary range assigned to classifications;
  - (g) Administration of salary increases established and funded by the legislature;
  - (h) Classification of position;
  - (i) Denial of leave requests except as provided for in T.C.A. § 8-50-110 and T.C.A. § 8-50-802;
  - (j) The terminology, formation, intent, implementation or construction of agency rules or policies; and
  - (k) Any other matter over which an Appointing Authority or the Commission has no control or jurisdiction or is without the authority to grant requested relief.
- (4) No Grounds for Complaint. Nothing contained in this rule shall be construed to create or provide any substantive or procedural right or interest in state government employment, and the denial of access to mediation services shall not constitute any grounds for complaint or appeal.
- (5) Voluntary Participation. Participation in mediation shall be voluntary and conducted only by agreement of both parties. Employees who participate in or opt out of mediation shall do so without interference, coercion, reprisal, discrimination, retaliation, or harassment.

Authority: T.C.A. § 8-30-104 and T.C.A. § 8-30-105.

#### 1120-14-.03 PROCESS AND PROCEDURE.

- (1) To commence the mediation process, an employee or the Appointing Authority shall file a request to the Department on a form prescribed by the Commissioner. Upon receipt of the request for mediation, the Department will notify the employee's Appointing Authority and the employee whose consent and presence will be necessary for the mediation. If consent to mediate is obtained by the individuals involved, and the Department otherwise considers the request appropriate for mediation under the guidelines set forth above, the Department shall refer the matter to an approved mediator. If consent is not obtained or the Department considers the matter not appropriate for mediation, the requesting employee or Appointing Authority will be so notified.

- (2) The Appointing Authority, or designee, shall attend the mediation to reach an agreement and implement any final mediation agreement.
- (3) Upon convening the mediation, the parties shall execute an agreement to mediate, which form shall be approved by the Commissioner and shall become part of the mediation file. Either party or the mediator may voluntarily withdraw from the mediation at any time or at any stage in the process.
- (4) Each party may have a representative present during the mediation. Any representative present at the mediation shall be required to sign the agreement to mediate and be bound by its terms. However, as mediation is not an adversarial proceeding, the role of any representative shall be limited to that of an advisor and observer, and not as an advocate on behalf of either party. The mediator shall maintain the authority to restrict the activities of any representative and shall have the discretion to terminate the mediation.
- (5) Audiotape, videotape, or other automated or electronic recordings of the mediation shall not be permitted.
- (6) Any mediated settlement agreement shall be approved by the parties' Appointing Authority. Copies of the mediation settlement agreement shall be provided to the involved parties. The mediation settlement agreement shall not become part of any involved party's personnel file. Any mediated settlement agreement shall not be considered confidential pursuant to T.C.A. §10-7-503. If the workplace issue involves an appeal filed pursuant to T.C.A. § 8-30-318, any mediated settlement agreement shall be forwarded to the Board of Appeals. Any mediated settlement agreement shall not be contrary to the laws, rules, regulations or policies of the State of Tennessee or federal law, or exceed the Appointing Authority's legal authority.
- (7) Neither a request for, nor participation in mediation shall preclude an Appointing Authority from taking independent disciplinary action as needed in dealing with an employee's job performance or conduct.
- (8) Participation in mediation shall not require the use of accrued leave if the participating employee has obtained the prior approval of his/her supervisor or Appointing Authority.
- (9) Neither a request for, nor participation in mediation shall affect the time periods for filing complaints or appeals pursuant to T.C.A. § 8-30-318.
- (10) By submitting a request for mediation and participating in the mediation process, participants agree not to subpoena the mediator or his/her records or notes pertaining to the mediation in any court or administrative proceedings, unless the proceeding concerns alleged misconduct by the mediator or enforcement of the mediated settlement agreement.
- (11) While serving as a mediator, the mediator is not acting in a supervisory or managerial capacity for the State of Tennessee or his/her Appointing Authority.

Authority: T.C.A. § 8-30-104 and T.C.A. § 8-30-105.

#### 1120-14-.04 TRAINING AND CERTIFICATION.

- (1) The Department shall maintain a list of state affiliated mediators approved to conduct mediations under this program.
- (2) An individual desiring to be listed on the panel of approved mediators shall have satisfactorily completed mediation training which has been approved by the Alternative Dispute Resolution ("ADR") Commission of the Tennessee Supreme Court, or otherwise satisfy the requirements for listing as a mediator pursuant to the rules of the ADR Commission; and further receive the approval and recommendation for listing on the panel of mediators from the individual's Appointing Authority. The

Department shall designate the necessary continuing education program for panel mediators. Final approval for listing or removal from the panel shall be determined by the Commissioner.

Authority: T.C.A. § 8-30-104 and T.C.A. § 8-30-105.

\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the \_\_\_\_\_ (board/commission/ other authority) on \_\_\_\_\_ (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: (04/30/2012)

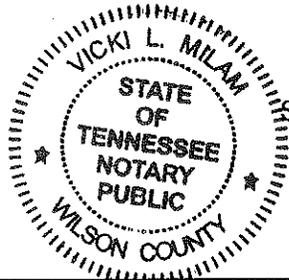
Rulemaking Hearing(s) Conducted on: (add more dates). (06/19/2012)

Date: July 2, 2012

Signature: *Danielle Whitworth Barnes*

Name of Officer: Danielle Whitworth Barnes

Title of Officer: Assistant Commissioner and General Counsel



Subscribed and sworn to before me on: July 2, 2012

Notary Public Signature: *Vicki L. Milam*

My commission expires on: May 24, 2016

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

*Robert E. Cooper, Jr.*

Robert E. Cooper, Jr.  
Attorney General and Reporter

7-5-12

Date

Department of State Use Only

Filed with the Department of State on: 7/5/12

Effective on: 10/3/12

*Tie Hargett* by *Tie Hargett* Secretary of State

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SECRETARY OF STATE

**G.O.C. STAFF RULE ABSTRACT**

DEPARTMENT: Finance and Administration

DIVISION: Office of Criminal Justice Programs

SUBJECT: Disposition of Forfeitures in Child Abuse Cases

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 39-13-530

EFFECTIVE DATES: December 29, 2012 through June 30, 2013

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: This rule allocates funds forfeited in criminal child abuse prosecutions according to a formula set forth in the controlling Tennessee statute.

### **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This rule has no projected impacts on local governments.

**Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

This rule substantially codifies an existing Tennessee statute, T.C.A. § 39-13-530 and does not change the regulatory burden imposed on grantees under this statute. Therefore, an economic impact statement is not required under T.C.A. § 4-5-404.

**Department of State**  
**Division of Publications**  
 312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower  
 Nashville, TN 37243  
 Phone: 615-741-2650  
 Fax: 615-741-5133  
 Email: [register.information@tn.gov](mailto:register.information@tn.gov)

**For Department of State Use Only**

Sequence Number: 07-08-12  
 Rule ID(s): 5251  
 File Date: 7/11/12  
 Effective Date: 12/29/12

**Proposed Rule(s) Filing Form**

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

<b>Agency/Board/Commission:</b>	Tennessee Department of Finance and Administration
<b>Division:</b>	Office of Criminal Justice Programs
<b>Contact Person:</b>	Buddy Lea, Assistant Commissioner
<b>Address:</b>	12 <sup>th</sup> floor, 312 Rosa L. Parks Avenue, Nashville, Tennessee
<b>Zip:</b>	37243
<b>Phone:</b>	(615) 741-6049
<b>Email:</b>	<a href="mailto:Buddy.Lea@tn.gov">Buddy.Lea@tn.gov</a>

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)**

Chapter Number	Chapter Title
0620-03-11	Disposition of Forfeitures in Child Abuse Cases
Rule Number	Rule Title
0620-03-11-.01	Purpose and Authority
0620-03-11-.02	Grants
0620-03-11-.03	Grant and Program Administration

Chapter Number	Chapter Title
Rule Number	Rule Title

The text of the proposed rules is as follows:

Proposed Rules  
of  
Department of Finance and Administration  
Division of Criminal Justice

Chapter 0620-03-11  
Disposition of Forfeitures  
in Child Abuse Cases

0620-03-11-.01 Purpose and Authority  
0620-03-11-.02 Grants  
0620-03-11-.03 Grant and Program Administration

0620-03-11-.01 Purpose and Authority.

