

**TITLE 170: LOCAL RULES AND REGULATIONS; TINIAN AND AGUIGUAN
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**SUBCHAPTER 170-30.5
PERSONNEL RULES AND REGULATIONS**

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Subchapter Authority: Revised Tinian Gaming Control Act of 1989 §§ 5(8)(c) and 121.

Subchapter History: Amdts Adopted 39 Com. Reg. 39701 (June 28, 2017); Amdts Proposed 39 Com. Reg. 39594 (Apr. 28, 2017); Amdts Adopted 39 Com. Reg. 39213 (Feb. 28, 2017); Amdts Proposed 39 Com. Reg. 39160 (Jan. 30, 2017); Amdts Adopted 36 Com. Reg. 35481 (Sept. 28, 2014); Amdts Proposed 36 Com. Reg. 35208 (July 28, 2014); Amdts Adopted 25 Com. Reg. 21054 (Aug. 22, 2003); Amdts Proposed 25 Com. Reg. 20214 (May 29, 2003); Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Commission Comment: The Tinian Casino Gaming Control Act of 1989, Tinian Local Initiative 1 (effective Jan. 1, 1990) is codified at 10 CMC §§ 2511-25129. On August 18, 1993, the Superior Court issued an order approving and adopting a Revised Tinian Casino Gaming Control Act of 1989 (Revised Act). See *Commonwealth v. Tinian Casino Gaming Control Comm'n*, Civ. No. 91-0690 (N.M.I. Super. Ct. Aug. 18, 1993) (Order Approving and Adopting the Revised Tinian Casino Gaming Control Act of 1989), reprinted in the commission comment to 10 CMC § 25129.

The Revised Act § 5(1) establishes the Tinian Casino Gaming Control Commission (TCGCC), charged with the administration of the Revised Act. Section 5(8)(c) grants TCGCC the responsibility to promulgate such regulations

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as in its judgment may be necessary to fulfill the policies of the Revised Act, in accordance with Commonwealth law. Revised Act § 121 further delineates the regulations TCGCC is authorized to promulgate.

Prior to 2002, TCGCC published the following amendments to Personnel Regulations that had not been previously published in the Commonwealth Register: Amdts Adopted 21 Com. Reg. 16999 (Dec. 15, 1999); Amdts Proposed 21 Com. Reg. 16925 (Oct. 15, 1999); Amdts Adopted 21 Com. Reg. 16997 (Dec. 15, 1999); Amdts Proposed 21 Com. Reg. 16931 (Oct. 15, 1999). The April 2002 notice of proposed regulations stated: “The proposed TCGCC Personnel Rules and Regulations submitted herewith specifically repeal and supercede [sic.] any previous TCGCC rules or regulations dealing with the same subject matter, or any amendments thereto, including but not limited to, TCGCC Personnel Regulations “adopted” August 18, 1993 (without publication in the CNMI Commonwealth Register (C/R)) as modified by amendments published in C/R Vol. 21 No. 10 at page 16927 et seq. and C/R Vol. 21 No. 10 at page 16933 et seq.” See 24 Com. Reg. at 19049 (Apr. 29, 2002).

Tinian Local Law 14-1 (effective May 24, 2004) significantly amended the Revised Tinian Casino Gaming Control Act of 1989.

Part 001 - General Provisions

§ 170-30.5-001 Purposes

(a) Interpretation. The Tinian Casino Gaming Control Commission Personnel Rules and Regulations (rules and regulations), codified in this subchapter, should be construed and applied to promote the following purposes and policies.

- (b) Purposes and Policies. The underlying purposes and policies of these regulations are:
- (1) To standardize and centralize the personnel policies and practices of the Tinian Casino Gaming Control Commission (TCGCC);
 - (2) To establish a system of personnel administration based on merit principles and generally accepted methods of personnel management and employee conduct;
 - (3) To provide the TCGCC with competent and loyal personnel who, at all times, render impartial services according to the dictates of ethics and propriety;
 - (4) To build a career service which will attract, select, and retain the best qualified employees who shall hold their offices or positions free from coercion, discrimination, reprisal, or political influence;
 - (5) To provide incentives in the form of promotions and salary increases to hire and retain qualified and competent employees; and
 - (6) To provide equal opportunity for all present and future employees regardless of age, race, sex, color, religion, political affiliation or belief, marital status, physical, visual or aural handicap, national origin, or ancestry.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Commission Comment: The Commission inserted commas after the words “select” and “reprisal” in subsection (b)(4) and “origin” in subsection (b)(6) pursuant to 1 CMC § 3806(g).

§ 170-30.5-005 Authority to Administer

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The Personnel Officer is responsible for administering the rules and regulations in this subchapter subject to the review and approval of the TCGCC Standing Committee on Administration and the Tinian Casino Gaming Control Commission.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-010 Application of Regulations

The rules and regulations in this subchapter apply to all employees and employment positions in the TCGCC, except the legal counsel, executive director, and deputy director positions which shall be governed by the terms of their respective employment contracts with the Commission.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 36 Com. Reg. 35481 (Sept. 28, 2014); Amdts Proposed 36 Com. Reg. 35208 (July 28, 2014); Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-015 Severability

If any provision of the rules and regulations in this subchapter or any application thereof to any person or circumstance is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or the application of these rules and regulations which can be given effect without the invalid provision and, to this end, the provisions of these rules and regulations are “severable.”

Modified, 1 CMC § 3806(d), (f), (g).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Commission Comment: The Commission moved the final period inside of the closing quotation mark.

§ 170-30.5-020 Terms of Gender

Unless otherwise specified, all references to male or female gender contained in the regulations in this subchapter are for convenience only and shall be interpreted to apply equally to all persons irrespective of gender.

Modified, 1 CMC § 3806(d).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-025 Computation of Time

(a) Except as otherwise specified, all “days” referred to in the rules and regulations in this subchapter are deemed to be working days of the TCGCC;

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(b) In computing any period of time prescribed or allowed by these rules and regulations, the day of the act or event from which the designated period of time begins to run shall not be included. The final day of the allocated period shall conclude at 4:30 p.m. unless otherwise provided by the TCGCC; and

(c) The term “file” or “submit” except as otherwise provided, refers to the date of actual receipt by the TCGCC at its primary office and not the date of mailing or delivery to a public or private career*. Deposit in the United States mail shall not constitute “constructive delivery” to or “constructive receipt” by the TCGCC.

* So in original.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-030 Public Access to Personnel Information

The names, present and past position titles, grades, salaries, and duty stations of TCGCC employees is information available to the public upon request, except when the release of the information is prohibited under the law or the information is sought for the purpose of solicitation. Except as otherwise stated herein, all other information related to an individual’s employment or application for employment with the TCGCC shall be considered as confidential and public access to such information shall be denied unless disclosure is required by applicable statutory law or judicial proceedings.

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-035 Selection for Employment

Except as constrained by applicable CNMI labor and immigration laws, and related rules and regulations, all applicants for employment shall be equally considered on merit and ability without regard to age, race, color, sex, religion, political affiliation or belief, marital status, physical, visual or aural handicap, national origin, or ancestry. However, in selecting between multiple qualified applicants for a position, it shall be the policy of the TCGCC to prefer certain residency groups in the following priority:

- (a) U.S. citizens or permanent residents who are current residents of Tinian;
- (b) U.S. citizens or permanent residents who are current residents of the Commonwealth of the Northern Mariana Islands;
- (c) Other U.S. citizens or permanent residents; and
- (d) All others.

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History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

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

§ 170-30.5-040 Definitions

As used in the regulations in this subchapter, unless the context otherwise requires, the following meanings apply:

- (a) “Administration Chairman” means the Commissioner currently serving as chairman of the TCGCC Standing Committee on Administration.
- (b) “Best qualified candidate” means an eligible candidate who ranks at the top when compared with other eligible candidates for either initial hiring or a promotion within a general group, i.e., one who is either qualified or highly qualified.
- (c) “Chairman” means the Chairman of the Commission.
- (d) “Commission” means the currently appointed confirmed and serving Commissioners of the Tinian Casino Gaming Control Commission (TCGCC) as a collective body.
- (e) “Commonwealth” or “CNMI” means the Commonwealth of the Northern Mariana Islands.
- (f) “Compensation” or “wages” or “salary” are used interchangeably in the rules and regulations in this subchapter and means the monetary payment made by the TCGCC to appointed Commissioners, or TCGCC exempt and non-exempt employees in exchange for such Commissioner or employee(s) performing his duties and responsibilities pursuant to a contract of employment or as provided by law or both. Compensation does not include per diem and travel allowances that do not exceed the rates approved by the Commission; rental value of a home or a housing allowance provided to the employee by the Commission; employment benefits such as life or health insurance premiums paid on behalf of the employee by the Commission; any payment provided by these rules and regulations if such payment is received by a Commissioner or an employee in settlement of any overtime pay or annual leave or sick leave previously earned or accrued.
- (g) “Competition” means the selection process in which candidates compete with each other for hiring or promotion to fill a specific position vacancy.
- (h) “Demotion” means either a voluntary or involuntary transfer or reclassification of an employee to a lower position, class, or pay level.
- (i) “Deputy Executive Director” means the appointed or acting Deputy Executive Director of TCGCC.

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- (j) “Employee” means any individual receiving regular compensation, wages, or salary payments from the TCGCC regardless of whether the position held by such employee is classified as exempt or non-exempt. This definition includes appointed TCGCC members, staff members, part-time employees, and temporary employees.
- (k) “Executive Director” means the appointed or acting Executive Director of the TCGCC.
- (l) “Exempt position” or “exempt employee” means the Commissioners, Executive Director, Deputy Executive Director, legal counsel, and other professional positions as from time-to-time designated by the TCGCC. An exempt employee is not subject to the overtime provisions of the federal Fair Labor Standards Act.
- (m) “Full-time employee” or “full-time” means, for each non-exempt employee, as defined herein, undertaking and discharging the responsibilities of the position during a standard work week. For each exempt employee or Commission member full-time means devoting the necessary time to the designated or delegated employment related undertaking in order to discharge the duties and responsibilities of the position regardless of the number of hours involved.
- (n) “Highly qualified candidate” means an applicant whose experience, training, knowledge or unique skill or ability or potential substantially exceed the qualification standard for the vacant position to a degree that he is likely to perform in a superior manner.
- (o) “Immediate family” means, depending on its usage, those people identified in §§ 170-30.5-520(a) and 170-30.5-1101(f) of this subchapter. The applicability of the definitions of immediate family set forth herein is limited to the unique matters related to TCGCC employment and the definitions of immediate family set forth herein are not intended to be used in interpreting any other rules or regulations adopted by the TCGCC including, but not limited to, the TCGCC Procurement Rules and Regulations.
- (p) “Legal counsel” means the in-house TCGCC legal counsel who is a full-time exempt employee of the TCGCC.
- (q) “Marriage” refers to any traditional spousal relationship whether such relationship is created by a recorded nuptial or common-law practice.
- (r) “Non-exempt position” or “non-exempt employee” means any TCGCC employee other than the Commissioners, Executive Director, Deputy Executive Director, legal counsel, and other professional positions as from time-to-time designated by the TCGCC. A non-exempt employee is subject to the overtime provisions of the federal Fair Labor Standards Act.
- (s) “Personnel Officer” means the individual directed by the Commission to perform the duties and functions set forth in the rules and regulations in this subchapter.
- (t) “Position change” means a promotion, transfer, or demotion during an employee’s

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continuous employment.

(u) “Promotion” means the transfer or reclassification of an employee to a higher position, class, or pay level.

(v) “Public Auditor” means the CNMI Office of the Public Auditor (OPA).

(w) “Qualified candidate” means an applicant who quantitatively satisfies the minimum education, experience, or other requirements of a position as stated in the position announcement.

(x) “Regulations” means the TCGCC Personnel Rules and Regulations codified in this subchapter.

(y) “Remote work site” means any assigned duty location of a TCGCC employee which location is away from the principle office of the Commission.

(z) “Rules” means the TCGCC Personnel Rules and Regulations codified in this subchapter.

(aa) “Salary” means the same as compensation.

(bb) “Spouse” refers to either husband or wife whether such relationship is created by a recorded nuptial or common-law practice.

(cc) “TCGCC” means the same as Commission and is an abbreviation for the Tinian Casino Gaming Control Commission.

(dd) “Wages” means the same as compensation.

(ee) “Working day” means a day during which one or more employees are specifically assigned to perform their duties or responsibilities. (See § 170-30.5-115, Standard Work Week). However, for purposes of § 170-30.5-025 of this subchapter if a working day falls on a Saturday, Sunday or holiday (see § 170-30.5-120, Holidays) any act or action which would otherwise be required to be completed or performed may be completed or performed on the next day, Monday through Friday, which is not a holiday.

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

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Commission Comment: In subsection (z), the Commission inserted the final period. The Commission inserted commas after the words “class” in subsection (h), “wages” and “employees” in subsection (j), “counsel” in subsections (l) and (r), “transfer” in subsection (t), “class” in subsection (u), “experience” in subsection (w), and “rules” in subsection (z) pursuant to 1 CMC § 3806(g).

§ 170-30.5-045 Employee Responsibility

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Violations of the rules and regulations in this subchapter may be cause for disciplinary action, including termination, which would be in addition to any other penalty imposed by law. It is the responsibility of employees to both familiarize themselves and comply with these rules and regulations. Employees are expected to consult with their supervisors or the Personnel Officer on general questions they may have regarding the applicability of these rules and regulations. On specific matters and for guidance on questions of conflict of interest, employees may directly seek authoritative advice and guidance from the Public Auditor.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-050 Repeal, Modification, or Amendment

The provisions of the TCGCC Personnel Rules and Regulations codified in this subchapter may be repealed, modified, or amended only by a majority vote of the Commission. Any repeal, modification or amendment shall become effective upon ratification by the Commission after adoption and publication in accordance with PL 17 TTC § 1, adopted by PL 3-90, the CNMI Administrative Procedure Act, now codified at 1 CMC §§ 9101, et seq.

Modified, 1 CMC § 3806(d).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

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

Part 100 - Personnel Administration

§ 170-30.5-101 Personnel Management Concepts

Personnel management is the responsibility of the Commissioners, Executive Director, Personnel Officer, managers, and supervisors who direct the work of others. It is the policy of the TCGCC to continuously promote human relations and communication in order to provide all employees the opportunity to satisfy their needs for recognition, a sense of personal worth and personal achievement. To accomplish these goals, the Personnel Officer has the responsibility to plan, develop, and implement programs and procedures which give effect and meaning to the rules and regulations in this subchapter, giving due consideration to the changing needs of the several programs of the TCGCC now in progress or to be initiated in the future.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

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

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§ 170-30.5-105 The Personnel Officer

The TCGCC Executive Director is designated to serve as the Personnel Officer to manage and discharge the personnel function pursuant to the rules and regulations in this subchapter. Subject to future requirements, the Commission may appoint another responsible employee to serve as Personnel Officer replacing the Executive Director. The Executive Director may designate a TCGCC employee as a personnel specialist to handle administrative duties and responsibilities related to the implementation of these rules and regulations and other ministerial duties related to personnel administration.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-110 Duties of the Personnel Officer

Subject to the rules and regulations in this subchapter, the Personnel Officer shall:

- (a) Direct and supervise all of the personnel administrative and technical activities of the TCGCC;
- (b) Advise the Commission on matters concerning personnel management, administration, employee training, and discipline;
- (c) Formulate and recommend personnel policies and applicable rules or regulations to the Commission;
- (d) Foster and develop programs to improve the personnel system and employee efficiency;
- (e) Administer recruitment programs and provide recommendations to the Commission regarding employees or applicants meeting specific qualification requirements;
- (f) Develop training programs for improvement of employee skills;
- (g) Provide recommendations to the Commission on administration of merit advancement programs;
- (h) Establish and maintain records of all personnel employed by the TCGCC; and
- (i) Administer and interpret the TCGCC Personnel Rules and Regulations codified in this subchapter.

Modified, 1 CMC § 3806(d), (g).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

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

§ 170-30.5-115 Standard Work Week

The standard TCGCC work week for each non-exempt employee consists of eight hours each work day, Monday through Friday between the hours 7:30 a.m. to 4:30 p.m. with one hour off for lunch, or, another eight hour, five day work week as may be prescribed for certain positions.

Modified, 1 CMC § 3806(e).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-120 Holidays

The TCGCC shall observe all official legal holidays of the government of the Commonwealth. With the exception of personnel required for essential services, all employees shall be granted holidays off with pay and without charge to leave or compensatory time-off balances. Any employee required to work on a legal holiday shall be compensated in accordance with the overtime compensation provisions set forth herein. An employee who is not on full-time status during the week immediately before and immediately after the holiday shall be compensated according to applicable federal and/or CNMI law.

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-125 Timekeepers

(a) The Personnel Officer shall appoint a person to serve as timekeeper at each location where non-exempt TCGCC personnel are regularly assigned to work.

(b) Each timekeeper will be responsible for recording and certifying time and attendance records of the non-exempt employees at the assigned location. Timekeeping duties shall be accomplished during working hours. Overtime shall not be authorized for timekeeping related responsibilities. The timekeeper will also record and certify leave time taken by employees at the assigned location. The method of recording and certifying time, attendance, and leave shall be prescribed by the Personnel Officer.

(c) Time and attendance records, kept by the timekeeper, are subject to audit at least once a year by the Personnel Officer or his designee.

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

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(e) Any employee who wishes to challenge the accuracy of any timekeeper's records may institute an employee appeal under the grievance process and grievance procedure set forth in §§ 170-30.5-735 and 170-30.5-740 of this subchapter.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

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

Part 200 - Types of Employment

§ 170-30.5-201 Probationary Employment

(a) Any permanent position may be filled on a probationary basis in order to provide a newly hired or transferred or promoted employee the opportunity to demonstrate satisfactory performance in the new position. The initial probationary period shall not exceed three months from the beginning of employment in the new position. Upon completion of the probationary period, one of the following must occur:

- (1) Conversion to permanent status; or
- (2) Extension of probation for a period not to exceed an additional three months; or
- (3) Return to the prior permanent TCGCC position from which transferred or promoted; or
- (4) Discharge from employment in the case of a newly hired employee.

(b) No employee shall serve more than six months in the same or similar probationary position within the TCGCC. Probationary employees who are newly hired shall be covered by and receive the benefits provided to permanent or full-time employees by either the rules and regulations in this subchapter, or the Revised Tinian Casino Gaming Control Act of 1989 or other applicable CNMI laws, rules, and regulations only to the extent specifically provided herein.

