

**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
SAIPAN, TINIAN, ROTA and NORTHERN ISLANDS**



COMMONWEALTH REGISTER

**VOLUME 42
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JANUARY 28, 2020**

COMMONWEALTH REGISTER

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NORTHERN MARIANAS HOUSING CORPORATION

P.O. BOX 500514, Saipan, MP 96950-0514

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PUBLIC NOTICE OF CERTIFICATION AND ADOPTION OF REGULATIONS OF Northern Marianas Housing Corporation

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER
AS PROPOSED REGULATIONS

Volume 41, Number 8, pp 042764-042766, of August 28, 2019

Regulations of the Northern Marianas Housing Corporation: NMIAC Chapter 100-90 Administrative Plan for Rental Assistance Program

ACTION TO ADOPT PROPOSED REGULATIONS: The Northern Marianas Housing Corporation "NMHC", HEREBY ADOPTS AS PERMANENT regulations the Proposed Regulations which were published in the Commonwealth Register at the above-referenced pages, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The NMHC announced that it intended to adopt them as permanent, and now does so. A true copy is attached. I also certify by signature below that:

as published, such adopted regulations are a true, complete and correct copy of the referenced Proposed Regulations,

and that they are being adopted without modification or amendment:

PRIOR PUBLICATION: The prior publication was as stated above. The NMHC Board adopted the regulations as final at its meeting of March 7, 2019.

MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY: "None"

AUTHORITY: The NMHC Board is required by the Legislature to adopt rules and regulations regarding those matters over which the NMHC Board has jurisdiction, including its regulation of the Section 8 Administrative Plan for Rental Assistance Programs pursuant to Executive Order No. 94-3, Section 407 of the Reorganization Plan No. 2 of 1994, Directive No. 138, and NMHC's Articles of Incorporation and Bylaws on file with the Registrar of Corporation as of February 06, 1995.

EFFECTIVE DATE: Pursuant to the APA, 1 CMC sec. 9105(b), these adopted regulations are effective 10 days after compliance with the APA, 1 CMC §§ 9102 and 9104(a) or (b), which, in this instance, is 10 days after this publication in the Commonwealth Register.

COMMENTS AND AGENCY CONCISE STATEMENT: Pursuant to the APA, 1 CMC sec. 9104(a)(2), the agency has considered fully all written and oral submissions respecting the proposed regulations. Upon this adoption of the regulations, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption. Please see the following pages for this agency's concise statement, if there are any, in response to filed comments.

ATTORNEY GENERAL APPROVAL: The adopted regulations were approved for promulgation by the Attorney General in the above-cited pages of the Commonwealth Register, pursuant to 1 CMC sec.

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2153(e), to review and approve, as to form and legal sufficiency, all rules and regulations to be promulgated by any department, agency or instrumentality of the Commonwealth government, including public corporations, except as otherwise provided by law.

I DECLARE under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 17th day of January, 2020, at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:



Vinney Atalig-Hocog
Chair, Northern Marianas Housing Corporation Board

1/17/2020

Date

Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC § 9104(a)(3) (obtain AG approval) the certified final regulations, modified as indicated above from the cited proposed regulations, have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General, and shall be published (1 CMC § 2153(f) (publication of rules and regulations)).

Dated the 21st day of January, 2020.



EDWARD MANIBUSAN
Attorney General

Filed and
Recorded by:



ESTHER SN. NESBITT
Commonwealth Registrar

01.23.2020

Date



Commonwealth of the Northern Mariana Islands

Department of Lands and Natural Resources

Antonio T. Benavente
Lower Base, Caller Box 10007
Saipan, MP 96950
Tel: 670-322-9834 Fax: 670-322-2633



PUBLIC NOTICE OF CERTIFICATION AND ADOPTION OF REGULATIONS OF The Department of Lands & Natural Resources

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER
AS PROPOSED REGULATIONS

Volume 39, Number 12, pp 040417-040424, of December 28, 2017

ACTION TO ADOPT PROPOSED REGULATIONS: The Commonwealth of the Northern Mariana Islands, Department of Lands & Natural Resources ("DLNR"), HEREBY ADOPTS AS PERMANENT regulations the Proposed Regulations which were published in the Commonwealth Register at the above-referenced pages, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The DLNR announced that it intended to adopt them as permanent and now does so. (Id.) I also certify by signature below that:

as published, such adopted regulations are a true, complete and correct copy of the referenced Proposed Regulations, and that they are being adopted without modification or amendment.

PRIOR PUBLICATION: The prior publication was as stated above.

MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY: None.

AUTHORITY: The Department has the authority to adopt rules and regulations in furtherance of its duties and responsibilities pursuant to 1 CMC § 2654.

EFFECTIVE DATE: These regulations were proposed on December 28, 2017, and are hereby being adopted as Permanent Regulations of the Department of Lands and Natural Resources pursuant to 1 CMC §9102 and §9104 (a) or (b), which, in this instance, is ten (10) days after publication in the Commonwealth Register.

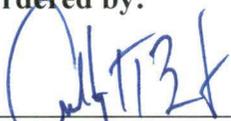
COMMENTS AND AGENCY CONCISE STATEMENT: Pursuant to the APA, 1 CMC sec. 9104(a)(2), the agency has considered fully all written and oral submissions respecting the proposed regulations. Upon this adoption of the regulations, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption.

The adopted regulations were approved for promulgation by the Attorney General in the above-cited pages of the Commonwealth Register, pursuant to 1 CMC sec. 2153(e) (To review and approve, as to form and legal sufficiency, all rules, and regulations to be promulgated by any department, agency

or instrumentality of the Commonwealth government, including public corporations, except as otherwise provided by law).