- (1) T.C.A. § 39-13-530 requires the Commissioner of Finance and Administration to promulgate rules and regulations for the distribution of money appropriated from the child abuse fund created by forfeitures under the statute.
- (2) T.C.A. § 39-13-530 provides that fifty percent (50%) of the money from the child abuse fund be used for child advocacy centers. The statute requires the Department of Finance and Administration to provide grants to child advocacy centers that are not-for-profit corporations, are tax-exempt under Section 501 of the Internal Revenue Code, and have provided child advocacy services for at least six (6) months prior to an application for funds.
- (3) T.C.A. § 39-13-530 requires that twenty five percent (25%) of the money from the child abuse fund be used by the Department of Finance and Administration for the court appointed special advocate (CASA) fund. The statute requires the Department of Finance and Administration to provide grants to CASA programs that are not-for-profit corporations, are tax-exempt under Section 501 of the Internal Revenue Code, and have provided CASA services for at least six (6) months prior to an application for funds.
- (4) T.C.A. § 39-13-530 requires that the twenty five percent (25%) of the money from the child abuse fund be used by the Department of Finance and Administration for the child abuse prevention fund, which shall be used to provide a grant to Prevent Child Abuse Tennessee, provided that it be a not-for-profit corporation, be tax-exempt under Section 501 of the Internal Revenue Code, and have provided child abuse prevention services for at least six (6) months prior to an application for funds.
- (5) The purpose of these rules is to provide procedures for the grant of these funds in an efficient, fair, and consistent manner.

Statutory Authority: T.C.A. §§ 4-5-202, 39-13-530.

0620-03-11-.02 Grants.

- (1) The Department of Finance and Administration will grant the money allocated for the child advocacy centers under T.C.A. § 39-13-530(c) to the Tennessee Chapter of Children's Advocacy Centers.
  - (a) The Tennessee Chapter of Children's Advocacy Centers shall grant ninety percent (90%) of the funds granted to it by the Department to the child advocacy center (CAC) in the county in which the forfeiture occurred. The remaining ten percent (10%) shall be retained by the Tennessee Chapter of Children's Advocacy Centers to cover administrative costs.

- (b) If there is no CAC in the county where the forfeiture occurred, ninety percent (90%) of the funds granted to it by the Department shall be granted to one (1) or more CAC in the judicial district in which the forfeiture occurred.
  - (c) If there is no CAC in the judicial district where the forfeiture occurred, the Tennessee Chapter of Children's Advocacy Centers shall, in consultation with the Department of Finance and Administration, select one (1) or more CAC outside the judicial district which will receive ninety percent (90%) of the funds granted to the Tennessee Chapter of Children's Advocacy Centers by the Department and provide the necessary services.
  - (d) Grants under this subsection shall be used to continue existing programs and services, create new programs and services, and/or to train personnel.
  - (e) The Commissioner may authorize a grant or subgrant to a CAC not otherwise authorized by these rules, if either:
    - 1. The Tennessee Chapter of Children's Advocacy Centers or a CAC authorized under these rules does not meet the statutory requirements of being incorporated as a not-for-profit corporation, being tax exempt under Section 501 of the Internal Revenue Code, or having provided services for at least six (6) months prior to receiving funds; or
    - 2. The Commissioner finds that any actual or proposed grantee or subgrantee is incapable of carrying out the purposes of the grant.
- (2) The Department of Finance and Administration will grant the money allocated for the Court Appointed Special Advocates under T.C.A. § 39-13-530(e) to the Tennessee CASA Association.
- (a) The Tennessee CASA Association shall grant ninety percent (90%) of the funds granted to it by the Department to the CASA program in the county in which the forfeiture occurred. The remaining ten percent (10%) shall be retained by the Tennessee CASA Association to cover administrative costs.
  - (b) If there is no CASA program in the county where the forfeiture occurred, ninety percent (90%) of the funds granted to it by the Department shall be granted to one (1) or more CASA in the judicial district in which the forfeiture occurred.
  - (c) If there is no CASA in the judicial district where the forfeiture occurred, the Tennessee CASA Association shall, in consultation with the Department of Finance and Administration, select one (1) or more CASA outside the judicial district which will receive ninety percent (90%) of the funds granted to the Tennessee CASA Association by the Department and provide the necessary services.
  - (d) Grants under this subsection shall be used to continue existing programs and services, create new programs and services, and/or to train personnel, including volunteers.
  - (e) The Commissioner may authorize a grant or subgrant to a CASA not otherwise authorized by these rules, if either:
    - 1. The Tennessee CASA Association or a CASA authorized under these rules does not meet the statutory requirements of being incorporated as a not-for-profit corporation, being tax exempt under Section 501 of the Internal Revenue Code, or having provided services for at least six (6) months prior to receiving funds; or
    - 2. The Commissioner finds that any actual or proposed grantee or subgrantee is incapable of carrying out the purposes of the grant.

- (3) The Department of Finance and Administration will grant the money allocated under T.C.A. § 39-13-530(g) to Prevent Child Abuse Tennessee.
- (a) Grants shall continue existing programs and services, create new programs and services, and train personnel to plan and carry out a comprehensive statewide child abuse prevention program that includes emphasis on primary and secondary prevention strategies and includes evaluation strategies to assess the effectiveness of prevention activities.

Statutory Authority: T.C.A. §§ 4-5-202, 39-13-530.

0620-03-11-.03 Grant and Program Administration.

- (1) The Department of Finance and Administration shall develop and implement grant formats for grants authorized by these rules consistent with the requirements of Tennessee state laws, regulations, and policies relating to grants, including the requirements of T.C.A. § 39-13-530. The grants shall require reporting of grant performance and program operations to the Department and appropriate committees and subcommittees of the General Assembly.
- (2) The Tennessee Chapter of Children's Advocacy Centers, Tennessee CASA Association and Prevent Child Abuse Tennessee shall work together as collaborative partners and will comply with requests from the Department of Finance and Administration to consult with governmental or private entities working on problems of child abuse.

Statutory Authority: T.C.A. §§ 4-5-202, 39-13-530.

\* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the agency on 6-18-2012 (date as 06/ /2012), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 6/18/12

Signature: Mark A. Emkes

Name of Officer: Mark A. Emkes  
Commissioner, Department of Finance and

Title of Officer: Administration

Subscribed and sworn to before me on: 6-18-2012

Notary Public Signature: Pat Pentecost

My commission expires on: 1-6-2015

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act,

RE Cooper Jr  
Robert E. Cooper, Jr.  
Attorney General and Reporter  
7-6-12  
Date

Department of State Use Only

Filed with the Department of State on: 7/11/12

Effective on: 12/29/12

Tre Hargett  
Tre Hargett  
Secretary of State

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SECRETARY OF STATE

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Board of Respiratory Care

DIVISION:

SUBJECT: Renewal Fees

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 63-27-105

EFFECTIVE DATES: October 11, 2012 through June 30, 2013

FISCAL IMPACT: The agency reports that the Board has approximately 4,600 licensees. The decrease in the renewal fee is \$30.00, and such fee is paid biennially. Thus the Board's annual revenues will be decreased approximately \$69,000 as a result of this rule. The Board's surplus is currently in excess of \$200,000.

STAFF RULE ABSTRACT: This rule decreases the biennial renewal fee for certified and registered respiratory therapists from \$150.00 to \$120.00.

## Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Respiratory Care Board  
May 24, 2012

### Public Comments

There was one comment made by David Johnson on behalf of the Tennessee Society for Respiratory Care. Mr. Johnson stated that the Tennessee Society for Respiratory Care was very much in favor of this rule change.

The Board thanked Mr. Johnson for his comments.

## Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This rule amendment is not expected to have any impact on local governments.

### **Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

#### **REGULATORY FLEXIBILITY ANALYSIS**

**(1) Type or types of small business subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:**

Respiratory Therapists and businesses that employ respiratory therapists such as hospitals may benefit from the proposed rule amendment.

**(2) Identification and estimate of the number of small businesses subject to the proposed rule:**

The proposed rule changes would affect all Respiratory Therapists. There are currently Four Thousand, Four Hundred (4,400 ) active licensees. The proposed rule change may also affect businesses that employ respiratory therapists such as hospitals.

**(3) Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:**

The proposed amendments that have economic impact on small businesses have no increased or new reporting, recordkeeping, or other administrative costs that are required for compliance.

**(4) Statement of the probable effect on impacted small businesses and consumers:**

The decrease in the renewal fee for Respiratory Therapists will directly benefit all Respiratory Therapists and thereby any that are sole proprietors of their own business as well as any programs or hospitals that may pay any portion of renewal fees.

**(5) Description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business:**

These rule amendments are not burdensome, intrusive, or costly. On the contrary, these rule amendments will have a positive impact on business.

**(6) Comparison of the proposed rule with any federal or state counterparts:**

Federal: The Board is not aware of any federal counterparts.

State: The Board is not aware of any State counterparts.

**(7) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.**

The rule change does not provide for any exemptions.

**STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES**

1. **Name of Board, Committee or Council:** Tennessee Board of Respiratory Care
2. **Rulemaking hearing date:** May 24, 2012
3. **Type or types of small businesses that will be directly affected by the proposed rules:**  
Respiratory Therapists and those that employ them, such as hospitals, will be affected.
4. **Types of small businesses that will bear the cost of the proposed rules:**  
The Board does not anticipate that there will be costs to small businesses.
5. **Types of small businesses that will directly benefit from the proposed rules:**  
Self-employed Respiratory Therapists and businesses that employ them will be benefitted.
6. **Description of how small business will be adversely impacted by the proposed rules:**  
The Board does not anticipate that there will be adverse impacts to small businesses.
7. **Alternatives to the proposed rule that will accomplish the same objectives but are less burdensome, and why they are not being proposed:**  
These rule amendments are not burdensome, intrusive, or costly. On the contrary, these rule amendments will have a positive impact on business.
8. **Comparison of the proposed rule with any federal or state counterparts:**
  - (a) **Federal:** The Board is not aware of any federal counterparts.
  - (b) **State:** The Board is not aware of any state counterparts.

**Department of State  
Division of Publications**

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**For Department of State Use Only**

Sequence Number: 07-10-12  
Rule ID(s): 5252  
File Date: 7/13/12  
Effective Date: 10/11/12

# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205*

<b>Agency/Board/Commission:</b>	Board of Respiratory Care
<b>Division:</b>	
<b>Contact Person:</b>	Mary Katherine Bratton, Assistant General Counsel
<b>Address:</b>	Office of General Counsel 220 Athens Way, Suite 210 Nashville, Tennessee
<b>Zip:</b>	37243
<b>Phone:</b>	(615) 741-1611
<b>Email:</b>	Mary.Bratton@tn.gov

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)**

Chapter Number	Chapter Title
1330-01	General Rules and Regulations Governing Respiratory Care Practitioners
Rule Number	Rule Title
1330-01-.06	Fees

(Rule 1330-01-.05, continued)

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-27-102, 63-27-104, 63-27-105, 63-27-106, 63-27-107, 63-27-108, 63-27-112, 63-27-113, 63-27-115, and 63-27-116. **Administrative History:** Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed March 20, 2001; effective June 3, 2001. Amendment filed March 27, 2003; effective June 10, 2003. Amendment filed April 17, 2003; effective July 1, 2003. Amendment filed December 5, 2003; effective February 18, 2004. Amendment filed March 14, 2006; effective May 28, 2006.

**1330-01-.06 FEES.**

(1) The fees are as follows:

- (a) Total Application fee - A fee to be paid by all applicants seeking initial licensure, including those seeking licensure by reciprocity. This fee consists of the Application Fee and License Fee. In cases where an applicant is denied licensure or the application file is closed due to abandonment, only the portion representing the License Fee will be refundable.
- (b) Endorsement/Verification fee - A non-refundable fee to be paid for each certification, endorsement or verification of an individual's record for any purpose.
- (c) Late Renewal fee - A Division established non-refundable fee to be paid when an individual fails to timely renew a license.
- (d) License Renewal fee - A non-refundable fee to be paid by all licensees. This fee also applies to individuals who reinstate a retired or lapsed license.
- (e) Replacement license fee - A non-refundable fee to be paid when an individual requests a replacement for a lost or destroyed "initial" license.
- (f) State Regulatory fee - A non-refundable fee to be paid by all individuals with all applications.
- (g) Upgrade fee - A non-refundable fee to be paid by a respiratory assistant or a certified respiratory therapist when seeking to upgrade his/her authorization to practice respiratory care as provided in rule 1330-01-.21.

(2) All fees may be paid in person, by mail or electronically by cash, check, money order, or by credit and/or debit cards accepted by the Division. If the fees are paid by certified, personal or corporate check they must be drawn against an account in a United States Bank, and made payable to the Board of Respiratory Care.

(3) Fee Schedule:	Amount
(a) Total Application Fee	
1. Application Fee	\$120.00
2. License Fee	<u>80.00</u>
Total Application Fee	\$200.00
(b) Endorsement/Verification	15.00
(c) Late Renewal Fee	50.00

(Rule 1330-01-.06, continued)

(d) <del>Renewal (biennial) Fee</del>	<del>150.00</del>
(d) Renewal (biennial) Fee	120.00
(e) Replacement License	25.00
(f) State Regulatory (biennial)	10.00
(g) Upgrade Fee	20.00
(h) License Fee	80.00

- (4) The total application fee must be paid at the time of application.

**Authority:** T.C.A. §§ 4-3-1011, 4-5-202, 4-5-204, and 63-27-104. **Administrative History:** Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed March 20, 2001; effective June 3, 2001. Amendment filed March 27, 2003; effective June 10, 2003. Amendment filed December 5, 2003; effective February 18, 2004. Amendment filed July 18, 2007; effective October 1, 2007.

**1330-01-.07 APPLICATION REVIEW, APPROVAL, AND DENIAL.**

- (1) Application files are not considered completed until all information, including fees, have been received by the Division. Preliminary review of all applications to determine whether or not the application file is complete may be delegated to the Board's Unit Director.
- (2) Completed applications may be approved by a Board member, by the Board consultant, or by the Board designee for a temporary authorization pursuant to T.C.A. §§ 63-1-142 and 63-27-116.
- (3) If an application is incomplete when received in the Board office, and all other reasonable efforts to correct any deficiency have failed, a deficiency letter will be sent by certified mail to the applicant notifying him of the deficiency. This letter shall request specified additional material necessary to complete the application. The requested information must be received in the Board office on or before the sixtieth (60<sup>th</sup>) day after receipt of the notification.
  - (a) Such notification shall be sent certified mail return receipt requested from the Board office.
  - (b) If the requested information is not timely received, the application file shall be deemed abandoned and closed and the applicant notified. No further action will take place until a new application is received pursuant to the rules governing the application process, including another payment of all fees.
- (4) If a completed application has been denied by the Board the action shall become final and the following shall occur:
  - (a) A notification of the denial shall be sent by the Board office by certified mail, return receipt requested. Specific reasons for denial will be stated, such as incomplete or unofficial records, examination failure, or other matters judged insufficient for licensure, and such notification shall contain all the specific statutory or administrative authorities for the denial.
  - (b) The notification, when appropriate, shall also contain a statement of the applicant's right to request a contested case hearing under the Tennessee Administrative Procedures

\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Candace Partee	X				
Ray Davis	X				
Gene Gantt	X				
Jeffrey McCartney, MD				X	
Teresa Hathcher	X				
Delmar Mack, Ed.D	X				
Roger Major				X	
Vacant					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Respiratory Care Board on 05/31/2012, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 04/09/12

Rulemaking Hearing(s) Conducted on: (add more dates). 05/31/12

Date: 6/19/12

Signature: Mary Katherine Bratton

Name of Officer: Mary Katherine Bratton

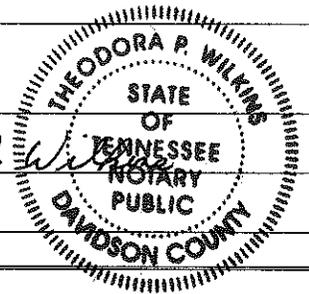
Assistant General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: 6/19/12

Notary Public Signature: Theodora P. Wilkins

My commission expires on: 11/3/15



All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.  
 Robert E. Cooper, Jr.  
 Attorney General and Reporter  
7-6-12  
 Date

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Filed with the Department of State on: 7/13/12

Effective on: 10/11/12

Tre Hargett by Mona Cant, PMA  
 Tre Hargett  
 Secretary of State

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Safety and Homeland Security

DIVISION: Highway Patrol

SUBJECT: Handgun Carry Permits

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 39-17-1360

EFFECTIVE DATES: December 29, 2012 through June 30, 2013

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: These rules establish uniform standards and procedures for administering the issuance of handgun carry permits pursuant to the provisions of Tennessee Code Annotated, Sections 39-17-1351 through 39-17-1360.

The agency reports that these proposed amendments delete sections of the present rules that are already adequately and expressly covered by the statutes.

Other revisions include changing references to the Department of Safety to the Department of Safety and Homeland Security.

### **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This rule would have no projected impact on local governments.

### Regulatory Flexibility Addendum

Pursuant to §§ T.C.A. 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

#### Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 2007, T.C.A. 4-5-401, et seq., the Department of Safety and Homeland Security submits the following regulatory flexibility analysis:

- (1) The extent to which the rule may overlap, duplicate, or conflict with other federal, state, and local government rules:  

The proposed rule does not overlap, duplicate or conflict with other federal, state or local government rules.
- (2) Clarity, conciseness, and lack of ambiguity in the rule:  

The proposed rule exhibits clarity, conciseness, and lack of ambiguity.
- (3) The establishment of flexible compliance and reporting requirements for small businesses:  

The proposed rule does not establish any compliance and/or reporting requirements for small businesses.
- (4) The establishment of friendly compliance and reporting requirements for small businesses:  

The proposed rule does not establish any compliance and/or reporting requirements for small businesses.
- (5) The consolidation or simplification of compliance or reporting requirements for small businesses:  

The proposed rule does not establish any compliance and/or reporting requirements for small businesses.
- (6) The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule:  

The proposed rule does not establish performance standards for small businesses as opposed to design or operational standards.
- (7) The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.  

