

# TITLE 10: CIVIL SERVICE COMMISSION

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Subchapter Authority: 1 CMC §§ 8116, 8117; N.M.I. Const. art. XX; Executive Order 94-3 § 214 (effective August 23, 1994).

Subchapter History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004);\* Amdts Proposed 26 Com. Reg. 22914 (Aug. 26, 2004);\* Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002);\* Amdts Proposed 23 Com. Reg. 18750 (Dec. 21, 2001);\* Amdts Adopted 22 Com. Reg. 17543 (Oct. 20, 2000); Amdts Proposed 22 Com. Reg. 17355 (Aug. 18, 2000); Amdts Adopted 22 Com. Reg. 17279 (June 20, 2000); Amdts Proposed 22 Com. Reg. 17099 (Apr. 20, 2000); Amdts Adopted 21 Com. Reg. 16701 (Apr. 19, 1999); Amdts Proposed 21 Com. Reg. 16455 (Feb. 18, 1999); Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com. Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997); Amdts Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Amdts Proposed 19 Com. Reg. 15638 (Sept. 15, 1997); Amdts Adopted 19 Com. Reg. 14894 (Jan. 15, 1997); Amdts Emergency and Proposed 18 Com. Reg. 14357 (Oct. 15, 1996); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 12 Com. Reg. 7139 (June 15, 1990); Amdts Proposed 11 Com. Reg. 6148 (Apr. 15, 1989); Amdts Adopted 11 Com. Reg. 6156 (Apr. 15, 1989); Amdts Proposed 11 Com. Reg. 5854 (Feb. 15, 1989); Amdts Adopted 10 Com. Reg. 5579 (July 15, 1988); Amdts Proposed 10 Com. Reg. 5557 (June 15, 1988); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Amdts Adopted 6 Com. Reg. 3175 (Oct. 15, 1984); Amdts Proposed 6 Com. Reg. 3123 (Aug. 15, 1984); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

\*As of December 2004, notices of adoption for the August 2004, May 2002 and December 2001 amendments had not been published.

Commission Comment: Regarding the history of the Civil Service Commission in the Commonwealth, see the general commission comment to chapter 10 and subchapter 20.1 of this title.

### **Part 001 - General Provisions; Purpose and Scope**

#### **§ 10-20.2-001 Purpose**

This subchapter implements the provisions of 1 CMC §§ 8101, et seq., and subsequent amendments thereto, which establish a Personnel Service System in the government of the Commonwealth of the Northern Mariana Islands.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Proposed 23 Com. Reg. 18750 (Dec. 21, 2001); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: When it promulgated the 1988 amendments, the Civil Service Commission readopted and republished all of the then existing Personnel Service System Rules and Regulations. The Commission, therefore, cites the 1988 amendments in the history sections throughout this subchapter.

The 2001 proposed amendments republished all of part 001. The Commission, therefore, cites the 2001 amendments in the history sections throughout this part. As of December 31, 2004, the Civil Service Commission had not adopted the December 2001 amendments, and therefore, the Commission has not incorporated the proposed changes.

#### **§ 10-20.2-005 Policy**

(a) It is hereby declared to be the policy of this subchapter to establish a system of personnel administration based on merit principles and generally-accepted methods to govern the

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classification of positions and the employment, conduct, movement, and separation of public officials and employees.

(b) It is also declared to be the purpose of these regulations to build a career service which will attract, select, and retain the best-qualified civil servants on merit who shall hold their offices or positions free from coercion, discrimination, reprisal, or political influences, with incentives in the form of genuine opportunities for promotion in the public service, and to provide competent and loyal personnel to render impartial service to the public at all times according to the dictates of ethics and morality. In order to achieve this purpose, it is declared to be the policy of the Commonwealth government that the personnel system hereby established be applied and administered in accordance with the following merit principles:

- (1) Equal opportunity for all, regardless of age, race, color, religion, sex, national origin, place of origin, marital status, political affiliation or belief, or disability;
- (2) Impartial selection of the most able person for government service by means of competitive tests which are fair, objective, and practical;
- (3) Just opportunity for competent employees to be promoted within the service;
- (4) Reasonable job security for the competent employee;
- (5) Systematic classification of all positions and personnel through adequate job descriptions and periodic performance evaluations;
- (6) Fair and practical grievance procedures for all employees pertinent to condition of employment; and
- (7) Flexibility in employer-employee relations to achieve and maintain a well-trained, productive, and happy work force.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Proposed 23 Com. Reg. 18750 (Dec. 21, 2001); Amdts Adopted 19 Com. Reg. 14894 (Jan. 15, 1997); Amdts Emergency and Proposed 18 Com. Reg. 14357 (Oct. 15, 1996); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

The 1997 amendments amended subsection (b)(1). See also the commission comment to § 10-20.2-001.

The Commission inserted commas after the words “movement” in subsection (a), “select” and “reprisal” in subsection (b), “objective” in subsection (b)(2), and “productive” in subsection (b)(7) pursuant to 1 CMC § 3806(g).

### § 10-20.2-010 Coverage

(a) This subchapter applies to all employees and positions now existing or hereafter established in the executive branch of the Commonwealth government and all personnel services performed for the executive branch, with the following exceptions:

- (1) Employees and positions covered by the United States Civil Service System, until and unless exempted by the United States Office of Personnel Management or by United States law;
- (2) Persons or organizations retained by contract where the Personnel Officer has certified that the service to be performed is special or unique and nonpermanent, is essential to the public

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interest, and that because of the degree of expertise or special knowledge required and the nature of the services to be performed, it would not be practical to obtain personnel to perform such services through normal public service recruitment procedures;

(3) Positions of a temporary nature needed in the public interest where certified by the Personnel Officer and when the need for the same does not exceed ninety days; provided, however, that in the event of a disaster declared by the President of the United States or by the Governor, the Personnel Officer may extend the 90-day period for a maximum of an additional one hundred eighty days for positions engaged in relief, repair, or rehabilitation as a result of such disaster;

(4) Household and domestic employees at the official residence of the Governor;

(5) Election inspectors, election clerks, and other election employees;

(6) Persons appointed by the Governor to fill executive positions;

(7) Positions specifically exempt by any other law of the Commonwealth;

(8) Personnel presently under contract of employment who are not included in subsection (a)(2) of this section but only during the life of the contract. No contract of employment shall be entered into, renewed, or amended after August 11, 1978, the effective date of the Civil Service Act, except subject to the provisions hereof;

(9) Any position involving intermittent performance which does not require more than forty hours in any one month;

(10) Positions of a part-time nature requiring the services of four hours or less per day but not exceeding one year in duration; and

(11) Positions of a temporary nature which involve special projects having specific completion dates which shall not exceed one year.

(b) The Personnel Officer shall determine the applicability of this section to specific positions not expressly covered by the Civil Service Act, 1 CMC §§ 8101, et seq.

Modified, 1 CMC § 3806(d), (e), (f), (g).

History: Amdts Proposed 23 Com. Reg. 18750 (Dec. 21, 2001); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: In subsection (a)(3), the Commission corrected the spelling of “personnel.” See also the commission comment to § 10-20.2-001. The Commission inserted commas after the words “repair” in subsection (a)(3) and “clerks” in subsection (a)(5) pursuant to 1 CMC § 3806(g).

### § 10-20.2-015 Scope

This subchapter covers nearly all aspects of personnel management and administration, and includes but is not limited to development and promulgation of personnel policy, staffing, position classification, employee relations, employee development and training, employee benefits and services, incentives and awards, performance evaluation, employee health services, employee safety and accident prevention, labor-management relations, personnel management program evaluation, and records and reports. Each of the foregoing elements is presented in detail in subsequent parts of this subchapter.

Modified, 1 CMC § 3806(d).

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History: Amdts Proposed 23 Com. Reg. 18750 (Dec. 21, 2001); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-001.

### § 10-20.2-020 Eligibility for Employment

It is the policy of the government that the personnel system shall be applied and administered according to the principle of equal opportunity for all persons regardless of age, race, color, religion, sex, national origin, place of origin, marital status, political affiliation or belief, or disability.

History: Amdts Proposed 23 Com. Reg. 18750 (Dec. 21, 2001); Amdts Adopted 19 Com. Reg. 14894 (Jan. 15, 1997); Amdts Emergency and Proposed 18 Com. Reg. 14357 (Oct. 15, 1996); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-001.

## Part 100 - Organization for Personnel Management

### § 10-20.2-101 Personnel Management

(a) Personnel management is the responsibility of all Commonwealth government executives, managers and supervisors who direct the work of others.

(b) The Personnel Officer has the specific responsibility to plan, develop and implement programs and procedures which give effect and meaning to the laws of the Commonwealth, *vis-a-vis* the government workforce, giving due consideration to the changing needs of the several programs that are now in progress and those to be initiated in the future.

(c) It is the policy of the Civil Service Commission to continuously promote improved labor relations, human relations and communications, and satisfying work conditions in order to provide all employees the opportunity to satisfy their needs for recognition, a sense of personal worth, and personal achievement.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 23 Com. Reg. 18750 (Dec. 21, 2001); Amdts Adopted 11 Com. Reg. 6156 (Apr. 15, 1989); Amdts Proposed 11 Com. Reg. 5854 (Feb. 15, 1989); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The 1988 amendments designated subsections (a) through (c). The 1989 amendments amended subsection (a).

The 2001 proposed amendments republished all of part 100. The Commission, therefore, cites the 2001 amendments in the history sections throughout this part. As of December 31, 2004, the Civil Service Commission had not



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adopted the December 2001 amendments, and therefore, the Commission has not incorporated the proposed changes.

### § 10-20.2-105 The Personnel Officer

The provisions of 1 CMC §§ 8101, et seq., and this subchapter shall govern the administration of the Personnel Service System. Subject to this subchapter and laws, the Personnel Officer shall:

- (a) Direct and supervise all the administrative and technical activities of the Personnel Office;
- (b) Administer the system of personnel administration for the Commonwealth government;
- (c) Act for the Civil Service Commission in the exercise of its appointing authority under 1 CMC §§ 8101, et seq., and Constitutional Amendment No. 41;
- (d) Advise the Governor and the Governor's staff on all matters concerning personnel management and administration, employee training, and staff housing;
- (e) Formulate and recommend to the Civil Service Commission policies and regulations to carry out the provisions of 1 CMC §§ 8101, et seq.;
- (f) Cooperate fully with and attend or arrange for a representative to attend meetings of the Civil Service Commission and advise the Commission on technical matters as required;
- (g) Encourage and exercise leadership in the development of effective personnel administration practices within the government and make available the equipment, staff, and facilities of the Personnel Office to this end;
- (h) Foster and develop, in cooperation with management officials, programs to promote the Personnel Service System, improve employee efficiency, and increase employee productivity;
- (i) Develop and maintain an adequate position classification and compensation plan;
- (j) Administer recruitment and examination programs and determine when employees meet specific job qualification requirements;
- (k) Provide advice and assistance to management on matters of employee discipline and grievance and appeal procedures;
- (l) Develop training programs to elevate employee skills and increase employee productivity;
- (m) Administer a staff housing program for the Commonwealth government;
- (n) Establish and maintain records of all personnel in the Personnel Service System;

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- (o) Interpret and administer this subchapter; and
- (p) Perform any other activities deemed necessary to assure effective implementation of the merit system.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Proposed 23 Com. Reg. 18750 (Dec. 21, 2001); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-101.

The Commission inserted commas after the words “training” in subsection (d) and “staff” in subsection (g) pursuant to 1 CMC § 3806(g).

### **§ 10-20.2-110 The Civil Service Commission**

The Civil Service Commission represents the public interest in matters concerning the Personnel Service System. Subject to the provisions of 1 CMC §§ 8101, et seq., and Constitutional Amendment No. 41, the Commission shall:

- (a) Prepare a comprehensive personnel management plan and proposed personnel policies of the government, hereinafter referred to as the “Personnel Service System,” and submit copies thereof to the Governor and the Legislature;
- (b) Oversee the operation of the Personnel Office;
- (c) Hold hearings and decide appeals of employees for disciplinary actions, for suspensions of more than three working days, demotions, and dismissals from the service. The Commission may utilize the services of qualified hearing officers where such services are deemed essential by the Commission. Hearings shall be public except when the appealing employee requests a closed hearing;
- (d) Administer oaths to witnesses in any matter pending before the Commission;
- (e) Subpoena witnesses and/or documents in any matter pending before the Commission; and
- (f) Perform any other lawful act(s) required by law or deemed by the Commission to be necessary to carry out its duties.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Proposed 23 Com. Reg. 18750 (Dec. 21, 2001); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

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Commission Comment: The 1988 amendments added new subsection (e) and redesignated subsection (f) accordingly. See also the commission comment to § 10-20.2-101.

The Commission inserted a comma after the word “demotions” in subsection (c) pursuant to 1 CMC § 3806(g).

### **Part 200 - Staffing**

#### **§ 10-20.2-201 Introduction**

(a) This part covers the staffing elements necessary to acquire, maintain, reassign, promote, and release employees of the Personnel Service System. The subparts treat specifically and in detail the regulations which govern in the execution of the respective functions. Merit principles, open competition and, in specific application, employee seniority, shall underlie all considerations in implementing these staffing functions.

(b) Appointing authorities are executive department, activity heads, and other public officials who are authorized to expend appropriated funds pursuant to law. Non-Commonwealth employees shall not be delegated the authority to effect change in personnel actions.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 11 Com. Reg. 6156 (Apr. 15, 1989); Amdts Proposed 11 Com. Reg. 5854 (Feb. 15, 1989); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: This provision was a forward to the original part III. See 9 Com. Reg. at 5302 (Dec. 15, 1987). The Commission designated it § 10-20.2-201 and created the section title. The original paragraphs were not designated. The Commission designated subsections (a) and (b).

The 1989 amendments added new subsection (b). The 2002 proposed amendments republished all of part 200. The Commission, therefore, cites the 2002 amendments in the history sections throughout this part. As of December 31, 2004, the Civil Service Commission had not adopted the May 2002 amendments and the Commission has not incorporated the proposed changes.

The Commission inserted commas after the words “promote” in subsection (a) and “heads” in subsection (b) pursuant to 1 CMC § 3806(g).

### **Subpart A - Examinations**

#### **§ 10-20.2-202 General**

This subpart prescribes the examining system to be used in the Personnel Service System. It describes the several types of examinations, the assembly of eligible lists, and the referral of eligibles from those lists to selecting officials.

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

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Commission Comment: This provision was a forward to the original part III, subpart A. See 9 Com. Reg. at 5302 (Dec. 15, 1987). The Commission designated it § 10-20.2-202 and created the section title. See also the commission comment to § 10-20.2-201.

The Commission inserted a comma after the word “lists” pursuant to 1 CMC § 3806(g).

### § 10-20.2-203 Competitive Examinations

All examinations shall be competitive and open to the public except where specifically exempted. All examinations shall be either:

(a) Assembled, wherein the applicants assemble in a designated place at a specific time to take written or performance tests that fairly measure the knowledge, skills, or abilities required by the particular position (or class of positions) sought. Assembled examinations shall be conducted under conditions affording maximum security at all times to protect the confidential nature of examination questions and related documents.

(b) Unassembled, wherein the candidates responding to an examination announcement submit, to designated places and by designated times, their records of education, training, experience, and such other information as requested in the announcement, to be evaluated and rated by a qualified analyst or by a board of rating examiners. The examination shall stipulate the dates of opening and closing of the examination, the forms to be used for filing, and the places to which the forms and associated information shall be sent.

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 19 Com. Reg. 14894 (Jan. 15, 1997); Amdts Emergency and Proposed 18 Com. Reg. 14357 (Oct. 15, 1996); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The 1997 amendments amended subsection (a). See also the commission comment to § 10-20.2-201.

The Commission inserted a comma after the word “experience” in subsection (b) pursuant to 1 CMC § 3806(g).

### § 10-20.2-204 Non-competitive Examinations

Non-competitive examinations, either assembled or unassembled, may be used when, in the judgment of the Personnel Officer, one of the following conditions or circumstances occurs:

(a) The position to be filled requires rare or special qualifications or training which do not permit competition;

(b) There is a lesser number of qualified applicants than there are positions to be filled;

(c) To determine the qualifications of an employee to be placed as a redress for error or omission in processes under the merit promotion program; or

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(d) To determine qualifications as part of the in-service placement process, or for placement of persons with reinstatement eligibility.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-201.

### § 10-20.2-205 Examination Announcements

Examination announcements shall contain, as a minimum, the following information:

- (a) Class title, pay, and pay level of the position;
- (b) Brief description of the duties and responsibilities;
- (c) Geographical and organizational location of the position;
- (d) Minimum bona fide occupational qualifications for the position to include general experience, specialized experience, and such qualitative evaluation elements as may be deemed appropriate and necessary;
- (e) Instructions on how to apply for the examination, including place to apply, form of application required, and documentary support required; and
- (f) Period of the announcement. In no instance shall this be less than fifteen calendar days. This period may be extended by the Personnel Officer if the response has been inadequate, provided that the extension shall be announced in the same manner as the original announcement.

Modified, 1 CMC § 3806(e).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 19 Com. Reg. 14894 (Jan. 15, 1997); Amdts Emergency and Proposed 18 Com. Reg. 14357 (Oct. 15, 1996); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The 1997 amendments amended subsection (d). See also the commission comment to § 10-20.2-201.

The Commission inserted comma after the words “pay” in subsection (a) and “experience” in subsection (d) pursuant to 1 CMC § 3806(g).

### § 10-20.2-206 Publicity

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Optimum publicity shall be given to examination announcements through posting in the Personnel Office and at such other places as may be designated by the Personnel Officer (e.g., official bulletin boards in offices or work places). In addition, public announcements through the news media may be used. Department directors shall make every effort to bring announcements to the attention of all personnel under their jurisdiction.

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-201.

### § 10-20.2-207 Content of Examinations

Examinations shall be practical and reasonable and shall examine for the bona fide occupational qualifications necessary to perform the duties of the positions to be filled. Any acceptable method of examination may be used, including verification and evaluation of education, training, experience, aptitude, and character of the applicants and any other accepted examination method deemed appropriate by the Personnel Officer.

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 19 Com. Reg. 14894 (Jan. 15, 1997); Amdts Emergency and Proposed 18 Com. Reg. 14357 (Oct. 15, 1996); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-201.

The Commission inserted a comma after the word “aptitude” pursuant to 1 CMC § 3806(g).

### § 10-20.2-208 Continuous Examinations

When difficulty is experienced in attracting sufficient numbers of qualified applicants for vacancies in the Personnel Service System, the Personnel Officer may issue a continuous examination. Notice of closing of a continuous examination shall be posted at least fifteen calendar days prior to the final closing date for such examination.

Modified, 1 CMC § 3806(e).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-201.

### § 10-20.2-209 Admissions to Examinations

Applications for examination shall be made on forms prescribed by the Personnel Officer. Proper completion of applications and submission of supplemental information shall be accomplished in accordance with the examination announcement and established procedures. Applications shall

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be signed and such signature shall certify to the truth of all statements contained therein. A knowingly false answer or statement shall be grounds for denying admission to the examination, removal from the eligible list, or for dismissal from the Personnel Service System if the person is employed prior to the discovery of a false answer or statement. The Personnel Officer shall designate persons authorized to accept applications. Applications for specific positions shall be accepted only during the period specified on the examination announcement. Applications submitted by mail shall be postmarked no later than the announced closing date. Late applications will not be accepted unless approved by the Personnel Officer because of unusual circumstances. Such determination shall be made a matter of record and similar circumstances in other examinations shall be treated equally.

Modified, 1 CMC § 3806(g).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The Commission corrected the spelling of the word “eligible.” See also the commission comment to § 10-20.2-201.

### **§ 10-20.2-210 Disqualification of Applicants**

The Personnel Officer may refuse to examine an applicant for failure to meet requirements for admission to the examination. Applicants who do not meet the minimum qualifications shall be notified as soon as practical. If an applicant is disqualified following placement on an eligible list, the applicant’s name shall be removed from the eligible list.

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-201.

### **§ 10-20.2-211 Notification of Acceptance for Assembled Examination**

Each applicant who has been accepted shall be given sufficient advance notice of the date, time, and place of an assembled examination; inclusion of the requisite information on the examination announcement meets this notification requirement. No applicant shall be entitled to take an assembled examination at a date, time, or place other than that stated in the notification unless specifically authorized by the Personnel Officer. The Personnel Officer shall not be responsible if a notice is lost in the mails or sent to an applicant’s former address through failure of an applicant to report a change of address. Where mail service is not adequate to meet these notification appointments, oral notification in person, by telephone, or by radio may be given if the foregoing time and content provisions are met and if such oral notification is properly documented.

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

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Commission Comment: See the commission comment to § 10-20.2-201.

The Commission inserted commas after the words “time” and “telephone” pursuant to 1 CMC § 3806(g).

### § 10-20.2-212 Conduct of Assembled Examinations

The Personnel Officer shall appoint a representative to administer the examinations at the time and place designated in the notification of acceptance for examination or the examination announcement.

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-201.

### § 10-20.2-213 Cancellation of Examinations

Examinations may be cancelled at any time by the Personnel Officer if there is no longer need for eligibles covered by the examination, or if the examination no longer meets the expressed requirements of the government.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-201.

### § 10-20.2-214 Rating of Examinations

(a) Examinations shall be rated by a qualified rating examiner from the Personnel Office.

(b) Appropriate statistical techniques and procedures shall be used in scoring and rating examinations and determining the relative ranking of candidates on competitive examinations. The final rating required to pass an examination shall be set by the Personnel Officer, who may also set minimum ratings for each part of the examination when the examinations are arranged in readily identifiable parts. The final earned ratings of each candidate shall be determined by combining the earned ratings of each part of the examination in accordance with the weights established for each part.

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Amdts Adopted 6 Com. Reg. 3175 (Oct. 15, 1984); Amdts Proposed 6 Com. Reg. 3123 (Aug. 15, 1984); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The 1984 amendments amended subsection (a). See also the commission comment to § 10-20.2-201.



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### **§ 10-20.2-215 Reviews of Examination Results**

Any applicant may request a review of his/her rating within ten calendar days following notification of examination results. Such request for review shall be addressed to the Personnel Officer, who shall comply with the request and make whatever changes, if any, the facts warrant.

Modified, 1 CMC § 3806(e).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-201.

### **§ 10-20.2-216 Changes in Rating**

Changes in rating may be made as a result of correction of errors in the scoring or rating process, or as a result of a request for review wherein the facts warrant a change. Correction of errors shall be applied equally to all participants. An amended notice of rating shall be reported to all applicants affected by such change in rating.

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-201.

### **§ 10-20.2-217 Establishment of Eligible Lists**

(a) Following the completion of an open competitive examination and rating process, the Personnel Officer shall establish eligible lists called “Registers of Eligibles,” in which all candidates who receive an eligible or passing rating on the examination shall be listed. The Register of Eligibles shall list the candidates in the order of their respective ratings, highest rating first. When the Personnel Officer provides a list of eligibles to a management official, the names of those candidates with the highest rating shall be certified first. A Register of Eligibles shall be considered “established” when approved by the Personnel Officer.

(b) In the event a list of eligibles for any position contains less than five names and the appointing authority deems the range of choice to be inadequate, the Personnel Officer shall announce a new examination.

(c) In the event two or more applicants have identical ratings, their names shall be placed according to their scores on the most heavily weighted portion of the examinations. If all portions are identical, the receipt time of their applications will determine priority. An open competitive list shall be certified by the Personnel Officer only after it has been determined that a qualified candidate is not available through the reemployment priority list or promotional examinations.

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Modified, 1 CMC § 3806(e).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Amdts Adopted 6 Com. Reg. 3175 (Oct. 15, 1984); Amdts Proposed 6 Com. Reg. 3123 (Aug. 15, 1984); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: The 1984 amendments amended subsection (a). See also the commission comment to § 10-20.2-201.

### § 10-20.2-218 Certification from Eligible Lists

(a) Appointments and promotions in the Personnel Service System shall be made from certified eligible lists resulting from examinations, except as otherwise provided by this subchapter. The process of providing a list of eligible candidates to a selecting official is known as “Certification of Eligibles.” A Certificate of Eligibles shall be drawn from among the highest rated candidates in precise numerical order, highest rate first. Where a list of eligibles exceeds five names, only the top five names shall be certified. The appointing authority shall be entitled to the certification of not less than five eligibles for each vacancy, however, when less than five persons comprise a list of eligibles, the appointing authority may accept such lesser number or return the list until sufficient names are available. If a selecting official intends to fill more than one position from the same examination at the same time, the number of names certified shall be increased by one eligible for each additional position to be filled, where possible.

(b) Requests for eligibles shall be made on forms prescribed by the Personnel Officer and shall clearly identify the position to be filled, including its position number.

(c) The selecting official shall justify, in writing, to the Personnel Officer the non-selection of any eligible with a higher rating than the candidate selected. Such requirement creates no special standing for the candidate(s) with a higher rating.

(d) No person shall report to work nor receive a salary unless an appropriate personnel action has been approved by the Personnel Officer or authorized representative.

Modified, 1 CMC § 3806(d), (e), (f).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 11 Com. Reg. 6156 (Apr. 15, 1989); Amdts Proposed 11 Com. Reg. 5854 (Feb. 15, 1989); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: The 1989 amendments added a new subsection (c). The final paragraph was not designated. The Commission designated it subsections (d). See also the commission comment to § 10-20.2-201.

### § 10-20.2-219 Procedure When Eligibles Are Required

Whenever eligibles are required, the Personnel Officer shall:

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- (a) Prepare the examination announcement;
- (b) Administer the examination; and
- (c) Establish an eligible list, as determined by the examination results.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-201.

### **§ 10-20.2-220 Removal of Names from Eligible Lists**

The Personnel Officer may remove the name of any person who has been disqualified under § 10-20.2-210. The name of any person may also be removed if:

- (a) The eligible candidate fails to respond within fifteen calendar days from the date of dispatch of an inquiry as to availability for employment, provided that the name may be restored for reasons deemed sufficient by the Personnel Officer.
- (b) The person is appointed from that list to a permanent position in the Personnel Service System.
- (c) The eligible voluntarily withdraws.
- (d) There is evidence of physical or mental unfitness to perform the duties of the position, as indicated by appropriate medical examination.
- (e) The eligible fails to report for duty within the time prescribed by the selecting official.
- (f) The eligible is found to be no longer qualified to perform the duties required of the class of position.
- (g) Intentional false statements, deception, or fraud is included in the application or in the examination process or appointment.

Modified, 1 CMC § 3806(c), (e).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-201.

The Commission inserted a comma after the word “deception” in subsection (g) pursuant to 1 CMC § 3806(g).

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### § 10-20.2-221 Selective Certification

Where the Personnel Officer determines that a position has a special requirement which is not a general qualification requirement for that class of position, s/he may certify from the appropriate class eligible list those eligibles who meet that specific requirement.

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-201.

### § 10-20.2-222 Use of Eligible Lists

Whenever a vacancy arises in the Personnel Service System, the official responsible for initiating the process to fill that position has the following options:

(a) When the position has promotional potential, the first option shall be to fill the position under the provisions of the merit promotion program.

(b) When the position to be filled does not have promotional potential, the selecting officer may request certification from the appropriate reemployment priority list or eligible list or choose to redefine the position at a lower level and fill it through the merit promotion program. If the position is in an established career ladder, it must be filled at the entry level unless there are overriding reasons not to do so. The Personnel Officer is authorized to grant exceptions to this procedure upon proper justification. Promotional examinations and open examinations may be announced concurrently but the promotional list will be used first. Appropriate records of such approvals and associated material shall be maintained by the Personnel Officer.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 11 Com. Reg. 6156 (Apr. 15, 1989); Amdts Proposed 11 Com. Reg. 5854 (Feb. 15, 1989); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The 1989 amendments amended subsections (a) and (b). See also the commission comment to § 10-20.2-201.

### § 10-20.2-223 Duration of Eligible Lists

The life of an eligible list, other than the reemployment priority list, shall be for one year, unless extended by the Personnel Officer. An eligible list may be extended up to one year beyond its original expiration date. No person shall be retained on an eligible list beyond the period of extension of the original list. Remaining eligibles shall be combined with those on the new list for the remainder of the term of the original list. An open examination eligible list and a non-competitive examination eligible list shall be combined only as a non-competitive eligible list. If an eligible candidate successfully participates in a subsequent competitive examination and the

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resulting eligible list is combined with that of a previous competitive examination eligible list bearing the candidate's name, that eligible candidate may elect to have his/her name retained on a combined list, either at the position and for the remainder of the term of the original list or of the subsequent list, but not at both positions.

Modified, 1 CMC § 3806(e), (g).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The Commission deleted the repeated word "a" in the phrase "on a combined list." See also the commission comment to § 10-20.2-201.

### § 10-20.2-224 Order of Use of Eligible Lists

The following order shall be followed in the use of eligible lists:

- (a) Reemployment Priority List
- (b) Promotional List
- (c) Open Competitive List.

Modified, 1 CMC § 3806(g).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The Commission inserted the final period. See the commission comment to § 10-20.2-201.

### § 10-20.2-225 Reemployment Priority List

Any person who has held a permanent position in the Personnel Service and has been demoted or terminated through reduction-in-force shall be permitted to have his/her name placed on a reemployment priority list (provided such person so requests in writing to the Personnel Officer). The name of such person shall be placed on the reemployment priority list for the same or related class of position as such person last held under a permanent appointment. Names shall be arranged on the reemployment priority list in the chronological order of their separation from their respective competitive levels. Names shall be removed from the reemployment priority list at the expiration of three years from the date of separation or demotion, or sooner if such person is reemployed in a position at the same or higher pay level as that such person formerly held in the Personnel Service System. The individual may be removed from the list if such person refuses a reasonable offer of employment. A reasonable offer is of the same position or one equivalent to that last held in the Personnel Service.

Modified, 1 CMC § 3806(e).

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History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-201.

### **Subpart B - Positions and Appointments**

#### **§ 10-20.2-230 Types of Positions**

All positions in the Personnel Service shall be identified in the records of the Office of Personnel Management as permanent, or such other status as is authorized by law.

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: When it promulgated the 1995 amendments, the Civil Service Commission readopted and republished all of part 200, subpart B. The Commission, therefore, cites the 1995 amendments in the history sections throughout this subpart. See also the commission comment to § 10-20.2-201.

#### **§ 10-20.2-231 Permanent Position**

A permanent position is a full-time position which is established based upon the continuing need of the government and which is authorized to continue longer than one year.

Modified, 1 CMC § 3806(e).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-201.

#### **§ 10-20.2-232 Types of Appointments**

Appointments in the Personnel Service System are placed in the classes defined in the following:

(a) **Probationary Appointment.** An appointment in which the appointee is selected from an eligible list resulting from an open examination to fill a permanent position. The appointee shall serve a period of not less than six and not more than twelve months from the beginning of the probationary appointment and shall demonstrate the capacity for 26 consecutive weeks of satisfactory performance before being eligible to be converted to a permanent appointment. Separations during a probationary appointment are not processed under adverse action procedures or reduction-in-force (RIF).

(b) **Permanent Appointment.** An employee who has been appointed to a permanent position and who has satisfactorily completed a probationary period is entitled to the full benefits of this

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subchapter. Permanent appointment may be made to less than full-time positions with a regularly scheduled tour of duty.

(c) **Limited-term Appointment.** A limited-term appointment is one in which the appointee is appointed for a period of not more than one year. An employee serving a limited-term may serve in either a full-time or part-time position. Any person given a limited-term appointment must meet the minimum qualifications for the class of position to which appointed. Appointing authorities shall justify, in writing, to the Director of Personnel Management, requests for new limited-term appointments following expiration of one year appointments. Limited-term appointments may be converted to permanent appointments at the end of one year, if the position has been found to be permanent, provided that the employee has demonstrated the capacity for 52 consecutive weeks of satisfactory performance.

(d) **Provisional Appointment.** A provisional appointment is usually limited to ninety days and is used to fill a permanent position in the absence of an appropriate eligible list. The Director of Personnel Management may authorize extension of a provisional appointment beyond ninety days for a maximum of one hundred eighty days when the examination fails to make available an adequate number of qualified candidates. Any person given a provisional appointment must meet the minimum qualifications for the class of position to which appointed.

(e) **Emergency Appointment.**

(1) An emergency appointment may be authorized by the Director of Personnel Management for any one of the following purposes:

(i) When a serious emergency exists; or

(ii) To prevent stoppage of essential public services.

(2) An emergency appointment shall be limited to thirty calendar days but may be extended by the Director of Personnel Management, if the appointing authority so requests in writing, when the cause is determined to be good and sufficient, and the extension does not exceed twenty additional working days.

(3) All persons receiving emergency appointments shall be required to meet the minimum qualification requirements of the class of position to which appointed.

(f) **Temporary Appointment.** A temporary appointment is utilized when it is anticipated that an employee will temporarily occupy a position for a period in excess of three months. An employee can be temporarily promoted only if the employee meets the qualification standards of the new position. See § 10-20.2-320.

(g) **“Acting” Appointment.**

(1) An “acting” appointment is the official written designation that an employee will act for a period of up to thirty days in place of a supervisor. When the supervisor’s absence exceeds the initial thirty day period, a new designation shall be made for an additional thirty days. The thirty day renewal of an “acting” assignment may be repeated until the supervisor returns to the position.

(2) Whenever the “acting” assignment exceeds ninety days, the employee shall be temporarily promoted/ appointed to the position if the employee meets the qualifications standards of the position. See § 10-20.2-322.

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Modified, 1 CMC § 3806(c), (d), (e), (f), (g).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 11 Com. Reg. 6156 (Apr. 15, 1989); Amdts Proposed 11 Com. Reg. 5854 (Feb. 15, 1989); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Amdts Adopted 6 Com. Reg. 3175 (Oct. 15, 1984); Amdts Proposed 6 Com. Reg. 3123 (Aug. 15, 1984); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: In subsections (e) and (g), the paragraphs were not designated. The Commission designated subsections (e)(1) through (e)(3) and (g)(1) and (g)(2).

The 1984 amendments amended subsection (c). The 1989 amendments amended subsections (a) through (c). The 1995 amendments amended subsection (a) and readopted the entire section. See also the commission comment to § 10-20.2-201.

In subsection (d), the Commission corrected the spelling of “adequate.”

### **§ 10-20.2-233 Pre-employment Condition Standards**

All persons appointed to positions in the Personnel Service System must be examined by medical personnel (see § 10-20.2-234) and certified as physically capable of performing the duties of the position. They must be free from communicable diseases and any present or potential medical condition which would be detrimental to the successful performance of duty or to the health of other employees, or reflect discredit upon the Personnel Service System. However, if a claim is made by a candidate or appointee that the condition constitutes a disability under the federal Americans with Disabilities Act (ADA), the provisions of that Act shall be followed, as applicable. Persons offered positions within the Civil Service must also submit to a urine test for the presence of drugs. See § 10-20.2-424(a).