Modified, 1 CMC § 3806(d), (e), (f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

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

§ 170-30.5-205 Permanent Employment

A permanent employee is a person hired to work in a full-time position which has been established based upon the continuing needs of the TCGCC with such position authorized to continue longer than one year. All permanent employees are entitled to be covered by and receive the full benefits of the rules and regulations in this subchapter, the Revised Tinian Casino Gaming Control Act of 1989 and other applicable CNMI laws, rules, and regulations.

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Modified, 1 CMC § 3806(d), (f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

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

§ 170-30.5-210 Emergency Employment

(a) An emergency hiring may be authorized by the Commission with or without a request from the Executive Director either when a serious need or emergency exists or when necessary to prevent the stoppage of the TCGCC providing essential services. To the extent practicable under the circumstances, position announcement and competitive selection procedures shall apply to an emergency hiring. All persons employed under this provision shall be required to meet the minimum qualification standards of the position they are hired to fill on an emergency basis. The basis of the emergency shall be documented in the employee’s official personnel files by the Executive Director.

(b) All positions filled by emergency hiring procedures shall be considered probationary positions and subject to all the conditions of § 170-30.5-201 of this subchapter. Emergency employees are not entitled to be covered by and receive the benefits provided to permanent or full-time employees by either the rules and regulations in this subchapter or the Revised Tinian Casino Gaming Control Act of 1989 or other applicable CNMI laws, rules, and regulations unless specifically provided herein.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

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

§ 170-30.5-215 Temporary Employment

(a) Temporary employment is authorized when it is anticipated that an employee will occupy a position for a period not to exceed three months. Temporary employment may be extended for one additional three month period when extension is made necessary due to unforeseen circumstances.

(b) All positions filled by temporary hiring procedures shall be considered probationary positions and subject to all the conditions of § 170-30.5-201 of this subchapter. Temporary employees are not entitled to be covered by or receive the benefits provided to permanent or full-time employees by either the rules and regulations in this subchapter or the Revised Tinian Casino Gaming Control Act of 1989 or other applicable CNMI laws, rules, or regulations unless specifically provided herein.

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

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History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

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

§ 170-30.5-220 Limited-term Appointment

A limited-term appointment is to be used when there is a temporary need to fill a position which has either been funded for a limited period or involves a project with specific completion dates. A limited term appointment is not to be used to create or fill a permanent position unless first approved by the Commission.

(a) A limited-term appointment is one in which the appointee is appointed for a specific period of not more than one year. To the extent possible limited-term appointments are to be filled by a competitive selection process as set forth in part 300 of this subchapter. Any disciplinary action taken in respect to a limited term appointment is subject to the adverse action process set forth in the rules and regulations in this subchapter. The non-renewal or non-reappointment of a limited term appointee is not an adverse action.

(b) With the approval of the Commission, an employee may be reappointed or a new employee may be appointed to a limited term appointment following the expiration of the initial limited term of appointment. The Executive Director shall justify, in writing, to the Commission, requests for a new limited term appointment following the expiration of the initial limited term of appointment.

(c) After the expiration of the term of the initial limited-term appointment, the position filled by the limited term appointment must be filled with a permanent employee or a limited term appointment approved by the Commission within 180 days of the expiration of the previous limited term or the position shall be deemed eliminated.

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

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-225 “Acting” Appointment

An “acting” appointment is the official written authorization for an employee to act in place of a supervisor for a period of up to thirty days. When the supervisor’s absence exceeds the initial thirty day period, a new authorization for that employee to continue in the position for one additional thirty day period may be issued or another employee may be appointed for one additional thirty day period.

(a) Whenever the acting appointment exceeds sixty days, an employee shall be temporarily promoted to fill the position if the employee meets the qualification standards of the position.

(b) If the temporarily promoted employee meets the qualification standards of the position,

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while serving in the acting appointment the employee shall be entitled to receive a salary equivalent to the salary received by the previous incumbent of the position.

(c) If the acting appointment exceeds sixty days and the temporarily promoted employee does not meet the qualification standards of the position, the employee, while serving in the acting appointment, shall be compensated with a two step increase in the appointees current pay level, provided such increase does not exceed the maximum step for the current classification of the employee.

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

Modified, 1 CMC § 3806(e).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-230 Detail

A detail is the temporary appointment of an employee to a different position for a specified temporary time period, with the employee returning to the regular position and duties at the end of the detail. A position is not filled by a detail, as the employee continues to be the incumbent of the position from which he is detailed. Normally, whenever it is anticipated that the need for a detail will exceed ninety days, it is more appropriate to effect a reassignment as probationary employment pursuant to § 170-30.5-201 if the employee is qualified at the higher grade. Individuals who do not meet the qualification standards for the promotion to the higher grade may be detailed pursuant to this section but cannot be temporarily promoted. An employee must voluntarily agree to any detail period which exceeds ninety days. An employee may also be detailed to a set of duties, which must be specifically described in the assignment, when the Commission's need for necessary or emergency services cannot be obtained by other desirable or practical hiring procedures.

Modified, 1 CMC § 3806(c), (e), (f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-235 Pre-employment Conditions and Standards

(a) There are special conditions and standards of employment which are considered implicit to successful performance in certain positions. These conditions may relate to unusual hours of work, physical or medical standards, maintenance of a license, maintenance of a health certification, availability during off-hours, or need to frequently travel. Such conditions shall be made part of the job description and position announcement. Candidates selected for the position must be advised of any special conditions and agree, in writing to those conditions.

(b) All persons offered employment in a non-exempt position with the TCGCC must be

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examined by medical personnel and certified as physically capable of performing the duties of the position. They must be free from communicable diseases and any present or potential medical condition which would be detrimental to the successful performance of their duty or the health of other employees, or reflect discredit upon the TCGCC. Persons offered positions with the TCGCC must also submit to a urine test for the presence of drugs as more fully set forth in part 1200 of this subchapter.

(c) Physical and medical examinations shall be administered by medical personnel authorized by the Commonwealth government to conduct such examinations for employment purposes, and shall be recorded on forms prescribed or approved by the Personnel Officer. Urine tests for candidates shall be conducted in accordance with part 1200 of this subchapter.

Modified, 1 CMC § 3806(c), (d).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Part 300 - New Employee Hiring

§ 170-30.5-301 Policy

(a) Within the restrictions and limitations imposed by applicable CNMI labor and immigration laws, and related rules and regulations the Commission maintains, as a fundamental policy, the providing equal employment opportunity in all of its operations and in all areas of employment practice and will function in an effort to assure that there shall be no discrimination against any employee or applicant for employment on grounds of race, color, political affiliation or belief, marital status, religion, sex, age, physical, visual, or aural handicap, national origin, or ancestry.

(b) This policy extends to recruiting hiring, training compensation, overtime, job classification, assignments, working conditions, promotions, transfers, and all other terms and conditions of employment.

Modified, 1 CMC § 3806(f), (g).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b). In subsection (a), the Commission inserted the final period. The Commission inserted commas after the words “origin” in subsection (a) and “transfers” in subsection (b) pursuant to 1 CMC § 3806(g).

§ 170-30.5-305 Preference to Merit Promotion

When a position vacancy is identified, the attributes of existing TCGCC employees will first be reviewed and evaluated to determine if a possibility exists for merit promotion. If a qualified employee is identified the TCGCC merit promotion program described in part 700 of this subchapter shall be the basis for filling the vacant position. For entry level positions and positions where there is no opportunity for merit promotion, new employees will be recruited

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and hired in accordance with the rules and regulations in this subchapter.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-310 Competitive Selection

Consideration of candidates for employment by the TCGCC shall be competitive and open to all qualified individuals. To be considered, individuals responding to a position announcement will submit only true and correct records and information relating to their education, training, experience, and such other information as requested by the announcement.

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-315 Position Announcements

(a) Position announcements shall contain, at a minimum, the following information:

- (1) Announcement number;
- (2) Position title and salary level or salary range;
- (3) General description of the duties and responsibilities;
- (4) Minimum qualifications for the position regarding education, general experience, specialized experience, and such additional information as may be deemed appropriate or necessary;
- (5) Special conditions of employment;
- (6) Instructions on how to apply for the position including place to apply, form of application required, and any documentary support required; and
- (7) Opening and closing dates of the application period which, unless exigent circumstances exist, shall encompass not less than fifteen calendar days.

(b) If, during the initial application period the response is inadequate, the application period may be extended by the Executive Director provided that the extension shall be publicized, to the extent possible, in the same manner as the original position announcement.

(c) All position announcements shall contain a statement reserving the right of TCGCC to extend or cancel, with or without cause, the hiring(s) set forth in the announcement.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-320 Publicity

Publicity shall be given to position announcements through posting at the TCGCC office and, if appropriate, other prominent public locations designated by the Personnel Officer. In addition, a public announcement or advertising through news media should be used when deemed necessary

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or appropriate to attract qualified candidates.

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-325 Screening of Applications

After the application period closing date, the personnel specialist (or other designee of the Executive Director) shall review all applications received in response to a particular position announcement to determine that each applicant meets the minimum education, experience or other requirements set forth in the announcement. Those meeting or exceeding the minimum requirements will be declared qualified candidates and referred for evaluation. Applicants who do not meet the minimum qualifications or who submitted materially incomplete applications shall be excluded from further evaluation. Where doubt exists as to conformance with minimum standards, the personnel specialist shall refer the application to the Executive Director for review. If, based on the complete application, the Executive Director is unable to arrive at a determination as to minimum qualification of the applicant, the candidate will be deemed qualified and referred for evaluation.

Modified, 1 CMC § 3806(f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-330 Evaluation of Qualified Candidates

Comparative evaluation of all qualified candidates for a position shall be completed by an initial evaluation panel consisting of Executive Director or designee, (other than the personnel specialist or designee of the Executive Director who performed the initial screening of applicants) and the manager, or other person who will supervise the new employee and one or more others appointed by the Chairman. Unless circumstances prohibit, the evaluation should include an oral interview with each qualified candidate. Evaluations shall be both practical and reasonable, to examine and evaluate each applicant's qualifications, capacity, aptitude, character, and relative fitness necessary to perform the duties of the position to be filled. Actions of the evaluation panel, including observations and conclusions regarding the positive and negative attributes for each qualified candidate, shall be documented in writing and maintained in the applicants official personnel file if the applicant is hired.

Modified, 1 CMC § 3806(f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Commission Comment: The Commission inserted a comma after the word "character" pursuant to 1 CMC § 3806(g).

§ 170-30.5-335 Selection of Successful Candidates

When the evaluation panel has completed its evaluation of the qualified candidates who responded to a position announcement, the Executive Director or designee shall present a written

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summary of recommendations at a meeting of the Commission. This summary shall include the panel's conclusion as to the best-qualified candidate for the position. A formal offer of employment to any candidate can only be made after a motion and an affirmative vote by a majority of a quorum of the Commission present at the meeting. The adopted motion of the Commission shall include the authorized salary and preferred starting date. After action by the Commission, the selected candidate and the unsuccessful applicants shall be promptly notified of the Commission's decision by the Executive Director or personnel specialist.

Modified, 1 CMC § 3806(f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-340 Cancellation of Position Announcements

Position announcements may be cancelled with or without a cause by the TCGCC. To the extent practical, the cancellation should be publicized in the same manner as the original position announcement.

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-345 Non-competitive Hiring

(a) Non-competitive hiring of an otherwise highly qualified candidate for employment may be used only when, in the judgment of a majority of a quorum of the Commission present at the meeting when the decision is made, that one of the following conditions or circumstances exist:

- (1) The position to be filled requires unique or special qualifications or training which do not realistically permit competition; or
- (2) There are a lesser number of qualified applicants than there are positions to be filled.

(b) Non-competitive hiring shall not require comparative evaluation by an evaluation panel as provided herein but shall require compliance with the requirements of § 170-30.5-335 by an affirmative vote by a majority of a quorum of the Commission present at the meeting prior to an offer of employment being made.

Modified, 1 CMC § 3806(c).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Commission Comment: The Commission corrected the spelling of the word "judgment" in subsection (a) pursuant to 1 CMC § 3806(g).

§ 170-30.5-350 Personnel Action Form Required

(a) No new employee shall report to work nor shall a promoted employee assume new duties without a proper personnel action form first being prepared and approved. Employment of any person without an approved personnel action form is prohibited. In addition to any other penalty specifically provided by law, supervisors or management officials who permit an employee to

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report to work without an appropriate and formally approved personnel action form shall be in violation of the rules and regulations in this subchapter.

(b) Retroactive personnel actions shall not be undertaken unless approved by a majority of a quorum of the Commission present at the meeting which considers and evaluates the requested retroactive personnel action.

(c) In addition to a personnel action, an employment contract, governing the employment terms of the Legal Counsel, the Executive Director, and Deputy Executive Director shall be executed.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 36 Com. Reg. 35481 (Sept. 28, 2014); Amdts Proposed 36 Com. Reg. 35208 (July 28, 2014); Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Part 400 - Positions and Compensation

§ 170-30.5-401 Compensation Philosophy

Compensation for the various positions within TCGCC shall include payment within a defined salary range for each position. Factors to be considered in establishing each salary range include:

- (a) Kind of work and degree of difficulty;
- (b) Responsibility associated with the position;
- (c) Kind, quality, and level of qualifications required;
- (d) Retention of competent employees;
- (e) Extensive employee training required for effective gaming regulation;
- (f) Unique abilities required for effective gaming regulation; and
- (g) Relationship to salary ranges established for other TCGCC positions based on the principle of equal pay for equal work and responsibility.

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-405 Position Salary Ranges

Salary ranges for either an individual position or a class or group of positions may be periodically added, deleted, or modified by a resolution adopted by a majority of a quorum of the Commission present at the meeting when such action is taken.

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History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

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

§ 170-30.5-410 Establishing Salary upon Hiring

Beginning salary will normally be set at the lower end of the compensation range established for the position. Should a higher rate be deemed necessary to hire a qualified employee and such salary is consistent with and appropriate to the qualifications of the applicant, the salary may be fixed by the Commission at any level within the salary range for such position.

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-415 Overtime Policy

- (a) All overtime employment, in order to be credited to an employee, shall be approved in advance by a Commissioner or the Executive Director.
- (b) Any non-exempt employee who is directed to work and does work in excess of eight hours in a single work day and more than 40 hours in a single work week shall be entitled to overtime for the hours in excess of 40 hours at the rate of one and one-half times his basic hourly-equivalent rate;
- (c) Any non-exempt employee required to work on a legal holiday shall be entitled to overtime for the hours at the rate of two times his basic hourly-equivalent rate;
- (d) No employee shall be paid overtime compensation during a week in which annual leave was also taken except to the extent that overtime hours exceed the annual leave taken in the same week;
- (e) In the absence of available funds for overtime compensation, compensatory time-off shall be granted at the rate of one and one-half hours of compensatory time for each overtime hour worked or two hours of compensatory time for each hour worked on a holiday. If compensatory time-off is not granted within four pay periods immediately following the pay period in which it was earned, the employee shall be paid overtime pay consistent with subsections (b)-(d) above, in the following pay period;
- (f) It is the responsibility of all supervisory and management personnel to ensure that an employee does not become entitled to payment of overtime for which there is no available funding and all supervisory or management personnel are responsible for using their best effort to implement § 170-30.5-420 “Reduction and Control of Overtime” of this subchapter.
- (g) Exempt employees are not be eligible for overtime pay compensatory time under any circumstances.

Modified, 1 CMC § 3806(c), (d), (e).

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History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-420 Reduction and Control of Overtime

Intelligent and responsible control of overtime is a continuing management function and, to this end, certain steps shall be taken by all management and supervisory personnel to minimize overtime. Overtime work should be directed to a specific objective or goal, and should not involve matters that can either be completed during the regular workday, or postponed to the following day or days. Management should:

- (a) Ensure that every effort is made to improve management of the worker's hours available during each employee's 40-hour work week; eliminate unessential or low priority work; make certain that reasonable discipline is maintained with respect to hours of work, leave, punctuality, level of performance, and individual productivity;
- (b) Examine each overtime request to determine whether the work to be accomplished requires immediate completion. No overtime should be approved to complete any work that could be delayed without adversely affecting the business of the Commission;
- (c) Where recurring overtime appears necessary, compare the relative cost of additional personnel with the current cost of overtime. When reallocation or reassignment of personnel, consistent with the rules and regulations in this subchapter, would result in less cost for the TCGCC, wherever possible reassign employees from less essential positions.
- (d) Pool clerical personnel and detail employees from one activity to another as needs require. No situation should be allowed to exist wherein employees are not fully occupied in necessary work during the full eight hours of each work day.
- (e) Use available recognition devices, merit increase, performance awards, and priority consideration for promotion to reward employees who make extra efforts to minimize overtime.
- (f) Ensure that timekeeping duties are accomplished during regular working hours. Overtime shall not be authorized for timekeeping. (See § 170-30.5-125, Timekeepers).
- (g) Minimize use of compensatory time off. Excessive use of compensatory time will take employees away from the workplace in the future thereby creating a potential need for more overtime.

Modified, 1 CMC § 3806(c), (d).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Commission Comment: The Commission inserted commas after the words "performance" in subsection (a) and "awards" in subsection (e) pursuant to 1 CMC § 3806(g).

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§ 170-30.5-425 Approval of Overtime

Overtime must be approved, in advance, by the appropriate management official on forms prescribed by the Executive Director. Appropriate management officials for approval of overtime are the Commission Chairman, the Executive Director, or department heads or their equivalent if this authority has been delegated to them in writing by the Executive Director.

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-430 Overtime Worked Without Proper Approval

An employee who is required or permitted to work overtime without proper authorization shall be paid, because such payment or compensation is a legal obligation of the TCGCC; however, the management official who permitted or required such overtime work may be subject to disciplinary proceedings pursuant to the rules and regulations in this subchapter or applicable CNMI law.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-435 Supervision of Overtime Work

In the event three or more employees are directed to work overtime, a supervisor must be present to ensure proper utilization of the overtime period by such employees.

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Part 500 - Leave and Other Employee Benefits

Subpart A - Leaves of Absence

§ 170-30.5-501 Purpose

Leaves of absence are for the mutual benefit of the employee and employer. When a leave of absence is granted, it must be only for legitimate reasons and not detrimental to the efficient functioning of the TCGCC.

