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§ 40-40-525	Use of Legally Obtained Drugs	§ 40-40-801	In General
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<b>Part 900</b>	<b>Amendments</b>	<b>and</b>		Personnel Service System
<b>Modifications</b>				Rules and Regulations
§ 40-40-901	Amendments	and		
	Modifications		<b>Exhibit A</b>	<b>(to § 40-40-220)</b>
			<b>Exhibit B</b>	<b>Table of Suggested</b>
<b>Part 1000</b>	<b>Regulatory</b>	<b>Authority</b>		<b>Penalties</b>
<b>for the</b>	<b>Commonwealth</b>	<b>Ports</b>	<b>Exhibit C</b>	<b>Commonwealth Ports</b>
<b>Authority</b>	<b>Personnel</b>	<b>Rules</b>		<b>Authority</b>
<b>and</b>	<b>Rules</b>	<b>and</b>		<b>Salary</b>
<b>Regulations</b>				<b>Schedule</b>
§ 40-40-1001	Applicability	of	CNMI	

Chapter Authority: 2 CMC § 2122(j) and (n).

Chapter History: Amdts Adopted 41 Com. Reg. 42877 (Nov. 28, 2019); Amdts Proposed 41 Com. Reg. 42690 (July 28, 2019); Amdts Readopted 41 Com. Reg. 42019 (June 28, 2019); Amdts Readopted 41 Com. Reg. 41666 (May 28, 2019); Amdts Adopted 41 Com. Reg. 41423 (Mar. 28, 2019); Amdts Proposed 40 Com. Reg. 41332 (Jan. 28, 2019); Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Amdts Adopted 39 Com. Reg. 39217 (Feb. 28, 2017); Amdts Proposed 38 Com. Reg. 39052 (Dec. 28, 2016); Amdts Proposed 28 Com. Reg. 25491 (Jan. 30, 2006);\* Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

\*As of August 31, 2007, a notice of adoption had not been published.

Commission Comment: For the history of the regulatory authority of the Commonwealth Ports Authority, see the general comment to chapter 40-10.

The adoption notice in the September 2018 Commonwealth Register included the following language: “The adopted regulations are intended to be a complete revision of CPA’s current Personnel Rules and Regulations.”

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

#### **§ 40-40-001 Purpose**

This Chapter comprises the rules and regulations that implement the provisions of 2 CMC § 2101, et seq., and subsequent amendments thereto, which authorize a classified Human Resource System within the Commonwealth Ports Authority of the Commonwealth of the Northern Mariana Islands (CNMI).

Modified, 1 CMC § 3806(f).

History: Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Proposed 39 Com. Reg. 40425 (Dec. 28, 2017).

#### **§ 40-40-005 Policy**

(a) It is hereby declared to be the policy of the Commonwealth Ports Authority to establish a system of human resource administration based on merit principles and generally-accepted methods to govern the classification of positions and the employment, conduct, movement, and separation of classified employees and contract employees, where so specified.

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

(c) In order to achieve this purpose, it is declared to be the policy of the Commonwealth Ports Authority that the Human Resource System hereby established be applied and administered with equal opportunity for all, regardless of age, race, color, religion, sex, sexual orientation or transgender status, national origin, place of origin, marital status, political affiliation or belief, or disability.

Modified, 1 CMC § 3806(f), (g).

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

#### **§ 40-40-010 Coverage**

This Chapter applies to all human resource services performed by the Commonwealth Ports Authority and to all employees and positions now existing or hereafter established in the Commonwealth Ports Authority, with the exception of non-classified employees, unless a specific statement of coverage is made herein or in the employee's contract. For the purposes of this Chapter, "non-classified employees" shall mean the Executive Director, the Staff Attorney, the Comptroller, and all other contract employees. All other employees and positions are deemed "classified."

Modified, 1 CMC § 3806(f), (g).

History: Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Proposed 39 Com. Reg. 40425 (Dec. 28, 2017).

#### **§ 40-40-015 Scope**

This Chapter sets forth the human resource management and administration policy and procedures for the Commonwealth Ports Authority, and includes, but is not limited to, development and promulgation of human resource policy, staffing, position classification, employee relations, drug and alcohol-free workplace, equal employment opportunity, prohibition of unlawful discrimination and harassment, employee development and training, employee benefits and services, incentives and awards, performance evaluation, employee health services, employee safety and accident prevention, labor-management relations, human resource management program evaluation, and records and reports. Each of the foregoing elements is presented in detail in subsequent parts of this Chapter.

Modified, 1 CMC § 3806(f), (g).

History: Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Proposed 39 Com. Reg. 40425 (Dec. 28, 2017).

**§ 40-40-020 Eligibility for Employment**

It is the policy of the Commonwealth Ports Authority that the Human Resource System shall be applied and administered according to the principle of equal opportunity for all persons regardless of age, race, color, religion, sex, sexual orientation or transgender status, national origin, place of origin, marital status, veteran status, genetic information, political affiliation or belief, or disability.

Modified, 1 CMC § 3806(f).

History: Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Proposed 39 Com. Reg. 40425 (Dec. 28, 2017).

**§ 40-40-025 Commonwealth Ports Authority Human Resource Management System**

(a) Human Resource Management. The provisions of this subsection shall govern the administration of the Human Resource System.

(1) Human resource management is the responsibility of all Commonwealth Ports Authority executives, managers, and supervisors who direct the work of others.

(2) The Human Resource Manager has the specific responsibility to plan, develop, and implement programs and procedures which create a positive work environment and productive workforce.

(b) The Human Resource Manager. Subject to this subsection and pertinent laws, the Human Resource Manager shall:

(1) Direct and supervise all the administrative and technical activities of the Human Resource Office;

(2) Administer the system of human resource administration for the Commonwealth Ports Authority;

(3) Advise the Executive Director and Commonwealth Ports Authority management staff on all matters concerning human resource management and administration, employee training, and other human resource matters.

(4) Formulate and recommend to the Executive Director and the Personnel Affairs Committee policies and regulations to carry out the provisions of 2 CMC § 2101, et seq.;

(5) Encourage and exercise leadership in the development of effective human resource administration practices within the Commonwealth Ports Authority and make available the equipment, staff, and facilities of the Human Resource Office to this end;

(6) Foster and develop, in cooperation with management officials, programs to promote the Commonwealth Ports Authority Human Resource System, improve employee efficiency, and increase employee productivity;

(7) Develop and maintain an adequate position classification and compensation plan;

(8) Develop an objective and quantitative system for ranking qualified external applicants, to be reviewed and approved by the Executive Director.

(9) Administer recruitment and selection programs, determine when employees meet specific job qualification requirements, and establish ranked eligible lists;

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- (10) Provide advice and assistance to management on matters of employee discipline and grievance and appeal procedures;
- (11) Develop training programs to elevate employee skills and increase employee productivity;
- (12) Establish and maintain records of all personnel in the Commonwealth Ports Authority Human Resource System, to include the Official Personnel Files (OPF) of all Commonwealth Ports Authority employees;
- (13) Interpret and administer this subsection; and
- (14) Perform any other activities deemed necessary to assure effective implementation of this Chapter.

(c) The Personnel Affairs Committee.

(1) The Personnel Affairs Committee of the Commonwealth Ports Authority shall consist of members of the Commonwealth Ports Authority Board of Directors who are appointed thereto by the Chairman of the Board of Directors. The Chairman of the Board of Directors shall appoint the Chairperson of the Personnel Affairs Committee. The Personnel Affairs Committee shall meet at the direction of its Chairperson or of the Chairman of the Board of Directors and shall have such powers and authority as are set forth in this Chapter,

(2) The Personnel Affairs Committee represents the Commonwealth Ports Authority and its employees' interest in matters concerning the Commonwealth Ports Authority Human Resource System. Subject to the provisions of this Chapter, the Personnel Affairs Committee shall:

- (i) Ensure the preparation of a comprehensive human resource management plan and review proposed human resource policies of the Commonwealth Ports Authority.
- (ii) Hold hearings and decide appeals of employees for disciplinary actions, suspensions of more than three working days, reductions in rank or pay, and dismissals from the service. The Personnel Affairs Committee may utilize the services of qualified hearing officers where such services are deemed essential by the Personnel Affairs Committee. Hearings shall be public except when the appealing employee requests a closed hearing;
- (iii) Administer oaths to witnesses in any matter pending before the Personnel Affairs Committee;
- (iv) Subpoena witnesses and/or documents in any matter pending before the Personnel Affairs Committee.

Modified, 1 CMC § 3806(a), (f), (g).

History: Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Proposed 39 Com. Reg. 40425 (Dec. 28, 2017).

### **Part 100 - Employment**

#### **§ 40-40-101 Employment Coverage**

(a) This Part shall apply to all employees and positions within the Commonwealth Ports Authority, except the non-classified employees, unless specific provisions are expressly made applicable to such employees.

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(b) The employment of the Executive Director, Comptroller, Staff Attorney, Port Managers, Staff Engineers, and other contract employees shall be governed by contracts executed between the employee and the Commonwealth Ports Authority.

(c) The positions of Executive Director, Comptroller, and Staff Attorney shall be selected and appointed by the Board of Directors.

(d) The Executive Director, or his/her designee, shall have the authority to select and appoint all classified and contract employees of the Commonwealth Ports Authority, except those positions specifically excluded under the Commonwealth Ports Authority's enabling statute. The selection process will be as provided in this Part.

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: [Historical comment removed.]

### § 40-40-105 Selection Process

(a) Procedure for Selection of Classified Positions. Whenever a new position is created by the Board of Directors or whenever a vacancy (including a promotional, transfer, or employee-exit vacancy) occurs in an existing position, the Executive Director, or his designee, shall initiate the following procedure:

(1) Prepare a separate internal (for then-current Commonwealth Ports Authority employees only) and external announcements of the position, both of which, at a minimum, shall contain the following information:

- (i) Title of position;
- (ii) Pay level of the position;
- (iii) Description of the duties and responsibilities of the position;
- (iv) Geographical work location of the position;
- (v) Minimum qualifications for the position;
- (vi) Instructions on where to apply, the form of application required, and any documentary support required; and
- (vii) Period of application, which shall be not less than five days for internal announcements and 15 days from the original date of publication in a newspaper for external announcements.

(2) Conduct internal announcement by posting the announcement in all work sections of the Commonwealth Ports Authority for not less than five days. Internal applicants submitting an application within the five-day period must be considered before continuing to external publication and announcement of the position.

(3) If no internal applicant is selected, publicize the external announcement by publication in two newspapers of general circulation in the CNMI no less than once a week for at least two weeks, posting the external announcement on the Commonwealth Ports Authority website, and posting the external announcement at the Commonwealth Office of Personnel Management.

(i) The Executive Director may cancel an announcement, but must provide written

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justification that is objective, legitimate, and non-discriminatory.

(ii) The Executive Director may waive subsection (3) if a qualified employee of the Commonwealth Ports Authority can be promoted to fill a vacancy.

Subsection (4) will be followed for internal candidates.

(4) The Human Resource Manager shall, for internal applicants:

(i) Review all applications submitted to determine if applicants meet the minimal qualifications. Applicants that do not meet the minimum qualification as set forth in the position announcement shall be notified as soon as possible.

(ii) Set appointments for interview of all qualified applicants by an interview committee consisting of the Human Resource Manager, the respective manager for which the position was announced, and another manager from another section of the Commonwealth Ports Authority.

(5) If no suitable internal applicants are available, the Human Resource Manager shall, for external applicants:

(i) Review all applications submitted and prepare a ranked eligible list of those applicants who meet the minimal qualifications according to the established ranking system. Applicants that do not meet the minimal qualification shall be notified as soon as possible.

(ii) Set appointments for interview of the qualified applicants with the five highest ranking scores by an interview committee consisting of the Human Resource Manager, the respective manager for which the position was announced, and another manager from another section of the Commonwealth Ports Authority. Appointments for interview shall be scheduled through reasonable attempts to contact the qualified applicants (at least three calls).

(6) The interview committee, upon completion of all interviews, shall rate applicants and refer the list to the Executive Director, recommending the top-rated applicant.

(7) The Executive Director will make the selection following the recommendation made by the interview committee. If the recommended applicant does not accept the position, the Executive Director shall select the next-highest-rated applicant for the position. If that applicant does not accept the position, the Executive Director may continue down the list referred by the interview committee to make the selection.

(8) The Human Resource Manager shall prepare and deliver an Offer of Employment letter summarizing the terms of employment and the proposed start date.

(b) Procedure for Selection of Non-Classified Employees.

(1) All employees appointed by the Board of Directors shall be selected as determined by the Board according to law. Board appointments will be placed on contracts stating conditions of employment but serve at the pleasure of the Board.

(2) All other non-classified employees shall be selected as determined by the Executive Director or her/his designee. Employees so hired will be placed on contracts stating conditions of employment.

Modified, 1 CMC § 3806(a), (f), (g).

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

**§ 40-40-110 Types of Employment**

(a) Probationary Employment.

(1) A probationary appointee is an employee selected from an eligible list to fill a permanent position.

(2) The probationary appointee shall serve a period of not less than six and not more than 12 months from the beginning of the probationary employment and shall demonstrate the capacity for a minimum of 26 consecutive weeks of satisfactory performance before being eligible to be converted to permanent employment.

(3) Those employees hired to serve as sworn officers at the Ports Police section or firefighters at the Aircraft Rescue and Firefighting section shall continue to be on probationary status beyond the probationary period until all required training and certification have been completed. All new cadets are required to acknowledge and sign the Training Reimbursement Agreement prior to commencement of the Academy as a condition of their employment.

(4) During the probationary employment status, the probationary employee may be terminated without cause by the Executive Director in accordance with NMIAC § 40-40-120(j).

(b) Permanent Employment.

(1) A permanent employee has satisfactory\* completed a probationary appointment to a permanent position.

(2) A permanent employee is entitled to full benefits under this Chapter.

(c) Provisional Employment. A provisional employee is a non-permanent employee limited to 90 days of employment. A provisional appointment is used to temporarily fill a permanent position in the absence of an appropriate eligible list. The Executive Director may authorize extension of a provisional appointment beyond 90 days. Any person given a provisional appointment must meet the minimum qualifications for the position to which appointed.

(d) Limited-term Employment. A limited-term employee is one in which the employee is appointed for a period of not more than one year. An employee serving a limited-term appointment may serve in either a full-time or part-time position. Any person given a limited-term appointment must meet the minimum qualifications for the position to which she/he is appointed. The Executive Director shall justify, in writing to the Board of Directors, requests for new limited-term appointments following expiration of one year appointments. Limited-term appointments may be converted to permanent appointments at the end of one year, if the position has been found to be permanent, provided that the employee has demonstrated the capacity for 52 consecutive weeks of satisfactory performance, the position is budgeted for, funds are available, and there is a present vacancy to be filled by the appointed candidate.

(e) “Acting” Appointment.

(1) An acting appointment is an official written designation that an employee will act for a period of up to 30 days in place of a permanent supervisor. When the supervisor’s

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absence exceeds the initial 30 day period, a new designation shall be made for an additional 30 days. The 30 day renewal of an acting appointment may be repeated until the permanent supervisor returns or a new permanent supervisor is appointed to the position.

(2) Whenever the acting appointment exceeds 90 days, the employee, if the employee meets the minimum qualifications for the position, shall be temporarily promoted and shall receive:

(i) a salary equivalent to the salary received by the previous incumbent of the position, if the position is non-classified.

(ii) a salary at the acting position's pay level at the step equivalent to the employee's experience.

(3) Whenever the acting appointment exceeds 90 days, and the acting employee does not meet the minimum qualifications for the acting position, the employee will receive a temporary salary equivalent to a two-step increase.

(4) Upon expiration of the acting appointment, the employee will be reinstated to her/his former position at the salary (level and step) that the employee would have been receiving had the employee remained in the former position.

(f) Emergency and Temporary Positions.

(1) Emergency and temporary employees are employees of a temporary nature needed in the public interest, as certified by the Board of Directors, and when the need for the same does not exceed 30 days.

(2) The Executive Director may appoint personnel under the provisions of this Part by reporting to the Board of Directors immediately and justifying in writing within five days of the hire the need for the appointment. The Comptroller must certify that funding is available for the appointment and the Board must confirm the appointment. Compensation shall be established by the Executive Director to be commensurate with the work to be performed.

(3) Emergency and temporary employees receive no benefits except workmen's compensation in event of work related injury or illness.

(g) Full Time and Part Time Work Status.

(1) A full time employee is one hired to work 32 hours or more in a standard seven-day pay period.

(2) A part time employee is one hired to work less than 32 hours in a standard seven-day pay period.

\* So in original.

Modified, 1 CMC § 3806(a), (e)–(g).

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: [Historical comment removed.]

### **§ 40-40-115 Pre-Employment Physical Condition Standard**

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- (a) All employees must undergo a post-offer pre-employment urine test to check for the presence of any illegal drugs (see § 40-40-545). Drug tests for candidates and employees shall be conducted in accordance with Part 500 of these regulations.
- (b) All new firefighting and law enforcement hires must submit to a post-offer pre-employment physical examination.
- (1) The examination is required to ensure that the employee is physically fit to perform the duties of the position.
- (2) If a claim is made by a candidate or appointee that she or he has a condition that constitutes a disability under the federal Americans with Disabilities Act (ADA), the provisions of that Act shall be followed, as applicable.
- (c) Physical and medical examinations for fitness-for-duty and Family Medical Leave Act purposes shall be administered by a licensed physician authorized by the Commonwealth Ports Authority to conduct such examinations and shall be recorded on forms provided by the Human Resource Manager. Fitness-for-duty examinations will be paid for by the Commonwealth Ports Authority.

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 41 Com. Reg. 42877 (Nov. 28, 2019); Amdts Proposed 41 Com. Reg. 42690 (July 28, 2019); Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

### **§ 40-40-120 Disciplinary Actions for Reasons of Cause**

- (a) **Employee Coverage.** This section applies to all permanent employees of the Commonwealth Ports Authority but does not apply to Board-appointed, contracted, or probationary employees, except where stated elsewhere in this Chapter.
- (b) **Merit of Disciplinary Action.** An action against an employee should only be taken under this section for cause in order to promote the efficiency and the mandates of the Commonwealth Ports Authority.
- (c) The Commonwealth Ports Authority Legal Counsel and the Commonwealth Ports Authority Human Resource Manager must review all proposed disciplinary actions that could result in reduction in rank or pay, suspension, or termination.
- (d) The Commonwealth Ports Authority 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 conduct and behavior set by the Commonwealth Ports Authority. 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.
- (1) **Authority to Take Adverse Action Disciplinary Measures.** Unless otherwise

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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.

(2) Authority to Take Disciplinary Measures. Unless otherwise restricted by the Executive Director, managers and supervisors are authorized to affect Non-Adverse Action disciplinary measures and to recommend Adverse Action disciplinary measures.

Managers and supervisors will keep the Executive Director advised of performance and conduct problems.

(e) Grounds for Disciplinary Action. Employees may be subjected to disciplinary action for reasons of cause, which shall include, but not be limited to, the following:

- (1) Non-performance of duties;
- (2) Incompetence (inexcusable failure to discharge duties in a prompt and efficient manner);
- (3) Insubordination;
- (4) Breach of trust, dishonesty, or violation of Commonwealth Ports Authority policies, rules, regulations, or law;
- (5) Excessive tardiness or absenteeism;
- (6) Violent conduct in the workplace;
- (7) Inappropriate behavior in the form of discrimination or harassment;
- (8) Convicted of a felony or of a misdemeanor involving moral turpitude.

(f) Non-Adverse Action Disciplinary Measures.

(1) 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).

(2) 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.