The proposed rule does not unnecessarily create entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

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**For Department of State Use Only**

Sequence Number: 07-15-12  
Rule ID(s): 5253  
File Date: 7/19/12  
Effective Date: 12/29/12

## Proposed Rule(s) Filing Form

*Proposed rules are submitted pursuant to T.C.A. §4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.*

<b>Agency/Board/Commission:</b>	Tennessee Department of Safety and Homeland Security
<b>Division:</b>	Highway Patrol
<b>Contact Person:</b>	Gerry Crownover, Staff Attorney
<b>Address:</b>	1150 Foster Avenue, Nashville, TN
<b>Zip:</b>	37243
<b>Phone:</b>	(615) 251-5277
<b>Email:</b>	Gerry.Crownover@tn.gov

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)**

Chapter Number	Chapter Title
1340-02-04	Handgun Carry Permit Procedures
Rule Number	Rule Title
1340-02-04-.02	Definitions
1340-02-04-.03	Eligibility Requirements
1340-02-04-.04	Application Availability
1340-02-04-.05	Application Requirements
1340-02-04-.06	Issuance of a Handgun Carry Permit
1340-02-04-.07	Denial of Handgun Carry Permit
1340-02-04-.08	Contents of Handgun Carry Permit
1340-02-04-.09	Renewal of Handgun Carry Permit
1340-02-04-.10	Obtaining a Duplicate Permit
1340-02-04-.11	Expiration of Handgun Carry Permit
1340-02-04-.12	Fees
1340-02-04-.13	Reciprocity of Other States' Handgun Carry Permits
1340-02-04-.14	Statistical Reports Kept by the Department
1340-02-04-.15	Revocation or Suspension of a Handgun Carry Permit
1340-02-04-.16	Criminal History Dispositions

1340-02-04-.17	Notice of Suspension and Revocation
1340-02-04-.18	Administrative Hearing After Suspension or Revocation of Handgun Carry Permit
1340-02-04-.19	Direct Judicial Review After Denial, Suspension, or Revocation of Handgun Carry Permit
1340-02-04-.20	Reinstatement of Handgun Carry Permit After Suspension or Revocation
1340-02-04-.21	Grandfathering Permits Issued on or After October 1, 1994
1340-02-04-.22	Change of Permittee's Principle Place of Residence
1340-02-04-.23	Change of Permittee's Name

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Rules  
of  
Tennessee Department of Safety  
Division of Driver License Issuance

Chapter 1340-02-04  
Handgun Carry Permit Procedures

Amendments

The above heading is revised, so that, as amended, the heading shall read:

Rules  
of  
Tennessee Department of Safety and Homeland Security  
Highway Patrol Division

Chapter 1340-02-04  
Handgun Carry Permit Procedures

Paragraph (2) of Rule 1340-02-04-.02 Definitions is revised by deleting the language in its entirety and substituting new language, so that, as amended, the paragraph shall read:

~~(2) Commissioner means the commissioner of the Tennessee Department of Safety.~~

2) Commissioner means the Commissioner of the Tennessee Department of Safety and Homeland Security.

Paragraph (4) of Rule 1340-02-04-.02 Definitions is amended by deleting the language in its entirety and substituting new language, so that, as amended, the paragraph shall read:

~~(4) Department means the Department of Safety acting directly or through its duly authorized officers and agents.~~

(4) Department means the Tennessee Department of Safety and Homeland Security acting directly or through its duly authorized officers and agents.

Paragraph (6) of Rule 1340-02-04-.02 Definitions is amended by deleting the language in its entirety and substituting new language, so that, as amended the paragraph shall read:

~~(6) Handgun Carry Permit means a permit issued by the Department of Safety or a permit that is issued from another state that meets the reciprocity provisions of T.C.A. §39-17-1351 as determined by the commissioner of safety.~~

(6) Handgun Carry Permit means a permit issued by the Tennessee Department of Safety and Homeland Security.

Paragraphs (10) and (11) of Rule 1340-02-04-.02 Definitions are deleted in their entirety.

~~(10) Unlawful user of a controlled substance or alcohol means any person convicted of T.C.A. § 39-17-425 relative to the use of controlled substances or T.C.A. § 39-17-310 relative to the use of alcohol.~~

~~(11) Employed in this state on a regular basis shall mean a person has been gainfully employed in this state for at least thirty (30) hours a week for six (6) consecutive months not counting any absence from employment caused by the employee's use of sick leave, annual leave, administrative leave, or compensatory time.~~

Paragraph (12) of Rule 1340-02-04-.02 Definitions is renumbered as paragraph "(10)", so that, as amended, the paragraph shall read:

(42) Lawful Permanent Resident shall mean the status of having been accorded the privilege of residing permanently in the United States as an immigrant in accordance with immigration laws, such status not having changed.

(10) Lawful Permanent Resident shall mean the status of having been accorded the privilege of residing permanently in the United States as an immigrant in accordance with immigration laws, such status not having changed.

Authority: T.C.A. §§ 2-2-122; 4-3-2009; 4-5-202; 39-17-1351 and 39-17-1360.

Rule 1340-02-04-.03 Eligibility Requirements is deleted in its entirety.

#### ~~1340-2-4-.03 ELIGIBILITY REQUIREMENTS.~~

~~(1) To be eligible to apply for a handgun carry permit, applicants are required to be a resident of Tennessee and either a United States citizen or lawful permanent resident thereof.~~

~~(2) Applicants must be at least twenty-one (21) years of age.~~

~~(3) Applicant must not be prohibited from purchasing or possessing a firearm in this state pursuant to T.C.A. §§ 39-17-1316, 39-17-1307(b), 18 U.S.C. 922(g) or any other state or federal law.~~

~~(4) The applicant must meet all other requirements regarding the proper submission of an application pursuant to T.C.A. § 39-17-1351 and this rule, submit proof of the successful completion of a department approved handgun safety course or any of the exceptions as provided in T.C.A. § 39-17-1351 and pay all appropriate fees.~~

~~(5) The applicant must not have been convicted of a criminal offense punishable for a term exceeding one year which does not include any federal or state offenses pertaining to anti-trust violations, unfair trade practices, restraints of trade or other similar offenses relating to the regulation of business practices.~~

~~(6) The applicant must not be currently under indictment or information for any criminal offense punishable by a term exceeding one year, which does not include any federal or state offenses pertaining to anti-trust violations, unfair trade practices, restraints of trade or other similar offenses relating to the regulations of business practices.~~

~~(7) The applicant must not be currently subject to any order of protection and, if so, the applicant must provide a copy of such order.~~

~~(8) The applicant must not be a fugitive from justice.~~

~~(9) The applicant must not be an unlawful user of or addicted to alcohol or any controlled substance and the applicant must not have been a patient in a rehabilitation program or hospitalized for alcohol or controlled substance abuse or addiction within ten (10) years from the date of application.~~

~~(10) The applicant must not have been convicted of the offense of driving under the influence of an intoxicant in this or any other state two or more times within ten (10) years from the date of the application, and that none of~~

~~such convictions must have occurred within five years from the date of application or renewal.~~

~~(11) The applicant must not have been adjudicated as a mental defective; and not have been committed to or hospitalized in a mental institution; has not had a court appoint a conservator for the applicant by reason of a mental defect; has not been judicially determined to be disabled by reason of mental illness, developmental disability or other mental incapacity; and has not, within seven (7) years from the date of application, been found by a court to pose an immediate substantial likelihood of serious harm, as defined in Section 33-6-104, because of mental illness.~~

~~(12) The applicant is not an alien and not illegally or unlawfully in the United States.~~

~~(13) The applicant has not been discharged from the Armed Forces under dishonorable conditions.~~

~~(14) The applicant has not renounced his or her United States citizenship.~~

~~(15) The applicant has not been convicted of a misdemeanor crime of domestic violence as defined in 18 U.S.C. §921(33). Such crime means an offense that is a misdemeanor under federal or state law; and has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shared a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim. This definition includes all misdemeanors that involve the use or attempted use of physical force (E.G. simple assault, assault and battery) if the offense is committed by one of the defined parties.~~

~~(16) The applicant is not receiving social security disability benefits by reason of alcohol dependence, drug dependence or mental disability.~~

~~(17) The applicant has not been convicted of the offense of stalking.~~

~~Rule 1340-02-04-.04 Application Availability is deleted in its entirety.~~

~~**1340-2-4-.04 APPLICATION AVAILABILITY.** The department shall make applications for permits available for distribution at any location where the department conducts driver license transactions; however, the department will receive and process applications at locations designated by the department.~~

~~Rule 1340-02-04-.05 Application Requirements is deleted in its entirety.~~

~~**1340-2-4-.05 APPLICATION REQUIREMENTS.**~~

~~(1) The application for a permit shall be on a standard form developed by the Department of Safety.~~

~~(2) Applicants for a handgun carry permit shall sign and complete in full and disclose under oath the following information concerning the applicant prior to the issuance of such permit:~~

~~(a) Full legal name and any aliases~~

~~(b) Addresses for the last five (5) years~~

~~(c) Date of birth~~

~~(d) Social security number~~

~~Acceptable proof of the social security number will be the social security card itself, not metal or plastic replicas; driver licenses containing social security numbers; military ID's, DD-214; selective service card; or a social security printout.~~

~~(e) physical description (height, weight, race, sex, hair color and eye color);~~

~~(3) The applicant shall answer all questions on the application relative to all eligibility requirements for SS-7038 (July 2010)~~

obtaining a handgun carry permit.

