

**CHAPTER 25-40
COMMONWEALTH DEVELOPMENT AUTHORITY PERSONNEL
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Chapter Authority: 2 CMC § 4433.

Chapter History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

Part 001 - Introduction

Subpart A- Purpose and Scope

§ 25-40-001 Purpose

These regulations implement Section 3 of Public Law 20-87 which authorize the Commonwealth Development Authority (CDA) to establish rules and regulations governing the personnel policies and processes of CDA that will establish and fair work environment to further the accomplishment of CDA's mission.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-005 CDA Mission Statement

CDA has established the following mission statement to guide it in its efforts on behalf of the Commonwealth: To provide appropriate financial and technical assistance to facilitate the startup or expansion of private and public enterprise for their success, CDA the benefit of the Commonwealth's economic welfare, and the long term sustainability of.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-010 Policy

(a) It is hereby declared that these regulations establish a system of personnel administration within CDA that is based on merit principles and generally accepted management methods to govern the employment actions and processes for the employees of CDA.

(b) It is also declared to be the purpose of these regulations to develop a personnel management which will attract, select, and retain the best-qualified employees on merit, who shall hold their positions free from coercion, discrimination, reprisal, or political influences, with incentives in the form of genuine opportunities for promotion within CDA, and to provide competent and loyal personnel to render impartial service to the public at all times.

(c) In order to achieve this purpose, it is declared to be the policy of CDA that the personnel management hereby established be applied and administered in accordance with the following merit principles:

- (1) Equal opportunity for all, regardless of race, creed, color, ancestry, membership in a labor organization, political affiliation, place of origin, disability, sex, religion, age, sexual orientation, veterans status or similar matters not related to individual merit and fitness;
- (2) Impartial selection of the most able person for government service by means of selection processes which are fair, objective, and practical;
- (3) Just opportunity for competent employees to be promoted within CDA;
- (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 and complaint procedures for all employees; and
- (7) Flexibility in employer-employee relations to achieve and maintain a well-trained, productive, and happy work force.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-015 Coverage

(a) These regulations apply to all employees and positions now or hereafter established in CDA except for board and contracted appointments.

(b) The executive director shall determine the applicability of this section to specific positions not expressly covered by this section.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-020 Scope

These regulations cover nearly all aspects of personnel management and administration, and include but are 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 service, 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 these regulations.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

Subpart B- CDA Personnel Management Responsibilities

§ 25-40-030 Personnel Management

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

(b) The executive director, with the assistance of CDA office manager, 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 CDA workforce, giving due consideration to the changing needs of CDA's programs and personnel needs.

(c) It is the policy of CDA to continuously promote improved management-employee 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.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-035 The Executive Director

The provisions of this regulation shall govern the administration of CDA personnel management system. Subject to this regulation and both federal and Commonwealth employment-related laws, the executive director shall:

- (a) Be appointed by and serve at the pleasure of the Board of Directors;
- (b) Receive such salary and benefits as approved by the Board of Directors and otherwise authorized by statute;
- (c) Direct and supervise all administrative and technical personnel activities of CDA;
- (d) Oversee the administration of the system of personnel administration for CDA;
- (e) Act for the Board of Directors in the exercise of its appointing authority under Public Law 4-49;

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- (f) Advise the Board of Directors on all matters concerning personnel management, and employee training;
- (g) Formulate and recommend to the Board policies and regulations needed to carry out CDA's personnel management responsibilities;
- (h) Encourage and exercise leadership in the development of effective personnel administration practices within CDA;
- (i) Perform other tasks and duties required by the position or as assigned by the Board.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-040 CDA Office Manager

CDA office manager will provide the administrative and personnel support to management staff and employees of CDA. The office manager will:

- (a) Foster and develop, in cooperation with management officials, programs to promote effective personnel management, improve employee efficiency, and increase employee productivity;
- (b) Develop and maintain an adequate position classification and compensation plan;
- (c) Administer recruitment and selection programs and determine when employees meet specific job qualification requirements;
- (d) Provide advice and assistance to management on matters of employee discipline and grievance and appeal procedures;
- (e) Assist employees and management in the resolution of employee-management issues;
- (f) Develop or arrange training programs to elevate employee skills and increase employee productivity;
- (g) Establish and maintain records of all CDA personnel, maintaining archived records for former personnel;
- (h) Interpret and administer this regulation; and
- (i) Perform any other activities deemed necessary to assure effective implementation of CDA personnel management system.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-045 CDA Board of Directors

CDA Board of Directors represents the fair and objective interests of both CDA and its employees in matters concerning CDA personnel management system. Subject to the provisions of this regulation and applicable federal and Commonwealth employment laws, the Board shall:

- (a) Ensure the establishment and maintenance of a comprehensive personnel management plan and personnel regulations for the smooth and effective operation of CDA;
- (b) Provide advice and assistance on personnel management issues referred by the executive director;
- (c) Hold hearings and decide appeals of employees for disciplinary actions, suspensions of more than three working days, demotions, and dismissals from CDA. The Board may utilize the services of qualified hearing officers or other professionals where such services are deemed essential by the Board. Hearings shall be public except when the appealing employee requests a closed hearing;
- (d) Require the presence of witnesses and/or documents in any matter pending before the Board; and
- (e) Perform any other lawful act(s) required by law or this regulation or deemed by the Board to be necessary to carry out its duties.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

Part 100 - Staffing

Subpart A- Application and Selection Processes

§ 25-40-101 Introduction

This part covers the staffing elements necessary to acquire, maintain, reassign, promote, and release employees of CDA. 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.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-102 Order of Priority for Filling a Job Vacancy

The following order shall be followed in the filling of job vacancies:

- (a) Internal promotion or transfer of current CDA employees;
- (b) Applicants obtained through open competitive job vacancy announcements.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-103 Selected Announcement and Internal Posting of Job Vacancy

All vacant positions will be filled through transfer or promotion of internal CDA applicants before opening the vacancy announcement unless otherwise determined by the Board of Directors.

- (a) The vacancy will be announced internally for five working days.
- (b) All internal applicants must meet the qualifications for the vacant position and meet standards of suitability that may be established by the executive director. If none of the internal applicants meet the qualifications or standards of suitability, the vacancy shall be filled through competitive hiring.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-104 Competitive Hiring

All hiring shall be competitive and open to the public, except where specifically exempted by the Board. Candidates responding to a vacancy announcement will submit to CDA, by the designated time, their records of education, training, experience, and such other information as requested in the announcement, to be evaluated and rated by CDA office manager or other designated evaluator.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-106 Vacancy Announcements

Vacancy 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;

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(e) Instructions on how to apply for the vacancy, including place or mailing address to apply, form of application required, and documentary support required; and

(f) Period of the announcement. All announcements shall initially be for 15 calendar days. This period may be extended by the executive director, if the response has been inadequate, by re-announcing the vacancy in the same manner as the original announcement.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-107 Publicity

Optimum publicity shall be given to vacancy announcements through posting in CDA office, on CDA website, on the CNMI Department of Labor job vacancy website, and at such other places as may be selected by the office manager (e.g., official bulletin boards in offices or work places, or public announcements through the news media).

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-108 Applications for Vacancies

(a) Applications for vacancies shall be made on forms prescribed by CDA. Proper completion of applications and submission of supplemental information shall be accomplished in accordance with the instructions on the vacancy announcement and established procedures.

(b) Applications shall 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 consideration or for disciplinary action if the applicant is a current CDA employee.

(c) 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 executive director because of unusual circumstances.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-109 Disqualification of Applicants

The office manager may deny consideration of an applicant for failure to meet the requirements for the position. Applicants who do not meet the minimum qualifications shall be notified as soon as practical. If an applicant is disqualified following initial designation as eligible, the applicant's name shall be removed from the list of eligible applicants.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-110 Establishment of List of Eligible Applicants

- (a) Following the closing of a vacancy announcement, the office manager shall review all applicants based upon their qualifications relative to the requirements of the announced position. Those applicants who meet the minimum qualifications for the position shall be rated based upon their qualifications and ranked according to their relative standing.
- (b) In the event a list of eligible applicants for any position contains less than five names and the executive director deems the range of choice to be inadequate, the office manager shall reannounce the vacancy.
- (c) An open competitive list of eligible applicants shall be created only after it has been determined that no qualified and suitable internal candidate is available.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-111 Removal of Names from Lists of Eligible Applicants

The office manager may remove the name of any person who has been disqualified under any provision of part 100. The name of any person may also be removed if:

- (a) The eligible applicant fails to respond within ten calendar days from the mailing or emailing date of an inquiry as to availability for employment, or from the date of actual personal contact, provided that the name may be restored for reasons deemed sufficient by the executive director.
- (b) The eligible applicant voluntarily withdraws.
- (c) There is evidence of physical or mental inability to perform the duties of the position, as indicated by appropriate medical examination.
- (d) The eligible applicant is found to be no longer qualified to perform the duties required of the class of position.
- (e) Intentional false statements, deception, or fraud is determined to have occurred in the application or in the interview process by the applicant or any other person involved in the application or selection process.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-112 Selection from Eligible Applicant Lists

- (a) Appointments and promotions in CDA shall be made from certified eligible lists resulting from open competitive vacancy announcement, except as otherwise provided by part 100. The list of certified eligible candidates will be prepared for the executive director by the office manager from among the highest rated applicants in precise numerical order, highest rate first. Where the number of eligible applicants exceeds five names, only the top

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five names shall be certified. The executive director shall be provided a certified list of the top five eligible applicants for each vacancy. However, when less than five persons comprise a list of eligible applicants, the executive director may accept such lesser number or request the vacancy be reannounced in order to obtain at least five eligible applicants. If more than one position of the same classification must be filled, the number of certified applicants on the list shall be increased by one eligible for each additional position to be filled, where possible.

(b) Where the position has a special requirement which is not a general qualification requirement for that class of position, the office manager will certify only those eligible applicants who meet that specific requirement.

(c) Only the top five certified applicants will be eligible for job interviews, except in those cases where additional applicants are added to the list of certified eligible applicants.

(d) The executive director shall justify, in writing, for CDA's administrative records, the non-selection of any eligible with a higher rating than the candidate selected. Such requirement creates no special standing for the applicant(s) with a higher rating.

(e) If no applicant on the list of certified eligible applicants is determined by the executive director to be suitable for the position, the executive director will justify the non-selection and a second listing of the next five highest ranked applicants will be provided for job interviews. If necessary, the vacancy will be re-announced.

(f) The selected applicant will be notified in writing of his or her selection and when to report for work. All employment will be contingent upon the receipt of a negative preemployment drug screening result that will be arranged by the office manager and paid by the selected applicant.

(g) No person shall report to work or receive a salary unless an appropriate personnel action has been approved by the executive director.

(h) The job offer will be withdrawn if the selected applicant fails to report for duty within the time prescribed by the executive director.

(i) All non-selected applicants, whether on the certified listing of eligible applicants or not, will be notified of their non-selection.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-113 Duration of Lists of Eligible Applicants

(a) The validity of a certified list of eligible applicants expires upon the hiring of the selected applicant. All applications and supporting documents will be maintained for one year from the date of hiring. This retention is required by various federal laws. Any original documents provided by the applicant may be returned upon request with a copy retained.

(b) CDA has no obligation to place any applicant on any subsequent list of eligible applicants without the applicant reapplying and meeting all requirements for application.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-114 Pre-employment Condition Standards

(a) All persons appointed to positions in CDA must be mentally and physically capable of performing the duties of the position. Medical examinations or disability-related questions such as a medical questionnaire cannot be utilized until after a conditional job offer has been made to an applicant. A medical exam is defined as a procedure or test that seeks information about an individual's physical or mental impairments or health. Employment can be conditioned on the results of post-offer medical exams or disability-related questions if the criteria examined relate directly to the employee's capability of performing the essential functions of the position. If medical exams or disability-related questions are required, they must be required of all entering employees in the same job class. Exams cannot be required, or medical-related inquiries made, of some applicants and not others.