(3) Reprimand. A reprimand is a formal means of calling to an employee's attention minor deficiencies in performance or conduct which, if continued, may result in further disciplinary measures. It is the first formal step in the disciplinary process. Reprimands are always in writing and should contain specific references to performance deficiencies, citations of instances of misconduct, and a warning that more stern disciplinary measures may be taken if the employee's performance or conduct is not improved. A copy of the reprimand becomes a part of the employee's 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.

(4) Suspension Not to Exceed Three Working Days. A suspension is an action placing an employee in a non-duty and non-pay status for disciplinary reasons for a period not to exceed three working days. There is no formal appeal from such a suspension, although the employee may resort to the grievance procedure if the employee feels the suspension is improper or not justified.

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(5) Overtime-Exempt Employee Suspensions. A suspension without pay for periods less than five working days shall only be imposed in respect to an employee who is covered by the overtime provisions of the Fair Labor Standards Act (FLSA). An employee who is exempt from the overtime provisions of the FLSA must receive suspensions without pay 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. The period of suspension for an exempt employee for attendance or performance matters shall be served in five working day periods on consecutive days consisting of entire workweeks.

(6) ARFF Physical Fitness Suspension. An ARFF firefighter expected to engage in interior structural firefighting as part of his or her job responsibilities who fails the Firefighter Fitness Test and the subsequent retake of that test shall be placed on leave without pay status. The firefighter shall remain on leave without pay status until the ARFF Chief receives a written opinion from a certified medical physician that the firefighter has a health or medical issue that limits the firefighters' ability to participate in the ARFF Physical Fitness Program or the firefighter successfully completes the Firefighter Fitness Test upon its third and final administration.

(g) Adverse Action Disciplinary Measures

(1) Furlough. A furlough is an action placing an employee in a non-duty and non-pay status because of lack of work or funds. It is an adverse action if for a period of 30 calendar days or less. Furloughs of more than 30 calendar days are reduction-in-force actions and shall be accomplished using reduction-in-force procedures, as set forth in § 40-40-135.

(2) 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 as will promote the efficiency of the government service, provided all adverse action procedures are followed.

(i) A suspended employee shall be put on leave without pay status and shall not be allowed to use annual leave, sick leave, or compensatory time during the period of suspension (once the decision is final and all appeals processes exhausted).

(ii) The period of suspension shall not exceed 30 days for a single adverse action and will consist of five work day periods, for example, five days, ten days, and 15 days. Suspensions in respect to an FLSA overtime exempt employee shall be served on consecutive days and for entire workweeks.

(iii) No employee shall be suspended for a total of more than 30 days in any 12 month period.

(3) Termination. The Executive Director may terminate an employee for just cause provided all adverse action procedures are followed.

(4) Termination for Abandonment of Job.

(i) An employee absent without leave 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.

(ii) An employee absence without leave without valid reason, for ten consecutive working days may be considered, in effect, a resignation. Adverse Action procedures will not be required in such instances. The Executive Director may elect not to effect such termination, however, if it is determined that circumstances warrant such action. Nothing

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in this subsection shall preclude the Executive Director from taking other disciplinary action against an employee for absence without leave.

(5) Reduction in Rank or Pay.

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

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

(h) Procedure for Taking Adverse Actions.

(1) The Executive Director determines, based on information received from the Human Resource Manager, that a disciplinary action requiring termination, suspension for more than three working days, furlough without pay, or reduction in rank or pay is necessary.

(2) The Executive Director must give the employee at least 30 days’ advance written notice of the proposed action. 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 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.

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

(4) The employee has the right to answer personally and/or in writing. The employee shall be allowed not more than 20 days to answer the notice of proposed action. Three work days within the allowed 20 days shall be official time in which to secure affidavits and prepare an answer.

(5) If the employee answers, the Executive Director must consider that answer.

(6) 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 advance notice period and placed on leave with pay. However, if the adverse action is a termination or is drug-related, the employee may be placed on leave without pay or, with the employee’s consent, carried on annual leave during the notice period.

(7) If not placed on leave without pay, an employee whose adverse action is drug-related (as prohibited by Part 500 of this Chapter) will not be permitted to perform any safety-sensitive functions during the notice period.

(8) The Executive Director must give the employee a written decision before the adverse action is put into effect. The decision must state which of the reasons in the advance notice have been found sustained and which have been found not sustained.

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- (9) The decision must tell the employee of appeal rights.
- (10) After a decision resulting in an adverse ruling, the Executive Director shall apprise the employee of the employee's right to appeal the adverse action to the Personnel Affairs Committee. The employee shall present such appeal, in writing, to the Personnel Affairs Committee, which will review and act upon the written submission of the employee. The employee shall submit such appeal within 15 working days after receipt of notice of the Executive Director's action. The Personnel Affairs Committee shall act on the employee's appeal within 15 days after it is received from the employee by beginning the hearing process as set forth in § 40-40-125;
- (11) A majority of the members of the Personnel Affairs Committee must consider the appeal. A decision on the appeal shall be made by a majority vote of the members of the Personnel Affairs Committee considering the appeal. The decision of the Personnel Affairs Committee shall be final;
- (12) In the event that the Committee overrules the adverse action, the employee shall be reinstated with full rights and privileges and shall receive 100% of the pay and associated benefits to which the employee would have been entitled during the employee's termination, furlough, or suspension, or as a result of the employee's reduction in rank or pay;
- (13) 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.
- (i) Summary of Steps for Taking Adverse Actions.
- (1) Misconduct triggering use of the adverse action procedural system
  - (2) Executive Director's letter of proposed adverse action
  - (3) Employee's answer and/or presentation of evidence
  - (4) Executive Director's letter of decision
  - (5) Employee's written appeal to Personnel Service Committee
  - (6) Personnel Affairs Committee hearing
  - (7) Personnel Affairs Committee decision (administrative remedies exhausted at this point)
- (8) Legal recourse
- (j) Separation during Probation.
- (1) If it becomes evident during the probationary period that the employee lacks the ability, attitude, or desire to become an efficient and productive employee in the position to which appointed, or there is lack of funds or work to be done, that employee shall be separated from the service. However, if the probationary employee claims that the apparent lack of ability, attitude, or desire is due to a disability under the Americans with Disabilities Act (ADA), the provisions of that Act shall be followed, as applicable.
  - (2) The Executive Director shall provide the employee with not less than 14 calendar days of notice, in writing, specifying the reasons for the separation.
  - (3) Grievance, adverse action, and reduction-in-force procedures do not apply to separations during probation.

Modified, 1 CMC § 3806(a), (f), (g).

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History: Amdts Adopted 41 Com. Reg. 42877 (Nov. 28, 2019); Amdts Proposed 41 Com. Reg. 42690 (July 28, 2019); Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: [Historical comment removed.]

### **§ 40-40-125 Appeal Rights of the Employee from any Adverse Action Decision**

(a) An employee who is the subject of an adverse action decision of the Executive Director may appeal the adverse action. The appeal must be in writing and delivered personally or by certified or registered mail to the Personnel Affairs Committee, copied to the Executive Director, within 15 working days after receipt of notice of the Executive Director's adverse action. The appeal must give the employee's reasons for contesting the adverse action, together with any offer of proof and pertinent documents the employee desires to submit. It should also include a request for a hearing if the employee so desires. Employees located away from Saipan must also meet the 15 calendar-day period for filing an appeal to the Committee. If certified or registered mail is utilized, the appeal must be postmarked no later than the 15th calendar day. The Executive Director may submit responsive comments within five days of getting the employee's written appeal. In any appeal the appealing employee and the Commonwealth Ports Authority have certain rights which shall not be denied. These include:

(1) Right to a Hearing.

(i) Upon the filing of an appeal by an employee, both the Commonwealth Ports Authority and the employee are entitled to a full and fair hearing before the Personnel Affairs Committee or a hearing officer designated by the Board of Directors, to present evidence and to be represented by counsel. At the hearing, although Commonwealth rules of evidence shall not apply, the testimony shall be recorded. The Personnel Affairs Committee shall render its findings of fact and final decision in writing with service on all parties within 15 days after such hearing.

(ii) Only one hearing will be held, unless the Personnel Affairs Committee determines that unusual circumstances require a second hearing. Any evidence may be presented at the hearing which the Personnel Affairs Committee or hearing officer allows, that bears on the issue of whether the adverse action taken was justified and proper.

(2) Freedom from Retaliation or Interference.

(i) An employee and the employee's representative must be free to exercise the employee's rights under this subsection without restraint, interference, coercion, discrimination, or reprisal when seeking an appeal of his/her administrative action decision.

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

(3) Employee Representation.

(i) Employees have the right to present an appeal of an administrative action decision without representation. They also have the right to be accompanied, represented, and

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advised by a representative of their choice at any stage of the proceeding. Employees may change their representative, but to do so, they must notify the Personnel Affairs Committee of the change, in writing.

(ii) An employee may select another Commonwealth Ports Authority employee as his/her representative, provided that such employee is willing to provide the representation. In addition, the representative must be free to do so.

(iii) An employee is free to select as his/her representative anyone outside the Commonwealth Ports Authority, but entirely at the employee's own expense.

(4) Commonwealth Ports Authority Representation.

(i) If the employee does not have an attorney-representative, the Commonwealth Ports Authority's representative at a hearing will be the Executive Director or his or her designee.

(ii) The Commonwealth Ports Authority's legal counsel will represent the Commonwealth Ports Authority if the employee does have legal representation.

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

(i) Employees are entitled to a reasonable amount of official time to prepare their appeal if they are otherwise in an active duty status. If the employees' representatives are employees of the Commonwealth Ports Authority, they are also entitled to a reasonable amount of official time to prepare the appeal if they are otherwise in an active duty status. Both the employees who appeal and the employees who act as representatives shall make arrangements with the Human Resource Manager for use of official time.

(ii) The Human Resource Manager shall determine the reasonable amount of official time that is to be granted and will inform the supervisors of the employees and of the employees' representatives. The time to be allowed must necessarily depend on the facts and circumstances of each case, e.g., the number and nature of the reasons stated in the letter of decision, the specifics, the volume of the supporting evidence compiled by the Executive Director, the availability of documents, witnesses, assistance at the employee's place of employment, and similar considerations.

(iii) If preparation requires more official time than was originally considered reasonable, the employees or their representatives may request the Human Resource Manager for more time. The request should explain fully why more time is needed. The Human Resource Manager will determine if the request is reasonable and should be granted. If granted, the Human Resource Manager will make the necessary arrangements.

(b) The Personnel Affairs Committee may retain an attorney or other professional to assist with legal, human resource management, or other necessary expertise.

(c) Preparation for Hearing.

(1) When the Personnel Affairs Committee establishes a hearing date, it will notify the Human Resource Manager, giving the employee's name, title, grade, and department unit.

(2) Separately, the employee and the Human Resource Manager will be required to furnish the Personnel Affairs Committee and the other party the following information:

(i) Employee's list of witnesses containing the name, location, and occupation of each witness; a summary of each witness' anticipated testimony; and the availability of each witness in the area of the employee's duty station during the next 30 days.

(ii) Commonwealth Ports Authority's list of witnesses containing the name, location, and occupation of each witness; a summary of each witness' anticipated testimony; and the

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availability of each witness in the area of the employee's duty station during the next 30 days.

(iii) The availability of the employee and representative and the Executive Director and representative, in the area of the employee's duty station during the next 30 days.

(3) The Personnel Affairs Committee shall direct the Human Resource Manager to make available to the employee the Commonwealth Ports Authority's entire adverse action file for review and reproduction, subject to redaction of confidential information.

(4) The employee may inspect and copy any part of the appeal file upon making request. The Commonwealth Ports Authority will redact any confidential information prior to releasing the file.

(5) The employee may request that the Commonwealth Ports Authority, at its own expense, produce at the hearing as witnesses those employees of the Commonwealth Ports Authority whose testimony the employee alleges, in writing, to be pertinent to the issues and necessary to the employee's defense. The employee may include in the list of witnesses non-Commonwealth Ports Authority individuals, but arrangements for their presence at the hearing are the obligation of the employee and will be at the expense of the employee unless otherwise ordered by the Personnel Affairs Committee.

(d) Appeal File.

(1) When an employee files an appeal from adverse action with the Personnel Affairs Committee, the Human Resources Manager must establish and maintain an appeal file on behalf of the Personnel Affairs Committee containing copies of all available pertinent documents. The originals of all pertinent documents will be forwarded immediately to the Personnel Affairs Committee. The appeal file is independent, separate, and distinct from the Official Personnel File.

(2) The appeal file, both with the Human Resources Office and the Personnel Affairs Committee, must contain all documents pertinent to the appeal, such as:

- (i) A copy of the notice of proposed adverse action with supporting documents;
- (ii) The employee's written answer, if any;
- (iii) A transcript or summary of the employee's presentation of oral evidence and copies of documents presented;
- (iv) A copy of the letter of decision;
- (v) The employee's written notice of appeal;
- (vi) Any pertinent evidence developed after issuance of the notice of proposed adverse action;
- (vii) The lists of witnesses submitted by both parties;
- (viii) The reason(s) for not granting a hearing when one is not granted;
- (ix) The reason(s) for not producing witnesses at the hearing;
- (x) The transcript of the Personnel Affairs Committee hearing when a hearing is held;
- (xi) The recommendation(s) of the Personnel Affairs Committee, if any; and
- (xii) A copy of the decision of the Personnel Affairs Committee.

(e) If at any time after the appeal has reached the Personnel Affairs Committee, it finds a regulatory or procedural defect which would warrant reversal of the action taken by the Executive Director, the Personnel Affairs Committee will prepare a report of its findings on the issue, and order the reversal of the action of the Executive Director. Copies of the

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findings and the order will be served on all parties.

(f) If an employee appeals the Executive Director's decision given in accordance with adverse action procedures, that decision shall remain in effect unless and until the Personnel Affairs Committee has entered its decision on the appeal.

(g) The Personnel Affairs Committee may enter such decision on appeals decided by it as it finds the circumstances of the case require and that it deems just and proper.

Modified, 1 CMC § 3806(a), (e)–(g).

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

### **§ 40-40-130 Resignation**

(a) Resignations shall be in writing and shall be submitted to the resigning employee's manager at least 14 calendar days in advance of the effective date. Management employees should provide a minimum of 30 days of notice. Employees who do not provide the required notice will not receive payment for unused leave unless the Executive Director certifies payment authorization in writing due to exceptional circumstances.

(b) The manager shall submit a copy of the written resignation to the Human Resource Manager for processing of the action.

(c) The Human Resource Manager is responsible for informing the employee of his/her obligations to the Commonwealth Ports Authority and for securing the return of all Commonwealth Ports Authority property, including keys and identification cards.

(d) Withdrawal of a resignation may be permitted, provided:

- (1) The employee's wishes are made known, in writing, prior to the effective date; and
- (2) The Executive Director agrees to the proposed withdrawal.

(e) An exit interview shall be scheduled and conducted during working hours by the Human Resource Manager upon notice of resignation. Such interview shall include questions on the reasons for resignation and counseling on benefits. The Human Resource 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.

(f) Employees will receive their final payment at the next regular payday following the effective date of resignation.

Modified, 1 CMC § 3806(g).

History: Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Proposed 39 Com. Reg. 40425 (Dec. 28, 2017).

### **§ 40-40-135 Reduction in Force Planning and Implementation**

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- (a) The Commonwealth Ports Authority, within its available resources, will provide job security to every permanent employee. When it becomes necessary to reduce the work force, every effort will be made to ensure that the reduction is accomplished with a minimum disruption in operations and a minimum negative impact on each employee affected.
- (b) Coverage. This section applies to all classified employees of the Commonwealth Ports Authority, as defined in this Chapter. Appointed and contracted employees are not covered by this section.
- (c) Reduction-in-Force Planning. When it becomes evident that a reduction-in-force must be implemented, the Executive Director shall notify the Board of Directors of the necessity and provide all employees with written notice of the Commonwealth Ports Authority's intention to take reduction-in-force action at least 60 days in advance.
- (d) Competitive Processes. Detailed competitive processes shall be established by the Executive Director to ensure equitable competition, recognition of seniority and tenure, and protection of the public interest. For administrative purposes, competition shall be limited by the establishment of competitive areas and recognition of competitive levels.
- (1) Competitive Areas. For all positions:
- (i) Area 1. Saipan
  - (ii) Area 2. Rota
  - (iii) Area 3. Tinian
- (2) Competitive Levels. Competitive levels are comprised of all positions within a competitive area which consist of the same or closely related duties, have essentially the same qualifications, and are in the same class and pay level.
- (3) Tenure Groups. For the purposes of reduction-in-force, Commonwealth Ports Authority employees shall be classed in tenure groups as follows:
- (i) Tenure Group I - All permanent employees.
  - (ii) Tenure Group II - Employees serving in a probationary appointment.
  - (iii) Tenure Group III - Employees serving in limited term or provisional appointments.
- (4) Competition within a Competitive Level.
- (i) When a permanent employment position is abolished within a competitive level, the incumbent shall displace the employee with the lowest retention standing in that competitive level. Employees in tenure groups III and II in any competitive level will be separated from employment in that order before the separation of any permanent employee in Tenure Group I.
  - (ii) If an employee whose position is abolished does not have sufficient retention standing to displace another employee, that employee shall be allowed to exercise retreat rights.
- (5) Retreat Rights. When an employee has insufficient retention standing to compete within that employee's competitive level, the employee shall compete down the line of promotion. This is known as the exercise of retreat rights. An employee may displace the employee with the lowest retention standing below that of the released employee in the highest competitive level from which promoted. The employee shall continue to compete

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

(6) **Creditable Service for Reduction-in-Force.** Only the period of service worked with the Commonwealth Ports Authority will count as creditable service in the calculation of retention standing.

(7) **Retention Standing.** Retention standing is derived by allotting one point for each year of creditable service, and an additional two points for each overall rating of “very good performance” or better, or each exceptional overall rating of 4.2 or better, depending on the evaluation scale in use by the Commonwealth Ports Authority for the service year. Missing performance evaluations cannot be made up. In competing with other employees for retention in a competitive level, the individual with lowest retention standing shall be released first.

(8) **Reemployment Eligibility.** Permanent employees who are separated by reduction-in-force shall be eligible to apply for internal announcements of open positions for three years or until returned to duty in a permanent position with the Commonwealth Ports Authority at any level.

(e) **Limitations on Competition.** Employees who are absent on military leave, approved educational leave, or temporarily promoted shall not be placed in reduction-in-force competition until they have returned to duty. Similarly, the employee’s positions shall not be abolished until the employee returns to duty in that position. The Human Resource Manager will keep a record that will assure recognition and protection of the position and its incumbent.

(f) **Furlough and Separation.**

(1) The Executive Director may use furloughs for more than 30 days if there is reasonable assurance that the employees furloughed will be returned to duty within the next 12 months.

(2) If there is reasonable doubt regarding the return to duty of furloughed employees, then the Executive Director must separate the employees found to be in excess of the Commonwealth Ports Authority’s needs and proceed according to reduction-in-force procedures.

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

(4) Furlough for 30 days or less may be used for clearing the rolls temporarily, not to exceed 30 days when there is positive assurance that employees so furloughed can return to duty within the 30 day period.

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

(h) **Assignment Rights (Bumping).** Assignment rights allow the displacement of an employee in a lower competitive level position.