~~(4) — In addition to the information required above, the applicant shall submit proof of the successful completion of a department approved handgun safety course within the past six (6) months. Such course must include both classroom hours and firing range hours. The proof must be submitted at the time the completed application is submitted to the department.~~

~~(a) — An applicant shall not be required to comply with the handgun safety course provisions of this rule if such applicant submits proof to the department that within five (5) years from the date the application for a handgun permit is filed, the applicant has:~~

~~1. — Been certified by the Peace Officers' Standards and Training Commission; or~~

~~2. — Successfully completed training at the Law Enforcement Training Academy; or~~

~~3. — Successfully completed the firearms training course required for armed security officer/guard registration, pursuant to Section 62-35-118(b); or~~

~~4. — Successfully completed all handgun training of not less than four (4) hours as required by any branch of the military.~~

~~(b) — A permittee will not be required to complete a handgun safety course to maintain or renew a handgun carry permit. No permittee will be required to complete any additional handgun safety course after obtaining a handgun carry permit.~~

~~(5) — An applicant is required to present a photo identification to the department at the time of filing the application. If the name on the photo identification, name on the application and name on the fingerprint card, if taken by a sheriff, are not the same, the department will refuse to accept the application. If the person whose picture appears on the photo identification is not the same as the applicant, the department will refuse to accept the application.~~

~~(6) — It shall also be the responsibility of the applicant to furnish proof of identification to the department in cases where an applicant has had a prior name change.~~

~~(7) — The department shall also photograph the applicant in a manner that is suitable for use on the permit.~~

~~(8) — The applicant is required to provide two full sets of classifiable fingerprints at the time the application is filed with the department. Such fingerprints may be taken by the department at the time the application is submitted, or the applicant may have such fingerprints taken at any sheriff's office and submit such fingerprints to the department along with the application and other supporting documents. At the time an applicant's fingerprints are taken, either by the department or a sheriff's office, such applicant is required to present a photo identification. If the person requesting the fingerprinting is not the same person as the person whose picture appears on the photo identification, the department or the sheriff will refuse to take such fingerprints.~~

~~(a) — If the fingerprints are taken by a sheriff's office, such prints shall be taken on a Department of Safety fingerprint card. Any fingerprints taken on any card other than a Department of Safety fingerprint card, will not be accepted by the Department of Safety upon application.~~

~~(b) — The department shall provide Department of Safety fingerprint cards to any sheriff that fingerprints applicants under the provision of this rule or law.~~

~~(9) — Upon receipt of a permit application, the department will:~~

~~(a) — Forward two full sets of fingerprints of the applicant to the Tennessee Bureau of Investigation; and~~

~~(b) — Send a copy of the application to the sheriff of the county in which the applicant resides.~~

~~(10) — Pursuant to T.C.A. §39-17-1351, the sheriff will provide the department with any information concerning the truthfulness of the applicant's answers to the eligibility requirements that is within the knowledge of the sheriff~~

within thirty (30) days of receiving an application.

~~(11) Pursuant to T.C.A. §39-17-1351, the Tennessee Bureau of Investigation shall:~~

~~(a) Within thirty (30) days from receipt of the fingerprints, conduct such computer searches to determine the applicant's eligibility for a permit under T.C.A. §39-17-1351 as are available to the Bureau based solely upon the applicant's name, date of birth and social security number and send the results of such searches to the Department of Safety;~~

~~(b) Conduct a criminal history record check based upon one set of the fingerprints received and send the results to the department; and~~

~~(c) Send one set of the fingerprints received from the department to the Federal Bureau of Investigation, request a federal criminal history record check based upon such fingerprints, as long as such service is available and send the results of such check to the department.~~

Rule 1340-02-04-.06 Issuance of a Handgun Carry Permit is deleted in its entirety.

#### **1340-2-4-.06 ISSUANCE OF A HANDGUN CARRY PERMIT.**

~~(1) The department will issue a permit to an applicant not prohibited from obtaining a permit under this rule or any other law relative to the purchase or possession of firearms no later than ninety (90) days after the date the department receives the application.~~

~~(2) The permit will be valid for four (4) years and shall entitle the permittee to carry any handgun(s) which the permittee legally owns or possesses.~~

~~(3) The permittee shall have the permit in the holder's immediate possession at all times when carrying a handgun and shall display the permit on demand of a law enforcement officer. Any canceled, suspended, revoked or otherwise invalid permit shall be surrendered to such law enforcement officer and returned to the Department of Safety.~~

Rule 1340-02-04-.07 Denial of Handgun Carry Permit is deleted in its entirety.

#### **1340-2-4-.07 DENIAL OF HANDGUN CARRY PERMIT.**

~~(1) The department shall deny a handgun carry permit application if it determines from information contained in the criminal history record checks conducted by the Tennessee and Federal Bureaus of Investigation, or from other information that comes to the attention of the department, that the applicant does not meet the eligibility requirements of T.C.A. §39-17-1351 and Rule 1340-2-4-.03. It shall be the responsibility of the applicant to furnish sufficient proof to the department that such applicant meets all eligibility requirements.~~

~~(2) Where a permit has not been issued and in cases where the criminal histories do not contain dispositions of charges, the department will notify the applicant of the charge. The applicant will have ninety (90) days to furnish information sufficient to the department as to the disposition of the charge.~~

~~(a) If the applicant does not provide the department with information as to the disposition of the charge within ninety (90) days, the department shall deny the permit pursuant to paragraph (1).~~

~~(b) If the applicant does not provide the department with information as to the disposition of the charge within ninety (90) days, the applicant will be required to meet the application requirements pursuant to Rule 1340-2-4-.05 and pay the prescribed application fee.~~

~~(3) If the department denies an application, the department shall notify the applicant in writing within ten (10) days of such denial. The written notice shall state the specific factual basis for the denial. It shall include a copy of any reports, records and/or inquiries reviewed or relied upon by the department.~~

~~(4) The department will also notify the sheriff or chief law enforcement officer of the applicant's county of residence when the department denies an application.~~

~~(5) If a person is denied a handgun carry permit and the time for filing a petition in general sessions court pursuant to Rule 1340-2-4-18 has expired, such person will be required to reapply under Rule 1340-2-4-05 and pay the prescribed application fee.~~

~~(6) The department shall not deny a permit application if:~~

~~(a) The existence of any arrest or other records concerning the applicant for any indictment, charge, or warrant have been judicially or administratively expunged; or~~

~~(b) The applicant's conviction has been set aside by a court of competent jurisdiction; or~~

~~(c) The applicant, who was rendered infamous or deprived of the rights of citizenship by judgment of any state or federal court, has had his or her full rights of citizenship duly restored pursuant to procedures set forth within Title 40, Chapter 29, or other federal or state laws.~~

~~1. This provision shall not apply to any person who had been convicted of burglary, any felony offense involving violence, or use of a firearm, or any felony drug offense involving a Schedule I, II, III, IV, or V controlled substance.~~

~~2. If the applicant has been convicted of a felony drug offense involving a Schedule VI controlled substance, the provisions of this rule shall not apply if such offense occurred within ten (10) years of the date of application or renewal.~~

~~(7) To seek review of the departmental action of a denial of a handgun carry permit, the applicant must seek judicial review pursuant to Rule 1340-2-4-19.~~

Rule 1340-02-04-08 Contents of Handgun Carry Permit is deleted in its entirety.

#### ~~1340-2-4-08 CONTENTS OF HANDGUN CARRY PERMIT.~~

~~(1) The permit shall be issued on a wallet-sized laminated card of the same approximate size as used by the State of Tennessee for driver licenses.~~

~~(2) The permit shall contain only the following information concerning the permittee:~~

~~(a) The permittee's name, address, and date of birth~~

~~(b) A description of the permittee by sex, height, weight and eye color~~

~~(c) A color photograph of the permittee; and~~

~~(d) The permit number and expiration date~~

Rule 1340-02-04-09 Renewal of Handgun Carry Permit is deleted in its entirety.