(b) Persons offered positions within CDA must submit to a pre-employment drug screening. Pre-employment drug screening are not considered to be medical examinations as defined in this section.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-115 Administration of Medical Examinations

Medical examinations and pre-employment drug screening shall be administered by medical personnel authorized by CDA to conduct such examinations for employment purposes and shall be recorded on forms prescribed by CDA. Pre-employment drug screening for candidates shall be conducted in accordance with established Commonwealth government procedures.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-116 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.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-117 Orientation

New employees shall receive a standardized orientation to CDA as soon as is practical after being appointed, and at least within one week of the first day of work.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

Subpart B- Positions and Appointment

§ 25-40-120 Types of Positions

All positions within CDA shall be identified by one of the following designations and as defined herein.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-121 Permanent Position

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

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-123 Types of Appointments

Appointments are categories of employment in the classes defined in the following that will fill established permanent or temporary positions:

(a) Board of Directors Appointment. The executive director, comptroller, and the executive assistant of CDA will be appointed by and serve at the pleasure of the Board. Benefits and conditions of employment will be as approved by the Board and as otherwise authorized or limited by statute. The policies, processes, and protections afforded by these regulations do not apply to a Board appointed position.

(b) Contracted Appointment. Key positions classified as professional will be employed on contracts not to exceed two (2) years in duration. Benefits and conditions of employment will be as provided in the contracted terms and conditions of employment and as otherwise authorized or limited by statute. The policies, processes, and protections afforded by these regulations do not apply to contracted appointees except as included in the contracted terms and conditions of employment.

(c) Probationary Appointment. This is an appointment in which the appointee is selected from a list of eligible applicants resulting from an open vacancy announcement to fill a permanent position. The appointee shall serve a period of not less than six and not more than 12 months from the beginning of the probationary appointment and shall demonstrate a minimum of 26 consecutive weeks of satisfactory performance before being eligible for conversion to a permanent appointment. Separations during a probationary appointment do not require adverse action procedures.

(d) **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 regulation. Permanent appointments may be made to part-time positions with defined regular work schedules.

(e) **“Acting” Appointment.**

(1) An “acting” appointment is the official written designation that an employee will act for a period of up to 30 days in place of a higher-level position. When the absence exceeds the initial 30-day period, a new designation shall be made for an additional 30 days. The thirty-day renewal of an “acting” assignment may be repeated until the incumbent returns to the position.

(2) Whenever the “acting” assignment exceeds 90 days, the employee shall be temporarily promoted or appointed to the position if the employee meets the qualifications standards of the position. See section 25-40-330.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

Subpart C- Separation, Suspensions, and Demotions

§ 25-40-130 General

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

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-131 Separations Not Involving Personal Cause

(a) **Resignation.**

(1) Resignations shall be in writing and shall be submitted to their managers at least 14 calendar days in advance of the effective date. Management employees should provide a minimum of 30 days notice.

(2) The manager shall submit a copy of the written resignation to the office manager for processing of the action.

(3) 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 executive director agrees to the proposed withdrawal.

(b) **Retirement.** An employee may be separated for the purpose of retirement, provided the employee meets the eligibility standards for age and service covered under the Settlement Fund or Social Security. A retirement shall follow the same notification process as a resignation.

(c) **Exit Interview.** An exit interview shall be scheduled and conducted during working hours by the executive director or his/her designee for employees upon notice of resignation or retirement. Such interview shall include questions on the reasons for

separation and counseling on benefits. The office manager shall not process exit documents until the interview is completed. If circumstances make such interview impractical, an employee may ask the executive director to waive this requirement.

(d) Termination for Medical Reasons.

(1) When an employee becomes mentally incapacitated or permanently physically disabled and is unable to satisfactorily perform the essential duties of the position to which assigned, the executive director may terminate the employment, provided:

(i) No reasonable accommodation can be made within CDA to which the employee is assigned;

(ii) Medical examination fitness-for-duty procedures have been conducted; and

(iii) All adverse action procedures have been followed.

(2) In all cases of termination for reasons of mental incapacity or physical disability, all provisions of the Americans with Disabilities Act will be followed.

(3) An employee whose services are terminated under this part may be eligible for disability retirement under the Settlement Fund or Social Security. The responsibility for applying for disability retirement rests with the employee, although it is the responsibility of the office manager to ensure 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 executive director must be contingent upon the following factors:

(1) A vacant position in the class and pay level must be available within CDA.

(2) The employee must meet the qualifications for the position at the level sought and be capable of fulfilling the duties required of the position.

(3) No additional cost shall accrue to CDA as a result of or incident to the demotion action.

(4) 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.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-132 Disciplinary Actions for Reasons of Personal Cause (Adverse Actions)

CDA will utilize management measures to prevent ethical misbehavior and misconduct. Employees, at all levels, will be held accountable for their actions, and disciplinary actions will be used as deterrent and corrective measures to assist in attainment and maintenance of the high standards of ethical and conduct behavior set by CDA. Disciplinary actions will be categorized as adverse action, where a tangible change to employment status occurs, and non-adverse action, where no tangible change occurs.

(a) Authority to Take Adverse Action Disciplinary Measures. Unless specified by law, the authority to hire is followed by the authority to effect adverse actions. For this purpose, the designated official will be the executive director.

(b) Authority to Take Disciplinary Measures. Unless otherwise restricted by the executive director, managers and supervisors are authorized to effect non-adverse action disciplinary measures and to recommend adverse action disciplinary actions. Managers and supervisors will keep the executive director advised of performance and conduct problems.

(c) Employee Coverage. This part applies to all permanent employees of CDA but does not apply to Board-appointed or probationary employees, except where stated elsewhere in this regulation.

(d) Merit of Disciplinary Action. An action against an employee should only be taken under this part for “such cause as will promote the efficiency and the mandates of CDA.”

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-133 Non-Adverse Action Disciplinary Measures

(a) Verbal Admonishment. A verbal admonishment, in the form of a counseling or warning, is an informal disciplinary measure. A manager or supervisor may discuss at any time minor deficiencies in performance or conduct with the objective of improving an employee's effectiveness. Verbal admonishments shall not be made a matter of record in the employee's official personnel file (OPF).

(b) Written Admonishment. A written admonishment, in the form of a counseling or warning, is also an informal disciplinary measure that normally occurs when minor deficiencies in performance or conduct reoccur after a verbal admonishment or for a more serious deficiency or incident. Written admonishments will be maintained as a matter of record in the employee's OPF.

(c) 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 stem 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 OPF as a matter of record. 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.

(d) Suspension

(1) 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.

(2) 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 exempt employee must receive suspensions without pay for attendance or performance matters in periods of a full five working days, except in situations of misconduct, defined by the FLSA as serious safety or work rule infractions, where a lesser period may be permitted by the FLSA.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-134 Adverse Action Disciplinary Measures

Adverse action disciplinary measures require the use of the adverse action notification and resolution procedure.

(a) **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. The executive director may suspend an employee for such cause, provided all adverse action procedures are followed.

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

(c) **Removal for Abandonment of Job.**

(1) An employee absent without leave (AWOL) without valid reason, for a combined total of ten working days in any 12 month period may be terminated from employment for job abandonment, provided all adverse action procedures are followed.

(2) An employee absent without leave without valid reason, for ten consecutive working days may be considered, in effect, a resignation. Adverse action procedures will not be required. The executive director may elect not to effect such termination, however, if it is determined that circumstances warrant such cancellation. Nothing in this section shall preclude the executive director from taking other disciplinary action against an employee for absence without leave.

(d) **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, the provisions of that act shall be followed, as applicable.

(2) The executive director shall provide the employee with not less than 14 calendar days' notice, in writing, specifying the reasons for the separation.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-135 Procedure for Taking Adverse Actions

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(a) The executive director must observe certain procedural requirements when processing adverse actions covered in this subpart. Procedures for removal and suspension for more than three working days are as follows:

(1) The executive director must give the employee at least 30 days advance written notice of the proposed action.

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

(3) The employee has the right to answer in writing. The employee shall be allowed not more than twenty days to answer the notice of proposed action. Three workdays within the allotted twenty days shall be official time.

(4) If the employee answers, the executive director 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. Based upon the circumstances, however, the employee may be suspended during the notice period and placed on leave without pay or, with the employee's consent, carried on annual leave. An employee, whose adverse action is drug-related as prohibited by part 40, subpart C, of this chapter, will not be permitted to perform any safety-sensitive functions during the notice period.

(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 notice of proposed action 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.

(b) In the event that criminal charges are filed against an employee, the employee may be immediately suspended without pay, reassigned, allowed to take annual leave, or be subject to such other action, including those which trigger the adverse action procedures, as management may deem necessary. In the event the charges are dismissed or the employee is found not guilty, the employee may be reinstated with benefits and pay but will not receive retroactive payment or reimbursement for any leave taken. Employee will not be eligible for reinstatement with benefits and pay if the employee was terminated.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-136 Summary of Steps for Taking Adverse Actions

(a) Misconduct triggering use of the adverse action procedures

(b) Executive director's notice letter of proposed adverse action

(c) Employee's answer and/or presentation of evidence

(d) Executive director's letter of decision

(e) Employee's written appeal to the Board of Directors

- (f) Board of Directors hearing (if requested)
- (g) Board of Directors' decision (administrative remedies exhausted at this point)
- (h) Legal recourse

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

Part 200 - Position Classification and Compensation

Subpart A- Position Classification

§ 25-40-201 General

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

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-202 Definitions

(a) “Position Classification”: 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.

(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.

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- (d) “Position Classification Plan”: classes of positions arranged in a systematic order to reflect all of the kinds and levels of work utilized in CDA Personnel Management System.
- (e) “Allocation”: the assignment of a position to its appropriate class on the basis of analysis of the duties and responsibilities of the position.
- (f) “Reallocation”: 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.
- (g) “Reclassification”: 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.
- (h) “Class Specification”: 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.
- (i) “Occupational Group”: 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” and “Administrative, Management, and Allied” are occupational groups.)
- (j) “Series of Classes”: classes closely related as to occupational specialty but differing in level of difficulty, responsibility, and qualifications required. (For example, the three classes of Marketing Specialist I, Marketing Specialist II, and Marketing Specialist III taken together make up a series of classes.)
- (k) “Position Description”: a formal, official written statement by management which documents the description, assignment, or arrangement of the duties and responsibilities of a position. The description should define the duties, knowledge, skills, abilities, education, and experience requirements of the position.
- (l) “Desk Audit”: a formal review of a position to determine if the duties being performed are consistent with the job description and grade level assigned.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-204 Principles and Policy

- (a) The basic principles underlying the position classification system are:
- (1) Equal pay for equal level of responsibilities, qualification requirements, and difficulty in differing position's assigned duties; and

(2) Variations in pay in proportion to differences in difficulty, responsibility, and qualification requirements of the work.

(b) CDA Personnel Management 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: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-206 Responsibilities

(a) The Executive Director

(1) Ensures the development of a classification program which supports management's objectives, meets legal and regulatory requirements, and promotes participation by operating officials in the classification process.

(2) Provides advice and assistance to management on the classification aspects of position structure needed to carry out CDA mission.

(3) Ensures the conduct of periodic reviews to evaluate the effectiveness of the classification program and directs corrective action where appropriate.

(4) Approves new classification standards, revises existing standards as needed, seeks the advice and counsel of an experienced desk auditor, as needed.

(5) Groups positions into classes on the basis of their similarities in duties, responsibilities, and other significant factors.

(6) 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 personnel committee and the appropriate management officials.

(7) Changes a position from one class to another where substantial changes have occurred in the duties and responsibilities.

(8) Determines the status of occupants of positions which have been changed from one class to another.

(9) Delegates authority to the degree the executive director deems appropriate, including to CDA office manager and other CDA management staff, to review and modify position descriptions which have been approved and allocated within the classification plan.

(b) The Department Managers

(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;

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- (3) Ensure 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) Assist employees to accomplish the foregoing.