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-505 General Leave Policy

(a) Employees have a contractual right to accumulate annual leave, but the right to use that leave is contingent upon TCGCC needs and requirements. Thus, it is incumbent upon managers and employees to agree mutually as to the dates of annual or other discretionary leave. The Executive Director shall be responsible for reviewing all requests for leave in the light of the

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Commission's program needs, replacement services, and other pertinent considerations. The Executive Director or the Chairman of the TCGCC may approve, disapprove, or arrange modifications of leave requests.

(b) The employee shall be responsible for initiating his request for leave using such forms, documentation, and explanatory material as may be required. Unforeseen circumstances excepted, an employee shall initiate such request sufficiently in advance to enable his supervisor, the Executive Director, and the TCGCC to make the adjustments necessitated by the employee's absence.

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

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

§ 170-30.5-510 Leave Balances from Previous Employment

Credit will be given to employees for sick leave earned in previous employment with the Commonwealth or municipality governments or their agencies. Employees are expected to arrange transfer of accrued sick leave balances to TCGCC. Subject to independent verification, TCGCC may retain a record of previously earned unpaid sick leave and include it in the employee's sick leave account and available for use on the first day of re-employment. This applies to employees hired after January 2014.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 39 Com. Reg. 39213 (Feb. 28, 2017); Amdts Proposed 39 Com. Reg. 39160 (Jan. 30, 2017); Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-515 Annual and Sick Leave

The rules and regulations in this subchapter apply to all employees and employment positions in the TCGCC.

(a) Annual Leave

(1) Annual leave, or vacation leave, with pay shall be granted as set forth herein for any personal purpose and the reason such leave is requested need not be disclosed. All requests to use accrued annual leave must be made in advance on not less than 24-hour notice using an approved leave request form. A request for annual leave made by a full-time non-exempt employee shall be approved by the Executive Director or designee. A request for annual leave made by full-time exempt employees, other than the Commissioners or the Executive Director, shall be approved by the TCGCC Executive Director, or, in the absence of the Executive Director, by a Commission member.

(2) All TCGCC full-time exempt employees shall earn and accrue annual leave at the rate of eight hours per complete two-week pay period. Full-time non-exempt employees shall earn and accrue annual leave at a rate commensurate with their total length of government service as

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follows:

- (i) Four hours per pay period for non-exempt employees with less than four years of combined TCGCC or CNMI government or government agency service;
 - (ii) Six hours per pay period for non-exempt employees with more than four but less than six years of combined TCGCC or CNMI government or government agency service;
 - (iii) Eight hours per pay period for non-exempt employees with more than six years of combined TCGCC or CNMI government or government agency service.
- (3) No annual leave shall accrue to an employee who did not receive the equivalent of 80 hours salary for the duration of any pay period.
 - (4) 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 charge that time to accrued sick leave.
 - (5) 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 from employment shall be converted to sick leave as of the effective date of such termination or resignation from employment. No TCGCC shall, upon separation from employment, receive a lump sum payment of unused annual leave in excess of 360 hours.

(b) Sick Leave

- (1)(i) Sick leave with pay shall be allowed whenever the employee is compelled to be absent from duty because of illness or injury or because of quarantine of his family or residence. To qualify for sick leave status, the employee or his representative must advise the employee's immediate supervisor before 9:00 a.m. on each day of the illness, injury, or quarantine. Use of sick leave is also authorized for medical treatment which shall include: medical, dental, or optometry treatment for the employee; or treatment and medical/dental referral escort of a minor or other member of the employee's immediate family; or for mental health examination, counseling or treatment. A request for sick leave made by a full-time non-exempt employee shall be approved by the Executive Director or designee. A request for sick leave made by full-time exempt employees, other than the Commissioners or the Executive Director, shall be approved by the TCGCC Executive Director, or, in the absence of the Executive Director, by a Commission member.
 - (ii) If an employee is on sick leave in excess of two consecutive work days, he may be required to furnish, from attending medical personnel, a written certification as to his or her illness or incapacity. If the required certification is not furnished within five days after such request the timekeeper shall convert all absence(s) which would have been covered by such certification with all such converted absence(s) indicated on the payroll as "absent without authorized leave" (AWOL).
- (2) Sick leave shall accrue to all exempt and non-exempt full-time employees at the rate of four hours per complete two-week pay period.
 - (3) No sick leave shall accrue to an employee who did not receive the equivalent of 80 hours salary for the duration of any pay period.

(c) Sick Leave Donation

- (1) An employee may, in writing on a TCGCC-approved form, donate their accrued sick

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leave to another TCGCC employee who has completed his probationary status and who is in need of medical treatment. The employee receiving medical treatment must provide certification from his attending physician regarding the employee's medical status and the duration that he is expected to remain on medical leave. Sick leave donation requests must be approved, in writing in advance, by the Executive Director or designee, prior to the transfer of the donated sick leave and such donations are subject to all of the following conditions:

- (i) The employee donating his accrued sick leave does so voluntarily and without any type of monetary payment, gift, or gratuity (as defined in § 170-30.5-1101(e) of this subchapter) or sick leave replacement; and
 - (ii) The employee requesting donation must provide certification that he is undergoing medical treatment and the number of days he is expected to be on medical leave; and
 - (iii) The employee receiving a sick leave donation has exhausted all his annual leave, sick leave, and accrued comp-time hours; and
 - (iv) The employee receiving a sick leave donation will not accrue any other leave benefits of any kind while on medical leave status pursuant to donated sick leave.
- (2) Any TCGCC employee may also donate accrued sick leave to non-TCGCC CNMI government employees if such donation is permissible pursuant to the CNMI Sick Leave Bank Regulations [NMIAC, title 10, chapter 50] administered by the CNMI Civil Service Commission or its successor.

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

History: Amdts Adopted 36 Com. Reg. 35481 (Sept. 28, 2014); Amdts Proposed 36 Com. Reg. 35208 (July 28, 2014); Amdts Adopted 25 Com. Reg. 21054 (Aug. 22, 2003); Amdts Proposed 25 Com. Reg. 20214 (May 29, 2003); Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Commission Comment: The original paragraphs of subsection (b)(1) were not designated. The Commission designated subsections (b)(1)(i) and (ii).

In subsection (a), the Commission changed “need not to be disclosed” to “need not be disclosed” to correct a manifest error. In subsection (c)(2), the Commission corrected the spelling of “permissible.” The Commission inserted commas after the words “injury” in subsection (b)(1)(i) and “gift” in subsection (c)(1)(i) pursuant to 1 CMC § 3806(g).

The 2003 amendments amended subsections (a)(1), (a)(5), (b)(1)(i), and (b)(1)(ii). The 2014 amendments added the introductory paragraph and amended subsection (a)(5).

Public Law 15-69 (effective June 5, 2007), codified at 1 CMC § 8246, authorized government employees to apply for sick leave to attend to an immediate family member who were sick. PL 15-69 was repealed and replaced by Public Law 15-116 (effective Nov. 29, 2007), codified at 1 CMC §§ 8265-8267. To the extent that subsection (b) conflicts with PL 15-116, it is superseded.

§ 170-30.5-520 Other Leave

- (a) Compassionate leave without loss of pay up to a maximum of ten working days may be granted to any full-time exempt or non-exempt employee by the Executive Director or the Chairman in the event of death in the immediate family of the employee. For the purpose of compassionate leave only, the term “immediate family” shall be defined as an employee's mother, father, spouse, immediate offspring (natural, cultural or legally adopted), brother or

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sister, grandfather or grandmother, mother-in-law or father-in-law.

(b) Administrative leave without loss of pay may be granted to any exempt or non-exempt employee by the Executive Director or the Chairman for any of the following reasons:

- (1) Emergency conditions beyond the control of management, such as a typhoon or prolonged power outage;
- (2) Participation in civic or professional activities of interest to the TCGCC or the public interest of Tinian;
- (3) Extended absence required for medical appointments and care following a job-related condition, illness, or injury; or
- (4) For other such reasons as the Commission may determine, such as early closing prior to a particular holiday or time off to vote.

(c) Maternity Leave

(1) Maternity leave shall be granted to any full-time permanent female employee who is absent from work because of childbirth. The Executive Director has the authority to approve maternity leave requests. Such maternity leave shall not exceed fifteen continuous working days and shall encompass the date of childbirth. Any additional leave taken in connection with childbirth may be charged to accumulated sick leave or annual leave.

(2) As with other leave related situations, if maternity leave, annual leave and sick leave are exhausted, the employee shall be considered to be on leave without pay (LWOP).

(d) Paternity leave shall be granted in the same manner as maternity leave to any full-time permanent male employee who is absent from work because of his wife's childbirth. Such paternity leave shall be granted on the same terms and conditions as maternity leave and shall not exceed fifteen continuous working days encompassing the date of childbirth. Paternity leave will only be granted to attend to a child born to the spouse of the employee.

(e) Training and education leave may be granted by the Executive Director, only with the concurrent approval of the Commission, for the purpose of job-related training or education to any TCGCC employee for a period not to exceed one year. Such leave shall be subject to the section(s) of this subchapter dealing with leave without pay (LWOP).

(f) Court leave shall be granted, with pay, by the Executive Director to any employee for jury duty or other subpoenaed court appearance such as testimony. Court leave is limited to the actual time the jury is impaneled or the employee is otherwise ordered to remain at the disposal of the court. To qualify for court leave an employee shall present a copy of his juror summons, subpoena, or other similar document, together with a completed request for leave form, to the Executive Director or Commission member. Employees granted court leave shall remit to the TCGCC any jury, witness, or other fees which they receive from the court. Expense allowance(s) or reimbursement(s) paid to the employee by the court may be retained by the employee to defray the expenses for which such payment was made.

(g) Military leave, not to exceed fifteen days per calendar year, shall be granted, with pay, by the Executive Director or the Chairman to employees who are members of a Reserve or National

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Guard Unit of the United States Armed Force, when such employee is under orders issued by a proper military authority. Upon presentation of orders or other appropriate documentation by the employee, military leave shall be granted consistent with applicable federal laws, rules, and regulations. Any additional military leave in excess leave of fifteen days per calendar year shall, unless otherwise required by law, be without pay to the employee receiving such leave.

(h) Extended military leave shall be granted pursuant to the federal Uniformed Services Employment and Reemployment Act (USERA) which generally requires the Commonwealth government to provide extended military leave for TCGCC 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 employee and approved by the Executive Director and the Commission. The employee must give advance notice of such leave to the Executive Director unless military necessity or circumstances make the giving of such nature unreasonable. In most cases, the employee will be guaranteed reinstatement rights and certain seniority rights upon return from extended military leave. The employee must also comply with requests for documentation and with the requirements of applicable regulations regarding the timing of an application for reemployment.

(i) Advance annual leave may be granted by the Commission to any employee for any appropriate reason. Such advance leave may not exceed 50% of the annual leave which the employee would normally accrue in one year. An employee may be granted advance leave only after he has exhausted all annual leave, sick leave, sick leave donation (if any), and accrued comp-time hours. If the employee fails to accrue sufficient hours of employment to reimburse the TCGCC for this advance leave, the monetary equivalent of such unreimbursed advance leave shall be offset by the TCGCC as provided in this subchapter, in particular § 170-30.5-525(e).

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

History: Amdts Adopted 39 Com. Reg. 39701 (June 28, 2017); Amdts Proposed 39 Com. Reg. 39594 (Apr. 28, 2017); Amdts Adopted 25 Com. Reg. 21054 (Aug. 22, 2003); Amdts Proposed 25 Com. Reg. 20214 (May 29, 2003); Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Commission Comment: The 2003 amendments amended subsection (g).

In subsection (d), the Commission corrected the spelling of “continuous.” The Commission inserted commas after the words “illness” in subsection (b)(3), “subpoena” and “witness” in subsection (f), and “rules” in subsection (g) pursuant to 1 CMC § 3806(g).

§ 170-30.5-525 Special Conditions of Paid Leave Policy

(a) Subject to the limitations set forth in the rules and regulations unused annual leave and sick leave may be accumulated and carried over to succeeding leave years.

(b) An employee separated from the TCGCC for any reason shall receive a lump sum payment for all annual leave accrued to his credit on the date of separation provided however that such lump-sum payment is consistent with these rules and regulations and in particular,

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§§ 170-30.5-515(a)(5) and 170-30.5-540.

(c) Falsification, written or verbal, regarding any application for leave, including, but not limited to, the existence or severity of a sickness, illness, or medical condition raises serious issues regarding the honesty and integrity of the employee and therefore is sufficient cause for adverse personnel action, including dismissal from TCGCC employment. Any employee who during any period of approved sick leave enjoys a “recovery” sufficient to permit the employee to undertake normal activities is expected to immediately advise the employee’s supervisor or the Executive Director of such “recovery” and either return to work or convert the remaining unused sick leave to annual leave.

(d) Subject to the limitations set forth in these rules and regulations, in particular § 170-30.5-1116, no employee shall undertake gainful employment while on any paid leave status other than earned annual leave which has actually accrued.

(e) If the Commission authorizes advance annual leave for an employee for any appropriate reason such advance leave, once used, constitutes a contract between the employee and the TCGCC and must be repaid even if the employee separates from employment with the Commission. Repayment may be accomplished by offset of employees subsequently accrued leave or employees salary or employees severance payment or by a reduction in employees creditable service time.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Commission Comment: Public Law 15-57 (effective April 25, 2007), codified at 1 CMC §§ 82601-82605, addresses maximum annual leave accumulation (360 hours) for excepted service employees and lump sum payments for unused annual leave to all government employees. PL 15-57 prohibits reemployment with the CNMI government “until a period equal to the period of annual leave paid in lump sum has elapsed” or the employee elects to pay the equivalent amount “consistent with CNMI regulations.” 1 CMC § 82604. PL 15-57 also prohibits the conversion of sick leave to annual leave and any compensation for unused sick leave hours upon separation from employment for all government employees. 1 CMC § 82603. The provisions of PL 15-57 supersede subsection (b) to the extent that they conflict.

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

§ 170-30.5-530 Leave Without Pay (LWOP)

(a) Subject to the needs of the TCGCC, any permanent full-time exempt or non-exempt employee may, for any appropriate reason, be granted leave without pay (LWOP) not to exceed ninety days. The LWOP period may be extended up to an additional ninety days if so requested by the employee. An employee desiring LWOP shall prepare a memorandum of explanation addressed to the Executive Director explaining in detail the reason(s) for the LWOP request.

(b) LWOP for purposes of training or education may be granted pursuant to § 170-30.5-520(e) in the same manner as other LWOP except that the maximum allowable time-period, for

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such training and education leave, including any extensions, may exceed one year.

(c) Upon completion of an authorized LWOP period, the employee shall be entitled to return to the same or a similar employment position and pay level previously held. Employment seniority shall not accrue during any LWOP period. The employee's service anniversary date shall be extended and adjusted forward by the amount of LWOP taken.

(d) Permanent full-time exempt and non-exempt employees may be granted leave without pay (LWOP) for the purpose of extending annual or sick leave. When sick leave is so extended, an attending physician must certify in writing the necessity of the extension.

(e) Only the Commission may approve a request for leave without pay.

Modified, 1 CMC § 3806(c), (e), (f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-535 Absence Without Leave (AWOL)

Except in cases of a bona fide documented emergency, any employee absent from his duty station without approved leave or pursuant to a leave approval based on false, deceptive, or misleading information submitted by or on behalf of the employee, is absent without leave (AWOL) and subject to an adverse personnel action, including dismissal. All time during which an employee is AWOL shall be without pay. No after-the-fact annual leave (i.e. retroactive leave) will be approved except for a bona fide documented emergency which does not qualify for another leave category. Such after-the-fact annual leave (i.e. retroactive leave) may only be approved by the Commission.

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Commission Comment: The Commission inserted a comma after the word "deceptive" pursuant to 1 CMC § 3806(g).

§ 170-30.5-540 Disposition of Leave Upon Separation

(a) Annual Leave.

(1) Except as otherwise provided in the rules and regulations in this subchapter, an employee separated from the TCGCC for any reason shall receive a lump-sum payment for all annual leave accrued to the employee's credit and remaining unused at the time of separation. If the employee returns to duty in any capacity with the TCGCC before the accumulated term of leave would have expired, had it been liquidated in the normal course of employment, the employee must return to the TCGCC the gross value of such unused leave and have those hours of leave re-credited to the employee's annual leave account.

(2) For example, an employee who has 360 hours annual leave to his credit upon separation, has the equivalent of 45 days of annual leave. If the employee returns to the TCGCC employment before the passage of 45 work days, the employee is required to "repay" the

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unexpired term of leave remaining.

(3) If the employee in the above examples separates from the TCGCC employment December 31, is offered an opportunity to return to duty with the same classification and pay, accepts, and returns to work March 15, 34 work days or 272 hours would have elapsed (one holiday occurred in February) between separation and return to duty. Such employee would be required to “repay” to the TCGCC the value of 88 work hours, representing the equivalent of the difference between the 360 accumulated hours granted through lump-sum payment, and the 272 hours of elapsed time between separation and return to duty.

(4) Repayment for the unexpired term of leave remaining may be through a lump-sum cash payment prior to resuming active employment status, payroll deduction or assigning to the TCGCC all annual leave accrued subsequent to returning to active employment until the repayment is completed.

(b) Sick Leave. Except as otherwise provided in the rules and regulations in this subchapter, an employee separated from the TCGCC for any reason shall have all sick leave accrued to the employee’s account held in the leave records for three years. Should the person be reemployed in the TCGCC at any time during that three year period, the sick leave balance shall be re-credited to the employee’s sick leave account and available for use from the first day of re-employment. Provided, however, that an employee separated from the TCGCC for retirement purposes, and whose unused sick leave has been converted to service time to determine eligibility in the retirement program, shall not be re-credited for such sick leave balance. (See: 1 CMC § 8301, as amended.)

(c) Lump Sum Leave Payment Upon Separation. When an employee is separated from the TCGCC, the employee is entitled to the payment of unused annual leave in a lump sum. However, lump-sum leave payment shall not be processed for an employee who has not complied with all of the requirements of these rules and regulations, in particular § 170-30.5-802(d) regarding an exit interview and related requirements necessary to have an orderly process pursuant to which TCGCC employment is completed.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Commission Comment: The original paragraphs of subsection (a) were not designated. The Commission designated subsections (a)(1) through (a)(4).