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- (1) Employees released from their competitive level who have exhausted their retreat rights without success may exercise assignment rights provided that they:
  - (i) Meet the qualification requirements and other standards for the position established by the Human Resource Manager;
  - (ii) Have the capacity, adaptability, and special skills needed to perform satisfactorily the duties and responsibilities of the position without undue disruption of the activity. For the purposes of this subsection, an undue disruption occurs only if the employee placed in a position through assignment requires more than 90 calendar days' training to reach the full performance level for the position.
- (2) An employee in Tenure Group I exercising assignment rights may displace another permanent employee with lower retention standing in another competitive level that requires no reduction, or the least possible reduction, in compensation rate.
- (3) Due to the specific nature of the Commonwealth Ports Authority departments, assignment rights are limited to within the employee's department. Assignment rights (bumping) will not be authorized between departments.
- (4) Reduction-in-force activities within the Commonwealth Ports Authority will affect Commonwealth Ports Authority employees only. Service within the Commonwealth Ports Authority will not provide a separated employee with bumping rights elsewhere in the government. Similarly, the Commonwealth Ports Authority will not recognize bumping rights from separated employees who worked outside of the Commonwealth Ports Authority.

Modified, 1 CMC § 3806(a), (f), (g).

History: Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Proposed 39 Com. Reg. 40425 (Dec. 28, 2017).

### **§ 40-40-140 Severance Pay**

- (a) Severance pay is limited to classified permanent employees only.
- (b) Tenure Group I employees who are separated from the Commonwealth Ports Authority by reduction-in-force are entitled severance pay computed as follows:
  - (1) For each full year of creditable service with a Commonwealth government entity, the employee is entitled to one-half of the employee's biweekly pay rate in effect upon separation by reduction-in-force.
  - (2) For each full three months of service beyond the total full years of service, the employee is entitled to twenty-five percent of the pay for a biweekly period at the rate in effect upon separation by reduction-in-force. Not more than seventy-five percent of the pay for one biweekly period shall be paid under this part-year provision.
- (c) Severance pay is paid at the regular biweekly sequences until the entitlement is exhausted. If an employee separated by reduction-in-force is reemployed by a Commonwealth government entity in any capacity before the allowable severance pay liability is satisfied, the employee sacrifices the unpaid balance upon the employee's reemployment.
  - (1) This benefit can only be received once in an employee's employment with the Commonwealth Ports Authority. If an employee who received a partial severance benefit

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becomes eligible again in the future for severance pay, any severance previously received will be deducted from the new severance amount.

(2) If the employee's total creditable service is less than one full year, there is no entitlement to severance pay.

(d) An employee who is offered and declines to accept another position with the Commonwealth Ports Authority which is equivalent in function, seniority, tenure, and compensation with any necessary moving expenses paid shall not be entitled to receive or continue to receive severance pay.

Modified, 1 CMC § 3806(g).

History: Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Proposed 39 Com. Reg. 40425 (Dec. 28, 2017).

### **§ 40-40-145 Termination for Medical Reasons**

(a) When an employee contracts an infectious or contagious disease that may endanger the health of others, becomes mentally incapacitated, or is otherwise physically unable to satisfactorily perform the duties of the position to which he is assigned, the Executive Director may terminate the employee provided:

(1) The Commonwealth Ports Authority has complied with the applicable terms of all federal and CNMI employment law, including the Americans with Disabilities Act (ADA) and the Family and Medical Leave Act (FMLA).

History: Adopted 41 Com. Reg. 42877 (Nov. 28, 2019); Proposed 41 Com. Reg. 42690 (July 28, 2019).

## **Part 200 - Compensation**

### **§ 40-40-201 Coverage**

Unless otherwise specified in this Part, the provisions of this Part are applicable to classified employees only.

Modified, 1 CMC § 3806(a).

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

### **§ 40-40-205 Timekeeping and Payment of Salary**

(a) All Commonwealth Ports Authority classified employees shall fill out and complete a time and attendance record. The Executive Director shall review and approve time and attendance records. The Commonwealth Ports Authority pay periods shall be identical with those of the government of the Commonwealth of the Northern Mariana Islands.

(b) Executive, managerial, professional employees, and contract employees will also time in and out unless excused by the Executive Director. Those employees excused from timing in and out are expected to work the regular hours of employment.

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(c) Absences by those employees considered to be “salaried” under the Fair Labor Standards Act (FLSA) will be treated in accordance with the provisions of the FLSA.

(d) All Commonwealth Ports Authority employees shall be paid within two weeks after the end of every pay period. Terminated employees will receive their final payment at the next regular payday following termination.

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

### **§ 40-40-210 Establishing Salary upon Appointment**

(a) Salary shall be fixed at the first step of the appropriate pay level upon initial employment. Should a higher rate be deemed necessary to recruit an applicant, and is appropriate to the qualifications of the applicant, the salary may be fixed at any succeeding step not to exceed Step 8. Payment of salary above Step 1 of a pay level must be approved by the Executive Director.

(b) If a person is reemployed after a break in service of one or more days into a position in a class and pay level equal to or lower than the highest class and pay level previously held, the salary may be set at the highest previous rate held, provided the rate does not exceed the salary range of the new pay level.

(c) If a person is reemployed after a break in service of one or more days into a position in a class and pay level higher than the highest class and pay level previously held, the salary may be set at no more than two steps above the highest previous rate held, provided the rate does not exceed the salary range of the new pay level.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: [Historical comments removed.]

### **§ 40-40-215 Salary Increases; Anniversary Date**

(a) An employee is eligible for a salary increase after the successful completion of his/her probationary period and the completion of 52 weeks of sustained satisfactory performance. Increases may only be awarded not less than one year from the date of his/her most recent salary increase; provided, however, that no salary increase shall be granted except for sustained satisfactory performance. An employee is also eligible for a salary increase when the employee is permanently reclassified, promoted, or transferred to another position.

(b) Within-grade Increases.

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- (1) Within-grade increases may be granted to employees upon completion of 52 consecutive calendar weeks of satisfactory performance.
- (2) Employees who are included under the classified system and assigned to work part-time will be eligible for a within-grade increase only at such time as the cumulative total of all hours worked equates to a standard work year of 2,080 hours and such work has been satisfactory.
- (3) 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.
- (4) For all positions, approved leave in a non-pay status and/or unapproved leave not to exceed 80 hours is creditable toward the waiting period for a within-grade increase. Unapproved leave and leave without pay of more than 80 hours will extend the waiting period by at least one pay period or by the amount of time such absences exceed the 80 hours, whichever is greater.
- (5) Time served in a non-pay status for purposes of military duty or job-related education or training is credited toward within-grade increases, the same as if the employee had been in a pay status for that period of time, provided that the employee is a registered or enrolled student. To be creditable toward the waiting period, the education program in which the employee is enrolled must be clearly and directly applicable to the employee's present position or one to which the employee may reasonably aspire, and for which the employee is released from full-time status and placed in an approved leave without pay (LWOP) status, and in which the employee performs satisfactorily as determined by management and the Human Resource Manager.
- (6) A former employee reemployed with a break in service begins a new waiting period for a within-grade increase. No credit will be given toward the completion of this new waiting period for any time served under a former waiting period prior to the break in service.
- (7) Time served during provisional status shall not be counted toward the required waiting period in receiving a within-grade step increase.

(c) Merit Awards.

- (1) An employee may be awarded, in addition, a merit award (a one-time payment equal to the amount of the next one step increase in the employee's base salary) by achieving an overall performance rating of "Exceptional" upon completion of the 52 consecutive calendar weeks of sustained exceptional work performance corresponding to the employee's anniversary year.
- (2) The merit award is a one-time performance award payment and not a salary step increase. Such additional merit award shall not alter the employee's waiting period required for qualifying for the next within-grade increase.
- (3) Employees at the maximum step of their pay level cannot receive an additional within-grade increase but may be eligible to receive a 5% merit award.

(d) An employee's effective date of hire shall be considered as the employee's service anniversary date. The anniversary date shall not be affected by a temporary transfer or assignment. However, the anniversary date for salary increase purposes will be adjusted upon each salary increase.

Modified, 1 CMC § 3806(g).

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History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: [Historical comments removed.]

### **§ 40-40-220 Salary Freeze**

Classified employees who reach the maximum step in their pay level, Step 12, are not eligible for any additional increase that would exceed the maximum step prescribed for the employee's pay level.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: [Historical comments removed.]

### **§ 40-40-225 Promotions**

(a) Any position opening that occurs by the establishment of a new position or by an existing position becoming vacant for any reason provides a promotional opportunity for qualified Commonwealth Ports Authority employees. Announcement of the vacancy and selection of the best qualified internal applicant will be in accordance with NMIAC § 40-40-105.

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

(c) An employee shall not be promoted into a supervisory position until and unless such employee has satisfactorily completed training in workshops in the areas of basic and/or advanced supervisory management and in the physical, behavioral, and performance indicators of probable drug and alcohol use.

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: [Historical comment removed.]

### **§ 40-40-230 Temporary Promotions**

A temporary promotion is utilized when it is anticipated that an employee will temporarily occupy a position for a period in excess of three months. An employee can be temporarily promoted only if such employee meets the qualifications standards of the new position.

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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 she/he would be receiving had the employee remained in the former position. No temporary promotion shall exceed a period of one year.

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: [Historical comment removed.]

### **§ 40-40-235 Demotions**

(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.

(b) An employee demoted as a disciplinary measure shall have his/her compensation reduced to the corresponding step of the lower pay level.

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

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Amdts Proposed 28 Com. Reg. 25491 (Jan. 30, 2006);\* Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

\*As of August 31, 2007, a notice of adoption had not been published.

Commission Comment: [Historical comments removed.]

### **§ 40-40-240 Transfer**

An employee who is transferred to a different position at the same pay level shall receive no change in compensation. A minimum of two weeks' notice must be given to the losing department prior to effecting a transfer.

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: [Historical comment removed.]

### **§ 40-40-245 Reallocation/Reclassification of a Position to a Higher Class**

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(a) An employee whose position is reallocated or 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 employee's anniversary date shall be recycled.

(b) Reallocations and reclassifications will be justified in writing and forwarded as recommendations by the Executive Director for approval by the Personnel Affairs Committee.

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Amdts Proposed 28 Com. Reg. 25491 (Jan. 30, 2006);\* Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

\*As of August 31, 2007, a notice of adoption had not been published.

Commission Comment: [Historical comments removed.]

### **§ 40-40-250 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 Executive Director. Exceptions to this rule may be made by the Executive Director only for such reasons as will expedite public business and not result in an inequitable situation.

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

### **§ 40-40-255 Regular Hours and Overtime**

(a) The Commonwealth Ports Authority standard work week for all full-time, permanent employees is normally eight hours per day, five days per week, except as provided under § 40-40-260 for ARFF and Ports Police. However, the employee's workday and workweek may vary from time to time according to the needs of the Commonwealth Ports Authority. The needs of the specific job may also require shifts, night duty, irregular, split, or on-call schedules. Every effort will be made to maintain a consistent and reasonable five day, 40 hour workweek.

(b) All Commonwealth Ports Authority employees who are not exempted from the overtime rate of pay under the Fair Labor Standard Act (FLSA) are non-exempt employees. Non-exempt employees shall be eligible for overtime compensation at the rate of one and one-half hours pay for each overtime hour worked beyond 40 hours in a standard 7-day workweek period. Paid annual leave, sick leave, administrative leave and holidays, as well as time lost due to absence without leave or leave without pay, will not be included as hours worked when calculating overtime compensation.

Modified, 1 CMC § 3806(e), (g).

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History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: [Historical comment removed.]

### **§ 40-40-260 Standard Work Hours for ARFF and Ports Police**

(a) Aircraft rescue and fire fighters (ARFF) personnel who are scheduled to work on a 106-hour bi-weekly work schedule shall have such hours considered as their standard regular bi-weekly working hours. Such ARFF personnel shall be paid up to 106 hours on a bi-weekly basis for actual hours worked using the employee's base salary rate. In the event such employee takes annual leave, sick leave, holidays, or compensatory time-off from work in a given bi-weekly period, the basis of the bi-weekly payment shall be made on the actual hours worked plus the number of leave hours taken. Under emergency situations, i.e., response to emergencies, such an employee shall be entitled to overtime pay if the employee works in excess of 106 hours. However, overtime payment eligibility will be based on the hours actually worked and will not include paid non-work hours such as annual leave, sick leave, holidays, or compensatory time off from work in the given bi-weekly period.

(b) Ports Police personnel who are scheduled to work on an 86-hour bi-weekly work schedule shall have such hours considered as the standard regular bi-weekly working hours. Such Ports Police personnel shall be paid for 86 hours on a bi-weekly basis for actual hours worked using the employee's base salary rate. In the event such employee takes annual leave, sick leave, or compensatory time off from work in a given bi-weekly period, the basis of the bi-weekly payment shall be made on the actual hours worked plus the number of hours of leave taken. Under emergency situations, i.e., response to emergencies, such an employee shall be entitled to overtime pay if the employee worked in excess of 86 hours. However, overtime payment eligibility will be based on the hours actually worked and will not include paid non-work hours such as annual leave, sick leave, holidays, or compensatory time off from work in the given bi-weekly period.

(c) For any services for security or force protection at the request of a tenant, military entity, or other agents not during the usual course of Commonwealth Ports Authority ARFF or Ports Police duties, the requestor shall pay established overtime rates for all requested or required services.

Modified, 1 CMC § 3806(f), (g).

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: [Historical comments removed.]

### **§ 40-40-265 Compensatory Time-Off (Comp-time) Policy**

(a) A compensatory time-off (comp-time) policy is hereby established to provide official guidelines on the earning and usage of comp-time hours by Commonwealth Ports

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Authority employees. For any comp-time issue which is not addressed in this policy, the U.S. Federal Labor Standard Act (FLSA) shall serve as the guidelines to be followed. This policy governs the earning and usage of compensatory time hours by all Commonwealth Ports Authority employees who are eligible for overtime pay.

(b) Non-exempt employees, as defined in subsection § 40-40-255(b), are entitled to earn overtime pay. Probationary, temporary, or part-time employees may on occasion be required to work overtime. However, under conditions of financial hardship or funding shortfall, as certified by the Comptroller, that result in the Commonwealth Ports Authority being unable to pay for overtime compensation, and upon issuance of an official notification of such condition by the Executive Director, employees shall accrue compensatory time-off hours. Compensatory time-off hours shall be granted using the following procedures:

(1) The eligible employee shall sign an agreement to accept compensatory time-off in lieu of overtime pay on such occasions when sufficient funding is not available. This agreement may be a condition of the employment contract.

(2) Hours eligible for compensatory time-off shall be based on hours worked that exceed 86 hours in a bi-weekly pay period for Ports Police and designated ARFF employees, 106 hours in a bi-weekly pay period for other ARFF employees, and 40 hours in a weekly pay period for all other eligible personnel. All hours used in computing compensatory time-off hours shall mean actual hours worked and shall not include any time-off taken for sick, annual, maternity, paternity, administrative leave, holidays, or compensatory time-off taken during the pay period.

(3) A factor of 1.5 shall be used in the determination of compensatory time-off hours, i.e., actual excess hours worked x 1.5 = compensatory time-off earned.

(4) All compensatory time-off hours must be approved, in advance, or on the next business day, by the department manager and the Executive Director, or her/his designee, and recorded on an approved form from the accounting department. Unofficial records of compensatory time-off will not be maintained. Any supervisor or manager who fails to monitor compensatory time-off hours and allows for unapproved compensatory time-off is subject to disciplinary action for such unauthorized expenditure.

(5) All approved compensatory time-off hours must be submitted to the accounting department at the end of each pay period along with the department's official time and attendance sheet.

(6) Ports Police and ARFF personnel may accrue a maximum amount of compensatory time-off up to 480 hours (320 actual hours of overtime) and 240 hours (160 actual hours of overtime), respectively. Overtime hours accumulated in excess of these limits will be paid as overtime.

(7) An employee who has accrued compensatory time-off and requests use of the time must be permitted to use the time-off within a reasonable period of time after making the request, if it does not unduly disrupt the operations of the Commonwealth Ports Authority. The Commonwealth Ports Authority may also direct employees to use accumulated compensatory time-off. Compensatory time-off shall be exhausted before annual leave is taken, even if this will result in accrued annual leave being forfeited or converted to sick leave.

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(8) In the event of employment termination, resignation, or reduction-in-force, an employee is entitled to receive compensation on all accrued compensatory time-off hours based on his or her most recent hourly base rate.

(9) Employees who accrue hours in excess of their bi-weekly scheduled work hours to complete a project funded by an outside source or independent contract shall be compensated as overtime and not compensatory time-off.

Modified, 1 CMC § 3806(g).

History: Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Proposed 39 Com. Reg. 40425 (Dec. 28, 2017).

### **§ 40-40-270 Policies and Procedures; Travel and Travel Reimbursement**

(a) An employee traveling on official Commonwealth Ports Authority business shall receive travel and per diem compensation at the rates and guidelines established for CNMI executive branch employees.

(b) Payment of per diem shall be in accordance with official CNMI policy and procedures.

(c) **Travel Authorization Forms.** An approved Travel Authorization Form is required for every trip within the CNMI that extends more than two quarters of a day and away from an island where the employee's office or residence is located as well as for every trip outside the CNMI. Travel Authorization Forms shall be approved by the Executive Director for travel within the CNMI, and in the case of travel outside the CNMI, by the Chairman of the Board. It is expected that the Travel Authorization Form relating to any given trip will be approved prior to the incurring of expenses.

(d) **Travel Advances.** Travel advances may be made for extended trips in accordance with the official CNMI policy and procedures. A travel advance is secured by completing a Travel Authorization Form and forwarding it to the Executive Director. Travel advances must be accounted for by a travel reimbursement claim after the trip or the advance will be deducted from the employee's wages. No more than 100% of the per diem estimated to be due on the travel authorization may be advanced.

(e) **Travel Reimbursement Forms.** Travel expenses should never be billed directly to the Commonwealth Ports Authority but should be paid by the employee and reimbursement sought. The Travel Reimbursement Form should be completed by a traveler who has qualified for reimbursement of travel expenses. All necessary receipts must be attached before reimbursement will be made. In the event no receipt is available for an expenditure for which reimbursement is sought, reimbursement is conditioned upon substantiation of the expense in a manner satisfactory to the Executive Director. An approved Travel Authorization Form must be attached for every trip reported.

(f) **Suspension of Processing.** Processing of reimbursements claimed on Travel Reimbursement Forms missing receipts (or substantiation of the expense satisfactory to the Executive Director) and processing of Travel Reimbursement Forms and Travel

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Authorization Forms which violate the regulations stated above or the instructions which appear on the forms themselves will be suspended and a notice of explanation will be forwarded to the employee concerned. In order to be processed, the forms must be corrected and the items for which reimbursement is sought must be included in a subsequent Travel Expense Statement in accordance with Commonwealth Ports Authority travel regulations. Reclaimed items must be fully itemized and must be supported by the original notice of explanation or a copy thereof. Erasures and alterations in totals on any Travel Reimbursement Form or Travel Authorization Form must be initialed by the traveling employee. Erasures or alterations in totals on vendor's receipts must be initialed by the vendor or his/her representative.

(g) **Travel Expense Statement.** An employee may receive reimbursement for extraordinary expenses actually incurred in the performance of his/her duties upon the submission of receipts or other proof of extraordinary expenses to the Executive Director and the specific approval of the Executive Director to reimburse the employee for his/her extraordinary expenses.

History: Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Proposed 39 Com. Reg. 40425 (Dec. 28, 2017).

Commission Comment: The title provided for this section included the phrase "(state all CPA employees)" which was removed by the Commission for consistency with the table of contents.

### **§ 40-40-275 Policies and Procedures; Official Representation**

(a) **Official Representation Authorization.**

(1) The Executive Director is authorized to incur charges for official representation. Other staff may be authorized on a case-by-case basis by the Executive Director.

(2) Official representation for the Board of Directors shall be accounted for separately and authorized by the Chairman of the Board of Directors, depending on availability of funds.

(b) When an authorized official incurs official representation expenses, the purpose of the representation and names of people entertained shall be indicated on the supporting document (i.e. invoice, or docket) at the time the invoice or docket is signed.