Modified, 1 CMC § 3806(c).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com. Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997); Amdts Adopted 19 Com. Reg. 14894 (Jan. 15, 1997); Amdts Emergency and Proposed 18 Com. Reg. 14357 (Oct. 15, 1996); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-201.

### **§ 10-20.2-234 Administration of Physical and Medical Examinations**

Physical and medical examinations shall be administered by medical personnel authorized by the Commonwealth government to conduct such examinations for employment purposes, and shall be recorded on forms prescribed by the Director of Personnel Management. Urine tests for candidates shall be conducted in accordance with § 10-20.2-428.

Modified, 1 CMC § 3806(c), (f).



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History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com. Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-201.

### § 10-20.2-235 Prohibited Actions

(a) Employment of any person without an approved personnel action is prohibited. Supervisors or management officials who permit an employee to report to work without an appropriate and formally approved personnel action shall be held personally liable for any claim for compensation resulting from such improper appointment as provided by 1 CMC §§ 8101, et seq.

(b) Retroactive personnel actions shall not be made unless approved by the Director of Personnel Management prior to commencement of such action.

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: The 1995 amendments amended subsections (a) and (b). See also the commission comment to § 10-20.2-201.

### § 10-20.2-236 Reemployment

(a) An employee who has successfully completed a probationary period in the Personnel Service and subsequently left the Personnel Service for any reason shall be granted reemployment eligibility for a period following the separation equal to the employee's total full years of creditable service with the government. This means that the former employee may be reappointed to the former position in the Personnel Service at the same pay level and step that the employee held upon separation. If re-appointed to a higher or a lower class, the employee shall be allowed to retain the former rate of pay.

(b) The possession of reemployment eligibility does not thereby provide the person with any mandatory reemployment rights. This means that the individual may be considered for employment only after persons with higher rating on the reemployment priority list have been considered. If it is in the public interest, such person may be reemployed, provided such person meets the noncompetitive qualifications for the position to be filled.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

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Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b). See also the commission comment to § 10-20.2-201.

### § 10-20.2-237 Orientation

New employees shall receive a standardized orientation to government service as soon as is practical after being appointed, and at least within one month of appointment.

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 11 Com. Reg. 6156 (Apr. 15, 1989); Amdts Proposed 11 Com. Reg. 5854 (Feb. 15, 1989).

Commission Comment: See the commission comment to § 10-20.2-201.

### Subpart C - Merit Promotion Program

#### § 10-20.2-240 Policy

(a) To the maximum extent possible, the Personnel Service System Merit Promotion Program provides for filling vacancies above the entry level by promotion of highly qualified Personnel Service System employees. This policy does not restrict the right of appointing authorities to fill vacancies by transfer or other means when to do so is in the best interest of the government.

(b) The Merit Promotion Program (MPP) is an integral part of the Personnel Service System manager/executive development plan and other programs in the area of staffing, training, and manpower utilization.

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b). See also the commission comment to § 10-20.2-201.

The Commission inserted a comma after the word “training” in subsection (b) pursuant to 1 CMC § 3806(g).

#### § 10-20.2-241 Definitions

(a) “Position Change:” A promotion, transfer, or demotion during an employee’s continuous service.

(b) “Promotion:” The change of an employee to a higher position class and pay level.

(c) “Career-ladder Position:” One of a group of positions in which an employee may be given successive promotions until the employee reaches the full performance level. All employees in positions in a career ladder must be given grade-building experience and training and are may be to the next higher level as they demonstrate ability to perform in a wholly

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adequate manner at the next higher level. Minimum time-in-grade requirements, where established, must be observed in making career ladder promotions.

(d) “Promotion Competition:” Those eligible candidates whose experience, training, and potential substantially exceed the qualification standard for the position to a degree that they are likely to perform in a superior manner.

(e) [Reserved.]

(f) “Best Qualified Candidates:” Those eligible candidates who rank at the top when compared with the other eligible candidates for a promotion within a general group, i.e., qualified or highly qualified.

(g) “Position with Known Promotion Potential:” A position which is to be filled below the specified performance level for the position. These may be trainee and understudy positions, career ladder positions and positions filled one or more levels below the established level.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: It appears that an error occurred in the 1988 amendment and re-adoption of subsections (d) and (e). Originally, subsections (d) and (e) stated:

(d) Current Competition: The selection process in which candidates compete with each other for a specific promotional vacancy.

(e) Highly Qualified Candidates: Those eligible candidates whose experience, training, and potential substantially exceed the qualification standard for the position to a degree that they are likely to perform in a superior manner.

See 5 Com. Reg. at 2305 (Aug. 31, 1983).

The 1988 amendments provided the former definition of “highly qualified candidates” as the definition for subsection (d), “promotion competition,” and omitted subsection (e). The Commission reserved subsection (e) to facilitate the correction of this error, if necessary. See also the commission comment to § 10-20.2-201. The Commission inserted commas after the words “transfer” in subsection (a) and “training” in subsection (d) pursuant to 1 CMC § 3806(g). The Commission inserted quotation marks around terms defined.

### § 10-20.2-242 Scope and Coverage

Competitive promotion procedures apply to:

(a) All competitive positions in the Personnel Service System when filled by promotion.

(b) Any position which is filled by a candidate at a basic pay level higher than the candidate’s last position; and

(1) The position is filled by transfer;

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- (2) The position is filled by selection of a non-temporary Personnel Service System employee from an eligible list following an open competitive examination; or
  - (3) The position is filled by detail for more than ninety days duration. (NOTE: All periods of detail of an employee to the position during the preceding twelve months, including promotion, are counted against the 90-day limitation.)
- (c) Any position with known promotion potential which is filled by transfer or selection from the reemployment priority list.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Amdts Adopted 6 Com. Reg. 3175 (Oct. 15, 1984); Amdts Proposed 6 Com. Reg. 3123 (Aug. 15, 1984); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: The 1984 amendments amended subsection (b)(2). See also the commission comment to § 10-20.2-201.

### § 10-20.2-243 Areas of Consideration

As a minimum, areas of consideration should be broad enough to provide a reasonable number of highly qualified candidates and to give employees adequate opportunity for consideration for promotion.

- (a) Normal Areas of Consideration. There are two different normal areas of consideration:
  - (1) Inter-island (Commonwealth-wide) for positions at pay level 22 and above; and
  - (2) Intra-island (within each island) for positions at pay level 21 and below.
- (b) Broadened Area of Consideration. At the discretion of the Personnel Officer, the areas of consideration may be broadened to the extent necessary to provide a reasonable number of “highly qualified” candidates.
- (c) Restricted Areas of Consideration. In exceptional circumstances, the area of consideration may be restricted upon prior approval by the Personnel Officer. For example, during a formal reorganization of one entity, the area of consideration may be restricted to the affected organization, provided no vacancies result from the reorganization.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-201.

### § 10-20.2-244 Methods of Locating Candidates

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When the Personnel Office processes a promotion request, it selects the appropriate method or combination of methods for locating candidates which is/are entered in the promotion processes record. The following methods are generally used, singly or in combination, depending upon the nature of the position and availability of candidates.

(a) **Promotional Opportunity Announcement.** A published announcement for posting and distribution and given maximum publicity within the area of consideration. The promotional opportunity announcement specifies:

- (1) Title, pay level and location of position(s);
- (2) Opening and closing dates (not less than fifteen calendar days);
- (3) Area of consideration;
- (4) Duties of the position, briefed;
- (5) Conditions of employment, e.g., night work, hazards, standby, etc.;
- (6) Qualification requirements, including selective placement factors, if any;
- (7) How and where to apply;
- (8) Non-discrimination statement; and
- (9) Known promotional potential, if any.

(b) **Restricted Area of Consideration.** When positions are being filled from within a “restricted area of consideration,” all eligible persons within that area must be considered.

Modified, 1 CMC § 3806(e), (f), (g).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: In subsection (b), the Commission corrected the spelling of “consideration.” See also the commission comment to § 10-20.2-201.

### **§ 10-20.2-245 Transfer**

An employee may be transferred, without change in pay level, either voluntarily or involuntarily, in order to meet changing program needs, to promote career development, to provide diversity of experience, or for other reasons. Transfers under this regulation are not subject to the promotion program unless the position to which transferred has known promotion potential. Transfers are made, wherever possible, from among employees who have requested such transfers. However, management may direct lateral transfers from among all qualified Public Service System employees when required by the needs of the service and in accordance with applicable personnel regulations.

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-201.

### **§ 10-20.2-246 Qualification Standards**

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(a) The minimum qualification standards prescribed by the Personnel Officer are used for promotion purposes. Selective placement factors also may be used, but only when they are essential to successful performance in the position to be filled. When selective placement factors are used, they become part of the minimum qualifications for the position.

(b) Qualification standards (including any selective placement factors used) must be established and made a matter of record prior to the start of the promotion process for any specific position. All employees who meet the minimum qualification standards (including selective placement factors) have basic eligibility for promotion. The standards must be applied fairly and consistently to all employees being considered. Written or performance tests shall be used if they are prescribed by the Personnel Officer.

(c) For supervisory positions, supervisory qualifications are prescribed by the Personnel Officer. They may be supplemented by specific subject matter (non-supervisory) qualification standards for the classification series of the position.

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) through (c). See also the commission comment to § 10-20.2-201.

### **§ 10-20.2-247 Conditions of Employment**

(a) There are conditions of employment which are considered implicit to successful performance in certain positions. These conditions may relate to hours of work, physical or medical standards, maintenance of a license, maintenance of a health standard, availability during off-hours, frequent need to travel, and so on. Such conditions should be made part of the promotion record, the promotion opportunity announcement and the classification standard or, as a minimum, the position description.

(b) Candidates selected for the position must be advised of the conditions and acknowledge those conditions in writing. However, with respect to physical or medical standards, if a candidate claims a disability under the federal Americans with Disabilities Act (ADA), the provisions of that act shall be followed, as applicable.

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 19 Com. Reg. 14894 (Jan. 15, 1997); Amdts Emergency and Proposed 18 Com. Reg. 14357 (Oct. 15, 1996); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b). The Commission inserted a comma after the word “travel” in subsection (a) pursuant to 1 CMC § 3806(g).

The 1997 amendments amended subsection (b) and republished and readopted the entire section. See also the commission comment to §10- 20.2-201.

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### § 10-20.2-248 Evaluation Process

(a) Since the Merit Promotion Policy requires that the selection be made from among the best qualified candidates, the evaluation process must go beyond basic eligibility to rank the candidates in meaningful array. When properly used, the evaluation process should:

(1) Provide a sound basis for comparing and judging candidates in relation to the knowledge, skills, abilities, and personal characteristics that contribute to successful performance of the position.

(2) Identify those qualities which demonstrate a candidate's potential for future promotion, when the job being filled leads to further advancement.

(3) Distinguish between the knowledge and skills that an employee must have at the time of promotion and those the employee can acquire quickly after the promotion, through experience and training.

(b) In selecting the proper method of evaluating candidates, recognition should be given to the future staffing needs of the organization as well as the current requirements of the positions to be filled.

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b). The Commission inserted a comma after the word "abilities" pursuant to 1 CMC § 3806(g). See also the commission comment to § 10-20.2-201.

### § 10-20.2-249 Evaluation Measures

The various measures for evaluating candidates are:

(a) **Written Tests.** Written tests may be used in the evaluation process, but may not be the sole means of evaluation. Written tests must be approved by the Personnel Officer or meet such standards as established by the Personnel Officer.

(b) **Appraisal of Performance.** A supervisory appraisal must be obtained for every employee who is qualified. Appraisals may be obtained from supervisors other than the employee's immediate supervisor.

(c) **Experience.** In evaluating experience the objective is to determine how closely the experience relates to the new position or level of work. Length of service is a factor only when there is a clear and positive relationship with quality of performance.

(d) **Awards.** In considering awards received by the candidates, the weight assigned must be based on those elements necessary to successful performance for the position to be filled.

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- (e) Training. An appropriate weight is given for pertinent training, self-development, and outside activities which would increase the employee's potential or effective performance in the position to be filled.
- (f) Education. Education may be considered only if it is clearly job-related or if it provides a measure of the learning ability essential for genuine trainee positions.
- (g) Qualifications Investigation. A qualification investigation may be used to assist in determining experience, training, degree of responsibility exercised, and effectiveness. Inquiries may be made to assist in judging how well a candidate is likely to perform at a higher level or in a different kind of work.
- (h) Oral Interview. Individual or group interviews may be held. Oral questions may relate either to subject matter knowledge or to other matters pertinent to the position or the candidate. If oral questions are in the nature of a test, the same questions and sequence must be asked of each candidate and a record of their answers made part of the promotion record.

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-201.

The Commission inserted commas after the words "self-development" in subsection (e) and "exercised" in subsection (g) pursuant to 1 CMC § 3806(g).

### **§ 10-20.2-250 Selection Procedure**

- (a) Selection is based on the selecting individual's judgment of how well the candidate will perform in the position to be filled and the candidate's potential for advancement. When there are less than five names available, the selecting authority is not required to select someone from the merit promotion certificate. However, if returning the certificate, the selecting authority must state how the position will be filled.
- (b) If the selecting authority disagrees with the merit promotion certificate, objections must be stated in writing with a request for the Personnel Officer to review rankings.
- (c) The selecting authority notes the name of the person selected on the merit promotion certificate. Reasons for selection do not have to be cited. The Personnel Officer notifies all eligible candidates of the selection, including the person selected.
- (d) When the promotion involves a move between organizations, the effective date is negotiated, and barriers may not be placed against the employee's release by the losing organization. The interval between notification of selection and the release date may not be more than thirty calendar days unless agreed to by the gaining organization. When the move between organizations also involves a move between islands, the appointing authority concerned must give prior approval of the selection.



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(e) When a first-line supervisory position is filled, a determination is made as to the amount of supervisory training needed to meet the standard. The selecting individual and Personnel Officer will determine and, where necessary, schedule the training needed to meet the standard.

Modified, 1 CMC § 3806(e), (g).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Amdts Adopted 6 Com. Reg. 3175 (Oct. 15, 1984); Amdts Proposed 6 Com. Reg. 3123 (Aug. 15, 1984); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The 1984 amendments amended subsection (e). See also the commission comment to § 10-20.2-201.

### § 10-20.2-251 Information to Employees

(a) Employees' acceptance and support of the Personnel Service System promotion program depends to a large extent on how well they understand its purpose and operation and are aware of its effect on them individually. The program does not guarantee a promotion to every employee, but it does give every employee an opportunity for fair consideration.

(b) New employees will receive promotion program information as part of their orientation. All employees will receive this information from time to time.

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-201.

### § 10-20.2-252 Employee Questions and Complaints

(a) Employee Questions. Any employee who has filed in response to a promotional opportunity announcement or who has been considered for promotion may present questions to the Personnel Office which handled the vacancy, within seven calendar days after receipt of notification of selection. Questions may be submitted in person, in writing, or through a representative. Among other considerations, an employee is entitled to know:

- (1) The level of eligibility for a specific promotion;
- (2) If considered for specific promotion and, if so, whether found eligible;
- (3) If in the group from which selection was made; and
- (4) Who was selected for the promotion.

(b) Employee Complaints. If the employee is dissatisfied and the matter cannot be resolved on an informal basis, the employee may have recourse to part 200, subpart G, Grievance Procedure. Mere failure to be selected for promotion when proper promotion and selection procedures were used is not a basis for a formal complaint.

Modified, 1 CMC § 3806(d), (e), (f).

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History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The 1988 amendments added a new subsection (a)(1). See also the commission comment to § 10-20.2-201.

### § 10-20.2-253 Review of Promotion Program

The Personnel Officer appraises the operation of the Merit Promotion Program at least once a year as part of the personnel management evaluation process to assure:

- (a) Promotion guidelines and plans are as effective as possible;
- (b) The promotion program is useful to management;
- (c) Promotion actions are taken promptly and in conformance with the plan;
- (d) Employee complaints are handled promptly and properly;
- (e) Promotion actions are used effectively to encourage competent employees, to open expanded careers to them, and to make the best use of their skills; and
- (f) Employees, supervisors and managers have a full understanding of the promotion program process.

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-201.

### Subpart D - Suspensions, Separations and Demotions

#### § 10-20.2-255 General

This subpart applies to suspensions, furloughs, separations, and demotions not resulting from reduction-in-force (RIF).

History: Amdts Proposed 26 Com. Reg. 22914 (Aug. 26, 2004); Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: This provision was a forward to the original part III, subpart D. See 9 Com. Reg. at 5320 (Dec. 15, 1987). The Commission designated it § 10-20.2-255. See also the commission comment to § 10-20.2-201.

As of December 2004, a notice of adoption for the August 2004 amendments had not been published.

The Commission inserted a comma after the word “separations” pursuant to 1 CMC § 3806(g).

**§ 10-20.2-256 Separations Not Involving Personal Cause**

(a)(1) Resignation. Resignations shall be in writing and shall be submitted at least fourteen calendar days in advance of the effective date. The Personnel Officer may designate management and highly skilled technical classes for which this period may be extended to thirty days.

(2) The appointing authority shall submit a copy of the written resignation and the necessary terminating documents to the Personnel Office for consummation of the action. Withdrawal of a resignation may be permitted provided:

- (i) The employee's wishes are made known, in writing, prior to the effective date; and
- (ii) The appointing authority agrees to the proposed withdrawal.

(b) Exit Interview. An exit interview shall be scheduled and conducted during working hours by the Personnel Officer or his designee for employees upon notice of resignation or retirement. Such interview shall include questions on the reasons for separation and counseling on benefits. The Personnel Officer or his designee shall not process exit documents until the interview is completed. If circumstances make such interview impractical, an employee may ask the Personnel Officer to waive this requirement.

(c) Retirement, Voluntary. An employee may be separated for the purpose of voluntary retirement, provided the employee meets the eligibility standards for age and service covered under the Northern Mariana Islands Retirement Program.

(d) Termination for Medical Reasons.

(1) When an employee contacts an infectious or contagious disease which endangers the health of others, or becomes mentally incapacitated, or is otherwise permanently physically disabled for the satisfactory performance of duties of the position to which assigned, the Personnel Officer may terminate the employee provided:

- (i) No suitable reassignment can be made within the department or location to which the employee is assigned; and
- (ii) Medical examination procedures, as outlined in § 10-20.2-234, have been complied with.

(2) However, if a claim is made by the employee that the medical reason constitutes a disability under the federal Americans with Disabilities Act (ADA), the provisions of that act shall be followed, as applicable.

(3) An employee whose services are terminated under this part may be eligible for disability retirement under the NMI retirement program. The responsibility for applying for disability retirement rests with the employee although it is the responsibility of the Personnel Officer to assure that the employee is aware of such an opportunity.

(e) Voluntary Demotion. An employee may volunteer for demotion to a lower class of position at a lower pay level. The approval of such a request by the appropriate management officials must be contingent upon the following factors:

- (1) A vacant position in the class and pay level must be available within the jurisdiction of the management official concerned.
- (2) No additional cost shall accrue to the government as a result of or incident to the demotion action.

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(3) The salary of the demoted employee in the lower level position shall be set at the same numerical step in the lower level position as the employee received in the higher position.

Modified, 1 § 3806(c), (e), (f).

History: Amdts Proposed 26 Com. Reg. 22914 (Aug. 26, 2004); Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 19 Com. Reg. 14894 (Jan. 15, 1997); Amdts Emergency and Proposed 18 Com. Reg. 14357 (Oct. 15, 1996); Amdts Adopted 11 Com. Reg. 6156 (Apr. 15, 1989); Amdts Proposed 11 Com. Reg. 5854 (Feb. 15, 1989); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: The original paragraphs of subsections (a) and (d) were not designated. The Commission designated subsections (a)(1) and (a)(2) and (d)(1) through (d)(3).

The 1989 amendments added a new subsection (b) and redesignated subsections (c) through (e). The 1997 amendments added a new subsection (d)(2). See also the commission comment to § 10-20.2-201.

The 2004 amendments proposed to amend subsections (a)(1), (b), (c) and (d)(1)(ii) and delete subsection (d)(2). As of December 2004, a notice of adoption had not been published.

### **§ 10-20.2-257 Furloughs, Suspensions, Separations for Personal Cause, and Demotions for Disciplinary Reasons (Adverse Actions)**

(a) Authority to Take Adverse Action. Unless specified by law, the authority to hire is followed by the authority to effect adverse actions. For this purpose, appointing authorities shall include the Governor, the Lieutenant Governor, staff officers, the Personnel Officer, department directors, resident department heads, and chairpersons of boards and commissions. These persons may delegate, in writing, authority to effect adverse actions to division heads of departments or to executive directors of boards and commissions. The authority to effect adverse actions may not be further delegated or re-delegated. Throughout this part the term “appointing authority” will refer only to an individual who is specifically granted authority by this part to effect adverse actions.

(b) Employee Coverage. This part applies to all permanent employees of the government, as provided under Constitutional Amendment No. 41 and 1 CMC §§ 8101, et seq., except:

- (1) Employees whose appointments must be made with the advice and consent of the Legislature;
- (2) Employees, temporarily promoted, to be returned to their former positions from which temporarily promoted;
- (3) Employees and appointees in positions excepted by the Commonwealth Constitution;
- (4) Employees under the Offices of the Mayors as stated in 1 CMC §§ 5101, et seq.; and
- (5) Employees hired under special contracts for a specified term not to exceed one year.

(c) Merit of Adverse Action. An action against an employee may not be taken under this part except for “such cause as will promote the efficiency of the service.”

(d) Admonishment. An admonishment is an informal disciplinary measure. A manager or supervisor may discuss at any time minor deficiencies in performance or conduct with the

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objective of improving an employee's effectiveness. Admonishments shall not be made a matter of record.

(e) **Reprimand.** A reprimand is a formal means of calling to an employee's attention minor deficiencies in performance or conduct which, if continued, may result in further disciplinary measures. It is the first formal step in the disciplinary process. Reprimands are always in writing and should contain specific references to performance deficiencies, citations of instances of misconduct, and a warning that more stern disciplinary measures may be taken if the employee's performance or conduct is not improved. A copy of the reprimand becomes a part of the employee's official personnel folder (OPF). There is no recourse to formal appeal processes as a result of a reprimand; however, an employee who feels a reprimand is not justified may resort to the grievance procedure. (See part 200, subpart G.)

(f) **Furlough.** A furlough is an action placing an employee in a non-duty and non-pay status because of lack of work or funds. It is an adverse action if for a period of thirty calendar days or less. Furloughs of more than thirty calendar days are reduction-in-force actions and shall be accomplished using reduction-in-force procedures. (See part 200, subpart E.)

(g) **Suspension Not to Exceed Three Working Days.** A suspension is an action placing an employee in a non-duty and non-pay status for disciplinary reasons for a period not to exceed three working days. There is no formal appeal from such a suspension, although the employee may resort to the grievance procedure if the employee feels the suspension is improper or not justified. (See part 200, subpart G.) A suspension without pay for periods less than five working days shall only be imposed in respect to an employee who is covered by the overtime provisions of the Fair Labor Standards Act (FLSA). An employee who is exempt from the overtime provisions of the Fair Labor Standard Act (FLSA) shall receive suspensions without pay for not less than five working days. The period of suspension shall consist of five work day periods, for example, five days, ten days, and fifteen days. Suspensions in respect to an exempt employee shall be served on consecutive days and for entire workweeks.

(h) **Suspension for More than Three Working Days.** A suspension is an action placing an employee in a non-duty and non-pay status for disciplinary reasons. Appointing authorities authorized to take adverse actions may suspend an employee for such cause as will promote the efficiency of the government service, provided all adverse action procedures are followed.

(i) **Abandonment of Job.**

(1) An employee absent without leave (AWOL) without valid reason, for a combined total of ten working days in any twelve month period may be terminated from employment for job abandonment, provided all adverse action procedures are followed.

(2) As of the last day of such AWOL, the employee's absence may be considered in effect a resignation. An appointing authority may cancel such termination, however, if it determines that circumstances warrant such cancellation. Nothing in this section shall preclude an appointing authority from taking disciplinary action against an employee for absence without leave.

(j) **Removals.** Appointing authorities may take removal action against an employee for just cause provided all adverse action procedures are followed.

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(k) Reduction in Rank or Pay. Appointing authorities may take action to reduce an employee in rank or pay for cause.

(1) “Reduction in rank” means more than one numerical grade or pay level under the classification system. Basically, it means lowering an employee’s relative standing in the organizational structure as determined by the employee’s official position description. An employee’s position assignment may be changed only by an official personnel action. When an employee is made the subject of an official personnel action which results in lowering the employee’s relative standing in the organizational structure, a reduction in rank has occurred even though there has not been a reduction in class or pay level. Such actions may be taken only under adverse action procedures.

(2) “Reduction in pay” means reduction in basic class and pay level of an employee. The base pay is fixed by law or administrative action. Base pay does not ordinarily encompass extra or additional payment for special conditions or duties which are generally regarded as premium pay or allowances. To reduce class and pay level for disciplinary reasons, appointing authorities authorized to take such actions must follow adverse action procedures.

(l) Separation during Probation

(1) If it becomes evident during the probationary period that the employee lacks the ability, attitude or desire to become an efficient and productive employee in the position to which appointed, or there is lack of funds or work to be done, that employee shall be separated from the service. However, if the probationary employee claims that the apparent lack of ability, attitude, or desire is due to a disability under the Americans with Disabilities Act (ADA), the provisions of that act shall be followed, as applicable.

(2) Appointing authorities who find it necessary to separate an employee during probation shall provide the employee with not less than fourteen calendar days’ notice, in writing, specifying the reasons for the separation. The employee shall be afforded the right to discuss the situation with the management official next above the one initiating the separation. If such management official does not make a final decision known to the employee before the separation date, the employee may seek the assistance of the Personnel Officer to have the separation date extended for an additional fourteen calendar days. The Personnel Officer may reject such request for good cause.

(3) Grievance, adverse action, or reduction-in-force procedures do not apply to separations during probation.

(m) Procedure for Taking Adverse Actions. Appointing authorities must observe certain procedural requirements when processing adverse actions covered in this subpart. These procedural requirements are presented here in abbreviated form. A letter of proposed adverse action must be reviewed by the Personnel Officer and the Attorney General, or their designees, before issuance. Procedures for removal, suspension for more than three working days, furlough without pay, and reduction in rank or pay are as follow:

(1) The appointing authority must give the employee at least thirty days’ advance written notice of the proposed action. In the event that criminal charges are filed against an employee, the employee shall be immediately suspended without pay, reassigned, or subject to such other action as management may deem necessary. In the event the charges are dismissed or the

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employee is found not guilty, the employee shall be reinstated with benefits and pay retroactive to the date of suspension.

(2) The notice must state any and all reasons for the proposed action specifically and in detail.

(3) The employee has the right to answer personally and/or in writing. The employee shall be allowed not more than twenty days to answer the notice of proposed action. Except as noted in subsection (m)(5) below, three work days within the allowed twenty days shall be official time in which to secure affidavits and prepare an answer. The Personnel Officer may extend the official time not to exceed three additional work days.

(4) If the employee answers, management must consider that answer.

(5) If at all practicable, the employee must be kept on active duty in the regular position during the notice period. In an emergency, however, the employee may be suspended during the advance notice period and placed on leave without pay (LWOP) or, with the employee's consent, carried on annual leave. An employee whose adverse action is based on conduct prohibited by § 10-20.2-418 shall not be allowed to perform any safety-sensitive functions. If there are no safety sensitive functions an employee can perform, an emergency exists and the employee must be placed on leave without pay. If an employee's adverse action is based on conduct prohibited by § 10-20.2-418 and the employee was involved in an injury-causing accident, the employee shall be placed on LWOP pending resolution of the proposed adverse action. See § 10-20.2-420(d).

(6) Management must give the employee a written decision before the adverse action is effected. The decision must state which of the reasons in the advance notice have been found sustained and which have been found not sustained.

(7) The decision must tell the employee of appeal rights.

(8) Advance written notice and opportunity to answer are not necessary if the employee is furloughed due to unforeseeable circumstances, such as sudden breakdowns in equipment, acts of God, or emergencies requiring curtailment of activities.

Modified, 1 CMC § 3806(c), (d), (e), (f).

History: Amdts Proposed 26 Com. Reg. 22914 (Aug. 26, 2004); Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 22 Com. Reg. 17543 (Oct. 20, 2000); Amdts Proposed 22 Com. Reg. 17355 (Aug. 18, 2000); Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com. Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997); Amdts Adopted 19 Com. Reg. 14894 (Jan. 15, 1997); Amdts Emergency and Proposed 18 Com. Reg. 14357 (Oct. 15, 1996); Amdts Adopted 10 Com. Reg. 5579 (July 15, 1988); Amdts Proposed 10 Com. Reg. 5557 (June 15, 1988); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Amdts Adopted 6 Com. Reg. 3175 (Oct. 15, 1984); Amdts Proposed 6 Com. Reg. 3123 (Aug. 15, 1984); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: The 1984 amendments amended subsections (b), (m)(1) and (m)(5). The July 1988 amendments amended subsection (a). The February 1988 amendments added new subsection (i) and redesignated the remaining subsections (j) through (m). The January 1997 amendments amended subsection (l)(1). The November 1997 amendments amended subsection (m)(5). The 2000 amendments amended subsection (g). See also the commission comment to § 10-20.2-201.

Prior to the 1988 amendments, subsection (i) was a separate section (former section III.D.2). See 5 Com. Reg. at 2313 (Aug. 31, 1983). The Commission designated subsections (i)(1) and (2).

The August 2004 amendments proposed to repromulgate this section in its entirety with numerous amendments. As of December 2004, a notice of permanent adoption had not been published.

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The Commission inserted commas after the words “heads” in subsection (a), “days” in subsection (g), “action” in subsection (l)(3), and “pay” in subsection (m) pursuant to 1 CMC § 3806(g).

### **Table 200-1 Steps for an Adverse Action**

1. ADVERSE ACTION PROCEDURAL SYSTEM
2. MANAGEMENT OFFICIAL’S LETTER OF PROPOSED ADVERSE ACTION
3. EMPLOYEE’S ANSWER AND/OR PRESENTATION OF EVIDENCE
4. MANAGEMENT OFFICIAL’S LETTER OF DECISION
5. EMPLOYEE’S WRITTEN APPEAL TO CIVIL SERVICE COMMISSION
6. CIVIL SERVICE COMMISSION HEARING (if requested)
7. CIVIL SERVICE COMMISSION DECISION

(Administrative Remedies Exhausted)

### 8. THE COURTS

History: Amdts Proposed 26 Com. Reg. 22914 (Aug. 26, 2004); Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-201.

### **Subpart E - Reduction-in-force (RIF)**

#### **§ 10-20.2-260 General**

This subpart establishes the general regulations under which reduction-in-force shall be accomplished. This subpart concerns the removal or reduction in class or pay level of employees because of lack of work or funds, or other management requirements, but not for disciplinary reasons. An appointing authority should exhaust all administrative alternatives to place the employee in another equivalent position before reduction-in-force procedures are instituted.

Modified, 1 CMC § 3806(d).

History: Amdts Proposed 26 Com. Reg. 22914 (Aug. 26, 2004); Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: This provision was a forward to the original part III, subpart E. See 9 Com. Reg. at 5326 (Dec. 15, 1987). The Commission designated it § 10-20.2-260. See also the commission comment to § 10-20.2-201.



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As of December 2004, a notice of adoption for the August 2004 amendments had not been published.

### **§ 10-20.2-261 Policy**

It is the policy of the government, within its available resources, to provide job security to every employee. When it becomes necessary to reduce the work force, every effort will be made to insure that the reduction is accomplished with a minimum disruption in operations and a minimum negative impact on each employee affected.

History: Amdts Proposed 26 Com. Reg. 22914 (Aug. 26, 2004); Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The August 2004 amendments proposed to add a new subsection (b). As of December 2004, a notice of adoption for the August 2004 amendments had not been published. See also the commission comment to § 10-20.2-201.

### **§ 10-20.2-262 Coverage**

This subpart applies to all permanent employees of the government, as provided under 1 CMC §§ 8101, et seq., and Constitutional Amendment No. 41, except:

- (a) Employees whose appointments must be made with the advice and consent of the Legislature;
- (b) Employees, temporarily promoted, to be returned to their former positions from which temporarily promoted;
- (c) Employees and appointees in positions excepted by the Commonwealth Constitution;
- (d) Employees under the Offices of the Mayors as stated in 1 CMC §§ 5101, et seq.;
- (e) Employees hired under special contracts for a specified term not to exceed one year; and
- (f) Temporary or probationary employees.

Modified, 1 CMC § 3806(d), (e).

History: Amdts Proposed 26 Com. Reg. 22914 (Aug. 26, 2004); Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The August 2004 amendments proposed to delete subsections (a) through (f). As of December 2004, a notice of adoption for the August 2004 amendments had not been published. See also the commission comment to § 10-20.2-201.

### **§ 10-20.2-263 Reduction-in-force Planning**

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When it becomes evident that reduction-in-force (RIF) must be made, the appointing authority concerned shall provide the Personnel Officer notice of intention to take RIF action at least sixty days in advance. The appointing authority shall then institute administrative procedures to assure that all legitimate possibilities for reassignment have been exhausted and that formal reduction-in-force is the only remaining alternative.

Modified, 1 CMC § 3806(e).

History: Amdts Proposed 26 Com. Reg. 22914 (Aug. 26, 2004); Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The August 2004 amendments proposed to amend subsection (a) and add new subsections (b) and (c). As of December 2004, a notice of adoption for the August 2004 amendments had not been published. See also the commission comment to § 10-20.2-201.

### § 10-20.2-264 Competitive Processes

Detailed competitive processes shall be established by the Personnel Officer to assure equitable competition, recognition of seniority and tenure and protection of the public interest. For administrative purposes, competition shall be limited by the establishment of competitive areas and recognition of competitive levels.

(a) Competitive Areas. For all positions:

- (1) Area 1. Saipan
- (2) Area 2. Rota
- (3) Area 3. Tinian
- (4) Area 4. Northern Islands

(b) Competitive Levels. Competitive levels are comprised of all positions within a competitive area which consist of the same or closely related duties, have essentially the same qualifications, and are in the same class and pay level.

(c) Competition within a Competitive Level.

(1) When a position is abolished within a competitive level, the incumbent shall displace the employee with the lowest retention standing in that competitive level. Persons occupying positions under limited-term appointments in the competitive level shall be terminated before RIF competition is instituted.

(2) If an employee whose position is abolished does not have sufficient retention standing to displace another employee, that employee shall be released from the competitive level to exercise retreat rights or assignment rights or be separated from the service.

(d) Retreat Rights. When an employee has insufficient retention standing to compete within that employee's competitive level, the employee shall compete down the line of promotion. This is known as the exercise of retreat rights. An employee released from a competitive level may displace the employee with the lowest retention standing below that of the released employee in the highest competitive level from which promoted. The employee shall continue to compete at

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successively lower levels along the line of promotion until placed or, if placement cannot be made, separated by reduction-in-force.