Public Law 15-57 (effective April 25, 2007), codified at 1 CMC §§ 82601-82605, addresses maximum annual leave accumulation (360 hours) for excepted service employees and lump sum payments for unused annual leave to all government employees. PL 15-57 prohibits reemployment with the CNMI government “until a period equal to the period of annual leave paid in lump sum has elapsed” or the employee elects to pay the equivalent amount “consistent with CNMI regulations.” 1 CMC § 82604. PL 15-57 also prohibits the conversion of sick leave to annual leave and any compensation for unused sick leave hours upon separation from employment for all government employees. 1 CMC § 82603. The provisions of PL 15-57 supersede this section to the extent that they conflict.

Subpart B - Other Employee Benefits

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§ 170-30.5-545 Worker’s Compensation Insurance

All full-time exempt and non-exempt TCGCC employees are entitled to worker’s compensation insurance coverage which is provided through the Northern Mariana Islands Retirement Fund (Retirement Fund) to all retirement fund participants at no cost to the employee. Terms and coverage of worker’s compensation insurance for TCGCC employees shall be in accordance with the requirements of applicable CNMI and federal law and all claims shall be administered directly by the CNMI Retirement Fund or its successor.

Modified, 1 CMC § 3806(f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-550 Group Medical and Life Insurance

All full-time exempt and non-exempt TCGCC employees are entitled to participate in the group life insurance and group health insurance programs which are either offered by the TCGCC or which are available to employees of the CNMI government on the same terms and conditions as such programs are available to employees of the CNMI government as long as such participation is permitted by the CNMI government or its insurer(s).

Modified, 1 CMC § 3806(f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-555 Retirement Program

All full-time exempt and non-exempt TCGCC employees shall be enrolled in the Northern Mariana Islands Retirement Fund program. Contributions to the retirement program are made by both the employee through regular payroll deduction and by the TCGCC through direct payments to the retirement fund on behalf of each employee. Employees are responsible for their own enrollment and each employee is responsible for contacting the retirement fund to obtain appropriate information regarding enrollment requirements and administration of the employee’s retirement account.

Modified, 1 CMC § 3806(f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Part 600 - Performance Evaluation of Employees

§ 170-30.5-601 Procedure

(a) Each non-exempt TCGCC employee shall be evaluated annually by their immediate supervisor unless a different evaluator is appointed, in writing by the Executive Director. Each evaluator is required to assess the employee’s performance of the duties listed on the employee’s position description. Each evaluator shall also evaluate the employee’s dependability,

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resourcefulness, and cooperativeness. Evaluation forms will also require the evaluator's recommendation regarding an increase in the employee's salary. This salary recommendation is one of several factors which will be used to determine whether the employee receives a salary increase pursuant to the rules and regulations in this subchapter, in particular § 170-30.5-730. These evaluations will become a part of the employee's official personnel file and will provide a portion of the information reviewed by the Executive Director and the Commission to determine the employee's qualification to receive either a merit promotion and/or merit salary increases.

(b) Completed evaluations shall be returned to the Executive Director, and a copy of the entire evaluation will also given to the employee. The evaluator shall discuss the evaluation with the employee so that constructive criticism may be exchanged between the evaluator and the employee.

(c) The employee will be invited to evaluate himself and if such self-evaluation is undertaken by the employee, the evaluation shall also be maintained in the employee's official personnel file and shall be included, for all purposes, in the evaluation of the employee by the Executive Director and the Commission.

(d) Exempt employees, other than the Executive Director, will be evaluated by the Executive Director or by their immediate supervisors, subject to a subsequent, supplemental review by the Executive Director. The Executive Director shall be evaluated by the Commission.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-605 Evaluation Responsibilities

(a) The Executive Director may designate, in writing, the evaluator responsible for evaluating each TCGCC non-exempt employee. Such designation shall be provided to the employee at least fifteen days prior to the evaluation date.

(b) The Executive Director, as the Personnel Officer, shall be responsible for:

- (1) Developing, evaluating, and improving the TCGCC employee performance evaluation program;
- (2) Distributing, receiving, and maintaining performance evaluation forms on each employee; and
- (3) Providing staff advice and assistance to divisions and departments in administration of the employee performance evaluation program.

(c) Supervisors of divisions or departments shall be responsible for implementing and administering the employee performance evaluation program within their area of responsibility including:

- (1) Providing assistance in developing performance standards;
- (2) Providing the necessary training to effectively carry out their responsibilities for communicating with and evaluating employees;

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- (3) Assuring that employees understand the objectives of the performance evaluation program and the provisions of the annual employee review; and
 - (4) Ensuring that all performance evaluation rating forms within their area of responsibility are properly completed and submitted to the Executive Director on a timely basis.
- (d) Supervisors or designated evaluators are also responsible for:
- (1) Assuring that position descriptions accurately reflect the duties and responsibilities assigned to each employee;
 - (2) Determining jointly with the employee concerned, on a person-to-person basis, the performance standards for each employees position and keeping each employee advised of their strengths, weakness, and opportunities for improvement in terms of the performance of their employment responsibilities;
 - (3) Conducting the performance evaluation and reviewing it with the employee; and
 - (4) Initiating appropriate personnel actions in case of either satisfactory or unsatisfactory performance by the employee.
- (e) Employees are responsible for:
- (1) Immediately requesting clarification from his supervisor or evaluator of any performance standard or job description requirement or work objective which is not clearly understood;
 - (2) Advising his supervisors or evaluator of any facts or circumstances which the employee believes should be taken into account during the employee evaluation; and
 - (3) Participating in discussions and evaluations of his performance and making suggestions for improving such performance.

Modified, 1 CMC § 3806(f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-610 Rating Probationary Employees

The final performance evaluation for a probationary employee shall be completed for at least fifteen days prior to such probationary employee being eligible for conversion to a permanent appointment.

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-615 Action upon Unsatisfactory Rating

Supervisors do not have a right to retain any employee, regardless of how such employee's job is classified, in a position for which the employee's composite performance evaluation rating is "unsatisfactory." The Executive Director or such employee's supervisor must initiate the necessary personnel action to have an employee whose overall performance rating is "unsatisfactory" reassigned, demoted, or separated from employment by the TCGCC pursuant to the procedures set forth in § 170-30.5-805 of this subchapter.

Modified, 1 CMC § 3806(c), (d), (g).

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History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Commission Comment: The Commission moved the period after “unsatisfactory” inside of the closing quotation mark and changed “employees” to “employee’s” to correct manifest errors. The Commission inserted a comma after the word “demoted” pursuant to 1 CMC § 3806(g).

§ 170-30.5-620 Right to Object to Performance Evaluation Rating

Any full-time, exempt or non-exempt, TCGCC employee who believes a performance evaluation rating was inappropriate or unjustified is entitled to submit, in writing, a statement of objection detailing perceived errors, extenuating circumstances, or any other information which the employee believes to be pertinent in changing the evaluation. As with the self-evaluation form as provided in § 170-30.5-601(c), the employee’s statement of objection shall be filed in the employee’s official personnel file and be reviewed by the Executive Director and the Commission with the other documents related to the employee’s performance evaluation when merit promotions and salary increases are considered.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

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

Part 700 - Merit Promotions and Salary Increases

§ 170-30.5-701 Policy

To the maximum extent possible, the TCGCC merit promotion process provides for filling vacancies above the entry level by promotion of existing qualified TCGCC employees. Salary increase policies are designed to reward quality job performance, retain qualified employees, and acknowledge exceptional job performance.

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

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

§ 170-30.5-705 Application

Competitive promotion procedures shall apply to all competitive non-exempt employment positions in the TCGCC personnel system.

Modified, 1 CMC § 3806(f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

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§ 170-30.5-710 Evaluation Criteria and Methods

In evaluating candidates for merit promotion, recognition should be given to the future needs of the TCGCC as well as the requirements of the position to be filled. The criteria for evaluating candidates for merit promotion may include one or more of the following.

(a) Experience. In evaluating experience, i.e. length of service, the objective is to determine how well the employee's existing experience relates to the new position or level of work. Length of service is a factor only when there is a clear and positive relationship between the length of service and quality of performance or to break a deadlock in the case of equally qualified candidates.

(b) Training. Consideration is given for pertinent training, self-development, and outside activities which would increase the employee's potential or effective performance in the position to be filled.

(c) Education. Consideration is given for secondary, post-secondary, or vocational education if it is clearly job-related or if it provides a measure of the learning ability or motivation of the employee.

(d) Oral Interview. Individual or group interviews may be held. Oral questions may relate either to subject matter knowledge or to other matters pertinent to either the position or the qualifications of the candidate. If oral questions are in the nature of an "examination," to the extent possible, the same questions and sequence should be asked of each candidate and a record of their answers made part of the merit promotion record.

(e) Interview Questions. Oral questions may relate to subject-matter knowledge or to other matters pertinent to either the position or the qualifications of the candidate. If questions are in the nature of an oral or written "examination," to the extent possible, the same questions and sequence should be asked of each candidate and a record of their answers made part of the merit promotion record.

(f) Written Tests. A written test may be used in the evaluation process, but may not be the sole means of evaluation. Written tests must be approved by the Executive Director or meet appropriate written standards established by the Executive Director.

(g) Investigation. An investigation may be undertaken to assist in determining or confirming the information provided by a candidate such as his education, experience, training, degree of responsibility previously exercised, and effectiveness.

(h) Inquiries. Verbal or written inquiries of other individuals familiar with the candidate may also be made to assist in determining how well a candidate is likely to perform at a higher level or in a different type of work.

Modified, 1 CMC § 3806(g).

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History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Commission Comment: In subsections (d) and (e), the Commission moved the commas after “examination” inside of the closing quotation marks.

§ 170-30.5-715 Subjective Evaluation Standards

Merit promotion requires that the selection be made from among the best qualified candidates. Accordingly, the evaluation process must go beyond basic eligibility to rank the candidates in a meaningful fashion. When properly used, the evaluation process should:

- (a) Provide a reasonable basis for comparing and judging each candidate in relation to the education, knowledge, skills, abilities, and personal characteristics that would contribute to successful performance in the new position;
- (b) Identify those qualities which demonstrate a candidate’s potential for future promotion, if the job being filled may lead to further advancement; and
- (c) Distinguish between the knowledge and skills that an employee must have at the time of promotion, and those which, through experience and training, can be acquired quickly after promotion.

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-720 Merit Promotion Selection Process

- (a) Any TCGCC management or supervisory employee may recommend a subordinate for merit promotion by submitting such recommendation, in writing, to the Executive Director. Alternatively, the Executive Director may independently decide that a particular employee should be considered for merit promotion. All recommendations for merit promotion should address the appropriate criteria and standards set forth in the rules and regulations in this subchapter, in particular §§ 170-30.5-710 and 170-30.5-715.
- (b) The qualifications of candidates for merit promotion shall be reviewed by the Executive Director who may also solicit comments from the employee’s current supervisor or the supervisor of the position to which promotion is proposed or the candidates co-workers or other TCGCC employees.
- (c) The Executive Director shall present his findings and recommendations to the TCGCC and a majority of a quorum of the Commission present at the meeting shall decide whether to award or deny the merit promotion.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

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§ 170-30.5-725 Employee Questions and Complaints

(a) Employee Questions. Any employee who has responded to a promotional opportunity announcement or who has been considered for promotion may present questions to the Executive Director within seven calendar days after receipt of notification advising the employee that he did not receive the merit promotion. Questions shall be submitted in writing, either by the employee or through a representative. Pursuant to this procedure an employee is entitled to know:

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

(b) Employee Complaints. If the employee is dissatisfied with the response received from the Executive Director and the matter cannot be resolved on an informal basis, the employee shall have recourse to the TCGCC grievance process and grievance procedure set forth in §§ 170-30.5-735 and 170-30.5-740 of this subchapter.

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

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-730 Annual Salary Increases

(a) An annual salary increase is not a right; but rather is a privilege earned by an employee through continuous satisfactory, outstanding or exceptional job performance. Regardless of an employee's job performance rating no employee is entitled to automatically receive a salary increase. Unless otherwise approved by the Commission, salary adjustments for all non-exempt employees shall be effective on October 1 of each year. Salary adjustments for exempt employees shall be effective on the anniversary date of their hiring unless a different date is approved by the parties in writing. The Commission shall approve salaries for the next fiscal year not later than August 15th of each preceding year.

(b) If sufficient funds are available in the budget, an employee may receive a 1 step within grade salary increase in an amount not to exceed the equivalent of a ten percent annual salary increase for the next fiscal year commencing October 1st, if such employee has maintained a satisfactory employment status and one or more adverse personnel actions have not been found against the employee during the preceding year. This increase may be denied by the Commission based on any previous adverse personnel action(s) or if the employee holding the position is at the maximum level of salary or if funds are insufficient in the budget to pay such salary increase.

(c) No salary increase shall become effective until a properly approved personnel action form is completed.

(d) Under no circumstances may an employee be compensated at a level which exceeds the maximum amount authorized for his position as set forth in the existing TCGCC pay scale.

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Modified, 1 CMC § 3806(e).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-735 Grievance or Hearing Process

(a) Consistent with the principles of good management, the TCGCC recognizes the importance of settling 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) Employees will be unimpeded and free from restraint, interference, coercion, discrimination, and reprisal in seeking adjudication of their grievance(s) and appeal(s).

(c) The TCGCC 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 grievance procedure as hereinafter set forth, the employee or group of employees have the right to be represented by counsel or other representative of their own choosing, with payment for such representation solely at the employee's expense. If the group of employees choose to serve as their own representative they may designate not more than two members of the aggrieved group as spokesperson, unless a different number is approved by the Commission or its designee.

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Commission Comment: The Commission inserted commas after the words "fairly" in subsection (a), "discrimination" in subsection (b), and "represented" in subsection (c) pursuant to 1 CMC § 3806(g).

§ 170-30.5-740 Grievance or Hearing Procedure

The following procedure shall be followed in reviewing and settling an employee grievance.

(a) The employee shall first attempt to resolve the grievance through an informal discussion with the immediate supervisor, fellow employees, or organization official concerned.

(b) If the employee is not satisfied with the understanding reached through such discussion, the employee shall review the matter with the employee's immediate supervisor. If the immediate supervisor was the person with whom the employee first had discussion, the employee should follow step (c) below.

(c) If the employee is dissatisfied with the understanding reached through consultation with the immediate supervisor, the employee may, within five days, deliver a written statement of his grievance to the Executive Director. The Executive Director will consult with the employee and others concerned, and will try to informally resolve the grievance. Such consultation may be in

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writing or in person.

(d) If the employee is dissatisfied with the results achieved by the Executive Director, or if the Executive Director is the person with whom the employee has the grievance, the employee may request, in writing, a review of the matter by the Commission. The Commission will hold either a formal hearing or informal hearing (meeting) within fifteen days after the employee's request is received unless the employee and the Commission agree to a later date.

(e) If the Commission conducts the hearing or meeting the Commission shall resolve the grievance by majority vote of a quorum of the Commission present. If a hearing officer has not been appointed by the Commission, the decision of the Commission shall be final and shall conclude the administrative hearing process.

(f) The Commission may delegate, to a hearing officer, its authority to conduct a formal hearing or informal hearing (meeting) under the grievance procedure.

(g) In hearings before the Commission or a designated hearing officer, the aggrieved employee and/or representative shall be allowed to appear and present the case. An appropriate TCGCC representative shall also be allowed to appear before the Commission or a designated hearing officer. Both sides shall have the right to call witnesses in support of their positions and to cross-examine witnesses called by the other side.

(h) The formal hearing shall be conducted pursuant to the requirements of the CNMI Administrative Procedure Act, (hereinafter APA) 1 CMC §§ 9101, et seq.

(i) The Commission or the hearing officer shall prepare a brief written summary of the formal hearing and therein set forth the ruling or decision. This decision shall be final and shall conclude the administrative hearing process.

(j) If, at the conclusion of the formal hearing, both parties desire a verbatim written record prepared by a reporter, the cost of such services shall be shared equally. If only one party desires a formal written record of the proceedings that party shall bear the entire cost.

(k) If the aggrieved employee (or, if a hearing officer is involved, the TCGCC), is dissatisfied with the decision, rendered after a formal hearing the employee (or, if a hearing officer is involved, the TCGCC), may have recourse to the courts as provided by applicable CNMI law.

(l) The Executive Director is responsible for assuring that the time limits established in this procedure and the APA are met. The Executive Director is also responsible to assure that the record of the grievance hearing procedure is assembled, maintained, properly stored, and safeguarded.

(m) The Executive Director shall be the custodian of all records of the grievance hearing procedure and any formal hearing related thereto.

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Modified, 1 CMC § 3806(e), (f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Commission Comment: The Commission inserted commas after the words “employees” in subsection (a) and “stored” in subsection (l) pursuant to 1 CMC § 3806(g).

Part 800 - Separations, Suspensions, and Demotions

§ 170-30.5-801 Voluntary Separations Not Involving Personal Cause

(a) Separation by Resignation. Separation by an employee’s resignation is permissible provided that such resignation is in writing and submitted to the Executive Director at least fourteen calendar days in advance of the effective date. The Executive Director may designate, in writing, certain supervisory, management, and highly skilled technical employee positions for which this durational notice requirement period is extended to thirty days.

(b) The Executive Director shall promptly commence the preparation of the documents for consummation of the separation by resignation action. Withdrawal of a resignation may be permitted provided:

- (1) The resignation letter is withdrawn, in writing, prior to its effective date; and
- (2) The Commission agrees to permit the proposed withdrawal of the resignation.

(c) Separation by Voluntary Retirement. Separation by an employee’s voluntary retirement is permissible provided the employee meets the eligibility standards for age and length of service required to receive benefits from the CNMI Retirement Fund.

(d) Exit Interview.

(1) An exit interview shall be scheduled for employees upon notice of resignation or retirement. The exit interview shall be conducted during working hours by the Executive Director or his designee. Such interview shall include questions related to the reason for separation and counseling of the employee related to any existing benefits of which the interviewer has knowledge. The Executive Director or his designee shall not process resignation or retirement documents until the exit interview is completed. If circumstances make an exit interview impractical, the Executive Director may waive the requirement of an exit interview.

(2) At the exit interview the Executive Director is responsible for securing the return of all TCGCC property including keys and identification cards. Neither the employee’s last paycheck nor lump-sum separation payment for unused annual leave will be issued until all the employee’s obligations to the TCGCC pursuant to law or the rules and regulations in this subchapter are satisfied.