I DECLARE under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the _____ day of January 13, 2020, at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:



ANTHONY T. BENAVENTE
Secretary, Department of Lands and Natural Resources

1/14/2020

Date

Received by:



MATHILDA A. ROSARIO

01/24/2020

Date

Filed and Recorded by:



ESTHER SN. NESBITT
Commonwealth Registrar

01.27.2020

Date

Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC § 9104(a)(3) (obtain AG approval) the certified final regulations, modified as indicated above from the cited proposed regulations, have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General, and shall be published (1 CMC § 2153(f) (publication of rules and regulations).

Dated the 27th day of January, 2020.



EDWARD MANIBUSAN
Attorney General



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
Department of Lands and Natural Resources

Division of Fish & Wildlife

Anthony T. Benavente, Secretary

Department of Lands & Natural Resources, Division of Fish & Wildlife, PO Box 10007
Lower Base, Across from Power Plant #1, Saipan MP 96950
Tel 670.322.9834; fax:670.322.2633

**PUBLIC NOTICE OF PROPOSED REGULATIONS
FOR THE DEPARTMENT OF LANDS AND NATURAL RESOURCES,
DIVISION OF FISH & WILDLIFE**

INTENDED ACTION TO ADOPT THESE PROPOSED REGULATIONS: The Commonwealth of the Northern Mariana Islands, Department of Lands and Natural Resources (DLNR), Division of Fish & Wildlife ("DFW") intends to adopt as permanent regulations the attached Proposed Regulations, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The Regulations would become effective 10 days after adoption and publication in the Commonwealth Register. (1 CMC § 9105(b))

AUTHORITY: The Department of Lands and Natural Resources is authorized to adopt rules and regulations in furtherance of its duties and responsibilities. 1 CMC § 2654

THE TERMS AND SUBSTANCE: The proposed regulation prohibits the harvesting of certain sizes of fish species for commercial purposes.

THE SUBJECTS AND ISSUES INVOLVED: The proposed regulation prohibits the harvesting of certain sizes of fish species for commercial purposes.

DIRECTION FOR FILING AND PUBLICATION: The Notice of Proposed regulation shall be published in the Commonwealth Register in the section on proposed and newly adopted regulations (1 CMC § 9104 (a)(1)) and posted in convenient places in the civic center and in local government offices in each senatorial district, both in English and in the principal vernacular. (1 CMC § 9104 (a)(1)).

TO PROVIDE COMMENTS: Send or deliver your comments to Anthony T. Benavente, DLNR Secretary, Re: Sizes and Certain Species, at the above address or fax or number. Comments are due within 30 days from the date of publication of this notice. Please submit your data, views or arguments. (1 CMC § 9104(a)(2)).

These proposed regulations were approved by the DLNR Secretary on November 9, 2017.

Submitted by:  11/09/17
Anthony T. Benavente Date
Secretary of Department of Lands & Natural Resources

Received by:  12/05/17
SHIRLEY CAMACHO-OGUMORO Date
Governor's Special Assistant for Administration

Filed and Recorded by:  12.18.2017
ESTHER SN. NESBITT Date
Commonwealth Registrar

Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC § 9104(a)(3) (obtain AG approval) the proposed regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published, 1 CMC § 2153(f) (publication of rules and regulations).

Dated the 15 day of December, 2017.


EDWARD MANIBUSAN
Attorney General

1. Part 600 Commercial Fishing Regulations

2. § 85-30.1-601 Purpose

The purpose of this regulation is to prohibit the taking or selling of fish species for commercial purposes.

3. § 85-30 1.605 Definition

Fish are measured using "Fork Length", which means the straight-line measurement from the tip of the snout to the middle of the trailing edge of the tail. In fish that do not have a "fork" this measurement is the same as "Total Length". See diagram below:

How to Measure Fish



Measure Fork Length, the straight-line distance from tip of snout to middle of trailing edge of tail.

4. § 85-30.1-610. Exemptions

The regulation does not apply to fish harvested for non-commercial purposes.

5. § 85-30.1-615 Fish Size Restrictions

Fish size restrictions are established based upon the best available estimates of sizes at reproductive maturity of 50% of females for reef fish species that are commonly found in the local markets. The fish selected constitute high proportion of the market (by number and biomass) based on ongoing market surveys and have adequate data on size at reproduction. The initial list of reef species; their scientific, common and local names; and their minimum size requirements for commercial catch and sale are as follow:



Common Name
Soldierfish

Local Names
Sagamelon/Mwéél

Minimum Size
5.0 inches

Scientific Name
Myripristis spp.



Common Name
Orangespine Unicornfish

Local Names
Hagon/Bwuláálay

Minimum Size
5.5 inches

Naso Lituratus



Common Name
Blueband Surgeonfish

Local Names
Hiyok/Filááng

Minimum Size
6.5 inches

Acanthurus lineatus



Common Name
Thumbprint Emperor

Local Names
Mafuti/Weyaw

Minimum Size
8.0 inches

Lethrinus harak



Common Name
Bluespine Unicornfish

Local Names
Tataga/Igh-Falafal

Minimum Size
10 inches

Naso unicornis

6. § 85-30.1-620 Penalties

Violations of the Department of Natural Resources Fish and Wildlife regulations shall be penalized in accordance with P.L. 2-51, Section 10, 2 CMC Section 5109, as amended.