(c) The Office Manager

- (1) Develops, prepares, maintains, and submits to the executive director, as required, 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,
- (2) Develops and maintains listings of positions, 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.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-208 Position Planning

Managers and supervisors are 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: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

Subpart B- Compensation

§ 25-40-210 General

All employees of CDA shall be compensated in accordance with applicable Commonwealth laws. CDA compensation plan shall follow the base salary schedule utilized by the executive branch of the Commonwealth government unless CDA develops a separate salary schedule, which is submitted to and approved by the board.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-212 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 executive director 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.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-214 Periodic Review of Compensation Plan

The executive director shall periodically ensure the conduct of necessary and appropriate studies of rates of compensation and compensation practices in the Commonwealth and recommend to the board any changes to CDA Compensation Plan.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-216 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 not to exceed step 8. An initial salary above step 1 of the pay level must be approved by the executive director. An initial salary above step 8 of the pay level must be approved by CDA Board of Directors with the recommendation of the executive director.

(b) When a person is reemployed after a break in service into a position in a class and pay level lower than the highest class and pay level previously held, the salary may be set in the lower grade at the highest previous step held.

(c) When a person is reemployed after a break in service into a position in a class and pay level higher than the highest class and pay level previously held, the salary may be set in the higher grade at a step-level equivalent to two steps higher than the highest previous step held.

(d) All initial salaries are contingent upon budgeted and available funding and may be limited accordingly, notwithstanding (b) and (c) above.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-218 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 a two-step increase in the old pay level. The rate of compensation must not exceed the 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. Retroactive promotions shall not be made except when directed by a decision of the board pursuant to an employee's appeal.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-220 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 two calendar days. 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.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-222 “Acting” Assignment

(a) An “acting” assignment is the designation, in writing, that an employee will act for a period of up to thirty calendar days in place of a supervisor. When the supervisor's absence exceeds the initial 30-day period, a new designation shall be made for an additional thirty days. This 30-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 acting assignment exceeds ninety days and the employee does not meet the qualifications standards of the position, 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 permanent status is designated for an acting assignment to a contracted position, the employee shall be required to resign from permanent status 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 if the employee meets the qualifications for the contracted position, or a two-step temporary increase if the employee does not.

(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.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-224 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 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.

(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: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-226 Transfer

An employee who is transferred to a different position within CDA at the same pay level shall receive no change in compensation.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-228 Effect on Service Anniversary Date

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

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-230 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 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 become the employee's new anniversary date for within-grade increases and other purposes.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-232 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 Chairman of the CDA Board. Exceptions to this rule may be made by the executive director only for such reasons as will expedite CDA's business and not result in an inequitable situation.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-234 Within-grade Increases

- (a) Within-grade increases may be granted to permanent employees upon completion of 52 consecutive calendar weeks of satisfactory performance.
- (b) Permanent employees who are 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 80 hours, is creditable toward the waiting period for a within-grade increase. Unapproved leave (AWOL) and leave without pay (LWOP) of more than 80 hours will extend the waiting period by at least one pay period or by the amount of time such AWOL or LWOP exceeds the 80 hours, whichever is greater.
- (e) A former employee reemployed with a break in service begins a new waiting period for a within-grade increase from the date of rehire.
- (f) Employees holding temporary promotions will be eligible for any within-grade increase due to their permanent position.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-238 Overtime Compensation

- (a) **Compensatory Time and Control.** Any employee who exceeds 40 hours actually worked in an established one-week pay period shall be compensated for the hours in excess of 40 at the rate of one and one-half times the regular rate of pay, except as provided below.
- (b) **Exceptions.** Bona fide executive, administrative, and professional employees are exempt from overtime compensation. These terms shall have the meanings given them in the Federal Fair Labor Standards Act of 1938, as amended (FLSA).
 - (1) Every personnel action or request therefore to appoint, promote, or transfer an individual to a position shall be endorsed by the office manager as 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. 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.

(c) **Hours Actually Worked.** Overtime compensation will only be paid for hours actually worked in excess of 40 hours a week. Paid leave, annual or sick, or holidays shall not be included in the computation of hours actually worked, except for administrative leave allowed to serve on government boards and commissions. 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.

(d) **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 scheduled shifts and 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 that is paid to the employee or the fair value of those benefits, if they are provided directly by the government, prorated to determine the amount for that workweek. The fair value shall be the amount specified for tax purposes.

(e) **Compensatory Time-Off.** 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-off in place of overtime; and

(2) The maximum authorized accumulation of compensatory time-off is 240 hours (160 hours of work time at one and one-half times). When an employee has accumulated 240 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) Compensatory time-off cannot be carried "off the books" through any in-house agreement or arrangement. All time work shall be officially recorded.

(6) Appointed, contracted, and overtime exempt positions are exempt from accruing compensatory time.

(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 or postponed to the following day or days. Avoid use of compensatory time-off. Excessive use of compensatory time-off 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 executive director on forms prescribed by CDA.

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

(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.

(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. 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.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-240 Standard Work Week

The standard work week commences on Monday at 7:30 a.m. and ends on Friday at 4:30 p.m. of each week. Section managers shall have discretion to require employees to work a flexible schedule so that the hours worked does not exceed 40 hours in a standard work 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: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-242 Holidays

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

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.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-244 Merit Award

(a) An employee achieving an overall exceptional performance rating (scale range of 4.2 to 5) may additionally be granted a merit award (a one-time payment of \$250.00) upon completion of 52 consecutive calendar weeks of sustained superior work performance corresponding to the employee's anniversary year. Such additional merit award shall not alter the waiting period required for qualifying for the next within-grade step increase.

(b) A recommendation for a merit award is prepared and signed by the manager, and then forwarded to the executive director for review and final approval.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-246 Premium Pay

(a) 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 40-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
- (4) Eligibility to be placed on-call is for a period of one year and may be renewed for additional one-year periods.

(b) Typhoon Emergency. Employees who are required by CDA 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 CDA 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.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-248 Approval of Premium Pay of Differentials

Proposals to either begin or discontinue premium pay differentials shall be submitted on a request for personnel action to the executive director 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.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-250 Bar to Dual Compensation or Dual Employment

(a) No employee shall receive compensation for two positions or two appointments in the CNMI government service. When an employee is engaged in government work other than in the employee's regular position with CDA, such employee shall be

- (1) Placed in LWOP from the regular position, or
- (2) Continue CDA 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 workday 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 executive director.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-252 Severance Pay

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

- (1) For each full year of creditable service with the government (total employment with CDA and other agencies), 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 25 percent of the pay for a biweekly period at the rate in effect upon separation by RIF. Not more than 75 percent of the pay for one biweekly period shall be paid under this part-year provision.
- (3) If the employee is reemployed by CDA and is again separated by a RIF, this time will not be counted toward any future severance pay.

(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.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-254 Timekeepers

It is essential that CDA 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.** The executive director shall appoint not less than two timekeepers from among CDA employees on Saipan and one each for Rota and Tinian. Upon the appointment, each timekeeper will undertake a course of instruction in timekeeping procedures as provided by the Executive Branch Office of Personnel Management. No person may perform the duties of timekeeper without certification.

(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 certifying time, attendance, and leave shall be as prescribed by the Office of Personnel Management training.

(2) Time and attendance records, kept by the timekeeper, are subject to audit by the executive director or his designee at least once a year. Noncompliance to the timekeeping procedures taught in the certification training may 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 executive director. 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.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

Part 300 - Employee Benefits and Services

§ 25-40-301 Policy

CDA will provide benefits and services to its employees in keeping with the general practices of the CNMI 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) Insurance, such as group life and health insurance, dental insurance, and worker's compensation coverage.
- (c) Retirement.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

Subpart A- Leaves of Absences

§ 25-40-305 Purpose

Leaves of absence from work are for the mutual benefit of the employee and employer. When leaves of absence are granted, they will be approved based upon legitimate reasons as presented by the employee for such times as will not be detrimental to CDA and its responsibilities.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-310 Types of Government Service that Qualify for Leave Accrual Purposes

Prior service in the following government activities will count in the determination of CDA leave accrual rate:

- (a) Employment within the departments of the executive branch.
- (b) Employment within the judicial branch.
- (c) Employment within the legislative branch.
- (d) Employment within government corporations, agencies, commissions, and instrumentalities.
- (e) Employment within the offices of the mayors and the municipal councils.
- (f) Prior service employment within the Trust Territories government, as defined and recognized by the Commonwealth government's civil service regulations.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-315 Kinds of Leaves

Broadly characterized, leaves of absence are either with pay or without pay.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-320 Leaves with Pay

(a) Annual Leave.

(1) Annual leave, or vacation, shall be granted for the purpose of rest and relaxation. Annual leave requests must be made at least three work days in advance on a leave request form. All annual leave requests must be approved by the employee's section manager and concurred by the executive director. A denial of request for annual leave is subject to employees' grievance rights.

(2) CDA 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 90 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.

(3) Maximum Accumulation. The maximum accumulation of annual leave for CDA employees shall be 360 hours. Accrued annual leave in excess of 360 hours remaining at the end of each calendar leave year shall be converted to sick leave.

(b) Sick Leave.

(1) Sick leave shall be allowed whenever the employee is to be absent from duty because of illness or injury or because of medically required quarantine of the family and/or residence. Use of sick leave is appropriate for medical, dental, optometric or mental health counseling or other necessary 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 executive director may require certification for such other period(s) of illness as is determined appropriate due to suspected abuse of the sick leave benefit.

(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) 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 employment.

(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

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supported by a certified medical statement issued by the attending physician. No employee shall be allowed to undertake gainful employment while on sick leave status.

(iii) Sick leave with pay may be granted in advance of earning sick leave as provided under subsection (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 in any branch or agency 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.

(c) Family Sick Leave. It should be noted that this leave, while it may be counted as Family and Medical Leave Act (FMLA) leave, is authorized by Commonwealth law and should not be confused with the federal FMLA.

(1) An employee may apply for leave to attend to an immediate family member who is sick. For leave in excess of two consecutive days, such request shall be supported by a certified medical statement. Leave taken for this purpose shall be deducted from the employee's earned sick leave.

(2) Per Public Law No. 15-16 the following definitions apply for family sick leave:

(i) "Certified medical statement" means a statement from an attending physician that a Commonwealth government employee is needed to care for an immediate family member;

(ii) "Immediate family member" means a legal spouse; child, whether natural or adopted, or parent.

(3) Employees are authorized to use up to 80 hours of earned sick leave hours per 12-month period. The executive director may approve an additional 80 hours in cases of severe illness or injury, or the need to accompany a qualified sick immediate family member for off-island treatment.

(4) Only one family member, as designated in a medical referral statement, may use this benefit to accompany a qualified sick immediate family member for off-island treatment.

(d) Leave Advance.

(1) Where, for good reason, an employee requires additional annual or sick leave in addition to the amounts accrued, the executive director, with recommendation of the employee's section manager, may grant advance leave. For permanent employees the advance leave will be limited 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. In the case of probationary employees, advance leave can be approved 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. Requests

for leave advance must be in writing from the employee with a recommendation from the section manager.

(2) Leave advance granted and taken:

(i) Constitutes a legal contract between the employee and CDA; and

(ii) Must be repaid, even if the employee separates or transfers from CDA. Recovery of advance leave that is unpaid may be through CDA's assumption of employee's accrued unused leave, payroll deductions, matched reduction of service time, and/or recourse to the courts.

(e) **Compassionate Leave.** Employees may be granted compassionate leave with pay of no more than five consecutive workdays 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 off-spring (natural and culturally or legally adopted), grandfather, grandmother, grandchild, mother-in-law, or father-in-law. Compassionate leave must be taken within 18 days after the death of the immediate family member. The executive director will be responsible for approving compassionate leave requests.