#### ~~1340-2-4-09 RENEWAL OF HANDGUN CARRY PERMIT.~~

~~(1) Prior to the expiration of a permit, a permittee may apply to the department for the renewal of a permit by submitting, under oath, a renewal application with the prescribed renewal fee.~~

~~(2) The applicant shall disclose, under oath, the information concerning the applicant as set forth in Rule 1340-2-4-03. The applicant must meet the eligibility requirements of Rule 1340-2-4-03.~~

~~(3) A permittee shall not be required to complete a handgun safety course to maintain or renew a handgun carry permit after the initial permit has been issued.~~

~~(4) It shall be the responsibility of the permittee to renew a permit prior to its expiration. The department is not responsible for sending renewal notices to permittees.~~

~~(5) — A person who has a valid permit, which has been expired for more than six (6) months from the date of the expiration of such permit, will be required to meet all the requirements under Rule 1340-2-4-.05.~~

~~(6) — A person whose permit has expired for six (6) months or less from the date of expiration will be processed pursuant to the renewal provisions of this rule.~~

~~(7) — Renewal of unexpired, valid permits by U.S. mail or overnight courier delivery service is permissible.~~

Rule 1340-02-04-.10 Obtaining a Duplicate Permit is deleted in its entirety.

~~**1340-2-4-.10 OBTAINING A DUPLICATE PERMIT.** The department shall issue a duplicate permit to a permittee for the prescribed duplicate fee.~~

Rule 1340-02-04-.11 Expiration of Handgun Permit is deleted in its entirety.

~~**1340-2-4-.11 EXPIRATION OF HANDGUN CARRY PERMIT.**~~

~~(1) — A handgun carry permit will be good for four (4) years from the date of issuance.~~

~~(2) — If the handgun carry permit expires prior to the department's approval or issuance of notice of denial regarding a renewal application, the permittee will be entitled to continue to use the expired permit; however, the permittee will be required to prove, by displaying a receipt for the renewal application fee, that the renewal application was delivered to the department prior to the expiration date of the permit.~~

Rule 1340-02-04-.12 Fees is amended by changing the section number from ".12" to ".03". Paragraph (4) of the newly numbered Rule 1340-02-04-.03 is amended by deleting the existing language in its entirety and substituting new language, so that, as amended, the Rule shall read:

1340-2-4-.12 FEES.

~~(4) — The acceptable method of payment for all initial fees will be by cash or certified check. Renewal fees may be paid by cash, personal check, or certified check.~~

1340-02-04-.03 Fees.

(1) The application fee for a handgun carry permit will be one hundred and fifteen dollars (\$115.00). Such fee will cover all aspects of processing the application and issuing a permit.

(2) The renewal fee for a permit will be fifty dollars (\$50.00).

(3) The fee for a duplicate permit will be five dollars (\$5.00).

(4) The acceptable method of payment for all initial fees will be by cash, certified check or credit card. Renewal fees may be paid by cash, personal check, certified check or credit card.

(5) All fees are non-refundable.

Authority: T.C.A. §§ 4-3-2009; 39-17-1351; 39-17-1356 and 39-17-1360.

Rule 1340-02-04-.13 Reciprocity of Other States' Handgun Carry Permits is deleted in its entirety.

~~**1340-2-4-.13 RECIPROCITY OF OTHER STATES' HANDGUN CARRY PERMITS.**~~

~~(1) — A facially valid handgun permit, firearms permit, weapons permit or a license issued by another state shall be valid in this state according to its terms and shall be treated as if it is a handgun permit issued by this state; provided, however, the holder of any such out-of-state permit or license will only authorize the holder to carry a handgun while in this state. For a person to lawfully carry a handgun in this state, based upon a permit or license issued in another state, the person must be in possession of the permit or license at all times such person carries~~

a handgun in this state.

~~(2) — The Commissioner of Safety shall enter into written reciprocity agreements with other states that require the execution of such agreements. If another state imposes conditions on Tennessee permit holders in a reciprocity agreement, such conditions shall also become a part of the agreement and apply to the other states' permit holders when they carry a handgun in this state.~~

~~(3) — The Commissioner of Safety shall prepare and publicly publish a current list of states honoring permits issued by the State of Tennessee and shall make the list available to anyone upon request. To the extent that any state may impose conditions in such reciprocity agreements, the Commissioner shall publish those conditions as part of the list. The Commissioner shall also prepare and publicly publish a current list of states that, after inquiry by the Commissioner, refuse to enter into a reciprocity agreement with this state or honor a handgun carry permit issued by this state.~~

~~(4) — If a person with a handgun permit from another state becomes a Tennessee resident, such person must obtain a Tennessee handgun permit within six (6) months of establishing residency in Tennessee.~~

~~(5) — If during the six (6) month period a person with an out-of-state handgun permit applies for a Tennessee handgun carry permit in this state and such application is denied, the person will not be allowed to carry a handgun in this state based upon the other state's permit.~~

~~(6) — If such person from another state does not apply for a Tennessee handgun carry permit within six (6) months of establishing residency, such person will be required to meet the requirements of an original handgun application pursuant to Rule 1340-2-4-.05 and pay the prescribed application fee.~~

~~(7) — If a person from another state has a handgun permit from that state and applies for a Tennessee handgun permit within six (6) months and the eligibility requirements of the other state are substantially similar to this state, the person will be processed under the renewal provisions of this rule.~~

~~(8) — The Commissioner of Safety or his designee shall be the judge of whether the eligibility requirements in another state are substantially similar to the requirements of this state.~~

~~(9) — A person from another state who becomes a resident of Tennessee and has not been fingerprinted for both state and federal criminal history records checks, but has completed a firearms safety course consisting of both classroom and firing range sessions; will not be required to complete a handgun safety course; but will be required to:~~

~~(a) — Complete an application.~~

~~(b) — Provide two (2) full sets of classifiable fingerprints.~~

~~(c) — Pay the prescribed application fee.~~

~~(10) — A person from another state who becomes a resident of Tennessee and has not completed a firearms safety course consisting of both classroom and firing range sessions, but has been fingerprinted for both state and federal criminal history records checks, will not be required to be fingerprinted; but will be required to:~~

~~(a) — Complete an application.~~

~~(b) — Submit proof of completing a Department of Safety approved handgun carry safety course.~~

~~(c) — Pay the prescribed renewal fee.~~

~~(11) — A person from another state who becomes a resident of Tennessee and has been fingerprinted for both state and federal criminal history record checks and has completed a handgun safety course consisting of both classroom and firing range sessions, will be required to meet the renewal provisions of this rule and pay the prescribed renewal fee.~~

~~(12) — If a person who is a resident of and a handgun permit holder in another state and employed in this state~~

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This rule establishes uniform standards and procedures for administering the issuing of handgun carry permits under the provisions of T.C.A. §§ 39-17-1351 through 39-17-1360. The proposed amendments delete those sections of the existing rule that are already adequately and expressly covered by the statutes. Other revisions include changing the "Department of Safety" to "Department of Safety and Homeland Security".

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. § 39-17-1360 authorizes the Department to promulgate rules and regulations to implement the provisions of T.C.A. §§ 39-17-1351 through 39-17-1360.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Persons who possess a Tennessee Handgun Carry Permit and those persons who may apply in the future to possess a Tennessee Handgun Permit.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

None

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

No impact.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Lieutenant Robert Eckerman, Program Director, Handgun Permits; Gerry Crowover, Staff Attorney

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Lieutenant Robert Eckerman, Program Director, Handgun Permits; Gerry Crowover, Staff Attorney

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Tennessee Department of Safety and Homeland Security  
1150 Foster Avenue  
Nashville, TN 37243  
[Robert.Eckerman@tn.gov](mailto:Robert.Eckerman@tn.gov) (615) 687-2323  
[Gerry.Crowover@tn.gov](mailto:Gerry.Crowover@tn.gov) (615) 251-5277

(l) Any additional information relevant to the rule proposed for continuation that the committee requests.

None

~~on a regular basis and desires to carry a handgun in this state, such person shall have six (6) months from the last day of the sixth (6th) month of regular employment in this state to obtain a Tennessee handgun carry permit. Such permit may be issued based on the person having a permit from another state provided such other state has substantially similar permit eligibility requirements as this state. If during such sixth month period the person applies for a Tennessee handgun carry permit and such application is denied, the person will not be allowed to carry a handgun in this state based upon the other state's permit. This provision shall not apply if the state of residence of the person employed in Tennessee has entered into a handgun permit reciprocity agreement with this state.~~

Rule 1340-02-04-.14 Statistical Reports Kept by the Department is deleted in its entirety.