COMMONWEALTH GI SANGKATTAN NA ISLAS MARIÑAS

Dipáttamentun I Tanu' Yan Natural Resources

Division of Fish & Wildlife

Anthony T. Benavente, Sekretáriu

Dipáttamentun I Tanu' Yan Natural Resources, Division of Fish & Wildlife, PO Box 10007

Lower Base, Otru Bándan i Power Plant #1, Saipan MP 96950

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**NUTISIAN PUBLIKU PARA I MANMAPROPOONI NA REGULASION SIHA PARA
I DIPÁTTAMENTUN I TANU' YAN NATURAL RESOURCES,
DIVISION OF FISH & WILDLIFE**

I AKSION NI MA'INTENSIONA NI PARA U MA'ADÁPTA ESTI I MANMAPROPOONI NA REGULASION SIHA: I Commonwealth gi Sangkattan na Islas Mariñas, I Dipáttamentun i Tanu' yan Natural Resources (DLNR), Division of Fish & Wildlife ("DFW") ma'intensiona para u ma'adapta kumu petmanienti i regulasion i mañechettun na Manmaproponi na Regulasion siha, sigun gi maneran i Akton Administrative Procedure, 1 CMC § 9104(a). I regulasion siha para u ifektibu gi hálum dies (10) dihas dispues di adaptación yan publikasion gi hálum i Rehistran Commonwealth. (1 CMC § 9105(b))

ATURIDÁT: I Dipáttamentun i Tanu' yan Natural Resources ma'aturisa para u ma'adapta i areklamentu yan regulasion siha ni para u makátga huyung iyon-ñiha obligasion yan responsabilidát siha. 1 CMC § 2654

I TEMA YAN SUSTANSIAN I PALÁBRA SIHA: I manmaproponi na regulasion ha pruhibi siha i rinikohi spesifikát siha na mineddung guihan ni manmakokonni' para fina'tinas saláppi' na rason.

SUHETU NI MASUMÁRIA YAN ASUNTU NI TINEKKA: I manmaproponi na regulasion ha pruhibi siha i rinikohi spesifikát na mineddung guihan siha ni manmakokonni' para fina'tinas saláppi' na rason.

DIREKSION PARA U MAPO'LU YAN PARA PUBLIKASION: I Nutisian i Manmaproponi na regulasion debi u mapublika gi hálum Rehistran Commonwealth gi seksiona ni manmaproponi yan nuebu na ma'adapta na regulasion siha, (1 CMC § 9104(a)(1)) yan u mapega gi kumbinienti na lugát siha gi halum i civic center yan i ufisinan gubietnamentu siha gi kada distritun senadot, parehu English yan prinsipát na lingguáhin natibu. (1 CMC § 9104(a)(1)).

PARA U MAPRIBENIYI UPIÑON SIHA: Na'hanao pat intrega hálum i upiñon-mu para as Anthony T. Benavente, Sekretariun DLNR, Rason: Mineddung yan Spesifikát na Klásin Gá'ga' Siha, gi sanhilu' na address pat fax pat hágan. I upiñon siha debi na u hálum gi hálum trenta (30) dihas ginin i fetchan i publikasion esti na nutisia. Put fabot na hálum iyo-mu infotmasion, upiñon, pat agumentu siha. (1 CMC § 9104(a)(2)).

Esti i manmaproponi siha na regulasion manma'aprueba ginin i Sekretariun DLNR gi Nubembri 9, 2017.

Nina'hålum as: 
Anthony T. Benavente
Sekritariun, DLNR

11/21/17
Fetcha

Rinisibi as: 
SHIRLEY CAMACHO-OGUMORO
Ispisiat Na Ayudanti Para I Atminis asion

12/05/17
Fetcha

Pine'lu yan
Ninota as: 
ESTHER SN. NESBITT
Rehistran Commonwealth

12-18-2017
Fetcha

Sigun i 1 CMC § 2153(e) (I Abugadu Henerat ma'aprueba i regulasion siha na para u macho'gui kumu fotma) yan i 1 CMC § 9104(a)(3) (hentan inaprueban Abugadu Henerat) i manmaproponi na regulasion siha ni mañechettun guini ni manmaribisa yan manma'aprueba kumu fotma yan sufisienti ligat ginin i CNMI Abugadu Henerat yan debi na u mapublika, 1 CMC § 2153(f) (publikasion areklamentu yan regulasion siha).

Mafetcha guini gi diha 15, gi Dec. 2017


EDWARD MANIBUSAN
Abugadu Henerat

COMMONWEALTH TÉÉL FALÚW KKA EFÁNG LLÓL MARIANAS

Depattamentool Falúw me Natural Resources

Bwulasiyol Fish & Wildlife

Anthony T. Benavente, Sekkretóoriyo

Depattamentool Falúw & Natural Resources, Bwulasiyol Fish & Wildlife, PO Box 10007

Lower Base, Peighitiwel Power Plant #1, Seipél MP 96950

Til 670.322.9834; fax:670.322.2633

**ARONGORONGOL TOULAP REEL POMMWOL MWÓGHUT
NGÁLI DEPATTAMENTOOL FALÚW ME NATURAL RESOURCES,
BWULASIYOL FISH & WILDLIFE**

MÁNGEMÁNGIL MWÓGHUT REEL REBWE ADÓPTÁÁLI POMMWOL MWÓGHUT:

Commonwealth Téél Falúw kka Efáng llól Marianas, Bwulasiyol Lands and Natural Resources (DLNR), Division of Fish & Wildlife ("DFW") re mángemángil rebwe adóptááli bwe ebwe lléghló mwóghutughut ikka e appasch bwe Pommwol Mwóghutughut, sáangi Administrative Procedure Act, 1 CMC § 9104(a). Ebwe bwunguló mwóghut kka llól seigh (10) ráál mwiril aal akkatééwow arongorongol yeel me llól Commonwealth Register. (1 CMC § 9105(b))

BWÁNGIL: Eyoor bwángil Bwulasiyol Lands and natural resources bwe rebwe adóptááli allégh me mwóghut bwe ebwe tééló mmwál reel peirághil aar angaang reel lemelem me mwóghutughutúl. 1 CMC § 2654

KKAPASÁL ME WEEWEL: Pommwol mwóghutughutúl ammwel me masamas yeel ebwe pileey attaw reel fféerúl selaapi.