(f) **Administrative Leaves.** An absence from duty administratively authorized, without loss of pay and without charge to accrued leave, is administrative leave. CDA board may grant administrative leave as the Governor may approve for the executive branch. The following are the three general classes into which administrative leaves fall:

(1) Administrative leave may be authorized under emergency conditions beyond the control of management, e.g., typhoons, or for participation in civic activities of interest to the government, or for such reasons as the Governor may determine (such as a shortened work day on Christmas Eve).

(2) Administrative leaves may be authorized relative to disciplinary actions. The executive director may place an employee in non-working status with pay for up to three work days pending an investigation or preparation of a notice of proposed suspension for up to thirty calendar days or termination of employment.

(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.

(g) **Court Leave.** CDA 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 section manager together with a completed request for leave for the executive director's approval. 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 a Commonwealth court. Expense allowances paid the employee for whatever purpose may be retained by the employee to defray the expenses for which granted. The employee may retain any jury fee paid by the federal court. An employee subpoenaed as witness, except as a government witness, shall charge such absence to

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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 executive director of the required testimony as soon as possible after being subpoenaed.

(h) **Military Leave.** Military leaves of absence with pay, not to exceed 15 working days in any calendar year, regardless of the number of training periods in the year, may be granted by the executive director to employees 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.

(i) **Maternity Leave.** Maternity leave shall be granted to a female employee who is absent from work because of childbirth. The executive director shall have the responsibility for approving maternity leave requests. Such maternity leave shall not exceed 15 work days, shall be in addition to any accumulated sick leave, and shall be any 15 work days encompassing the date of childbirth. Any additional leave taken for such childbirth purposes shall be charged against accumulated sick leave. This benefit will not be granted in cases of adoption. All leave time related to the birth of a child will be counted as family and medical leave.

(j) **Paternity Leave.** Paternity leave shall be granted to a male employee on who is absent from work because of his wife's confinement for childbirth. Such paternity leave shall not exceed two workdays encompassing the date of childbirth. The executive director shall have the responsibility for approving paternity leave requests.

(k) **Sick Leave Bank Leave.**

(1) All CDA employees are eligible to participate in and utilize the Commonwealth's Sick Leave Bank established by Public Law No. 8-25, as amended by Public Law No. 15-69.

(2) The Sick Leave Bank serves as a depository into which participating employees may donate accrued sick leave time for allocation to other Commonwealth employees who have personally suffered, or have an immediate family member who has suffered, a catastrophic illness or injury, and who have exhausted their compensatory time, sick leave, and annual leave balances.

(3) Employees are eligible for up to 160 hours of Sick Leave Bank hours once during their employment, unless the loaned hours are repaid. The terms and conditions of this benefit are provided in the Sick Leave Bank Regulations [NMIAC, title 10, chapter 50].

(4) CDA office manager will provide access to this regulation and will assist employees in submitting applications for this benefit.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-325 Leaves without Pay

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(a) **Leave Without Pay for Personal Reasons.** An employee may be granted leave without pay not to exceed 90 consecutive workdays if the executive director considers it justified. Leave without pay may be extended up to 90 additional consecutive workdays only with the approval of CDA board, upon recommendation by the executive director. Such leave without pay may be granted to permit the employee to attend to important family affairs, or for justifiable personal or business reasons.

(b) **Leave Without Pay in Extension of Annual or Sick Leave.** An employee 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 provide medical certification as to the necessity of the extension. The executive director is responsible for approving or disapproving requests for leave without pay, upon recommendation by the section manager.

(c) **Tardiness.**

(1) At the end of each pay period accumulated tardiness in excess of 15 minutes 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 or annual leave at the employee's election.

(ii) If the period of lateness is more than one hour the executive director will review the justification for absence to determine whether annual leave can be used in lieu of leave without pay.

(2) The period of tardiness shall be calculated in the same manner as hours worked are calculated for time keeping purposes.

(d) **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 executive director. The employee must give advance notice to the executive director, 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 managers should contact the U.S. Department of Labor.

(e) **Family and Medical Leave Act (FMLA) Leave.**

(1) The federal Family and Medical Leave Act of 1993 (FMLA), as amended, 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;
 - (iii) For a serious health condition that makes the employee unable to perform the employee's job; or
 - (iv) For specified situations relating to family members in military service.
- (2) 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. CDA can designate a leave as a FMLA leave.
- (3) Participation in the government group health insurance program shall continue during FMLA leave.
- (4) The definitions, benefit eligibility, and limits and notification procedures comply with the federal Family and Medical Leave Act (FMLA) of 1973 as amended.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-330 Basis for Accrual

- (a) 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. Pay status will include paid annual or sick leave, holidays, administrative leave, and overtime work hours. No annual leave will be earned if the pay period includes unpaid periods where the total time worked is less than 80 hours per pay period. If the work week is shortened due to the needs of CDA, the shortened work week will then be the basis for leave accrual.
- (b) 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.
- (c) Part-time employees with work schedules of 40 to 70 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 § 620 at this rate.
- (d) Part-time employees with work schedules of than 40 hours during a biweekly pay period will not accrue annual or sick leave benefits or be eligible for the other paid leave benefits.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-335 Unauthorized Leave

Unauthorized leave (absent without leave, AWOL) is absence from duty without appropriate authorization. Employees who are absent from duty without prior approval, except in bona fide emergencies, shall be charged as being AWOL. Employees who are AWOL are subject to loss of pay and possible disciplinary action.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-340 Disposition of Leave upon Separation

(a) Annual Leave.

(1) An employee separated from CDA for any reason shall receive a lump-sum payment of up to 360 hours of unused annual leave 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.

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 workdays, the employee is required to make a refund for the unexpired term of leave remaining. To calculate the amount of repayment, subtract the number of workdays (exclusive of holidays or other paid days off) from the annual leave amount paid to the employee.

(2) 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 CDA for any reason shall have all sick leave accrued to the employee's account held in the leave records for three years. Should the person be reemployed in any government agency at any time during that three-year period, the sick leave balance shall be recredited to the employee's sick leave account and available for use from the first day of reemployment. Provided, however, that an employee separated from CDA 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.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-345 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 begins in that calendar year.

(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 CDA.

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.** CDA urges and encourages employees to use annual leave for the purpose for which it is intended. That is for rest and relaxation. CDA considers that a “vacation” of not less than two consecutive weeks of annual leave meets the basic intent of annual leave provisions. To avoid internal dissension, managers are urged to schedule vacation periods for their employees, bearing in mind employees’ preferences, needs, and desires, so that CDA will not be unduly affected by employee absences.

(d) **Lump Sum Leave Payment upon Separation.** When an employee is separated from CDA, the employee is entitled to the payment of unused annual leave up to 360 hours in a lump sum. However, lump-sum leave payment shall not be processed for an employee who has not completed CDA's separation requirements.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

Subpart B- Insurance

§ 25-40-350 General

It is the policy of CDA to provide certain insurance benefits to all its employees, whatever their appointive status. These are defined in the section which follows.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-355 Nature of Coverage

(a) In the event of an on-the-job work-related injury or illness, the employee may be entitled to benefits under the Commonwealth's Workers' Compensation Insurance program.

(b) CDA will pay part of the cost of group health and group life insurance coverage and the employee may pay his/her share through payroll. CDA does not pay any share of the group dental insurance.

(c) Employees have the option to waive dental, health/medical, and life insurance.

(d) 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.

(e) Employees are responsible to familiarize themselves with reporting procedures so that they may be assured of proper coverage in event of injury or illness.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

Subpart C- Retirement

§ 25-40-360 Retirement Program

The NMI Public Employees' Defined Contribution Retirement Plan is the single retirement program offered by the Commonwealth for all employees whose first time CNMI government employment commences on or after January 1, 2007.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

Part 400 - Employee Management Processes

Subpart A- Communications

§ 25-40-401 General

CDA 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 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;
 - (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) 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.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-402 Role of the Executive Director

The Executive Director shall:

- (a) Monitor and guide managers and supervisors in the above listed actions to facilitate good intra-CDA communications;
- (b) Designate CDA office manager to monitor employee relations through advising managers and supervisors in such areas as:
 - (1) 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;
 - (2) Advising and counseling employees concerning benefits to include the group life insurance, the group health insurance, and the worker's compensation;
 - (3) Advising all employees on the impact of law and regulations concerning the personnel management function; and
 - (4) Advising all employees concerning conflict of interest as denounced in this subchapter.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

Subpart B- Emotional and Mental Health

§ 25-40-404 General

(a) This subpart deals with employee conduct and performance when outside influences, other than substance abuse, adversely affect employees' effectiveness. These 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 CDA'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.
- (c) This subpart does not deal with substance abuse. See subpart C, for CDA's policy on creating an alcohol and drug free workplace.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-406 Policy on Emotional and Mental Health

(a) As employer, CDA 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 CDA.

(b) It is CDA 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.

(c) Supervisor must take care not to make decisions for employees or give guidance beyond their professional capabilities. For non-work-related situations, the supervisor should guide the employee to seek professional assistance.

(d) Assistance available to employees voluntarily seeking help for substance abuse problems is described in subpart C. 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.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-408 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:

- (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 incidents leading to work-related accidents or damages;
- (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 again counsel with the employee and, if the employee is unresponsive, refer the matter to the executive director.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-410 Action by the Executive Director

Upon referral of a case to the executive director by a supervisor, the executive director should contact the Community Guidance Center or other appropriate agency for assistance. Once arrangements for assistance have been made, the executive director should seek out the employee and counsel the employee to seek appropriate help. If the employee is agreeable, the executive director should notify the supervisor concerned so that arrangements can be made for the employee to seek help. If the employee is not agreeable, the executive director should advise the employee that he or she is responsible for the consequences of their actions and if the unsatisfactory performance continues, disciplinary action may result. Actions taken should be properly documented and maintained in the official personnel folder or the confidential medical file, as appropriate.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-412 Further Actions

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 again with the executive director. The executive director should then seek assistance from an appropriate practitioner at the Community Guidance Center, the Commonwealth Health Center or other appropriate agency.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

Subpart C- Alcohol and Drug-Free Workplace

§ 25-40-414 General Policy

(a) As an employer, CDA 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, CDA is concerned about the adverse effect that 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 CDA's mission. To the end of maintaining an alcohol and drug free workplace, employees shall not be

under the influence of alcohol, illegal drugs, or controlled substances during business hours, whether or not consumed on CDA premises and whether or not consumed out of or during working hours.

(b) CDA realizes that alcoholism, problem drinking, and drug addiction are treatable illnesses. CDA, 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: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-416 Procedure

CDA understands and accepts its obligation to maintain a workplace free of alcohol and illegal drugs. To ensure that the objectives of this policy are met, CDA will actively implement and maintain a drug-free program. The program will have the following elements: collection and testing, education and guidance, referral and rehabilitation. CDA has accepted the CNMI CDA's Alcohol and Drug Free Workplace program and will utilize and work with this program in accordance with the guidance provided in the Civil Service's Personnel Service System Rules and Regulations [NMIAC Title 10, Chapter 10] with the exception that any administrative or disciplinary hearings and decisions will be conducted by CDA executive director and the board as provided in this regulation.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-418 Testing Occasions

(a) Pre-employment Testing

(1) At the time of application, persons applying for any position with CDA 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, phencyclidine in the urine, etc. The test shall be paid for by the candidate.

(2) Also at the time of application, applicants who were previously employed by CDA and applicants who have had an offer for CDA employment withdrawn due to a previous positive urine test result must provide a written release of drug testing history for the two years immediately preceding the application date.

(3) No new CDA 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 a negative result for the presence of cocaine, marijuana, opiates, amphetamines, and phencyclidine.

(4) 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.

(5) If the candidate's drug testing history shows a positive drug test within two years prior to the application date, the offer of employment will be withdrawn unless the

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candidate submits a statement of fitness for duty and agrees to execute an agreement similar to a return to duty contract described below [§25-40-434].

(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, CDA shall pay for the testing.

(1) Testing Decision Authority. Only a manager or higher official is permitted to make reasonable suspicion testing decisions.