(c) An official representation shall be incurred to promote goodwill or further the best interest of the Commonwealth Ports Authority or the CNMI through hosting of social, official, or ceremonial functions, for meetings of the Board of Directors, and for official Commonwealth Ports Authority-related business. The parties to be entertained may include Commonwealth Ports Authority officials, CNMI and federal government officials, official guests of the Commonwealth Ports Authority, and other officials.

(d) Any unauthorized official representation expense made by an employee shall be subject to disciplinary action.

(e) **Procedures to Follow:** The supporting documents (i.e. invoices, dockets, and the like) charged as official representation shall comply with the following internal controls:

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- (1) Verify the name of the Commonwealth Ports Authority official or staff that made the charges by reference to subsection (a).
- (2) Ascertain that the purpose and the names of guests are indicated on the supporting documents (i.e. invoice, docket and the like).
- (3) Ensure that alcohol is not purchased as part of the official representation.
- (4) Verify the budget to ensure that the expenditure is within budget guidelines.
- (5) In the event that an official representation expense is unauthorized, payroll deductions shall be made and the Comptroller shall bring this incident to the attention of the Executive Director for appropriate sanctions.

History: Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Proposed 39 Com. Reg. 40425 (Dec. 28, 2017).

### **§ 40-40-280 Outside Gainful Employment**

A full-time employee who wishes to engage in outside gainful employment must have the express prior written approval of the Executive Director and the outside employment cannot be, or cannot appear to be, adverse to or in conflict with the interests of the Commonwealth Ports Authority.

History: Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Proposed 39 Com. Reg. 40425 (Dec. 28, 2017).

### **§ 40-40-285 Typhoon Emergency Pay**

(a) Employees who are required by the Executive Director 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 employees' regularly scheduled work hours during which Commonwealth Ports Authority 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 in excess of the employee's regularly scheduled work hours that 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. This rate consists of a 1.5 overtime rate plus an additional 1.0 payment for the hours worked during an emergency period.
- (3) Employees being paid typhoon emergency differential are not eligible to receive any other premium pay for the same period.

(b) This subsection applies only to classified employees who are also non-exempt employees.

Modified, 1 CMC § 3806(g).

History: Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Proposed 39 Com. Reg. 40425 (Dec. 28, 2017).

## **Part 300 - Personnel Policies**

### **§ 40-40-301 Grievance Procedure**

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- (a) Consistent with the principles of good management, the Commonwealth Ports Authority recognizes the importance of settling labor-management disagreements and misunderstandings promptly, fairly, and in ways that will maintain the self-respect of both the employee and the supervisor. To accomplish this, every effort will be made to settle grievances expeditiously and at the lowest possible level of supervision.
- (b) This grievance procedure is applicable to all Commonwealth Ports Authority classified employees.
- (c) This grievance procedure will cover all matters of concern or dissatisfaction to an eligible employee unless excepted by NMIAC § 40-40-30l(d).
- (d) This grievance procedure will not cover the following:
- (1) An adverse action appealed under NMIAC § 40-40-120(h)(9)–(12) and NMIAC § 40-40-125;
  - (2) A fitness-for-duty examination;
  - (3) The content of published Commonwealth Ports Authority policy;
  - (4) Non-selection for appointment, promotion, or transfer from a group of properly ranked candidates;
  - (5) Non-adoption of a suggestion or disapproval of a merit increase, performance award, or other kind of honorary discretionary award; and
  - (6) An employee who is serving on probationary status.
- (e) Employees will be unimpeded and free from restraint, interference, coercion, discrimination, and reprisal in seeking adjudication of their grievances.
- (f) The Commonwealth Ports Authority recognizes that grievances are personal in nature and that aggrieved employees or groups of employees must have the right in presenting their grievances to be accompanied, represented, and advised by representatives of their own choosing. Thus, in the formal grievance process, as hereinafter defined, the employee or group of employees have the right to be represented by counsel or other representative of their own choosing at their own discretion. If the employee or group of employees chooses to serve as their own representative or to designate a member of the aggrieved group as spokesperson, they may do so.
- (g) The Personnel Affairs Committee serves as the ultimate appellate level for grievances of employees or groups of employees. It shall take under cognizance only those formal grievances which cannot be settled to the satisfaction of all concerned in accordance with the grievance procedure set forth herein.
- (h) Sometimes an employee has a valid reason for not taking a grievance to the immediate supervisor. The grievance procedure, therefore, provides opportunity for an employee to communicate informally with and seek advice from the Human Resource Office and/or a supervisory or management official of higher rank than the employee's immediate supervisor.

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(i) Informal Grievance Procedure.

(1) The grievance action shall first be initiated by the aggrieved employee who will discuss the problem informally with his/her immediate 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. 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.

(2) 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:

- (i) The identity of the aggrieved employee and the department in which the employee works;
- (ii) The details of the grievance;
- (iii) The corrective action desired; and
- (iv) The name of the employee's representative, if any.

(j) Formal Grievance Procedure.

(1) 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 present the employee's immediate supervisor, if it is deemed appropriate to the resolution of the grievance.

(2) If the Executive Director is not successful in settling the grievance to the employee's satisfaction within 14 calendar days after it is presented by the employee in writing, the employee may, within 15 calendar days after receiving written notification of the Executive Director's decision, or 15 calendar days after the deadline for the Executive Director's decision, submit the grievance to the Personnel Affairs Committee.

(3) The Personnel Affairs Committee shall set a time for a hearing on a grievance within a reasonable time after receiving a grievance. If the Personnel Affairs Committee desires to have the grievance heard by a hearing officer, it must inform the aggrieved employee and representative as soon as possible.

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

Modified, 1 CMC § 3806(a), (g).

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History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: [Historical comment removed.]

### **§ 40-40-305 Annual Evaluations**

(a) All Commonwealth Ports Authority classified and contract employees shall be evaluated annually. Evaluations shall be written on forms provided by the Executive Director, who will require the evaluator to assess the employee's performance of the duties listed on the employee's position description as well as comment on the employee's dependability, resourcefulness, and cooperativeness. Evaluation forms will also ask for the evaluator's recommendation regarding any increase in the employee's salary. The evaluator shall discuss the evaluation with the employee so that constructive criticism may be exchanged between the evaluator and the employee.

(b) Completed evaluations shall be returned to the Executive Director, and a copy given to the employee.

(c) The employee will also be invited to evaluate him or herself, and that self-evaluation will be included in the employee's personnel file.

(d) All employees other than the Executive Director will be evaluated by their immediate supervisors, subject to review and approval by the Executive Director. The Executive Director shall be evaluated by the Board of Directors.

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: [Historical comment removed.]

### **§ 40-40-310 Political Activities**

(a) All employees shall have the following rights:

- (1) To vote for the candidates of their choice and to express their opinions on political matters.
- (2) To be active members of the political party or organization of their choosing.
- (3) To make voluntary contributions to a political party for its general expenditures.

(b) Employees shall not:

- (1) Use their office or official influence to interfere with an election or to affect the results of an election;
- (2) Use their official authority to coerce any person or political party in reference to any politically related activity;
- (3) Be obligated to contribute to any political fund or render service to any political activity;
- (4) Solicit or receive political contributions from anyone while on government time or on government property;

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- (5) Campaign for any candidate for public office during official working hours;
- (6) Promote or oppose legislation relating to the Commonwealth Ports Authority in the name of the Commonwealth Ports Authority without the official sanction of the Executive Director.

(c) An employee who is an official candidate for public office shall take annual leave or leave without pay upon certification of his/her candidacy by the Commonwealth Board of Elections.

(d) An employee found guilty of violating the prohibitions of this section shall be subject to disciplinary action by management.

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

### **§ 40-40-315 Policy on Equal Employment Opportunity**

(a) Policy Statement. The Commonwealth Ports Authority hereby declares as its official policy that all workers lawfully authorized to work without restriction in the United States shall be accorded equal opportunity in employment by the Commonwealth Ports Authority, and that the Commonwealth Ports Authority's employment practices shall be fair and non-discriminatory.

(b) Statutory and Regulatory Basis.

(1) The Commonwealth Ports Authority hereby affirms and adopts the Commonwealth's policy on non-discrimination as stated in 1 CMC § 8102(c) and updated for complete lawful coverage for the purpose of this Chapter. It is the policy of the Commonwealth Ports Authority that the personnel system hereby established be applied and administered in accordance with the following merit principles:

(i) Equal opportunity for all regardless of age, race, sex, religion, political affiliation or place of origin, color, disability, veteran status, genetic information, transgender or marital status.

(ii) Impartial selection of the ablest person for government service by means of the selection process set forth in § 40-40-105 which shall be fair, objective, and practical;

(iii) Just opportunity for competent employees to be promoted;

(iv) Reasonable job security for the competent employee;

(v) Systematic classification of all posts through adequate job evaluation;

(vi) Fair and reasonable grievance procedures for all employees pertinent to condition of employment; and

(vii) Proper employer-employee relations to achieve a well-trained, productive, and happy work force.

(c) Purpose of Policy. It is the purpose of this statement of policy to make clear that the Commonwealth Ports Authority will provide equal opportunity to all qualified applicants and employees, and will exercise non-discrimination in all employment

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practices, consistent with United States and Commonwealth law. The Commonwealth Ports Authority believes that it has a duty to ensure that a person's opportunity to succeed should be determined by the person's ability, skill and training, and not by race, religion, sex, or other suspect classification, with respect to equal employment opportunity.

(d) Establishment of Office of Equal Employment Opportunity. There is hereby established an Equal Employment Opportunity program within the Commonwealth Ports Authority. The Executive Director of the Commonwealth Ports Authority shall serve as the Equal Employment Opportunity (EEO) Officer. There shall also be designated an EEO Coordinator and assistant EEO coordinators for Tinian and Rota, as well as counselors within the separate departments. Appointments to these positions will be made by the Executive Director.

(e) Coordination with CNMI Office of Personnel Management in Training and Implementation. The Governor, as overall EEO Officer for the Commonwealth government, has appointed the Civil Service Commission's Director of Personnel as Deputy EEO Officer. The Director of Personnel, in turn, has appointed an Equal Employment Opportunity Coordinator for the Commonwealth EEO Program, within the Commonwealth Office of Personnel Management. The Commonwealth Ports Authority EEO officers and coordinators shall coordinate the establishment, implementation, and training for the Commonwealth Ports Authority's EEO program with the Commonwealth EEO Coordinator and Office of Personnel Management. That office will provide assistance to the Commonwealth Ports Authority's EEO Office in such matters, as requested.

(f) Complaints received will be investigated by the Commonwealth Ports Authority EEO Coordinator and referred to the Personnel Affairs Committee if unresolvable through management efforts. Any hearing held on complaints filed shall be conducted pursuant to the Commonwealth Ports Authority's EEO program and the procedures established thereunder.

Modified, 1 CMC § 3806(a), (g).

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: [Historical comment removed.]

### **§ 40-40-320 Policy Against Sexual Harassment**

(a) Prohibition Against Sexual Harassment. It is the policy of the Commonwealth Ports Authority that all of its employees shall enjoy a work environment free from sexual harassment and other forms of job discrimination.

(b) Sexual Harassment Defined. Any behavior that is coercive, intimidating, harassing, or sexually offensive in nature is inappropriate and prohibited. Based on guidelines developed by the U.S. Equal Employment Opportunity Commission, sexual harassment

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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.** 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:

- (1) Explicit sexual propositions, sexual innuendos, sexually suggestive comments;
- (2) Obscene or sexually suggestive pictures or drawings;
- (3) Obscene gestures or language, sexually oriented jokes and teasing;
- (4) Intimate touching or other unwanted physical contact, such as hugging, pinching, patting, or "accidental" brushing up against.

(d) **Sexual Harassment Is Prohibited by Law.** Sexual harassment is illegal under Title VII of the Civil Rights Act of 1964, as amended and as implemented by 29 CFR 1604.11. It is also prohibited under this section.

(e) **Policy against Sexual Harassment.**

- (1) Sexual harassment is specifically prohibited by the Commonwealth Ports Authority and will not be tolerated, regardless of whether the offensive conduct is committed by its supervisors, managers, non-supervisors (co-workers) or non-employees (consultants, contractors, general public).
- (2) To ensure a fair and equitable work environment, all Commonwealth Ports Authority employees also have a responsibility to advise management of inappropriate and/or unprofessional activities occurring in the work environment. The reporting of such incidents will assist management in addressing sexual harassment in the workplace.
- (3) No employee will be denied or receive employment opportunities and/or benefits because of a sexual relationship of a co-worker or supervisor. No employee or non-employee shall imply to an employee or applicant for employment that conduct of a sexual nature will have an effect on that person's employment, assignment, advancement, or any other condition of employment.
- (4) Supervisors will be held responsible for the acts of sexual harassment in the workplace when they know or should have known of the prohibited conduct but fail to prevent such conduct or fail to take steps to stop such act or conduct from occurring and/or fail to report the acts of harassment to a higher authority. Management official must report or take action when aware of an act or harassment, even if the employee does not want it reported.
- (5) Managers and supervisors are responsible for providing an environment free from any form of discrimination and harassment, and for ensuring that all employees under their

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supervision are fully aware of the Commonwealth Ports Authority's equal employment opportunity policy and complaint procedure.

(6) Managers and supervisors who become aware of situations involving discrimination or harassment are responsible for immediately contacting the Human Resource Manager and the EEO Coordinator to determine the appropriate action to be taken.

(7) Each department manager shall distribute a copy of this policy to every employee and shall post this policy in an accessible location.

(8) The Commonwealth Ports Authority will ensure that all employees are trained in the protections and responsibilities provided under this policy. All supervisors will be provided additional training on conducting an investigation and resolving cases of harassment.

(f) Sanctions Against Sexual Harassment.

(1) The Commonwealth Ports Authority shall take immediate and appropriate action for acts which violate this policy against sexual harassment.

(2) Such actions may include, if warranted, disciplinary actions per NMIAC § 40-40-120.

Modified, 1 CMC § 3806(a), (f), (g).

History: Amdts Adopted 41 Com. Reg. 42877 (Nov. 28, 2019); Amdts Proposed 41 Com. Reg. 42690 (July 28, 2019); Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: [Historical comment removed.]

### **§ 40-40-325 Disability and Reasonable Accommodations**

(a) General. The Americans with Disabilities Act (ADA) and the Americans with Disabilities Amendments Act (ADAAA) are federal laws that require employers to not discriminate against applicants and employees with disabilities and, when needed, to provide reasonable accommodations to applicants and employees who are qualified for a job, with or without reasonable accommodations, so that they may perform the essential job duties of the position.

(b) Disability Employment Policy. It is the policy of the Commonwealth Ports Authority to comply with all federal and state laws concerning the employment of persons with disabilities and to act in accordance with regulations and guidance issued by the Equal Employment Opportunity Commission (EEOC). Furthermore, it is the Commonwealth Ports Authority's policy not to discriminate against qualified individuals with disabilities in regard to application procedures, hiring, advancement, discharge, compensation, training or other terms, conditions and privileges of employment.

(1) An individual meets the Americans with Disabilities Act's definition of "disability" if they have "a physical or mental impairment that substantially limits one or more major life activities."

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(2) Not all disabilities require an accommodation. If a disability is not obvious, the Commonwealth Ports Authority may ask for medical documentation from a health care provider to confirm the need for an accommodation and the recommended nature of the accommodation. It is the responsibility of the employee to request the accommodation that he seeks.

(c) **Reasonable Accommodation Defined.** A reasonable accommodation is any change to the application or hiring process, to the job, to the way the job is done, or the work environment that allows a person with a disability who is qualified for the job to perform the essential functions of that job and enjoy equal employment opportunities. Accommodations are considered “reasonable” if they do not create an undue hardship or a direct threat to the health or safety of the individual or others.

(1) The following types of accommodations are generally considered reasonable:

- (i) Change job tasks.
- (ii) Provide reserved parking.
- (iii) Improve accessibility in a work area.
- (iv) Change the presentation of tests and training materials.
- (v) Provide or adjust a product, equipment, or software.
- (vi) Allow a flexible work schedule.
- (vii) Provide an aid or a service to increase access.
- (viii) Reassign to a vacant position.

(2) Reassignment is a reasonable accommodation in some situations. The Commonwealth Ports Authority may reassign an employee to open position if the employee can no longer perform the essential functions of their current job. The Commonwealth Ports Authority does not have to create a new position, no other employees need be transferred or terminated in order to make a position vacant for the purpose of reassignment, and the individual with a disability should be qualified for the new position.

(d) **Undue Hardship.** Undue hardship means, with respect to the provision of an accommodation, significant difficulty or expense incurred by the Commonwealth Ports Authority.

(1) The Commonwealth Ports Authority will determine whether an accommodation is reasonable or causes an undue hardship, based upon relevant federal and local statutes, prior EEOC determinations, consideration of the cost of the accommodation as compared to Commonwealth Ports Authority’s budget, and whether the accommodation will be unduly disruptive to other Commonwealth Ports Authority employees or the functioning of the Commonwealth Ports Authority’s business.

(2) An accommodation will not be considered an undue hardship if the accommodation is disruptive due to the fears or prejudices toward the individual’s disability or if the accommodation has a negative impact on the morale of Commonwealth Ports Authority’s other employees, but not on the ability of these employees to perform their jobs.

(e) **Limits to Accommodation.**

(1) When an applicant with a disability requests accommodation and can be reasonably accommodated without creating an undue hardship or causing a direct threat to workplace safety, he or she will be given the same consideration for employment as any other

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applicant. Applicants who pose a direct threat to the health, safety, and well-being of themselves or others in the workplace, when the threat cannot be eliminated by reasonable accommodation, will not be hired.

(2) The Commonwealth Ports Authority will reasonably accommodate qualified employees or applicants with a disability so that they can perform the essential functions of a job unless doing so causes:

(i) A direct threat the health or safety of these individuals or others in the workplace; or  
(ii) The accommodation creates an undue hardship to the Commonwealth Ports Authority.

(3) All employees are required to comply with the Commonwealth Ports Authority's safety standards. Current employees who, as a result of their disability, pose a direct threat to the health or safety of themselves or other individuals in the workplace will be placed on leave until an organizational decision has been made in regard to the employee's immediate employment situation. Employees who cannot effectively or safely perform the essential functions of their job and cannot be reasonably accommodated will be separated from their employment.

(4) Individuals disabled by prior alcoholism or drug addiction, as diagnosed by a licensed medical provider, are entitled to the same protections accorded to other individuals with disabilities. However, individuals who are currently using illegal drugs are excluded from coverage under the CPA ADA policy. Employees are liable for the consequences of their actions when under the influence of alcohol or drugs.

(f) Disability Accommodation Requests. If an employee has any questions or requests for accommodation, the employee shall contact the Human Resource Manager.

History: Adopted 41 Com. Reg. 42877 (Nov. 28, 2019); Proposed 41 Com. Reg. 42690 (July 28, 2019).

### **§ 40-40-330 Open Door Policy**

Employees are encouraged to discuss work-related issues or concerns with their supervisor or manager. If, after discussion with the supervisor or manager, a circumstance continues to exist that an employee believes is in violation of this regulation, or will in some other way adversely affect the employee or the Commonwealth Ports Authority, the employee should contact the Human Resource Manager or the EEO Coordinator to report the problem.

History: Adopted 41 Com. Reg. 42877 (Nov. 28, 2019); Proposed 41 Com. Reg. 42690 (July 28, 2019).

### **§ 40-40-335 Prohibition Against Retaliation**

The Commonwealth Ports Authority prohibits retaliation of any kind against any employee who complains about discrimination or harassment or assists or participates in any manner in the investigation. The Commonwealth Ports Authority will take disciplinary action against any fellow employee or management staff who attempts to retaliate in any way.

History: Adopted 41 Com. Reg. 42877 (Nov. 28, 2019); Proposed 41 Com. Reg. 42690 (July 28, 2019).