KKAPASÁL ME ÓUTOL: Pommwol mwóghutughutúl ammwel me masamas yeel ebwe pileey attaw reel fféerúl selaapi.

AFAL REEL AMMWELIL ME AKKATÉÉWOWUL: Ebwe akkatééwow mwóghutughutúl Arongorongol Pommw me llól Commonwealth Register llól táilil ffél me pommwol mwóghutughut ikka ra adóptááilil (1 CMC §9104(a)(1)) me ebwe appaschetá llól civic center me bwal llól bwulasiyol gobetnameento llól senatorial district, fengál reel kkasal English me mwáliyaasch. (1 CMC § 9104 (a)(1)).

ISIISILONGOL KKAPAS: Afanga ngáre bwughiló yóómw ischiil mángemáng ngáli Anthony T. Benavente, Sekkretóoriyol DLNR, Re: Sizes and Certain Species, reel féféfé iye weiláng ngáre fax ngáre numuro. Ebwe toolong ischial mángemáng llól eliigh (30) ráál mwiril aal akkatééwow arongorong yeel. Isiisilong yóómw data, views, ngáre angiingi. (1CMC § 9104(a)(2)).

Aa átirow pommwol mwóghutughut kkal sáangi Sekkretóoriyol DLNR wóól Nobembre 9, 2017.

Isaliyalong: 

Anthony T. Benavente
Sekretóriyol Bwulasiyol Lands & Natural Resources

11/21/17

Ráál

Bwughiyal: 

SHIRLEY P. CAMACHO-OGUMORO
Layúl Gobenno Special Assistant ngáli Administration

12/05/17

Ráál

Ammwelil: 

ESTHER SN. NESBITT
Commonwealth Register

12-18-2017

Ráál

Sáangi 1 CMC § 2153(e) (Allégh kkal e bwe lléghló sáangi AG bwe e fil reel fféerúl) me 1 CMC § 9104(a)(3) (mwiir sáangi aal lléghló sáangi AG) reel pommwol mwóghut ikka ra amwuri fischiiy me aa lléghló reel fféerul me legal sufficiency sáangi Soulemelemil Allégh Lapalapal CNMI me ebwe akkatéwow, 1 CMC § 2153(f) (arongowowul allégh me mwóghutughut).

Aghikkilátiw wóol 15 rááil Dec. ~~October~~, 2017.



EDWARD MANIBUSAN
Soulemelemil Allégh Lapalap



Commonwealth Healthcare Corporation

Commonwealth of the Northern Mariana Islands
1 Lower Navy Hill Road Navy Hill, Saipan, MP 96950



PUBLIC NOTICE OF CERTIFICATION AND ADOPTION OF RULES AND REGULATIONS OF THE COMMONWEALTH HEALTHCARE CORPORATION

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER
AS PROPOSED RULES AND REGULATIONS
Volume 41, Number 11, pp. 042881-042896, of November 28, 2019

INTERVENTIONAL RADIOLOGY FEES AMENDMENTS TO THE CHCC CHARGEMASTER

ACTION TO ADOPT PROPOSED REGULATIONS: The Commonwealth of the Northern Mariana Islands, COMMONWEALTH HEALTHCARE CORPORATION ("CHCC"), HEREBY ADOPTS AS PERMANENT regulations the Proposed Regulations which were published in the Commonwealth Register at the above-referenced pages, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The CHCC announced that it intended to adopt them as permanent, and now does so. (Id.) A true copy is attached. I also certify by signature below that:

as published, such adopted regulations are a true, complete and correct copy of the referenced Proposed Regulations,

and that they are being adopted as published.

PRIOR PUBLICATION: The prior publication was as stated above.

MODIFICATIONS FROM PROPOSED REGULATIONS: Adoption as Amendments to the Chargemaster.

AUTHORITY: The Corporation is empowered by the Legislature to adopt these rules and regulations pursuant to 3 CMC Section 2826(c).

EFFECTIVE DATE: Pursuant to the APA, 1 CMC sec. 9105(b), these adopted regulations are effective 10 days after compliance with the APA, 1 CMC §§ 9102 and 9104(a) or (b), which, in this instance, is 10 days after this publication in the Commonwealth Register.

COMMENTS AND AGENCY CONCISE STATEMENT: Pursuant to the APA, 1 CMC sec. 9104(a)(2), the Corporation has considered fully all written and oral submissions respecting the proposed regulations. Upon this adoption of the regulations, the Corporation, if requested to do

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so by an interested person, either prior to adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption.

The adopted regulations were approved for promulgation by the Attorney General in the above-cited pages of the Commonwealth Register, pursuant to 1 CMC sec. 2153(e)

I DECLARE under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:



for Esther L. Muna
CHCC Chief Executive Officer

1/23/2020
Date



Lauri Ogumoro
Board Chair

1/27/2020
Date

Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC § 9104(a)(3) (obtain AG approval) the certified final regulations, modified as indicated above from the cited proposed regulations, have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General, and shall be published (1 CMC § 2153(f) (publication of rules and regulations)).

Dated the 28th day of January, 2020.