(2) Objective inquiry. The supervisor or higher CDA official 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.

(3) Prior to making the decision to require testing, the management official 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.

(4) Transportation assistance. The employee shall be accompanied to the collection site by a supervisor and shall be provided transportation home from the collection site. If the individual refuses and demands to drive his/her vehicle, the supervisor 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 manager 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 personnel file.

(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, CDA shall pay for the testing.

(1) Objective inquiry. A department head or higher CDA official'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 department head or higher CDA official shall require the driver of any CDA vehicle or the operator of any CDA equipment involved in the accident to be tested.

(2) Transportation assistance. The employee shall be accompanied to the collection site by a management official and shall be provided transportation home from the collection site. If the individual refuses and demands to drive his/her vehicle, the management official shall notify the Department of Public Safety.

(3) 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.

(4) Report. The supervisor or higher CDA official 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 personnel file.

(d) Random Testing

Not less than every two years, 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, CDA 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 25 percent of all employees performing safety-sensitive functions shall be required to submit to breath-alcohol testing and no more than 50 percent shall be required to submit to urine testing. The actual percentage will be determined at the beginning of each fiscal year by the executive director and the office manager after reviewing CDA's prior positive testing rates, reasonable suspicion and post-accident events, and referrals for service.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-420 Collection and Testing Procedures

(a) Collection

(1) Breath and urine specimens shall be collected only at a site approved by CDA or at the scene of an accident if proper equipment and personnel can be made immediately available.

(2) Breath and urine specimens shall be collected only by a technician trained in the collection of specimens in accordance with standard collection protocols as specified in the U.S. Department of Transportation Regulation, 49 CFR, Part 4 (B and C) "Procedures for Transportation Workplace Drug Testing Programs," except as otherwise provided in this section. However, a certified medical review officer (MRO) or a consulting physician, when requested, may assist in facilitating the collection for post-accident testing.

(b) Confirming Tests

(1) Alcohol Test. Breath specimens shall first be subjected to a screening test for alcohol. If that test indicates a probable breath alcohol concentration (BAC) 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 BAC of 0.02 or greater.

(2) Drug Test. The urine sample will be split into two specimens (primary and secondary). Both specimens will be shipped to the laboratory selected for performing tests for CDA. 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.

(c) Results

(1) The breath test results shall be transmitted by the technician, in a manner to assure confidentiality, to the employee and to CDA office manager.

(2) The laboratory conducting the urine test shall give the results only to the MRO. The MRO shall discuss the test result with the tested individual.

(3) If the test shows positive for the presence of a specific drug or drugs, the employee may request that the MRO 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.

(i) The employee must make the request in writing, within 72 hours of receiving notice of the result of CDA's test.

(ii) The results of the second test shall be given to the MRO, who shall discuss the result with the employee.

(iii) The employee shall pay for the cost of the second test.

(4) Upon receiving a report of a positive test result, the MRO 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 MRO determines it to be necessary he or she may request pertinent analytical records from the laboratory or require a re-analysis of the specimen.

(5) The MRO 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.

(6) Employees receiving a positive test result will be subjected to disciplinary action up to termination of employment.

(d) Report to CDA

The MRO shall report all positive and negative urine drug test results, in a manner to assure confidentiality, to CDA executive director. Other than as specified above, the MRO.

shall not release the results of drug tests to any other individual without a written release from the tested employee.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-422 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 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.** CDA 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 a substance abuse professional (SAP) for treatment, may self-refer, or may be referred by a manager as part of a performance counseling session. Such referrals shall only be made a part of the employee's medical file and shall not be a part of the employee's personnel file. Referrals shall be kept confidential.

(2) **Voluntary referrals.** Employees who voluntarily seek assistance in dealing with drug and alcohol problems or who accept referrals, before job performance is compromised, shall be provided the same leave benefits for recommended treatment as provided for any other health problem.

(c) **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. Such requests may be considered a mitigating factor in determining the appropriate form of discipline.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-424 Prohibited Conduct

The following conduct or activity is prohibited by CDA and employees violating this provision will be subject to disciplinary action:

(a) **Sale, Purchase, Possession with Intent to Deliver, or Transfer of Alcohol or Illegal Drugs.** No employee shall sell, purchase, or transfer; attempt to sell, purchase, or transfer; or possess with the intent to deliver, any illegal drug while on CDA property, in any CDA vehicle or on any CDA business, except that alcohol may be purchased, transported, maintained, and consumed in reasonable quantities where social drinking is part of doing CDA-related business.

- (b) Possession of Illegal Drugs. No employee shall possess any illegal drug while on CDA property, in any CDA vehicle, or on any CDA-related business.
- (c) Possession of Open Containers of Alcohol. No employee shall possess an open container of alcohol in any vehicle while on CDA property, in any CDA vehicle, or on any CDA-related business.
- (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 used other than as directed by the physician or normal usage per nonprescription directions. An employee is presumed to be under the influence of alcohol or an illegal drug if:
 - (1) The employee has a BAC 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 CDA-related functions; or
 - (4) The employee uses alcohol or any illegal drug within four hours prior to reporting to work and expects to perform CDA-related functions.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-426 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:

- (a) Refusing in writing to submit to testing after receiving clear and specific written notice of the requirement to be tested;
- (b) 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;
- (c) 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 MRO 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);
- (d) Engaging in conduct that clearly obstructs the specimen collection process;
- (e) 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;

- (f) Consuming alcohol or illegal drugs after an accident and before a testing decision is made;
- (g) Failing to report, during the work shift in which an accident occurred, an accident which could have resulted in a testing decision; or
- (h) Failing to report to the specimen collection site timely after being informed of the requirement to be tested.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-428 Other Actions Violating this Regulation

- (a) **Giving False Information.** No employee shall give false information about a urine specimen or attempt to contaminate or alter the specimen.
- (b) **Refusal to Comply with Treatment Recommendations.** No employee shall fail to comply with recommendations for treatment or after-care made by an MRO or SAP as a consequence of a prior positive drug or alcohol test result.
- (c) **Failure to Notify CDA of Conviction.** No employee shall fail to notify the office manager 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 CDA business, or while on or using CDA property.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-430 Refusal to be Tested; Penalties and Consequences

- (a) **Disciplinary Action.** An employee committing any act prohibited by this procedure shall be subject to an appropriate form of discipline, depending on the circumstances.
 - (1) **Generally.** Where an employee commits any act prohibited by this procedure, without valid reason, the employee shall be disciplined up to and including removal. At a minimum, the 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) **Serious offenses.** The following acts, even for a first offense, will result in an immediate disciplinary action for removal:
 - (i) The sale, purchase, possession with intent to deliver, or transfer of illegal drugs, or the attempt to sell, purchase, or transfer illegal*;
 - (ii) Being involved in an accident resulting in a fatality while under the influence of alcohol or illegal drugs;
 - (iii) While performing and about to perform duties in a safety sensitive position, being under the influence of alcohol or illegal drugs;
 - (iv) An unexcused refusal to be tested;

- (v) Giving false information, contaminating, or attempting to contaminate a urine sample;
- (vi) Failing to notify the proper authority of conviction for a drug;
- (vii) Testing positive for alcohol or illegal drugs within five years of a prior positive test; or
- (viii) Breaching any term of a return to duty contract executed under the provisions of this procedure.

(b) **Counseling Concerning Treatment Options.** Those employees not removed from CDA service after committing any act prohibited by this procedure shall be informed of resources available for evaluating and resolving problems associated with the use of alcohol and illegal drugs. At a minimum, the supervisor or office manager shall give the names, addresses, and telephone numbers of local substance abuse professionals 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 law shall be reported, by CDA, to the Department of Public Safety for possible criminal prosecution.

(d) **Duty/Pay Status Pending Disciplinary Action.** Unless the employee was involved in an accident resulting in a fatality, an employee subject to a disciplinary action for committing any act prohibited by this procedure, shall be allowed to remain on the job pending resolution of any proposed disciplinary action but shall not be allowed to perform a safety-sensitive function, even if that means assigning the employee duties the employee would not otherwise be performing. An employee subject to a disciplinary action for committing any act that resulted in a fatal accident shall be placed on leave without pay pending resolution of the disciplinary action for removal.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-432 Return to Duty Procedures

Requirements. 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:

- (a) Complied with treatment recommendations of an MRO or SAP and been released for work by an SAP in consultation, when appropriate, with the MRO or a consulting physician;
- (b) 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
- (c) Agreed to execute a return to duty contract.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-434 Return to Duty Contract

The return to duty contract shall include the following provisions:

- (a) **Aftercare.** An agreement to comply with aftercare and follow-up treatment recommendations for one to five years, as determined appropriate by the employee's SAP;
- (b) **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 SAP, but there shall be no fewer than six tests in the first year after the employee returns to work;
- (c) **Compliance with Rules.** An agreement to comply with CDA rules, policies, and procedures relating to employment;
- (d) **Term.** An agreement that the terms of the contract are effective for five years after the employee's return to duty; and
- (e) **Breach of Contract.** An agreement that violation of the return to duty contract is grounds for termination.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-436 Administrative Considerations

- (a) **Confidentiality.** CDA shall not 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 procedure.
- (b) **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.
- (c) **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 personnel file.
- (d) **Authority/Responsibility.**
 - (1) **Management/supervisory employees** at all levels are responsible for implementing program elements to ensure that the objectives of the program are communicated to all employees and that problems are handled in a confidential, timely, and professional manner.

- (2) The office manager will:
- (i) Ensure that all employees are given a copy of CDA's regulation and policy and procedures;
 - (ii) Be responsible for establishing management and employee alcohol and drug free workplace training programs.
 - (iii) Liaising with the Commonwealth government's Alcohol and Drug Free Workplace Coordinator, testing facilities, and the medical review officer;
 - (iv) Additionally, the Human Resource Office will be the central contact point for company interaction with the employee assistance programs and for maintaining documentation on rehabilitative actions.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

Subpart D- Employee and Management Responsibilities

§ 25-40-438 Code of Ethics for CDA Personnel Service

- (a) All persons in CDA service should:
- (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 or benefitting others.
 - (9) Expose corruption wherever discovered.
 - (10) Uphold these principles, ever conscious that public office is a public trust.
- (b) In addition, 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

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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.

(c) CDA 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 wellbeing. The government's, inclusive of CDA, 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 CDA and lessen their effectiveness.

(d) To protect its credibility and rapport in the community, CDA 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.

(e) 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 only enforcement procedures. Most of all, it involves the active support of the employees. The employees of CDA, as a group, have a greater stake in improving the quality of CDA's 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.

(f) So that all employees will understand the standards of conduct that are expected of them, these principles are set forth in this subpart. Officials and employees of CDA are reminded that they must not only avoid wrong-doing in the conduct of their official duty, but must, with equal care, also avoid the appearance of wrong-doing. Acts which have the appearance of wrong-doing are prohibited equally with actual acts of wrong-doing.

(g) Each employee shall avoid situations in which his/her private interests conflict with or raise a reasonable question of conflict with his/her duties and responsibilities at work. An employee shall avoid any action, whether or not specifically prohibited, which might result in or create the appearance of using the government or CDA for private gain, giving preferential treatment to any person, impeding company efficiency or economy, making an CDA-related decision outside of official channels or by exceeding authority, or affecting adversely the confidence of the public in the integrity of the government or CDA.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-440 Policy on Employee Conduct

(a) The maintenance of the highest standards of honesty, integrity, impartiality, and conduct by CDA employees is essential to assure the proper performance of CDA business and maintain the confidence of citizens in CDA.

(b) Employees of CDA 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. CDA employees are required to conduct themselves in such a manner that the work of CDA is effectively accomplished and to observe the requirements of courtesy, consideration, and promptness in dealing with or serving the public or its business clientele.