- (e) Creditable Service for Reduction-in-force.
  - (1) Trust Territory public service experience since United States administration took over (including WAE until June 30, 1972).
    - (i) Includes trainees. Includes employment under 61 TTC, paragraph 9(d), (f), (h), (l), (m), (n) and (o).
    - (ii) By Director of Personnel memorandum dated January 26, 1972, to all Trust Territory of the Pacific Islands (TTPI) departments and districts, WAE appointments were to be terminated or converted to appointments per Administrative Directive 72-1 dated January 26, 1972. WAE appointments until June 30, 1972, are to be considered as full-time employment and service credited accordingly. After June 30, 1972, for WAE or intermittent employment, time actually worked will be used to compute creditable service.
  - (2) Marianas administration under U.S. Navy and NTTU. Until 1962, when TTPI Headquarters moved to Saipan, the Marianas (Saipan and Tinian) were under Naval Administration. Rota was already included in TTPI Administration prior to 1962.
  - (3) Personnel under municipal governments.
  - (4) All employment within TTPI including: Peace Corps, Micronesian Claims Commission, National Weather Service, and U.S. Coast Guard.
  - (5) U.S. military and civilian service in the Trust Territory. Active military service in United States Armed Forces; civilian service with the U.S. Armed Forces in the TTPI.
  - (6) Employees of judiciary and legislative branches (Congress of Micronesia, municipal councils and district legislatures). Judiciary, including district court judges who may have been or are presently on WAE appointments.
  - (7) Service in the Commonwealth government since April 1, 1976.
  - (8) Trust Territory government employment under the Seaman's Act.
  - (9) Employees of government agencies and instrumentalities within the Commonwealth.
- (f) Retention Standing. Retention standing is derived by allotting one point for each year of creditable service, and two points for each exceptional overall rating of 4.2 or better. In competing with other employees for retention in a competitive level, the individual with lowest retention standing shall be released first. (See § 10-20.2-720)
- (g) Reemployment Priority Lists. Employees serving under permanent appointments who are separated by reduction-in-force shall be placed on an appropriate reemployment priority list for three years or until returned to duty in a permanent position in the Personnel Service System. An appropriate reemployment priority list is the one established for the class and pay level from which the employee was finally separated.

Modified, 1 CMC § 3806(c), (e), (f), (g).

History: Amdts Proposed 26 Com. Reg. 22914 (Aug. 26, 2004); Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 11 Com. Reg. 6156 (Apr. 15, 1989); Amdts Proposed 11 Com. Reg. 5854 (Feb. 15, 1989); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Amdts Adopted 6 Com. Reg. 3175 (Oct. 15, 1984); Amdts Proposed 6 Com. Reg. 3123 (Aug. 15, 1984); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

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Commission Comment: In subsections (a) and (c), the original paragraphs were not designated. The Commission designated subsections (a)(1) through (a)(4) and (c)(1) and (c)(2).

The 1984 amendments amended subsections (c)(1) and (e)(9). The 1989 amendments amended subsection (f). See also the commission comment to § 10-20.2-201.

The August 2004 amendments proposed to repromulgate this section in its entirety with numerous changes. As of December 2004, a notice of adoption had not been published.

In subsections (d) and (f), the Commission corrected the spelling of “displace” and “allotting,” respectively. The Commission inserted commas after the words “qualifications” in subsection (b) and “Service” in subsection (e)(4) pursuant to 1 CMC § 3806(g).

### **§ 10-20.2-265 Limitations on Competition**

(a) Obligated positions are positions from which the incumbent is temporarily absent because of:

- (1) Approved educational leave;
- (2) Temporary promotion; or
- (3) Detail to another activity.

(b) Employees who are incumbents of obligated positions shall not be placed in RIF competition until they have been returned to duty in the obligated position. Similarly, obligated positions shall not be abolished until the employee returns to duty in that position. The Personnel Officer, having jurisdiction over an obligated position, must keep a record thereof in such form or manner that will assure recognition and protection of the obligated position and its incumbent.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 26 Com. Reg. 22914 (Aug. 26, 2004); Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Amdts Adopted 6 Com. Reg. 3175 (Oct. 15, 1984); Amdts Proposed 6 Com. Reg. 3123 (Aug. 15, 1984); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The 1984 amendments amended the opening sentence of subsection (a) and subsection (a)(2).

The August 2004 amendments proposed to repromulgate this section in its entirety with numerous changes. As of December 2004, a notice of adoption had not been published. See also the commission comment to § 10-20.2-201.

### **§ 10-20.2-266 Tenure Groups**

For the purposes of reduction-in-force, Personnel Service employees shall be classed in tenure groups as follow:

- (a) TENURE GROUP I - All permanent employees.
- (b) TENURE GROUP II - Employees serving in a probationary appointment.

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### (c) TENURE GROUP III - Employees serving in limited term or provisional appointments.

History: Amdts Proposed 26 Com. Reg. 22914 (Aug. 26, 2004); Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002);\* Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) through (c).

The August 2004 amendments proposed to repromulgate this section in its entirety with numerous changes. As of December 2004, a notice of adoption had not been published. See also the commission comment to § 10-20.2-201.

### § 10-20.2-267 Furlough and Separation

(a) The Personnel Officer may use furloughs for more than thirty days if there is reasonable assurance that the employees furloughed will be returned to duty within the next twelve months. If there is reasonable doubt regarding the return to duty of furloughed employees, then the appointing authorities concerned must separate the employees found to be in excess of management's needs and proceed according to reduction-in-force procedures.

(b) A combination of furlough and separation may be used to clear the rolls of excess employees, provided no employee is separated while furloughed employees with lower retention standing are kept in furlough status.

(c) Furlough for thirty days or less may be used for clearing the rolls temporarily, not to exceed thirty days when there is positive assurance that employees so furloughed can return to duty within the 30-day period. Adverse action procedures must be used to place an employee in furlough status for thirty days or less.

Modified, 1 CMC § 3806(e).

History: Amdts Proposed 26 Com. Reg. 22914 (Aug. 26, 2004); Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The August 2004 amendments proposed to repromulgate this section in its entirety with numerous changes. As of December 2004, a notice of adoption had not been published. See also the commission comment to § 10-20.2-201.

### § 10-20.2-268 Vacant Positions

During reduction-in-force situations, management has no obligation to fill vacant positions by placement of employees whose positions have been abolished or who have been released from their competitive level.

History: Amdts Proposed 26 Com. Reg. 22914 (Aug. 26, 2004); Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

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Commission Comment: The August 2004 amendments proposed to repromulgate this section in its entirety with numerous changes. As of December 2004, a notice of adoption had not been published. See also the commission comment to § 10-20.2-201.

### § 10-20.2-269 Assignment Rights (Bumping)

(a) Employees released from their competitive level who have exhausted their retreat rights without success may exercise assignment rights provided they:

(1) Meet the qualification requirements and other standards for the position established by the Personnel Officer;

(2) Meet any special qualifying condition which has previously been approved by the Personnel Officer; and

(3) Have the capacity, adaptability, and special skills needed to perform satisfactorily the duties and responsibilities of the position without undue disruption of the activity. For the purposes of this subpart, an undue interruption occurs only if the employee placed in a position through assignment requires more than ninety calendar days training to reach the full performance level for the position. For employees in professional categories such as medical and dental doctors, attorneys and engineers, and other positions requiring, as a minimum qualification, a four-year degree from a recognized college or university, the training period may be extended to one hundred eighty calendar days.

(b) An employee in tenure group I exercising assignment rights may displace another permanent employee with lower retention standing in another competitive level that requires no reduction or the least possible reduction, in representative rate (step 5 in any pay level).

Modified, 1 CMC § 3806(e), (f).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-201.

The Commission inserted a comma after the word “adaptability” in subsection (a)(3) pursuant to 1 CMC § 3806(g).

### § 10-20.2-270 Transfer of Function

(a) Function defined. For the purpose of this subchapter function means all or a clearly identifiable segment of an entity’s mission and the integral parts of that mission, regardless of how performed.

(b) Transfer of employees. Before a reduction-in-force is made in connection with the transfer of any or all of the functions of an entity to another continuing entity, each competing employee in a position identified with the function or functions shall be transferred to the continuing entity without change in the tenure of employment. An employee whose position is transferred solely for liquidation and who is not identified with an operation function specifically authorized at the time of transfer to continue in operation more than sixty days, is not a competing employee for other positions in the receiving entity.

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(c) Change of location. A change of location of a function does not automatically qualify as a transfer of function. The function must move from its commuting area at the time of the transfer to a new commuting area. Consolidation of activities, reorganizations, or other changes not involving a move to another commuting area do not qualify as a transfer of function for the purpose of this subchapter. A function transferred for the purpose of liquidation is not a “function” for the purpose of this subchapter and therefore should not be treated as a transfer of function.

(d) Failure to accompany a function. An employee in a position in a function which is to be transferred, who does not intend to accompany the function to the new location and so indicates in writing to management, shall be separated from the Personnel Service using the adverse action procedures in part 200, subpart D.

Modified, 1 CMC § 3806(d), (e).

History: Amdts Proposed 26 Com. Reg. 22914 (Aug. 26, 2004); Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The August 2004 amendments proposed to repromulgate this section in its entirety with numerous changes. As of December 2004, a notice of adoption had not been published. See also the commission comment to § 10-20.2-201.

The Commission inserted a comma after the word “reorganizations” pursuant to 1 CMC § 3806(g).

### **Subpart F - Employee Appeals**

#### **§ 10-20.2-275 General**

This subpart establishes the Personnel Service Appeals System. Any employee of the Personnel Service may appeal, personally and/or in writing, a decision to take adverse action resulting from reduction-in-force procedures, or an “unsatisfactory” or “satisfactory” performance rating.

History: Amdts Proposed 26 Com. Reg. 22914 (Aug. 26, 2004); Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: When it promulgated the 1995 amendments, the Civil Service Commission readopted and republished all of part 200, subpart F. The Commission, therefore, cites the 1995 amendments in the history sections throughout this subpart.

The 2004 amendment republished and repromulgated this subpart in its entirety. As of December 2004, a notice of adoption had not been published. See also the commission comment to § 10-20.2-201.

#### **§ 10-20.2-276 Rights of the Parties**

In any appeal the appealing employee and the appointing authority have certain rights which shall not be denied. These include:

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(a) Right to a Hearing.

(1) Upon the filing of an appeal by an employee, both the responsible management official and the employee are entitled to a full and fair hearing before the Civil Service Commission or a hearing officer designated by the Commission, to present evidence and to be represented by counsel. At the hearing, although technical rules of evidence shall not apply, the testimony shall be recorded. The Commission shall render its findings of fact and final decision in writing with service on all parties.

(2) Only one hearing is held, unless the Commission determines that unusual circumstances require a second hearing. It should be noted that the hearing provided by this subpart is separate and distinct from the employee's answer and presentation of evidence in response to a letter of proposed adverse action. Any evidence may be presented at the hearing which the Commission or hearing officer allows, that bears on the issue of whether the adverse action taken was justified and proper.

(b) Denial of a Hearing.

(1) The Commission may make the determination to deny a hearing on the appeal when a hearing is impractical by reason of unusual location or other extraordinary circumstance. In this event the Commission must notify both parties in writing of the reason(s) for denying a hearing.

(2) If the Commission determines that no hearing is reasonably possible, the appointing authority and the employee will be notified to submit, in writing, any additional evidence they desire to present on the issues so that a decision can be made on the record without a hearing.

(c) Freedom from Reprisal or Interference.

(1) Unless an employee feels free to use the appeal system, the system will not serve the intended purpose of giving a means for review of dissatisfaction. An employee and the employee's representative, therefore, must be free to use the system without restraint, interference, coercion, discrimination, or reprisal.

(2) An employee, whether acting in an official capacity for the government or on any other basis, must not interfere with, or attempt to interfere with, another employee's exercise of rights under this subpart. To be fully effective, the spirit as well as the letter of the requirement must be enforced. It is not enough for an official to abstain from overt acts or interference. The official must also refrain from making any statement or taking any action that has the appearance of a threat, interference, or intimidation.

(d) Employee Representation. Employees have the right to present an appeal without representation. They also have the right to be accompanied, represented, and advised by a representative of their choice at any stage of the proceeding. Employees may change their representative, but to do so, they must notify the Commission of the change, in writing. Employees may select other government employees as their representative, provided that such employees are willing to represent them. In addition, the representatives must be free to do so, e.g., not be disqualified because of conflict of position or unavailability to serve in that capacity because of priority needs of the service or reasonable cost to the government as determined by the appointing authority or management official. Employees are free to select as their representative anyone outside the government service, but entirely at their own expense.



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(e) Government Representation. The appointing authority's representative at Civil Service Commission hearings must be the Attorney General or designee.

(f) Employee Entitled to Official Time to Prepare an Appeal. Employees are entitled to a reasonable amount of official time to prepare their appeal if they are otherwise in an active duty status. If the employees' representatives are employees of the government, they are also entitled to a reasonable amount of official time to prepare the appeal if they are otherwise in an active duty status. Both the employees who appeal and the employees who act as representatives shall make arrangements with the Director of Personnel Management for use of official time. The Director of Personnel Management shall determine the reasonable amount of official time that is to be granted and will inform the supervisors of the employees and of the employees' representatives. The time to be allowed must necessarily depend on the facts and circumstances of each case, e.g., the number and nature of the reasons stated in the letter of decision, the specifics, the volume of the supporting evidence compiled by the management official, the availability of documents, witnesses, assistance at the employee's place of employment, and similar considerations. If preparation requires more official time than was originally considered reasonable, the employees or their representatives may request the Director of Personnel Management for more time. The request should explain fully why more time is needed. The Director of Personnel Management will determine if the request is reasonable and should be granted. If granted, the Director of Personnel Management will make the necessary arrangements.

Modified, 1 CMC § 3806(e).

History: Amdts Proposed 26 Com. Reg. 22914 (Aug. 26, 2004); Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Amdts Adopted 6 Com. Reg. 3175 (Oct. 15, 1984); Amdts Proposed 6 Com. Reg. 3123 (Aug. 15, 1984); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: In subsections (a) and (c), the paragraphs were not designated. The Commission designated subsections (a)(1) and (a)(2) and (c)(1) and (c)(2).

The 1984 amendments amended subsection (e). See also the commission comments to § 10-20.2-201 and § 10-20.2-275.

The Commission inserted commas after the words "discrimination" in subsection (c)(1), "interference" in subsection (c)(2), "represented" in subsection (d), and "employment" in subsection (f) pursuant to 1 CMC § 3806(g).

### **§ 10-20.2-277 Employee Appeal**

An employee must file an appeal within fifteen calendar days after delivery of the letter of decision. The appeal must be in writing and delivered personally or by certified or registered mail to the Civil Service Commission. The appeal must give the employee's reasons for contesting the adverse action, together with any offer of proof and pertinent documents the employee desires to submit. It should also include a request for hearing if the employee so desires. Employees located away from Saipan must also meet the fifteen calendar days period for filing an appeal to the Commission. If certified or registered mail is utilized, the appeal must be postmarked no later than the 15th calendar day.

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Modified, 1 CMC § 3806(e), (f).

History: Amdts Proposed 26 Com. Reg. 22914 (Aug. 26, 2004); Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Amdts Adopted 6 Com. Reg. 3175 (Oct. 15, 1984); Amdts Proposed 6 Com. Reg. 3123 (Aug. 15, 1984); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comments to § 10-20.2-201 and § 10-20.2-275.

### **§ 10-20.2-278 Preparation for Hearing**

(a) When the Civil Service Commission grants a hearing and establishes a hearing date, it will notify the Director of Personnel Management, giving the employee's name, title, grade, and organizational unit.

(b) The Director of Personnel Management must meet the employee and representative and the appointing authority and representative (either simultaneously or at different times) within seven calendar days, if possible, after receiving notice that hearing has been granted. If it is not possible to hold the meeting or meetings within the seven calendar days, the meeting or meetings will be held as soon thereafter as possible. In such event, the Director of Personnel Management will inform the Commission of the delay and request a hearing date if necessary. Separately, the employee and the appointing authority will be required to furnish the Director of Personnel Management and the other party the following information:

(1) Employee's list of witnesses containing the name, location, and occupation of each witness; a summary of each witness' anticipated testimony; and the availability of each witness in the area of the employee's duty station during the next thirty days.

(2) Management's list of witnesses containing the name, location, and occupation of each witness; a summary of each witness' anticipated testimony; and the availability of each witness in the area of the employee's duty station during the next thirty days.

(3) The availability of the employee and representative and the appointing authority and representative, in the area of the employee's duty station during the next thirty days.

(c) The Director of Personnel Management shall direct the appointing authority to make available to the Office of Personnel Management and to the employee the appointing authority's entire adverse action file for review and reproduction.

(d) The employee may inspect and copy any part of the appeal file upon making request.

(e) The employee may request that the government, at its own expense, produce at the hearing those witnesses who are employed by the government and whose testimony the employee alleges, in writing, to be pertinent to the issues and necessary to the employee's defense. The employee may include in the list of witnesses non-governmental individuals, but arrangements for their presence at the hearing are the obligation of the employee and will be at the expense of the employee unless otherwise ordered by the Commission.

Modified, 1 CMC § 3806(e).

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History: Amdts Proposed 26 Com. Reg. 22914 (Aug. 26, 2004); Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comments to § 10-20.2-201 and § 10-20.2-275.

The Commission inserted commas after the words “grade” in subsection (a) and “location” in subsections (b)(1) and (b)(2) pursuant to 1 CMC § 3806(g).

### **§ 10-20.2-279 Appeal File**

When an employee files an appeal from adverse action with the Commission, the Office of Personnel Management must establish and maintain an appeal file containing copies of all available pertinent documents; in addition, that office must immediately forward originals of all pertinent documents to the Commission. The employee appeal file is independent, separate, and distinct from the official personnel folder (OPF). The employee appeal file, both with the Office of Personnel Management and the Commission, must contain all documents pertinent to the appeal, such as:

- (a) A copy of the delegation of authority of the management official taking the action;
- (b) A copy of the letter of proposed adverse action;
- (c) The material relied on by the management official to support the reason(s) listed in the letter of proposed adverse action;
- (d) The employee’s written answer, if any;
- (e) A transcript or summary of the employee’s presentation of oral evidence and copies of documents presented;
- (f) A copy of the letter of decision;
- (g) The employee’s written notice of appeal;
- (h) Any pertinent evidence developed after issuance of the letter of proposed adverse action;
- (i) The lists of witnesses submitted by both parties;
- (j) The reason(s) for not granting a hearing when one is requested but not granted;
- (k) The reason(s) for not producing witnesses at the hearing;
- (l) The transcript of the Commission hearing when a hearing is held;
- (m) The recommendation(s) of the Commission’s hearing officer, if any; and

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(n) A copy of the notice of decision of the Civil Service Commission.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 26 Com. Reg. 22914 (Aug. 26, 2004); Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-201 and § 10-20.2-275.

The Commission inserted a comma after the word “separate” in the initial paragraph pursuant to 1 CMC § 3806(g).

### **§ 10-20.2-280 Procedural Defects**

If at any time after the appeal has reached the Commission, it finds a regulatory or procedural defect which would warrant reversal of the action taken by the appointing authority, the Commission will prepare a report of its findings on the issue and order that the action be dismissed. Copies of the findings and the order will be served on all parties.

History: Amdts Proposed 26 Com. Reg. 22914 (Aug. 26, 2004); Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comments to § 10-20.2-201 and § 10-20.2-275.

### **§ 10-20.2-281 Status of Employee During Appeal**

If an employee appeals an appointing authority’s decision given in accordance with adverse action procedures, that decision shall remain in effect unless and until the Commission has entered its findings and decision on the appeal. The Commission may enter such findings and decision on appeals decided by it as it finds the circumstances of the case require and that it deems just and proper.

History: Amdts Proposed 26 Com. Reg. 22914 (Aug. 26, 2004); Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comments to § 10-20.2-201 and § 10-20.2-275.

### **§ 10-20.2-282 Performance Rating Appeal**

(a) In the event an employee disagrees with a performance rating report, such employee may appeal an “unsatisfactory” performance rating to the Commonwealth of the Northern Mariana Islands Civil Service Commission. The appeal to the Civil Service Commission must be in writing, stating the reasons for the appeal and must be filed to the Director of Personnel Management within thirty calendar days after the date of the employee’s signature on the

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performance rating report. If a statement of disagreement is not received, the performance rating form shall be processed as received.

(b) An employee has a right to representation of his choice as provided in § 10-20.2-276(d).

(c) Upon receipt of the statement of disagreement, the Director of Personnel Management will appoint an ad hoc committee of three to review the rating and evaluate the objection of the employee. The ad hoc committee shall be selected from among the employees

(1) Who are on at least equal rank as the appellant;

(2) Who are not in the supervisory line above the appellant; and

(3) At least one of whom must have an understanding of the work the employee is performing. The Director of Personnel Management or designee shall serve as Executive Secretary and advisor to the committee.

(d) The ad hoc committee shall review the content of the appeal, make such inquiries of the rating supervisor and the employee as are considered necessary, and, in closed session, arrive at a judgment. The committee may

(1) Refer the rating and the appeal to the rating supervisor and the reviewing official for reevaluation, or

(2) Determine that the performance rating should stand.

(e) In the event the committee determines that the appeal is justified and re-rating is required, it shall direct the rating supervisor to correct the rating. The committee's original orders shall be in writing and shall state specifically where the original rating was deficient. All documentation in support of this conclusion must accompany the rating when referred back to the rating supervisor.

(f) If the employee is not satisfied with the decision of the ad hoc committee, the employee may appeal to the Civil Service Commission, using the procedure defined in this subpart for appeals from adverse action decisions.

Modified, 1 CMC § 3806(c), (e), (f).

History: Amdts Proposed 26 Com. Reg. 22914 (Aug. 26, 2004); Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The 1988 amendments repealed former subsection (c) and redesignated the remaining subsections (d) through (f). The 1995 amendments amended subsections (a) and (b) and republished and readopted the entire section. See also the commission comments to § 10-20.2-201 and § 10-20.2-275.

The Commission inserted a comma after the word "necessary" in subsection (d) pursuant to 1 CMC § 3806(g).

### **Subpart G - Grievance Procedure**

#### **§ 10-20.2-285 General**

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Consistent with the principles of good management, the government recognizes the importance of settling labor-management disagreements and misunderstandings promptly, fairly, and in ways that will maintain the self-respect of both the employee and the supervisor. To accomplish this, every effort will be made to settle grievances expeditiously and at the lowest possible level of supervision.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-201.

The Commission inserted a comma after the word “fairly” pursuant to 1 CMC § 3806(g).

### **§ 10-20.2-286 Employee Coverage**

The personnel service grievance system covers all Personnel Service System employees.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-201.

### **§ 10-20.2-287 Grievance Coverage**

The grievance system will cover all matters of concern or dissatisfaction to an eligible employee unless excepted by § 10-20.2-288.

Modified, 1 CMC § 3806(c).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-201.

### **§ 10-20.2-288 Matters Not Covered**

The grievance system will not cover the following:

- (a) An adverse action appealed under part 200, subpart D;
- (b) A fitness-for-duty examination;
- (c) The content of published government policy;

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- (d) Non-selection for appointment, promotion, or transfer from a group of properly ranked and certified candidates;
- (e) Non-adoption of a suggestion or disapproval of a merit increase, performance award, or other kind of honorary discretionary award; and
- (f) An employee who is serving on probationary status.

Modified, 1 CMC § 3806(c).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-201.

### **§ 10-20.2-289 Freedom from Restraint**

Employees will be unimpeded and free from restraint, interference, coercion, discrimination, and reprisal in seeking adjudication of their grievances and appeals.

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-201.

The Commission inserted a comma after the word “discrimination” pursuant to 1 CMC § 3806(g).

### **§ 10-20.2-290 Employee’s Right to Representation**

The government recognizes that grievances are personal in nature and that aggrieved employees or groups of employees must have the right in presenting their grievances to be accompanied, represented and advised by representatives of their own choosing. Thus, in the formal grievance process, as hereinafter defined, the employee or group of employees have the right to be represented by counsel or other representative of their own choosing at their own discretion. If the employee or group of employees choose to serve as their own representative or to designate a member of the aggrieved group as spokes-person, they may do so.

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-201.

### **§ 10-20.2-291 Role of the Civil Service Commission**

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The Civil Service Commission serves as the ultimate appellate level for grievances of employees or groups of employees. It shall take under cognizance only those formal grievances which cannot be settled to the satisfaction of all concerned in accordance with the formal grievance procedure defined in § 10-20.2-293.

Modified, 1 CMC § 3806(c).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-201.

### **§ 10-20.2-292 Employee's Right to Seek Advice**

Sometimes an employee has a valid reason for not taking a grievance to the immediate supervisor. The grievance system, therefore, provides opportunity for an employee to communicate informally with and seek advice from the Personnel Office and/or a supervisory or management official of higher rank than the employee's immediate supervisor.

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-201.

### **§ 10-20.2-293 Informal Grievance Procedure**

(a) The grievance action shall first be initiated by the aggrieved employee who will discuss the problem informally with the supervisor, of if the employee feels the relationship with the immediate supervisor is such that the matter cannot be reasonably discussed, the employee may discuss it with the next level of supervision. A grievance concerning a particular act or occurrence must be presented within ten calendar days of the date of the act or occurrence or the date the aggrieved employee became aware of the act or occurrence.

(b) If the grievance is not settled within five calendar days, or if the employee is not satisfied with the decision of the immediate supervisor, the employee or representative may, within the next ten calendar days, put the grievance in writing and submit it to the appointing authority as a formal grievance. The written representation must contain the following information:

- (1) The identity of the aggrieved employee and the organization in which the employee works;
- (2) The details of the grievance;
- (3) The corrective action desired; and
- (4) The name of the employee's representative, if any.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Amdts Adopted 6 Com. Reg. 3175 (Oct. 15, 1984);



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Amdts Proposed 6 Com. Reg. 3123 (Aug. 15, 1984); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: The 1984 amendments amended subsection (b)(1). See also the commission comment to § 10-20.2-201.

### § 10-20.2-294 Formal Grievance Procedure

(a) The appointing authority will examine the grievance, discuss it with the grievant or representative, and render a decision, in writing, within fourteen calendar days after receiving the grievance. The appointing authority may have present the employee's immediate supervisor, if it deems it appropriate to the resolution of the grievance.

(b) If the appointing authority is not successful in settling the grievance to the employee's satisfaction within fourteen calendar days after it is presented to the employee in writing, the employee shall, within fifteen calendar days after receiving written notification of the decision, submit a grievance to the Civil Service Commission.

(c) The Civil Service Commission shall set a time for its review of the case within a reasonable time after receiving a grievance. If the Commission desires to have the grievance heard by a hearing officer, it must inform the aggrieved employee and representative as soon as possible.

(d) In hearings before the Civil Service Commission or a hearing officer, the aggrieved employee and/or representative shall be allowed to appear and present the case. An appropriate management representative shall also be allowed to appear before the Commission. Both sides shall have the right to call witnesses in support of their positions and to cross-examine witnesses for the other side. The Commission or the hearing officer shall prepare a summary of the hearing. If both parties desire a formal, written record prepared by a reporter, the cost of such services shall be shared equally. If only one side desires a formal written record of the proceedings, that side shall bear the cost.

(e) The Civil Service Commission shall reach a decision and present it formally to the appropriate management official within fifteen working days following the close of the formal hearing. Decision by the Civil Service Commission shall be made by a two-thirds vote of the entire members, as required by 1 CMC §§ 8101, et seq., and shall be final.

(f) If the aggrieved employee is dissatisfied with the decision after having exhausted all administrative appeal levels, the employee has recourse to the courts.

(g) The Personnel Officer shall be kept informed as to the progress of a formal grievance and is responsible for assuring that the time limits established in this procedure are met. The Personnel Officer is also responsible to assure that the formal record of the grievance is assembled into one place, stored and safeguarded.

(h) The Personnel Officer shall be the final custodian of all records of a grievance and is responsible for their proper storage and security.

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Modified, 1 CMC § 3806(e).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Amdts Adopted 6 Com. Reg. 3175 (Oct. 15, 1984); Amdts Proposed 6 Com. Reg. 3123 (Aug. 15, 1984); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: The 1984 amendments amended subsections (c) and (e). See also the commission comment to § 10-20.2-201.

The Commission inserted a comma after the word “representative” pursuant to 1 CMC § 3806(g).

### **Part 300 - Position Classification and Compensation**

#### **Subpart A - Position Classification**

##### **§ 10-20.2-301 General**

All positions subject to the provisions of the Personnel Service System shall be classified in accordance with the approved Position Classification Plan.

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Amdts Adopted 6 Com. Reg. 3175 (Oct. 15, 1984); Amdts Proposed 6 Com. Reg. 3123 (Aug. 15, 1984); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: The proposed 2002 amendments republished all of part 300. The Commission, therefore, cites the 2002 amendments in the history sections throughout this part. As of December 31, 2004, the Civil Service Commission had not adopted the May 2002 amendments.

##### **§ 10-20.2-302 Definitions**

(a) “Position Classification.” Position classification means the process by which employment positions in an organization are identified, described, and defined according to their duties and responsibilities, with like positions segregated into groups called “classes.” A systematic record is made of the classes found and a listing is made of the particular positions found to be of each class.

(b) “Class.”

(1) Class means one position or a group of positions sufficiently similar in respect to their duties, responsibilities and authority that the same title may be used with clarity to designate each position allocated to the said class. The same standard qualifications may be required of all incumbents, the same test of fitness may be used to choose qualified employees, and the same schedule of compensation may be applied with equity under the same or substantially the same employment conditions of a given class; although sufficiently dissimilar from any position or any other group of positions to warrant exclusion from those groups of positions.

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- (2) The class title assigned to a position in accordance with the Position Classification Plan shall be the official title and will be used for all personnel, budgetary and financial purposes, and should be used for all position organization charts.
- (c) “Position.” The work, consisting of duties and responsibilities assigned by competent authority for performance by an employee.
- (d) “Position Classification Plan.” Position Classification Plan means classes of positions arranged in a systematic order to reflect all of the kinds and levels of work utilized in the Personnel Service.
- (e) “Appointing Authority.” Appointing authority means a person or a designee of such a person having power to make appointments or changes in status of an employee in the Personnel Service.
- (f) “Allocation.” Allocation of a position means the assignment of a position to its appropriate class on the basis of analysis of the duties and responsibilities of the position.
- (g) “Reallocation.” Reallocation of a position is a position change resulting from a change of duties and responsibilities over a period of time, not a result of planned management decision and action.
- (h) “Reclassification.” Reclassification means change of a position or group of positions to a different class as a result of a change in assigned duties and responsibilities, classification standards, or as a result of correcting a classification error.
- (i) “Class Specification.” Class specification means an official position classification plan document description of the general characteristics of a class, and includes the official class title, a detailed description of the scope of duties and responsibilities of the class, specific examples of work or typical duties performed, and a statement of the qualifications required to perform the work of the class.
- (j) “Occupational Group.” Occupational group means a major subdivision of a position classification plan, generally embracing several series of classes of positions in associated or related work specialties, professions, or related activities. (For example, “Clerical and Machine Operation,” “Administrative, Management, and Allied,” and “Agricultural and Allied” are occupational groups.)
- (k) “Series of Classes.” Series of classes means classes closely related as to occupational specialty but differing in level of difficulty, responsibility, and qualifications required. (For example, the three classes of Architect I, Architect II and Architect III taken together make up a series of classes.)
- (l) “Position Description.” Position description means a formal, official written statement by management which documents the description, assignment, or arrangement of the duties and responsibilities of a position.

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Modified, 1 CMC § 3806(f).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: In subsection (b), the paragraphs were not designated. The Commission designated subsections (b)(1) and (b)(2). See also the commission comment to § 10-20.2-301.

The Commission inserted commas after the words “described” in subsection (a), “performed” in subsection (i), “professions” in subsection (j), “responsibility” in subsection (k), and “assignment” in subsection (l) pursuant to 1 CMC § 3806(g).

### § 10-20.2-304 Principles and Policy

- (a) The basic principles underlying the position classification system are:
- (1) Equal pay for equal work; and
  - (2) Variations in pay in proportion to differences in difficulty, responsibility, and qualification requirements of the work.

(b) The Personnel Service System’s position classification program applies these principles in response to management’s expressed needs and in support of mission accomplishments. Changes in classification shall not be made for the purpose of raising or reducing pay, but only to reflect clear and significant changes in duties and responsibilities. Supervisors and managers are expected to organize the work of their organizations and structure the positions so that vacancies can be filled at the lowest level at which qualified applicants can be obtained.

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b). See also the commission comment to § 10-20.2-301.

The Commission inserted a comma after the word “responsibility” in subsection (a)(2) pursuant to 1 CMC § 3806(g).

### § 10-20.2-306 Responsibilities

- (a)(1) Personnel Officer
- (i) Administers a classification program which supports management’s objectives, meets legal and regulatory requirements, and promotes participation by operating officials in the classification process.
  - (ii) Provides advice and assistance to management on the classification aspects of position structure needed to carry out the government’s mission.
  - (iii) Conducts periodic reviews to evaluate the effectiveness of the classification program and directs corrective action where appropriate.
  - (iv) Develops new classification standards, revises existing standards as needed, seeks advice and counsel of appointing authorities with the approval of the Civil Service Commission.

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- (v) Groups positions into classes on the basis of their similarities in duties, responsibilities, and other significant factors.
  - (vi) Assigns a title to each class which shall apply to all positions in the class; prescribes the characteristics of each class; and sets the standards for employment in any position in the class subsequent to consultation with the Civil Service Commission and the appropriate management officials.
  - (vii) Changes a position from one class to another where substantial changes have occurred in the duties and responsibilities.
  - (viii) Determines the status of occupants of positions which have been changed from one class to another.
  - (2) The Personnel Officer is authorized to delegate authority to the degree to which the Personnel Officer deems appropriate, including to other qualified personnel in the Personnel Office, to identify positions which have been approved and allocated within the classification plan.
- (b) Appointing Authorities and Supervisors
- (1) Plan, organize, develop, and assign duties and responsibilities to positions, whether occupied or vacant;
  - (2) Consider the mission of the organization and structure positions for accomplishment of requirements in the most effective and economical manner possible;
  - (3) Assure that assigned duties and responsibilities do not duplicate or overlap those of other positions;
  - (4) Assure that duties and responsibilities assigned to positions are completely and accurately described in position descriptions in full and sufficient detail for position classification and all related purposes;
  - (5) Develop, prepare, maintain, and submit factual and up-to-date functional statements and organizational position charts which clearly depict such information as assigned organizational and/or supervisory responsibility, organizational segment identification, employee names with official class titles and pay levels for the positions to which assigned, the title and pay levels of vacant positions which are funded and approved, and other similar essential details; and
  - (6) Assist employees to accomplish the foregoing.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Amdts Adopted 6 Com. Reg. 3175 (Oct. 15, 1984); Amdts Proposed 6 Com. Reg. 3123 (Aug. 15, 1984); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: In subsection (a), the paragraphs were not designated. The Commission designated subsections (a)(1) and (a)(2). The Commission inserted commas after the words “responsibilities” in subsections (a)(1)(v), “develop” in subsection (b)(1), and “maintain” in subsection (b)(5) pursuant to 1 CMC § 3806(g).