EDWARD MANIBUSAN
Attorney General

Filed and
Recorded by:



ESTHER SN. NESBITT
Commonwealth Registrar

01.28.2020
Date

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NORTHERN MARIANAS HOUSING CORPORATION

P.O. BOX 500514, Saipan, MP 96950-0514

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PUBLIC NOTICE

PROPOSED REGULATIONS FOR THE NORTHERN MARIANAS HOUSING CORPORATION PERSONNEL REGULATIONS

Notice of Intended Action: The Board of Directors of the Northern Marianas Housing Corporation proposes to promulgate its Personnel Regulations. Pursuant to the Administrative Procedure Act, 1 CMC § 9104 (a). If adopted, these regulations will become effective ten (10) calendar days after publication of a Notice of Adoption in the Commonwealth Register after compliance with 1 CMC § 9102, 9104 (a), and 9105 (b).

Authority: These regulations are promulgated pursuant to Public Law 20-87, to amend Title 2, Division 4, Chapter 4, Article 3, § 4433 of the Commonwealth Code and to add new subsection (s) through (u) and appropriately re-designating current subsections (s) and (t) as subsections (v) and (w).

Terms and Substance: These proposed regulations are established to provide the Northern Marianas Housing Corporation (NMHC) its own personnel regulations to establish rules and regulations governing the personnel policies and procedures of the Corporation that will establish a positive and fair work environment to further accomplish the Corporation mission.

Citation of Related and/or Affected Statutes, Rules and Regulations. The proposed regulations were formulated pursuant to CNMI Public Law 20-87, amending Title 2, Division 4, Chapter 4, Article 3, § 4433 of the Commonwealth Code and to add new subsections (s) through (u) and re-designating current subsections (s) and (t) as subsections (v) and (w) and to read as follows:

(s) To employ agents and employees of NMHC. They shall be exempt from the application of 1 CMC §8101 et seq., the Commonwealth Civil Service Act. NMHC and the Commonwealth Development Authority (CDA) shall establish through regulations its own compensation, wage and salary scales which shall be commensurate with those paid by other public housing agencies/entities requiring comparable education, training, and experience. NMHC and CDA shall also promulgate regulations governing the selection, promotion, performance evaluation, demotion, suspension and other disciplinary action for its employees similar to the regulations of the Civil Service Commission.

(t) To adopt regulation its own procurement policies and procedures similar to the regulations of the Department of Finance to purchase or lease supplies, goods, materials, professional services and commodities and to furnish and supply services for the operation of NMHC.

“NMHC is a fair housing agency and an equal opportunity, lender and employer”

Rota Field Office: Tel: (670) 532-9410
Fax: (670) 532-9441

Tinian Field Office: Tel: (670) 433-9213
Fax: (670) 433-3690

(u) To establish through regulations reasonably necessary travel policies and procedures for NMHC and CDA consistent with the United States Federal Travel Regulations (41 C.F.R. Subtitle F).

Directions for Filing and Publication: These proposed Personnel regulations shall be published in the Commonwealth Register in the section on proposed and newly adopted regulations (1 CMC § 9102 (a)(1)) and posted in convenient places in the civic center and in local government office in each senatorial district, both in English and in the principal vernacular (1 CMC § 9104 (a)(1)).

Comments: Interested parties may submit written comments on the proposed amendments to Jesse S. Palacios, Corporate Director, NMHC, to the following address, fax, or email address, with the subject line "Proposed Personnel Regulations"

NORTHER MARIANAS HOUSING CORPORATION

P.O. Box 500514

Saipan, MP 96950

Fax: (670)234-9021

Email Address: nmhc@nmhc.gov.mp

Comments, data, views, or arguments are due within thirty (30) calendar days from the date of publication of this notice. 1 CMC § 9104 (a)(2). If you may have any questions, you may reach NMHC at telephone numbers (670)234-6866/9447.

Submitted by:



Kim M. Rosario
Acting-Chairman
NMHC Board of Directors

Date: 26 DEC 2019

Received by:



Ms. Mathilda A. Rosario
Special Assistant for Administration

Date: 12/30/19

Filed and Recorded by:



Ms. Esther SN. Nesbitt
Commonwealth Registrar

Date: 01-23-2020

I certify, pursuant to 1 CMC § 2153 (e) and 1 CMC § 9104 (a)(3), that I have reviewed and approved these regulations as to form and legal sufficiency.



Mr. Edward Manibusan
Attorney General

Date: 1/21/2020



NORTHERN MARIANAS HOUSING CORPORATION

P.O. BOX 500514, Saipan, MP 96950-0514

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NUTISIAN PUPBLIKU

I MANMAPROPONI NA REGULASION PARA I REGULASION PERSONNEL SIHA GI NORTHERN MARIANAS HOUSING CORPORATION

NUTISIA I MA'INTENSIONA NA AKSION: I Kuetpun Direktot siha gi “Northern Marianas Housing Corporation” mapropo ni para u macho’gui iyon-ñiha Regulasion “Personnel” siha. Sigun para i Áktun “Administrative Procedure,” I CMC § 9104(a). Yanggin ma’adapta, esti na regulasion siha para u ifektibu gi hálum dies (10) dihas dispues di publikasion i Nutisian Adáptasion gi hálum i Rehistran “Commonwealth” dispues di compliance yan i CMC §§ 9102 yan 9104 (a), yan 9105(b).

ÁTURIDÁT: Esti na regulasion siha manmaho’gui sigun para Lai Pupbliku 20-87, para u amenda i Titulu 2, Dibision 4, Pátti 4, Attikulu 3, § 4433 gi “Commonwealth Code” yan para u na’danña hálum nuebu na “subsections” (s) asta (u) yan mata’lun madisignan máulik i nuebu na “subsections” (s) asta (t) kumu “subsections” (v) yan (w).