**§ 40-40-340 Reporting Procedure**

(a) All acts or conduct of discrimination or sexual harassment shall be reported to the department manager, unless he or she is the discriminator or harasser, the Human Resource Manager, or the Executive Director or his/her designee. If the harasser is the victim's supervisor or manager, the victim may go to another supervisor or manager, an EEO Counselor or Coordinator, the Human Resource Manager, or the Executive Director to make the complaint.

(b) An employee who is subjected to discrimination or harassment may make a verbal report first and, if assistance is needed, shall be assisted in preparing a written report of the incident(s) by the department manager, an EEO Counselor or Coordinator, or the Human Resource Manager for presentation to the Executive Director. The written report shall contain the following information:

- (1) The identity of the aggrieved employee and the department in which the employee works;
- (2) The identity of the alleged discriminator or harasser and the department in which the employee works;
- (3) A detailed description of the grievance with discriminating harassing action, time, date, location, and witnesses;
- (4) The corrective action desired; and
- (5) The name of the aggrieved employee's representative, if any.

(c) Commonwealth Ports Authority management will examine the grievance, conduct an investigation, discuss it with the grievant or his representative and the alleged discriminator/harasser, and render a decision, in writing, within 14 calendar days after receiving the complaint report.

(1) Confidentiality will be maintained throughout the investigation to the greatest extent possible while still meeting the Commonwealth Ports Authority's legal obligations to conduct a full investigation and to provide the individual accused of discrimination/harassment with an opportunity to respond.

(2) If management is not successful in settling the grievance to the complainant's satisfaction within 14 days after it is presented to the employer in writing, the employee shall, within 14 calendar days after receiving written notification of the decision, submit a petition to the Personnel Affairs Committee for a review of such decision by the Committee.

(3) The Personnel Affairs Committee shall conduct a de novo hearing on the grievance filed by the complainant and render a final decision on the matter, no later than 30 days thereafter.

(4) Any applicant or employee also has the right to file a formal complaint of illegal discrimination or harassment with an applicable local or federal regulatory agency or request outside mediation as an alternative means of dispute resolution.

(5) If the complaint cannot be resolved through other efforts, it shall be, to the exclusion of a court of law, mandatorily submitted to binding arbitration, per 42 U.S.C.A. § 12212.

(d) Equal Employment Opportunity Commission.

(1) If a grievance complaint is not acted upon to a complainant's satisfaction, the complainant may file a complaint with the federal Equal Employment Opportunity Commission (EEOC).

(2) The district EEOC office in Hawaii is located at 300 Ala Moana Blvd., Room 7123A, Box 50082, Honolulu, Hawaii, 96850, or call (808) 541-3120.

(3) The regional EEOC office in Los Angeles, California is located at the Roybal Federal Building, 255 East Temple Street, 4th Floor, Los Angeles, 90012, or call (800) 669-4000.

History: Adopted 41 Com. Reg. 42877 (Nov. 28, 2019); Proposed 41 Com. Reg. 42690 (July 28, 2019).

#### **§ 40-40-345 Anti-Bullying Policy**

(a) **Prohibition Against Workplace Bullying.** It is the policy of the Commonwealth Ports Authority that all of its employees shall enjoy a work environment free from workplace bullying.

(b) **Definitions.**

(1) "Workplace bullying" is repeated and unreasonable behavior directed towards a worker or a group of workers that creates a risk to health and safety.

(2) "Repeated behavior" refers to the persistent nature of the behavior and can involve a range of behaviors over time.

(3) "Unreasonable behavior" means intentional or unintentional behavior that a reasonable person, having considered the circumstances, would see as unreasonable, including behavior that is victimizing, humiliating, intimidating, or threatening. Unreasonable behavior that may be workplace bullying includes, without limitation, the following:

(i) Abusive, insulting, or offensive language or comments;

(ii) Aggressive and intimidating conduct;

(iii) Belittling or humiliating comments;

(iv) Victimization;

(v) Practical jokes or initiation;

(vi) Unjustified criticism or complaints;

(vii) Deliberately excluding someone from work-related activities;

(viii) Withholding information that is vital for effective work performance;

(ix) Setting unreasonable timelines or constantly changing deadlines;

(x) Setting tasks that are unreasonably below or beyond a person's skill level;

(xi) Denying access to information, supervision, consultation, or resources to the detriment of the worker;

(xii) Spreading misinformation or malicious rumors; and

(xiii) Changing work arrangements, such as leave, to deliberately inconvenience a particular worker or workers.

(4) "Health and Safety" includes, but is not limited to, an employee's physical or psychological health, the safety of an employee, or the safe and efficient operation of the Ports.

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(c) Policy against Workplace Bullying.

(1) Workplace bullying is specifically prohibited by the Commonwealth Ports Authority and will not be tolerated, regardless of whether the offensive conduct is committed by supervisors, managers, non-supervisors (coworkers), or non-employees (consultants, contractors, general public).

(2) All Commonwealth Ports Authority employees have a responsibility to advise management of workplace bullying occurring in the work environment.

(3) The Commonwealth Ports Authority prohibits retaliation of any kind against any employee that complains about workplace bullying or against any employee that assists or participates in any manner in the investigation of an alleged instance of workplace bullying.

(4) Confidentiality will be maintained throughout the investigation to the greatest extent possible. Disclosures of confidential material is permitted to further the Commonwealth Ports Authority's investigation of the alleged workplace bullying and to provide the individual accused of workplace bullying with an opportunity to respond.

(5) Supervisors may be held responsible for a supervisee's acts of workplace bullying when the supervisor suspects workplace bullying is occurring but fails to prevent or take steps to prevent such conduct from occurring or fails to report the workplace bullying to a higher authority.

(6) Managers and supervisors may take reasonable management action to effectively direct and control the way work is carried out. It is not workplace bullying if the management action is carried out in a lawful and reasonable way that takes the particular circumstances into account. The following are examples of reasonable management action:

- (i) Setting realistic and achievable performance goals, standards and deadlines;
- (ii) Fair and appropriate allocation of working hours;
- (iii) Transferring a worker to another area or role for operational reasons;
- (iv) Deciding not to select a worker for a promotion or salary increase where a fair and transparent process is followed;
- (v) Informing a worker about unsatisfactory work performance in an honest, fair, and constructive way;
- (vi) Informing a worker about poor behavior in an objective and confidential way;
- (vii) Implementing organizational changes or restructuring; and
- (viii) Taking disciplinary action where appropriate or justified in the circumstances.

(7) Each department manager shall distribute a copy of this policy to every employee and shall post this policy in an accessible location.

(d) Procedures and Disciplinary Actions.

(1) The Commonwealth Ports Authority shall take appropriate action for acts that violate this policy against workplace bullying.

(2) An employee alleging workplace bullying is required to follow the grievance procedure outlined in NMIAC § 40-40-301.

(3) Disciplinary actions for workplace bullying includes all actions listed in NMIAC §§ 40-40-125(f)–(g). The Executive Director is authorized to affect all disciplinary measures, and unless otherwise restricted by the Executive Director, Managers and Supervisors are authorized to affect non-adverse action disciplinary measures and recommend adverse action disciplinary measures.

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(4) The procedure for taking and appealing adverse actions disciplinary measures shall be governed by NMIAC §§ 40-40-125(h), 40-40-130.

History: Adopted 41 Com. Reg. 42877 (Nov. 28, 2019); Proposed 41 Com. Reg. 42690 (July 28, 2019).

### **Part 400 - Employee Benefits**

#### **§ 40-40-401 Policy**

(a) The Commonwealth Ports Authority will provide benefits 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, which include:

- (1) Paid leaves of absence;
- (2) Unpaid leaves of absence;
- (3) Insurance benefits, such as group life and health insurance, accident and health insurance, and worker's compensation coverage;
- (4) Employee Savings Plan.

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: [Historical comment removed.]

#### **§ 40-40-405 Eligibility for Benefits**

(a) All full-time employee are eligible for the employee benefits enumerated in this Chapter. Such employees shall include classified, non-classified, and contract employees.

(b) Employees on unpaid leave of absence for 50% or more of a pay period shall not accrue annual or sick leave for that pay period. If the employee is on unpaid leave of absence for less than 50% of a pay period, the employee shall accrue annual and sick leave at the normal rate.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: [Historical comment removed.]

### **Subpart A – Paid Leaves of Absence**

#### **§ 40-40-410 Annual Leave**

(a) Employees shall accumulate annual leave time as specified below; provided, however, that Commonwealth Ports Authority employees will be given credit, for the purpose of computing the rate at which leave time will be accumulated, for prior

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employment with the government of the Trust Territory of the Pacific Islands or any branch, agency, corporation, board, or commission of the government of the Commonwealth of the Northern Mariana Islands.

0–3 years of service:	4 hours annual leave per pay period
3–6 years of service:	6 hours annual leave per pay period
6 or more years of service:	8 hours annual leave per pay period

(b) If an official holiday falls while an employee is on annual leave, that day will not be deducted from accrued annual leave. If an employee is sick while on annual leave, the employee may change that time to accrued sick leave. An employee who requests such change must submit a written certification from the attending physician regarding the employee's illness.

(c) Annual leave must be approved by an employee's supervisor or manager prior to the employee going on annual leave. The Executive Director approves leave for managers and staff attorneys. If an employee applies for leave in excess of three days, the employee shall request for approval at least three days in advance on the Commonwealth Ports Authority leave request form. Denial of such requests must be for good reason and may be a basis for an employee's grievance.

(d) 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 annual leave. A manager is wholly within managerial rights to deny an employee's request for annual leave if that denial is based upon demands of the Commonwealth Ports Authority. The manager is obligated, in event of a denial, to suggest to the employee a more appropriate time for taking annual leave.

(e) The Commonwealth Ports Authority urges and encourages employees to use annual leave for the purpose for which it is intended. That is for rest and relaxation. The Commonwealth Ports Authority 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 the Commonwealth Ports Authority will not be unduly affected by employee absences.

(f) Any annual leave accumulated in excess of 360 hours at the end of any calendar year shall be converted to sick leave on the last day of such calendar year. Any annual leave accumulated in excess of 360 hours on the date of an employee's termination or resignation of employment shall be converted to sick leave as of the effective date of such termination or resignation of employment.

(g) An employee whose employment is terminated, or who resigns his/her employment, and who has been employed for more than one year prior to the effective date of such termination or resignation, shall be entitled to receive payment for any and all unused annual leave, up to a maximum of 360 hours. Employees with less than one year

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of employment will not be entitled to payment for unused annual leave.

Modified, 1 CMC § 3806(e), (g).

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: [Historical comments removed.]

### **§ 40-40-415 Sick Leave**

(a) An employee commences sick leave accrual at the beginning of the first full pay period following the employee's employment. Each employee will accrue four hours of sick leave per pay period. If an employee's accrued sick leave is depleted, any additional days the employee is not at work will be deducted from accrued annual leave. When accrued annual leave has been depleted, the employee will go on leave without pay (LWOP). If an official holiday occurs while an employee is on sick leave, that day will not be deducted from accrued sick leave.

(b) When an employee is absent due to illness, the employee himself/herself, unless incapacitated, should give notice of his/her illness to the employee's supervisor within the first hour of scheduled duty or the entire day may be charged against annual leave, at the discretion of the immediate supervisor. Each employee returning from sick leave after an absence of three days or more shall furnish a written certification from the attending physician regarding the employee's illness. 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 payroll as absent without leave (AWOL). 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.

(c) Sick leave may be accumulated and carried over to succeeding years up to 1,040 hours of sick leave. A report showing the accrued sick leave balance will be provided the employee each pay period. Any current employee with sick leave in excess of the 1,040-hour threshold will no longer accrue sick leave until such time that their sick leave hours are reduced to 1,040 hours or below.

(d) The use of sick leave is subject to the following special provisions:

(1) Falsification of an illness report shall be considered sufficient cause for disciplinary action, including termination from employment.

(2) Accrued and unused sick leave will not prevent a termination for medical reasons. Employees are not entitled to exhaust accrued and unused sick leave.

(3) No employee shall be allowed to undertake gainful employment while on sick leave status.

(e) 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

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service for a period longer than three years, the employee shall be divested of accumulated sick leave.

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 41 Com. Reg. 42877 (Nov. 28, 2019); Amdts Proposed 41 Com. Reg. 42690 (July 28, 2019); Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: [Historical comment removed.]

### § 40-40-420 Leave Advance

(a) 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 department 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 limited term or 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 for one year from the date the application is received, 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 department manager.

(b) Leave advance granted and taken:

- (1) Constitutes a legal contract between the employee and the Commonwealth Ports Authority; and
- (2) Must be repaid, even if the employee separates or transfers from the Commonwealth Ports Authority. Recovery of advance leave that is unpaid may be through the Commonwealth Ports Authority's assumption of the employee's accrued unused leave, payroll deductions, matched reduction of service time, and/or recourse to the courts.

\* So in original.

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

### § 40-40-425 Sick Leave Donation

(a) An employee may, in writing on a Commonwealth Ports Authority-approved form, donate his/her accrued sick leave to another Commonwealth Ports Authority employee who has completed his/her probationary status and who is in need of medical treatment. An employee under medical treatment must provide certification from his/her attending physician on his/her medical status and duration of time that he/she shall be on medical leave. Sick leave donation requests must be approved, in writing, in advance by the

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Executive Director or her or his designee, prior to the transfer of sick leave and subject to the following:

- (1) An employee donating his/her accrued sick leave does so voluntarily and without compensation or sick leave replacement. The donation shall be limited to 160 hours;
- (2) The employee requesting donation must provide certification that he/she is undergoing medical treatment and the number of days he/she is expected to be on medical leave. Under no circumstances may the requesting employee receive more than 480 hours of donated sick leave during his/her employment with the Commonwealth Ports Authority;
- (3) The employee receiving a sick leave donation has exhausted all his annual leave, sick leave, and accrued comp-time hours;
- (4) The employee receiving a sick leave donation shall not accrue any other leave while on medical leave status.

(b) Any Commonwealth Ports Authority employee may also donate accrued sick leave to non-Commonwealth Ports Authority CNMI government employees subject to the CNMI Sick Leave Bank Regulations (NMIAC, Title 10, Chapter 10-50) being administered by the Office of the Personnel Management.

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

### § 40-40-430 Holidays

(a) The Commonwealth Ports Authority shall observe those holidays observed by the government of the Commonwealth of the Northern Mariana Islands. Employees shall be paid holiday pay for work performed on Commonwealth legal holidays, in accordance with the regulations set forth herein.

(b) Payment for Work on Holidays.

- (1) An employee required to work on a legal holiday shall be compensated at two times the base salary rate or the adjusted base salary rate for the standard eight-hour workday. The remaining hours of a 24-hour schedule will be at the regular rate.
- (2) Any overtime worked on a holiday by a non-exempt employee will be based on the employee's regular rate of pay.
- (3) Holiday pay will only be paid for hours of work actually performed on a legal holiday and will not be paid to any employee who is being paid a standby differential for those same hours.
- (4) A salaried overtime-exempt employee required to work on a legal holiday shall receive double the employee's daily pay.

(c) Holiday Pay in a Non-Standard Workweek. When a holiday falls on a regular non-work day for employees whose basic workweek is other than the standard workweek, the workday immediately preceding or succeeding the holiday shall be designated (as determined by the Executive Director) as the holiday in lieu of such holiday that occurs on the employees' scheduled non-work day.

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History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: [Historical comment removed.]

### **§ 40-40-435 Maternity Leave**

(a) A female employee may be granted maternity leave, not to exceed 15 work days, because of confinement for childbirth. When possible, the employee must request maternity leave at least one week prior to the day she expects to leave work. The Executive Director shall have the authority to approve maternity leave requests.

(b) Maternity leave may be granted in cases of miscarriage with a medical certificate.

(c) Accrued annual leave and sick leave may also be applied for during this period. Maternity leave shall be in addition to any accumulated sick or annual leave, and any additional leave taken for such childbirth purposes shall be charged against accumulated sick or annual leave. If maternity leave, annual leave, and sick leave are exhausted, the employee shall be placed on leave of absence without pay.

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

### **§ 40-40-440 Paternity Leave**

A male employee may be granted a maximum five days of paternity leave because of the birth of his child, which five days shall include the date of childbirth. Paternity leave may be granted in cases of common-law marriages where reasonable proof of the relationship can be shown. The Executive Director shall have the authority to approve paternity leave requests.

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: [Historical comment removed.]

### **§ 40-40-445 Bereavement Leave for a Death in the Immediate Family**

(a) An employee who suffers a death in his or her immediate family will be given a maximum of five days leave with pay.

(b) Immediate family shall be defined as including the employee's parent (including step or adoptive), spouse, domestic partner, sibling (including step or half), child (including step, adopted, or children-in-law), grandparents, mother-in-law and father-in-law (including step or adoptive). For the purposes of this section a "Domestic partner" is defined to be a person with whom the CPA employee has a personal, household

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relationship and with whom the employee has established substantial personal ties for several years.

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

### **§ 40-40-450 Election Day Leave**

An employee will be given two hours off work with pay to vote on each official Election Day. The determination of which two hours of the day shall be taken off will be made by the employee's supervisor, so as to assure adequate staffing of the employee's office at all times.

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

### **§ 40-40-455 Administrative Leave**

(a) Administrative leave is defined as an absence from duty, administratively authorized, without loss of pay and without charge to accrued leave. The Executive Director, or his/her designee in the Executive Director's absence, has the responsibility for approving administrative leave requests. The following are the four general classes into which administrative leaves fall:

(1) Administrative leave authorized due to emergency conditions beyond the control of management, e.g., typhoons, or for participation in civic activities of interest to the government or the Commonwealth Ports Authority, or employment connected examinations, or for such reasons as the Executive Director may determine (such as a shortened work day on Christmas Eve or New Year's Eve).

(2) Administrative leave for extended absence required for medical appointments and care following job-related injuries.

(3) Administrative leave related to disciplinary action. Managers may place an employee in nonworking status with pay for up to three work days pending preparation of a notice of proposed suspension for up to 30 calendar days or termination from employment.

(4) Administrative leave granted to employees serving on a government board or commission, provided such employee does not receive compensation from the board or commission. Advance written notice by the head of a board or commission must be delivered to the department or agency head before an employee can be released from official duties to attend a meeting. If an emergency meeting is necessary, the chairperson or the executive director of the board or commission may notify the Commonwealth Ports Authority employee's department manager by phone, but a written confirmation of the meeting must follow such oral notification.

(b) Administrative leave for civic duties for non-profit organizations. Such leave may be granted provided the organization is recognized under § 501(c)(3) of the Internal Revenue Code and all meetings and/or activities are scheduled and verified.

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

**§ 40-40-460 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.

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

**§ 40-40-465 Court Leave**

Employees who are called upon to serve as jurors may be granted court leave for such period as the jury may be impaneled. Employees who are called to jury duty shall present their juror summons to their immediate supervisor together with a completed request for leave for the supervisor's signature and processing. An employee subpoenaed as a government witness in a court matter may also be granted court leave. Such employee must inform the Executive Director of the required testimony date as soon as possible after being subpoenaed.

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: [Historical comments removed.]

**Subpart B – Unpaid Leaves of Absence**

**§ 40-40-470 Leaves Without Pay**

(a) Leave of Absence. An employee may request a leave of absence without pay. Requests for such leave must specify its purpose and time period and must be authorized, in writing, by the Executive Director prior to its commencement. Because of the difficulties presented the organization by granting such leave, approval will be based upon the demonstrated need.

(1) A permanent 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 work days only with the approval of the Executive Director. Such leave without pay may be granted to permit the employee to attend to justifiable personal or business issues.