The 1984 amendments amended subsection (a)(1)(vi). See also the commission comment to § 10-20.2-301.

### **§ 10-20.2-308 Position Planning**

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The supervisor is responsible for position planning. The supervisor analyzes the work to be accomplished, decides on work or production methods, and determines the requirements for supervision, special technical support, qualitative and quantitative controls, and review and evaluation. A well defined position has clearly defined operation, tasks, duties, authorities, responsibilities, and supervisory relationships.

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-301.

The Commission inserted a comma after the word “responsibilities” pursuant to 1 CMC § 3806(g).

### **Subpart B - Compensation**

#### **§ 10-20.2-310 General**

All persons subject to the provisions of 1 CMC §§ 8101, et seq., and Constitutional Amendment No. 41 shall be compensated in accordance with such laws and the provisions of this subpart.

Modified, 1 CMC § 3806(d).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: When it promulgated the 1995 amendments, the Civil Service Commission readopted and republished all of part 300, subpart B. The Commission, therefore, cites the 1995 amendments in the history sections throughout this subpart. See also the commission comment to § 10-20.2-301.

#### **§ 10-20.2-312 Compensation Plan**

The classes in the position classification plan, when assigned to appropriate pay levels of the base salary schedule as established, shall constitute the basic compensation plan. The Director of Personnel Management shall assign all classes in the position classification plan to appropriate pay levels in the base salary schedule in accordance with the following:

- (a) Kind and level of work;
- (b) Degree of difficulty and responsibility;
- (c) Kind, quality and level of qualification requirements;
- (d) Relationship to other classes in its occupational group and of its occupational group to other occupational groups.

Modified, 1 CMC § 3806(f).

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History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-301.

### § 10-20.2-314 Periodic Review of Compensation Plan

The Director of Personnel Management shall periodically conduct necessary and appropriate studies of rates of compensation and compensation practices in all geographic areas from which employees are normally recruited, and shall recommend and transmit the same to the Civil Service Commission for its review. Following such review, the Commission shall submit the same, together with its comments and recommendations, to the Legislature for review and approval as stated in 1 CMC §§ 8101, et seq.

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-301.

### § 10-20.2-316 Establishing Salary upon Appointment

(a) Salary shall be fixed at the first step of the appropriate pay level upon initial appointment. Should a higher rate be deemed necessary to recruit, and is appropriate to the qualifications of the applicant, the salary may be fixed at any succeeding step. Payment of salary above step 1 of pay level must be approved by the Director of Personnel Management.

(b) When a person may be reemployed after a break in service of one or more days into a position in a class and pay level lower than the highest class and pay level previously held, the salary may be set at the highest previous rate held, provided the rate does not exceed the salary range of the lower pay level. (See § 10-20.2-322.)

Modified, 1 CMC § 3806(e), (f).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-301.

### § 10-20.2-318 Promotions

An employee who is promoted from a position in one class to an existing position in a higher class shall be compensated at the lowest step in the new pay level which at least equals the amount of two step increases in the old pay level. The rate of compensation must not exceed the

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rate of the maximum step in the higher pay level. The effective date of the promotion shall be the new service anniversary date for the promoted employee. An employee shall not be promoted into a supervisory position until and unless such employee has satisfactorily completed training in workshops sanctioned by the Office of Personnel Management in the areas of basic and/or advanced supervisory management. Retroactive promotions shall not be made except when directed by a decision of the Civil Service Commission pursuant to an employees appeal.

Modified, 1 CMC § 3806(e), (f), (g).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 11 Com. Reg. 6156 (Apr. 15, 1989); Amdts Proposed 11 Com. Reg. 5854 (Feb. 15, 1989); Amdts Adopted 10 Com. Reg. 5579 (July 15, 1988); Amdts Proposed 10 Com. Reg. 5557 (June 15, 1988); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-301.

### **§ 10-20.2-320 Temporary Promotions**

A temporary promotion is utilized when it is anticipated that an employee will temporarily occupy a position for a period in excess of three months. An employee can be temporarily promoted only if such employee meets the qualifications standards of the new position. The employee temporarily promoted shall be compensated at the step in the new pay level which is at least equal to an increase of two steps at the current pay level. The employee must be informed in advance and agree, in writing, that at the expiration of the temporary promotion, the employee will be returned to the former salary (level and step) that s/he would be receiving had the employee remained in the former position. No temporary promotion shall exceed a period of one year except when the temporary promotion is to replace an employee on educational leave outside the Commonwealth. In this instance, the temporary promotion may continue for not longer than two years.

Modified, 1 CMC 3806(e).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-301.

### **§ 10-20.2-322 “Acting” Assignment**

(a) An “acting” assignment is the designation, in writing, that an employee will act for a period of up to thirty days in place of a supervisor. When the supervisor’s absence exceeds the initial thirty-day period, a new designation shall be made for an additional thirty days. This thirty-day renewal of the acting assignment is repeated until the supervisor returns to the position. Whenever the acting assignment exceeds ninety days, the employee shall be temporarily promoted if the employee meets the qualifications standards of the position. If the



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acting assignment exceeds ninety days and the employee does not meet the qualifications standards of either the target level or the intermediate level, the employee shall be compensated with two steps in the current pay level, but may not exceed the maximum step.

(b) When an employee in the classified service is designated for an acting assignment in the excepted service, the employee shall be required to resign from the classified service in order to accept the said acting assignment. While in the acting assignment, the employee shall be entitled to receive a salary equivalent to the salary received by the previous incumbent of the position.

(c) Upon expiration of the acting assignment, the employee will be reinstated to the former position and salary (level and step) that the employee would be receiving had the employee remained in the former position.

Modified, 1 CMC § 3806(e).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) through (c). See also the commission comment to § 10-20.2-301.

### § 10-20.2-324 Detail

A detail is the temporary assignment of an employee to a different position for a specified temporary time period, with the employee returning to the regular position and duties at the end of the detail. Technically, a position is not filled by a detail, as the employee continues to be the incumbent of the position from which detailed. Normally, whenever it is anticipated that the need for a detail will exceed ninety days, it is more appropriate to effect a temporary promotion (see § 10-20.2-320) if the employee is qualified at the higher grade. Individuals who do not meet the qualification standards of the promotion at the higher grade cannot be temporarily promoted, however, and must voluntarily agree to any period for which the detail exceeds ninety days. An employee also may be detailed to a set of duties, which must be specifically described in the task list, when the government's need for necessary or emergency services cannot be obtained by other desirable or practical recruitment means.

Modified, 1 CMC § 3806(c), (e).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987).

Commission Comment: See the commission comment to § 10-20.2-301.

### § 10-20.2-326 Demotion

(a) An employee demoted because of abolishment of position or reallocation of position to a lower pay level, except at the employee's own request, shall be compensated at the salary rate

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which does not exceed the employee's current pay rate. Where the employee's current rate exceeds the rate of the maximum step of the lower pay level, the employee shall be compensated at such maximum step. An employee demoted as a disciplinary measure shall have his/her compensation reduced to the corresponding step of the lower pay level, and may, with the approval of the Director of Personnel Management, be compensated at a lower step.

(b) An employee demoted at his/her own request shall have pay set at the step in the lower pay level which corresponds to the step held in the higher level.

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b). See also the commission comment to § 10-20.2-301.

### **§ 10-20.2-328 Transfer**

An employee who is transferred to a different position at the same pay level shall receive no change in compensation. An employee may transfer from the classified service in one branch of government to the classified service in another branch of the government with no loss of benefits. A minimum of two weeks' notice must be given the losing supervisor or appointing authority prior to effecting a transfer.

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Amdts Adopted 6 Com. Reg. 3175 (Oct. 15, 1984); Amdts Proposed 6 Com. Reg. 3123 (Aug. 15, 1984); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-301.

### **§ 10-20.2-330 Effect on Service Anniversary Date**

An employee's service anniversary date will not be affected by a detail, acting assignment, or temporary promotion.

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-301.

### **§ 10-20.2-332 Reallocation/Reclassification of Position to Higher Pay**

An employee whose position is reallocated/reclassified to a higher class shall be compensated at the lowest step in the higher pay level which at least equals the amount of a two step increase in

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the lower pay level. The rate of compensation cannot exceed the rate of the maximum step in the higher pay level. The anniversary date of the new reallocation/ reclassification shall be recycled.

Modified, 1 CMC § 3806(e).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-301.

### § 10-20.2-334 Effective Date of Position Changes

The effective date of all position changes shall be the beginning of the first pay period immediately following the approval of the action by the Director of Personnel Management. Exceptions to this rule may be made by the Director of Personnel Management only for such reasons as will expedite public business and not result in an inequitable situation.

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Amdts Adopted 6 Com. Reg. 3175 (Oct. 15, 1984); Amdts Proposed 6 Com. Reg. 3123 (Aug. 15, 1984); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-301.

### § 10-20.2-336 Within-grade Increases

(a) Within-grade increases may be granted to employees upon completion of fifty-two consecutive calendar weeks of satisfactory performance.

(b) Employees who are included under the Personnel Service System and assigned to work part-time will be eligible for a within-grade increase only at such time as the cumulative total of all hours worked equates to a standard work year of 2,080 hours and such work has been satisfactory. Employees who are employed on an intermittent basis are not eligible to receive within-grade increases.

(c) The effective date of a within-grade step increase shall be the first day of the first pay period following completion of the required waiting period.

(d) For all positions, approved leave in a non-pay status (LWOP) and/or unapproved leave (AWOL) not to exceed eighty hours, is creditable toward the waiting period for a within-grade increase. Unapproved leave (AWOL) and leave without pay (LWOP) of more than eighty hours will extend the waiting period by at least one pay period or by the amount of time such AWOL or LWOP exceeds the eighty hours, whichever is greater.

(e) Time served in a LWOP status for purposes of job-related education or training is credited toward within-grade increases, the same as if the employee had been in a pay status for

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that period of time on LWOP, provided that the employee is a registered or enrolled student. To be creditable toward the waiting period, the education program in which the employee is enrolled must be clearly and directly applicable to the employee's present position or one to which the employee may reasonably aspire, and for which the employee is released from full-time status and placed in an approved leave without pay (LWOP) status, and in which the employee performs satisfactorily as determined by management and the Director of Personnel Management.

(f) A former employee reemployed with a break in service is assigned and begins a new waiting period for a within-grade increase. No credit will be given toward the completion of this new waiting period for any time served under a former waiting period prior to the break in service.

(g) Time served during provisional status shall not be counted toward the required waiting period in receiving a within-grade step increase.

Modified, 1 CMC § 3806(e).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 11 Com. Reg. 6156 (Apr. 15, 1989); Amdts Proposed 11 Com. Reg. 5854 (Feb. 15, 1989); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The 1989 amendments added new subsection (g) and readopted the other subsections. The 1995 amendments republished and readopted the entire section. See also the commission comment to § 10-20.2-301.

### **§ 10-20.2-338 Workshops**

An employee occupying a permanent position who after July 1, 1983 successfully completes 120 hours of training workshops that are supervised, sponsored and/or sanctioned by the Director of Personnel Management may be given a salary increase equivalent to one step.

(a) No employee may receive more than one step increase under this subpart in any one calendar year regardless of the number of training workshops that are successfully completed. Employees who are employed on an intermittent basis are not eligible to receive this increase.

(b) Upon determination of the appointing authority that such employee is eligible to receive a salary increase as provided for in this subpart, the appointing authority shall prepare, sign and submit a request for personnel action to the Director of Personnel Management for final approval.

(c) The effective date of a training workshop salary increase shall be the beginning of the pay period immediately following the approval of the Director of Personnel Management.

(d) This increase shall not affect the anniversary date of the employee.

Modified, 1 CMC § 3806(e), (f).

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History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Amdts Adopted 6 Com. Reg. 3175 (Oct. 15, 1984); Amdts Proposed 6 Com. Reg. 3123 (Aug. 15, 1984); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: The 1984 amendments amended subsection (c). The 1988 amendments removed subsection (c). Subsection (c) was reinstated in 1995. See also the commission comment to § 10-20.2-301.

### § 10-20.2-340 Overtime Compensation, Compensatory Time and Control

Any employee who exceeds forty hours actually worked in a week shall be paid overtime at the rate of one and one-half times the regular rate of pay, except as provided below.

(a) Exceptions. Bona fide executive, administrative and professional employees are exempt from payment for overtime. These terms shall have the meanings given them in the federal Fair Labor Standards Act of 1938, as amended (FLSA). Following is a summary of the FLSA criteria for these terms. However, the full explanation of these terms under federal law is extensive and complex and may change from time to time. The Office of Personnel Management and each agency not served by that office are responsible for determining whether or not a position fully meets the federal criteria for one of these categories. For such purpose, they may seek guidance from the Civil Service Commission, Office of the Attorney General, or the U.S. Department of Labor, as necessary.

(1) Executive employees. The term executive employee generally includes employees--

(i) Whose primary duty is management of a department, division, section, or other customarily recognized subdivision of the government; and

(ii) Who customarily and regularly direct the work of at least two employees; and

(2) Administrative Employees. The term administrative employee generally includes employees--

(i) Whose primary duty consists of

(A) Responsible office or non-manual work directly related to management or policies or general operations of the employing agency, or

(B) Responsible work in the administration of a school, educational establishment, or department (or of a subdivision thereof) that is directly related to the academic instruction or training; and

(ii) Such primary duty includes work requiring the exercise of discretion and independent judgment.

(iii) Examples: Positions that often qualify under this exemption include executive and administrative assistants, such as executive secretaries and special assistants; staff employees, such as advisors, research experts, and analysts; and heads of small work units (generally those performing staff functions), including one-person units. However, regular secretaries, clerks, bookkeepers, and most "specialists," even though they do work commonly considered to be administrative in nature, are not exempt.

(3) Professional Employees. The term professional generally includes employees -

(i) Whose primary duty consists of work requiring knowledge of an advanced type in a field of science or learning, e.g., physicians and attorneys, or work as a teacher in an activity of imparting knowledge, which requires consistent exercise of discretion and judgment; or

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(ii) Whose primary duty is artistic work that requires invention, imagination, or talent in a recognized field of artistic endeavor.

(4) Additional federal criteria for each category apply to any employee who receives less than \$250 a week (\$13,000 annually). No employee shall be categorized as an executive or administrative employee who is not paid a salary of at least \$155 a week (\$8,060 on an annual basis). No employee (except certain doctors, lawyers or teachers) shall be categorized as a professional employee who is not paid a salary of at least \$170 a week (\$8,840 annually).

(5) Every personnel action or request therefore to appoint, promote, transfer or detail an individual to a position shall be endorsed by the Office of Personnel Management (or agency not serviced by the office) either "FLSA covered" or FLSA exempt," and the latter term shall only apply to bona fide executive, administrative, or professional employees. The criteria used in justifying such exemptions must be documented in the employees' job descriptions. Every examination announcement, promotional opportunity announcement, or other vacancy announcement for a position that is FLSA exempt shall indicate that the holder of that position is not eligible for payment for overtime. If changes in a job description effectively change an employee's coverage or exemption under the FLSA, a special personnel action shall be prepared to document such change.

(6) In addition to the above exceptions, no employee shall be eligible to receive overtime pay for any hour for which the typhoon emergency differential is paid.

(b) Hours Actually Worked. Overtime compensation will only be paid for hours actually worked in excess of forty hours a week. Paid leave shall not be included in the computation of hours actually worked, except for administrative leave allowed pursuant to § 10-20.2-620(g)(1) or § 10-20.2-620(g)(3). Time during which an employee is required to remain at a prescribed workplace shall be included in the hours actually worked, even if no work is performed.

(c) Payments Included in Determining Regular Rate of Pay. The regular rate of pay shall include consideration of the following compensation for employment:

(1) Basic pay (one-eightieth of biweekly salary) for the first forty hours actually worked in the workweek, including work on a holiday (but not the amount also paid for holiday leave), and including basic pay for work during a typhoon emergency (but not the amount also paid for administrative leave), regardless of whether actual compensation during such emergency is higher because any such work was performed outside of regular duty hours; and

(2) Any hazardous work differential earned during the workweek; and

(3) Any night work differential (which can only be earned during regular duty hours); and

(4) Any premium earned for remaining on call for duty during a regularly scheduled period in excess of a forty hour week; and

(5) Payment for housing or transportation to and from work provided to the employee, or the fair value of those benefits if they are provided directly by the government, pro-rated to determine the amount for that workweek. The fair value shall be the amount specified by the Secretary of Finance for tax purposes.

(d) Calculation of Regular Rate of Pay and Overtime. The computations set forth below are guidelines that describe how overtime generally is computed under the FLSA as of the effective date of this provision. However, there are numerous official federal interpretations that may be applicable in individual cases. Also, as a result of federal statutory or regulatory changes or as a

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result of court rulings, the computations may change from time to time. In case of any discrepancy applicable federal law, regulations, and interpretations shall be followed in lieu of these guidelines. All payroll offices are required to become knowledgeable and keep current regarding applicable overtime regulations under the FLSA. Guidance should be sought, as necessary, from the U.S. Department of Labor.

(1) The regular rate is an hourly rate. Except as described in subsection (d)(2) below, the items of compensation for the week in question included pursuant to subsections (c)(1) through (5) of this section shall be added together and then divided by forty to determine the regular rate. For the week's work, the employee shall receive cash wages including all amounts under subsections (c)(1) through (c)(4), plus any cash payment under subsection (c)(5), plus payment for each hour in excess of forty at one and one-half times the regular rate for that workweek.

(2) If any hazardous work differential is earned during overtime hours, federal regulations require that a special calculation be made as follows: first compute the basic hourly rate (generally one-eightieth of the biweekly salary); multiply this by the total number of hours actually worked during the workweek (including overtime hours) and add all amount under subsections (c)(2) through (c)(5). This is the regular pay for all hours. Then divide this regular pay amount by the total number of hours actually worked to determine the regular rate. For the week's work the employee shall receive the regular pay for all hours as computed above, plus an overtime premium for each hour worked in excess of forty at one-half such regular rate. Cash wage would be this amount less the value of any benefit under subparagraph (c)(5) received in kind. Any payroll office, at its option, may use this method for all overtime calculation.

(3) Example for Paragraph (d)(2): An employee who earns \$640 biweekly works 46 hours in a workweek. The employee is entitled to hazardous work differential for 16 of these hours, 10 during regular duty and all 6 of the overtime hours. The employee's regular rate of pay would be computed as follows: 46 hours at \$8 (\$368), plus hazardous work differential at 25% of \$8 for 16 hours (\$32), for regular pay for all hours of \$400. Divide this by 46 hours for a regular rate of pay for all hours of \$8.70 per hour. For the week's work the employee would receive regular pay for all hours of \$400 plus a 50% overtime premium for the 6 overtime hours at \$4.35 (\$26.10) for a total of \$426.10. Note that the overtime hours are considered twice - once at straight time and once at a 50% premium, for a total of time-and-a-half.

(e) Compensatory Time. If funds are not available for overtime compensation, compensatory time off may be granted at the rate of one and one-half hours for each hour actually worked of overtime, provided that:

(1) The employee signs a statement agreeing to compensatory time in place of overtime; and

(2) The maximum authorized accumulation of compensatory time is eighty hours. When an employee has accumulated eighty hours of compensatory time off, all overtime must be paid in cash; and

(3) An employee's request to use compensatory time off must be granted within a reasonable time unless the responsible official determines that time off would be unduly disruptive to operation of the activity; and

(4) Accrued balances of compensatory time off at the termination of employment must be paid at the average basic pay of the employee over the last three years of employment or the final basic pay, whichever is higher.

(5) Transition Provision. All compensatory time of carried "off the books" through an in-house agreement or arrangement shall be converted to official compensatory time of\* as of the

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effective date of this amendment. The approving official shall be personally liable for any compensatory time off granted through a non-official in-house agreement or arrangement after the effective date of this amendment. An employee who has a balance of more than eighty hours of compensatory time because of this transition provision must be paid immediately for the balance exceeding eighty hours. If funds are not available for such immediate payment, the balance will be converted to annual leave.

\* So in original.

(f) **Reduction and Control of Overtime.** Intelligent and responsible control of overtime is a continuing management function and certain steps are to be taken by all appointing authorities and supervisors to reduce overtime. Overtime work should be directed to a specific objective or goal, and should not be work that can be completed during the regular workday, nor postponed to the following day or days. Management should:

(1) Ensure that every effort is made to improve management of the worker-hours available during the 40-hour work week; eliminate unessential or low priority work; make certain that reasonable discipline is maintained with respect to hours of work, leave, punctuality, industry, and individual productivity.

(2) Examine the purpose of overtime to determine whether the work to be accomplished requires immediate completion. No overtime should be approved to complete any work that could be delayed without undue hardship.

(3) Where recurring overtime appears necessary, compare the relative cost of additional personnel versus the current cost of overtime. Where additional personnel would result in less cost to the government, reassign employees in less essential positions, wherever possible.

(4) Pool clerical personnel and loan employees from one activity to another as the needs require. No situation should be allowed to exist wherein employees are not fully occupied in necessary work the full eight hours a day.

(5) Use available recognition devices, merit increase, performance awards, and priority consideration for promotion to reward employees who make extra efforts on behalf of their organizations. This will encourage other employees to raise their sights.

(6) Ensure that timekeeping duties are accomplished during regular working hours. Overtime shall not be authorized for timekeeping.

(7) Minimize use of compensatory time off. Excessive use of compensatory time will take employees away from the workplace in the future and create a need for more overtime.

(g) **Approval of Overtime.** Overtime must be approved, in advance, by the appropriate management official on forms prescribed by the Director of Personnel Management. Such officials are Secretaries or their equivalent, or Directors or their equivalent when this authority is delegated.

(1) An employee who is suffered or permitted to work overtime without authorization shall be paid, because the time represents an obligation of the government.

(2) The responsible management official has an obligation to discourage overtime which is not approved, and must take disciplinary action, when appropriate, against an employee who works overtime without authorization. The Director of Personnel may request documentation of the steps taken by management to control unauthorized overtime.



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- (3) As a general policy, an employee who has taken annual or sick leave or who plans to take annual or sick leave within the same work week will not be scheduled to work overtime.
- (h) Supervisors Working Overtime. As a general policy, management officials should refrain from directing supervisory personnel to work overtime.
- (i) Supervision of Overtime Work. In the event three or more employees are directed to work overtime, a supervisor must be present to ensure proper utilization of the overtime period.

Modified, 1 CMC § 3806(c), (d), (e), (f), (g).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 19 Com. Reg. 14894 (Jan. 15, 1997); Amdts Emergency and Proposed 18 Com. Reg. 14357 (Oct. 15, 1996); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 11 Com. Reg. 6156 (Apr. 15, 1989); Amdts Proposed 11 Com. Reg. 5854 (Feb. 15, 1989); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The final paragraph of subsection (a)(2) was not designated. The Commission designated it subsection (a)(2)(iii). The final three paragraphs of subsection (a) were not designated. The Commission designated subsections (a)(4) through (a)(6). The Commission also designated the final paragraph of subsection (d) as subsection (d)(3).

The 1989 amendments added new subsection (f)(6). The 1995 amendments added new subsections (a)(1) through (a)(3), (b), (c), (d)(1), (e), (f)(7), (g)(1) and (g)(2), and amended and readopted all other then-existing provisions of this section (now subsections (f) through (i)). The 1997 amendments added new subsections (a)(4) through (a)(6), (d)(1) through (d)(3), and amended subsections (a)(1) through (a)(3) and (c)(1) through (c)(3). See also the commission comment to § 10-20.2-301.

In subsections (a)(2)(iii) and (a)(5), the Commission moved commas inside of the closing quotation marks after “specialist” and “FLSA exempt,” respectively. The Commission inserted commas after the words “section” in subsection (a)(1)(i), “industry” in subsection (f)(1), and “awards” in subsection (f)(5) pursuant to 1 CMC § 3806(g).

### **§ 10-20.2-342 Standard Work Week**

The standard work week commences on Monday at 7:30 a.m. and ends on the following Friday at 4:30 p.m. of each week. For FLSA purposes, including the computation of overtime pay, the workweek is the 168-hour period beginning at 12:01 a.m. on Sunday, unless a different FLSA workweek is specified for a particular position.

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 19 Com. Reg. 14894 (Jan. 15, 1997); Amdts Emergency and Proposed 18 Com. Reg. 14357 (Oct. 15, 1996); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-301.

### **§ 10-20.2-344 Use of Non-standard Work Week**

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Non-standard work weeks may be used to provide continuity of service or to fulfill other needs of the public interest. Schedules for non-standard work weeks shall be devised, in advance, by the appointing authority, not to exceed forty hours per week. When it becomes necessary to change an employee from a standard work week to a non-standard work week, the employee shall be given notice ten working days in advance of the effective date of the change. If an employee is not given the required notice of change in schedule of work, the employee shall be compensated at the overtime rate for those days worked within the first ten working days which do not fall within the standard work week.

Modified, 1 CMC § 3806(e).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 11 Com. Reg. 6156 (Apr. 15, 1989); Amdts Proposed 11 Com. Reg. 5854 (Feb. 15, 1989); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-301.

### **§ 10-20.2-346 Holidays**

All government employees shall receive leave with pay on each legal holiday.

(a) **Payment for Work on Holidays:** An employee required to work on a legal holiday shall be compensated at the base salary rate or the adjusted base salary rate for the hours actually worked, and shall also be paid for the holiday leave with pay.

(b) **Holiday Pay in a Non-standard Work Week.** When holidays fall on a regular non-work day for employees whose basic work week is other than the standard work week, the work day immediately preceding or succeeding the holiday shall be designated (as determined by the department head) as the holiday in lieu of such holiday which occurs on the employee's scheduled non-work day:

(1) Such employees who have designated holidays in lieu of the official holiday shall, if possible, be excused from duty on the designated holiday.

(2) Such employees who are required to work on their designated holiday shall receive the basic salary rate for work performed on that day, and shall also receive holiday leave with pay.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Amdts Adopted 6 Com. Reg. 3175 (Oct. 15, 1984); Amdts Proposed 6 Com. Reg. 3123 (Aug. 15, 1984); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: The 1984 amendments amended subsection (a). The 1995 amendments amended subsections (a) and (b)(2) and republished and readopted the entire section. See also the commission comment to § 10-20.2-301.

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### § 10-20.2-348 Merit Increase

(a) An employee with a minimum of four exceptional ratings may additionally be granted a merit increase not to exceed one step increase in the base salary upon completion of fifty-two consecutive calendar weeks of sustained superior work performance. Such additional merit increase shall not alter the waiting period required for qualifying for the next within-grade step increase. No employee shall be compensated above the maximum step prescribed for the employee's pay level except where the employee was receiving such compensation pursuant to law.

(b) A request for merit increase is initiated and signed by the supervisor, attached to an approval recommendation from the appointing authority, and then forwarded to the Director of Personnel Management for review and final approval.

(c) The effective date of all merit increases shall be the beginning of the pay period immediately following the final approval of the Director of Personnel Management. Exceptions to this rule may be made by the Director of Personnel Management only for such reasons as might expedite public business and not result in an inequitable situation.

Modified, 1 CMC § 3806(e).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Amdts Adopted 6 Com. Reg. 3175 (Oct. 15, 1984); Amdts Proposed 6 Com. Reg. 3123 (Aug. 15, 1984); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) through (c).

The 1984 amendments amended subsection (b). The 1995 amendments amended subsection (a) and republished and readopted the entire section. See also the commission comment to § 10-20.2-301.

### § 10-20.2-350 Premium Pay

See § 10-20.2-352 for approval of proposals to provide premium pay or differentials.

(a) **Hazardous Work.** All employees meeting the qualification criteria below, whose occupation involves unusual and extreme hazards to their health and safety, shall be paid a differential of twenty-five percent of their base salary rate for any hour actually worked while exposed to the hazard. Eligibility will be for a specified period up to 90 days, and any renewal must be reviewed in the same manner and for the same maximum period as an original request for the differential. To qualify for payment of a hazardous work differential, the following conditions of work must be met:

(1) The conditions of usual and extreme hazard to the employee's health and safety must be clearly evident and fully defined;

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(2) The hazard, on which a request for payment of such differential might be based, has not previously been recognized in the establishment of the pay level for the class which covers the position(s) and work involved;

(3) Exposure to the particular unusual and extreme hazard must constitute a reasonable amount of time so as to be clearly recognizable. For example, several repeated exposures to such a hazard may occur for a brief period of time, but collectively measured over a period of time, e.g., one day, may possibly provide a valid basis for recognition of the hazard. Conversely, clear and sustained exposure to an unusual and extreme hazard is readily more recognizable and measurable.

(4) Upon receipt of a request to renew a hazardous differential, the Director of Personnel Management shall:

(i) Review the pay level assigned to the class which covers the position involved and the hours actually worked by employees with that classification while exposed to the hazard involved, and determine whether the pay level should be adjusted for the entire class; and

(ii) Review the justification provided by management to determine whether the employee is still eligible for the hazardous work differential.

(b) Night Work. Additional compensation in the form of a night work differential of fifteen percent of base salary rate is paid for all hours worked between 4:30 p.m. and 7:30 a.m., when such hours are included within a regularly scheduled tour of duty.

(1) Control Criteria. To be eligible to receive payment of a night work differential, the following criteria must be met:

(i) Payment will be made only for actual hours worked which fall between 4:30 p.m. and 7:30 a.m.

(ii) The above is restricted to include only those regularly scheduled work hours within the specified time period which constitute all or a part of the employee's regular hours of duty.

(2) Non-payment of Night Work Differential. Payment of a night work differential will not be made for the following situations:

(i) An employee whose regular hours of duty include scheduled hours during the period of 4:30 p.m. to 7:30 a.m., is absent and does not actually perform work for the hours involved;

(ii) An employee required to perform work during the hours of 4:30 p.m. to 7:30 a.m. which is not a part of the employee's regularly scheduled hours of night work duty; or

(iii) An employee who is paid for remaining on call to duty in excess of the normal forty hour work week shall not be eligible for payment of night work differential for any work performed while on call.

(c) On-call. Employees who are required to remain on-call to duty outside of their regular working hours shall be fit to report for duty while on call and shall be paid a premium of one dollar and fifty cents per hour they are scheduled to be on-call, provided that:

(1) Employees shall be compensated for hours actually worked instead of receiving an on-call premium for all hours in which they are required to be at a prescribed work place; and

(2) Hours of on-call duty must be for a regularly scheduled period of time in excess of the regular forty hour work week. On-call schedules must be submitted to the timekeeper before the beginning of the work week involved; and

(3) There is a bona fide reason for the employee to be on call; and

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(4) Eligibility to be placed on-call is for a period of one year, and may be renewed for additional one year periods.

(d) Typhoon Emergency. Employees who are required by the government to work in a location and during a period of time in which a typhoon or tropical storm emergency has been declared by the Governor shall be compensated as follows:

(1) For the employee's regularly scheduled work hours during which other government employees are released from work as a result of the emergency, the employee shall receive pay for administrative leave, and shall also receive pay for the actual hours worked; and

(2) For all other hours such employees are required to work while such declaration of emergency shall remain in force, compensation shall be at the rate of two and one-half times the base salary rate. Employees being paid typhoon emergency differential are not eligible to receive any other premium pay or overtime pay for the same time period.

(e) Outside Commonwealth Service. An employee of the Personnel Service residing in the Commonwealth and assigned a permanent change of duty station to work at locations outside the geographic boundaries or administrative control limits of the Commonwealth shall receive, in addition to base salary, fifty percent of the base salary. Employees receiving housing benefits shall not be eligible for this differential.

(f) Special Medical. A Medical Officer or Dental Officer who occupies a position with duties predominately clinical, as opposed to administrative in nature, shall receive, in addition to the base salary, a special medical differential of thirty percent of the base salary for the pay level and step of the position.

(g) Advanced Professional. An employee who has achieved advanced professional preparation through obtaining an L.L.B. or J.D. degree, a doctorate in medicine or dentistry, or an earned doctorate in any other field from an accredited United States university or any other university accredited in the United States, and who is employed in a position having a requirement for such degree, shall receive, in addition to the base salary, a premium of fifty percent of the base salary for the pay level and step of the position.

Modified, 1 CMC § 3806(c), (e), (f).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 11 Com. Reg. 6156 (Apr. 15, 1989); Amdts Proposed 11 Com. Reg. 5854 (Feb. 15, 1989); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The 1988 amendments deleted former subsection (b), "Hardship Post Differential," and redesignated former subsections (c) through (h). The 1989 amendments amended subsections (f) and (g) and added a new subsection (h). The 1995 amendments added new subsections (a)(4) and (d)(1), replaced former subsection (c), entitled "Standby," with a new subsection (c), entitled "On-call," and deleted subsection (h). The 1995 amendments also amended subsections (a), (b)(2)(iii), (e) and (f) and republished and readopted the entire section. See also the commission comment to § 10-20.2-301.

### **§ 10-20.2-352 Approval of Premium Pay or Differentials**

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Proposals to either begin or discontinue premium pay differentials shall be submitted on a request for personnel action to the Director of Personnel Management for review and approval. The request must be accompanied by a letter of justification addressing each of the criteria required to support the particular differential. Discontinuance of differentials does not constitute a “reduction in pay” and does not require a formal adverse action under part 200, subpart D.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-301.

### **§ 10-20.2-354 Bar to Dual Compensation or Dual Employment**

(a) No employee shall receive compensation for two positions or two appointments in the Personnel Service. When an employee is engaged in government work other than in the employee’s regular position, such employee shall be

- (1) Placed in LWOP from the regular position, or
- (2) Continue the government salary and reject the salary for the second position, whichever is to the employee’s personal advantage.

(b) Exception: When an employee is engaged as a classroom teacher outside the employee’s regular work day to teach adult basic education or classes for the Northern Marianas College, such employee shall be paid for work as a teacher at the prevailing rate. Other exceptions may be made upon proper justification with the specific written approval of the Director of Personnel Management.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Amdts Adopted 6 Com. Reg. 3175 (Oct. 15, 1984); Amdts Proposed 6 Com. Reg. 3123 (Aug. 15, 1984); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

The 1984 amendments amended subsection (b). See also the commission comment to § 10-20.2-301.