I TEMA YAN SUSTÁNSIAN I PALÁBRA SIHA: Esti i manmapropo ni na regulasion siha ma’estapblesi para u pribeni i “Northern Marianas Housing Corporation (NMHC)” iyon-ñiha regulasion “personnel” para u istapblesi i areklamentu yan i regulasion siha ni gumubiebietna i areklamentu yan maneran i “personnel” i “Corporation” ni siempri umistapblesi “positive” yan “fair work environment” para u sigi mo’na kumumpli’ i “mission Corporation.”

SITASION I ASOSIÁT YAN/PAT I MANINA’FEKTA NA STATUTES, AREKLAMENTU YAN REGULASION SIHA: I mapropo ni na regulasion siha manmafotma sigun para “CNMI” Lai Pupbliku 20-87, amemenda i Titulu 2, Dibision 4, Pátti 4, Attikulu 3, §4433 gi “Commonwealth Code” yan para u na’danña hálum nuebu na “subsections” (s) asta (u) yan mata’lun disigna i nuebu na “subsections” (s) yan (t) kumu “subsections” (v) yan (w) yan para u mataitai kumu tinattiyi siha:

(s) Para u ma’impleha ayenti yan impli’áo siha gi “NMHC.” Debi na “exempt” ginin i aplikasion i I CMC § 8101 et seq., i Áktun “Commonwealth Civil Service.” I “NMHC” yan i “Commonwealth Development Authority (CDA)” debi na u ma’istapblesi ginin i regulasion i iyon-ñiha ápas suetdu, suetdu yan “salary scales” ni debi di u “commensurate” yan atyu siha i manma’apási ginin otu na “public housing” na ahensia siha/ “entities” ni manisisita “comparable” na edukasion, “training” yan ekspirensia. I NMHC yan i CDA debi lokkui’ na u macho’gui i regulasion ni ha gubietna i sileksion, subida, ibaluasion cho’chu’, “demotion,” suspendasion yan otu na aksion arekláo para impli’áo-ñiha kulang atyu yan i regulasion i “Civil Service Commission.”

(t) Para u adapta ginin i regulasion iyon-ñiha procurement na areklamentu yan maneran siha kulang atyu yan i regulasion i Dipáttamentun Finansiát para u mafáhan pat atkila “supplies,” fektus, matiriát,
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Tinian Field Office: Tel: (670) 433-9213
Fax: (670) 433-3690

profesot na setbisiu siha yan “commodities” yan para u “furnish” yan suplika setbisiu siha para i operasion i NMHC.

(u) Para u istapblesi ginin regulasion rasonâppli nisisâriu para i “areklamentu travel” yan manera siha para NMHC yan CDA ni kunsisti yan i Regulasion Fedirât “Travel” i Estâdus Unidus (41 C.F.R. “Subtitle F”).

DIREKSION SIHA PARA U MAPO’LU YAN PUPBLIKASION: Esti i Maproponi na Regulasion i “Personnel” debi na u mapupblika gi hâlum i Rehistran Commonwealth gi hâlum seksiona i maproponi yan nuebu na ma’adâpta na regulasion siha (1 CMC § 9102(a)(1)) yan u mapega gi hâlum i mangkumbinienti na lugât gi hâlum i Civic Center yan i hâlum ufisinan gubietnamentu siha gi kada distritun senadot, parehu English yan i dos na lingguâhi Chamorro yan Refaluwasch. (1 CMC § 9104(a)(1)).

UPIÑON SIHA: I intirisao na petsona siha siña muna’hâlum tinigi’ upiñon put i manmaproponi na amendasion siha guatu as Jesse S. Palacios, Corporate Director, NMHC gi sigienti na address, fax, pat email address, yan i râyan suhetu “Maproponi na Regulasion Personnel siha.”

NORTHERN MARIANAS HOUSING CORPORATION

P.O. BOX 500514

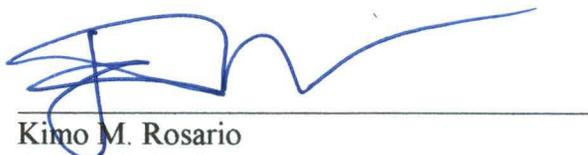
Saipan, MP 96950

Fax 234-9021

Email address: nmhc@nmhc.gov.mp

I upiñon, infotmasion yan kunistasion siha debi na u hâlum gi hâlum trenta (30) dihas ginin i fetchan pupublikasion esti na nutisia. 1 CMC § 9104(a)(2). Yanggin guaha maseha hâfa na kuestion-mu, siña un âgang i NMHC gi numerun tilifon gi 234-6866/9447.

Nina’halum as:



Kimo M. Rosario
Acting-Kabesiyu
Kuetpun Mandirektot NMHC

Fetcha:

26 DEC 2019

Rinisibi as:



Ms. Mathilda A. Rosario

Fetcha:

12/30/19

Ispisiât Na Ayudânti Para I Atministrasion

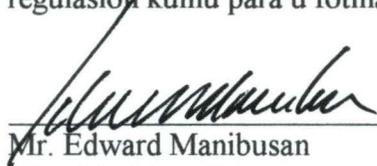
Pine'lu yan
Ninota as:



Ms. Esther SN. Nesbitt
Rehistran Commonwealth

Fetcha: 01-23-2020

Hu sitifika, sigun para i 1 CMC § 2153(e) yan 1 CMC § 9104(a)(3), na hu ribisa yan aprueba esti siha na regulasion kumu para u fotma yan ligat na sufisienti.