(2) An employee desiring extended leave without pay shall prepare a memorandum of

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explanation addressed to the Executive Director explaining in detail the reasons for the request.

(b) **Training and Education Leave.** Permanent employees who wish to pursue their education on a full-time basis, without financial assistance from the government, may be granted leaves of absence without pay for a period not to exceed one year. Such employees shall have the right to return to their positions at the satisfactory conclusion of their education or training, and their service anniversary dates shall be adjusted by the amount of leave without pay taken. The Executive Director will approve or disapprove requests for training and education leave.

(c) **Leave Without Pay in Extension of Annual or Sick Leave.** Employees on permanent status may be granted leave without pay (LWOP) for the purpose of extending annual or sick leave. When sick leave is so extended, the attending physician must certify to the necessity of the extension. The Executive Director is responsible for approving or disapproving requests for leave without pay.

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: [Historical comment removed.]

### **§ 40-40-475 FMLA Leave**

(a) The Federal Family and Medical Leave Act of 1993 (FMLA), as amended, entitles employees who have worked as a Commonwealth employee 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 leave without pay for any of the following reasons:

- (1) To care for the employee's child after birth or placement for adoption or foster care;
- (2) To care for the employee's spouse, son or daughter, or parent, who has a serious health condition;
- (3) For a serious health condition that makes the employee unable to perform the employee's job; or
- (4) For specified situations relating to family members in military service.

(b) If an employee intends to take leave, the employee shall provide the Executive Director with at least 30 days' written notice and shall provide the Executive Director a copy of a medical certification to support a request for medical leave. In the case of medical emergency or unforeseeable event, then the employee only has to provide the Executive Director with such notice as is practicable under the facts and circumstances of the particular case.

(c) At the option of the employee, 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.

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The Commonwealth Ports Authority can designate a leave as a FMLA leave.

(d) In most cases, participation in the government group health insurance program shall continue during FMLA leave.

(e) These definitions, benefit eligibility, and limits and notification procedures comply with the federal Family and Medical Leave Act (FMLA) of 1993, as amended.

Modified, 1 CMC § 3806(g).

History: Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Proposed 39 Com. Reg. 40425 (Dec. 28, 2017).

### **§ 40-40-480 Extended Military Leave**

The federal Uniformed Services Employment and Reemployment Rights 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 Chapter regarding the timing of applications for re-employment. For details, employees and managers should contact the U.S. Department of Labor.

Modified, 1 CMC § 3806(g).

History: Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Proposed 39 Com. Reg. 40425 (Dec. 28, 2017).

### **§ 40-40-485 Unauthorized Leave**

Unauthorized leave (absent without leave or 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 40 Com. Reg. 40924 (Sept. 28, 2018); Proposed 39 Com. Reg. 40425 (Dec. 28, 2017).

## **Subpart C – Insurance Benefits**

### **§ 40-40-490 Medical and Life Insurance**

(a) An employee shall be entitled to participate in the group life and hospital insurance programs which are available to employees of the government of the Commonwealth of the Northern Mariana Islands on the same terms and conditions as are available to employees of the government of the Commonwealth of the Northern Mariana Islands for

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as long as such participation is permitted by the government of the Commonwealth of the Northern Mariana Islands or its insurer.

(b) An employee is entitled to participate in the medical insurance program which is available to Commonwealth Ports Authority employees, on the same terms and conditions as are available to Commonwealth Ports Authority employees.

History: Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Proposed 39 Com. Reg. 40425 (Dec. 28, 2017).

### **§ 40-40-495 Workers Compensation Insurance**

(a) Worker's compensation coverage for work-related injury or illness is provided by the Commonwealth Ports Authority to all employees. Employees who suffer a work-related illness or injury are eligible to receive worker's compensation benefits. Employees should report injuries immediately so that they can receive fast and effective treatment. Any work-related injury must be reported to the Human Resource Office in the following manner:

(1) If an employee is injured while working, it is required that his/her supervisor be informed immediately. The employee must then complete and submit a notification form to report his/her injury. This form must be submitted to the Human Resource Office at the earliest possible time.

(2) If medical attention is needed, the employee must obtain authorization to receive medical treatment from his/her supervisor prior to going to the doctor. The employee should not use his/her personal health insurance, as reimbursement for any out-of-pocket expenses is not authorized.

(3) The first three days of worker's compensation leave is unpaid. Employees may apply for sick or annual leave in order to be compensated for this time.

(4) Any questions should be referred to the Human Resource Office.

(b) If the employee is unable to fill out an injury report due to the nature of the employee's injury, his/her supervisor should obtain a form and fill it out for the employee. Injuries occur\* outside the course of an employee's employment are matters of personal liability.

\* So in original.

History: Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Proposed 39 Com. Reg. 40425 (Dec. 28, 2017).

### **Subpart D – Employee Savings Plan**

#### **§ 40-40-499 Employee Savings Plan**

(a) All Commonwealth Ports Authority employees are eligible to participate in the Employee Savings Plan which is available to employees of the government of the Commonwealth of the Northern Mariana Islands on the same terms and conditions as are available to employees of the government of the Commonwealth of the Northern Mariana Islands.

- (b) Any questions should be referred to the Human Resource Office.

History: Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Proposed 39 Com. Reg. 40425 (Dec. 28, 2017).

## **Part 500 - Drug and Alcohol-Free Workplace Policy**

### **§ 40-40-501 Purposes**

(a) The Commonwealth Ports Authority recognizes its commitment to employees, customers, and the public, and wishes to take reasonable steps to assure safety in the workplace and the safety of the community. The Commonwealth Ports Authority is aware of the adverse effect alcohol and substance abuse may have on safety and productive job performance. It recognizes that employees are affected in their ability to perform their jobs safely and productively, due to physical and emotional problems caused by the use or abuse of alcohol and other drug substances, which jeopardizes the integrity of the workplace and the achievement of the Commonwealth Ports Authority's mission.

(b) This policy establishes programs and practices that promote and support a drug and alcohol-free working environment and comply with the Drug Free Workplace Act of 1988.

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: [Historical comments removed.]

### **§ 40-40-505 Overview**

(a) Employees have the responsibility for managing their individual behavior, and, if an impairment issue exists, the employee must successfully resolve that issue. Being fit for work addresses two matters — an employee's condition and his/her conduct.

(1) Condition. When an employee's condition (physical illness, emotional distress, and chemical dependency) interferes with safe and productive work, the employee needs to take measures necessary to correct the condition. The Commonwealth Ports Authority recognizes the valuable resource we have in our employees, and is committed to helping them maintain their health and well-being. Therefore, the Commonwealth Ports Authority strongly encourages employees to take advantage of the many opportunities of assistance through the employee assistance program to help them make the Commonwealth Ports Authority a positive, healthy, and mutually beneficial employment opportunity (see NMIAC § 40-40-570).

(2) Conduct. The second aspect of being fit for work involves conduct. Employees are accountable for unsafe and unproductive work, and the consequences of their work. Irresponsible behavior that is unproductive and unsafe will not be tolerated, and an employee engaging in misconduct may be disciplined, including termination from employment (see NMIAC § 40-40-520).

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(b) The Commonwealth Ports Authority recognizes the need for safety, efficiency, and productivity in employment. Therefore, it is the official policy of the Commonwealth Ports Authority that the use, distribution, sale, possession, manufacture, or transfer of illegal drugs and unauthorized substances in any detectable amount, or being under the influence of alcohol in any form, on Commonwealth Ports Authority property or while on duty by employees, independent contractors or their employees is strictly prohibited and will be cause for termination of employment (see NMIAC § 40-40-520).

(c) Commonwealth Ports Authority employees who violate the prohibitions of this policy will be subject to disciplinary action, including termination of employment (see NMIAC § 40-40-520). An employee's refusal to submit to testing requirements will be treated as a violation of the prohibitions of this policy and will be subject to disciplinary action, including termination of employment (see NMIAC §§ 40-40-510(q) & 520(a)).

(d) Independent contractors and their employees who violate the prohibitions of this policy may be subject to contract cancellation (see NMIAC § 40-40-515).

(e) All employees shall be subject to drug/alcohol testing, to include the following categories: pre-employment, reasonable suspicion, post-accident/incident, random, return to duty, and follow-up (see NMIAC §§ 40-40-545 & 550).

(f) Employee education and supervisory training are essential parts of this policy and program. All existing and new employees will receive information on the impact of drug and alcohol use in the workplace, and will receive information on resources for help and assistance. No supervisor may make a reasonable suspicion or post-accident/incident decision unless he/she has completed supervisory training relating to this policy (see NMIAC § 40-40-535).

(g) Drug/alcohol testing will be conducted with accuracy and reliability, while maintaining privacy and dignity in specimen collection, testing, and notification processes. Employees found with breath alcohol at a detectable level of 0.02 BAC or greater, or a confirmed positive drug urine test, without adequate medical explanation, will be regarded to have violated the provisions of this policy.

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: [Historical comments removed.]

### **§ 40-40-510 Definitions**

For purposes of this Part, the following definitions shall apply:

- (a) "Accident" means an occurrence that results in:
  - (1) The death of a human being;

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- (2) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident;
  - (3) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the vehicle(s) to be transported away from the scene by a tow truck or other vehicle;
  - (4) Damage to property of Commonwealth Ports Authority or other personal property resulting from an accident during working hours or while using Commonwealth Ports Authority equipment; or
  - (5) Injury to a person on the job requiring outside medical attention, and/or physical damage or economic loss greater than \$1,000.
  - (6) Any such occurrence must be reported to the Commonwealth Ports Authority under applicable regulations.
- (b) “Alcohol concentration” means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test. When the indicated alcohol concentration on an initial alcohol test is different from an indicated alcohol concentration on a confirmatory test, the employee shall be considered to have the lower indicated concentration.
- (c) “Alcohol” means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl or isopropyl alcohol.
- (d) “Alcohol use” means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.
- (e) “Canceled test” (drug) means a test that has been declared invalid. It is neither a positive nor a negative test. This term includes a specimen which is rejected for testing by a laboratory. Further testing is required in cases of pre-employment or return to duty testing.
- (f) “Conducting Commonwealth Ports Authority business” means being in a situation where decisions are made that commit CPA to some action, or being in a position where actions could injure or adversely affect other individuals or the Commonwealth Ports Authority as a corporate entity.
- (g) “Confirmatory test” (alcohol) means a second test following a screening test with a result of 0.02 or greater that provides quantitative data of alcohol concentration.
- (h) “Confirmatory test” (controlled substances) means a second analytical procedure to identify the presence of a specific drug or metabolite that is independent of the screen test and that uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy.
- (i) “Consulting physician” means a licensed physician retained by the Commonwealth Ports Authority to advise on drug testing and other industrial medicine issues.

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(j) “Contractor” means a person or organization that provides service to or works for the Commonwealth Ports Authority.

(k) “Covered substances” means:

(1) Legally obtained drugs (prescription and non-prescription remedies) when used according to directions to alleviate a specific condition;

(2) Illegal drugs, including:

(i) Drugs which are not legally obtainable including, but not limited to, marijuana, cocaine, amphetamines, opiates, phencyclidine, and other drugs prohibited by law;

(ii) Drugs which are legally obtainable, but have not been obtained legally, such as prescription remedies prescribed by a licensed medical professional;

(iii) Drugs which are legally obtained, but are knowingly used for other than the prescribed purpose or in other than the prescribed manner; and

(iv) So-called designer drugs or drug substances not approved for medical or other use by the Commonwealth of the Northern Mariana Islands, the U.S. Drug Enforcement Administration, or the U.S. Food and Drug Administration.

(3) Unauthorized substances including any substance that is intentionally used to cause impairment of physical and/or mental functioning;

(4) Commonwealth Ports Authority-covered substances are those substances that will be tested when called for by the Commonwealth Ports Authority, specifically:

(i) Marijuana (cannabinoids) and metabolites;

(ii) Cocaine and metabolites;

(iii) Amphetamines and metabolites;

(iv) Opiates (narcotics);

(v) PCP (Phencyclidine); and

(vi) Alcohol (ethyl alcohol).

(1) “Drug/Alcohol Coordinator” means the Executive Director’s representative who is in charge of the Commonwealth Ports Authority drug and alcohol program (i.e., testing, training, and documentation).

(m) “Drug use” means the consumption of any substance (legal or illicit) that may cause interference with an employee’s capacity to perform safe and/or productive work.

(n) “Executive Director” means the Executive Director of the Commonwealth Ports Authority.

(o) “Medical review officer” (“MRO”) means a licensed physician who is responsible for receiving laboratory results generated by the Commonwealth Ports Authority’s drug testing program, has knowledge of substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual’s confirmed positive test result together with his or her medical history and any other relevant biomedical information.

(p) “Proof of wellness” means a notice from the treatment specialist or substance abuse professional indicating the applicant/employee is no longer dependent on some drug/alcohol substance to the extent it can affect safe and productive work.

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- (q) “Refusal to submit” means that:
- (1) An employee gives a verbal declination after receiving clear and specific order to submit to urine and/or breath-testing.
  - (2) An employee fails to provide adequate breath for testing or an insufficient urine specimen without a valid medical explanation after he/she has received notice of the requirement to be tested.
  - (3) An employee engages in conduct that clearly obstructs the collection process.
- (r) “Safety-sensitive” is a term describing activities which directly affect the safety of one or more persons, including the operation of motor vehicles or heavy machinery or the carrying of firearms. Each department, in conjunction with the Drug and Alcohol Coordinator, shall identify all positions to be considered safety-sensitive positions due to the amount of time the employee spends performing safety-sensitive functions. Safety-sensitive includes, but is not limited to, functions performing work involving:
- (1) Flight service;
  - (2) Ports Police;
  - (3) Aircraft rescue and fire-fighting;
  - (4) Vessel traffic controllers;
  - (5) Aircraft operation area controllers;
  - (6) Safety-sensitive positions shall include administrative assistants and officers assigned to subsections (1) through (5), and supervisory positions assigned to subsections (1) through (5).
- (s) “SAMHSA” means the Substance Abuse and Mental Health Services Administration, U.S. Department of Health and Human Services.
- (t) “Screening test” (alcohol) means an analytical procedure to determine whether a covered employee may have a prohibited concentration of alcohol in his/her system.
- (u) “Substance Abuse Professional” (“SAP”) means a licensed physician (medical doctor or doctor of osteopathy), licensed or certified psychologist, social worker or employee assistance professional with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders, or a counselor who is certified by the national Association of Alcoholism and Drug Abuse Counselors Certification Commission.
- (v) “Under the influence” means that a covered substance is present in the body and is detected by breath alcohol testing (0.02 BAC or greater) or urine drug testing (a confirmed positive). NOTE: For the purposes of this Part, 0.02 BAC is established as the lowest conclusive detectable level in breath alcohol testing; however, noting breath odor is conclusive to remove an employee from service.

Modified, 1 CMC § 3806(a), (f), (g).

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: [Historical comments removed.]

**§ 40-40-515 Application**

This policy shall apply to:

- (a) All Commonwealth Ports Authority employees:
  - (1) While on Commonwealth Ports Authority-owned or leased property or while off-premises conducting Commonwealth Ports Authority business;
  - (2) While involved in off-premise activities during lunch break or other break periods where the employee is scheduled to return to work, or is on-call status or pre-shift periods.
  
- (b) All Independent Contractors, Vendors, Concessionaires, Employees.
  - (1) Independent contractors, vendors, concessionaires, and their respective employees are expected to be free from the effects of drug or alcohol use/abuse while conducting business for the Commonwealth Ports Authority or on Commonwealth Ports Authority premises.
  - (2) Contractor, vendor, or concessionaire employees found to be violating this policy will not be allowed to continue to conduct business and their supervisor, if appropriate, will be notified.
  - (3) All contracts entered into between the Commonwealth Ports Authority and contractors, vendors, and concessionaires shall incorporate this policy into the agreement.

Modified, 1 CMC § 3806(f), (g).

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: [Historical comment removed.]

**§ 40-40-520 Prohibited Conduct; Consequences**

- (a) Refusal to Submit to a Drug/Alcohol Test. The following acts shall be considered a refusal to be tested and shall be grounds for disciplinary action up to and including termination from employment:
  - (1) Any employee refusing to comply with a request for a drug/alcohol test. Such refusal shall be considered insubordination and the employee shall be terminated from employment;
  - (2) Any employee leaving the scene of an accident before a testing decision is made;
  - (3) Any employee consuming alcohol after an accident and before a testing decision is made;
  - (4) Any conduct that clearly obstructs the collection process;
  - (5) Refusing to submit to testing within one hour after receiving clear and specific instructions in writing from the drug coordinator or immediate manager to be tested;
  - (6) Failing to timely provide an adequate specimen for testing, without a valid medical explanation, after receiving clear and specific instruction to be tested. An MRO or consulting physician shall determine if there is any medical reason for failure to provide

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an adequate urine sample (shy bladder) or an adequate breath sample (shy lung); (7)

Failure to provide an adequate urine sample for testing as required by the designated laboratory within one hour after arrival at the testing site;

(8) Failing to report to the specimen collection site timely after being informed of the requirement to be tested (once employee is instructed, employee must report directly to the collection site and must submit urine sample).

(b) Providing False Information and/or Attempting to Contaminate or Alter a Urine Specimen. Any employee providing false information about a urine specimen and/or attempting to contaminate a urine specimen will be subject to termination from employment.

(c) Refusal or Failure to Comply with Treatment Recommendations. Any employee refusing or failing to comply with treatment and after-care recommendations will be subject to suspension or termination from employment.

(d) Testing Positive for Prohibited Drugs, Alcohol, and Unauthorized Substances on a First Test. An employee with a first confirmed positive drug/alcohol test result which has been verified as a positive result by a medical review officer will be:

(1) Suspended without pay for not less than 20 working days, and thereafter, immediately be placed on leave without pay (LWOP) status until he/she successfully completes an approved drug or alcohol rehabilitation program;

(2) Demoted to the next lower career ladder position and not less than two pay level steps. If the employee is not in a classified non-career ladder position, the employee shall be demoted two pay level steps. If the employee is non-classified, the employee's salary shall be decreased by 10%; and

(3) If the employee holds any safety-sensitive function, the employee will be automatically terminated from employment.

(e) Testing Positive for Prohibited Drugs, Alcohol, and Unauthorized Substances on a Second Occasion. Should an employee be retained or be re-employed following an initial positive test and then test positive for a prohibited drug, alcohol, or unauthorized substance on a second or subsequent occasion, and within five years of a prior positive drug/alcohol test, the employee will be terminated from employment.

(f) Sale, Transfer, Possession with Intent to Deliver. Any employee engaging in the sale or attempted sale, purchase, or transfer, or possession with intent to deliver illegal drugs or unauthorized substances on Commonwealth Ports Authority property, in Commonwealth Ports Authority vehicles or equipment, or while on Commonwealth Ports Authority business will be terminated. Law enforcement authorities will be notified.

(g) Possession. Any employee found in possession of any amount of illegal drugs, unauthorized substances, or alcohol (open container) in a Commonwealth Ports Authority vehicle or a personal vehicle on Commonwealth Ports Authority property while on duty or off-duty, or in a Commonwealth Ports Authority vehicle off Commonwealth Ports Authority property, or while conducting Commonwealth Ports Authority business on or off

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Commonwealth Ports Authority property shall be subject to termination of employment. Law enforcement authorities will be notified.

(h) **Use or Under the Influence.** Any employee found using or reasonably believed to be under the influence of an illegal drug, alcohol, or unauthorized substance at work or reporting to work with the intention of work shall not be allowed to perform their job while in that condition, and will be subject to drug/alcohol testing.

(i) **Admission of Using Controlled Substance after Testing.** If an employee voluntarily admits to his/her supervisor/manager of illegally using controlled substances after the drug testing was performed and the drug result is determined to be negative, the employee will still be considered to have illegally used drugs and shall be treated as having a confirmed positive testing in accordance with subsections (d) and (e).