(e) Separation for Medical Reasons. When an employee contracts an infectious or contagious disease which endangers the health of others, or becomes mentally incapacitated, or is otherwise permanently physically disabled for the satisfactory performance of duties of the position to which assigned, the employee may be terminated provided:

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- (1) No suitable reassignment can be made within the department or location to which the employee is assigned;
- (2) Absence from work for medical leave, paid or unpaid, is in excess of twelve weeks during any period of 52 consecutive weeks;
- (3) An employee whose services are terminated under this part may be eligible for disability retirement benefits under the NMI Retirement Program. The responsibility for applying for disability retirement benefits rests with the employee although it is the responsibility of the Executive Director to assure that the employee is aware of the possible existence of these benefits.
- (4) If a claim is made by a candidate or appointee that an existing medical condition constitutes a disability under the federal Americans with Disabilities Act (ADA) and at the time of such claim the TCGCC is subject to the requirements of the ADA, the provisions of the ADA shall be followed and applied.

(f) Separation Due to Reduction in Force (RIF).

- (1) When it is in the best interest of the Commission to eliminate an employment position, every effort will be made to relocate the affected employee to another TCGCC position suited to the qualifications and experience of the displaced employee. The Chairman shall appoint a RIF Task Force, chaired by a Commissioner, to study any contemplated reduction in force. The RIF Task Force shall make specific recommendations to the Commission based on its findings, after which individual personnel actions shall be approved by vote of a majority of a quorum of the Commission present at such meeting. Any employee selected for discharge through a reduction in force, shall be notified by the Executive Director that his position is being eliminated. Employees separated in this manner shall be entitled to receive the following from TCGCC:
 - (i) A minimum of two weeks advance notice of the reduction in force and the employees projected separation date; and
 - (ii) A lump severance payment equal to four weeks salary payable on the date of separation; and
 - (iii) A letter from the Chairman explaining the circumstances of the employees separation.
- (2) Any position eliminated through a reduction in force may not be reestablished for a period of one year after the employee separation date.

(g) Separation of Exempt Employees. Exempt employees may be terminated with or without cause provided that the termination is in accordance with the terms of their appointment, employment contract, and applicable CNMI or federal law.

(h) Voluntary Demotion. For any reason or without reason an employee may, without prejudice, volunteer for demotion to a lower class of position at a lower pay level. The approval of such a request may be granted by the Executive Director or appropriate management official(s) and is contingent upon the following factors:

- (1) A vacant position in the lower class and pay level is available within TCGCC; and
- (2) No additional cost accrue to the TCGCC as a result of, or incident to, the voluntary demotion.

(i) Abandonment of Job - AWOL. An employee absent without approved leave (AWOL) for

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a total of ten working days, whether or not consecutive, in any period of 52 consecutive weeks will be deemed to have constructively resigned and shall be terminated from employment provided that the procedures set forth in § 170-30.5-805 of this subchapter and* followed. Employees removed in this manner are entitled to no termination payments or benefits except unpaid salary and accrued leave through the date of notification with such payment appropriately reduced for all periods of unauthorized absence.

*So in original.

(j) Excessive AWOL. A total of five working days of AWOL, whether or not consecutive, in any period of 52 consecutive weeks conclusively demonstrates an employees unreliability and therefore, if the employee is not terminated, shall constitute an automatic forfeiture of the within-grade salary increase for which the employee may have been eligible the next succeeding year.

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

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

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

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

§ 170-30.5-805 Involuntary Demotion, Suspension, or Termination

(a) Grounds for Demotion, Suspension, and Termination

Employees may be demoted, suspended, or terminated for cause, which shall include, but not be limited to, the following:

- (1) Non-performance of duties; or
- (2) Incompetence demonstrated by an inexcusable failure to discharge duties in a prompt and efficient manner; or
- (3) Insubordination; or
- (4) Breach of trust, dishonesty, or violation of applicable CNMI or federal statutory laws and/or TCGGG laws, rules and regulations or written employment policies; or
- (5) Excessive tardiness or absenteeism whether or not defined herein as “abandonment of job”; or
- (6) Commission of a felony or a misdemeanor involving moral turpitude; or
- (7) Violation of any of the applicable portions of the PL 8-11, as amended, The CNMI Government Ethics Code Act of 1992, now codified at 1 CMC §§ 8501, et seq., or the TCGCC Code of Ethics, or TCGCC Procurement Regulations; or TCGCC confidentiality waiver; or TCGCC Personnel Rules and Regulations; or other statutory or administrative requirements for employee behavior or ethical conduct.

(b) Suspension Procedure

(1) Any employee who is no longer within a probationary or provisional employment period may be suspended by the Executive Director for cause including commission of any of the

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grounds set forth in the rules and regulations in this subchapter, in particular, but not limited to, subsection (a). A suspension is an action placing a non-exempt 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 set forth in § 170-30.5-740 if the employee feels the suspension is improper or not justified.

(2) A suspension without pay for periods less than five days shall only be imposed upon an employee who is covered by the overtime provisions of the Fair Labor Standards Act (FLSA). An employee who is exempt from the overtime provisions of the Fair Labor Standards Act (FLSA) shall only receive suspensions without pay for not less than five working days. For an exempt employee the period of suspension shall only consist of five work day periods, for example, five days, ten days, and fifteen days. Suspensions in respect to an exempt employee shall be served on consecutive days and for entire workweeks.

(3) If the suspension exceeds three working days and the non-exempt employee requests a hearing, the employee may be suspended only after being accorded a*

*So in original; see 24 Com. Reg. at 19084 (Apr. 29, 2002).

(4) A suspension for a non-exempt employee shall be for a period not to exceed thirty days, and shall be effective immediately or on a specific date selected by the Executive Director. A suspended non-exempt employee shall be put on leave without pay (LWOP) status and shall not be allowed to use annual leave, sick leave or comp-time during the period of suspension. The Executive Director shall notify the employee concerned of the fact of suspension, effective date and duration of the suspension. Such notice shall be given in writing. The action of the Executive Director shall be final.

(5) Any hearing related to an employee suspension shall be conducted in accordance with § 170-30.5-740 of this subchapter. No employee non-exempt or exempt shall be suspended for more than a combined total of thirty days in any period of 52 consecutive weeks. Any employee who accrues 30 or more days of suspension in any period of 52 consecutive weeks shall be deemed an “unsatisfactory” employee subject to the procedures of § 170-30.5-615 of this subchapter.

(c) **Demotion and Termination Procedure**

An employee who is no longer within a probationary or provisional employment period may be demoted in rank and pay or may be terminated by the Executive Director. The procedure for demoting and/or terminating an employee is as follows:

(1) The Executive Director shall notify the employee concerned in writing of the proposed demotion/termination action, the reasons for such action, and schedule an informal conference in order to attempt to resolve the matter with the employee.

(2) If after an informal conference an employee requests an appeal of what the employee deems to be an adverse ruling, the Executive Director shall apprise the demoted/terminated employee of his right to appeal his demotion/termination to the Commission or a hearing officer appointed by the Commission. An employee shall present his appeal, in writing, to the Commission or a hearing officer appointed by the Commission. Any hearing related to an employee demotion or termination shall be conducted in accordance with § 170-30.5-740 of this

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subchapter.

(3) If considered by the Commission, the appeal shall be decided by a majority of a quorum of the Commission members present at such hearing. The decision of the Commission or a hearing officer appointed by the Commission shall be final and conclude the administrative hearing process.

(4) In the event that the Commission or a hearing officer appointed by the Commission overrules the demotion/termination and the employee is reinstated with full rights and privileges, such employee shall receive 100% of the pay and associated benefits to which he would have been entitled during his demotion/termination period.

(5) A terminated employee is entitled to no termination payments or benefits except unpaid salary and accrued leave through the date of notification with such payment(s) appropriately reduced for all periods of unauthorized absence.

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

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

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

§ 170-30.5-810 Separation During Probation

(a) During the probationary period, if, it becomes evident to the employee’s supervisor or the Executive Director that the employee lacks the ability, attitude, or desire to become an efficient and productive TCGCC employee in the position to which such employee was appointed, or there is lack of funds or lack of work to be done, the employee shall be separated from TCGCC employment.

(b) The Executive Director upon deciding to separate an employee during probationary employment shall provide the employee with not less than fourteen calendar days notice, in writing specifying the reasons for the separation. The employee shall be afforded the right to discuss the situation with the Executive Director.

(c) Grievance, adverse action, or reduction-in-force procedures do not apply to separations during probationary employment.

Modified, 1 CMC § 3806(e).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Commission Comment: The Commission inserted commas after the words “attitude” in subsection (a) and “action” in subsection (c) pursuant to 1 CMC § 3806(g).

Part 900 - Adverse Personnel Actions

§ 170-30.5-901 Introduction

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When circumstances warrant, all TCGCC management and supervisory personnel have the authority and responsibility to initiate an adverse personnel action pertaining to a subordinate. The type of adverse personnel action other than demotion, suspension, or termination shall be determined by the severity and repetitiveness of the improper conduct or performance. These procedures include, but are not limited to, the following.

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Commission Comment: This section was originally the introduction to article 10, codified at part 900. The Commission created the section title. The Commission inserted a comma after the word “suspension” pursuant to 1 CMC § 3806(g).

§ 170-30.5-905 Admonishment

An admonishment is an informal disciplinary measure. A manager or supervisor may at any time discuss minor deficiencies in performance or conduct with the objective of improving an employee’s effectiveness. Admonishments need not be in writing and are not a matter of record. Provided however that subsequent adverse action(s) pursuant to the rules and regulations in this subchapter may make reference to prior admonishments received by the employee.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-910 Reprimand

A reprimand is a formal means of documenting a non-exempt employee’s 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 addressed to the affected employee and should contain specific references to performance deficiencies or misconduct, and a warning that additional disciplinary measures, such as demotion, suspension, or termination may be taken if the employee’s performance or conduct does not improve. A copy of the reprimand becomes part of the employee’s official personnel file.

Modified, 1 CMC § 3806(f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

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

§ 170-30.5-915 Censure

A censure is similar to a reprimand except that it is utilized only for exempt employees. Censure may be accomplished only by a majority vote of a quorum of the Commission. The written letter of censure is issued by the Chairman to the affected exempt employee and becomes a part of the employee’s official personnel file. Censure is appropriate in cases of a serious violation of either

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ethical or behavioral standards or a gross dereliction of duty.

Modified, 1 CMC § 3806(f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Part 1000 - Personnel Records

§ 170-30.5-1001 General Personnel Records Policy

The Personnel Officer shall establish a system of records maintenance and retention for all personnel presently or previously employed by the TCGCC. The records shall be separated so that those of active employees are filed separately from those of former employees. Files shall also be maintained for each position vacancy announcement.

Modified, 1 CMC § 3806(f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-1005 Records Required and Retention Periods

(a) For each present employee an official personnel file shall be maintained by the Personnel Officer. Each file shall contain, at a minimum, the following items of pertinent information:

- (1) Application for employment;
- (2) Copy of each personnel action form affecting the employee;
- (3) Copy of hiring and promotion selection letters;
- (4) Copy of each form reflecting choice of insurance coverage, designation of beneficiary, and other legal and binding assignments or designations;
- (5) Documents related to any informal or formal grievance procedure(s);
- (6) Documents related to any informal or formal adverse personnel action(s).

(b) Certain components of the official personnel file shall be considered temporary and separated in the file from permanent information. Temporary information shall be removed from the file and either given to the employee or destroyed two years from the date of the individual document. Examples of temporary material include, but are not limited to, the following information:

- (1) Performance evaluation report forms;
- (2) Employee review counseling notes;
- (3) Letters of reprimand;
- (4) Other items of correspondence concerning the employee such as letters of commendation or congratulation.

(c) Upon the separation of an employee for whatever reason, the official personnel file shall, after inclusion of the final personnel action form, be closed and transferred to the location reserved for files of former employees. Prior to transfer, all temporary material shall be removed from the file and either given to the employee or destroyed. Official personnel files of former

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employees shall be retained indefinitely.

(d) A separate file shall be established for each TCGCC position vacancy announcement. Each file shall contain, at a minimum, the following items of pertinent information:

- (1) Copy of the official position announcement;
- (2) Copy of each application or resume received in response to the announcement;
- (3) Notes, rankings, and recommendations of the evaluation board;
- (4) Copy of any official extension or rescission announcements if applicable;
- (5) Copies of correspondence with applicants;
- (6) Memo to the file from the Personnel Officer explaining the disposition of the announced position.

(e) Position vacancy files shall be retained for two years from the date of hiring or announcement cancellation and then may be destroyed.

Modified, 1 CMC § 3806(f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Commission Comment: The Commission inserted commas after the words “beneficiary” in subsection (a)(4) and “rankings” in subsection (d)(3) pursuant to 1 CMC § 3806(g).

§ 170-30.5-1010 Access to Official Personnel File

Any employee may have access to his own official personnel file at any time during regular working hours provided a responsible person designated by the Personnel Officer is present as the employee’s review takes place.

Modified, 1 CMC § 3806(f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Part 1100 - Ethical and Behavioral Standards for Employees

§ 170-30.5-1101 Definition of Terms

In addition to the definitions in § 170-30.5-040 the following definitions shall be applicable to this part.

(a) “Confidential information” means any information which is available to a TCGCC employee only because of his status as an employee of the TCGCC and is not a matter of public knowledge or generally available to the public on request.

(b) “Conflict of interest” means any situation in which a TCGCC employee’s private interest, usually, but not always, a financial interest, conflicts, or presents the reasonable appearance of conflict, with his official duties and responsibilities.

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(c) “Direct or indirect participation in a procurement” means involvement in the procurement decision, approval, disapproval, recommendation, preparation of any part of a procurement, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or participation in the procurement process or procurement award in any other advisory capacity.

(d) “Financial interest” means:

(1) Ownership of any interest or involvement in any relationship from which or as a result of which, a person within the past year has received or is presently receiving or may in the future receive or be entitled to receive compensation; or

(2) Holding a position in a business such as officer, director, trustee, partner, employee or the like.

(e) “Gift or gratuity” means a payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, presented or promised, unless consideration of substantially equal or greater value is transferred.

(f) “Immediate family” when used within the provisions of the existing or revised provisions of the TCGCC Personnel Rules and Regulations codified in this subchapter, unless explicitly excepted or defined otherwise, includes spouse, children, and other family members residing within one household.

(1) The term “household” used in these definitions means a primary dwelling where one or more persons is permanently residing and shall include any extensions of such dwelling. A person’s household is his primary residence. It is presumed that a dwelling house on Tinian occupied by an employee or a member of the Commission is that individual’s household.

(2) The term “other family member” used in these definitions includes children, parents, brothers, sisters, grandchildren, grandparents, adopted children and adoptive parent, or stepparents, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, and relatives up to and including first degree cousin(s).

(3) The term “spouse” used in these definitions refers to any marital relationship between a man and a woman whether created by a recorded nuptial or common-law practice.

(4) The term “children” used in these definitions refers to a child by birth or adoption whether such adoption was through a formal judicial proceeding or a common-law or traditional adoption.

(5) The term “other family member” used in these definitions does not include a live-in housekeeper.

(g) “Nominal value” means a gift or gratuity having a cash value of less than \$500.00.

(h) “Outside work” means all gainful employment other than the performance of official TCGCC duties. It includes, but is not limited to, self-employment, working for an employer, the management or operation of a private business for profit (including personally owned private businesses, partnerships, corporations, and other business entities).

Modified, 1 CMC § 3806(c), (d), (f).

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History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Commission Comment: The Commission inserted a comma after the word “auditing” in subsection (c) pursuant to 1 CMC § 3806(g). The Commission inserted quotation marks around terms defined.

§ 170-30.5-1102 Applicability of Other Ethical or Behavioral Standards

The ethical and behavioral standards in part 1100 of this subchapter shall be in addition to the requirements of PL 8-11 as mended*, (the CNMI Government Ethics Code Act of 1992 now codified at 1 CMC §§ 8501, et seq.) which may be applicable to TCGCC employees. Standards set forth in this part shall apply to all TCGCC employees, including exempt employees and Commission members. Certain TCGCC employees are also subject to the terms of the TCGCC Code of Ethics. If a conflict of provisions between this part and the TCGCC Code of Ethics is deemed to exist with regard to an employee who is subject to both standards, the more stringent of the two standards shall be applied. If a conflict of provisions between this part and/or the TCGCC Code of Ethics is deemed to exist with the CNMI Government Ethics Code Act of 1992 then, to the extent applicable to TCGCC employees, the statutory requirements of the CNMI Government Ethics Control Act of 1992 shall be applied.

* So in original.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-1104 Policy

(a) Employment at the TCGCC constitutes a public trust with regard to all TCGCC employees. The highest standards of honesty, integrity, impartiality, and conduct by TCGCC employee is essential to assure the proper conduct of TCGCC business and maintenance of public confidence in the Commission and the employees of the TCGCC.

(b) Employees are required to conduct themselves in such a manner that the duties and responsibilities of the TCGCC may be effectively accomplished and to observe the principals of fairness, courtesy, consideration, and promptness in dealing with or serving those having business with the TCGCC. Personal off-duty conduct of an employee that is contrary to these principals or reflects adversely upon the integrity or credibility of the TCGCC, may also be a basis for disciplinary action pursuant to the rules and regulations in this subchapter.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

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

§ 170-30.5-1106 General Standards

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(a) Any attempt to realize a gift, gratuity, or other personal gain through TCGCC employment by conduct inconsistent with, or in violation of, either the rules and regulations in this subchapter or the Revised Tinian Casino Gaming Control Act of 1989 is a breach of public trust and subject to adverse personnel action. In order to fulfill, uphold, and implement the ethical standards of the TCGCC, employees must strictly adhere to all applicable legal and ethical requirements, and standards, and in particular of the requirements of this part.

(b) Every TCGCC employee shall:

(1) Give a reasonable full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought;

(2) Seek to develop and implement more efficient and economic methods of accomplishing his duties;

(3) Never accept, for himself or another or his immediate family, a gift, gratuity or other favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his TCGCC duties;

(4) Always act fairly in a non-partisan and unbiased manner when carrying out his duties and never discriminate by dispersing special favors or privileges to anyone, whether or not for personal gain;

(5) Engage in no business with the TCGCC, either directly or indirectly, which is inconsistent with the conscientious performance of his TCGCC duties;

(6) Whether or not for personal gain, never divulge any confidential information coming to him in the performance of TCGCC duties; and

(7) Report corruption or any violation of the Revised Tinian Casino Gaming Control Act of 1989 or of the Personnel Rules and Regulations codified in this subchapter wherever suspected.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Commission Comment: The Commission inserted commas after the words "gratuity" in subsections (a) and (b)(3) and "uphold" in subsection (a) pursuant to 1 CMC § 3806(g).