### **§ 10-20.2-356 Severance Pay**

(a) Employees who are separated from the Personnel Service by reduction-in-force (RIF), not eligible to receive immediate retirement pay, are entitled severance pay computed as follows:

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(1) For each full year of creditable service with the government, the employee is entitled to one-half of the employee's biweekly pay rate in effect upon separation by RIF.

(2) For each full three months of service beyond the total full years of service, the employee is entitled to twenty-five percent of the pay for a biweekly period at the rate in effect upon separation by RIF. Not more than seventy-five percent of the pay for one biweekly period shall be paid under this part-year provision.

(b) Severance pay is paid at the regular biweekly sequences until the entitlement is exhausted. If an employee separated by RIF is reemployed by the government in any capacity before the allowable severance pay liability is satisfied, the employee sacrifices the unpaid balance upon return to duty. If the employee's total creditable service is less than one full year, there is no entitlement to severance pay.

Modified, 1 CMC § 3806(e).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b). See also the commission comment to § 10-20.2-301.

### § 10-20.2-358 Timekeepers

It is essential that the Civil Service Commission and the government have available accurate data concerning the time and attendance of employees. This information assists forecasting of future personnel needs and analysis of current practices. To provide the needed information, it is necessary that competent timekeepers be appointed and certified.

(a) Appointment and Certification of Timekeeper. Each appointing authority shall appoint timekeepers from among the employees assigned to such office. Each timekeeper shall be assigned designated employees for whom the timekeeper will be responsible. Every employee (classified service and excepted service) shall be required to be assigned a timekeeper. Upon the appointment, each timekeeper will undertake a course of instruction in timekeeping procedures as specified by the Director of Personnel Management and the Secretary of Finance. Upon satisfactory completion of such instruction, the Director of Personnel Management may certify as acting timekeeper an employee who has not yet completed the required instruction, where circumstances dictate.\* No person may perform the duties of timekeeper without certification.

\*So in original; see the commission comment to this section.

(b) Duty of the Timekeeper.

(1) Each timekeeper will be responsible for recording and certifying time and attendance records of the assigned employees. Timekeeping duties shall be accomplished during regular working hours. Overtime shall not be authorized for timekeeping. The timekeeper will also record and certify leave time taken by any assigned employee. The method of recording and

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certifying time, attendance, and leave shall be prescribed by the Director of Personnel Management and the Secretary of Finance.

(2) Time and attendance records, kept by the timekeeper, are subject to audit by the Director of Personnel Management or his designee at least once a year. Non-compliance to this part shall subject the timekeeper to immediate decertification and appropriate disciplinary action(s).

(c) Protection of Timekeeper. It is essential that timekeepers be able to fulfill their duties without harassment. No person may attempt to coerce, threaten, or otherwise attempt to hinder the timekeeper. Any person violating this provision shall be reported promptly by the timekeeper to the Director of Personnel Management. Any person violating this provision may be subject to disciplinary and/or criminal sanctions.

(d) Employees' Rights to Challenge Timekeeping Records. Any employee who wishes to challenge the accuracy of any timekeeper's records may institute an employee appeal under the grievance procedure, part 200.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Proposed 24 Com. Reg. 19146 (May 20, 2002); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 11 Com. Reg. 6156 (Apr. 15, 1989); Amdts Proposed 11 Com. Reg. 5854 (Feb. 15, 1989); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: In subsection (b), the original paragraphs were not designated. The Commission designated subsections (b)(1) and (b)(2).

The 1989 amendments amended subsection (b)(1) and added subsection (b)(2). See also the commission comment to § 10-20.2-301.

It appears that subsection (a) contains an error. Originally, it provided, in part: "Upon satisfactory completion of such instruction, the Personnel Officer shall certify the timekeeper. The Personnel Officer may certify as acting timekeepers employees who have not yet completed the required instruction, where circumstances dictate." See 5 Com. Reg. at 2349-50; 9 Com. Reg. at 5356. The 1995 amendments combined these two sentences into one: "Upon satisfactory completion of such instruction, the Director of Personnel Management may certify as acting timekeeper an employee who has not yet completed the required instruction, where circumstances dictate." See 17 Com. Reg. at 13443 (adoption); Compare 16 Com. Reg. at 11790.

The Commission inserted commas after the words "attendance" in subsection (b)(1) and "threaten" in subsection (c) pursuant to 1 CMC § 3806(g).

### **Part 400 - Workplace Standards**

#### **Subpart A - Communications**

##### **§ 10-20.2-401 General**

The government is committed to the policy of participative management. This means that employee views and opinions shall be actively sought. Managers and supervisors shall not take any steps, either covertly or overtly, which will diminish participation by employees in the



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management process through communication of ideas, comments, and suggestions to their supervisors and superiors. To this end, supervisors and managers shall make positive and continuing efforts to communicate with the employees in the following ways:

(a) Formally, through:

- (1) The annual employee review system and the performance evaluation process as defined in part 700 of this subchapter;
- (2) Staff meetings or other assemblies called for the purpose of informing subordinates concerning the status of work and programs and discussion of current matters of mutual interest;
- (3) Contributions to official publications of the government prepared for information to employees; and
- (4) Such other devices as may be initiated by managers and supervisors to enhance communications.

(b) Informally, through:

- (1) Frequent contact with employees at their work site to exchange comments concerning progress of work;
- (2) Maintaining an “open door” policy which encourages employees to bring to the attention of supervisors and managers those problems of mutual concern;
- (3) Adopting a helpful and supportive attitude toward the incentive awards program, especially the beneficial suggestion program;
- (4) Passing along, promptly, to higher levels of management, complaints and concerns of employees which cannot be resolved or corrected at the lower levels of supervision;
- (5) Resolving promptly those matters which fall within the authority of the supervisor;
- (6) Encouraging morale and esprit de corps by:
  - (i) Occasional brief group meetings to recognize events and communicate plans of mutual interest to the employees in that office; and
  - (ii) Occasional social gatherings of employees and their families for picnics or holiday celebrations to promote better understanding and cooperation.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987).

Commission Comment: The 1988 amendments replaced the former part V, subpart A (now part 400, subpart A) in its entirety. See 5 Com. Reg. 2286, 2351-55 (Aug. 31, 1983), as amended by 6 Com. Reg. 3123, 3129-30 (Aug. 15, 1984).

The 2004 amendments proposed to repromulgate part 400 in its entirety. As of December 2004, a notice of adoption had not been published, and therefore, the Commission has not incorporated the proposed changes.

The Commission inserted a comma after the word “comments” in the initial paragraph pursuant to 1 CMC § 3806(g).

### **§ 10-20.2-402 Role of the Personnel Officer**

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The Personnel Officer shall designate one or more employees to monitor employee relations through advising managers and supervisors in such areas as:

- (a) Advising supervisors and managers concerning effect and import of regulations concerning employees' rights and privileges, management's rights, employee conduct and performance appeals, grievances and communications;
- (b) Advising and counseling employees concerning benefits to include the group life insurance, the group health insurance, and the worker's compensation;
- (c) Advising all employees on the impact of law and regulations concerning the personnel management function; and
- (d) Advising all employees concerning conflict of interest as denounced in this subchapter.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987).

Commission Comment: See the commission comment to § 10-20.2-401.

The Commission inserted a comma after the word "insurance" in subsection (b) pursuant to 1 CMC § 3806(g).

### **Subpart B - Emotional and Mental Health**

#### **§ 10-20.2-404 General**

(a) This subpart deals with employee conduct and performance when outside influences, other than substance abuse, adversely affect employees effectiveness. The influences include, but are not limited to, the following:

Politics	Family problems
Employee-supervisor conflict	Divorce
Employee-employee conflict	Legal concerns
Perceived personal crisis	Financial problems
Retirement crisis	Death in family

(b) Early recognition of deteriorating performance or conduct is a vital first step in the government's program to help troubled employees retain or resume their place as productive members of the work force. Early recognition is also an integral part of supervision. Because the immediate supervisor must assume such a key role in helping troubled employees, this subpart is prepared to help the supervisor:

- (1) Recognize early signs indicative of personal problems;
- (2) Deal in an appropriate manner with employees whose work is suffering because of personal problems; and
- (3) Make employees aware of sources of help within the organization and community.

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(c) This subpart does not deal with substance abuse. See part 400, subpart C, for the government's policy on creating an alcohol and drug free workplace.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com. Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) through (c).

The 1997 amendments amended subsections (a) and (b) and added new subsection (c). See also the commission comment to § 10-20.2-401.

### **§ 10-20.2-406 Policy on Emotional and Mental Health**

(a) As employer, the government is concerned with any person or social situation which interferes with the individual employee's mental and physical well-being, or interferes with the efficient and safe performance of assigned duties, reduces dependability, or reflects discredit on the Personnel Service.

(b) It is the government's policy to offer assistance through confidential counseling and referral guidance when indicated. This assistance includes but is not limited to such areas as emotional problems, family and marital problems, indebtedness, interpersonal conflicts (employee-supervisor, employee-employee) and crisis situations, where it is determined by the employee or management that these problems adversely affect employee health and performance. Assistance available to employees voluntarily seeking help for substance abuse problems is described in § 10-20.2-430. Sick leave, annual leave, or leave without pay may be granted for approved programs of treatment, counseling, or rehabilitation. The confidential nature of records in these cases will be maintained in the same manner as medical records.

Modified, 1 CMC § 3806(c).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com. Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b). See also the commission comment to § 10-20.2-401.

The Commission inserted commas after the words "leave" and "counseling" pursuant to 1 CMC § 3806(g).

### **§ 10-20.2-408 Action by Supervisors and Managers**

(a) Supervisors and managers must be alert to indications of deteriorating performance on the part of employees under their supervision. Some of the indications which may occur are:

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- (1) A marked change in behavior. This may show up as emotional outbursts, chronic irritability, excessive fatigue, or rule violations.
- (2) Frequent short-term absences, notably the afternoon of pay day or the following Monday;
- (3) Repeated accidents;
- (4) Frequent complaints related to health;
- (5) Chronic inability to get along with fellow employees; or
- (6) Excessive problem drinking.

(b) Upon identification of presumed problems, the supervisor should approach the employee to determine the cause of performance change. Should such an approach be rebuffed, which is likely, the supervisor should continue observation of the employee's performance, recording occurrences which tend to support the supervisor's feeling that the employee is troubled. If the conduct continues for a lengthy period, the supervisor must counsel with the employee and, if the employee is unresponsive, refer the matter to the Director of Personnel Management.

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com. Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: The 1997 amendments repealed former section V.B3, entitled "Policy on Alcoholism and Problem Drinking." See 19 Com. Reg. at 15778; 9 Com. Reg. at 5361; 5 Com. Reg. at 2357. The remaining sections of subpart B were renumbered accordingly. See also the commission comment to § 10-20.2-401.

### **§ 10-20.2-410 Action by Director of Personnel Management**

Upon referral of a case to the Director of Personnel Management by a supervisor, the Director of Personnel Management should contact the Department of Public Health for assistance. Once arrangements for assistance have been made, the Director of Personnel Management should seek out the employee and counsel the employee to seek appropriate help. If the employee is agreeable, the Director of Personnel Management should notify the supervisor concerned so that arrangements can be made for the employee to seek help. If the employee is not agreeable, the Director of Personnel Management should advise the employee that if the unsatisfactory performance continues, disciplinary action may result.

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com. Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-401.

### **§ 10-20.2-412 Further Actions**

(a) Should an employee's conduct and performance continue to deteriorate and the supervisor is convinced beyond a reasonable doubt that the cause is other than alcohol abuse or drug dependence, the supervisor should consult with the Director of Personnel Management. The

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Director of Personnel Management should then seek assistance from an appropriate practitioner at the Department of Public Health.

(b) Once the availability of professional help has been arranged, the Director of Personnel Management should meet with the employee and candidly discuss the problem and offer to assist the employee in seeking professional help from the Department of Public Health.

(c) The course of action to be taken after referral to professional attention depends on the professional recommendation given.

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com. Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) through (c).

The 1997 amendments repealed former section V.B6, entitled “Action Related to Alcoholism or Drug Abuse.” See 19 Com. Reg. at 15778; 9 Com. Reg. at 5362; 5 Com. Reg. at 2358. The remaining sections of subpart B were renumbered accordingly. See also the commission comment to § 10-20.2-401.

### **Subpart C - Alcohol and Drug Free Workplace**

#### **§ 10-20.2-414 Policy**

As an employer, the government recognizes it has a responsibility to its employees and the public it serves to take reasonable steps to assure safety in the workplace and in the community. Furthermore, the government is concerned about the adverse effect alcohol and drug abuse have on safe and productive job performance. It also recognizes that any employee, whose ability to perform safely and productively is affected by the use of alcohol and other drugs, jeopardizes the integrity of the workplace and the achievement of the government’s mission. The government realizes that alcoholism, problem drinking and drug addiction are treatable illnesses. The government, therefore, encourages employees who have problems with drugs or alcohol to utilize all available resources to resolve their problems before those problems affect their job performance.

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com. Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997).

Commission Comment: See the commission comment to § 10-20.2-401.

#### **§ 10-20.2-416 Definitions**

For the purposes of this subpart, the following definitions apply:

- (a) “Accident.” An event which causes
- (1) A fatality,

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- (2) An injury to a person requiring professional medical treatment beyond simple at-scene first aid, or
  - (3) An economic loss, including property damage, greater than \$2,500.00.
- (b) “Assessment.” A determination of the severity of an individual’s alcohol or drug use problem and an analysis of the possible courses of treatment, made by an expert in the field of substance abuse.
- (c) “Breath Alcohol Concentration” (“B.A.C.”). The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath testing device (E.B.T.).
- (d) “Breath Alcohol Technician” (“B.A.T.”). An individual authorized to collect breath specimens under § 10-20.2-426(b) and who operates an E.B.T.
- (e) “Consulting Physician.” A licensed physician retained or employed by the government to advise on drug testing.
- (f) “Drug.” A substance
- (1) Recognized in the official United States Pharmacopoeia, the official Homeopathic Pharmacopoeia of the United States, or the official National Formulary, or any supplement to any of them; or
  - (2) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; or
  - (3) Other than food, minerals, or vitamins, intended to affect the structure or any function of the body of a human or other animal; or
  - (4) Intended for use as a component of any article specified in subsections (f)(1), (2), or (3) above. Devices or their components, parts, or accessories are not considered drugs under this definition.
- (g) “Evidential Breath Testing Device” (“E.B.T.”). A device which is
- (1) Approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath; and
  - (2) Is on the NHTSA’s Conforming Products List of E.B.T.s; and
  - (3) Conforms with the model specifications available from the NHTSA, Office of Alcohol and State Programs.
- (h) “Illegal Drug.” A drug that
- (1) Is not obtained legally; or
  - (2) Is knowingly used for other than the prescribed purpose or in other than the prescribed manner; or
  - (3) Is a “designer drug” or drug substance not approved for medical or other use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration.

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- (i) “Invalid Test.” A breath or urine test that has been declared invalid by a medical review officer (M.R.O.), including a specimen that is rejected for testing by a laboratory for any reason. An invalid test shall not be considered either a positive or a negative test result.
- (j) “Medical File.” The file containing an employee’s medical examination form, mental health referrals, alcohol and drug test results, and other health related documents, maintained by the Office of Personnel Management separate from an employee’s official personnel folder, in accordance with § 10-20.2-1020(c).
- (k) “Medical Review Officer” (“M.R.O.”). A licensed physician, appointed by the government, with specialized training in substance abuse disorders and in the use and evaluation of drug test results. The M.R.O. shall be the only person authorized to receive laboratory drug test results and shall be the primary contact for technical inquiries to the drug testing laboratory.
- (l) “Reasonable Suspicion.” A perception based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of an individual or on specific facts, circumstances, physical evidence, physical signs and symptoms, or on a pattern of performance or behavior that would cause a trained supervisor to reasonably conclude that the individual may be under the influence of alcohol or illegal drugs while on duty.
- (m) “Safety-sensitive.” A word describing activities which directly affect the safety of one or more persons, including the operation of motor vehicles or heavy machinery or the carrying of firearms. Each department, entity, or organization head, in conjunction with the Director of Personnel Management, shall identify all positions to be considered safety-sensitive positions due to the amount of time the employee spends performing safety-sensitive functions.
- (n) “Statement of Fitness for Duty.” A written statement from a substance abuse professional (S.A.P.), certifying that the named employee is not dependent on alcohol or any drug to the extent such dependence will affect safe and productive work.
- (o) “Substance Abuse Professional” (“S.A.P.”). A physician, psychologist, psychiatrist, or social worker with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders; or a counselor certified by the National Association of Alcoholism and Drug Abuse Counselors.
- (p) “Under the Influence.” A condition where a person’s behavior, attention, or ability to perform work in the usual careful fashion has been adversely affected by the use of alcohol or drugs; intoxicated.
- (q) “Vehicle.” A device in, upon, or by which any person or property is or may be propelled or moved on a highway, on a waterway, or through the air.

Modified, 1 CMC § 3806(c), (f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997).

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Commission Comment: See the commission comment to § 10-20.2-401.

The Commission inserted quotation marks around terms defined. The Commission inserted commas after the words “treatment” in subsection (f)(2), “results” in subsection (j), and “upon” in subsection (q) pursuant to 1 CMC § 3806(g).

### § 10-20.2-418 Prohibited Conduct

(a) Sale, Purchase, Possession with Intent to Deliver, or Transfer of Illegal Drugs. No employee shall

(1) Sell, purchase, or transfer;

(2) Attempt to sell, purchase, or transfer; or

(3) Possess with the intent to deliver, any illegal drug while on government property, in any government vehicle or on any government business. It is a defense to this provision that the employee is employed by a law enforcement agency and the conduct occurs as part of the employee’s assigned duties for the purpose of investigating illegal drug trafficking.

(b) Possession of Illegal Drugs. No employee shall possess any illegal drug on government property, in any government vehicle, or while on government business. It is a defense to this provision that the employee is employed by a law enforcement agency and the conduct occurs as part of the employee’s assigned duties for the purpose of investigating illegal drug trafficking.

(c) Possession of Open Containers of Alcohol. No employee shall possess an open container of alcohol in any vehicle while on duty or in any government vehicle at any time. No employee shall possess an open container of alcohol while at his or her workplace.

(d) Under the Influence of Alcohol or Illegal Drugs. No employee shall be under the influence of alcohol or any illegal drug when at work, or reporting to work with the intention of working. As used in this subsection, alcohol includes any alcohol found in any prescription or non-prescription drug such as cough syrup. An employee is presumed to be under the influence of alcohol or an illegal drug if:

(1) The employee has a B.A.C. of 0.02 or more;

(2) The employee has a detectable amount of any illegal drug in his or her urine;

(3) The employee uses alcohol or any illegal drug while on call when the employee knows he or she may be called upon to perform safety-sensitive functions;

(4) The employee uses alcohol or any illegal drug within four hours prior to reporting to work and expects to perform a safety-sensitive duty.

(e) Refusal to Be Tested. No employee required to be tested for drugs or alcohol under any provision of this subpart shall refuse to be tested. The following conduct shall be considered a refusal to be tested:

(1) Refusing in writing to submit to testing after receiving clear and specific written notice of the requirement to be tested;

(2) Refusing verbally, in front of at least two witnesses, to submit to testing after receiving clear and specific written notice of the requirement to be tested;



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- (3) Failing to timely provide an adequate specimen for testing, without a valid medical explanation, after receiving clear and specific written notice of the requirement to be tested. An M.R.O. or consulting physician shall determine if there is any medical reason for failure to provide an adequate urine sample (shy bladder) or an adequate breath sample (shy lung);
  - (4) Engaging in conduct that clearly obstructs the specimen collection process;
  - (5) Failing to remain available for post-accident testing, or leaving the scene of an accident before a testing decision is made. An employee may leave the scene of an accident only to obtain necessary medical care or assistance in responding to the accident. If the employee leaves the scene, the employee must notify his or her supervisor as soon as possible of his or her location and reason for leaving the scene;
  - (6) Consuming alcohol or illegal drugs after an accident and before a testing decision is made;
  - (7) Failing to report, during the work shift in which an accident occurred, an accident which could have resulted in a testing decision; and
  - (8) Failing to report to the specimen collection site timely after being informed of the requirement to be tested.
- (f) Giving False Information. No employee shall give false information about a urine specimen or attempt to contaminate or alter the specimen.
- (g) Refusal to Comply with Treatment Recommendations. No employee shall fail to comply with recommendations for treatment or after-care made by an M.R.O. or S.A.P. as a consequence of a prior positive drug or alcohol test result.
- (h) Failure to Notify Government of Conviction. No employee shall fail to notify the Director of Personnel Management of any criminal drug statute conviction, within five days of such conviction, if the violation of the criminal drug statute occurred while the employee was conducting Commonwealth business, or while on or using Commonwealth property.
- (i) Supervisor's Responsibility for Confidentiality. No manager or appointing authority shall knowingly disregard an employee's right to confidentiality in matters relating to alcohol or drug testing or otherwise neglect his or her responsibilities under this subpart.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997).

Commission Comment: See the commission comment to § 10-20.2-401.

### **§ 10-20.2-420 Penalties and Consequences**

- (a) Disciplinary Action. An employee committing any act prohibited by § 10-20.2-418 shall be subject to an appropriate form of discipline, depending on the circumstances.
- (1) Generally. Where an employee commits any act prohibited by § 10-20.2-418, without valid reason, the employee shall be disciplined up to and including removal. At a minimum, the

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employee shall receive a formal reprimand. If the prohibited act committed by the employee relates to the use or possession of alcohol or illegal drugs, the employee shall be referred to an S.A.P. for assessment and treatment.

(2) First offense, under the influence. An employee found to be under the influence of alcohol or illegal drugs in violation of § 10-20.2-418(d), for a first offense, shall not be subject to removal solely for being under the influence of alcohol or illegal drugs. However, if the person is also involved in an accident, depending on the circumstances, the appointing authority may decide to initiate an adverse action for removal, even on a first offense.

(3) Serious offenses. The following acts, even for a first offense, will result in an immediate adverse action for removal in accordance with § 10-20.2-257(j) and (m):

- (i) The sale, purchase, possession with intent to deliver, or transfer of illegal drugs, or the attempt to sell, purchase or transfer illegal drugs in violation of § 10-20.2-418(a);
- (ii) Being involved in an accident resulting in a fatality while under the influence of alcohol or illegal drugs, in violation of § 10-20.2-418(d);
- (iii) While performing and about to perform duties in a safety sensitive position, being under the influence of alcohol or illegal drugs, in violation of § 10-20.2-418(d);
- (iv) An unexcused refusal to be tested, in violation of § 10-20.2-418(e);
- (v) Giving false information, contaminating or attempting to contaminate a urine sample, in violation of § 10-20.2-418(f);
- (vi) Failing to notify the proper authority of conviction for a drug offense in violation of § 10-20.2-418(h);
- (vii) Testing positive for alcohol or illegal drugs within five years of a prior positive test; and
- (viii) Breaching any term of a return to duty contract executed under the provisions of § 10-20.2-422(b).

(b) Information Concerning Treatment Options. Those employees not removed from government service after committing any act prohibited by § 10-20.2-418 shall be informed of resources available for evaluating and resolving problems associated with the use of alcohol and illegal drugs. At a minimum, the Office of Personnel Management's Alcohol and Drug Free Workplace Coordinator shall give the names, addresses, and telephone numbers of local S.A.P.s and substance abuse counseling or treatment programs. The employees will then be required to fulfill all the specified steps of treatment before being considered ready for return to duty.

(c) Report to Department of Public Safety. An employee committing any act prohibited by § 10-20.2-418(a) or (b) shall be reported, by the appointing authority, to the Department of Public Safety for the purpose of possible criminal prosecution.

(d) Duty/Pay Status Pending Adverse Action. Unless the employee was involved in an accident resulting in a fatality, an employee subject to an adverse action for committing any act prohibited by § 10-20.2-418, except for § 10-20.2-418(g), shall be allowed to remain on the job pending resolution of any proposed adverse action but shall not be allowed to perform a safety-sensitive function, even if that means assigning to the employee duties the employee would not otherwise be performing. An employee subject to an adverse action for committing any act prohibited by § 10-20.2-418 who was involved in a fatal accident shall be placed on leave without pay pending resolution of the adverse action for removal.

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Modified, 1 CMC § 3806(c).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997).

Commission Comment: See the commission comment to § 10-20.2-401.

### § 10-20.2-422 Return to Work Procedures

(a) Prerequisites to Returning to Duty. No employee who has tested positive for the presence of alcohol or illegal drugs shall be allowed to return to work until the employee has:

- (1) Complied with treatment recommendations of an M.R.O. or S.A.P. and been released for work by an S.A.P. in consultation, when appropriate, with the M.R.O. or a consulting physician;
- (2) Tested negative in a subsequent test paid for by the employee for the presence of alcohol, if the removal from duty was due to alcohol use; or cocaine, marijuana, opiates, amphetamines, and phencyclidine, if the removal from duty was due to drug use; and
- (3) Agreed to execute a return to duty contract.

(b) Return to Duty Contract. The return to duty contract shall include the following provisions:

- (1) Aftercare. An agreement to comply with aftercare and follow-up treatment recommendations for one to five years, as determined appropriate by the employee's S.A.P.;
- (2) Follow-up testing. An agreement to unannounced alcohol or drug testing, depending on the substance which resulted in the removal from duty, paid for by the employee, for one to five years, as determined appropriate by the employee's S.A.P., but there shall be no fewer than six tests in the first year after the employee returns to work;
- (3) Compliance with rules. An agreement to comply with government rules, policies, and procedures relating to employment;
- (4) Term. An agreement that the terms of the contract are effective for five years after the employee's return to duty; and
- (5) Breach of contract. An agreement that violation of the return to duty contract is grounds for termination.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997).

Commission Comment: See the commission comment to § 10-20.2-401.

### § 10-20.2-424 Testing Occasions

(a) Pre-employment Testing. At the time of application, persons applying for any position within the Civil Service will be notified that any offer of employment is contingent upon a negative urine test. After receiving an offer of employment, the candidate shall be tested for the presence of cocaine, marijuana, opiates, amphetamines, and phencyclidine in the urine. The test

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shall be paid for by the candidate. Testing shall be in compliance with § 10-20.2-428, below. Applicants who were previously employed by the government and applicants who have had an offer for government employment withdrawn due to a previous positive urine test result, must also provide a written release of drug testing history for the two years immediately preceding the application date.

(1) No new civil service candidate may be assigned to work in any position until he or she presents the results of a urine test, taken after the offer for employment has been made, that shows negative for the presence of cocaine, marijuana, opiates, amphetamines, and phencyclidine.

(2) If the candidate's test result is positive for the presence of a tested drug, without a legitimate explanation, the offer of employment will be withdrawn.

(3) If the candidate presents a drug testing history showing a positive drug test within two years prior to the application date, the offer of employment will be withdrawn unless the candidate submits a statement of fitness for duty and agrees to execute an agreement similar to a return to duty contract described in § 10-20.2-422(b).

(b) Reasonable Suspicion Testing. Where there is a reasonable suspicion that an employee is under the influence of alcohol or drugs while at work or about to begin work, he or she shall submit to a breath or urine test for the presence of alcohol, cocaine, marijuana, opiates, amphetamines, and phencyclidine, upon written notice from the employee's supervisor. Except as otherwise provided, the government shall pay for the testing.

(1) Properly trained supervisor. Only a supervisor with government-approved training in the physical, behavioral, and performance indicators of probable drug and alcohol use is permitted to make reasonable suspicion testing decisions.

(2) Objective inquiry. The properly trained supervisor will observe the employee suspected of being under the influence of alcohol or illegal drugs. A decision to request testing shall be based on eye witness reports, facts of the event, and observed physical and behavioral characteristics of the employee. Prior to making the decision to require testing, the supervisor will question the employee in a private area to ascertain whether there are any reasons other than alcohol or drug use for any behavior observed.

(3) Verification. No employee shall be required to submit to a drug or alcohol test based on reasonable suspicion unless the need for the test is verified by a second properly trained government employee. The required verification shall be done in person.

(4) Transportation assistance. The employee shall be accompanied to the collection site by a supervisor or manager, and shall be provided transportation home from the collection site. If the individual refuses and demands to drive his/her vehicle, the supervisor or manager shall notify the Department of Public Safety.

(5) Duty pending test results. Until the results of the drug and alcohol test are complete and verified, no employee tested based upon reasonable suspicion shall be allowed to perform or continue to perform a safety-sensitive duty.

(6) Report. The supervisor ordering reasonable suspicion testing shall put in writing, in detail, the facts leading to the decision. This report shall be considered confidential and will be maintained in the employee's medical file, which is confidential, until needed for a disciplinary action. Only at that time will the report be filed in the employee's official personnel folder.

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(c) Post-accident Testing. As soon as practical after an accident any employee whose action or inaction may have contributed to the accident must submit to breath and urine tests for the presence of alcohol, cocaine, marijuana, opiates, amphetamines, phencyclidine, upon written notice from the employee's supervisor. Except as otherwise provided, the government shall pay for the testing.

(1) Supervisor training. Only a supervisor with government-approved training in the physical, behavioral, and performance indicators of probable drug and alcohol use is permitted to make post-accident testing decisions.

(2) Objective inquiry. A supervisor's decision to request testing shall be based on eye witness reports, facts of the event, and observed physical and behavioral characteristics of the employee. Specifically, the properly trained supervisor shall require the driver of any government vehicle or the operator of any government equipment involved in the accident to be tested.

(3) Transportation assistance. The employee shall be accompanied to the collection site by a supervisor or manager, and shall be provided transportation home from the collection site. If the individual refuses and demands to drive his/her vehicle, the supervisor or manager shall notify the Department of Public Safety.

(4) Duty pending test results. Until the results of the drug and alcohol test are complete and verified, no employee reasonably suspected of having been under the influence of alcohol or drugs at the time of the accident shall be allowed to perform or continue to perform a safety-sensitive duty.

(5) Report. The supervisor ordering post-accident testing shall put in writing, in detail, the facts leading to the decision. This report shall be considered confidential and will be maintained in the employee's medical file, which is confidential, until needed for a disciplinary action. Only at that time will the report be filed in the employee's official personnel folder.

(d) Random Testing. During each calendar year randomly selected employees performing safety-sensitive functions will be required to submit to breath tests for alcohol and urine tests for cocaine, marijuana, opiates, amphetamines, and phencyclidine. The testing will be done during on-duty time. Except as otherwise provided, the government shall pay for the testing.

(1) Method of selection. Employees will be selected by a statistically valid method such as a random number table or computer-based random number generator that is matched with employee Social Security numbers, payroll identification numbers, or other comparable identifying numbers.

(2) Number to be tested. No more than twenty-five percent of all employees performing safety-sensitive functions in each department or agency each year shall be required to submit to breath alcohol testing and no more than fifty percent shall be required to submit to urine testing. The actual percentage will be determined at the beginning of each fiscal year for each department or agency by the Office of Personnel Management's Alcohol and Drug Free Workplace Coordinator, in consultation with the appointing authority and the MRO after reviewing the department's or agency's prior positive testing rates, reasonable suspicion and post accident events, and referrals for service.

Modified, 1 CMC § 3806(c), (f).

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History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997).

Commission Comment: See the commission comment to § 10-20.2-401. PL 18-47 (Apr. 24, 2014) § 3 purported to amend this section. However, pursuant to 1 CMC § 9103(a), the Administrative Code consists of “Commonwealth administrative rules.” As PL 18-47 is a statute enacted by the legislature and not an administrative rule promulgated by an agency, the Commission codified it at 1 CMC § 8602. To the extent that this section conflicts with 1 CMC § 8602, it is superseded.

### § 10-20.2-426 Collecting and Testing Breath Specimens

- (a) **Collection Site.** Breath specimens shall be collected only at a site approved by the Director of Personnel Management or at the scene of an accident if proper equipment and personnel can be made immediately available.
- (b) **Collection Protocol.** Breath specimens shall be collected only by a B.A.T. trained in the collection of breath specimens at a course approved by the United States Department of Transportation in accordance with standard collection protocols as specified in 49 CFR, part 40(C) “Procedures for Transportation Workplace Drug Testing Programs - Alcohol Testing,” except as otherwise provided in this section. However, the M.R.O. or a consulting physician, when requested, may assist in facilitating the collection for post-accident testing.
- (c) **Confirming Test.** Breath specimens shall first be subjected to a screening test for alcohol. If that test indicates a probable breath alcohol concentration of 0.02 or greater, a second test, confirming the first and providing quantitative data of alcohol concentration, shall be performed. No alcohol test shall be considered positive unless both the screening test and the confirming test show a B.A.C. of 0.02 or greater.
- (d) **Results.** The breath test results shall be transmitted by the B.A.T., in a manner to assure confidentiality, to the employee, to the employee’s appointing authority, and to the Director of Personnel Management.
- (e) **Confidentiality.** Other than as specified above, no person involved in the testing process shall release the results of breath tests to any other individual without a written release from the tested employee.
- (f) **Invalid Test.** If the Director of Personnel Management determines the test is invalid, using the factors found at 49 CFR, part 40.79, the test result shall be reported as negative.
- (g) **Statistical Reporting.** The B.A.T. shall compile statistical data, that is not name-specific, related to testing results. The B.A.T. shall release the statistical data to the Director of Personnel Management upon request.

Modified, 1 CMC § 3806(f).

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History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com. Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997).

Commission Comment: See the commission comment to § 10-20.2-401.

### § 10-20.2-428 Collecting and Testing Urine Specimens

(a) **Collection Site.** Urine specimens shall be collected only at a site approved by an appropriate government agency, and identified by the Director of Personnel Management.

(b) **Collection Protocol.** Urine specimens shall be collected by persons trained in the collection process developed by the Substance Abuse and Mental Health Service Administration, United States Department of Health and Human Services, in accordance with standard collection protocols as specified in 49 CFR, part 40(B), “Procedures for Transportation Workplace Drug Testing Programs - Drug Testing,” except as otherwise provided in this section. However, the M.R.O. or a consulting physician, when requested, may assist in facilitating the collection for post-accident testing.

(c) **Splitting Sample.**

(1) After collecting a sample of the employee’s urine, the sample will be split into two specimens. Both specimens will be shipped to the laboratory selected for performing tests for the government.

(2) One specimen, called the primary specimen, shall be tested for the government. The other specimen, called the secondary specimen, shall be the property of the employee, to be tested only upon request of the employee.

(d) **Confirming Test.** Primary urine specimens shall first be subjected to a screening test. Only if the screening test shows positive for the presence of a prohibited drug, will a second test be conducted on the same urine specimen to identify the presence of a specific drug or metabolite, using a gas chromatography/mass spectrometry (GC/MS) test. No drug test shall be considered positive unless both the screening test and the confirming test show the presence of one or more of the drugs tested for.

(e) **Results.** The laboratory conducting the urine test shall give the results only to the M.R.O. The M.R.O. shall discuss the test result with the tested individual.