(j) **Pre-duty Use of Alcohol.**

(1) **All Employees on all Work Occasions.** No employee shall report to work if they have used alcohol within four hours of reporting to work. No employee shall report to work with any detectable levels of alcohol in their system.

(2) **On-call Employees.** No employee who is on a designated on-call status shall consume alcohol during the period of his or her on-call status. Employees in an on-call status shall inform the supervisor of any inability to perform safety-sensitive functions before commencing work.

(3) Any employee, prior to reporting to work, that acknowledges the use of alcohol during an on-call status may be subject to disciplinary action and will be referred to the Commonwealth Ports Authority employee assistance program for assessment.

(4) Any employee reporting to work having consumed alcohol during on-call status and failing to notify their supervisor of such consumption will be regarded as being under the influence. Such employee will be tested and subject to disciplinary action for failure to report the use and other discipline under subsections (d) and (e), according to the results of the test.

(5) Any employee, who acknowledges use during an on-call status, but claims ability to perform his/her safety-sensitive function, will be required to take an alcohol test before performing work. An alcohol test may be in the form of a breathalyzer, urine test, or other appropriate testing mechanism as approved by the drug coordinator. If the alcohol test is 0.02 or above or another form of testing shows a positive result for alcohol use, the employee will be subject to disciplinary action according to subsections (d) and (e). If the alcohol test is below 0.02, the employee will not be allowed to work and will be subject to testing under subsection (h).

(k) **Failure to Notify Commonwealth Ports Authority of Criminal Drug Conviction.** Employees are required to notify the Commonwealth Ports Authority of any criminal drug statute conviction no later than five days after such conviction. Failure to do so within five days of conviction will result in termination (U.S. Drug Free Workplace Act of 1988).

(l) **Consequences of Violating the Prohibitions of this Section.**

(1) Employees testing positive in a required drug test and otherwise violating the

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prohibitions of this policy will be disciplined as provided in this section.

(2) An employee undergoing a drug rehabilitation program, or terminated from employment, shall surrender his/her valid government driver's license to operate government vehicles, as well as his/her airport or seaport badges to the Executive Director.

(3) An employee who is undergoing a drug rehabilitation program shall not be allowed on Commonwealth Ports Authority's premises unless cleared and deemed fit for duty by the MRO.

(4) An employee testing positive will be ineligible for employment benefits, such as nomination for employee incentive awards, annual increments, merit increases, off-island seminars or training, and promotional opportunities for a period of not less than two years after the date of completion of the required rehabilitation program.

Modified, 1 CMC § 3806(e)-(g).

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: [Historical comments removed.]

### **§ 40-40-525 Use of Legally Obtained Drugs**

(a) **Prohibition from Work.** Employees adversely affected by virtue of their use of any legally obtained drugs (prescription or non-prescription) cannot be allowed to perform a safety-sensitive job in such a condition.

(b) **Notification Required.** Prior to commencing work, each employee must report immediately to their supervisor/manager the use of any prescription or non-prescription drug which may affect driving performance or contains a cautionary label regarding the operation of equipment or vehicles. Employees taking medication with cautionary labels will provide proper medical authorization to work from a physician. Employees failing to report use of any prescription or non-prescription drug affecting work will be subject to disciplinary action up to and including termination.

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

### **§ 40-40-530 Policy Communication**

(a) **Current Employees.** All employees will receive a copy of the drug and alcohol policy. In addition, the policy will be posted in each departmental workplace.

(b) **New Employees.** All new employees shall be given a copy of the Commonwealth Ports Authority drug and alcohol policy as a part of new employee orientation. Each new employee shall acknowledge and certify in writing that he/she read the policy and will adhere to its conditions. Such acknowledgment will be kept in the employee's personnel file.

(c) **All employees transferring into the Commonwealth Ports Authority or new**

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employees being assigned to the Commonwealth Ports Authority will be notified of the specific requirement for drug/alcohol testing.

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

### **§ 40-40-535 Training**

- (a) Current Employees. All employees will receive information and training on:
  - (1) Effects and consequences of drug and alcohol use on personal health, safety, and the work environment;
  - (2) Manifestations and behavioral clues indicative of drug and alcohol use and abuse.
  
- (b) Supervisors/Managers. All supervisors/managers who are authorized to make reasonable suspicion determinations will receive training that meets Commonwealth Ports Authority standards on the physical, behavioral, and performance indicators of probable drug and alcohol use.
  
- (c) New Hires and Supervisors/Managers.
  - (1) All newly hired employees will participate in an alcohol and other drug abuse policy training.
  - (2) No supervisor or manager shall make reasonable suspicion determinations until they participate in a training as set forth in subsection (b) to acquaint them with the physical, behavioral, and performance indicators of probable drug use.

Modified, 1 CMC § 3806(f), (g).

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

### **§ 40-40-540 Role of the Medical Review Officer (MRO) and Consulting Physician**

- (a) The Medical Review Officer will perform the following duties:
  - (1) Recipient of Drug Testing Results.
    - (i) The MRO will be the sole recipient of SAMHSA drug testing results from the laboratory and positive results of all non-SAMHSA drug-testing results. After verification of positive or negative results and the applicant/employee has been consulted by the MRO, the MRO will contact the Commonwealth Ports Authority Drug and Alcohol Coordinator and inform him/her of the positive or negative result.
    - (ii) The MRO shall immediately contact the Commonwealth Ports Authority Drug and Alcohol Coordinator should the employee be a Ports Police officer or a fire fighter so the individual will be temporarily placed in a non-safety-sensitive job status until the verification process of the result has been completed.
  - (2) Verification of Positives: The MRO will verify that the laboratory report of a positive result is reasonable. The MRO, if necessary:
    - (i) When requested by the applicant/employee, will review the individual's medical history, including any medical records and biomedical information provided.

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- (ii) When requested by the applicant/employee, will afford the individual an opportunity to discuss the test results with the MRO or a local designated consulting physician.
  - (iii) Will determine whether there is a legitimate medical explanation for the result, including legally prescribed medication.
  - (iv) Will request, as needed, pertinent analytical records or require re-analysis of any specimen to verify results.
  - (v) Will determine that there is clinical evidence, in addition to the urine test, of unauthorized use of any opium, opiate, or opium derivative if the laboratory does not confirm the presence of 6-monoacetylmorphine.
  - (3) Post-accident Specimen Collection Facilitation. The MRO or local consulting physician, when requested, will assist in facilitating the collection of specimens related to an accident event.
  - (4) Fit for Work Consultation. The MRO or local consulting physician will, when requested, be available for consultation to determine the ability of an employee to report to work or continue work when under the influence of over-the-counter medication and/or prescription medication.
  - (5) Return to Work Consultation. The MRO or local consulting physician will, when requested, review the records and examine, when appropriate, all employees returning to duty after successfully completing a rehabilitation program. The MRO will consult with treatment counselors and the Commonwealth Ports Authority staff when making the evaluation.
- (b) The MRO will receive and be responsible for the release of test results. Test results will be released only under the following circumstances:
- (1) The MRO will report all positive test results (after review) and all positive and negative SAMHSA test results to the Executive Director and Drug/Alcohol Coordinator;
  - (2) The MRO may release the results to a third party only when the person tested signs an authorization for the release to an identified person;
  - (3) The MRO may release the results of a drug/alcohol test to the person who was tested, the Executive Director, and the Drug/Alcohol Coordinator.
- (c) Reporting Relationships and Limitations. The MRO will only report to the Executive Director and/or the Drug/Alcohol Coordinator.
- (d) Other Relationships.
- (1) Testing Laboratories. The MRO will be the primary contact for technical inquiries to the testing laboratory.
  - (2) Treatment and Rehabilitation Facilities. The MRO and the Drug/Alcohol Coordinator will have direct contact with substance abuse professionals regarding drug positives.
  - (3) Employee Assistance Counselors. The MRO will, if appropriate, confer with any Employee Assistance Counselor when evaluating a return to duty status.
- (e) Records and Reports.

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- (1) The MRO will retain records for five years of reports of individuals who do not pass a drug/alcohol test. Reports of individuals who do pass a drug/alcohol test will be retained for one year. Records related to the collection process will be retained for two years.
- (2) The MRO will provide the Commonwealth Ports Authority the necessary information for the preparation of federal reports.

Modified, 1 CMC § 3806(a), (f), (g).

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: [Historical comment removed.]

### **§ 40-40-545 Referral for Testing**

- (a) Pre-employment Testing.
  - (1) All offers of Commonwealth Ports Authority employment are contingent upon the applicant successfully passing a pre-employment drug test. No applicant will be assigned to work until they have passed a urine drug test. Drug testing will be at the applicant's own expense. 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.
  - (2) Test Specimens. Urine – All applicants being hired will be subject to SAMHSA or a NIDA panel test for illegal and unauthorized substances.
  - (3) Notification of Testing Requirement. Applicants will be notified of the requirement to pass a drug test at the time of application.
  - (4) Canceled Test. When a pre-employment drug test is determined to be a canceled test by the laboratory technician, the applicant will be required to immediately submit another urine specimen for testing.
  - (5) Reapplication After a Positive Test. Applicants who test positive without adequate explanation of the results will not be considered for employment for two years for any announced position. At which time, they must present proof of wellness upon application. Applicants who were previously released from Commonwealth Ports Authority employment as a result of a positive test must complete a waiting period of not less than two years after the date of release from their last Commonwealth Ports Authority employment, complete a drug rehabilitation program, and must submit a statement of fitness for duty from the MRO or a certified physician/counselor and sign an agreement in the form of a return to duty contract as described in NMIAC § 40-40-550(d).
  - (6) Release of Statement of Any Drug Testing History. Applicants who were previously employed with the Commonwealth Ports Authority or with the CNMI government, and applicants who have had an offer for Commonwealth Ports Authority employment withdrawn due to a previous positive urine test result, must provide the Commonwealth Ports Authority a written release of drug testing history for the two years immediately prior to the application date. If the candidate presents a drug testing history showing a positive drug test within two years prior to the application date, the offer of employment will be withdrawn unless the candidate submits a statement of fitness for duty

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and agrees to execute an agreement similar to a return to duty contract as described in NMIAC § 40-40-550( d).

(b) Reasonable Suspicion Testing. An employee will be subject to drug/alcohol testing if there is reasonable suspicion to believe the employee may be under the influence of some drug or alcohol.

(1) Reasonable Suspicion Defined. Reasonable suspicion for drug/alcohol testing means specific contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. In other words, a reasonable suspicion decision consists of specific facts, circumstances, physical evidence, physical signs and symptoms, or a pattern of performance and/or behavior that would cause a trained supervisor to reasonably conclude that an employee may have engaged in on-the-job drug or alcohol use, or may be under the influence of some drug/substance, including alcohol.

(2) Examples of reasonable suspicion include, but are not limited to:

(i) Unsatisfactory work performance, including accidents and incidents, adequately documented, and where some drug or alcohol related documentation indicates a linkage to a change in an employee's prior patterns of work performance;

(ii) Physical symptoms consistent with substance abuse;

(iii) Evidence of illegal substance use, possession, sale, or delivery;

(iv) Fights (to mean physical contact) and assaults, or erratic or violent behavior.

(3) Test Specimens.

(i) Breath – Employees will be subject to the collection of a breath sample(s) to determine if current consumption of alcohol is present.

(ii) Urine – Employees will be subject to a urine drug test for covered substances.

(4) Steps in Reasonable Suspicion Testing.

(i) Supervisor's Observation. All supervisors will receive training in the physical, behavioral, and performance indicators of probable drug and alcohol use in order to make reasonable suspicion testing decisions.

(ii) Objective Inquiry. When reasonable suspicion exists, the affected employee will be questioned and observed. A decision to request a specimen will be based on eyewitness reports, facts of the event, and observed physical and behavioral characteristics of the affected employee. The employee will be interviewed in a private area.

(iii) Management Notification. Upon determination that reasonable suspicion exists, the supervisor will notify the responsible manager and obtain authorization to conduct a reasonable suspicion drug/alcohol test. Such notification may be done in person or telephonically.

(iv) Relief of Duty. The employee will be relieved of duty and placed on administrative leave with pay until the results of the drug and/or alcohol test are complete and verified.

(v) Transportation Assistance. The employee will be accompanied to the collection site by a supervisor or manager. The employee will be provided transportation home. If the employee refuses and demands to drive his/her vehicle, the supervisor shall notify the Ports Police department.

(vi) Supervisor's Report. The supervisor ordering reasonable suspicion testing shall document in writing, in detail, the facts leading to the decision. This report shall be considered confidential and will be maintained in the employee's drug and alcohol test file,

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which is confidential, until needed for a disciplinary action. The report will be reviewed by the Drug/Alcohol Coordinator and management.

(c) Post-accident Testing. All employees will be subject to drug/alcohol testing if an accident occurs meeting the definitions of NMIAC § 40-40-510(a).

(1) Test Specimens.

(i) Breath – Employees will be subject to the collection of a breath sample(s) to determine if current consumption of alcohol is present.

(ii) Urine – Employees will be subject to a urine drug test for covered substances.

(iii) Blood – In accidents and incidents that cause severe injuries or damages, a blood sample may be drawn for future testing if breath alcohol testing is not readily available.

(2) Steps in Post-Accident Testing.

(i) Supervisor's Observation. All supervisors will receive training in the physical, behavioral, and performance indicators of probable drug and alcohol use in order to make reasonable suspicion testing decisions.

(ii) Objective Inquiry. When an accident occurs, the affected employee will be questioned and observed. A decision to request a specimen will be based on eyewitness reports, facts of the event, and observed physical and behavioral characteristics of the involved employee. Where warranted, the supervisor shall require the driver of any government vehicle or the operator of any government equipment involved in the accident to be tested.

(iii) Management Notification. Upon determination that a test is warranted, the supervisor will notify the responsible manager and obtain authorization to conduct a post-accident drug/alcohol test. Such notification may be done in person or telephonically.

(iv) Relief of Duty. The employee will be relieved of duty and placed on administrative leave with pay until the results of the drug and/or alcohol test are complete and verified.

(v) Transportation Assistance. The employee will be accompanied to the collection site by a supervisor or manager. The employee will be provided transportation home. If the employee refuses and demands to drive his/her vehicle, the supervisor shall notify the Ports Police department.

(vi) Notify the Hospital of the Need for a Specimen. If the employee is injured and unable to consent to a urine sample, wait until the treating physician determines the employee is able to understand a request, sign the necessary forms, and provide a sample.

(vii) 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.

(viii) Cooperate with Law Enforcement. Allow local law enforcement to conduct their investigation. The police may require a breath/alcohol test or blood specimen to be drawn for a legal determination of blood alcohol.

(ix) Notification to Employee. Tell the employee that a drug and/or alcohol test is required by regulation and refusal to cooperate will result in termination of employment.

(x) Notify the MRO. Explain the circumstances of the accident. The MRO will telephonically assist in facilitating the specimen collection process.

(xi) Collection Timing. 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

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tests for the presence of alcohol, cocaine, marijuana, opiates, amphetamines, or phencyclidine, upon written notice from the employee's supervisor. Except as otherwise provided, the Commonwealth Ports Authority shall pay for the testing.

(xii) **Collect Accident Documentation Promptly.** Immediately following the accident, accident investigators, either employees or contracted individuals, should be used to accurately document critical information. Note the times and dates of both the occurrence of the accident and of the specimen collection.

(xiii) **Return to Duty.** An employee may be returned to duty, at the supervisor's discretion, pending results from a post-accident/incident event if there is reasonable belief the employee was not under the influence at the time of the accident. If the employee has been medically examined, post-incident, he/she must receive a return to work clearance from the Commonwealth Ports Authority's MRO/consulting physician before returning to work.

(xiv) **Supervisor's Report.** The supervisor ordering post-accident testing shall document in writing, in detail, the facts leading to the decision. This report shall be considered confidential and will be maintained in the employee's drug and alcohol test file, which is confidential, until needed for a disciplinary action. The report will be reviewed by the Drug/Alcohol Coordinator.

(d) **Random Testing.**

(1) **Random Testing Defined.** Random testing means that drug tests are unannounced.

(2) **Selection Rate.** The selection rate will be no less than 25% for urine drug testing and 25% for breath alcohol testing.

(3) **Selection.** Using the lottery system, the Executive Director or the Drug/Alcohol Coordinator shall randomly select employees for unannounced drug testing through a random lottery number table that is matched with the employee's social security number or payroll identification number. Each employee selected for testing will remain in the random testing pool to ensure equal chance of being selected for testing.

(4) **Schedule of Testing.**

(i) **Safety-Sensitive Employees:** Testing will be on a quarterly basis and shall not be less than 25% of the employees designated as safety-sensitive.

(ii) **All other employees:** Testing will be on a yearly basis and shall not be less than 25% of all non-safety-sensitive designated employees.

(5) **Notification of Employee.** Employees, when notified of a random selection, shall cease work functions and immediately proceed to the collection site.

(i) If the selected individual is off-duty, he/she will be placed on the next quarterly selection process.

(ii) If the employee is notified and does not report for testing, it is considered a refusal.

(iii) A Commonwealth Ports Authority employee shall only be tested for alcohol before, during, or just after performing his/her duty.

(6) **Re-testing of a Split Specimen.** If the drug test result of the primary urine specimen is verified positive, the employee performing a safety-sensitive function may request that the MRO direct the split specimen to be tested in a different DHHS-certified laboratory for presence of the drug(s) for which a positive result was obtained in the test of the primary specimen.

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- (i) Such request must be in writing to the MRO and within 72 hours of the employee having been notified of the verified positive drug test result. Re-tests will be at the employee's expense.
- (ii) The employee will automatically be placed on leave without pay (LWOP) status for the duration of the re-testing procedure.
- (iii) Should the second test return and be verified by an MRO as a negative, the employee will be cleared, reimbursed of testing expenses, reinstated with back pay, and returned back to regular duty.
- (iv) Should the second test return and be verified by an MRO as a positive, the employee will automatically be terminated, if his/her position is a safety-sensitive function.
- (v) The employee shall have the right to appeal the dismissal to the Commonwealth Ports Authority Appeal Committee, in writing, within five working days after being notified of the second test.

Modified, 1 CMC § 3806(a), (f), (g).

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: [Historical comments removed.]

### **§ 40-40-550 Return to Duty Testing (Re-entry to Work) and Follow-Up Testing**

- (a) **Return to Duty Testing Criteria.** An employee, having previously tested positive for drugs or alcohol, or who voluntarily acknowledged being under the influence of drugs or alcohol while on duty, will be required to pass a drug/alcohol test before being returned to duty. Such employees will not be allowed to return to work until they:
  - (1) Test negative for the covered substances and are evaluated and released for duty by the MRO (if the prior incident was drug related); or
  - (2) Test below a 0.02 alcohol concentration and are released by a substance abuse professional (if the prior incident was alcohol related).
- (b) **Follow-up Testing.** An employee, requiring return to duty drug/alcohol testing, may be subject to unannounced drug/alcohol tests for up to 60 months after returning to work. There shall be no fewer than six tests in the first 12 months of follow-up testing. The specific number will be recommended by the substance abuse professional. All return to duty and follow-up testing costs will be paid by the employee.
- (c) **Test Specimens.**
  - (1) **Breath** – Employees will be subject to the collection of a breath sample(s) to determine if current consumption of alcohol is present.
  - (2) **Urine** – Employees will be subject to a urine drug test for Commonwealth Ports Authority-covered substances. Employees performing a safety-sensitive function will have two urine specimens (split specimen) collected for the covered substances test under the Commonwealth Ports Authority rule.

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(3) Canceled Test. When a return to duty drug test is determined to be a canceled test by the laboratory technician, the employee will be required to immediately submit another urine specimen for testing.