§ 170-30.5-1108 Nepotism

(a) Employment of more than one person from the same immediate family of a TCGCC employee in the same division or at the same remote work site is prohibited.

(b) Employment of any person who is a member of the same immediate family of a TCGCC employee if such person is less than fully qualified for the position or to the exclusion of a more qualified candidate is prohibited.

(c) No employee shall directly supervise a member of his immediate family except in emergency situations. No supervisor shall employ any member of his immediate family or other relative or any other person whose relationship or association with the supervisor is such that a reasonable person might assume the employee to be in a favored position compared to other

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TCGCC employees.

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-1110 Use of Confidential Information

It is a breach of ethical standards and a violation of the rules and regulations in this subchapter for any TCGCC employee or former employee to knowingly use or disclose any confidential information.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-1112 Employee Conflict of Interest and Disclosure Requirements

(a) It is a breach of ethical standards and a violation of the rules and regulations in this subchapter for any employee to participate directly or indirectly in a TCGCC procurement when the employee knows or should have known that:

- (1) The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement; or
- (2) Any other person, business, or organization with whom the employee or any member of the employee's immediate family is conducting business or negotiating has an arrangement concerning a present or prospective financial interest and is involved in the procurement.

(b) It is a breach of ethical standards and a violation of these rules and regulations for any employee who has a financial interest in or obtains any gift, gratuity, or other benefit or item of other than nominal value from any TCGCC license applicant, licensee, contractor, or their representative(s) to fail to immediately report in writing to the Executive Director such financial interest, gift, gratuity, or other benefit.

(c) It is a breach of ethical standards and a violation of these rules and regulations for any employee, whether or not the recipient of a financial interest, gift, gratuity, other benefit or item of other than nominal value, who knows or should have known of such financial interest, gift, gratuity, other benefit or item of other than nominal value being offered to or received by another in violation of these rules and regulations and failing to immediately report such occurrence to the Executive Director.

(d) It is a breach of ethical standards and a violation of these rules and regulations for any TCGCC employee or member of the employee's immediate family to seek or obtain employment from or seek or hold any financial interest in any business activity of a gaming license holder or applicant for a gaming license.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

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§ 170-30.5-1114 Gifts, Gratuities, and Offers of Employment

(a) It is a breach of ethical standards and a violation of the rules and regulations in this subchapter for any TCGCC employee or member of the employees immediate family to accept from any person any gift, gratuity, other benefit or item of value given to such employees or family member with the intent to influence the employee's business judgment.

(b) It is a breach of ethical standards and a violation of these rules and regulations for any person to offer, give, or agree to offer or give any TCGCC employee or former employee, or member of their immediate family; or, for any TCGCC employee or former employee or member of their immediate family to solicit, demand, accept or agree to accept from another person, a gift, gratuity, benefit or item of value or offer of employment in any way related to the performance of their TCGCC duties.

Modified, 1 CMC § 3806(d), (f), (g).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Commission Comment: In subsection (a), the Commission changed "employee's" to "employees" to correct a manifest error. The Commission corrected the spelling of the word "judgment" in subsection (a) pursuant to 1 CMC § 3806(g). The Commission inserted a comma after the word "give" in subsection (b) pursuant to 1 CMC § 3806(g).

§ 170-30.5-1116 Outside Work and Interests

(a) It is a breach of ethical standards and a violation of the rules and regulations in this subchapter for any TCGCC employee or member of the employee's immediate family to seek or obtain employment from or seek or hold any financial interest in any business activity of a gaming license holder or applicant for a gaming license.

(b) A TCGCC employee shall not perform outside work which:

- (1) Is of such a nature that it may be reasonably construed by the public to be an official act of the TCGCC; or
- (2) Involves the use of TCGCC facilities, equipment, or supplies of whatever kind; or
- (3) Is the result of or involves the use of confidential information; or
- (4) Involves active proprietary management of a business closely related to the official TCGCC work of the employee; or
- (5) Could influence or appear to influence the exercise of impartial judgment on any matters coming before the employee in the course of his official duties.

(c) Except for the restrictions set forth in subsections (a) and (b) immediately above and § 170-30.5-525(d) of this subchapter outside work is permitted for exempt and non-exempt TCGCC employees and Commission members to the extent that it does not prevent a Commission member or employee from devoting his primary interest, talents, and energies to the accomplishment of his work for the TCGCC or tend to create a conflict between the private interests of any Commission member or employee and his official responsibilities. The outside

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employment of a Commission member or employee shall not reflect negatively upon or otherwise discredit the TCGCC.

(d) Active proprietary management of any undertaking except a “small business” is discouraged because of the possibility that such management responsibilities may interfere with the employee’s obligations to his primary employer, the TCGCC.

(e) Abuse of leave privileges to engage in outside work contrary to these rules and regulations could be grounds for adverse action, including termination.

(f) Employees are urged to seek the advice of their immediate supervisor or the Personnel Officer before committing themselves to outside employment of any nature.

(g) All outside employment, regardless of how temporary in nature, must be reported in writing to the Executive Director within ten days of the commencement of such employment.

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

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Commission Comment: In subsection (c), the Commission changed “restriction” to “restrictions” to correct a manifest error. The Commission corrected the spelling of the word “judgment” in subsection (b)(5) and inserted a comma after the word “talents” in subsection (c) pursuant to 1 CMC § 3806(g).

§ 170-30.5-1118 Negotiations for Employment

A TCGCC employee shall not, without prior written approval from the Executive Director, negotiate for future employment with persons or organizations having business with the TCGCC. In the event an employee desires to negotiate such future employment, he shall inform the Personnel Officer in writing of his intentions. If it is determined by the Personnel Officer that the proposed negotiations will not adversely affect the Commission’s interest, the employee will be permitted to proceed with such negotiations while maintaining employment with the TCGCC.

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-1120 Gambling

To clarify, interpret, and supplement part II § 5(12) and part XI § 110(1)(a) of the Revised Tinian Casino Gaming Control Act of 1989, except as may be required in the proper discharge of officially assigned duties, a TCGCC exempt employee or non-exempt employee, or Commission member, whether on duty or off duty, shall not participate in any form of gaming at a licensed casino on Tinian. Further, gambling of any nature is prohibited during work hours for all TCGCC exempt employees or non-exempt employees and Commission members except as may be required in the proper discharge of officially assigned duties.

Modified, 1 CMC § 3806(f).

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History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

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

§ 170-30.5-1122 Use of Alcoholic Beverages and Drugs

Except at officially sanctioned events, employees shall not consume alcoholic beverages while on TCGCC duty. Consumption of alcoholic beverages at officially sanctioned events shall be in moderation to avoid employee intoxication or inebriation. Regardless of the permissive language of this section, all TCGCC employees are subject to and required to comply with the TCGCC drug and alcohol policies and procedures set forth in part 1200 of this subchapter.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-1124 Use of TCGCC Property or Funds

(a) Employees have a fiduciary duty whenever dealing with TCGCC property or funds and shall be held accountable for TCGCC property or funds entrusted to them for use in connection with their official duties. It is the responsibility of the employee to protect and conserve TCGCC property and funds and to use them properly, legally, economically, and for official purposes only.

(b) Employees shall not use or authorize the use of a TCGCC owned or leased motor vehicle for other than official purposes unless either contractually entitled to do so or such use is authorized by the Executive Director or the Chairman.

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-1126 Political Activities

(a) All TCGCC employees shall have the following rights, free from work-place influence or intimidation, with respect to political activities:

(1) To vote for the candidate of their choice and to express their personal opinions on political candidates and political matters; and

(2) To be active members of a political party or similar organization of their choosing; and

(3) To make voluntary contributions to a political party or similar organization or any political candidate; and

(4) To become a candidate for election to any public office, provided however that the employee must take leave of absence, with or without pay, from their TCGCC employment from the date that the employee officially registers as a candidate with the CNMI Board of Election until the election is concluded.

(b) At no time shall any TCGCC employee:

(1) Use their office or official position or influence or authority to interfere with any election

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or to affect the results of an election; or

- (2) Use their office or official position or influence or authority to coerce any person or political party in reference to any politically related activity; or
- (3) Solicit or receive political contributions from any person or for any political party or political candidate during working hours or while on TCGCC duty or property; or
- (4) Campaign for any political party or political candidate for public office during working hours or while on TCGCC duty or property; or
- (5) Express a political opinion or preference for a political party or political candidate in such a way that it might be construed to be an official position of the TCGCC or its members or employees of the TCGCC.

(c) In connection with all TCGCC personnel related decisions, no person may make inquiry of an applicant or employee as to their political affiliations or political viewpoint nor may known political affiliations or views of the employee or applicant be considered in any TCGCC personnel related decision.

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-1128 Sexual Harassment Defined

Sexual harassment is unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature which creates an intimidating hostile or offensive work environment which impacts on an employee's work performance. Conduct of a sexual nature includes, but is not limited to, offensive sexual flirtation, verbal sexual harassment, direct or indirect pressure for sexual activity, degrading comments about a person or that person's appearance, physical assault or battery, the display of sexually explicit or suggestive objects, or abusive contact.

Modified, 1 CMC § 3806(g).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Commission Comment: The Commission corrected the spelling of "degrading." The Commission inserted commas after the words "favors" and "objects" pursuant to 1 CMC § 3806(g).

§ 170-30.5-1130 Prohibition Against Sexual Harassment

It is the policy of the TCGCC that all of its employees shall enjoy a work environment free from sexual harassment and all other forms of job discrimination. Sexual harassment is illegal under title VII of the Civil Rights Act of 1964, as amended and this prohibition is implemented by 29 CFR § 1604.11.

Modified, 1 CMC § 3806(f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-1132 Policy to Preclude Sexual Harassment

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- (a) Sexual harassment will not be tolerated by the TCGCC regardless of whether the offensive conduct is committed by its supervisors, managers, non-supervisors, co-workers, or non-employees (such as vendors, consultants, contractors, or members of the general public who enter the TCGCC workplace).
- (b) All TCGCC employees are encouraged to report any violation of this prohibition against sexual harassment since the TCGCC cannot resolve problems of sexual harassment in the workplace until incidents of sexual harassment are reported. Employees will not be subject to any retaliatory action for making truthful statements about alleged sexual harassment.
- (c) An employee will neither be denied nor receive employment opportunities and/or benefits because of a sexual relationship with 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 may or will have a positive or favorable effect on that person's hiring, assignment, advancement, compensation, or any other condition(s) of employment.
- (d) The victim of sexual harassment can be either a male or female.
- (e) The victim of sexual harassment does not have to be the person harassed but could be anyone adversely affected by the offensive conduct.
- (f) Unlawful sexual harassment may occur without economic injury to the victim.
- (g) Supervisors, by law, are 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 promptly take appropriate action(s) to stop such conduct from occurring or recurring.
- (h) The Executive Director shall, independently of the publication of the rules and regulations in this subchapter, distribute a copy of §§ 170-30.5-1128 through 170-30.5-1140 inclusive of these rules and regulations to every current and future TCGCC employee and shall also post a copy of this information in an accessible location at the TCGCC office.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Commission Comment: The Commission inserted commas after the words "co-workers" and "contractors" in subsection (a) and "compensation" in subsection (c) pursuant to 1 CMC § 3806(g).

§ 170-30.5-1134 Sanctions Against Sexual Harassment

The TCGCC shall, to the extent legally permissible, take immediate and appropriate action to preclude or punish any conduct which violates the TCGCC policy against sexual harassment. Such actions may include, if warranted, reprimand, suspension from work without pay, demotion, termination, or other personnel action deemed appropriate under the circumstances.

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History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-1136 Procedure for Reporting a Sexual Harassment Claim

(a) All alleged conduct constituting sexual harassment shall be reported, in writing, to the Executive Director, unless the Executive Director is the alleged violator. If the Executive Director is the alleged violator the report shall be submitted to the Commission Chairman. The alleged victim may make a preliminary verbal report of the alleged sexual harassment and if assistance is needed, the alleged victim/complainant shall then be assisted by the Executive Director, Commission Chairman, or designee in preparing a written report of the incident(s).

(b) The written report alleging sexual harassment should contain the following information:

- (1) The identity and the duty station of the alleged victim;
- (2) A detailed description of the alleged improper conduct;
- (3) The corrective action desired; and
- (4) The name of the alleged victim's representative, if any.

(c) The Executive Director, Commission Chairman, or designee shall examine the complaint; conduct any necessary independent investigation; if appropriate, discuss the complaint with the complaining party and/or his representative and/or the alleged violator; and render a preliminary decision, in writing, within fourteen calendar days after receiving the initial written complaint.

(d) If the Executive Director is not successful in resolving the complaint to the alleged victims satisfaction within ten days after the preliminary decision is initially presented to the Commission, the alleged victim may, within fifteen days after receiving the Executive Director's preliminary decision, submit a petition to the Chairman requesting a review of the Executive Director's ruling by the Commission.

(e) The Commission, or its designee, shall conduct a de novo hearing on the sexual harassment complaint and render a final decision on the matter, no later than thirty days after the conclusion of such hearing.

(f) Any hearing undertaken by the Commission or its designee shall be conducted pursuant to §§ 170-30.5-735 and 170-30.5-740 of this subchapter; and, any decision or order issued by the Commission or its designee shall be final and conclude the administrative hearing process.

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

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Commission Comment: The Commission inserted commas after the word "Chairman" in subsections (a) and (c) pursuant to 1 CMC § 3806(g).

§ 170-30.5-1138 U.S. Equal Employment Opportunity Commission (EEOC)

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If a complaint of sexual harassment is not acted upon to a alleged victim's satisfaction, the alleged victim/complainant may, at the conclusion of the TCGCC administrative hearing process or as otherwise permitted by law, file a complaint with the U.S. Equal Employment Opportunity Commission (EEOC).

(a) The current contact location for the nearest EEOC office, in Hawaii, is 300 Ala Moana Blvd., Room 7123A, Box 50082, Honolulu, Hawaii, 96850, phone (808) 541-3120; or

(b) The current contact location for the regional EEOC office, in San Francisco, California is 901 Market Street, Suite 500, San Francisco, California, 94103, phone (415) 356-5100.

Modified, 1 CMC § 3806(f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-1140 TCGCC Assistance in Filing EEOC Claim

To the extent permissible or appropriate the Executive Director or Commission may direct one or more TCGCC employees to assist the alleged victim/complainant in pursuing a claim before the EEOC.

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-1142 Other Prohibited Conduct or Behavior

(a) A TCGCC officer or employee shall not direct, encourage, or knowingly allow another TCGCC officer or employee to engage in any illegal conduct or behavior or to violate any applicable federal or CNMI laws, rules, or regulations.

(b) A TCGCC officer or employee shall not withhold any information from his supervisor(s) or the Commission if such information relates to or affects a Commission decision or action or if such information would otherwise affect the functioning or integrity of the Commission.

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Commission Comment: The Commission inserted commas after the words "encourage" and "rules" in subsection (a) pursuant to 1 CMC § 3806(g).

§ 170-30.5-1144 Legal, Civil, and Administrative Remedies

(a) The TCGCC legal counsel shall report any departure from the rules and regulations in this subchapter which he believes also constitute a violation of any applicable law(s) to law enforcement officials, or the CNMI Attorney General or other appropriate CNMI or federal authority.

(b) Any TCGCC employee who violates the provisions of applicable law(s), rule(s), or

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regulation(s), including these rules and regulations is subject to appropriate adverse personnel action(s) as set forth herein.

(c) When applicable, the TCGCC may pursue several alternative legal remedies available against an employee who violates the Personnel Rules and Regulations codified in this subchapter or other applicable federal or CNMI law(s), rule(s), and regulation(s) including, but not limited to, administrative proceedings pursuant to these rules and regulations or judicial relief including, but not limited to, civil injunction, civil suit for damages or return of TCGCC funds, or criminal prosecution.

(d) All administrative proceedings under this section shall be undertaken in accordance with applicable due process requirements.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Commission Comment: The Commission inserted commas after the word “rule(s)” in subsections (b) and (c) pursuant to 1 CMC § 3806(g).

Part 1200 - Employee Drug and Alcohol Usage

§ 170-30.5-1201 Policy

(a) As an employer, the Commission recognizes its responsibility to its employees and the public it serves to take reasonable steps to assure safety in the workplace and in the community. Furthermore, the Commission is concerned by the adverse effect alcohol and drug abuse have on safe and productive job performance by TCGCC employees.

(b) The Commission also recognizes that any employee whose ability to perform safely and productively is affected by the use of alcohol and other drugs jeopardizes the integrity of the workplace and the achievement of the Commission’s duties and objectives. The Commission has an interest in any health problem that adversely affects an employee’s job performance. It recognizes that alcoholism, problem drinking, and drug abuse are treatable illnesses and should be given the same consideration as other health problems. The goal of this part of the rules and regulations in this subchapter is improved job performance, not discipline. Accordingly, it is the TCGCC policy to offer employees affected by alcoholism, problem drinking, or drug abuse assistance, treatment and rehabilitation.

(c) The Commission, therefore, encourages employees who have problems with drugs or alcohol to utilize all available resources to resolve their problems before those problems affect their job performance.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

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

§ 170-30.5-1205 Definitions

In addition to those definitions set forth in § 170-30.5-040, the following definitions apply to this part.

- (a) “Accident” means an event which causes:
 - (1) A fatality, or
 - (2) An injury to a person requiring professional medical treatment beyond simple at-scene first aid; or
 - (3) An economic loss, including property damage, greater than \$2,500.00.

- (b) “Alcohol” means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl or isopropyl. As used in this part, alcohol also includes any alcohol found in any prescription or non-prescription drug or a product such as cough syrup.

- (c) “Alcohol use” means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

- (d) “Assessment” means a determination made by an expert in the field of substance abuse of the severity of an individual’s alcohol or drug use problem and an analysis of the possible course(s) of treatment.

- (e) “Breath alcohol concentration” (“B.A.C.”) 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 testing device. When the indicated alcohol concentration on an initial alcohol test is different from an indicated alcohol concentration on a confirmatory test, for purposes of this part the lower indicated concentration shall be deemed to be the correct B.A.C.

- (f) “Breath alcohol technician” (“B.A.T.”) means an individual authorized to collect breath specimens under § 170-30.5-1230 of this subchapter or a person who operates an evidential breath testing device.

- (g) “Canceled test” means a test that has been declared invalid pursuant to subsection (p) of these definitions. It is neither a positive or a negative test. Where a cancelled test is declared further testing is required prior to the completion of either a pre-employment or return to duty evaluation.