(f) **Invalid Test.** If the M.R.O. decides that the test is invalid, the candidate shall immediately submit another urine specimen for testing.

(g) **Employee Test.** If the government’s test shows positive for the presence of a specific drug or drugs, the employee may request that the M.R.O. have the secondary specimen tested at another laboratory certified by the United States Department of Health and Human Services, for the presence of the drug or drugs found in the primary specimen.

(1) The employee must make the request in writing, within 72 hours of receiving notice of the result of the government’s test.

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(2) The results of the second test shall be given to the M.R.O. who shall discuss the result with the employee.

(3) The employee shall pay for the cost of the second test.

(h) Alternative Explanations for Positive Test Results.

(1) Upon receiving a report of a positive test result, the M.R.O. shall determine if there is any alternative medical explanation for the result, including the use of prescribed medication by the employee. Such a determination shall be based on information received from the employee such as the tested individual's medical history and records. If the M.R.O. determines it to be necessary he or she may request pertinent analytical records from the laboratory or require a re-analysis of the specimen.

(2) The M.R.O. shall report the urine test result as negative and shall take no further action if he or she determines:

(i) There is a legitimate medical explanation for a positive test result, other than the use of the specific drug; or

(ii) Based on a review of laboratory inspection reports, quality assurance and quality control data, and other drug test results, the positive drug test result is scientifically insufficient for further action.

(i) Illegal Use of Opium. If the GC/MS does not confirm the presence of 6-monoacetylmorphine, the M.R.O. shall determine whether there is clinical evidence, in addition to the urine test result, of illegal use of any opium, opiate or opium derivative.

(j) Report to Government. The M.R.O. shall report all positive and negative urine drug test results, in a manner to assure confidentiality, to the employee's appointing authority, and to the Director of Personnel Management.

(k) M.R.O. and Confidentiality. Other than as specified above, the M.R.O. shall not release the results of drug tests to any other individual without a written release from the tested employee.

(l) Statistical Reporting. The M.R.O. shall compile statistical data, that is not name-specific, related to testing and rehabilitation. The M.R.O. shall release the statistical data to the Director of Personnel Management upon request.

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997).

Commission Comment: See the commission comment to § 10-20.2-401.

### **§ 10-20.2-430 Employee Awareness and Rehabilitation**

(a) Employee Awareness Training. All employees shall receive information concerning the effects and consequences of drug and alcohol use on personal health, safety, and the work environment; the manifestations and behavioral clues indicative of drug and alcohol use; and the



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resources available to the employee in evaluating and resolving problems associated with the use of illegal and legal drugs and alcohol.

(b) **Employees Seeking Voluntary Assistance.** Government employees shall be allowed to voluntarily seek assistance for alcohol or drug use at any time prior to being required to be tested under the reasonable suspicion, post-accident or random testing procedures.

(1) **Referrals.** Employees may request referral to an S.A.P. for treatment, may refer themselves, or may be referred by a supervisor as part of a performance counseling. Such referrals shall only be made a part of the employee's medical file and shall not be a part of the employee's official personnel folder. Referrals shall be kept confidential.

(2) **Voluntary referrals.** Employees who voluntarily seek assistance in dealing with drug and alcohol problems or accept referrals, before job performance is compromised, shall be provided the same leave benefits for recommended treatment as provided for any other health problem.

(3) **Accountability for job performance.** Regardless of participation in or requests for referrals, employees shall be held accountable for acceptable job performance. In no case where job performance has been compromised will disciplinary action be waived for employees asking for assistance and referral. However, such requests may be considered a mitigating factor in determining the appropriate form of discipline.

(c) **Job Security Maintained.** Employees shall not have job security or promotional opportunities jeopardized solely because of a request for a drug or alcohol treatment referral.

(d) **Required Documentation.** Although voluntary referrals or referrals made prior to testing are kept strictly confidential, documentation of poor performance or disciplinary actions taken due to drug or alcohol abuse shall be included in the employee's official personnel folder.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997).

Commission Comment: See the commission comment to § 10-20.2-401.

### **§ 10-20.2-432 Disseminating Information on Regulations**

(a) **Distribution to Employees.** All current employees shall receive a copy of this subpart at least thirty days before the implementation date. New employees hired after the effective date of this policy will be given a copy of this policy at the time of hire. Each employee shall sign a form prescribed by the Director of Personnel Management which acknowledges the receipt of the policy and the employee's understanding that he or she is bound by this policy. This acknowledgment shall be kept in the employee's official personnel folder.

(b) **Posting.** This subpart will be posted in all government workplaces for at least sixty days following their implementation.

Modified, 1 CMC § 3806(d), (e), (f).

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History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997).

Commission Comment: See the commission comment to § 10-20.2-401.

### § 10-20.2-434 Record Retention and Reporting Requirements

(a) **Administrative Records.** Records relating to the administration of this policy, including policy and program development, employee awareness training, supervisory training, collection site training, program administration, and calibration documentation, shall be kept by the Director of Personnel Management and the M.R.O. for five years.

(b) **Records Relating to Collection Process.** Records relating to the breath and urine collection process shall be kept by the Director of Personnel Management, the M.R.O., and the specimen collector at the collection site for two years.

(c) **Refusals, Referrals, and Test Results.** The Director of Personnel Management shall keep a copy of all records of refusals to be tested, breath and urine test results, and referrals to an S.A.P. in the employee's medical file, not the employee's official personnel folder, at least until such time as disciplinary action is taken. The M.R.O. shall keep a copy of all urine test results and the B.A.T. shall keep a copy of all breath test results in a manner to assure confidentiality. No test results shall be available for use in a criminal prosecution of the employee without the employee's consent.

(1) Positive test result records, records of refusals to be tested and referrals to an S.A.P. shall be kept for five years.

(2) Negative test result records shall be kept for a period of one year.

(d) **Report to Federal Contract Agency.** To comply with the Drug Free Workplace Act of 1988, 41 U.S.C. § 701(a)(1)(E), the Director of Personnel Management shall notify the federal contracting agency of the conviction of any employee for selling, manufacturing or dispensing any illegal drug on government business property or government time, within 10 days of the conviction.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997).

Commission Comment: See the commission comment to § 10-20.2-401.

### Subpart D - Responsibilities of Employees and Management

#### § 10-20.2-436 Code of Ethics for Government Personnel Service

(a) All persons in government service should:

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- (1) Put loyalty to the highest moral principles and the country above loyalty to persons, party or government office.
- (2) Uphold the laws applicable in the Commonwealth and in all subdivisions thereof and never be a party to their evasion.
- (3) Give a full day's labor for a full day's pay; giving to the performance of duties earnest effort and best thought.
- (4) Seek to find and employ more efficient and economic ways of getting tasks accomplished.
- (5) Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or note; and never accept, for him/herself or his/her family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his/her governmental duties.
- (6) Make no private promises of any kind binding upon the duties of office, since a government employee has no private word which can be binding on public duty.
- (7) Engage in no business with the government, either directly or indirectly, which is inconsistent with the conscientious performance of governmental duties.
- (8) Never use any information coming confidentially in the performance of governmental duties as a means for making private profit.
- (9) Expose corruption wherever discovered.
- (10) Uphold these principles, ever conscious that public office is a public trust. In addition, guaranties and custodians of federal funds shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by federal funds. No employee, officer or agent of the grantee shall participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer or agent, or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's and contractor's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors or parties to sub-agreements. To the extent permitted by law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's officers, employees or agents, or by contractors or their agents.

(b) The government expects its employees to be representatives of its legal self. Like any other employer, it has the right to expect the employees to foster its business and well-being. The government's first business is the maintenance of law and order at all times (even after regularly scheduled working hours) because without law and order, the government's goals and objectives cannot be realized. An illegal or dishonorable act of an agent or employee may degrade and embarrass the government and lessen its effectiveness. To protect its credibility and rapport in the community, the government has the right to take administrative action as necessary and justifiable against employees who violate its laws or detract from its policies. Such administrative action is aside from any court action which may ensue from a criminal act or omission. If employees in the Personnel Service System take pride in their service, it will reduce the number of formal disciplinary actions necessary. Disciplinary actions are wasteful of the time of many employees, who must sit on hearing committees and serve as investigators or witnesses, and such actions leave a residue of bad feeling which affects the entire department/division.

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(c) It is a mistake for anyone to believe that good discipline is simply a matter of enforcement by those at the head of the administration. Good discipline requires employee leadership, not enforcement procedures. Most of all, it involves the active support of the employees. The employees, as a group, have a greater stake in improving the quality of government service than any other interested party. An organization can take genuine pride and provide an opportunity to find a meaningful outlet for abilities and an opportunity for advancement in accordance with employee contribution. Leadership which meets these needs of employees will have no difficulty getting employee support.

(d) So that all employees will understand the standards of conduct that are expected of them, these principles are set forth. Officials and employees of the government are reminded that they must not only avoid wrongdoing in the conduct of their official duty, but must, with equal care, also avoid the appearance of wrongdoing. Acts which have the appearance of wrongdoing are prohibited equally with actual acts of wrongdoing.

History: Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) through (d).

### **§ 10-20.2-438 Policy on Employee Conduct**

(a) The maintenance of the highest standards of honesty, integrity, impartiality, and conduct by Personnel Service System employees is essential to assure the proper performance of government business and maintain the confidence of citizens in their government.

(b) Employees of the government are expected to comply with all laws and regulations. Legal requirements are essentially concerned with official conduct, i.e., behavior of the employee in the course of or in relation to official duties. Personnel Service System employees are required to conduct themselves in such a manner that the work of the government is effectively accomplished and to observe the requirements of courtesy, consideration, and promptness in dealing with or serving the public or its clientele. Personal and private conduct of an employee (as opposed to official conduct), that reflects adversely upon the dignity and prestige of the Personnel Service System, is also a matter of concern to management. All employees are expected to cultivate those personal qualities which characterize a good civil servant - loyalty to our government, a deep sense of responsibility for the public trust, and a standard of personal deportment which will be a credit to the individual.

History: Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

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Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

The Commission inserted commas after the words “impartiality” in subsection (a) and “consideration” and “trust” in subsection (b) pursuant to 1 CMC § 3806(g).

### **§ 10-20.2-440 Subordination to Authority**

An employee is required to carry out the announced policies and programs of the Commonwealth government. While policies related to work are under consideration, the employee may, and is expected to, express opinions and points of view; but once a decision has been rendered by those in authority, the employee will be expected unreservedly to assure the success of programs which it is the employee’s responsibility to effectuate. If the employee fails to carry or out any lawful regulation, order, or policy, or deliberately refuses to obey the proper requests of superiors having responsibility for the employee’s performance, the employee is subject to appropriate disciplinary action.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

The Commission inserted a comma after the word “order” pursuant to 1 CMC § 3806(g).

### **§ 10-20.2-442 Management Responsibility**

Appointing authorities shall establish and maintain internal procedures by means of which all employees are adequately and systematically informed of the content, meaning and importance of the regulations in this subpart. Copies of the regulations in this subpart shall be given to each employee within ninety days from the effective date of these regulations and to new employees upon entrance to duty. Each appointing authority shall remind its employees of the regulations in this subpart periodically, at least once annually, through a publication or memorandum issued to all employees.

Modified, 1 CMC § 3806(e).

History: Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

### **§ 10-20.2-444 Employee Responsibility**

It is the responsibility of employees to familiarize themselves and to comply with the regulations in this subpart. Employees are expected to consult with their supervisors and Personnel Officer on general questions they may have regarding the applicability of the regulations. On specific

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matters and for guidance on questions of conflict of interest, they may receive authoritative advice and guidance from the Personnel Officer and the Attorney General's Office.

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com. Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-401.

### § 10-20.2-446 Interpretation and Advisory Service

(a) Channels for counseling. It is the government's policy to encourage responsible disposition of counseling requests by the Personnel Officer. Counseling provided by the Personnel Officer involving any question of conflict of interest shall be in cooperation with the Attorney General.

(b) In order that the Attorney General may be informed as to the content and scope of counseling at all levels, the Personnel Officer will be responsible for communicating a summary of each such counseling action to the Attorney General on a concurrent basis; provided, however, that such reporting is required only as to counseling in regard to conflict of interest questions.

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com. Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-401.

### § 10-20.2-448 Disciplinary and Other Remedial Action

(a) Violations of the regulations in this subpart by an employee may be cause for appropriate disciplinary action which may be in addition to any penalty prescribed by law. After consideration of the statements of employment and financial interests submitted by the employee and the explanation of such employee as required in the regulations in this subpart, if the Attorney General or designee decides that remedial action is required, immediate action shall be taken to end the actual or apparent conflict of interest.

(b) Remedial action may include, but is not limited to:

- (1) Changes in assigned duties;
- (2) Divestment by the employee of conflicting interest;
- (3) Disciplinary action; and/or
- (4) Disqualification for a particular assignment.

(c) Remedial action, whether disciplinary or otherwise, shall be effected in accordance with any applicable laws or regulations.

Modified, 1 CMC § 3806(d).

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History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com. Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-401.

### § 10-20.2-450 Ethical and Other Conduct and Responsibilities of Employees

(a) Gifts, Entertainment, and Favors.

(1) Except as provided in subsections (b) and (c) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:

(i) Has, or is seeking to obtain, contractual or other business or financial relations with the government;

(ii) Conducts operations or activities that are regulated by the government; or

(iii) Has interests that may be substantially affected by the employee's performance of official duty.

(2) Except as specifically authorized by law, employees are not authorized to accept on behalf of the government voluntary donations or cash contributions from private sources for travel expenses, or the furnishing of services in-kind, such as hotel accommodations, meals, and travel accommodations.

(b)(1) The prohibitions of subsection (a) do not apply in the context of obvious family, non-official, or personal relationships, such as those between the parents, children, or spouse of the employee, when the circumstances make it clear that it is those relationships, rather than the business of the persons concerned, which are the motivating factors.

(2) An employee may accept food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may properly be in attendance.

(c) An employee may accept loans from banks or other financial institutions on customary terms to finance proper and usual activities, such as home mortgage loans. An employee may accept unsolicited advertising or promotional material such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value. An employee shall avoid any action, whether or not specifically prohibited by this subpart, which might result in, or create the appearance of:

(1) Using public office for private gain;

(2) Giving preferential treatment to any person;

(3) Impeding government efficiency or economy;

(4) Losing independence or impartiality;

(5) Making a government decision outside official channels; and/or

(6) Affecting adversely the confidence of the public in the integrity of the government.

(d) An employee shall not solicit a contribution from another employee for a gift to an official superior, or accept a gift from an employee receiving less pay. However, this subsection

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does not prohibit a voluntary gift of nominal values or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(e) An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by law or by the Constitution.

(f) This section does not prohibit receipt of bona fide reimbursement, unless prohibited by law, for actual expenses for travel and such other necessary subsistence as is compatible with this part for which no government payment or reimbursement is made. However, an employee may not be reimbursed and payment may not be made on the employee's behalf, for excessive personal living expenses, gifts, or entertainment, nor does it allow an employee to be reimbursed by a person for travel on official business under government orders when reimbursement is prescribed by law.

Modified 1 CMC § 3806(d), (f).

History: Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Amdts Adopted 6 Com. Reg. 3175 (Oct. 15, 1984); Amdts Proposed 6 Com. Reg. 3123 (Aug. 15, 1984); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The original paragraphs of subsections (a) and (b) were not designated. The Commission designated subsections (a)(1) and (a)(2) and (b)(1) and (b)(2).

The 1984 amendments amended subsection (b)(1).

The Commission inserted commas after the words "entertainment" in subsection (a), "meals" in subsection (a)(2), "non-official" and "children" in subsection (b)(1), "calendars" in subsection (c), "illness" in subsection (d), "decoration" in subsection (e), and "gifts" in subsection (f) pursuant to 1 CMC § 3806(g).

### § 10-20.2-452 Outside Work and Interests

(a) Policy: Outside work is permitted to the extent that it does not prevent an employee from devoting the employee's primary interests, talents, and energies to the accomplishment of work for the government or tend to create a conflict between the private interests of an employee and official responsibilities. The employee's outside employment shall not reflect discredit on the government.

(b) Definitions:

(1) The term "outside work" means all gainful employment other than the performance of official duties. It includes, but is not limited to self-employment and working for another private business (including personally owned businesses, partnerships, corporations and other business entities).

(2) The term "active proprietary management" refers to a business affiliation in which substantial ownership is coupled with responsibility for day-to-day management efforts.

(3) A "conflict of interest" is one in which a Personnel Service System employee's private interests, usually of an economic nature, conflict or raise a reasonable question of conflict with



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the employee's public duties and responsibilities. Potential conflict of interest is prohibited and is to be avoided whether it is real or only apparent.

(c) Restrictions: An employee shall not engage in outside activity incompatible with the full and proper discharge of the duties and responsibilities of the employee's government employment. Any activity involving an incompatibility of interest is prohibited. Any work assignment or employment affiliation which might encourage on the part of members of the general public a reasonable presumption of a conflict of interest falls in this category. Incompatible activities include but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expenses, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of conflicts of interest.

(2) Outside employment which tends to impair an employee's mental or physical capacity to perform government duties and responsibilities in an acceptable manner. An employee shall not receive any salary or anything of monetary value from a private source as compensation for services to the government.

(d) Among other things, abuse of leave privileges to engage in outside work shall be treated as an interference with official performance. Active proprietary management of any except the smallest business is questionable because of the probability that such management responsibilities may interfere with the employee's obligations to the employee's primary employer, the government. Employees are especially urged to seek the advice of the Personnel Officer before committing themselves to such activities.

(e) An employee shall not perform outside work:

(1) Which is of such a nature that it may be reasonably construed by the public to be the official act of the government.

(2) Which involves the use of government facilities, equipment, or supplies of whatever kind.

(3) Which involves the use of official information not available to the public.

(f) While an employee is not prohibited from performing outside work solely because the work is of the same general nature as the work the employee performs for the government, no employee may perform outside work:

(1) If the work is such that the employee would be expected to do it as a part of regular duties.

(2) If the work involves active proprietary management of a business closely related to the official work of the employee.

(3) If the work for a private employer is of the same type or closely kin to that involved in the program responsibilities of the office in which the employee is employed.

(4) If the work would tend to influence the exercise of impartial judgment on any matters coming before the employee in the course of official duties.

(g) This section does not preclude an employee from:

(1) Participation in the activities of political parties not prescribed by applicable law.

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(2) Participation in the affairs of, or acceptance of an award for, meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, non-profit educational, recreational, public service, or civic organization.

History: Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

The Commission inserted commas after the words “talents” in subsection (a) and “equipment” in subsection (e)(2) pursuant to 1 CMC § 3806(g).

### § 10-20.2-454 Financial Interests

(a) An employee shall not:

(1) Have a direct or indirect financial interest that conflicts with government duties and responsibilities.

(2) Engage in directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through government employment.

(b) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the government, so long as it is not prohibited by law, the Constitution, or the regulations in this part.

History: Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

### § 10-20.2-456 Government Property

General Responsibility. Employees shall be held accountable for government properties and money entrusted to their individual use in connection with their official duties. It is their responsibility to protect and conserve government property and to use it economically and for official purposes only.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

### § 10-20.2-458 Information

It is the policy of the government to accord the public access to information about its activities and to make available to the public records of the government except in cases where the disclosure of the record is prohibited by statute or constitutes an invasion of privacy of any individual concerned, or the record is exempt from the disclosure requirements, and sound

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grounds exist which require application of an applicable exemption. An employee may not testify in any judicial or administrative proceedings concerning matters related to the business of the government without the permission of the appointing authority or the Governor.

History: Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The 1988 amendments deleted original section V.D12, and redesignated the remaining sections in this subpart. See 5 Com. Reg. at 2364 (Aug. 31, 1983).

### **§ 10-20.2-460 Gambling, Betting, and Lotteries**

While on government-owned or leased property or while on duty for the government, an employee shall not participate in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket. However, this section does not preclude activities necessitated by the employee's law enforcement duties.

History: Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

### **§ 10-20.2-462 Specific Types of Conduct**

(a) **Misconduct.** Any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct on the part of a government employee is cause for removal from service.

(b) **Negotiations for Employment.** It is the policy of the government that employees shall not, without proper clearance, negotiate for future non-Personnel Service System employment with persons or organizations having business with the Commonwealth and to which the employee is called upon officially to render advice or make judgments. In the event an employee desires to negotiate for such employment, the employee must inform his/her supervisor of his/her intentions. If the supervisor determines that the proposed negotiations will not adversely affect the government's interests, the supervisor may authorize the employee to proceed.

(c) **Selling or Soliciting.** Employees and other persons are prohibited from selling or soliciting for personal gain within any building occupied or used by the government without proper permission. This prohibition does not apply to:

- (1) Authorized and installed business activities such as Employees Credit Union.
- (2) Solicitation for health drives, the Red Cross, and other purposes approved under the governor's fund-raising policy.
- (3) Token solicitations for floral remembrances, retirement gifts, and similar purposes.

History: Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988);

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Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: The 1997 amendments repealed former section V.D15, entitled "Use of Intoxicants." See 19 Com. Reg. at 15779 (Nov. 15, 1997); 9 Com. Reg. at 5371 (Dec. 15, 1987); 5 Com. Reg. at 2367 (Aug. 31, 1983). The remaining sections were redesignated accordingly.

The Commission inserted commas after the words "immoral" in subsection (a), "Cross" in subsection (c)(2), and "gifts" in subsection (c)(3) pursuant to 1 CMC § 3806(g).

### **§ 10-20.2-464 Community and Professional Activities**

Employees are encouraged to participate in the activities of professional societies and of civic organizations whose purposes and objectives are not inconsistent with those of the departments in which they are employed. Affiliation with such groups may be mutually beneficial to the employee and to the government; however, such participation must not affect adversely an employee's performance of regularly assigned duties.

History: Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com. Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

### **Subpart E - Political Activity**

#### **§ 10-20.2-466 Political Activities**

The political activities of persons in the Personnel Service System shall be subject to the restrictions of this subpart.

History: Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

#### **§ 10-20.2-468 Rights of Employees**

All employees in the Personnel Service System shall have the following rights:

- (a) To vote for the candidates of their choice and to express their opinions on political matters.
- (b) To be active members of the political party or organization of their choosing.
- (c) To make voluntary contributions to a political party for its general expenditures.

History: Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Amdts Adopted 6 Com. Reg. 3175 (Oct. 15, 1984); Amdts Proposed 6 Com. Reg. 3123 (Aug. 15, 1984); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: The 1984 amendments deleted former subsection (d).

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### § 10-20.2-470 Prohibitions

Employees of the Personnel Service System shall not:

- (a) Use their office or official influence to interfere with an election or to affect the results of an election.
- (b) Use their official authority to coerce any person or political party in reference to any politically related activity.
- (c) Be obligated to contribute to any political fund or render service to any political activity.
- (d) Solicit or receive political contributions from anyone while on government time or on government property.
- (e) Campaign for any candidate for public office during official working hours.
- (f) Promote or oppose legislation relating to programs of the departments without the official sanction of the proper departmental authority. (It should be clearly understood, however, that nothing in this policy is to be considered as restricting or interfering with the obligation of employees to respond freely and candidly to any inquiries made of them in regard to appropriations or related matters.)

History: Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

### § 10-20.2-472 Public Office

An employee who is an official candidate for public office shall take annual leave or leave without pay.

History: Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

### § 10-20.2-474 Penalty

An employee found guilty of a prohibited activity shall be subject to disciplinary action by management.

History: Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

## Subpart F - Government Employment Equal Opportunity Policy

### § 10-20.2-476 Government Employment Equal Opportunity Policy

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(a) It is the policy of the government that there shall be no discrimination based on such factors as race, creed, color, ancestry, membership in a labor organization, political affiliation, place of origin, physical handicap, sex, religion, age, and similar matters not related to merit and fitness. Also, as stated in 1 CMC §§ 8101, et seq.:

“It is hereby declared to be the purpose of this Act to establish a system of personnel administration based on merit principles and generally-accepted methods governing the classification of positions and the employment, conduct, movement and separation of public officials and employees.

“It is also declared to be the purpose of this Act to build a career service which will attract, select and retain the best-qualified civil servants on merit who shall hold their offices or positions free from coercion, discrimination, reprisal or political influences, with incentives in the form of genuine opportunities for promotions in the public service, to provide competent and loyal personnel to render such service, according to the dictates of ethics and morality. In order to achieve these purposes, it is declared to be the policy of the Commonwealth that the personnel system hereby established be applied and administered in accordance with the following merit principles:

“A. Equal opportunity for all regardless of age, race, sex, religion, political affiliation or place of origin;

B. Impartial selection of the ablest person for government service by means of competitive tests which are fair, objective and practical;

C. Just opportunity for competent employees to be promoted within the service;

D. Reasonable job security for the competent employee;

E. Systematic classification of all positions through adequate job evaluation;

F. Fair and reasonable grievance procedures for all employees pertinent to condition of employment; and

G. Proper employer-employee relations to achieve a well-trained, productive and happy work force.”

(b) All employees, and especially supervisors and managers, are expected to implement the equal employment opportunity policy at all times. Discrimination for or against any employee on the basis of age, race, color, religion, sex, national origin, place of origin, marital status, political affiliation, disability, or any other basis prohibited by federal or Commonwealth law shall not be tolerated. All agencies shall maintain every workplace free from unlawful harassment, including sexual harassment. Any employee or official who engages in any act of discrimination or harassment on the basis of any of the above factors violates government policy, and such misconduct will subject an employee to corrective action ranging from counseling to adverse action up to and including termination. Such harassment by a non-employee (for example, a client or contractor) is also prohibited. Supervisors and management officials shall not tolerate any such outside harassment and shall take necessary action to prevent its continuation or recurrence.

(c) Any employee who feels that he or she has been discriminated against on the basis of any of the above factors, or sexually or in any other manner harassed, should immediately report such incidents to a supervisor at any level without fear of reprisal. Confidentiality will be maintained to the extent permitted by the circumstances.

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(d) A supervisor who receives a claim of discrimination or harassment in violation of this policy shall take such complaint seriously; assure that it is investigated promptly, privately, and with as much confidentiality as possible consistent with the need to determine the facts; and document the investigation. Any person accused of a violation shall be allowed the opportunity to rebut the charges.

(e) After determining the facts, the appropriate supervisor shall take any corrective action required by the circumstances. This may include counseling any employee, whether or not a violation has occurred; imposing an appropriate sanction, including adverse action; making sure that this policy is reiterated to all employees or any group thereof; referral to the Civil Service Commission, Attorney General, or Public Auditor; or any other action necessary or likely to remedy the problem and prevent future discrimination or harassment. A supervisor who does not take appropriate action also violates this policy and exposes the Commonwealth government to liability.

(f) Except as noted below, every department or other agency shall designate at least one person as Equal Employment Opportunity Officer (EEO Officer) as part of that person's regular duties. The Governor may designate a single EEO Officer for two or more agencies of fewer than 50 employees each. Agencies that do not report to the Governor may voluntarily group themselves together and designate a single EEO Officer, and may seek the assistance of the Civil Service Commission in making such arrangements.

(g) EEO Officers shall advise employees, including managers and other supervisors, regarding their rights and responsibilities under this policy and applicable federal and Commonwealth laws and shall be provided with appropriate training for such purpose.

Modified, 1 CMC § 3806(g).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 19 Com. Reg. 14894 (Jan. 15, 1997); Amdts Emergency and Proposed 18 Com. Reg. 14357 (Oct. 15, 1996); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) through (g).

The 1997 amendments added new subsections (b) through (g). See also the commission comment to § 10-20.2-401.

In subsection (b), the Commission corrected the spelling of "supervisors." The Commission inserted a comma after the word "age" in subsection (a) pursuant to 1 CMC § 3806(g).

### **§ 10-20.2-478 Nepotism**

Employment by reason of blood or marriage relationship rather than merit is prohibited. No employee shall supervise an immediate family member except in emergency situations such as typhoons, floods, or at isolated field stations or where there is a shortage of quarters. No supervisor shall employ any relative or any other person whose relationship or association is

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such that it creates a reasonable assumption that that person, as an employee, would be in a favored position in relationship to other employees.

History: Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

### **§ 10-20.2-480 Political Affiliation**

Under the Personnel Service System, no person with authority to make or recommend a personnel action relative to a person in, or an eligible or applicant for, a position in the Personnel Service, may make inquiry concerning political affiliation. All disclosures concerning political affiliation shall be ignored. Except as may be authorized or required by law, discrimination may not be exercised, threatened, or promised by any person in the government against or in favor of an employee in, or an eligible or applicant for, a position in the Personnel Service because of political affiliation.

History: Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The Commission inserted a comma after the word “threatened” pursuant to 1 CMC § 3806(g).

### **§ 10-20.2-482 Coercion**

A Personnel Service System employee shall not use government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to self or another person, particularly one with whom the employee has family, business, or financial ties.

History: Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The Commission inserted a comma after the word “business” pursuant to 1 CMC § 3806(g).

## **Part 500 - Incentive Programs**

### **Subpart A - Incentives and Awards**

#### **§ 10-20.2-501 Introduction and Purpose**

To set forth policies and procedures for the Personnel Service incentives and awards program under applicable regulations.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).



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Commission Comment: The August 2004 proposed amendments republished part 500 in its entirety. As of December 2004, a notice of adoption had not been published, and therefore, the Commission has not incorporated the proposed changes.

### **§ 10-20.2-505 Policy**

It is the policy of the government to use incentives and awards as an integral part of supervision and management to:

- (a) Recognize and reward employees who contribute to increased efficiency, economy, or other improvements in operation; and
- (b) Encourage individual or group effort to make such contributions.

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-501.

The Commission inserted a comma after the word “economy” pursuant to 1 CMC § 3806(a).

### **§ 10-20.2-510 Program Responsibility**

- (a) The Personnel Officer is responsible for the overall direction and supervision of the incentive awards program and to administer the program in conjunction with the Incentive Awards Committee.
- (b) The appointing authorities are responsible for directing awards activities, including suggestions processing, to the Incentive Awards Committee. Appointing authorities have been delegated responsibility for recommending superior service awards, awards of service, letters of appreciation and honor awards to the Incentive Awards Committee.
- (c) Appointing authorities and supervisors at all levels have the primary responsibility for the conduct and promotion of the incentive awards program. They should encourage all employees to become active participants in the government’s search for efficiency and economy in the conduct of its business. When superior work performance or special acts are identified through normal management review, program managers shall request appropriate supervisors in those areas to identify the employees who have made the special contribution, and consider submitting award nominations.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-501.

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### § 10-20.2-515 Incentive Awards Committee

(a) The Incentive Awards Committee will consist of three persons. The Personnel Officer shall serve as chairman. The Governor shall appoint the other two members, one to represent management and one to represent the employees.

(b) The committee shall meet each quarter or more frequently, at the call of the chairman, if the number of award nominations warrants. The presence of the chairman and one member will constitute a quorum.

(c) The committee reviews and evaluates letters of appreciation, suggestion awards, superior performance awards, special act or service awards, honor awards, and cash awards.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-501.

The Commission inserted a comma after the word “awards” pursuant to 1 CMC § 3806(c).

### § 10-20.2-520 Contributions and Award Categories

(a) An employee’s contribution, to be considered for an incentive award, must be identified with one of the following four categories:

- (1) Suggestion award;
- (2) Superior performance award;
- (3) Special act or service award; or
- (4) Sustained superior performance for two years or more.

(b) Supervisors shall be given due recognition for the extent to which they are successful in creating a climate in which their employees are motivated to express their interests and participate in the incentive awards program. An employee shall not be advised that an award nomination has been submitted until final approval has been received. So that an employee may be given full benefit and recognition of achievement, appointing authorities are encouraged to submit award nominations at the time an important contribution is made and to recognize a notable career well in advance of retirement.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

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See the commission comment to § 10-20.2-501.

### **§ 10-20.2-525 Letters of Commendation**

Supervisors should initiate letters of commendation for employees who make contributions which are worthy of recognition but do not meet the minimum standards for monetary or honor awards. Such letters may be signed by the immediate supervisor or higher official, depending upon the significance of the contribution. The original is presented to the employee and a copy is furnished to the Personnel Office for the employee's official personnel folder. If the letter concerns an adopted suggestion, a copy is also forwarded to the Incentive Awards Committee.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-501.

### **Subpart B - Recognition and Awards**

#### **§ 10-20.2-530 Superior Performance Award**

A superior performance award is granted for performance exceeding job requirements and involving a contribution so superior or meritorious as to warrant special recognition. An employee may be considered for a lump-sum cash award for superior performance, provided the employee's performance meets all the following criteria:

- (a) Performance of one or more important job functions in a manner that substantially exceeds normal requirements so that, when reviewed as a whole, the work performance is of a high degree of effectiveness.
- (b) Performance that exceeds the normal or typical;
- (c) Performance that does not meet all the requirements of a merit increase, but does significantly exceed performance standards in one or more important job functions.

Modified, 1 CMC § 3806(f), (g).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: In subsection (a), the Commission corrected the spelling of "substantially."

See the commission comment to § 10-20.2-501.

#### **§ 10-20.2-535 A Special Act or Service Award**

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A special act or service award is granted for performance which involved overcoming unusual difficulties, or exemplary or courageous handling of an emergency situation related to official employment. Awards in this category are made in the form of a lump-sum payment.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-501.

### § 10-20.2-540 Honorary Awards

When appropriate, an honorary award may be granted in recognition of an employee's contribution. The honorary award may be in addition to a cash award. For example, an honorary award is particularly appropriate in recognition of continued distinguished service, a singular achievement, or an act of personal heroism. It may be granted independently of, or as a supplement to, a cash award; it is not intended, however, to serve as a substitute for deserved monetary award. It is designed to select and bestow singular honor as an official recognition of achievement and as an incentive for further accomplishment. The concept of recognizing career public employees for significant contribution is to encourage excellence in government service which, in turn, should promote public appreciation of quality in government. By raising public opinion of government employees, the more able youth may be persuaded to choose government careers. Recommendations of honor awards should be submitted during the nominee's active service, at least one or two years before retirement. General requirements for each type are:

(a) The distinguished service award (gold medal) is the Commonwealth government's highest award and can be received by an employee only once. It is granted by the Incentive Awards Committee for:

- (1) An outstanding contribution to science;
- (2) An outstanding skill or ability in the performance of duty;
- (3) An eminent career in the Commonwealth government;
- (4) An outstanding record in administration; or
- (5) Any other exceptional contribution to the public service.

(b) The valor award (gold medal) is granted by the Incentive Awards Committee to employees who demonstrate unusual courage involving a high degree of personal risk in the face of danger. The valorous act does not have to be performed while on official duty.

(c) The meritorious service award (silver medal) is granted by the Incentive Awards Committee for:

- (1) An important contribution to science or management;
- (2) A notable career;
- (3) Superior service in administration or execution of duties;
- (4) Initiative in devising improved work methods and procedures;

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- (5) Superior achievement in improving safety, health, or morale; or
- (6) Superior accomplishments in fostering the objective of the government in the development in management.