(d) Return to Duty Contract.

(1) Compliance with Rules. The employee shall sign an agreement to comply with Commonwealth Ports Authority rules, policies, and procedures relating to employment;

(2) Term. The term of the agreement shall be effective for five years after an employee's return to duty; and

(3) Breach of Contract. The agreement shall state that any violation of the return to duty contract shall be grounds for termination.

Modified, 1 CMC § 3806(e)–(g).

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: [Historical comment removed.]

### **§ 40-40-555 Specimen Collection**

(a) Specimen Collection Sites. Urine and/or breath specimens will be collected at sites approved by the Executive Director or a designated representative.

(b) Specimen Collection Persons. The only persons authorized to collect specimens are as follows:

(1) Urine – Persons trained in the SAMHSA or NIDA collection process;

(2) Breath – Persons (employees of the Commonwealth Ports Authority or the collection site) who have been trained as breath alcohol technicians in a Commonwealth Ports Authority or CNMI government approved training program;

(3) Blood – Persons authorized or certified by CNMI law to draw blood.

(c) Specimen Collection Protocol. Breath and urine specimens shall be collected strictly in accordance with established collection protocols, and shall strictly adhere to the collection requirements specified in 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs.

(d) Split Specimens. All urine collections for Commonwealth Ports Authority employees will be split into two specimens and shipped to the laboratory. One specimen, called the primary specimen, shall be tested for the Commonwealth Ports Authority. The other specimen, called the secondary specimen, shall be the property of the employee, to be tested only upon the request of the employee.

(1) Results. 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 and then report the result to the Drug/Alcohol Coordinator.

(2) Invalid Test. If the MRO decides that the test is invalid, the candidate shall immediately submit another urine specimen for testing.

(3) **Alternative Explanations for Positive Test Results.** 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, the MRO may request pertinent analytical records from the laboratory or require a re-analysis of the specimen.

(4) The MRO shall report the urine test as negative and shall take no further action if the MRO 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 inspections reports, quality assurance and quality control data, and other drug test results, the positive drug test result is scientifically insufficient for further action.

Modified, 1 CMC § 3806(a), (g).

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

#### **§ 40-40-560 Laboratory Testing**

(a) **Approved Laboratory Defined.** Only laboratories and laboratory systems approved for the testing of urine specimens by the U.S. Department of Health and Human Services, SAMHA, will be used.

(b) **Reports.** The laboratory will provide the Commonwealth Ports Authority with summary information on the number of tests and the results.

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

#### **§ 40-40-565 Supervisor Responsibilities**

(a) **Reasonable Suspicion and Post-Accident Testing.** Supervisors and managers are expected to base testing requests on objective observations and to thoroughly document all steps.

(b) **Confidentiality.** Supervisors and managers will communicate information regarding a fit for work incident strictly on a need-to-know basis.

(c) **Accountability.** Supervisors and managers who knowingly disregard the requirements of this policy with respect to fit for work concerns will be regarded as neglecting their responsibilities, and may be disciplined up to and including termination.

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

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Commission Comment: [Historical comment removed.]

### **§ 40-40-570 Employee Assistance and Rehabilitation**

(a) Intent. The Commonwealth Ports Authority highly encourages employees who have personal problems to utilize the employee assistance program (EAP) before those problems affect their job performance. Employees, who voluntarily seek assistance in dealing with emotional distress, personal health problems, or problems relating to alcohol or drug use before there is a performance issue, will be provided the same leave benefits as with any other health-related issue. Employees will be held accountable for acceptable job performance regardless of participation in or requests for referral to the EAP. In no case will disciplinary amnesty be granted to employees asking for assistance and referral.

(b) Management Referrals. Employees who are referred as a part of supervisory performance counseling or intervention are assured of confidentiality. Only those in the chain of responsibility and human resources may be aware of an EAP referral/treatment request.

(c) Positive Test Referrals. If an employee tests positive for the presence of alcohol or prohibited drugs and is retained as an employee, he/she shall be referred to the Commonwealth Ports Authority's EAP for assessment, and will be required to fulfill specified steps of treatment before being considered ready for evaluation for return to duty to any position at the Commonwealth Ports Authority. Commonwealth Ports Authority employees may be allowed the opportunity for rehabilitation following a positive alcohol or drug test under the following conditions:

- (1) Voluntary self-referrals by the employee prior to any type of incident or accident;
- (2) Management intervention/referral prior to any incident or accident;
- (3) First time positive drug or alcohol test (unrelated to any incident or accident) for an employee not performing a safety-sensitive function while under the influence.

(d) Return to Duty Evaluation. No employee shall return to work after a positive test for alcohol (0.02 or above) or drugs (positive finding from the laboratory and/or MRO) until they have been evaluated and released for duty by the MRO (for Commonwealth Ports Authority-covered substances) and/or a substance abuse professional (for non-Commonwealth Ports Authority-covered substances and alcohol).

(e) Confidentiality and Conduct. A direct request by the employee for assistance will be made a part of the employee's medical file. Any related performance issue or disciplinary action will be placed in the employee's personnel file.

(f) Free of Discrimination. Employees will not have job security or promotional opportunities jeopardized solely because of a request for help.

(g) Re-entry to Work.

(1) After Mandatory Referral. Employees re-entering the work force after a mandatory referral for a fit for work issue will agree to a re-entry contract. That contract may include, but is not limited to:

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- (i) A release to work statement from an approved treatment specialist;
  - (ii) Evidence of a plan setting out after-care and follow-up treatment procedures with the assistance of a counselor or a treatment specialist and MRO/consulting physician for a minimum of six months. Longer periods of follow-up may be specified by the assistance counselor;
  - (iii) A review and release for work by the Executive Director and the MRO/consulting physician (for drug positives) or the Executive Director and the Commonwealth Ports Authority's substance abuse professional (for alcohol positives);
  - (iv) A negative test for drugs, unauthorized substances and alcohol;
  - (v) An agreement to unannounced drug/alcohol testing (for up to five years);
  - (vi) A statement of expected compliance with the Commonwealth Ports Authority work rules, policies, and procedures;
  - (vii) Specific acknowledgement by the employee that violation of the agreement will be grounds for termination.
- (2) After Voluntary Self-Referral. Employees self-referring to a substance abuse treatment program, with the prior knowledge of their supervisor or the Commonwealth Ports Authority's management, must agree to a re-entry contract. The contract will include:
- (i) A release to work statement from an approved treatment specialist.
  - (ii) An evaluation and release to work by a designated Commonwealth Ports Authority representative.

Modified, 1 CMC § 3806(a), (f), (g).

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: [Historical comment removed.]

### **§ 40-40-575 Confidentiality, Record Keeping, and Reports**

- (a) Confidentiality.
  - (1) Test Results. All test results will be regarded as medical data and will be stored in a separate location than the employee's general personnel file. The status of an employee's drug/alcohol test will be communicated within the Commonwealth Ports Authority on a strict need-to-know basis.
  - (2) Employee Assistance Referrals. Any knowledge of an employee's attendance at a substance abuse treatment program will be treated the same as medical data and will be filed in the employee's medical file. The status of an employee's involvement with employee assistance and/or substance abuse treatment will also be communicated within the Commonwealth Ports Authority on a strict need-to-know basis.
- (b) Record Keeping.
  - (1) Test/Collection Records. Original test results will be maintained by the MRO. The Commonwealth Ports Authority will also maintain records received from the MRO regarding test results in a secure location with controlled access. All records relating to the urine and alcohol collection process will be maintained by the Commonwealth Ports Authority, the MRO, and the collection site (if other than the MRO and/or on-site

collection).

(2) Record Retention Schedule.

(i) Ten years – Records relating to the administration of the fit for work policy, including policy and program development, employee awareness and supervisor training, collection site training, and program administration.

(ii) Five years – Records of positive drug and alcohol tests, refusals to take required drug/alcohol tests, calibration documentation, and referrals to the substance abuse professional.

(iii) Two years – Records relating to the breath and urine collection process.

(iv) One year – Records of negative drug and alcohol test results.

(c) Commonwealth Ports Authority Reports. The Drug/Alcohol Coordinator will submit, to the Executive Director, an annual report summarizing the results of the anti-drug and alcohol misuse prevention program.

Modified, 1 CMC § 3806(a), (f), (g).

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: [Historical comment removed.]

#### **§ 40-40-580 Business Use of Alcohol**

(a) Never a Business Obligation. The consumption of alcohol should never be considered a business obligation.

(b) Separation of Business and Business Entertainment. Employees will not consume beverages containing alcohol while conducting business. Conducting business occurs at any event where the interests of the Commonwealth Ports Authority are being discussed and/or represented. Business entertainment takes place at events where the primary purpose is friendship and socialization. When in doubt, the best advice is to not drink. Lunch, with the expectation of returning to business or the workplace, would not be considered business entertainment.

(c) Commonwealth Ports Authority-Sponsored Social Events. Employees who consume alcohol-containing beverages at Commonwealth Ports Authority-sponsored social events should not drive after drinking.

History: Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Proposed 39 Com. Reg. 40425 (Dec. 28, 2017).

### **Part 600 - Miscellaneous**

#### **§ 40-40-601 Rules Governing Conflict of Interest and Nepotism**

(a) No person shall hold a position over which a member of his/her immediate family exercises supervisory authority.

(b) For purposes of this Part, the phrase immediate family shall be consistent with NMIAC § 40-40-445(b) to include the employee's parent (including step or adoptive), spouse, domestic partner, sibling (including step or half), child (including step, adopted, or children-in-law), grandparents, mother-in-law, and father-in-law (including step or adoptive).

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: [Historical comment removed.]

### **§ 40-40-605 Internal Operating Procedures**

Internal office operating procedure shall be governed by the Executive Director. From time to time, written memoranda, directives, and policies will be issued by the Executive Director. Instructions, guidance, and policies and procedures so issued shall be followed.

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

### **§ 40-40-610 Promulgation of Personnel Policies and Procedures**

All existing personnel and each new employee shall be advised of the existence of the personnel policies and procedures provided in this Chapter and all memoranda governing internal operating procedures. This Chapter and all applicable internal operating memoranda shall be kept in a place in each office where all employees will have access to the same.

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

### **§ 40-40-615 Employee Incentive Program**

(a) **Objective.** The Executive Director may establish an appropriate employee incentive award program to motivate Commonwealth Ports Authority employees, promote employee morale and increase productivity. Under this authority the following employee incentive program is hereby established.

(b) **Introduction.** The intent of this program is to recognize those employees who are responsible for significant Commonwealth Ports Authority-related accomplishments. Its employees are the Commonwealth Ports Authority's most important resource. Through this employee incentive program, it is the Commonwealth Ports Authority's intent to recognize deserving employees and encourage them to continue to produce positive results through their efforts.

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(c) Establishing an Employee Incentive Awards Committee. An employee award committee shall be appointed by the Executive Director to oversee the program and make sure that all actions and activities are effected in a timely and non-discriminatory fashion. Additionally, the committee shall be responsible for developing the award program and making it comprehensive to cover all departments and levels of employees. The committee shall be comprised of supervisors and managers, including the Executive Director or Deputy Director, and shall consist of no less than four members. Supervisors who do not serve in the committee may be appointed as alternates, as needed.

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: [Historical comments removed.]

### **§ 40-40-620 Governor Directives and Other Memoranda**

(a) Directives and other memoranda issued by the Governor of the Commonwealth of the Northern Mariana Islands that affect personnel matters shall be made applicable to the Commonwealth Ports Authority. The Executive Director may interpret and modify substantive provisions of such directives and other memoranda in order to tailor such documents to the Commonwealth Ports Authority.

(b) Any rules or regulations that conflict with the Governor's directives and memoranda in subsection (a) or the Executive Director's interpretation or modification of such documents shall be suspended until such directives or other memoranda are deemed no longer effective or applicable to the Commonwealth Ports Authority by either the Governor of the Commonwealth of the Northern Mariana Islands, the Commonwealth Ports Authority Executive Director, or the Commonwealth Ports Authority Board of Directors.

History: Readopted 41 Com. Reg. 42019 (June 28, 2019); Readopted 41 Com. Reg. 41666 (May 28, 2019); Adopted 41 Com. Reg. 41423 (Mar. 28, 2019); Proposed 40 Com. Reg. 41332 (Jan. 28, 2019).

### **Part 700 - Ethics Policy Guidelines for Commonwealth Ports Authority Board Members, Management, and Staff**

#### **§ 40-40-701 Purpose of Ethics Policy Guidelines**

(a) Most jurisdictions have statutes that prohibit board members and management employees from using their public offices for private gain. These statutes are sometimes criminal or quasi-criminal in nature.

(b) Many ethics infractions deal with the misuse of agency equipment such as vehicles, computers, and telephones. Other ethics infractions deal with inappropriate expense reimbursement.

(c) Members of the Commonwealth Ports Authority Board of Directors and its Executive Director must avoid any improper act or conduct, including the appearance of

impropriety.

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: [Historical comment removed.]

#### **§ 40-40-705 Conflict of Interest and Impartiality**

(a) Members of the Commonwealth Ports Authority Board of Directors and Commonwealth Ports Authority management staff must always act fairly, be non-partisan and unbiased when carrying out their duties and responsibilities.

(b) The goal of all Commonwealth Ports Authority agency decisions is to further the best interest of the public. Members of the Commonwealth Ports Authority Board of Directors and Commonwealth Ports Authority management staff must not have any conflict or potential conflict of interest in any matter requiring board action or management decision.

(c) Members of the Commonwealth Ports Authority Board of Directors and Commonwealth Ports Authority management staff must always avoid any improper act or conduct, including the appearance of impropriety.

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

#### **§ 40-40-710 Recusal Due to Conflict**

(a) A member of the Commonwealth Ports Authority Board of Directors must not neglect his/her duties and responsibilities as a Board member, including regular attendance at meetings, being prepared, and carrying out of committee assignments.

(b) A member of the Commonwealth Ports Authority Board of Directors must not participate in board decisions in which he/she will realize any direct or indirect financial or non-financial benefit. A Board member shall not participate in matters in which his/her personal interest would compromise his/her objectivity or where the appearance of bias would compromise his/her impartiality in a matter requiring board action or approval.

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

#### **§ 40-40-715 Public Communications**

(a) A member of the Commonwealth Ports Authority Board of Directors may not speak or act on behalf of the Board without proper authorization. He/she may, however, voice his/her opinion on a matter before the Board.

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(b) Commonwealth Ports Authority management staff must obtain authorization from the Board of Directors or the Executive Director before transmitting any official, public communication to the general public or to the news media.

(c) The Executive Director and the Chairman of the Board of Directors shall coordinate the matter of press releases and official public communications issued by the Commonwealth Ports Authority.

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

### **§ 40-40-720 Board Member Conduct**

(a) Members of the Commonwealth Ports Authority Board of Directors and Commonwealth Ports Authority management staff shall conduct themselves in a manner that promotes the integrity of the Commonwealth Ports Authority, the Board and management, and the Commonwealth Ports Authority's decision-making processes.

(b) Members of the Commonwealth Ports Authority Board of Directors shall recognize the responsibility of all board members to promote the public interest in its decision-making process.

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: [Historical comment removed.]

### **§ 40-40-725 Policy-making Role of the Board**

(a) A member of the Commonwealth Ports Authority Board of Directors shall not become involved in the day-to-day management and personnel matters of the Commonwealth Ports Authority, unless required by law, the Commonwealth Ports Authority by-laws, rule, or policy.

(b) The Board of Directors shall make policy decisions; the Executive Director and management staff shall implement the policies and decisions of the Board.

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

### **§ 40-40-730 Matters of Confidentiality**

(a) Members of the Commonwealth Ports Authority Board of Directors and Commonwealth Ports Authority management staff shall always maintain the confidentiality of documents and information that are confidential by nature or law.

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(b) Members of the Commonwealth Ports Authority Board of Directors and Commonwealth Ports Authority management staff shall protect the confidentiality of Commonwealth Ports Authority matters that are confidential in nature or by law, or matters which are still being considered by the Board, prior to Board decision, action, or approval.

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

### **§ 40-40-735 Disclosure of Conflict of Interest**

(a) Members of the Commonwealth Ports Authority Board of Directors shall disclose all actual or potential conflicts of interest(s) in any matter requiring Board action or approval.

(b) Upon becoming aware of a conflict of interest or that there is an appearance of a conflict of interest, a member of the Commonwealth Ports Authority Board of Directors shall immediately recuse himself/herself, on the record, from participating in such matter requiring Board action or approval.

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

### **§ 40-40-740 Other Inappropriate Conduct or Behavior**

(a) Members of the Commonwealth Ports Authority Board of Directors shall not engage in any inappropriate relationship, sexual or otherwise, with a Commonwealth Ports Authority official or employee while serving as a Board member.

(b) Members of the Commonwealth Ports Authority Board of Directors shall not direct, encourage, or knowingly allow any Commonwealth Ports Authority official or employee to engage in any inappropriate conduct or behavior with another Commonwealth Ports Authority official or employee, such as fraternizing with a subordinate employee.

(c) Commonwealth Ports Authority management employees and staff shall not withhold any information from the Board of Directors which relates to or affects a Board decision or action or which affects or would affect the integrity of the Commonwealth Ports Authority or the accomplishment of its mission.

(d) Members of the Commonwealth Ports Authority Board of Directors shall not engage Commonwealth Ports Authority staff in the performance of non-Commonwealth Ports Authority related activities. Board members shall not unnecessarily interfere with Commonwealth Ports Authority staff members' performance of their duties and responsibilities.

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(e) Inappropriate conduct or behavior by a member of the Commonwealth Ports Authority Board of Directors, management employee or staff is conduct or behavior which is contrary to applicable law, rules, regulations or policy, such as the Commonwealth Ethics Code, the Commonwealth Ports Authority's enabling statute, or these ethics policy guidelines.

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: [Historical comments removed.]

### **§ 40-40-745 Applicability of Ethics in Government Act**

These ethics policy guidelines shall be in addition to the Ethics in Government Act requirements and any other ethics law applicable to CNMI government officials and employees. Whenever any of these policies is in conflict with applicable law, the law shall govern.

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

### **Part 800 - Applicability**

#### **§ 40-40-801 In General**

The members of the Board of Directors and any independent contractor or consultant retained by the Board of Directors are not employees of the Commonwealth Ports Authority and the provisions hereof shall not apply to such persons, unless specifically made applicable herein.

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

### **Part 900 - Amendments and Modifications**

#### **§ 40-40-901 Amendments and Modifications**

The provisions of this Chapter contained herein may be modified or amended by a majority vote of the Personnel Affairs Committee. Any such amendment or modification shall become effective upon ratification by the Board of Directors and adoption in accordance with the Administrative Procedure Act (1 CMC § 9101, et seq.).

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: [Historical comment removed.]

**Part 1000 - Regulatory Authority for the Commonwealth Ports Authority Personnel Rules and Regulations**

**§ 40-40-1001 Applicability of CNMI Personnel Service System Rules and Regulations**

Whenever CPA's personnel rules and regulations in this chapter do not have any particular regulation on a personnel matter or issue affecting CPA or any of its employees. CPA shall refer to and shall apply the CNMI Personnel Service System Rules and Regulations [NMIAC, title 10, chapter 20.2] to address such personnel matter or issue, until such time as the CPA Board of Directors has adopted a regulation addressing such personnel matter or issue.

History: Amdts Adopted 41 Com. Reg. 42877 (Nov. 28, 2019); Amdts Proposed 41 Com. Reg. 42690 (July 28, 2019); Amdts Adopted 40 Com. Reg. 40924 (Sept. 28, 2018); Amdts Proposed 39 Com. Reg. 40425 (Dec. 28, 2017); Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: [Historical comment removed.]