- (h) “Conducting TCGCC business” means being in a situation where decisions are made that commit TCGCC to some action or inaction, or being in a position where an action or inaction could injure or adversely affect either other individuals or the responsibilities or reputation of the TCGCC.

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(i) “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.

(j) “Confirmatory test” (controlled substances) means a second analytical procedure, that is independent of the screening test, to identify the presence of a specific drug or metabolite and that, if available, uses a different technique and chemical principle from that of the screening test in order to better ensure the reliability and accuracy of the initial test.

(k) “Covered substances” means:

(1) Legal 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;

(ii) Drugs which are legally obtainable, but have not been obtained legally;

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

(iv) So-called “designer drugs” or drug substances which are substances or compounds not approved for medical or other use by a state board of pharmacy, or the U.S. Drug Enforcement Administration, or the U.S. Food and Drug Administration;

(v) Unauthorized substances including any substance that is intentionally used to cause impairment or otherwise alter or effect physical and/or mental functioning.

(vi) TCGCC-covered substances. Those substances for which an applicant or employee will be routinely tested when the TCGCC conducts a “drug test” will include, but are not limited to:

(A) Marijuana (cannabinoids) and metabolites;

(B) Cocaine and metabolites;

(C) Amphetamines and metabolites;

(D) Opiates (narcotics);

(E) PCP (Phencyclidine); and

(F) Alcohol.

(l) “Consulting physician” means a medical review officer, as defined in subsection (r) of these definitions, who is retained or employed by the Commission to advise or assist with drug-testing.

(m) “Drug” means a substance:

(1) Recognized in the official United States Pharmacopoeia, the official Homeopathic Pharmacopoeia of the United States, or the official National Formulary, or any supplement to any of them; or

(2) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals; or

(3) Other than food, minerals, or vitamins, intended to affect the structure or any function of the body of a human or animal; or

(4) Intended for use as a component of any article specified in the compilations set forth subsections (m)(1), (m)(2), or (m)(3) of this definition. Medical devices or their components,

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parts, or accessories are not considered drugs under this definition.

(n) “Evidential breath testing device” (“E.B.T”) means a device which is:

- (1) Approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath; and
- (2) Is on the NHTSA’s Conforming Products List of E.B.T’s; and
- (3) Conforms with the model specifications available from the NHTSA, Office of Alcohol and State Programs.

(o) “Illegal drug” means those substances listed in subsection (k)(2)(i)-(v) of these definitions.

(p) “Invalid test” means a breath or urine test that has been declared invalid by a medical review officer, including a specimen that is rejected for testing by a laboratory for any reason. An invalid test shall not be considered either a positive or a negative test result.

(q) “Medical file” means that portion of the employees official personnel file containing an employee’s medical examination form, mental health referrals, alcohol and drug test results, and other health related information and documents.

(r) “Medical review officer” (“M.R.O.”) means a licensed physician with specialized training in substance abuse and related disorders and/or in the use and evaluation of drug test results. If available, the M.R.O. shall be the Commission’s primary contact for technical inquiries to the drug testing laboratory.

(s) “Proof of wellness” means a written notice from the medical review officer or substance abuse professional indicating the applicant/employee is no longer dependent on some drug/alcohol substance to the extent it can affect the applicants/employees safe and productive work. Also known as a statement of fitness for duty.

(t) “Reasonable suspicion” means a perception based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or breath or body odors of an individual; or based on specific facts, circumstance, physical evidence, physical signs and symptoms; or based on a pattern of performance or a pattern of behavior that would cause a knowledgeable or trained individual to reasonably conclude that a person may be under the influence of alcohol or illegal drugs while on duty.

(u) “Refusal to submit” means conduct constituting a refusal to be tested as set forth in § 170-30.5-1210(e) of this subchapter.

(v) “SAMHSA” means the Substance Abuse and Mental Health Services Administration, U.S. Department of Health and Human Services.

(w) “Safety-sensitive” means a classification of employment related activities which directly affect the safety of the employee or one or more other persons, including, but not limited to, the

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operation of motor vehicles or heavy machinery or the carrying of firearms.

(x) “Screening test” means an analytical procedure to determine whether an employee or applicant may have a prohibited concentration of drugs or alcohol in his system.

(y) “Statement of fitness for duty” means a written statement from a medical review officer (M.R.O.) or substance abuse professional (S.A.P.), certifying that the named applicant or employee is not dependent on alcohol or any drug to the extent such dependence will affect the applicants or employees ability to perform work in an acceptable, safe, and careful fashion. Also known as a proof of wellness.

(z) “Substance abuse professional” (“S.A.P.”) means a physician, psychologist, psychiatrist, or social worker with knowledge of or clinical experience in the diagnosis and treatment of drug and alcohol related disorders; or an individual certified by the National Association of Alcoholism and Drug Abuse Counselors.

(aa) “Under the influence” means a condition where a person’s behavior, attention, or ability to perform work in an acceptable, safe, and careful fashion has been adversely affected by the use of drugs or alcohol.

(bb) “Vehicle” means a device in, upon, or by which any person or property is or may be propelled or moved on land, or a highway on a waterway, or through the air.

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

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Commission Comment: In subsection (k)(2)(vi)(F), the Commission inserted the final period to correct a manifest error. In subsection (m)(4), the Commission corrected the spelling of “compilations.” The Commission inserted quotation marks around terms defined. The Commission inserted commas after the words “treatment” in subsection (m)(2), “results” in subsection (q), “safe” in subsections (y) and (aa), and “upon” in subsection (bb) pursuant to 1 CMC § 3806(g).

§ 170-30.5-1210 Prohibited Conduct

(a) Sale, Purchase, or Possession with Intent to Transfer of Illegal Drugs. No employee shall:

(1) Sell, purchase, or transfer any illegal drug during their hours of actual employment or while on Commission property or in any Commission vehicle or on any Commission business; or

(2) Attempt to sell, purchase, or transfer any illegal drug during their hours of actual employment or while on Commission property or in any Commission vehicle or on any Commission business; or

(3) Possess with the intent to sell, transfer or deliver, any illegal drug during their hours of actual employment or while on Commission property or in any Commission vehicle or on any Commission business.

(b) Possession of Illegal Drugs. No employee shall possess any illegal drug during their hours of actual employment or while on Commission property, or in any Commission vehicle, or

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on any Commission business.

(c) **Possession of Open Containers of Alcohol.** Except as provided in § 170-30.5-1122 of this subchapter no employee shall possess an open container of alcohol during their hours of actual employment or while on Commission property or in any Commission vehicle or on any Commission business.

(d) **Under the Influence of Alcohol or Illegal Drugs.** No employee shall be under the influence of alcohol or any illegal drug when at work, or reporting to work with the intention of working. An employee is presumed to be under the influence of alcohol or an illegal drug if:

- (1) The employee has a B.A.C. of 0.02 or more; or
- (2) The employee has a detectable amount of any illegal drug in his urine; or
- (3) The employee uses alcohol or any illegal drug while on call when the employee knows there exists a possibility that he may be called upon to perform a safety-sensitive function; or
- (4) The employee uses alcohol or any illegal drug within four hours prior to reporting to work and there exists a possibility that he may be called upon to perform a safety-sensitive function.

(e) **Refusal to Be Tested.** No employee required or selected to be tested for drugs or alcohol under either any provision of this part or any other requirement of the rules and regulations in this subchapter shall refuse to be tested. The following conduct shall constitute a refusal to be tested:

- (1) Refusing in writing to submit to testing after receiving clear and specific written notice of the requirement to be tested; or
- (2) Refusing verbally in front of at least two witnesses, to submit to testing after receiving a specific written or verbal notice of the requirement to be tested; or
- (3) Without a valid medical explanation, failing to timely provide an adequate specimen for testing after receiving notice of the requirement to be tested. An M.R.O. or S.A.P. shall determine if there is any medical reason for failure to provide an adequate urine sample or an adequate breath sample; or
- (4) Engaging in conduct that clearly obstructs the collection or testing process; or
- (5) Failing to remain available for post-accident testing, or leaving the scene of an accident before a testing decision is made. An employee may only leave the scene of an accident to obtain necessary medical care or assistance in responding to the accident. If the employee leaves the scene, the employee must notify his supervisor either prior to leaving the scene or as soon as possible thereafter of his location and the reason for leaving the scene; or
- (6) Consuming alcohol or illegal drugs after an accident but before a testing decision is made; or
- (7) Failing to report for the work shift during which an accident which could have resulted in a testing decision occurred; or
- (8) Failing to promptly report to the specimen collection site after being informed of the requirement to be tested.

(f) **Giving False Information or Contamination of Specimen.**

No employee shall give false information about a breath or urine specimen or contaminate or

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alter or attempt to contaminate or alter a breath or urine specimen or solicit another to do so.

(g) **Refusal to Comply with Treatment Recommendations.**

No employee shall fail to comply with recommendations for treatment or after-care made by an M.R.O. or S.A.P. as a result of an assessment prepared as a consequence of a prior positive drug or alcohol test result.

(h) **Failure to Notify Commission of Conviction.** An employee shall notify the Executive Director and the Commission of any criminal drug statute conviction within five days after such conviction.

(i) **Supervisor's Responsibility for Confidentiality.** A supervisor, the Executive Director, or a Commission member shall not knowingly disregard an employee's right to confidentiality in matters relating to alcohol or drug testing or otherwise neglect his other responsibilities under this part.

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

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Commission Comment: The Commission inserted commas after the words "purchase" in subsections (a) and (a)(1) and "transfer" in subsection (a)(3) pursuant to 1 CMC § 3806(g).

§ 170-30.5-1215 Penalties and Consequences

(a) **Disciplinary Action.** Pursuant to the following guidelines, depending on the circumstances, an employee committing any act prohibited by part 1200 of this subchapter shall be subject to an appropriate form of discipline.

(1) **Generally.** Where an employee commits any drug or alcohol related violation prohibited by the rules and regulations in this subchapter, the employee shall be disciplined. At a minimum, the employee shall receive a formal reprimand. If the prohibited act committed by the employee relates to the use or possession of alcohol or illegal drugs, the employee shall be referred to the M.R.O. or S.A.P. for assessment and treatment.

(2) **First offense.** An employee found to be under the influence of alcohol or illegal drugs in violation of this part, for a first offense, shall not be subject to removal solely for being under the influence of alcohol or illegal drugs. However, if the person is also involved in an accident, the Executive Director may decide to initiate an adverse action for termination of employment, even for a first offense.

(3) **Serious offenses.** The following acts, even for a first offense, will result in an immediate adverse action for termination of employment:

(i) The sale, purchase, possession with intent to deliver, or transfer of illegal drugs, or the attempt to sell, purchase, or transfer illegal drugs in violation of § 170-30.5-1210(a)(1)-(3); or

(ii) Being involved in an accident resulting in a fatality while under the influence of alcohol or illegal drugs, in violation of § 170-30.5-1210(d); or

(iii) While performing or about to perform duties in a safety sensitive position, being under the influence of alcohol or illegal drugs, in violation of § 170-30.5-1210(d); or

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- (iv) Refusal to be tested, in violation of § 170-30.5-1210(e);
- (v) Giving false information, contaminating or attempting to contaminate a urine or breath sample, in violation of § 170-30.5-1210(f); or
- (vi) Failing to notify the Personnel Division of the conviction for a drug offense in violation of § 170-30.5-1210(h); or
- (vii) Testing positive for alcohol or illegal drugs within five years of a prior positive test; or
- (viii) Breaching any term of a return to duty contract executed under the provisions of § 170-30.5-1220(b).

(b) **Information Concerning Treatment Options.** Those employees not removed from TCGCC employment after committing any act prohibited by this part shall be informed of resources available for evaluating and resolving problems associated with the abuse of alcohol and use of illegal drugs. The Commission shall, at a minimum, give the name, address, and telephone number of the nearest available S.A.P. professional. The employees will then be required to fulfill all the specified requirements of the treatment program recommended by the S.A.P. before being evaluated for return to duty.

(c) **Report to Department of Public Safety.** An employee committing any act prohibited by § 170-30.5-1210(a)(1)-(3) or § 170-30.5-1210(d) shall be reported, by the TCGCC, to the Department of Public Safety as required by law.

(d) **Duty/Pay Status Pending Adverse Action.** Unless the employee was involved in an accident resulting in a fatality, an employee subject to an adverse action for committing any act prohibited by this part, except for § 170-30.5-1210(g), may be allowed to remain on the job pending resolution of any proposed adverse action; however, such employee shall not be allowed to perform any safety-sensitive functions, even if that means assigning to the employee duties the employee would not otherwise be performing. An employee subject to an adverse action for committing any act prohibited by this part who was involved in a fatal accident shall be placed on leave without pay (LWOP) pending resolution of the adverse action for removal.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

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

§ 170-30.5-1220 Return to Work Procedures

- (a) **Prerequisites to Returning to Duty.** No employee who has tested positive for the presence of alcohol or illegal drugs shall be allowed to return to work until the employee has:
- (1) Complied with treatment program recommended by the S.A.P. and been released for work by a S.A.P., in consultation, when appropriate, with the M.R.O. or a consulting physician; and
 - (2) In a subsequent test paid for by the employee tested negative for the presence of all TCGCC covered substances regardless of whether the removal from duty was due to alcohol

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abuse or drug possession or use; and

(3) Executed a return to duty contract.

(b) Return to Duty Contract. The return to duty contract shall, at a minimum, include the following provisions:

(1) Aftercare. An agreement to comply with aftercare and follow-up treatment recommendations for one to five years, as determined appropriate by the employee's S.A.P.; and

(2) Follow-up testing. An acceptance of unannounced alcohol or drug testing, regardless of the substance which resulted in the removal from duty, paid for by the employee, for one to five years, as determined appropriate by the employee's S.A.P.; provided however, that there shall be no fewer than six tests in the first year after the employee returns to work; and

(3) Compliance with rules. An agreement to comply with all the Commission's rules, policies, and procedures relating to employment; and

(4) Term. An acceptance that the terms of the return to duty contract are effective for up to five years after the employee's return to duty; and

(5) Breach of contract. An acknowledgment that violation of the return to duty contract is grounds for termination of employment.

Modified, 1 CMC § 3806(e), (f), (g).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Commission Comment: In subsection (a)(3), the Commission changed "execute" to "executed" to correct a manifest error.

§ 170-30.5-1225 Testing Occasions

(a) Pre-employment Testing. At the time of application for employment any person applying for any position with the Commission (the candidate) will be notified that any offer of employment is contingent upon a negative drug and alcohol urine test. After receiving an offer of employment, the candidate shall be tested for the presence of TCGCC covered substances as defined in § 170-30.5-1205(k)(2)(vi)(A)-(F). The test shall be paid for by the Commission. Testing shall be in compliance with § 170-30.5-1235 of this subchapter. Applicants who were previously employed by the Commission and applicants who have had an offer for TCGCC employment withdrawn due to a previous positive pre-employment drug test result, must also provide a written waiver authorizing the release of the candidates drug testing history for the two years immediately preceding the application date.

(1) No candidate may be assigned to work in any position until he presents the results of a pre-employment drug test, taken after the offer for employment has been made, at a facility approved by the Commission, that shows negative for the presence of TCGCC covered substances.

(2) If without a legitimate explanation, the candidate's test result is positive for the presence of a TCGCC covered substance the offer of employment shall be withdrawn or, at the discretion of the Executive Director, the candidate shall, on a schedule established by the Executive Director, submit another specimen for testing.

(3) If the candidate presents a drug testing history showing a positive drug test within two

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years immediately prior to the application date, the offer of employment shall be withdrawn unless the candidate also submits a statement of fitness for duty and agrees to execute an agreement that is equivalent to the return to duty contract set forth in § 170-30.5-1220(b).

(b) Reasonable Suspicion Testing. Where there is a reasonable suspicion that an employee is under the influence of alcohol or drugs while at work or about to begin work, he shall, upon written notice from the employee's supervisor, submit to a breath or urine test for the presence of TCGCC covered substances. Except as otherwise provided, the Commission shall pay for the testing.

(1) Properly trained supervisor. Only a supervisor with Commission approved training in the physical, behavioral, and performance indicators of probable drug or alcohol use is permitted to make reasonable suspicion testing decisions.

(2) Objective inquiry. The properly trained supervisor will observe the employee suspected of being under the influence of alcohol or illegal drugs. A decision to request testing shall be based on eye witness reports, facts of the event, and observed physical and behavioral characteristics of the employee. Prior to making the decision to require testing, the supervisor will privately question the employee to ascertain whether there are any reasons, other than alcohol or drug use, for any behavior observed.

(3) Verification. No employee shall be required to submit to a drug or alcohol test based on reasonable suspicion unless the need for the test is verified by a second properly trained supervisor or other Commission employee whether or not such other Commission employee meets the standards for a properly trained supervisor. The required verification shall be done in person.

(4) Transportation assistance. The employee to be tested shall be taken to the testing site by a supervisor or manager or Commission employee and shall be provided transportation home from the testing site. If the individual refuses and demands to drive his own vehicle, the supervisor or manager or Commission employee shall immediately notify the Department of Public Safety.

(5) Duty pending test results. Until the results of the drug or alcohol test are completed and verified, an employee tested based upon reasonable suspicion shall be allowed to perform or continue to perform safety-sensitive duty.

(6) Report. The supervisor ordering reasonable suspicion testing shall, in writing, in detail, set forth the facts leading to the decision. This report shall be considered confidential and will be maintained in the employee's medical file, which is deemed confidential, until needed for a disciplinary action. Only at that time will the report be filed in the employee's official personnel folder.

(c) Post-accident Testing. As soon as practical after an accident, any employee whose action or inaction may have contributed to the accident must, upon written or verbal notice from the employee's supervisor or a law enforcement officer, submit to breath and/or urine tests for the presence of illegal drugs. Except as otherwise provided, the Commission shall pay for the testing.

(1) Supervisor training. Unless the test is requested by a law enforcement official, only a properly trained supervisor with Commission approved training in the physical, behavioral, and performance indicators of probable drug or alcohol use is permitted to make post-accident testing decisions.

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(2) Objective inquiry. A properly trained supervisors decision to request testing shall be based on eye witness reports, facts of the event, and observed physical and behavioral characteristics of the employee. However, regardless of symptoms, the properly trained supervisor or the employee's supervisor, the Executive Director or any Commission member shall require the driver of any Commission vehicle or the operator of any Commission equipment to be tested if involved in an accident.