(c) Personal and private conduct of an employee (as opposed to official conduct), that reflects adversely upon the dignity and prestige of CDA, 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 the government and CDA, a deep sense of responsibility for the public trust, and a standard of personal deportment which will be a credit to the individual and CDA.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-442 Subordination to Authority

An employee is required to carry out the announced policies and programs of the Commonwealth and CDA. 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 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.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-444 Management Responsibility

CDA 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. The executive director shall remind his or her employees of the regulations in this subpart periodically, at least once annually, through a publication or memorandum issued to all employees.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-446 Employee Responsibility

(a) 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 managers and the office manager on general questions they may have regarding the applicability of the regulations, both on specific ethical and conduct matters and for guidance on questions of conflict of interest.

(b) Each employee represents CDA to the community and is expected to conduct himself/herself at all times so that his/her actions will not bring discredit upon CDA. Employees shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct or other conduct prejudicial to CDA. Such conduct can adversely affect their continued employment with CDA.

(c) The employee shall at all times observe the local laws which govern the CNMI and shall also respect the culture and traditions of the Commonwealth and its peoples. The employee is responsible for his/her actions at all times, whether during or after working hours.

(d) CDA shall not be responsible for assisting the employee if he or she violates the local or federal laws, and neither shall it be held financially responsible for the negligent action of the employee other than as provided by law.

(e) Discrimination and harassment will not be tolerated. Any employee of this company while in the performance of his or her duty who discriminates against or harasses any other employee, or allows such harassment or discrimination to take place, because of race, creed, color, ancestry, membership in a labor organization, political affiliation, place of origin, disability, sex, religion, age, sexual orientation, or veterans status, will be subject to disciplinary action in accordance with the provisions of this subpart.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-448 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.

(b) Every effort must be made to follow a program of progressive discipline, imposing disciplinary actions of increasing severity if continued disciplinary infractions occur. However, serious offences will be responded to with an appropriate disciplinary consequence.

(c) The steps of CDA's progressive discipline program are provided in part 200, subpart D of this chapter.

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(d) The goal of progressive discipline must be to correct unacceptable behavior while being objective and fair in administering disciplinary actions. All actions should treat the offense and not the person.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-450 Conflict of Interest

(a) CDA expects that all employees will avoid activities that create a conflict of interest with their responsibilities to CDA. Employees should use good judgment, professional commitment, and moral ethics to protect themselves and CDA from potential conflicts. Employees have a duty and responsibility to conduct work-related matters solely for the benefit of CDA.

(b) Examples of conflict of interest include, but are not limited to:

(1) Outside activities that have negative effect on an employee's ability to perform the job requirement of his/her position at CDA.

(2) Outside jobs or business interests that are in competition with the company's business.

(3) Outside activities that involve the use of confidential information learned directly or indirectly through employment at CDA.

(4) Use of CDA position to obtain private gain for CDA employee or his or her immediate family member.

(c) Failure to report a potential conflict of interest and/or refusal to resolve such conflict may result in disciplinary action, including discharge.

(d) CDA reserves the right to determine when an activity conflicts with CDA's interests and to take whatever remedial action is necessary to resolve the conflict. Such actions might include:

(1) Changes in assigned duties;

(2) Divestment by the employee of the conflicting interest;

(3) Disciplinary action; and/or

(4) Disqualification for a particular assignment.

(5) Remedial action, whether disciplinary or otherwise, shall be effected in accordance with any applicable laws or regulations.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-452 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:

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- (i) Has, or is seeking to obtain, contractual or other business or financial relations with CDA;
 - (ii) Conducts operations or activities that are regulated by CDA; 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 CDA 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.
- (3) 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.
- (4) 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.
- (b) 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.
- (c) An employee may accept unsolicited advertising or promotional material such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value.
- (d) 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 CDA efficiency or economy;
 - (4) Losing independence or impartiality;
 - (5) Making a CDA decision outside official channels; and/or
 - (6) Affecting adversely the confidence of the public in the integrity of CDA.
- (e) 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 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.
- (f) An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by law or by the Constitution.
- (g) 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 CDA 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 CDA orders when reimbursement is prescribed by law.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-454 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 CDA 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 CDA.

(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 an CDA employee’s private interests, usually of an economic nature, conflict or raise a reasonable question of conflict with 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 CDA 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 CDA 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 CDA.

(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, CDA. Employees are especially urged to seek the advice of the office manager or executive director before committing themselves to such activities.

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- (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 CDA.
 - (2) Which involves the use of CDA 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 CDA, 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.
 - (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: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-456 Financial Interests

- (a) An employee shall not:
- (1) Have a direct or indirect financial interest that conflicts with CDA duties and responsibilities.
 - (2) Engage in directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through CDA 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 CDA, so long as it is not prohibited by law, the Constitution, or the regulations in this part.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-458 CDA Property

General Responsibility. Employees shall be held accountable for CDA properties and money entrusted to their individual use in connection with their official duties. It is their

responsibility to protect and conserve CDA property and to use it economically and for official purposes only.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-460 Information

It is the policy of CDA to accord the public access to information about its activities and to make available to the public records of CDA 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 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 CDA without the permission of the executive director or the board of directors.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-462 Gambling, Betting, and Lotteries

While on CDA-owned or leased property or while on duty for CDA, 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, unless the activity has prior approval by the board and is a required CDA duty.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-464 Other Types of Conduct

(a) Negotiations for Post-CDA Employment.

It is the policy of CDA that employees shall not, without proper clearance, negotiate for future non-CDA employment with persons or organizations having business with CDA 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 the executive director of his/her intentions. If the executive director determines that the proposed negotiations will not adversely affect CDA's interests, the employee may be authorized to proceed.

(b) Selling or Soliciting. Employees and other persons are prohibited from selling or soliciting for personal gain within any building occupied or used by CDA without proper permission. This prohibition does not apply to:

- (1) Authorized and installed business activities.
- (2) Solicitation for health drives, the Red Cross, and other purposes approved under the government's fund-raising policy.
- (3) Token solicitations for floral remembrances, retirement gifts, and similar purposes.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-466 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 CDA; however, such participation must not affect adversely an employee's performance of regularly assigned duties.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

Subpart E- Political Activity

§ 25-40-468 Political Activities

The political activities of persons in CDA shall be subject to the restrictions of this subpart.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-470 Rights of Employees

All employees in CDA 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: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-472 Prohibited Activities

Employees of CDA 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 CDA time, on CDA property, or on CDA business.

(e) Campaign for any candidate for public office during official working hours.

(f) Promote or oppose legislation relating to programs of CDA without the official sanction of the proper CDA 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: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-474 Public Office

An employee who is an official candidate for public office, once certified by the Board of Elections, shall take annual leave or leave without pay.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-476 Penalty

An employee found guilty of a prohibited activity shall be subject to disciplinary action.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

Part 500 - Employment Processes

Subpart A- Employee Grievances

§ 25-40-501 Policy

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

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-505 Coverage

This policy will apply to all CDA employees expressing their concern or dissatisfaction with work-related issues that are not otherwise excluded by this chapter.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-510 Matters Not Covered

The grievance system will not cover the following:

- (a) An adverse action separately appealed;
- (b) A fitness-for-duty examination;
- (c) The content of published CDA or other government policy;
- (d) Non-selection for appointment, promotion, or transfer from a group of properly ranked and certified candidates;
- (e) Non-recommendation 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.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-515 Freedom from Restraint

Employees seeking adjudication of their grievances in a reasonable manner and in accordance with this regulation will be unimpeded and free from restraint, interference, coercion, discrimination, or retaliation.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-520 Employee's Right to Representation

CDA 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. Therefore, 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 and expense. If the employee or group of employees chooses to serve as their own representative or to designate a member of the aggrieved group as spokes-person, they may do so.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-525 Role of CDA Board of Directors

CDA board serves as the ultimate appellate level for grievances of employees or groups of employees. It shall consider only those formal grievances which cannot be settled to the satisfaction of all concerned in accordance with the formal procedure defined in part 500.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-530 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 office manager and/or the executive director of higher rank than the employee's immediate supervisor.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-535 Informal Grievance Procedure

(a) The grievance action shall first be initiated by the aggrieved employee who will discuss the problem informally with the supervisor, or 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.

(b) 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.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-540 Formal Grievance Procedure

(a) 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 executive director as a formal grievance. The written representation must contain the following information:

- (1) The name of the aggrieved employee and the employee's work section;
- (2) The details of the grievance;
- (3) The corrective action desired; and
- (4) The name of the employee's representative, if any.

(b) The executive director will examine the grievance, discuss it with the grievant or representative, and render a decision, in writing, within 14 calendar days after receiving the grievance. The executive director may have the employee's immediate supervisor present, if he or she deems it appropriate to the resolution of the grievance.

(c) If the executive director is not successful in settling the grievance to the employee's satisfaction within 14 calendar days after the grievance was presented to executive director in writing, the employee may, within 15 calendar days after receiving written notification of the decision or the failure of the executive director to provide a decision, resubmit the grievance to the board.

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(d) If the grievance is against the executive director, the employee may, after attempting to informally resolve the issue with the executive director, formally submit the grievance to the board.

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

(f) In hearings before the board 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 board. Both sides shall have the right to call witnesses in support of their positions and to cross-examine witnesses for the other side. The board or the hearing officer shall prepare a summary of the hearing. If both parties desire a formal, written record prepared by a recorder, 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.

(g) The board shall reach a decision and present it formally to the aggrieved employee and the executive director within 15 working days following the close of the formal hearing. Decision by the board shall be made by a majority vote of the entire CDA Board of Directors and shall be final.

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

(i) The office manager 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 office manager is also responsible to assure that the formal record of the grievance is assembled into one place, stored, and safeguarded.

(j) The office manager shall be the final custodian of all records of a grievance and is responsible for their proper storage and security.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

Subpart B- Employee Appeals

§ 25-40-545 General

This subpart establishes CDA appeal process. Any employee of CDA may appeal, personally and/or in writing, a decision by CDA to take adverse action resulting from the disciplinary process, reduction-in-force procedures, or an “unsatisfactory” evaluation of performance.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-550 Rights of the Parties

In any appeal the appealing employee and CDA have certain rights. These include:

(a) Right to a Hearing.

(1) If an appeal is filed by an employee, both CDA and the employee will be entitled to a full and fair hearing before the board or a hearing officer designated by the board, to present evidence, and to be represented by counsel. At the hearing, although technical rules of evidence shall not apply, the testimony may be recorded, but will not be transcribed. Hearing minutes will be prepared and maintained. The board shall present its findings of fact and final decision in writing to all parties.

(2) Only one hearing will be held, unless the board determines that unusual circumstances require a second hearing. Any evidence presented at the hearing must bear on the issue of whether the adverse action taken was justified and proper.

(3) The board will decide whether or not a hearing is required for an appealed performance rating based upon the written appeal of the employee. Subsection (b) does not apply to performance rating appeals.

(b) Denial of a Hearing.

(1) The board may make the determination to deny a hearing on the appeal when a hearing is impractical by reason of extraordinary circumstance. In such cases the board will notify both parties in writing of the reason(s) for denying a hearing.

(2) If the board determines that no hearing is reasonably possible, CDA 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 presented.

(c) Freedom from Reprisal or Interference.

(1) The employee and the employee's representative will be free to use the Appeal Process without restraint, interference, coercion, discrimination, or reprisal.

(2) No employee, whether acting in an official capacity for CDA or on any other basis, will be allowed to interfere with, or attempt to interfere with, another employee's exercise of rights under this subpart. The spirit as well as the letter of the requirement must be enforced. In addition to abstaining from overt acts or interference, the official is prohibited 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 or to be accompanied, represented, and advised by a representative of their choice at their own expense. Employees may change their representative, but must notify the board of the change, in writing. Employees may select other government employees as their representative, provided that such employees are willing to represent them and are not disqualified because of conflict of position or unavailability to serve in that capacity because of priority needs of, or unreasonable cost to, their employee agency, as determined by the desired representative's appointing authority or management official. Employees

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are free to select their representative from outside the government service, but entirely at their own expense.