Mr. Edward Manibusan
Abugadu Henerat

Fetcha: 1/21/2020



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ARONGORONGOL TOULAP

REEL POMMWOL MWÓGHUTUGHUT NGÁLI MWÓGHUTUGHUTÚL PERSONNEL NGÁLI BWULASIYOL ALILLISIL IMWEER TOULAP

Arongorong reel Mángemángil Mwóghut: Board of Directors sáangi Bwulasiyol Alillisil Imweer Toulap re pommw reel rebwe arongawow reel Mwóghutughutúl Personnel. Sáangi Administrative Procedure Act, 1 CMC § 9104 (a). Ngáre re adóptááli, ebwe bwunguló mwóghutughut kkal llól seigh ráál mwiril aal akkatééwow Arongorongol Adópta me llól Commonwealth Register mwiril aal angúungú fengál me 1 CMC § 9102 (a), me 9105 (b).

Bwángil: Ebwe arongowow mwóghutughut kkal sáangi Alléghúl Toulap 20-87, rebwe liiweli Title 2, Division 4, Article 3, § 4433 reel Commonwealth Code me rebwe aschuulong ffél subsection (s) mwet ngáli (u) me fféerú sefááliy bwe ebwe ffil subsections ikka e lo (s) me (t) reel subsections (v) me (w).

Kkapasal me Aweewel: Re ayoorá pommwol mwóghutughut kkal reel ebwe ittitiw le ayoorai ngáli Bwulasiyol Alillisil Imweer Toulap (NMHC) reel aar mwóghutughutúl personnel reel ebwe ittitiwel allégh me mwóghutughut me lemelemil personnel policies me Mwóghutughutúl Corporation iye ebwe yoor ghikkillil mille e ghatch me wel ngáli leliyál angaang reel ebwe tam Corporation reel aar mission.

Citation reel Milikka e lo me/ngare Affected Statutes, Allégh, me Mwóghutughut: Re ammwala pommwol mwóghutughut kkal sáangi CNMI Alléghúl Toulap 20-87, Liiweli Title 2, Division 4, Chapter 4, Article 3, § 4433 reel Commonwealth Code me aschuulong ffél subsections (s) mwet ngáli (u) fféerú safááliy subsections ikka e lo (s) me (t) bwe subsections (v) me (w) me ebwe árágharágh milikka e amwirimwiritiw:

(s) Rebwe ayoorá agents me schóól angaang ngáli NMHC. Rebwe exempt-liir sáangi application reel 1 CMC § 8101 et seq. Commonwealth Civil Service Act. NMHC me Commonwealth Development Authority (CDA) rebwe ittitiw sáangi mwóghutughut llól aar compensation, óbwóss me salary scales iye ebwe commensurate-liir schóó kka re óbwóssur sáangi akkááw public housing agencies/entities ikka re tipáli comparable education, sóssót me experience. NMHC me CDA rebwe bwal arongowow mwóghutughut ikka ebwe lemeli áffilil, promotion, performance evaluation, demotion, suspension

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me akkáaw mwóghutughutúl disciplinary ngáli layúr employees ikka e weewe ngáli mwóghutughutúl Civil Service Commission.

(t) Rebwe adóptáali mwóghutughut sáangi aar procurement policies me procedures ikka e weewe ngáli mwóghutughutúl Depattamentool Finance reel rebwe akkamé ngáre atkkilaay supplies, goods, materials, professional services me commodities me rebwe furnish me ayoorai supply services ngáli mwóghutughutúl NMHC.

(u) itittiwel mwóghut ikka e ffil ngáli travel policies me mwóghutughut ngáli NMHC me CDA ikka e weewe ngáli Mwóghutughutúl United States Federal Travel (41 C.F.R Subtitle F).

Afal reel Ammwelil me Akkatééwowul: Pommwol mwóghutughutúl Personnel akkatééwow me llól Commonwealth Register llól táilil pommwol me ffél mwóghut ikka ra adóptáali (1 CMC § 9102(a)(1) me ebwe appaschetá llól civic center me llól bwulasiyol gobetnameento llól senatorial district, fengál reel English me mwáliyaasch (1 CMC § 9104(a)(1)).

Kkapas: Schóó kka re tipáli rebwe isiisilong ischil kkapas wóól pommwol liiwel kkal rebwe isiis ngáli Jesse S. Palacios, Corporate Director, NMHC, ngáli address, fax, ngáre email address, ebwe lo wóól subject line bwe "Pommwol Mwóghutughutúl Personnel".

NORTHERN MARIANAS HOUSING CORPORATION

PO Box 500514

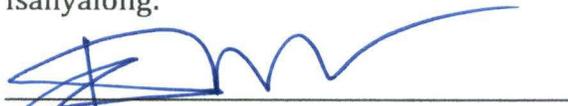
Saipan, MP 96950

Fax: 234-9021

Email Address: nmhc@nmhc.gov.mp

Fóós, data, views, ngáre angiingi ebwe toolong llól eliigh ráál mwiril aal akkatééwow arongorong yeel. 1 CMC § 9104(a)(2). Ngáre eyoor yóómw aiyegh, faingiló NMHC reel 234-6866/9447.

Isáliyalong:



Kimo M. Rosario
Acting-Chairman
NMHC Board-il Directors

Ráál: 26 DEC 2019

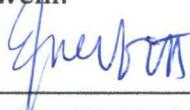
Bwughiyal:



Ms. Mathilda A. Rosario
Special Assistant ngáli Administration

Ráál: 12/30/19

Ammweilil:



Ms. Esther SN. Nesbitt
Commonwealth Register

Ráál: 01-23-2020

I átirow, sáangi 1 CMC § 2153(e) me 1 CMC § 9104(a)(3), bwe I ya amwuri fischiiy me átirowa pommwol mwóghutughut kal bwe aa lléghló reel fféerúl me legal sufficiency.