(3) Transportation assistance. The employee to be tested shall be taken to the testing site by a supervisor or manager or Commission employee and shall be provided transportation home from the testing site. If the individual refuses and demands to drive his own vehicle, the supervisor or manager or Commission employee shall immediately notify the Department of Public Safety.

(4) Duty pending test results. Until the results of the drug or alcohol test are completed and verified, an employee reasonably suspected of having been under the influence of alcohol or drugs at the time of the accident shall not be allowed to perform or continue to perform safety-sensitive duty.

(5) Report. The supervisor ordering post-accident testing shall put in writing, in detail, the facts leading to the decision. This report shall be considered confidential and will be maintained in the employee's medical file, which is deemed confidential, until needed for a disciplinary action. Only at that time will the report be filed in the employee's official personnel folder.

(d) Random Testing. During each calendar year randomly selected employees performing safety-sensitive functions will be required to submit to breath tests for alcohol and/or urine tests for cocaine, marijuana, opiates, amphetamines, and phencyclidine and alcohol. The testing will be done during on-duty time. Except as otherwise provided, the Commission shall pay for the testing.

(1) Method of selection. Employees will be selected using a statistically valid random selection method such as a random number table or computer-based random number generator that is matched with a unique identification for each employee such as Social Security numbers, payroll identification numbers, or other comparable unique identifying number.

(2) Number to be tested. No more than twenty-five percent of all employees performing safety-sensitive functions in each division each year shall be required to submit to random breath alcohol testing and no more than fifty percent of all employees performing safety-sensitive functions in each division each year shall be required to submit to random urine testing. The actual percentage tested will be determined at the beginning of each fiscal year for each division by the Commission in consultation with the Executive Director and/or S.A.P. after reviewing each division's prior positive testing rates, reasonable suspicion and post-accident events, and referrals for treatment.

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

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Commission Comment: The Commission inserted commas after the words "event" in subsections (b)(2) and (c)(2) and "numbers" in subsection (d)(1) pursuant to 1 CMC § 3806(g). The Commission corrected the capitalization of the words "Social Security" in subsection (d)(1) pursuant to 1 CMC § 3806(f).

§ 170-30.5-1230 Collection and Test of Breath Specimens

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- (a) Testing Site. Breath specimens shall be collected only at a site approved by the Commission or the Commission's S.A.P. or at the scene of an accident if proper equipment and personnel can promptly be made available at the accident scene.
- (b) Collection Protocol. Except as otherwise provided in this part, breath specimens shall be collected in accordance with standard collection protocols as specified in 49 CFR, part 40(C) "Procedures for Transportation Workplace Drug Testing Programs - Alcohol Testing," only by a B.A.T. trained in the collection of breath specimens at a course approved by the United States Department of Transportation. A M.R.O. or a consulting physician or other person knowledgeable or trained in the collection procedure may, when requested, assist in facilitating the collection of breath samples for testing.
- (c) Confirming Test. Breath specimens shall first be subjected to a screening test for alcohol. If that test indicates a probable breath alcohol concentration of 0.02 or greater, a second test, confirming the first and providing quantitative data of alcohol concentration, shall be performed. No alcohol test shall be considered positive unless both the screening test and the confirming test show a B.A.C of 0.02 or greater.
- (d) Results. The breath test results shall be transmitted by the B.A.T., in a manner to assure confidentiality, to the employee and to the personnel officer.
- (e) Confidentiality. Other than as specified herein, no person involved in the testing process shall disclose the results of breath tests to any other individual without a written release from the tested employee.
- (f) Invalid Test. If, using the factors found at 49 C.F.R. part 40.79*, the Commission or the Commission's S.A.P. determine the test is invalid, the test result shall be reported as negative.
- (g) Statistical Reporting. The B.A.T. or S.A.P. shall compile statistical data, that is not name-specific, related to testing results. The B.A.T. or S.A.P. shall release the statistical data to the Commission upon request.

* So in original. See Commission Comment.

Modified, 1 CMC § 3806(d), (f), (g).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Commission Comment: In subsection (b), the Commission moved the comma after "Testing" inside of the closing quotation mark.

49 C.F.R. 40.79, referenced in subsection (f), does not exist.

§ 170-30.5-1235 Collection and Test of Urine Specimens

- (a) Testing Site. Urine specimens shall be collected only at a site approved by Commission

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or the Commission's S.A.P.

(b) **Collection Protocol.** Except as otherwise provided in this part, urine specimens shall be collected in accordance with standard collection protocols as specified in 49 CFR, part 40(B), "Procedures for Transportation Workplace Drug Testing Programs - Drug Testing" by persons trained in the collection process developed by the S.A.M.H.S.A., United States Department of Health and Human Services. However, the M.R.O. or a consulting physician, or other person knowledgeable or trained in the collection procedure may, when requested, assist in facilitating the collection of urine samples for testing.

(c) **Splitting Sample.**

(1) After collecting a sample of the employee's urine, the sample will be split into two specimens. Both specimens will be shipped to the laboratory selected for performing tests for the Commission.

(2) One specimen, selected by the laboratory, called the primary specimen, shall be tested for the Commission. The other specimen called the secondary specimen, shall be the property of the employee, to be tested only upon request of the employee.

(d) **Confirming Test.** Primary urine specimens shall first be subjected to a screening test. Only if the screening test shows positive for the presence of an illegal drug, will a second test be conducted on the same urine specimen to identify the presence of a specific drug or metabolite, using a gas chromatography/mass spectrometry (GC/MS) or other similarly reliable test. No drug test shall be considered positive unless both the screening test and the confirming test show the presence of one or more illegal drugs.

(e) **Results.** The laboratory conducting the urine test shall give the results, on a confidential basis, only to the S.A.P. The S.A.P. shall discuss the test result with the tested individual.

(f) **Invalid Test.** If for any reason the S.A.P. decides that the test is invalid, the test shall be deemed negative and the tested individual shall, when subsequently requested by the Executive Director or the S.A.P., submit another urine specimen for testing.

(g) **Employee Test.** If the Commission's test shows positive for the presence of a specific illegal drug or drugs, the employee may request that the S.A.P. have the secondary specimen tested at another laboratory certified by the United States Department of Health and Human Services, for the presence of the drug or drugs found in the primary specimen.

(1) The employee must make the request in writing, within 72 hours of receiving notice of the result of the Commission's test of the primary specimen.

(2) The results of the second test shall only be given to the S.A.P. who shall then discuss the result with the employee.

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

(h) **Alternative Explanations for Positive Test Results.**

(1) Upon receiving a report of a positive test result, the S.A.P. shall attempt to determine if there is any alternative medical explanation, including the use of prescribed medication by the

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employee, for the result. Such a determination shall be based on information received from the employee and may include the tested individual's medical history and records. If the S.A.P. determines it necessary he may request pertinent analytical records from the laboratory or require a re-analysis of the primary specimen.

(2) The S.A.P. shall report the urine test result as negative and shall take no further action regarding such test if he determines:

(i) There is a legitimate medical explanation for a positive test result, other than the use of the illegal drugs; or

(ii) Based on a review of laboratory inspection report, quality assurance and quality control data, and other drug test results, the positive drug test result is scientifically unreliable or insufficient.

(iii) If the test is deemed negative under subsection (h)(2)(ii) the tested individual shall, when subsequently requested by the Executive Director or the S.A.P., submit another urine specimen for testing.

(i) **Illegal Use of Opium.** If the GC/MS or other appropriate testing device does not confirm the presence of 6 monoacetyl-morphine, the S.A.P. shall determine whether there is clinical evidence, in addition to the urine test result, of illegal use of any opium, opiate, or opium derivative.

(j) **Report to the Personnel Officer.** The S.A.P. shall, in a manner to assure confidentiality, report all positive and negative urine drug test results to the personnel officer, who shall, on a confidential basis, provide the results to the Commission.

(k) **S.A.P. and Confidentiality.** Other than as specified herein, the S.A.P. shall not disclose the results of drug tests to any other individual without a written release from the tested employee.

(l) **Statistical Reporting.** The S.A.P. shall compile statistical data, that is not name-specific, related to testing and rehabilitation. The S.A.P. shall release the statistical data to the Commission upon request.

Modified, 1 CMC § 3806(f), (g).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Commission Comment: In subsection (i), the Commission corrected the spelling of "device." The Commission inserted a comma after the word "opiate" in subsection (i) pursuant to 1 CMC § 3806(g).

§ 170-30.5-1240 Employee Education and Rehabilitation

(a) **Employee Awareness Training.** All employees shall receive information concerning the effects and consequences of drug and alcohol use on personal health, safety, and the work environment; the manifestations and behavioral clues indicative of drug and alcohol abuse; and the resources available to the employee in evaluating and resolving problems associated with the abuse of illegal drugs and alcohol.

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(b) **Employees Seeking Voluntary Assistance.** TCGCC employees may voluntarily seek assistance for alcohol or drug related problems at any time prior to being required to be tested under the reasonable suspicion, post-accident, or random testing procedures.

(1) **Referrals.** Employees may request referral to a S.A.P. for treatment, may refer themselves, or may be referred by a supervisor as part of a performance counseling. Referrals shall be kept confidential and referral information shall be made a part of the employee's medical file and shall not be a part of the employee's official personnel folder.

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

(3) **Accountability for Job Performance.** Regardless of participation in a treatment program or a request for referral to such program employees shall be held accountable for acceptable job performance consistent with the standards set forth in the rules and regulations in this subchapter. In no case where job performance has been compromised will disciplinary action be waived for employees requesting assistance or referral. However, such request for assistance referral may be considered as a mitigating factor in determining the appropriate form of discipline.

(c) **Job Security Maintained.** Employees shall not have job security or promotional opportunities jeopardized solely because of a request for assistance or referral for drug or alcohol treatment.

(d) **Required Documentation.** Although voluntary referrals or referrals made prior to testing are kept confidential, other drug or alcohol related information such as documentation of poor work performance or disciplinary actions taken due to drug or alcohol abuse shall be included in the employee's official personnel folder.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Commission Comment: The Commission corrected the capitalization of the word "regulations" in subsection (b)(3) pursuant to 1 CMC § 3806(f). The Commission inserted a comma after the word "post-accident" in subsection (b) pursuant to 1 CMC § 3806(g).

§ 170-30.5-1245 Disseminating Information

(a) **Distribution to Employees.** All current employees shall receive a copy of the rules and regulations set forth in part 1200 at least thirty days before the effective date for enforcement of these requirements and procedures by the TCGCC. New employees hired after the effective date for enforcement of part 1200 of this subchapter will be given a copy of part 1200 at the time of hire. Each employee shall sign a form prescribed by the Personnel Officer which acknowledges the receipt of part 1200 and the employee's understanding that he is bound by these rules and regulations. This signed acknowledgement shall be kept in the employee's official personnel

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folder.

(b) Posting. The regulations set forth in part 1200 shall be posted in the Commission's primary office for at least sixty days following their adoption.

Modified, 1 CMC § 3806(c), (e), (f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-1250 Record Retention and Reporting Requirements

(a) Administrative Records. Records relating to the administration of part 1200, including policy and program development, employee awareness training, supervisory training, testing site training, and program administration, shall be kept by the Executive Director for five years.

(b) Records Relating to Collection Process. Records relating to the breath and urine collection process shall be kept for two years by either the Executive Director or the S.A.P., or the operator of the testing site.

(c) Refusals, Referrals, and Test Results. The Executive Director shall keep a copy of all records of refusals to be tested, breath and urine test results, and referrals to a S.A.P. in the employee's medical file, not the employee's official personnel file, until such time as disciplinary action is taken. The S.A.P. shall keep a copy of all urine test results and the B.A.T. shall keep a copy of all breath test results consistent with their office's records retention policy and in a manner to assure confidentiality. The Commission shall retain its records related to drug and alcohol testing on the following basis:

(1) Positive test result records, records of refusals to be tested, and referrals to a S.A.P. shall be kept for five years.

(2) Negative test result records shall be kept for a period of one year.

(3) Unless otherwise provided herein, results of any test administered pursuant to the rules and regulations in this subchapter shall be available for use in a criminal prosecution of the employee without the employee's written consent unless a court of competent jurisdiction orders that such test results be released.

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

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Commission Comment: The Commission inserted commas after the words "Referrals" in subsection (c) and "tested" in subsection (c)(1) pursuant to 1 CMC § 3806(g).

Part 1300 - Emotional and Mental Health

§ 170-30.5-1301 General

(a) This part deals with employee conduct and performance when outside influences, other than drug or alcohol abuse, adversely affect an employee. The influences include, but are not

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limited to:

- (1) Politics;
- (2) Employee-supervisor conflict;
- (3) Employee-employee conflict;
- (4) Perceived personal crises;
- (5) Retirement matters;
- (6) Medical problems;
- (7) Family medical problems;
- (8) Other family problems;
- (9) Marital separation or divorce;
- (10) Legal concerns;
- (11) Financial problems; and
- (12) Death in the family.

(b) Early recognition of either deteriorating performance or inappropriate, unacceptable conduct is a vital first step in the Commission's program to help troubled employees retain or resume their place as productive members of the TCGCC work force. Early recognition is an integral part of a supervision's* responsibility. Because the immediate supervisor must be involved in helping troubled employees, this part is adopted to help the supervisor:

- (1) Recognize early signs indicative of an employee having personal problems;
- (2) Deal in an appropriate manner with employees whose work or personal conduct is adversely affected by personal problems; and
- (3) Make employees aware of various available programs within the community to assist the employee in resolving emotional or mental health problems.

(c) This part is not intended to deal in any way with personal problems related to drug and alcohol abuse since part 1200 of this subchapter establishes the Commission's rules, regulations, programs, and policy for creating and maintaining an alcohol and drug free workplace.

* So in original.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Commission Comment: The Commission inserted a comma after the word "programs" in subsection (c) pursuant to 1 CMC § 3806(g).

§ 170-30.5-1305 Policy on Emotional Health

(a) As an employer, the Commission is concerned with any personal or social situation which interferes with the individual employees mental and physical well being, or interferes with the employees efficient and safe performance of assigned duties, or reduces the employees reliability or dependability, or reflects negatively on or in any manner discredits the Commission.

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(b) It is the Commission's policy to offer assistance to those employees adversely affected by personal emotional problems such as those set forth in § 170-30.5-1301(a)(1)-(12) through confidential counseling and referral for treatment when indicated. When it is determined by either the employee or the employee's supervisor or manager that the outside problems adversely affect an employee's emotional or mental health and job performance, assistance similar to that made available to employees voluntarily seeking help for substance abuse problems as described in part 1200, and in particularly § 170-30.5-1240, will be made available to the affected employee.

(c) The same sick leave, annual leave, or leave without pay benefits granted in the rules and regulations in this subchapter for the treatment of alcohol or drug problems may be granted for an employee's participation in approved programs of treatment, counseling, or rehabilitation for an employee's emotional or mental health.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

Commission Comment: The Commission inserted commas after the words "leave" and "counseling" in subsection (c) pursuant to 1 CMC § 3806(g).

§ 170-30.5-1310 Action by Supervisors and Managers

(a) Supervisors and managers must be alert to indications of deteriorating performance or inappropriate personal conduct on the part of employees under their supervision. Indication of possible emotional or mental health problems include, but are not limited to:

- (1) A marked change in behavior which may be evidenced by emotional, verbal or physical outburst(s), chronic irritability, excessive fatigue, or rule violations; or
- (2) Frequent short-term absences, notably payday or the following Monday; or
- (3) Repeated accidents; or
- (4) Complaints related to health; or
- (5) Conflict with supervisor or with fellow employees; or
- (6) Conflict with casino employees or members of the public; or
- (7) Excessive consumption of alcohol or use of illegal drugs.

(b) Upon identification of an apparent problem, the supervisor should approach the employee to determine the cause of the situation. Should an approach be rebuffed the supervisor should continue observation of the employee's performance and conduct, recording occurrences which tend to support or contradict the supervisor's belief that the employee is having emotional or mental health problems. If the negative conduct continues, the supervisor must again counsel the employee. If the employee remains unresponsive, the supervisor shall refer the matter to the Executive Director.

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-1315 Action by the Executive Director

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Upon referral of a case to the Executive Director by a supervisor, the Executive Director should contact the Department of Public Health or other appropriate public or private entity for guidance or assistance. Once arrangements for assistance have been made, the Executive Director should approach the employee and counsel the employee to seek appropriate help. If the employee is not agreeable, the Executive Director should advise the employee that if the improper, inappropriate, or unsatisfactory performance continues, disciplinary action will result.

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-1320 Further Actions

(a) Once the availability of professional help has been arranged, the Executive Director, when meeting with the employee, should candidly discuss the problem and offer to assist the employee in seeking professional counseling and assistance from the Department of Public Health or another appropriate public or private entity.

(b) If the employee is agreeable to receiving counseling and assistance, and professional help has been arranged, the Executive Director should meet with the employee and the employee's supervisor to facilitate the employee receiving professional assistance.

(c) The course of treatment to be taken after a referral under this section depends on the professional evaluation and recommendation of the Department of Public Health or other appropriate public or private entity providing assistance to the employee. Failure of the employee to undertake or complete the recommended treatment program can result in employee discipline, including dismissal, being imposed consistent with the requirements of the rules and regulations in this subchapter.

(d) Failure to seek professional assistance at this stage may also result in adverse action being taken against the employee consistent with the requirements of the rules and regulations in this subchapter.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).

§ 170-30.5-1325 Records Required

(a) To protect the privacy of the individual, medical records relating to an employee's emotional or mental health, like records of drug and alcohol test results, shall be maintained in the confidential medical records portion of the employees official personnel folder, separate from the general information in the employee's official personnel folder. Only when the information is needed for a disciplinary action will such information be transferred to the employee's official personnel folder.

(b) Consistent with the requirements of the rules and regulations in this subchapter, upon

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separation, for whatever reason, of an employee from employment with the TCGCC, the employee's official personnel folder shall be closed and removed to storage. Prior to sending the file to storage, the temporary material or confidential information which has not previously been removed shall be removed and, pursuant to the employee's instruction, either given to the employee or destroyed. Investigation type material shall be placed in the official personnel folder so that the record is accurate and complete. Medical records including matters relating to the evaluation of an employee's emotional or mental health shall, like records of alcohol and drug test results, be retained in the employee's medical file until the time period for retention, established at § 170-30.5-1250(c) or a period of six years, whichever is greater, has passed. At that time, the records may be destroyed.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 24 Com. Reg. 19378 (June 17, 2002); Proposed 24 Com. Reg. 19047 (Apr. 29, 2002).