(e) CDA Representation. CDA's representative at a hearing will be the executive director or his or her designee, if the employee does not have an attorney-representative. CDA's legal counsel or the Attorney General's designee will represent the executive director if the employee does have legal representation.

(f) Subject to the approval of the Attorney General, CDA Board of Directors may retain an attorney or other professional to assist with legal, human resource management, or other necessary expertise.

(g) Employee Entitled to Official Time to Prepare an Appeal.

(1) An employee will be entitled to one day of official time-off as administrative leave to prepare the appeal, if the employee is otherwise in an active duty status. The employee's work on the appeal will take place outside CDA work premises.

(2) If the employee's representative is an employee of CDA, the representative will also be entitled to one day of official time to help prepare the appeal if otherwise in an active duty status.

(3) Both the employee who is appealing and the employee who is acting as representative shall make arrangements with the office manager for the use of official time. Leave forms will be utilized.

(4) If the representative is a government employee from another agency, it is the employee's responsibility to determine if that agency will allow them time off to assist with the appeal.

(5) If preparation requires more than one day off from work, the employee must request annual leave or unpaid time. If the appeal involves complicate issues that require extensive preparation time, the employee may request additional time, up to three additional days, from the board.

(6) The employee may view and request copies of any documents being used to support the adverse action being appealed. These copies will be provided at the employee's expense.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

Part 600 - Fair Treatment in the Workplace

§ 25-40-545 General

This subpart establishes CDA appeal process. Any employee of CDA may appeal, personally and/or in writing, a decision by CDA to take adverse action resulting from the disciplinary process, reduction-in-force procedures, or an "unsatisfactory" evaluation of performance.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-601 Equal Employment Opportunity Policy

(a) It is the policy of CDA 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, disability, sex, religion, age, sexual orientation, veterans status, and similar matters not related to individual merit and fitness.

(b) CDA will establish and implement 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 CDA employees. CDA will contribute to the CNMI government's efforts to build a career service which will attract, select, and retain the best-qualified employees, based on merit, who shall hold their positions free from coercion, discrimination, reprisal, or political influences and will render competent and effective service to the Community, according to the dictates of ethics and morality. In order to achieve these purposes, CDA that the personnel management shall be applied and administered in accordance with the following merit principles:

- (1) Equal opportunity for all regardless of race, creed, color, ancestry, membership in a labor organization, political affiliation, place of origin, disability, sex, religion, age, sexual orientation, or veterans status;
- (2) Impartial selection of the ablest person for service with CDA by means of selection tools which are fair, objective, and practical;
- (3) Just opportunity for competent employees to be promoted within CDA;
- (4) Reasonable job security for the competent employee;
- (5) Systematic classification of all positions through adequate job evaluation;
- (6) Fair and reasonable grievance and complaint procedures for all employees on matters pertinent to conditions of employment and these regulations;
- (7) Proper employer-employee relations to achieve a well-trained, productive, and happy work force.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-605 Prohibition of Harassment

CDA prohibits any form of unlawful harassment against its employees based upon any of the protected categories listed above. The prohibited conduct includes actions taken by or against employees by other employees, agents, contractors, vendors, or clients. Each employee is expected to assist CDA in preventing or eliminating harassment by bringing incidents of perceived harassment or discrimination to the attention of management or CDA's office manager.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-610 Prohibition of Sexual Harassment

(a) Sexual harassment of employees by their supervisors, coworkers, vendors, or customers will not be tolerated and should be promptly. Employees at all levels are

expected to conduct themselves in a courteous and professional manner at all times. Any behavior that is coercive, intimidating, harassing, or sexually offensive in nature is inappropriate and prohibited.

(b) Based on guidelines developed by the U.S. Equal Employment Opportunity Commission, sexual harassment includes unwelcome sexual advances or requests for sexual favors, or other verbal or physical conduct based on gender when:

(1) Submission to such conduct is an explicit or implicit term or condition of employment.

(2) Submission to or rejection of the conduct is used as the basis for an employment decision.

(3) The conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

(c) Inappropriate sexual conduct can take many forms and is not limited to physical assault, unwelcomed, or unwanted sexual requests or demands for sexual favors. Sexual harassing actions may include, but are not limited to, any of the following kinds of behavior: explicit sexual propositions, sexual innuendos, sexually suggestive comments, obscene or sexually suggestive pictures or drawings, obscene gestures or language, sexually oriented jokes and teasing, intimate touching or other unwanted physical contact, such as hugging, pinching, patting, or “accidental” brushing up against.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-615 Expectation of Non-Discriminatory and Non-Harassing Behavior

All employees, and especially supervisors and managers, are expected to implement and enforce the equal employment opportunity policy at all times. Discrimination for or against any employee on the basis of any of the protected factors listed above, or any other basis prohibited by federal or Commonwealth law shall not be tolerated. CDA shall maintain its 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 CDA and 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.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-620 Complaint Process

(a) Any employee who believes that he or she have been the subject of, or have witnessed, job-related harassment or discrimination (whether by an employee, agent,

contractor, vendor, or client of CDA, or others doing business with CDA), should promptly report it to a supervisor or manager. If any supervisor or manager is considered to be the discriminating or harassing agent, the employee may go directly to the office manager or the executive director. Confidentiality will be maintained to the extent permitted by the circumstances.

(b) Complaints of discrimination, harassment and/or retaliation shall be accepted both in writing and orally. If any supervisor or manager becomes aware of a discriminatory or harassment situation, he or she must immediately report the situation to the office manager or the executive director, even if the employee does not wish to file a complaint.

(c) A supervisor who receives a claim of discrimination or harassment in violation of this policy shall take such complaint seriously and immediately notify the executive director. A supervisor who does not take appropriate action also violates this policy and exposes the Commonwealth government to liability.

(d) After a complaint is received, CDA shall investigate the complaint or promptly forward the complaint to an assigned complaint investigator, who may be within or outside CDA. The complaint investigator shall commence the investigation immediately upon receipt of the complaint from the contact person. The investigation shall not exceed 14 days unless a longer period is necessary to gather all material information relevant to the complaint. Any person accused of a violation shall be allowed the opportunity to rebut the charges.

(e) After the investigation is completed, CDA will take appropriate disciplinary action, if warranted. Discipline may include: EEO training, counseling, written warning, demotion, discharge, or any other action deemed appropriate. CDA will also communicate with the complainant its decision on the results of the investigation and any corrective or remedial actions taken or proposed.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-625 Retaliation

CDA absolutely forbids retaliation of any kind against any employee who, in good faith, complains about harassment or assists or participates in any manner in the investigation. CDA will take disciplinary action against anyone, fellow employee or management staff, who attempts to retaliate in any way.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-630 Equal Employment Opportunity Officer and Representative

The executive director of CDA shall be the Equal Employment Opportunity Officer for CDA with the responsibility for ensuring compliance with CDA EEO program. The EEO Officer shall appoint and be assisted by the office manager, as CDA's EEO representative,

who shall fulfill this role as part of that person's regular duties. The office manager 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. The office manager must be accessible to employees and capable of assisting them in the complaint process.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-635 Nepotism

(a) For the purpose of this regulation, nepotism is defined as employment or employment benefit bestowed on the basis of family relationship and not in consideration of merit.

(b) For the purpose of this regulation, an immediate relative is defined as a spouse, parent, sibling, or child related by blood, legal marriage, common-law marriage, legal adoption, or cultural adoption.

(c) The basic criteria for the appointment and promotion of all CDA employees shall be appropriate qualifications and performance. There shall be no discrimination, for or against, based on relationship by family or marriage in any employment action.

(d) Employment or employment benefit by reason of blood or marriage relationship rather than merit is prohibited.

(e) No employee shall supervise an immediate family member except in emergency situations.

(f) No applicant will be hired to a position with a direct reporting relationship to an immediate relative or where a relationship or association exists that creates a reasonable assumption that that person, as an employee, would be in a favored position in relationship to other employees.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-640 Political Affiliation

No person with authority to make or recommend a personnel action relative to a person in, or an applicant for, a position with CDA, may make inquiry concerning political affiliation. All disclosures made by an employee or an applicant concerning political affiliation shall be ignored. Discrimination may not be exercised, threatened, or promised by any person in CDA against or in favor of an employee in, or an applicant for, a position with CDA because of political affiliation.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-645 Coercion

An CDA employee shall not use CDA 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: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

Part 700 - Performance Evaluation

§ 25-40-701 Employee Performance Evaluation Process

CDA will establish and maintain an employee work performance review system which will recognize, evaluate and reward employees and their contributions toward increasing efficiency and economy within CDA. An employee performance evaluation process is essential to:

- (a) Improve employee effectiveness by:
 - (1) Providing a 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: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-705 Policy

- (a) The executive director shall ensure that managers/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) A written rating of performance shall be submitted by the employee's manager/supervisor annually, commencing at the anniversary of the employee's employment date, based upon the preceding 12-months performance record and other pertinent factors. The performance rating will be acknowledged by the employee and concurred by the executive director, on forms prescribed by CDA board, for each permanent, probationary, and limited-term employee. CDA office manager shall administer the performance rating report ensuring timely and justified implementation of the program and will alert the executive director to any problem or changes needed for improvement to the program.

(c) Non-CDA employees shall not be delegated the authority to supervise or evaluate CDA employees.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-710 Responsibilities

(a) The Board of Directors shall be responsible to:

- (1) Develop, evaluate, and improve CDA's annual employee review system and performance rating report; and
- (2) Provide advice, assistance, and supervision in the administration of the system.

(b) The executive director shall be responsible to implement, administer, and obtain compliance with the purposes of the system, including:

- (1) Provide assistance to supervisors and employees, as needed, in preparing the annual performance rating;
- (2) Provide training to managers/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) Managers are responsible to:

- (1) Ensure 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) Provide periodic counseling to employees throughout the evaluation year and document significant incidents of good or poor performance;
- (4) Conduct the annual employee performance reviews; and
- (5) Initiate appropriate personnel actions in cases of continuing unsatisfactory performance.

(d) The employee is responsible to:

- (1) Request clarification from the manager/supervisor of any performance ratings, work objectives, or duties which are not clearly understood;

- (2) Advise the manager/supervisor of any fact or circumstance which the employee believes should be considered during the review process;
- (3) Participate in performance appraisal discussions and in the development of performance standards, and make suggestions for improving performance; and
- (4) Acknowledge the performance ratings.

(e) In the event the employee disagrees with any of the ratings, the employee must so indicate on the performance rating form and must submit a written statement to the executive director for review and inclusion in the employee's official personnel folder along with the appraisal.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-715 Relationship to Other Personnel Management Activities

(a) By using the employee anniversary date system (as contrasted to a fixed due date), managers/supervisors will have a full year to better consider and evaluate each employee and coordinate the employee's performance evaluation with the other factors which make up the totality of the employee review system.

(b) Managers 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. In such cases, the manager/supervisor must initiate the necessary personnel action to have such an employee reassigned, demoted, or separated from the position at the earliest possible date in accordance with the provisions of this regulation.