#### **~~1340-2-4-.14 STATISTICAL REPORTS KEPT BY THE DEPARTMENT.~~**

~~(1) — The department shall make available, on request and payment of a reasonable fee to cover the cost of copying, a statistical report that includes the number of permits issued, denied, revoked, or suspended by the department during the preceding month, listed by age, gender, and zip code of the applicant or permittee and the reason for any permit revocation or suspension.~~

~~(2) — By January 1 of each year, a copy of such statistical report for the preceding calendar year shall be provided to each member of the General Assembly.~~

~~(3) — The department shall maintain statistics related to responses by law enforcement agencies to incidents in which a person who has a permit to carry a handgun under this section is arrested and booked for any offense.~~

~~(4) — All state and local law enforcement officials are required to report the information required in section (3) above to the handgun issuance division of the Department of Safety.~~

Rule 1340-02-04-.15 Revocation or Suspension of a Handgun Carry permit is deleted in its entirety.

#### **~~1340-2-4-.15 REVOCATION OR SUSPENSION OF A HANDGUN CARRY PERMIT.~~**

~~(1) — The department shall suspend or revoke a handgun permit upon a showing by its records or other sufficient evidence that the permittee:~~

~~(a) — Is prohibited from purchasing a handgun under applicable state or federal law;~~

~~(b) — Has not accurately disclosed any material information required by §39-17-1351;~~

~~(c) — Poses a material likelihood of risk or harm to the public;~~

~~(d) — Has been arrested for a felony involving the use or attempted use of force, violence, or a deadly weapon, or a felony drug offense;~~

~~(e) — Has been convicted of a felony;~~

~~(f) — Has violated any other provision of T.C.A. §39-17-1351—§39-17-1360; or~~

~~(g) — Has at any time committed an act or omission or engaged in a pattern of conduct that would render the permittee ineligible to apply for or obtain a permit under the eligibility requirements of T.C.A. §39-17-1351.~~

~~(2) — In cases where a permit has been issued prior to the department's receipt of the Tennessee and Federal Bureau of Investigation's criminal history fingerprint record checks, such permit shall be subject to immediate revocation if either such record check reveals that the applicant is not eligible for a permit.~~

~~(3) — The department shall suspend a handgun carry permit that is received from a court pending final disposition when the permittee is charged with a felony.~~

~~(a) — It will be the responsibility of the permittee to furnish the department with court documents showing that the permittee has been acquitted of the charge or charges prior to reinstatement of a handgun carry permit.~~

~~(b) If the permittee is placed on pre-trial diversion or judicial diversion, the permittee's privilege to lawfully carry a handgun shall be suspended for the length of time the permittee is subject to the jurisdiction of the court. The court shall send the surrendered permit to the department.~~

~~(c) It shall be the responsibility of the permittee to provide the department with court documents showing that the permittee is no longer subject to the jurisdiction of the court prior to reinstatement of the handgun carry permit.~~

~~(4) If a permittee is convicted of a Class A misdemeanor offense, the permittee is required to surrender the permit to the court having jurisdiction of the case for transmission to the department.~~

~~(a) The department shall suspend such permittee's handgun carry permit for the term of the sentence imposed by the court for the offense or offenses for which the permittee was convicted;~~

~~(b) The permittee shall be required to furnish the department with court documents showing that the permittee is no longer subject to the sentence imposed by the court for the offense or offenses for which the permittee was convicted.~~

Rule 1340-02-04-.16 Criminal History Dispositions is amended by changing the section number from ".16" to ".04", and paragraph (2) is amended by replacing the phrase "1340-2-4-.15 (1) and 1340-2-4-.17" with "T.C.A. § 39-17-1352", and the statutory authority has been re-ordered and revised to add "39-17-1353", so that, as amended, the Rule shall read:

#### **1340-2-4-.16 CRIMINAL HISTORY DISPOSITIONS.**

- (1) In cases where a permit has been issued prior to the department's receipt of the Tennessee Bureau of Investigation and the Federal Bureau of Investigation criminal history fingerprint record checks and such record checks are returned to the department without dispositions, the permittee will have sixty (60) days from the date appearing in the Notice of Proposed Revocation to furnish the department with a disposition of such charge.
- (2) If the permittee does not submit to the department the requested information showing the disposition of charges on the permittee's criminal history, the permit will be revoked pursuant to 1340-2-4-.15(1) and 1340-2-4-.17.

Authority: T.C.A. §§ 39-17-1352; 39-17-1354; 39-17-1355; 39-17-1360 and 4-3-2009.

#### **1340-2-4-.04 Criminal History Dispositions.**

- (1) In cases where a permit has been issued prior to the department's receipt of the Tennessee Bureau of Investigation and the Federal Bureau of Investigation criminal history fingerprint record checks and such record checks are returned to the department without dispositions, the permittee will have sixty (60) days from the date appearing in the Notice of Proposed Revocation to furnish the department with a disposition of such charge.
- (2) If the permittee does not submit to the department the requested information showing the disposition of charges on the permittee's criminal history, the permit will be revoked pursuant to T.C.A. § 39-17-1352.

Authority: T.C.A. §§ 4-3-2009; 39-17-1352; 39-17-1353; 39-17-1354; 39-17-1355 and 39-17-1360.

Rule 1340-02-04-.17 Notice of Suspension and Revocation is deleted in its entirety.

#### **~~1340-2-4-.17 NOTICE OF SUSPENSION AND REVOCATION.~~**

~~(1) Upon the suspension or revocation of a permit, the department shall send notice of the suspension or revocation to the permittee and the chief law enforcement officer of the applicant's county of residence.~~

~~(2) Such notice shall state the following:~~

- ~~(a) — That the permit has been immediately suspended or revoked;~~
- ~~(b) — That the permittee must surrender the permit to the department within ten (10) days of the date appearing on the notice;~~
- ~~(c) — That it is a Class A misdemeanor punishable by up to one (1) year in jail for the permittee to knowingly fail or refuse to surrender the permit to the department within such ten (10) day period;~~
- ~~(d) — That if the permittee does not surrender the suspended or revoked permit within the ten (10) day period, the department shall issue authorization to the chief law enforcement official of the applicant's county of residence to take possession of the suspended or revoked permit and send it to the department.~~
- ~~(e) — That the permittee has thirty (30) days from the date appearing on the notice of suspension or revocation to request an administrative hearing pursuant to Rule 1340-2-4-18, or seek judicial review pursuant to Rule 1340-2-4-19, to challenge the suspension or revocation.~~

Rule 1340-02-04-18 Administrative Hearing after Suspension or Revocation of Handgun Carry Permit is deleted in its entirety.

~~1340-2-4-18 ADMINISTRATIVE HEARING AFTER SUSPENSION OR REVOCATION OF HANDGUN CARRY PERMIT.~~

~~1340-02-04-05 Administrative Hearing after Suspension or Revocation of Handgun Carry Permit.~~

- ~~(1) — A person who has received a notice of suspension or revocation of a handgun carry permit will have the right to make a written request for an administrative hearing pursuant to the Uniform Administrative Procedures Act, Title IV, Chapter 5 to challenge such suspension or revocation.~~
- ~~(2) — The written request for an administrative hearing must be filed with the department within thirty (30) days from the date appearing on the notice. Failure to make such request for hearing within the time specified shall without exception constitute a waiver of such right.~~
- ~~(3) — The person must surrender the handgun carry permit at the time of the request of the hearing is made, if the person has not previously surrendered such permit. Failure of the person to surrender such permit at the time the request for hearing is made, shall, without exception, constitute a waiver of such right.~~
- ~~(4) — A request for a hearing will not stay the suspension or revocation.~~
- ~~(5) — Within thirty (30) days from the date the request for hearing is filed, the department will establish a hearing date and set the case on a docket. This shall not be construed as requiring the hearing to be conducted within the thirty (30) day period.~~
- ~~(6) — The hearing will be held at a place designated by the department.~~
- ~~(7) — The department will provide written notice of the time and place of the hearing to the party requesting the hearing at least ten (10) days prior to the scheduled hearing, unless the party agrees to waive this requirement.~~
- ~~(8) — The hearing officer will be the commissioner or an authorized representative designated by the commissioner.~~
- ~~(9) — The hearing officer will have the authority to:
 
  - ~~(a) — Administer oaths and affirmations;~~
  - ~~(b) — Examine witnesses and take testimony;~~
  - ~~(c) — Receive relevant evidence;~~~~