(d) The superior service award (certificate) is given at any time during an employee's career to recognize significant acts, services, or achievements that materially aid or affect the successful accomplishment of the government's mission. This award is granted by the Incentive Awards Committee for:

- (1) Accomplishment of a particularly difficult or important assignment in a manner that reflects favorably on the employee or the government;
- (2) Development of a new procedure or process that results in substantially increased productivity, efficiency, or economy of operation and for which the employee has not been otherwise rewarded;
- (3) Innovations of significance to further government programs; or
- (4) Any other aspect of superior performance related to assigned duties and deemed to be deserving of special recognition.

(e) The government issues two other types of honor awards to employees. These are: award of service (plaque) and letter of appreciation. General requirements for each type are:

(1) The award of service (plaque) is granted by the Incentive Awards Committee upon the retirement or death of an employee who has completed ten years or more of government service. A letter, signed by the Incentive Awards Committee citing the service and attainments of the recipient, accompanies the plaque. The employee's organization prepares the letter and submits the justification memorandum to the Personnel Officer, who arranges for Incentive Awards Committee approval, signing of the letter and engraving of the plaque. The award materials are forwarded to the organization for presentation.

(2) Letter of Appreciation. An employee who upon retirement has not qualified for the award of service (plaque) receives a letter of appreciation signed by the Incentive Awards Committee. The letter reflects the employee's service and attainments. The employee's organization prepares the letter and submits it by memorandum to the Personnel Officer, who arranges for Incentive Awards Committee approval and signing of the letter. The letter of appreciation is returned to the organization for presentation.

Modified, 1 CMC § 3806(e), (f), (g).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: In subsection (e)(1), the Commission corrected the spelling of "committee." The Commission inserted commas after the words "health" in subsection (c)(5), "services" in subsection (d), and "efficiency" in subsection (d)(2) pursuant to 1 CMC § 3806(g).

See the commission comment to § 10-20.2-501.

### **§ 10-20.2-545 Length of Service Awards**

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Government employees receive emblems commemorating ten, twenty, and thirty years of government service. The Personnel Officer issues these emblems annually.

Modified, 1 CMC § 3806(e).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-501.

The Commission inserted a comma after the word “twenty” pursuant to 1 CMC § 3806(g).

### **§ 10-20.2-550 Awards to Persons Outside Commonwealth**

An award in the form of a brief citation or certificate is granted by the Incentive Awards Committee to private citizens to commend them officially for their voluntary contributions to the public service. Any employee may initiate a recommendation for this award by memorandum to the Incentive Awards Committee, outlining the individual’s or group’s contribution. Criteria might include:

- (a) Advancements in technology of benefit to the Commonwealth;
- (b) Effective cooperation among various sectors of private enterprises; and
- (c) Esthetic and environmental aspects of citizenship.

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-501.

### **§ 10-20.2-555 Presentation of Awards**

The distinguished service awards and valor awards are presented at a special annual convocation by the Governor. It is preferable that the ceremony accompanying the presentation of the distinguished service awards or valor awards be made a truly memorable occasion to which the spouses and families of the recipients should be invited, and following which may be served refreshments, if the administration or the recipients’ co-workers so desire. By their very nature, these awards represent truly significant accomplishments worthy of public note. The awards reflect credit not only upon the employees being given the recognition, but on the organizations and individuals with whom they work.

- (a) Meritorious service awards, length-of-service emblems for thirty years, and special achievement awards of two hundred dollars and over are presented in the appointing authority’s staff meetings.

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(b) Length of service pins for twenty or more years are presented to the employee by the appointing authority.

(c) Other awards may be presented by any appropriate official in the recipient's organization, in accordance with the importance of the contribution. The recipient of a special achievement award is given the original of the approved recommendation, along with a check.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-501.

The Commission inserted a comma after the word "years" in subsection (a) pursuant to 1 CMC § 3806(g).

### **Subpart C - Beneficial Suggestions Program**

#### **§ 10-20.2-560 Suggestion Award**

A suggestion award is an award for an idea submitted by an employee and adopted for use by the government. Awards of this kind are made only when the employee's suggestion directly contributes to economy or efficiency or directly increases effectiveness in carrying out government programs or missions. Lack of novelty or originality does not necessarily make an idea ineligible for an award. Awards are made in the form of a cash lump-sum payment.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-501.

#### **§ 10-20.2-565 Suggestions Procedures**

(a) A suggestion is prepared in triplicate with the original being submitted to the suggestor's immediate supervisor, the duplicate to the chairman of the Incentive Awards Committee and the triplicate retained by the suggestor. The suggestion is accepted only if the idea contributes to increased efficiency or economy; suggestions which relate to employee benefits, working conditions, housekeeping, building and grounds, etc., are not processed as part of the awards program. The supervisor determines adoption or rejection of a suggestion, if s/he has authority to do so. If the suggestion is not within the scope of the supervisor's authority, s/he initiates further referral.

(b) If a suggestion is not adopted, the supervisor advises the suggestor by memorandum of the reasons for its rejection and furnishes a copy of the memorandum to the chairman of the Incentive Awards Committee. If it is adopted and has significant first-year benefits, the

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supervisor initiates the recommendation for a special achievement award (see § 10-20.2-535). If it is adopted but the benefits are not sufficient to qualify for a cash award, the supervisor initiates a letter of commendation to the suggestor, to be signed by himself or a higher level official. Suggestions which appear to have benefits applicable to other government organizations are referred to them by the Incentive Awards Committee.

Modified, 1 CMC § 3806(f), (g).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Amdts Adopted 6 Com. Reg. 3175 (Oct. 15, 1984); Amdts Proposed 6 Com. Reg. 3123 (Aug. 15, 1984); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

The 1984 amendments amended subsection (a). See also the commission comment to § 10-20.2-501.

In subsection (a), the Commission corrected the spelling of “efficiency.”

### **§ 10-20.2-570 Documentation**

Recommendation for a performance award, special act or service award related to the suggestion must be submitted in writing by supervisors. Awards for cash and certain honor awards should be forwarded to the Personnel Officer for consideration by the Incentive Awards Committee.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Amdts Adopted 6 Com. Reg. 3175 (Oct. 15, 1984); Amdts Proposed 6 Com. Reg. 3123 (Aug. 15, 1984); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-501.

### **§ 10-20.2-575 Records and Reports**

The chairman of the Incentive Awards Committee will receive reports and maintain necessary files. Each case file includes a copy of the suggestion itself and a copy of the letter to the suggestor concerning its adoption or rejection. Copies of letters of commendation for adopted suggestions are also forwarded. By the tenth day of each month, the chairman of the Incentive Awards Committee will report on the number of suggestions received, adopted and rejected to the Civil Service Commission. This information will be used to prepare a notification - at least at six-month intervals - to all employees concerning awards granted throughout the Commonwealth.

Modified, 1 CMC § 3806(f).



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History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-501.

### **Part 600 - Employee Benefits and Services**

#### **§ 10-20.2-601 Policy**

It is the policy of the government to provide benefits and services to its employees in keeping with the general practices of government and private enterprise and as limited or prescribed by law. This part delineates those benefits and services which include:

- (a) Leaves of absence; and
- (b) Benefits, such as group life and health insurance, accident and health insurance, and worker's compensation coverage.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The August 2004 proposed amendments republished part 600 in its entirety. As of December 2004, a notice of adoption had not been published, and therefore, the Commission has not incorporated the proposed changes.

### **Subpart A - Leaves of Absence**

#### **§ 10-20.2-605 Purpose**

Leaves of absence from the Personnel Service are for the mutual benefit of the employee and employer. When leaves of absence are granted, they are considered to be for legitimate reasons not detrimental to the Personnel Service.

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-601.

#### **§ 10-20.2-610 Creditable Service for Leave Purposes**

- (a) Trust Territory Public Service experience since United States administration took over (including when actually employed [WAE] until June 30, 1972).
  - (1) Includes trainees. Includes employment under 61 TTC, paragraph 9(d), (f), (h), (l), (m), (n) and (o).

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- (2) By Director of Personnel memorandum, dated January 26, 1972, to all Trust Territory of the Pacific Islands (TTPI) departments and districts, WAE appointments were to be terminated or converted to appointments per Administrative Directive 72-1 dated January 16, 1972. WAE appointments until June 30, 1972, are to be considered as full-time employment and service credited accordingly. After June 30, 1972, for WAE or intermittent employment, time actually worked will be used to compute creditable service.
- (b) Marianas administration under U.S. Navy and NTTU. Until 1962, when TTPI Headquarters moved to Saipan, the Marianas (Saipan and Tinian) were under Naval Administration prior to 1962.
- (c) Personnel under municipal governments.
- (d) All employment within TTPI including: Peace Corps, Micronesian Claims Commission, National Weather Service, and U.S. Coast Guard.
- (e) U.S. military and civilian service in the Trust Territory; active military service in United States Armed Forces in the TTPI.
- (f) Employees of judiciary and legislative branches (Congress of Micronesia, municipal councils, and district legislatures). Judiciary, including district court judges who may have been or are presently on WAE appointments.
- (g) Service in the Commonwealth government since April 1, 1976.
- (h) Trust Territory Government employment under the Seaman's Act.
- (i) Employees of agencies and instrumentalities within the Commonwealth.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: The first paragraph was not designated. The Commission designated it subsection (a).

See the commission comment to § 10-20.2-601.

The Commission inserted commas after the words "services" in subsection (d) and "councils" in subsection (f) pursuant to 1 CMC § 3806(g).

### **§ 10-20.2-615 Kinds**

Broadly characterized, leaves of absence are either with pay or without pay.

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

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Commission Comment: See the commission comment to § 10-20.2-601.

### § 10-20.2-620 Leaves with Pay

(a) Annual Leave.

(1) Annual leave, or vacation, shall be granted for the purpose of rest and relaxation. Personnel Service System employees who have less than three years of creditable service shall earn annual leave at the rate of four hours per pay period; except that newly appointed employees shall undergo a waiting period of ninety calendar days before being credited with annual leave. Employees with three but less than six years of creditable service shall earn annual leave at the rate of six hours per pay period. Employees who have six or more years of creditable service shall earn annual leave at the rate of eight hours per pay period.

(2) Annual leave requests of more than three working days must be made in advance on a leave request form. All annual leave requests must be approved by the employee's division head upon recommendation of such employee's immediate supervisor. In smaller organizations where divisions may not exist, the heads of such organizations shall approve annual leave. A denial of request for annual leave is subject to employees' grievance rights.

(b) Maximum Accumulation. The maximum accumulation of annual leave for Personnel Service System employees shall be three hundred sixty hours. Accrued annual leave in excess of 360 hours remaining at the end of the leave year shall be converted to sick leave.

(c) Sick Leave.

(1) Sick leave shall be allowed whenever the employee on permanent status is to be absent from duty because of illness or injury or because of quarantine of the family and/or residence. Use of sick leave is appropriate only for medical, dental, optometric, or mental health counseling or treatment which the employee personally must undergo.

(2) If an employee is absent because of illness, injury, or quarantine in excess of three days, the employee may be required to furnish a certification as to the incapacity from the attending physician. The appointing authority may require certification for such other period(s) of illness as is appropriate.

(3) If the required certification is not furnished, all absence which would have been covered by such certification shall be indicated on the time and attendance record and the payroll as absent without leave (AWOL).

(4) Employees on permanent status shall earn sick leave at the rate of four hours for each biweekly pay period in which they are in pay status for the entire ten days. Sick leave may be accumulated and carried over to succeeding leave years without limitation. A report showing the accrued sick leave balance will be provided the employee each pay period.

(5) The generality of the foregoing is subject to the following special provisions:

(i) Falsification of an illness report shall be considered sufficient cause for disciplinary action, including dismissal from the government service for repeated offenses.

(ii) Sick leave with pay shall be allowed during leaves of absence or vacations; provided, however, that any sick leave taken by an employee while on vacation must be supported by a certificate issued by the attending physician. No employee shall be allowed to undertake gainful employment while on sick leave status.

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(iii) Sick leave with pay may be granted in advance of earning sick leave as provided under § 10-20.2-620(d). If an employee is separated from the service without having earned all of the sick leave allowed and taken, there shall be deducted from any money due the employee at the time of separation an amount equal to salary for the period of unearned sick leave allowed and taken.

(6) Sick leave accrued for service with the government shall vest in the employee upon accrual and shall remain vested so long as the individual is employed by the government, provided that if such employee is separated from government service (other than through retirement) for a period longer than three years, the employee shall be divested of accumulated sick leave. (See § 10-20.2-640.)

(d) Leave Advance.

(1) Where, for good reason, an employee on permanent or limited term status requires additional annual or sick leave in addition to the amounts accrued, the Director of Personnel, with recommendation of the appointing authority, may grant advance leave up to a maximum of one-half of the total earnable leave credits for which the employee is eligible for one year from the date the application is received, or, in the case of limited term employees, up to a maximum of one-half of the total earnable leave credits for which the employee is eligible during the remainder of the employment term, whichever is shorter. Subsequent accrued leave earnings shall serve to replace the amount of advance leave granted and taken. Request for leave advance must be in writing from the employee with recommendation from the appointing authority.

(2) Leave advance granted and taken:

(i) Constitutes a legal contract between the employee and the government; and

(ii) Must be repaid, even if the employee separates from government service. Recovery of advance leave that is unpaid may be through the government's assumption of employee's accrued unused leave, payroll deductions, matched reduction of service time, and/or recourse to the courts.

(e) Training and Education Leave. Leaves for the purpose of job-related training and education may be granted employees on permanent status for a period not to exceed one year, by the Personnel Officer with the recommendation of the appointing authority. No training and educational leave, outside of the CNMI, shall be approved if such training is available locally. shall be subject to immediate decertification and appropriate disciplinary actions(s).\*

\*So in original; see the commission comment to this section.

(f) Compassionate Leave. Employees on permanent or limited term may be granted compassionate leave with pay of no more than five consecutive work days in cases of death in the immediate family of the employee. For the purpose of this subpart, the term "immediate family" shall be defined as an employee's mother, father, brother, sister, spouse, immediate offspring (natural and culturally or legally adopted), grandfather, grandmother, grandchild, mother-in-law, or father-in-law. Compassionate leave must be taken within eighteen days after the death of the immediate family member. The appointing authority is responsible for approving compassionate leave requests.

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(g) **Administrative Leaves.** An absence from duty administratively authorized, without loss of pay and without charge to accrued leave, is administrative leave. The governor, appointing authorities or their designees have the responsibility for approving administrative leave requests. The following are the three general classes into which administrative leaves fall:

(1) Administrative leave is absence authorized under emergency conditions beyond the control of management, e.g., typhoons, or for participation in civic activities of interest to the government, or employment connected examinations, or for such reasons as the Governor may determine (such as a shortened work day on Christmas Eve).

(2) Administrative leaves related to disciplinary actions. Managers may place an employee in non-working status with pay for up to three work days pending preparation of a notice of proposed suspension for up to thirty calendar days or removal from the Personnel Service.

(3) Administrative leave may be granted to employees serving on government boards and commissions, provided such employees do not receive compensation from the boards and commissions.

(h) **Court Leave.** The government encourages its employees to fulfill their obligations as citizens of the Commonwealth. Thus, employees who are called upon to serve as jurors may, at their option, be granted court leave for such period as the jury may be impaneled. Employees who are called to jury duty shall present their juror summons to their immediate supervisor together with a completed request for leave, for the supervisor's signature and processing. Employees who serve as jurors using court leave to cover the period of absence shall turn over to the Commonwealth Treasurer such jury fees (as distinct from expense allowances) as they receive from the court. Expense allowances paid the employee for whatever purpose may be retained by the employee to defray the expenses for which granted. An employee subpoenaed as witness, except as a government witness, shall charge such absence to annual leave or leave without pay. Court leave shall be granted to an employee subpoenaed in litigation in which the government has no interest, to serve as a witness in the employee's present or past official capacity as a government employee and who may be required to present government records in testimony. Such employee must inform the appointing authority of the required testimony as soon as possible after being subpoenaed.

(i) **Military Leave.** Military leaves of absence with pay, not to exceed fifteen working days in any calendar year, regardless of the number of training periods in the year, may be granted by the Personnel Officer to employees on permanent status who are members of the United States National Guard and reserve components of the United States Armed Forces, when directed under orders issued by proper military authority. Administrative leave will not be granted in order to extend leave time for any additional training days.

(j) **Maternity Leave.** Maternity leave shall be granted to a female employee on permanent or limited term status who is absent from work because of confinement for childbirth. The appointing authority shall have the responsibility for approving maternity leave requests. Such maternity leave shall not exceed fifteen work days, shall be in addition to any accumulated sick leave, and shall be any fifteen work days encompassing the date of childbirth. Any additional leave taken for such childbirth purposes shall be charged against accumulated sick leave.

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(k) Paternity Leave. Paternity leave shall be granted to a male employee on permanent or limited term status who is absent from work because of his wife's confinement for childbirth. Such paternity leave shall not exceed two work days encompassing the date of childbirth. The appointing authority shall have the responsibility for approving paternity leave requests.

Modified, 1 CMC § 3806(c), (e), (f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 22 Com. Reg. 17279 (June 20, 2000); Amdts Proposed 22 Com. Reg. 17099 (Apr. 20, 2000); Amdts Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Amdts Proposed 19 Com. Reg. 15638 (Sept. 15, 1997); Amdts Adopted 12 Com. Reg. 7139 (June 15, 1990); Amdts Proposed 11 Com. Reg. 6148 (Apr. 15, 1989); Amdts Adopted 11 Com. Reg. 6156 (Apr. 15, 1989); Amdts Proposed 11 Com. Reg. 5854 (Feb. 15, 1989); Amdts Adopted 10 Com. Reg. 5579 (July 15, 1988); Amdts Proposed 10 Com. Reg. 5557 (June 15, 1988); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Amdts Adopted 6 Com. Reg. 3175 (Oct. 15, 1984); Amdts Proposed 6 Com. Reg. 3123 (Aug. 15, 1984); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: In subsections (a), (c), and (d), the paragraphs were not designated. The Commission designated subsections (a)(1) and (a)(2), (c)(1) through (c)(6), and (d)(1) and (d)(2).

The 1984 amendments added new subsection (g)(3) and amended subsections (d)(1), (e), (f), (i), (j) and (k). The February 1988 amendments added new subsection (d)(2). The July 1988 amendments amended subsection (a).

The 1989 amendments amended subsection (e). The starred language was probably included in error and should be deleted. See 11 Com. Reg. at 6164 (Apr. 15, 1989).

The 1990 amendments amended subsection (a). The 1997 amendments repealed former subsection (g)(2) and redesignated the paragraphs of subsection (g) accordingly. The 2000 amendments amended subsections (d)(1), (d)(2), (f), (j) and (k). See the commission comment to § 10-20.2-601.

Public Law 15-69 (effective June 5, 2007), codified at 1 CMC § 8276, authorized government employees to apply for sick leave to attend to an immediate family member who is sick. Public Law 15-116 (effective Nov. 29, 2007), codified at 1 CMC §§ 8265-8267, which repealed and reenacted PL 15-69, requires that sick leave requests to attend to immediate family members in excess of two days must be supported by a certified medical statement. The provisions of PL 15-116 supersede subsection (c) to the extent that they conflict.

The Commission inserted commas after the words "optometric" in subsection (c)(1), "injury" in subsection (c)(2), "time" in subsection (d)(2)(ii), and "mother-in-law" in subsection (f) pursuant to 1 CMC § 3806(g).

### § 10-20.2-625 Leaves Without Pay

(a)(1) An employee on permanent status may be granted leave without pay not to exceed ninety consecutive work days if the appointing authority considers it justified. Leave without pay may be extended up to ninety additional consecutive work days ONLY with the approval of the Personnel Officer, upon recommendation by the appointing authority. Such leave without pay may be granted to permit the employee to attend to important family affairs, such as settling an estate or for justifiable personal or business reasons.

(2) An employee desiring extended leave without pay shall prepare a memorandum of explanation addressed to the immediate supervisor explaining in detail the reasons for the request.

(b) Training and Education Leave. Employees on permanent status who wish to pursue their education on a full-time basis without financial assistance by the government, may be granted

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leaves of absence without pay for a period not to exceed one year. Such employees shall have the right to return to their positions at the satisfactory conclusion of their education or training, and their service anniversary dates shall be adjusted by the amount of leave without pay taken. The Personnel Officer is responsible for approving or disapproving requests for training and education leave, upon recommendation by the appointing authority.

(c) Leave Without Pay in Extension of Annual or Sick Leave. Employees on permanent status may be granted leave without pay (LWOP) for the purpose of extending annual or sick leave. When sick leave is so extended, the attending physician must certify to the necessity of the extension. The Personnel Officer is responsible for approving or disapproving requests for leave without pay, upon recommendation by the appointing authority.

(d) Tardiness.

(1) At the end of each pay period tardiness shall be charged to leave without pay (LWOP) or absence without leave (AWOL). In respect to each incident of tardiness,

(i) If the period of lateness is less than one hour it will be charged to LWOP.

(ii) If the period of lateness is more than one hour it will be charged to AWOL.

(2) The period of tardiness shall be calculated in the same manner as hours worked are calculated for time keeping purposes.

(e) Extended Military Leave. The federal Uniformed Services Employment and Reemployment Act (USERRA) generally requires the Commonwealth government to provide extended military leave for its career employees, regardless of whether the service is voluntary or involuntary. The cumulative length of all absences due to military leave and extended military leave shall not exceed five years, unless extended for good reason documented in writing by the appointing authority. The employee must give advance notice to the appointing authority, unless military necessity or circumstances make this impossible or unreasonable. In most cases, the employee is guaranteed reinstatement rights and certain seniority rights upon return from leave. The employee must also comply with requests for documentation and with the requirements of this subchapter regarding the timing of applications for reemployment. For details, employees and appointing authorities should contact the U.S. Department of Labor.

(f) FMLA Leave.

(1) The federal Family and Medical Leave Act of 1993 (FMLA) entitles employees who have worked for the Commonwealth for at least one year and who worked at least 1,250 hours over the previous 12 months to take up to 12 weeks of LWOP for any of the following reasons:

(i) To care for the employee's child after birth or placement for adoption or foster care;

(ii) To care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or

(iii) For a serious health condition that makes the employee unable to perform the employee's job.

(2) At the option of the employee or the employing agency, annual leave, sick leave, maternity leave, or paternity leave may be substituted for LWOP for FMLA purposes. All leave qualifying under the FMLA shall be documented as FMLA leave either before it is taken or promptly thereafter. In most cases, participation in the government group health insurance

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program shall continue during FMLA leave. Agencies should contact the U.S. Department of Labor for detailed guidance regarding the requirements of the FMLA.

Modified, 1 CMC § 3806(d), (e), (f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 22 Com. Reg. 17279 (June 20, 2000); Amdts Proposed 22 Com. Reg. 17099 (Apr. 20, 2000); Amdts Adopted 19 Com. Reg. 14894 (Jan. 15, 1997); Amdts Emergency and Proposed 18 Com. Reg. 14357 (Oct. 15, 1996); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Amdts Adopted 6 Com. Reg. 3175 (Oct. 15, 1984); Amdts Proposed 6 Com. Reg. 3123 (Aug. 15, 1984); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: In subsections (a), (d) and (f), the paragraphs were not designated. The Commission designated subsections (a)(1) and (a)(2), (d)(1) and (d)(2), and (f)(1) and (f)(2).

The 1984 amendments amended subsection (b). The 1997 amendments added new subsections (e) and (f) and readopted the entire section. The 2000 amendments amended subsection (d)(1) and added new subsection (d)(2). See also the commission comment to § 10-20.2-601.

### § 10-20.2-630 Basis for Accrual

Employees shall accrue annual leave and sick leave for each biweekly pay period in which they are in pay status for the entire ten days; otherwise there shall be no accrual for such period. Provided, however, employees serving on government boards and commissions who elect to take leave without pay (LWOP) during such performance shall accrue leave for that service time. Part-time employees with regular scheduled tours of duty of forty to seventy hours during a biweekly pay period will accrue annual and sick leave at one-half the rate of full-time employees and will be eligible for other paid leaves, as provided in § 10-20.2-620 at this rate. Part-time employees with regular scheduled tours of duty of less than forty hours during a biweekly pay period will not accrue annual or sick leave benefits or be eligible for the other paid leave benefits. Part-time employees must be in a pay status for their full regular scheduled tour of duty for the entire ten days; otherwise there shall be no accrual for such period.

Modified, 1 CMC § 3806(c), (e).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 22 Com. Reg. 17279 (June 20, 2000); Amdts Proposed 22 Com. Reg. 17099 (Apr. 20, 2000); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Amdts Adopted 6 Com. Reg. 3175 (Oct. 15, 1984); Amdts Proposed 6 Com. Reg. 3123 (Aug. 15, 1984); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: The 1988 amendments changed the order of the original sections of this subpart. See 5 Com. Reg. at 2383-89 (Aug. 31, 1983). The then-existing sections in this part were redesignated accordingly. See also the commission comment to § 10-20.2-601.

### § 10-20.2-635 Unauthorized Leave

(a) Unauthorized leave (absent without leave, AWOL) is absence from duty without appropriate authorization. Employees who are absent from duty without prior approval, except in



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bona fide emergencies, shall be charged as being AWOL. Employees who are AWOL are subject to loss of pay and possible disciplinary action.

(b) If an employee is absent because of illness, injury, or quarantine in excess of three days, the employee may be required to furnish a certification as to the incapacity from the attending physician. The appointing authority may require certification for such other period(s) of illness as is appropriate. If the required certification is not furnished, all absence which would have been covered by such certification shall be indicated on the time and attendance record and the payroll as absent without leave (AWOL). (See § 10-20.2-620(c).)

Modified, 1 CMC § 3806(c), (f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

The 1988 amendments added new subsection (b). See also the commission comment to § 10-20.2-601.

The Commission inserted a comma after the word “injury” in subsection (b) pursuant to 1 CMC § 3806(g).

### **§ 10-20.2-640 Disposition of Leave upon Separation**

(a) Annual Leave.

(1) An employee separated from the Personnel Service for any reason shall receive a lump-sum payment for all annual leave accrued to the employee’s credit and remaining unused at the time of separation. If the employee returns to duty in any capacity with the government before the accumulated term of leave would have expired, had it been liquidated in the normal course of employment, the employee must return to the government the gross value of such unused leave and have those hours of leave re-credited to the employee’s annual leave account.

(2) For example, if an employee has 360 hours annual leave to his credit upon separation, that represents 45 days of annual leave. If the employee returns to government employment before the passage of 45 work days, the employee is required to make a refund for the unexpired term of leave remaining.

(3) If the employee in the above example separates from government employment December 31, is offered an opportunity to return to duty with the same classification and pay, accepts, and returns to work March 15, 34 work days or 272 hours would have elapsed (one holiday occurred in February) between separation and return to duty. Such employee would be required to repay to the government the value of 88 work hours, the difference between the 360 accumulated hours granted through lump-sum payment, and the 272 hours of elapsed time between separation and return to duty. Repayment may be through lump-sum cash prior to resuming duty status, payroll deduction or assigning to the government all annual leave accrued subsequent to returning to duty until the repayment is completed.

(b) Sick Leave. An employee separated from the Personnel Service for any reason shall have all sick leave accrued to the employee’s account held in the leave records for three years. Should

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the person be reemployed in the Personnel Service at any time during that three year period, the sick leave balance shall be re-credited to the employee's sick leave account and available for use from the first day of reemployment. Provided, however, that an employee separated from the Personnel Service for retirement purposes, and whose unused sick leave has been converted to service time to determine eligibility in the retirement program, shall not be recredited for such sick leave balance. (See 1 CMC § 8301, as amended.)

Modified, 1 CMC § 3806(e), (f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: In subsection (a), the original paragraphs were not designated. The Commission designated subsections (a)(1) through (a)(3).

The 1988 amendments added new subsection (a)(3). See also the commission comment to § 10-20.2-601.

### § 10-20.2-645 Responsibilities

(a) The employee shall be responsible for initiating a request for leave using such forms, documentation, and explanatory material as may be required. Such request shall be initiated, sufficiently in advance so as to enable management to make the necessary staff adjustments. Management shall review all leave requests and may approve, disapprove or modify any leave request.

(b) The Personnel Officer shall be available for advice and assistance to the employees and to all management agencies in matters concerning leaves and shall be responsible for the final decision in leave disputes and interpretation and application of leave policy.

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

See the commission comment to § 10-20.2-601.

The Commission inserted a comma after the word "documentation" pursuant to 1 CMC § 3806(g).

### § 10-20.2-650 Administration of the System

(a) Leave Year. For administrative convenience, leave accumulations and usages are based upon the leave year. A "leave year" is that period of 52 consecutive weeks (26 pay periods) which begins on the first day of the first full pay period of the calendar year and ends on the last day of the last pay period which ends in that calendar year. For example, if the first day of the first pay period in the new year is January 11, then the leave year ends on January 10 the following year.

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(b) **Employee's Right to Annual Leave.** Employees have a legal right to accumulate annual leave, but the right to use that leave is contingent upon management's requirements. Thus, it is incumbent upon managers and employees to agree mutually as to the duration of annual leave and the period of taking. A manager is wholly within managerial rights to deny an employee's request for annual leave if that denial is based upon demands of the Personnel Service. The manager is obligated, in event of a denial, to suggest to the employee a more appropriate time for taking annual leave.

(c) **Vacation Scheduling.** The government urges and encourages employees to use annual leave for the purpose for which it is intended. That is for rest and relaxation. The government considers that a "vacation" of not less than two consecutive weeks of annual leave meets the basic intent of annual leave provisions. To avoid confusion, recriminations, disappointments, and grievances, managers are urged to schedule vacation periods for their employees, bearing in mind employees' preferences, needs and desires, so that the work force will not be unduly affected by employee absences. In event of conflict between employees over choice of a vacation period, government seniority or some other device, consistently applied, may be used to resolve such conflicts.

(d) **Lump Sum Leave Payment Upon Separation.** When an employee is separated from the Personnel Service, the employee is entitled to the payment of unused annual leave in a lump sum. However, lump-sum leave payment shall not be processed for an employee who has not completed the requirements of § 10-20.2-256.

Modified, 1 CMC § 3806(c).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 11 Com. Reg. 6156 (Apr. 15, 1989); Amdts Proposed 11 Com. Reg. 5854 (Feb. 15, 1989); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Amdts Adopted 6 Com. Reg. 3175 (Oct. 15, 1984); Amdts Proposed 6 Com. Reg. 3123 (Aug. 15, 1984); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: The 1984 and 1989 amendments amended subsection (d). The 1988 amendments moved two paragraphs from subsection (d) to § 10-20.2-640(a). See also the commission comment to § 10-20.2-601.

The Commission inserted commas after the words "disappointments" and "needs" in subsection (c) pursuant to 1 CMC § 3806(g).

### **Subpart B - Benefits**

#### **§ 10-20.2-655 General**

It is the policy of the government to provide certain benefits to all its employees, whatever their appointive status. These are defined in the sections which follow.

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

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Commission Comment: See the commission comment to § 10-20.2-601.

### § 10-20.2-660 Responsibilities

- (a) The Personnel Office is charged with the responsibility to administer the several benefits.
- (b) The Personnel Officer is responsible for advising the Civil Service Commission as to the kinds of coverage needed for the employees, the preparation and oversight of procedures used, and for the training of managers and employees in the development and presentation of claims.
- (c) Managers and supervisors are responsible to know the provisions of the several plans for coverage of the employees under their supervision and the procedures necessary to present claims.
- (d) Employees are responsible to familiarize themselves with reporting procedures so that they may be assured of proper coverage in event of injury or illness.

Modified, 1 CMC § 3806(g).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Amdts Adopted 6 Com. Reg. 3175 (Oct. 15, 1984); Amdts Proposed 6 Com. Reg. 3123 (Aug. 15, 1984); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: The 1984 amendments amended subsection (d). See also the commission comment to § 10-20.2-601.

In subsection (b), the Commission corrected the spelling of “employees.”

### § 10-20.2-665 Nature of Coverage

Government employees are entitled to the following benefits with specific exceptions as noted below:

- (a) Worker’s compensation coverage for work-related injury or illness is provided to all employees of the government who are not otherwise covered by U.S. laws.
- (b) Group life insurance coverage is available to all employees who work at least twenty hours per week; provided, however, that should a group life insurance policy be in effect covering employees not meeting the stated requirements, such coverage shall immediately be afforded such employees.
- (c) Group health insurance coverage is available to all employees of the government.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

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Commission Comment: The 1988 amendments added new subsection (c). See also the commission comment to § 10-20.2-601.

### § 10-20.2-670 Insurance Program Definitions

Brochures and other information concerning nature and extent of coverage, cost to the employee, and manner of processing claims shall be available in the Personnel Office.

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-601.

The Commission inserted a comma after the word “employee” pursuant to 1 CMC § 3806(g).

### § 10-20.2-675 Retirement Program

The Personnel Officer and his staff must be conversant with the provisions and entitlements under the Social Security and retirement programs so that they may provide informal advice and counsel to employees or their survivors who need information and guidance in filing claims for benefits.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-601.

The Commission corrected the capitalization of the words “Social Security” pursuant to 1 CMC § 3806(g).

## Part 700 - Performance Evaluation

### § 10-20.2-701 General

This part prescribes the employee work performance review system which seeks to recognize, evaluate, and reward employees and their contributions toward increasing efficiency and economy in the Personnel Service.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

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Commission Comment: When it promulgated the 1995 amendments, the Civil Service Commission readopted and republished all of part 700. The Commission, therefore, cites the 1995 amendments in the history sections throughout this part.

The August 2004 proposed amendments republished part 700 in its entirety. As of December 2004, a notice of adoption had not been published, and therefore, the Commission has not incorporated the proposed changes.

The Commission inserted a comma after the word “evaluate” pursuant to 1 CMC § 3806(g).

### § 10-20.2-705 Employee Performance Evaluation

Employee performance evaluation is essential to:

- (a) Improve employee effectiveness by:
  - (1) Providing the working atmosphere in which an employee may be motivated to achieve the highest performance potential; and
  - (2) Identifying work performance standards agreed to by both management and employee.
- (b) Strengthen the employee-supervisory relationship by:
  - (1) Establishing a framework for continuing employee-supervisor communications regarding performance standards and development of employee potential; and
  - (2) Guaranteeing employees the opportunity to participate in the establishment of performance standards.
- (c) Provide management with an objective basis for relating employee work performance to a wide variety of pertinent personnel management activities.

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-701.