(c) An employee with a current official rating of "outstanding/exceptional" will receive an additional two points of retention credit for reduction-in-force purposes.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-720 Performance Rating

A completed performance rating must be submitted to the executive director by the responsible manager/supervisor for each employee on an annual basis at the employee's anniversary date for appropriate action.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-725 Rating Probationary Employees

The final probationary performance rating shall be completed for probationary appointees prior to the completion of six months of employment with CDA. The rating will recommend conversion to a permanent appointment after six months or a continuation of probationary status until the end of one year of employment.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-730 Appeals

An employee may appeal an “unsatisfactory” appraisal as provided in part 200, subpart B, of this chapter.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

Part 800 - Training and Employee Development

§ 25-40-801 Policy

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, CDA acknowledges its commitment to train and develop a viable workforce within CDA.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-805 Responsibilities

- (a) The executive director, supported by CDA office manager, shall:
 - (1) Implement training programs at all levels within CDA to assure that training objectives are met;
 - (2) Determine annual training objectives and implementation plans that reflect the immediate priorities within CDA;
 - (3) Budget funds to support the needed training programs;
 - (4) Report to CDA Board of Directors annually by September 30 of each year, the nature, content, and results attained by in-service training activities;

- (b) CDA office manager will hold the secondary role of training officer for CDA and shall work with managers/supervisors to:
 - (1) Identify and define training needs for developing CDA workforce;
 - (2) Determine training goals to be met for each CDA job category;
 - (3) Establish training and development goals to be met by CDA employees for promotion and career development;
 - (4) Evaluate all training programs to ensure that manpower development programs accomplish their objectives;
 - (5) Assure that training and education services in the Commonwealth are fully utilized before seeking outside sources; and
 - (6) Develop a recommended training schedule to be submitted with the annual budget;
 - (7) Provide advice and assistance to managers/supervisors as they conduct employee development activities;

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- (8) Locate, evaluate, and determine the cost of training resources within and outside the Commonwealth, as needed;
- (9) Maintain current training records for all employees;
- (10) Improve quality of training through evaluation of course content and practical testing of skills and knowledge gained through training.

(c) Supervisors/managers, in carrying out the training objectives in their respective program areas, shall:

- (1) Plan to release employees when needed for formal classroom instruction;
- (2) Inform trainees of the content of the training programs, the 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) Deliver or assist in the delivery of instruction within the limits of their individual capabilities.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-810 Coverage

All training must be authorized by the executive director, will be work-related, and will be limited to the following categories:

(a) **Orientation:** Within one week after an employee enters employment with CDA, CDA office manager and the employee's manager/supervisor will 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.

(b) **Job Skills:** 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.

(c) **Promotional:** training which prepares an employee to perform with adequate efficiency the basic task of higher-level position for which the employee is being trained.

(d) **Developmental:** training offered to broaden an employee's knowledge and perspectives.

(e) **Supervisory, Managerial, and Executive 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 progressively responsible work within the area(s) of intended succession.

(2) Opportunities for supervisory, managerial, professional, and executive training will be offered to potential managers if value to CDA can be identified and if funding is available.

(3) Employees entering a supervisory position must receive supervisory/management training not earlier than six months prior to such promotion and no later than six months after entry into such position.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-815 External Training Sources

Training courses provided by sources outside the Commonwealth will be utilized as necessary and to the extent the budget will permit.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-820 Training Costs Defined

(a) The term “all costs,” when used in this part to define CDA’s intent to support an employee undergoing training, means:

- (1) Round trip transportation to the training site by the least expensive air routing;
- (2) Mileage allowance for on-island travel by private transportation;
- (3) Training leave with pay, i.e., the employee’s regular salary will be paid, as all training will be work-related and the employee will be in work status. If overtime work is required and performed, payment will be made in accordance with law.
- (4) Cost of tuition, books, and fees; and
- (5) Stipend. i.e., the regular per diem rate for the time authorized to be spent at the training site.

(b) CDA will pay all pre-reviewed and approved necessary costs for training.

(c) Unapproved costs incurred or caused by the employee will be the responsibility of the employee.

(d) Unplanned and unavoidable expenses related to approved-training and not caused by the actions of the employee will be reviewed on a case-by-case basis by the executive director.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-825 Support for Training

Managers/supervisors are encouraged to support positively CDA’s training efforts, as improved skills and more effective supervision at all levels will improve mission accomplishment.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-830 Evaluation of Training

(a) CDA office manager shall develop and maintain a system which will provide information and analysis of the effectiveness of training received by CDA employees. Such analyses shall be used to determine the value of training received and programs utilized.

(b) All personnel who attend and return from a training course outside the Commonwealth shall submit to CDA office manager a written report including a summary of the course along with a judgment of the added value gained from the course.

(c) Employees who received training may be required to provide a presentation to CDA managers/supervisors and/or staff, sharing the training received.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-835 Unsponsored Training Activities

(a) Personal advancement training or academic training toward baccalaureate or higher degrees is highly encouraged. However, CDA shall not sponsor or have any responsibility for any costs incurred for such training.

(b) Personal advancement training or academic training taken at the election of the employee will utilize annual leave or leave without pay, as approved by the executive director.

(c) Unsponsored training activities will comply with the leave policies established by this regulation.

Part 900 - Performance Management Evaluation

§ 25-40-901 Purpose

Regularly and honestly evaluating the performance of CDA is one of the most difficult, yet one of the most important requirements for CDA to be a successful organization. A meaningful performance management evaluation requires that the individuals conducting the evaluation not only to know and understand the mission, strategy, and goals established by CDA for the period being evaluated, but also the projects and their measurable objectives for each CDA section and the duties and responsibilities for each employee. With this knowledge and the use of analytical evaluative methods the evaluator must determine how well each section has performed in their part of achieving CDA mission and goals, and then, after full consideration of the findings, make an objective judgment of the overall degree of effectiveness that CDA has attained in relation to mission and goal accomplishment.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-905 CDA Strategic Goals

CDA's long range plan and strategic goals will be set, reviewed, and modified, as required by changing circumstances, annually in conjunction with budget development at a strategic planning session held for that express purpose.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-910 Objectives of CDA Performance Management Evaluation Program

The objectives of CDA performance management evaluation program are to:

- (a) Provide a comprehensive basis for improvements in CDA's management of its activities, programs, and employee performance;
- (b) Assure compliance with statutory requirements, regulations, and Board directives governing CDA's programs and practices;
- (c) Evaluate the participation and effectiveness of managers and supervisors in their performance management and section goal attainment; and
- (d) Achieve CDA goals and objectives established in the annual strategic planning session.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-915 Responsibilities

- (a) Section managers are responsible for:
 - (1) Establishing section objectives that contribute to the accomplishment of CDA's strategic objectives;
 - (2) Providing leadership, guidance, and supervision in the accomplishment of section objectives;
 - (3) Keeping the executive director apprised of significant problems and achievements in carrying out their performance management responsibilities and accomplishing their assigned portion of CDA's strategic goals.
- (b) The executive director is responsible for:
 - (1) Guiding senior CDA managers in an annual strategic planning session to establish, review, and modify strategic goals for CDA;
 - (2) Providing management, direction, and continued oversight in the accomplishment of CDA's established strategic goals;
 - (3) Conducting, through a designated evaluation officer, an annual performance management evaluation to measure goal accomplishment;

- (4) Using evaluation results to work with CDA management team and the board of directors to developing plans for improving CDA's performance and goal accomplishment.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-920 Annual Report

- (a) Report of CDA performance management evaluation shall be made to CDA Board in its annual report not later than November 30 of each year. The report shall be based upon:

- (1) the comprehensive CDA performance management evaluation report on the projects completed and the goal-related objectives reached for each section; and*
- (2) the overall successful goal achievement performance of CDA.
- (3) CDA's financial status on the last day of the fiscal year.

- (b) The designated evaluating officer in consultation with the executive director shall develop the evaluation plan and the format for reporting.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-925 Action

Using on-going observations and the findings in the annual comprehensive CDA performance management report, the executive director shall:

- (a) Direct and follow-up on corrective action to be taken with respect to any deficiencies noted in any of the reports.
- (b) Ensure that managers conduct or arrange training for those employees who appear to be deficient in the supervisory, technical, or other job-related performance aspects of meeting CDA's mission, as indicated in the several evaluations.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

Part 1000 - Records and Reports

§ 25-40-1001 Purpose

This subpart defines the minimum requirements for personnel records to be originated and maintained by CDA.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-1005 Policy

CDA shall establish a system of records for all personnel presently or previously employed by CDA. 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 Committee, may also be maintained. The office manager shall develop and maintain the personnel records for CDA.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-1010 Records Required

(a) Official Personnel Folder (OPF). An official personnel folder (or file) shall be maintained for each employee. The folder shall contain, as a minimum, the following elements of primary information covering the employee:

- (1) Formal application for employment.
- (2) Copy of the certificate of eligible applicant list from which selected.
- (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 each form reflecting choice of health benefits or group life insurance coverage, designation of beneficiary, and other legal and binding assignments or designations.
- (7) Adverse action supporting material, if the action is consummated.

(b) Secondary 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:

- (1) Performance evaluation reports;
- (2) Annual employee review documentation sheets;
- (3) Descriptions of positions occupied by the employee;
- (4) Letters of reprimand (retained but usable as a past offense for two years only); and
- (5) Items of correspondence concerning the employee but which have no historical or permanent value, e.g., letters of commendation or congratulation.

(c) Employee Record Card. This card record 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.

(d) 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 filing cabinet or safe with access allowed only to personnel authorized by the executive director. Access must be restricted only to persons who have a “need to know” as determined and approved by the executive director.

(2) Whenever access to a medical record is allowed, the office manager shall record on a log sheet maintained in the individual medical record:

- (i) Date of access;
- (ii) Name of person allowed such access; and
- (iii) Reason for access.

(e) Records of EEO Cases, Disciplinary Investigations, and Official Inquiries. Any records of an EEO case, disciplinary investigation, or official 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 filing cabinet or safe, with access allowed only on a "need to know" basis and upon approval by the executive director. The existence of any of these files shall be noted in the OPF, filed on top of the last entry therein.

(f) Confidential medical and investigation records may be kept in the same filing cabinet or safe but must be maintained in separate drawers or areas. Access to one individual file or set of files does not allow access to others without specific authorization.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-1015 Policy

(a) Upon the separation of an employee for whatever reason, the employee's official personnel folder shall be closed and removed to storage.

(b) Prior to sending the file to storage, all secondary material filed on the left side of the folder shall be reviewed and duplicate information or documents considered unnecessary for permanent retention will be either given to the employee or destroyed.

(c) Medical examination records and investigation file material shall be placed in the OPF for retention so that the record is accurate and complete.

(d) Records of alcohol and drug test results shall be retained in the employee's medical file until the time period for retention, established as one year for negative testing results, two years for testing program records, and five years for all positive testing results, has passed. At that time, the test records shall be destroyed.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-1020 Access to Official Personnel Folder

Employees may have access to their own official personnel folders at any time during regular working hours provided the office manager or another responsible employee assigned by the executive director watches as the employees' reviews take place. Employees are entitled access to their medical records, but 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 executive director to allow the employee access to the investigation report.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-1025 Information Available to the Public

The names, present and past position titles, grades, salaries, and duty stations of a CDA employee is information available to the public; provided, however, such shall not be available when the release of the information is otherwise prohibited by law or when the information is sought for the purpose of commercial or other solicitation. To receive information an open-government request for the information must be submitted to CDA.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-1030 Reports

(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.

(b) CDA office manager is required to establish and maintain a roster of all persons in CDA which shall include, as a minimum, for each person, the class of position held, the salary or pay, any changes that might occur in class, title, pay, or status and any other necessary data.

(c) The executive director shall prescribe a system of reports and the format for reporting to provide, on a timely basis, the information required by law and for the efficient and effective operation of CDA.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

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History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

§ 25-40-1035 Timekeeping Records

An assigned and trained timekeeper shall be responsible for recording and certifying time and attendance reports of CDA employees. The timekeeper shall also record and certify leave time taken by any CDA employee. The method of recording and certifying time, attendance and leave shall be in compliance with Commonwealth and federal law and requirements established by the Director of Finance.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).

Part 1100 - Special Provision

§ 25-40-1101 Financial Austerity Measures

(a) At any time CDA Board of Directors, at the advice of the executive director, declares by directive to all CDA staff the need for financial austerity measures that affect CDA, all provisions in this regulation that require increases in employees' salaries due to permanent or temporary promotions, acting or detail assignments, reallocation or reclassification of positions, and step increases of any type will be suspended effective on the date set in the directive.

(b) The suspension shall expire upon subsequent notice to all CDA staff of its expiry. Upon such expiration, all 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 earlier date.

History: Adopted 42 Com. Reg. 43873 (Aug. 28, 2020); Proposed 42 Com. Reg. 43423 (March 28, 2020).