- (d) ~~Issue subpoenas, take depositions, or cause depositions or interrogatories to be taken;~~
  - (e) ~~Regulate the course and conduct of the hearing; and~~
  - (f) ~~Make a final ruling on the issues.~~
- (10) ~~The sole issue at the hearing will be whether by a preponderance of the evidence the person has violated any provision of this rule or T.C.A. § 39-17-1351 thru 1360.~~
- (11) ~~If the hearing officer finds in favor of the department, the suspension or revocation order will be sustained. The department will also notify the sheriff or chief law enforcement officer of the permittee's county of residence of such finding.~~
- (12) ~~If the hearing finds in favor of the person requesting the hearing, the suspension or revocation order will be rescinded. The department will also notify the sheriff or chief law enforcement officer of the permittee's county of residence of such finding.~~
- (13) ~~The hearing will be recorded.~~
- (14) ~~The decision of the hearing officer will be rendered in writing, and a copy will be provided to the person who requested the hearing.~~
- (15) ~~If the person who requested the hearing fails to appear without just cause, the right to a hearing will be waived and the department's earlier determination will be final.~~
- (16) ~~Witnesses under subpoena will be entitled to the same fees as are now or may hereafter be provided for witnesses in civil actions in the circuit court and, unless otherwise provided by law or by law or by action of the agency, the party requesting the subpoena will bear the cost of paying fees to the witnesses subpoenaed.~~
- (17) ~~An appeal from the final decision of the department under these administrative procedures is to the chancery court of the permittee's county of residence.~~

Authority: ~~T.C.A. §§ 4-3-2009; 39-17-1351; 39-17-1353; 39-17-1354; 39-17-1355; 39-17-1358 and 39-17-1360.~~

Rule 1340-02-04-19 Direct Judicial Review after Denial, Suspension, or Revocation of Handgun Carry Permit is deleted in its entirety.

**1340-2-4-19 DIRECT JUDICIAL REVIEW AFTER DENIAL, SUSPENSION, OR REVOCATION OF HANDGUN CARRY PERMIT.**

- (1) ~~In the case of a denial of a handgun carry permit, the applicant shall have a right to directly petition the general sessions court of his or her county of residence within thirty (30) days from the date appearing on the notice of denial for judicial review of the departmental denial of a permit. A copy of the petition is to be sent to the district attorney, and the Department of Safety at the address on the petition. The clerk of the court will forward a copy of the petition for review to the sheriff who will serve it on the state. Alternatively, the clerk of the court may return a copy of the petition to the petitioner who will then lodge it with the sheriff who will mail it to the state via certified return receipt mail. In either instance, the sheriff must serve the petition for judicial review upon the Commissioner of the Department of Safety.~~
- (2) ~~In the case of a suspension or revocation, the permittee may, as an alternative to the administrative review process set forth in Rule 1340-2-4-18, within thirty (30) days of the issuance of the final determination of the department, directly petition the general sessions court of the person's residence, for judicial review. A copy of the petition is to be sent to the district attorney, and the Department of Safety at the address on the petition.~~
- (3) ~~The district attorney general of the county where the petition is filed shall represent the department.~~
- (4) ~~The district attorney general's office shall notify the Handgun Carry Permit Section in the Department of Safety upon receipt of a handgun carry permit petition. The district attorney general shall advise the Handgun~~

~~Carry Permit Section of any pending hearing date on the petition.~~

~~(5) — The district attorney general's office shall immediately notify the Handgun Carry Permit Section of any disposition of any hearing or settlement on the filed petition.~~

~~(6) — The district attorney general shall advise the Handgun Carry Permit Section as to whether the case should or should not be appealed.~~

~~Rule 1340-02-04-.20 Reinstatement of Handgun Carry Permit after Suspension or Revocation is deleted in its entirety.~~

~~**1340-2-4-.20 REINSTATEMENT OF HANDGUN CARRY PERMIT AFTER SUSPENSION OR REVOCATION.**~~

~~(1) — Notwithstanding the provisions of paragraph (2); prior to the reinstatement of a handgun carry permit after a suspension or revocation, such person will be required to meet all statutory and regulatory eligibility requirements and finger-printing requirements. Such persons will also be required to have successfully completed a Department of Safety approved handgun safety course including exceptions as provided in Rule 1340-2-4-.05(4) within the previous six months, and pay the one hundred and fifteen dollar (\$115.00) application fee.~~

~~(2) — Prior to reinstatement of a permit suspended pursuant to 1340-2-4-.15(3) and (4), the permittee shall pay a reinstatement fee of twenty five dollars (\$25.00) with one half of such fee payable to the Department of Safety and one half payable to the court that suspended the permit.~~

~~(a) — Prior to the reinstatement of the permit, the permittee shall have paid in full all fines, court costs, and restitution, if any, required by the sentencing court.~~

~~(b) — The applicant must complete any terms of probation imposed by the court. Such failure to complete any terms of probation imposed by the court shall be a bar to reinstatement of the handgun carry permit.~~

~~(c) — Prior to the reissuance of the permit, the department shall verify that the permittee has complied with all reinstatement requirements of subdivision (a) by furnishing the department with certification from the court that the permittee has paid in full all fines, and court costs, and restitution; and has completed any terms of probation imposed by the court.~~

~~Rule 1340-02-04-.21 Grandfathering Permits Issued on or after October 1, 1994 is deleted in its entirety.~~

~~**1340-2-4-.21 GRANDFATHERING PERMITS ISSUED ON OR AFTER OCTOBER 1, 1994.**~~

~~(1) — Any person holding a valid handgun carry permit issued on or after October 1, 1994 may request the department to issue a new permit card under this rule.~~

~~(2) — The applicant shall be required to disclose under oath that such applicant still satisfies all the requirements of T.C.A. § 39-17-1351 and this rule for the issuance of a permit.~~

~~(3) — The applicant shall be required to pay the fifty dollar (\$50.00) renewal fee.~~

~~(4) — The applicant shall make available, the current permit received from the sheriff or the chief law enforcement officer, for copying purposes by the department.~~

~~(5) — The department shall also photograph the applicant in a manner that is suitable for use on the permit.~~

~~Rule 1340-02-04-.22 Change of permittee's Principal Place of Residence is deleted in its entirety.~~

~~**1340-2-4-.22 CHANGE OF PERMITTEE'S PRINCIPAL PLACE OF RESIDENCE.**~~

~~1340-02-04-.06 Change of Permittee's Principal Place of Residence.~~

~~(1) — A permittee will notify the department in writing within sixty (60) days of any change in such permittee's~~

~~principal place of residence and advise the department of the new address.~~

- ~~(2) The permittee will submit to the department the permit containing the old address when the permittee makes a request for a change of residence.~~
- ~~(3) The department will not issue a new permit with the new address until the old permit has been submitted to the department.~~
- ~~(4) The department will issue the permittee a receipt for such address change and give a copy of the original permit to the permittee.~~
- ~~(5) The permittee will be entitled to use the receipt and the copy of the original permit as a handgun permit until receipt of the new handgun permit.~~
- ~~(6) The process for making a change of address will be conducted at a full-service driver license station.~~

~~Authority: T.C.A. §§ 4-3-2009, 39-17-1357 and 39-17-1360.~~

~~Rule 1340-02-04-.23 Change of Permittee's Name is deleted in its entirety.~~

~~1340-2-4-.23 CHANGE OF PERMITTEE'S NAME.~~

- ~~(1) A permittee will notify the department within sixty (60) days of any change in such permittee's name and advise the department of the new name.~~
- ~~(2) The permittee will submit to the department the permit with the previous name when the permittee makes request for a name change.~~
- ~~(3) The department will not issue a new permit with the new name until the old permit has been submitted to the department.~~
- ~~(4) The department will issue the permittee a receipt for such name change and give a copy of the original permit to the permittee.~~
- ~~(5) The permittee will be entitled to use the receipt and the copy of the original permit as a handgun permit until receipt of the new permit. The process for making a change of name will be conducted at a full-service driver license station.~~

~~Authority: T.C.A. §§ 4-3-2009 and 39-17-1360.~~

\* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

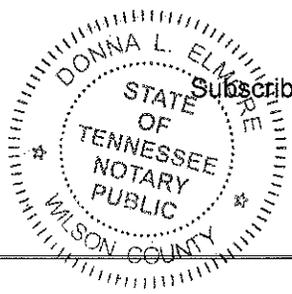
I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Department of Safety and Homeland Security on 07-02-2012, and is in compliance with the provisions of TCA 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 07/02/2012

Signature: [Handwritten Signature]

Name of Officer: Lieutenant Robert Eckerman

Title of Officer: Program Director, Handgun Permits



Subscribed and sworn to before me on: 7-2-12

Notary Public Signature: Donna L. Elmore

My commission expires on: 1-26-14

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

[Handwritten Signature]  
Robert E. Cooper, Jr.  
Attorney General and Reporter  
7-16-12  
Date

**Department of State Use Only**

Filed with the Department of State on: 7-19-12

Effective on: 12-29-12

[Handwritten Signature]  
Tre Hargett  
Secretary of State

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