### § 10-20.2-710 Policy

- (a) Appointing authorities shall ensure that supervisors in their respective jurisdictions reach and maintain a clear understanding with their subordinates of the standards of work performance which must be met in order to successfully accomplish assigned work. The supervisor and the employee, on a person-to-person basis, must understand and agree on the work objectives set, the manner in which they can be reached, and the way they will be evaluated. A review of the employee’s position description is necessary, therefore, to assure such understanding of the duties, performance standards and work objectives established.
- (b) Annually, commencing at the employee’s employment date, based upon the preceding twelve months performance rating report and other pertinent factors, an annual written rating of performance shall be submitted by the supervisor, and concurred by the activity head, on CSC-P-07 forms prescribed by the Director of Personnel, for each permanent, probationary, and limited-

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term employee. The Director of Personnel Management, through an authorized representative, shall administer the performance rating report and be alerted to changes needed for necessary improvement of such system.

(c) Non-Commonwealth employees shall not be delegated the authority to supervise employees of the Commonwealth.

Modified, 1 CMC § 3608(e).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 11 Com. Reg. 6156 (Apr. 15, 1989); Amdts Proposed 11 Com. Reg. 5854 (Feb. 15, 1989); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) through (c).

The 1989 amendments added new subsection (c) and amended subsection (b). The 1995 amendments amended subsection (b) and republished and readopted the entire section. See also the commission comment to § 10-20.2-701.

### § 10-20.2-715 Responsibilities

(a) The Director of Personnel Management shall be responsible to:

- (1) Develop, evaluate, and improve the Personnel Service annual employee review system and performance rating report; and
- (2) Provide advice, assistance, and supervision in the administration of the system.

(b) The appointing authorities shall be responsible to implement, administer, and obtain compliance with the purposes of the system, including:

- (1) Provide assistance to supervisors and employees in developing performance rating report;
- (2) Provide training to supervisors so they can effectively evaluate employee performance; and
- (3) Assure that employees understand the provisions, procedures, and objectives of the performance evaluation plan.

(c) Supervisors are responsible to:

- (1) Assure that position descriptions accurately reflect the duties and responsibilities assigned;
- (2) Determine jointly with each employee the performance standards to be met and keep each employee advised of strengths, weaknesses, and opportunities for improvement;
- (3) Conduct the annual employee performance reviews; and
- (4) Initiate appropriate personnel actions in cases of continuing unsatisfactory performance.

(d) The employee is responsible to:

- (1) Request clarification from the supervisor of any performance ratings, work objectives, or duties which are not clearly understood;

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- (2) Advise the supervisor of any fact or circumstance which the employee believes should be considered during the review process;
  - (3) Participate in performance appraisal discussions, in the development of performance standards, and make suggestions for improving performance; and
  - (4) Certify the performance appraisal ratings.
- (e) In the event the employee disagrees with any of the ratings, the employee must so indicate on the performance rating form (CSC-P-07) and must submit a written statement to the Director of Personnel Management as required by § 10-20.2-282 of this subchapter.

Modified, 1 CMC § 3806(c), (f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The final paragraph was not designated. The Commission designated it subsection (e).

The 1988 amendments added subsections (d)(4) and (e). The 1995 amendments amended subsections (a)(1), (b)(1), (b)(3), (c)(3), (c)(4), (d)(1) and (e) and republished and readopted the entire section. See also the commission comment to § 10-20.2-701.

The Commission inserted commas after the words “evaluate” in subsection (a)(1), “assistance” in subsection (a)(2), “administer” in subsection (b), “procedure” in subsection (b)(3), “weaknesses” in subsection (c)(2), and “objectives” in subsection (d)(1) pursuant to 1 CMC § 3806(g).

### **§ 10-20.2-720 Relationship to Other Personnel Management Activities**

- (a) By using the employee anniversary date system (as contrasted to a fixed due date), supervisors may better consider and evaluate each employee as an individual and coordinate the performance evaluation with the other appraisal actions which make up the totality of the employee review system.
- (b) Supervisors do not have a right to retain an employee in a position in which the employee’s overall rating is “unsatisfactory.” To permit such a situation would not be in the best public interest and would not be consistent with good management principles. Supervisors must initiate the necessary personnel action to have such an employee reassigned, demoted, or separated from the position at the earliest possible date.
- (c) An employee with a current official rating of “outstanding/exceptional” has an additional two points of retention credits for reduction-in-force purposes.

Modified, 1 CMC § 3806(e), (f), (g).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 11 Com. Reg. 6156 (Apr. 15, 1989); Amdts Proposed 11 Com. Reg. 5854 (Feb. 15, 1989); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).



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Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) through (c).

The 1989 amendments amended subsection (c). The 1995 amendments amended subsection (b) and readopted the entire section. See also the commission comment to § 10-20.2-701.

In subsection (b), the Commission moved the period after “unsatisfactory” inside of the closing quotation mark to correct a manifest error. The Commission inserted a comma after the word “demoted” in subsection (b) pursuant to 1 CMC § 3806(g).

### **§ 10-20.2-725 Performance Appraisal Rating**

A completed performance rating report (CSC-P-07) must be submitted to the Office of Personnel Management on an annual basis for appropriate action.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 11 Com. Reg. 6156 (Apr. 15, 1989); Amdts Proposed 11 Com. Reg. 5854 (Feb. 15, 1989).

Commission Comment: The 1989 amendments adopted this section and replaced former section VIII.F, entitled “Exceptional Performance Ratings.” See 9 Com. Reg. 5294, 5398 (Dec. 15, 1987). See also the commission comment to § 10-20.2-701.

### **§ 10-20.2-730 Rating Probationary Employees**

The final rating shall be completed for probationary appointees a month prior to being eligible for conversion to a permanent appointment.

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 11 Com. Reg. 6156 (Apr. 15, 1989); Amdts Proposed 11 Com. Reg. 5854 (Feb. 15, 1989); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-701.

### **§ 10-20.2-735 Appeals**

Employees who believe their ratings are unjust shall be entitled to appeal as provided for in § 10-20.2-282 of this subchapter.

Modified, 1 CMC § 3806(c), (d).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 17 Com. Reg. 13398 (May 15, 1995); Amdts Proposed 16 Com. Reg. 11771 (Mar. 15, 1994); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-701.

**Part 800 - Training and Employee Development**

**§ 10-20.2-801 Policy**

Insofar as appropriate training increases workers' effectiveness in jobs, improves morale, decreases labor turnover, prepares new employees to do jobs for which they are not trained, provides an effective means of screening and placement, and prepares employees for filling responsible jobs and upward mobility, and insofar as it is a major commitment of the government to train and develop a viable Personnel Service System workforce within the Commonwealth, it is therefore in keeping with government policy and the intent of 1 CMC §§ 8101, et seq., that the policy stated in § 10-20.2-005 be followed.

Modified, 1 CMC § 3806(c).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The August 2004 proposed amendments republished part 800 in its entirety. As of December 2004, a notice of adoption had not been published, and therefore, the Commission has not incorporated the proposed changes.

**§ 10-20.2-805 Responsibilities**

- (a) The Personnel Officer shall work with appointing authorities to:
- (1) Formulate and define policy requirements for developing the workforce in the personnel service;
  - (2) Determine goals to be met in all job categories;
  - (3) Set standards to be met by personnel service employees for promotion and career development;
  - (4) Evaluate all training programs and recommend alternatives to assure that manpower development programs accomplish their objectives;
  - (5) Coordinate the training and employee development programs with the appointing authorities and other appropriate training agencies so that manpower development in the personnel service is in harmony with development in private sector;
  - (6) Assure that education services in the Commonwealth are fully utilized; and
  - (7) Establish the minimum training requirements for mobility in the work force.
- (b) Appointing authorities, supported by the designated officer or the Personnel Officer, shall:
- (1) Implement training programming at all levels within their respective organizations to assure that training objectives are met;
  - (2) Submit to the Civil Service Commission annual training objectives and implementation plans for their functions by October 31 of each year. Such objectives and plans are to reflect their immediate priorities within the overall government objectives and the needs of their organizations;

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- (3) Budget funds to support the training programs needed for their employees and conducted under their auspices;
- (4) Maintain training units within the training framework concurred in by the Personnel Officer;
- (5) Report to the Personnel Officer annually by September 30 of each year, the nature, content, and results attained by in-service training activities;
- (6) Establish committees of senior staff personnel to implement procedures for systematic training of employees in their respective jurisdictions; and
- (7) Assure that effective in-service training programs are carried forward within their respective jurisdictions.

(c) The Training Division shall:

- (1) Identify training needs and develop training programs for the appointing authorities;
- (2) Provide advice and staff assistance to appointing authorities as they conduct their employee development activities;
- (3) Locate, evaluate, and determine the cost of training resources within and outside the Commonwealth;
- (4) Maintain current employee training records for all appointing authorities;
- (5) Coordinate plans and programs for in-service training to develop employees in managerial, supervisory secretarial, clerical, trades, crafts, and other skills areas;
- (6) Formulate standards for selection of trainees and instructors;
- (7) Coordinate all training with appointing authorities and the Training Task Force to assure a balanced development of manpower and to avoid duplication of efforts; and
- (8) Improve quality of training through evaluation of course content and testing by securing evaluations from supervisors, employees, and counseling reports.

(d) Supervisors, in carrying out the training objectives in their respective program areas, shall:

- (1) Plan for employee release time when it is needed for formal classroom instruction;
- (2) Inform trainees of the content of their training programs, their objectives and benefits, and the employees' responsibility to absorb and use the instruction provided;
- (3) Encourage employees to engage in self-improvement activities which may lead to improved performance and possible promotion; and
- (4) Provide reports to the appointing authority regarding all aspects of the training programs in which their subordinates are participating.

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-801.

The Commission inserted commas after the words “content” in subsection (b)(5), “evaluate” in subsection (c)(3), “crafts” in subsection (c)(5), and “employees” in subsection (c)(8) pursuant to 1 CMC § 3806(g).

### § 10-20.2-810 Definitions

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For the purpose of this part:

- (a) “Job skill training” means training to:
  - (1) Improve an employee’s performance in the position currently occupied; and
  - (2) Prepare an employee to move laterally in the same or closely related class of position.
- (b) “Promotional training” means that training which prepares an employee to perform with adequate efficiency the basic task of a class series within which the employee is being trained.
- (c) “Employee development” means that type of training offered to broaden an employee’s background and perspectives in the employee’s own or closely related occupational areas.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-801.

### § 10-20.2-815 Coverage

In keeping with the intent of 1 CMC §§ 8101, et seq., major training emphasis will be geared to developing a systematic and balanced program to meet the needs in the professional, managerial, technical, vocational, educational, and training areas.

- (a)(1) The government, in the implementation of its training policy, intends that the Personnel Officer shall plan, fund, schedule, conduct, and evaluate all training in these areas:
  - (i) Supervisory, executive and managerial;
  - (ii) Secretarial and clerical; and
  - (iii) Basic communications.
- (2) In addition, the government intends that the appointing authorities plan, fund, schedule, conduct, evaluate, and report to the Personnel Officer all specialized training particularly related to their respective functions.
- (b) Orientation.
  - (1) When an employee enters a new position, a ninety-day period will be given the supervisor in which to conduct an orientation for the new employee in the policies, procedures, rules, and regulations which are specific to the employee and to the performance of the employee’s job. At the end of the initial 90-day period, a report on completion of such training shall be submitted to the Personnel Officer, bearing both the signature of the employee and the supervisor.
  - (2) The report shall contain the sequence, content and duration of training sessions undertaken during the initial 90-day period. This 90-day period may be extended, provided that the supervisor submits and the appointing authority approves the reasons for extension, in writing, for inclusion in the employee’s official personnel folder.

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- (3) As part of the induction process, the Personnel Officer or designee will indoctrinate each new employee entering the Personnel Service concerning:
- (i) The employee's identification with work situations;
  - (ii) Formation of favorable attitudes and the goals of the employee with those of the government; and
  - (iii) Government policies and objectives, organization structure, and functions.
- (c) Supervisory, Executive and Managerial Training:
- (1) Inasmuch as the work of the government is the best and most important training resource for potential managers, opportunity should be given to qualified employees to participate in:
    - (i) Formulating objectives, policies and operating procedures with respect to the programs of their organizations;
    - (ii) Defining and analyzing problems, evaluating workload, and developing operating procedures;
    - (iii) Planning, programming, and budgeting; and
    - (iv) Representing their inter-departmental committees, work groups, survey teams, and at legislative hearings.
  - (2)(i) The Personnel Officer shall supervise the development of all supervisory, executive, and managerial training programs and develop a list of required courses for entry into such classes and required courses to be taken prior to or immediately after entry into the supervisory classes.
  - (ii) A person entering a supervisory position must take such required courses not earlier than six months prior to such promotion and no later than six months after entry into such position.
- (d) Secretarial and Clerical Training:
- (1) The Training Division shall recommend secretarial and clerical procedures to be standardized for the secretarial and clerical functions within the government.
  - (2) The Personnel Officer shall supervise the development of courses in the secretarial and clerical areas, maintain a list of required courses for entry and for promotions within these classes, when necessary, and require employees to take necessary courses and tests for promotion within these classes.
  - (3) The Personnel Officer shall develop training courses to insure that the standard government correspondence and administrative procedures are taught to employees performing secretarial and clerical duties.
- (e) Vocational and Trades Training:
- (1) Insofar as possible, trades training of employees will take place at institutions within the Commonwealth. When courses are needed for certification, or otherwise are not available at the institutions within the Commonwealth, the Personnel Officer may approve outside training after determining that the courses are job-related and that such skills are critical to the normal execution of government functions.
  - (2) Inasmuch as a majority of the trades positions are within the public sector, the institutions within the Commonwealth engaging in trades training shall make every effort to offer courses that will meet the needs of the public sector.
  - (3) Wherever possible, the Personnel Officer shall arrange with the Department of Education and the Northern Marianas College for development of needed remedial education for adults in the trades positions.

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(f) Other Training. The Personnel Officer in coordination with appropriate management officials shall establish requirements for other areas of training.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: In subsections (a), (b) and (c)(2), the paragraphs were not designated. The Commission designated subsections (a)(1) and (a)(2), (b)(1) through (b)(3), and (c)(2)(i) and (c)(2)(ii).

The 1988 amendments deleted former subsection (e)(4). See also the commission comment to § 10-20.2-801.

The Commission inserted commas after the words “educational” in the initial paragraph, “conduct” in subsection (a)(1), “evaluate” in subsection (a)(2), “rules” in subsection (b)(1), “programming” in subsection (c)(1)(iii), and “executive” in subsection (c)(2)(i) pursuant to 1 CMC § 3806(g).

### § 10-20.2-820 External Training

(a) Training courses given by agencies outside the Commonwealth will be utilized as necessary and to the extent the budget will permit. All appointing agencies wishing to engage in special training, formal short-term training, and other academic programs for their employees outside the Commonwealth must submit to the Personnel Officer the names of employees to be given such training, for evaluation at least thirty days prior to sending an employee abroad for training. All such requests shall be made on form CSC-P-01 (request for personnel action) and on form CSC-P-T-66 (training agreement).

(b) Payment of Costs:

(1) Employees released to attend authorized job-related training and developmental programs will receive any combination of basic salary, travel expenses when required, and stipend, as applicable to the training involved. Training provided as part of a planned upgrading program, such as management internship, is job-related within the meaning of this part.

(2) It shall be the government’s policy to pay all costs for training defined as “job-skill training” in § 10.20.2-810(a) above; to pay one-half of all costs of training defined as “promotional training;” and one-fourth of all costs of training defined as “employment development.”

(3) Employees attending education or training designed generally to improve their potential for advancement, but not specifically related to their present duties or duties they are specifically being trained to assume, may be released on training and education leave at the discretion of their supervisors in accordance with the requirements set forth in this part.

(4) For academic training or training toward baccalaureate or higher degrees other than those classified above, the employee may seek scholarship assistance from the Education Department or the Northern Marianas College. The government shall have no responsibility for any costs incurred when such is initiated by the employee. All requirements for job eligibility shall apply to the employees when they sever themselves from their present positions to pursue such training.

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(5) Salary and related benefits provided employees released for training under the above paragraphs shall be limited to a one year period, unless an extension is recommended by the appointing authority and approved by the Personnel Officer.

Modified, 1 CMC § 3806(c), (e), (f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 11 Com. Reg. 6156 (Apr. 15, 1989); Amdts Proposed 11 Com. Reg. 5854 (Feb. 15, 1989); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The 1989 amendments amended subsection (a). See also the commission comment to § 10-20.2-801.

### § 10-20.2-825 Training Costs Defined

The term “all costs,” when used in this part to define the government’s intent to support an employee undergoing training, means:

- (a) Round trip transportation to the training site by the least expensive air routing;
- (b) Training leave with pay;
- (c) Cost of tuition, books, and fees; and
- (d) Stipend. i.e., one-half the regular per diem rate for the time authorized to be spent at the training site. In the event the training is received at or near a high cost resort area, the Personnel Officer may approve an upward adjustment of the stipend.

Modified, 1 CMC § 3806(e).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-801.

The Commission inserted a comma after the word “books” in subsection (c) pursuant to 1 CMC § 3806(g).

### § 10-20.2-830 Support for Training

Appointing authorities are encouraged to support positively the training efforts, since improved skills and more effective supervision at all levels will improve mission accomplishment. They are further encouraged to provide adequate training facilities in their respective areas to assure the optimum level of effective training.

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

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Commission Comment: See the commission comment to § 10-20.2-801.

### § 10-20.2-835 Coordination with U.S. Federal Programs

The training division will coordinate training efforts with personnel engaged in monitoring U.S. federal grants training efforts. Training needs met through these efforts shall be included in annual reports of training accomplishments. Such coordination will be concerned with avoiding duplication of effort and attempting to direct training efforts toward that which is most needed.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-801.

### § 10-20.2-840 Evaluation of Training

The Personnel Officer shall develop and maintain a system which will provide information and analysis of the effectiveness of training provided. Such analyses shall be used to alter training courses where needed and in training needs surveys. All personnel who attend and return from a training course outside the Commonwealth shall submit a written report including a summary of the course along with a judgment of the added value gained from the course. Copies of such reports shall be addressed to the appointing authority and the Personnel Officer.

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-801.

## Part 900 - Personnel Management Evaluation

### § 10-20.2-901 Purpose

(a) Evaluating personnel management of an organization is one of the most difficult, yet one of the most important assignments that can be given a personnel management specialist. Personnel management evaluation requires the individuals conducting an evaluation not only to know the policies and procedures applicable and appropriate in all areas of a total personnel management operation, but also to be able to analyze how well an organization has applied and adopted these policies and procedures in managing its human resources. Then, after full consideration of the findings, make an objective judgment of the degree of effectiveness attained in relation to mission accomplishment. For the purpose of this part, the mission of personnel management can be defined as follows:

(1) Provide management with an efficient and effective work force, using the structure and regulations of the Personnel Service System;



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- (2) Assist employees in their individual development and advancement by providing developmental opportunities through training and career guidance; and
- (3) Assist management at every level to administer the work force by providing advice and counsel as to management rights and obligations under 1 CMC §§ 8101, et seq., and regulations which were promulgated thereunder.

(b) None of the personnel management activity can be the sole province of the personnel specialist. Personnel management, ultimately, is the responsibility of each manager and supervisor. The prime function of personnel management is the development of the people in the work force. The Personnel Office must have a definite role in the process of providing leadership and advice on the principles and practices of personnel management, but the acquisition and utilization of a work force are part of the overall management of organizations. Unless it participates in the management process, however, a Personnel Office may be reduced to the primary function of overseeing and carrying out the mechanics of personnel operations, reacting to management action rather than affecting it. "Personnel administration" may thus be differentiated from "personnel management." This technical and regulatory function is an essential part of personnel management but not synonymous with it. In the conduct of personnel management, great care must be taken that efforts are not restricted to the area of personnel administration rather than the broader perspective of total management. The regulations stated in this part are directed toward evaluation of performance management and only incidentally personnel administration.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

The August 2004 proposed amendments republished part 900 in its entirety. As of December 2004, a notice of adoption had not been published, and therefore, the Commission has not incorporated the proposed changes.

### **§ 10-20.2-905 Objectives**

The objectives of the government's evaluation program are to:

- (a) Provide a comprehensive basis for improvements in personnel management activities, programs, and policies;
- (b) Assure compliance with statutory requirements, regulations, and directives governing personnel programs and practices;
- (c) Evaluate the participation and effectiveness of managers and supervisors in their exercise of personnel management; and

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(d) Attain the personnel management goals and objectives established in 1 CMC §§ 8101, et seq., and this subchapter.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-901.

The Commission inserted commas after the words “programs” in subsection (a) and “regulations” in subsection (b) pursuant to 1 CMC § 3806(g).

### § 10-20.2-910 Responsibilities

(a) Appointing authorities are responsible to keep the Personnel Officer apprised of significant problems and achievements in carrying out their personnel management responsibilities, and for proposing constructive changes in personnel policies and practices.

(b) The Personnel Officer is responsible to:

- (1) Develop and administer with the Civil Service Commission the personnel management evaluation program;
- (2) Report results to the Civil Service Commission;
- (3) Use evaluation results to work with the Civil Service Commission in developing plans and improving personnel programs and activities; and
- (4) Assist outside audit teams and/or the Civil Service Commission in the performance of reviews, audits, and inspections.

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-901.

The Commission inserted a comma after the word “audits” in subsection (b)(4) pursuant to 1 CMC § 3806(g).

### § 10-20.2-915 Evaluation Methods and Procedures

(a) The Personnel Officer must develop a very comprehensive guide to assure full coverage of the personnel management effort. The Personnel Officer shall make on site evaluations of personnel management in each of the appointing authorities’ areas not less often than each two years.

(b) Specific Techniques. The following specific techniques shall be employed:

- (1) Collection, analysis, and organization of a wide variety of information relating to personnel management effectiveness, including statistical data, minutes of meetings and conferences, reports on problem cases, special studies of programs or occupations, proposals by

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operating officials, analyses by personnel specialists, and results of employee-management consultations.

(2) Use of questionnaires, attitude surveys, interviews, and similar tools to elicit opinions from employees and supervisors on the personnel program.

(3) Periodic review of personnel actions taken throughout the Commonwealth to determine compliance with classification and qualification standards, appointment and status change regulations, etc. The review shall include desk audits, examination of official personnel folders, personnel action forms and position description reviews.

(4) Inclusion of relevant information, reports, analyses, etc.

(5) Schedule. The Personnel Officer shall schedule personnel management reviews with appointing authorities each fiscal year. The schedule shall be published and provided to the Civil Service Commission and appointing authorities not later than March 31 of each year. As opportunity is provided by other necessary business, a personnel specialist should make selective regulatory compliance reviews on a random basis as part of the overall personnel management evaluation effort.

Modified, 1 CMC § 3806(e).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-901.

The Commission inserted commas after the words “analysis” in subsection (b)(1) and “interviews” in subsection (b)(2) pursuant to 1 CMC § 3806(g).

### **§ 10-20.2-920 Reports**

(a) Reports of the Personnel Officer’s personnel management evaluations shall be made to the Civil Service Commission and to the Governor not less than once each two years by February 1, as of December 31. The reports shall be based upon:

(1) Comprehensive audit reports of evaluations accomplished by the Personnel Office; and

(2) Reports of program accomplishments under the personnel management plan.

(b) The Personnel Officer in consultation with the Civil Service Commission shall develop the evaluation plan and the format for reporting.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

See the commission comment to § 10-20.2-901.

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### § 10-20.2-925 Action

Using the interim evaluations and the annual comprehensive personnel management report, the Personnel Officer shall:

- (a) Direct and follow-up on corrective action to be taken with respect to any improper, illegal, or unprofessional personnel practices noted in any of the reports.
- (b) Arrange for and conduct training for those persons involved in personnel management activities who appear to be deficient in the technical or professional phases of personnel management as indicated in the several evaluations.

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-901.

The Commission inserted a comma after the word “illegal” in subsection (a) pursuant to 1 CMC § 3806(g).

### Part 1000 - Personnel Management Plan and Records

#### Subpart A - Personnel Management Planning

#### § 10-20.2-1001 Personnel Management Plan

Each year, as of October 1, the Personnel Officer in consultation with the Civil Service Commission shall prepare a personnel management plan which will specify the critical program areas to be addressed during the ensuing fiscal year. The plan shall address:

- (a) Scheduled personnel management evaluation reviews to be conducted by the Personnel Office and/or the Civil Service Commission. The schedule shall indicate which appointing authorities' areas will be given attention and the scheduled dates therefor.
- (b) Scheduled interim evaluations to be made at the Personnel Office.
- (c) Program development work to be done by the Personnel Office and the timetable for it. As an example, staff effort toward revision of a class standard or a project to develop a qualification standard or personnel management training to be done.
- (d) Commentary on evaluation of the labor market with respect to critically needed skills, estimates of turnover by classes and reports of changes or turnover and similar elements of management information.

Modified, 1 CMC § 3806(f), (g).

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History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The Commission corrected the spelling of the word “evaluation” in subsection (d).

The August 2004 proposed amendments republished part 1000 in its entirety. As of December 2004, a notice of adoption had not been published, and therefore, the Commission has not incorporated the proposed changes.

### **§ 10-20.2-1005 Report on Personnel Management Plan (PMP)**

The Personnel Officer shall report not later than December 31 of each year to the Governor, to the Civil Service Commission, and to the appointing authorities on performance under the personnel management plan for the preceding fiscal year period, October 1 to September 30. The report shall contain, in addition to a report on status of PMP projects, comments on such elements as:

- (a) Employee turnover, by appointing authority and by class;
- (b) Adverse actions taken for disciplinary reasons;
- (c) Adverse actions under RIF procedures;
- (d) Adverse actions not for cause;
- (e) Promotion actions processed, by appointment authorities by the several methods used;
- (f) Hires above entry level in comparison to those hired at entry level; and
- (g) Accomplishments in training and employee development, and such other information as may be determined to be of interest to management.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-1001.

### **Subpart B - Records**

#### **§ 10-20.2-1010 Purpose**

This subpart defines the minimum requirements for personnel records to be originated and maintained by the Personnel Office.

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History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-1001.

### **§ 10-20.2-1015 Policy**

(a) The Personnel Officer shall establish a system of records for all personnel presently or previously employed by the government. The records shall be separated so that those of active employees are filed separately from those of former employees. Other supporting records, as deemed appropriate by the Personnel Officer, may also be maintained.

(b) The personnel specialists shall develop and maintain system of personnel records which parallels that a maintained in the Personnel Office.

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-1001.

### **§ 10-20.2-1020 Records Required**

(a) Official Personnel Folder (OPF). For each employee an official personnel folder (or file) shall be maintained. The folder shall contain, as a minimum, the following elements of permanent information covering the employee:

- (1) Formal application for employment.
- (2) Copy of the certificate of eligibles from which selected or other documents which indicate the appointing authority.
- (3) Form on which prior creditable service is listed and service computation date is derived.
- (4) Letter of original selection signed by an authorized selecting official.
- (5) Copy of each personnel action affecting the employee.
- (6) Copy of promotion certificate from which employee was selected, if appropriate.
- (7) Copy of promotion selection letter signed by an authorized selecting official.
- (8) Copy of each form reflecting choice of health benefits or group life insurance coverage, designation of beneficiary, and other legal and binding assignments or designations.
- (9) Adverse action supporting material if the action is consummated. Temporary information, as contrasted to permanent-type information as delineated above, shall be kept in the OPF but filed on the LEFT side of the folder. Examples of temporary material include:
  - (i) Performance evaluation reports;
  - (ii) Annual employee review documentation sheets;
  - (iii) Descriptions of positions occupied by the employee;
  - (iv) Letters of reprimand (retained for two years only); and
  - (v) Items of correspondence concerning the employee but which have no historical or permanent value, e.g., letters of commendation or congratulation.

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(b) Employee Record Card. A card record which summarizes critical data concerning the identity, status, movement, and separation of an employee. Every personnel action taken will be recorded on the employee record card. Exceptional or less than satisfactory performance ratings shall be noted on the employee record card showing the rating and date thereof.

(c) Medical Records.

(1) Medical examination forms and drug and alcohol test result forms for each employee shall be maintained in a file separate from the OPF. This is essential to protect the privacy of the individual. The records shall be maintained in a locked, fire resistant file with access allowed only to personnel authorized by the Director of Personnel Management. Access must be restricted only to persons who have a “need to know” as determined and approved by the Director of Personnel Management. Whenever access to a medical record is allowed, the Director of Personnel Management shall record:

- (i) Date of access;
- (ii) Name of person allowed such access; and
- (iii) Reason therefor.

(2) This memorandum shall be kept in the folder of the individual medical record.

(d) Records of Investigations and Inquiry. Any records of investigation or inquiry concerning an employee shall be filed in a separate folder, clearly identified by the employee’s name, date of birth and social security number. The material shall be kept in a locked, fire resistant storage facility, safe or fire proof cabinet, with access allowed only on a “need to know” basis and upon approval by the Personnel Officer. The existence of an investigation file shall be noted in the OPF, filed on top of the last entry therein.

Modified, 1 CMC § 3806(e), (f), (g).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: The original paragraphs of subsection (c) were not designated. The Commission designated subsections (c)(1) and (c)(2).

The 1997 amendments amended subsection (c). See the commission comment to § 10-20.2-1001.

In subsection (b), the Commission corrected the spelling of “thereof.” The Commission inserted commas after the words “beneficiary” in subsection (a)(8) and “movement” in subsection (b) pursuant to 1 CMC § 3806(g).

### **§ 10-20.2-1025 Disposition of Records**

Upon the separation of an employee for whatever reason, the employee’s official personnel folder shall be closed and removed to storage. Prior to sending the file to storage, all temporary material filed on the left side of the folder shall be removed and either given to the employee or destroyed. Medical examination records and investigation file material shall be placed in the OPF so that the record is accurate and complete. Records of alcohol and drug test results shall be

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retained in the employee's medical file until the time period for retention, established at § 10-20.2-434(c) has passed. At that time, the records shall be destroyed.

Modified, 1 CMC § 3806(c), (f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 19 Com. Reg. 15758 (Nov. 15, 1997); Amdts Proposed 19 Com. Reg. 15520 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15119 (Feb. 15, 1997); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-1001.

### **§ 10-20.2-1030 Access to Official Personnel Folder**

Employees may have access to their own official personnel folders at any time during regular working hours provided a responsible personnel specialist or clerk watches as the employees' reviews take place. The employees are not entitled access to their medical records. Investigation reports are not available to the employees. If employees persist in their desire to see investigation reports, they should be referred to the agency which prepared the report or secure a court order authorizing the Personnel Officer to allow the employee access to the investigation report.

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-1001.

### **§ 10-20.2-1035 Information Available to the Public**

The names, present and past position titles, grades, salaries, and duty stations of a government employee is information available to the public; provided, however, such shall not be available when the release of the information is prohibited by law or when the information is sought for the purpose of commercial or other solicitation.

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com. Reg. 2286 (Aug. 31, 1983).

Commission Comment: The 1988 amendments deleted former section XI.B7, entitled "Information May Be Provided." See 5 Com. Reg. at 2410 (Aug. 31, 1983). See also the commission comment to § 10-20.2-1001.

The Commission inserted a comma after the word "salaries" pursuant to 1 CMC § 3806(g).

## **Subpart C - Reports**

### **§ 10-20.2-1040 Purpose**

(a) Accurate and timely reports are invaluable to the management of a workforce. They are important to the processes of budgeting, manpower planning, forecasting staffing needs and declines, and other management areas.



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(b) 1 CMC §§ 8101, et seq., requires that the Personnel Officer “establish and maintain a roster of all persons in the government in which shall be set forth, as to each, the class of position held, the salary or pay, any change in class, title, pay, or status and any other necessary data.”

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-1001.

### **§ 10-20.2-1045 Role of the Personnel Officer**

The Personnel Officer shall prescribe a system of reports and the format for reporting to provide, on a timely basis, the information required by law.

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-1001.

### **§ 10-20.2-1050 Role of the Timekeeper**

The timekeeper shall be responsible for recording and certifying time and attendance reports of the assigned employees. The timekeeper shall also record and certify leave time taken by any assigned employee. The method of recording and certifying time, attendance, and leave shall be prescribed by the Personnel Officer and the Director of Finance.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 26 Com. Reg. 22953 (Aug. 26, 2004); Amdts Adopted 10 Com. Reg. 5436 (Feb. 15, 1988); Amdts Proposed 9 Com. Reg. 5294 (Dec. 15, 1987); Adopted 5 Com. Reg. 2502 (Nov. 15, 1983); Proposed 5 Com Reg. 2286 (Aug. 31, 1983).

Commission Comment: See the commission comment to § 10-20.2-1001.

The Commission inserted a comma after the word “attendance” pursuant to 1 CMC § 3806(g).

## **Part 1100 - Special Provisions**

### **Subpart A - Financial Austerity Measures**

#### **§ 10-20.2-1101 Financial Austerity Measures**

At any time the governor declares by directive the need for financial austerity measures that affect the Civil Service System, all provisions in this subchapter that require increases in employees’ salaries due to permanent or temporary promotions, acting or detail assignments, reallocation or reclassification of positions, and step increases based on attendance at workshops

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or other training programs, will be suspended upon announcement by the Civil Service Commission of such suspension in the Commonwealth Register. The suspension shall expire upon subsequent notice in the Commonwealth Register. Upon expiration of the suspension of the pay increases employees who qualified for the increases during the time of suspension shall receive the pay increases effective the date the suspension expired. The increases shall not be made retroactive to any date that occurred during the time of suspension.

Modified, 1 CMC § 3806(d).

History: Amdts Adopted 21 Com. Reg. 16701 (Apr. 19, 1999); Amdts Proposed 21 Com. Reg. 16455 (Feb. 18, 1999).

Commission Comment: The history of the implementation of this section is as follows: 21\* Com. Reg. 16460 (Feb. 18, 1999) (invoking § 10-20.2-1101); 21 Com. Reg. 16703 (Apr. 19, 1999) (invoking § 10-20.2-1101); 21 Com. Reg. 16978 (Nov. 15, 1999) (proposing to suspend the operation of § 10-20.2-1101 for customs class series within the Department of Finance and nursing class series and midwives within Department of Public Health); 22 Com. Reg. 17054 (Feb. 15, 2000) (notice of expiration of § 10-20.2-1101); 23 Com. Reg. 18747 (Nov. 23, 2001) (invoking § 10-20.2-1101); 24 Com. Reg. 19534 (Sept. 27, 2002) (suspending § 10-20.2-1101 for federally funded positions); 26 Com. Reg. 21777 (Feb. 23, 2004) (emergency and proposed permanent suspension of § 10-20.2-1101 for uniformed correctional series employees within the Division of Corrections, Department of Public Safety); 26 Com. Reg. 22612 (June 24, 2004) (emergency suspension of § 10-20.2-1101 for nursing classes of employees at the Department of Public Health).

\*Commonwealth Register volume 21, number 2, pages 16459 through 16571 are mislabeled as volume 20. See 21 Com. Reg. 16455-16571 (Feb. 18, 1999).