Mr. Edward Manibusan
Soulemelemil Allégh Lapalap

Ráál: 1/21/2020

CHAPTER 100-50
NORTHERN MARIANAS HOUSING
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NORTHERN MARIANAS HOUSING CORPORATION-(NMHC)

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NORTHERN MARIANAS HOUSING CORPORATION-(NMHC)

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NORTHERN MARIANAS HOUSING CORPORATION-(NMHC)

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NORTHERN MARIANAS HOUSING CORPORATION-(NMHC)

Part 001 - Introduction Subpart A - Definition, Purpose and Scope

§ 100-50-001 Definition

- a) "NMHC" The NMHC means the Northern Marianas Housing Corporation, a part of the Commonwealth government.
- b) "Board of Directors" or "Board" means the Board of Directors of the Northern Marianas Housing Corporation. The Board shall make policy decisions for NMHC.
- c) "Corporate Director" the Corporate Director is in charge of the day-to-day operations of the NMHC.
- d) "Office Manager" the Office Manager serves as the Personnel Officer who executes the personnel policies of the NMHC.
- e) "Administrative Division" the Administrative Division serves as the Human Resources Office to assist the NMHC employees with personnel matters.
- f) "Personnel Committee" the Personnel Committee shall be established by the Board and shall comprise of the following members: 1- Saipan Board Member; 1- Tinian Board Member; 1- Rota Board. It shall also include the Corporate Director and the Office Manager.
- g) "Executives" means the Corporate Director, Deputy Corporate Director and the Chief Financial Officer (CFO) whom are hired by the Board.
- h) "Managers" means the Division Heads that are comprised of the following managers: Office Manager; Chief Accountant; Program and Housing Manager; Mortgage and Credit Manager; Asset Management Manager; Field Office Representatives (Tinian & Rota); and Special Assistant for Housing and Low Income Housing Tax Credit (LIHTC) Programs.
- i) "Emergency Declarations" the NMHC shall recognize locally declared emergencies by the Commonwealth Governor and/or Presidentially Declared emergencies by the U.S. President
- j) "Congressional Federally Funded Programs" programs funded by the U.S. Congress to assist in disasters areas particularly the Commonwealth of the Northern Mariana Islands.
- k) "OPM" mean the CNMI Office of Personnel Management within the Civil Service Commission as provided in 1 CMC § 8121.
- l) "MRO" means Medical Review Officer.
- m) "SAP" means Substance Abuse Professionals.
- n) "FLSA" means the Fair Labor Standards Act.

§ 100-50-002 Purpose

These regulations implement 2 CMC § 4433(s) which authorizes the Northern Marianas Housing Corporation (NMHC) to establish rules and regulations governing the personnel policies and processes of the Corporation that will establish a positive and fair work environment to further the accomplishment of the NMHC mission.

§ 100-50-005 NMHC Mission Statement

The NMHC is guided by its mission statement in its efforts on behalf of the

NORTHERN MARIANAS HOUSING CORPORATION-(NMHC)

Commonwealth: to provide efficient and responsive delivery of housing, mortgage and community development programs to the people of the Commonwealth; afford fair and equal opportunity to housing programs and services for all, with special emphasis on very-low, low and moderate income individuals, elderly persons with disabilities; increase and implement home ownership programs with houses that are safe, decent, sanitary and affordable; encourage and promote economic independence, self-sufficiency and upward mobility for families; and implement programs to address the growing and future needs and cost effective viability of the communities in the Commonwealth.

§ 100-50-010 Policy

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

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

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

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

§ 100-50-015 Coverage

(a) These regulations apply to all employees and positions now or hereafter established in the NMHC and all personnel services performed for the NMHC.

(b) Some provisions of these regulations will vary for employees in the following employment status:

- (1) Key positions filled by appointment or contract;

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- (2) Persons or organizations retained by contract where the Corporate Director has certified that the service to be performed is special or unique and nonpermanent, is essential to the NMHC's interest, and that because of the degree of expertise or special knowledge required and the nature of the services to be performed, it would not be practical to obtain personnel to perform such services through normal public service recruitment procedures;
 - (3) Positions of a temporary nature needed by the NMHC, where certified by the Corporate Director and when the need for the same does not exceed ninety (90) days;
 - (4) Any position involving intermittent performance which does not require more than forty hours in any one month;
 - (5) Positions of part-time nature requiring the services of four hours or less per day but not exceeding one year in duration;
 - (6) Positions of temporary nature which involve special projects having specific completion dates which shall not exceed one year.
- (c) The Corporate Director shall determine the applicability of this section to specific positions not expressly covered by this section.

§ 100-50-020 Scope

These regulations cover nearly all aspects of personnel management and administration, and which include but are not limited to development and promulgation of personnel policy, staffing, position classification, employee relations, employee development and training, employee benefits and services, incentives and awards, performance evaluation, employee health service, employee safety and accident prevention, labor-management relations, personnel management program evaluation, and records and reports. Each of the foregoing elements is presented in detail in subsequent parts of these regulations.

§ 100-50-025 Eligibility for Employment

It is the policy of the NMHC that the personnel system shall be applied and administered according to the principle of equal opportunity for all persons regardless of race, creed, color, ancestry, membership in a labor organization, political affiliation, place of origin, disability, sex, religion, age, sexual orientation, veterans status and similar matters not related to individual merit and fitness.

Subpart B - Personnel Management Responsibilities

§ 100-50-030 Personnel Management

- (a) Personnel management is the responsibility of all Executives, Managers, and supervisors who direct the work of others.
- (b) The Corporate Director, with the assistance of the Office Manager, has the specific responsibility to plan, develop, and implement programs and procedures which give effect and meaning to the laws of the Commonwealth, vis-a-vis the NMHC workforce, giving due consideration to the changing needs of the NMHC's programs and personnel needs.
- (c) It is the policy of the NMHC to continuously promote improved management-

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employee relations, human relations and communications, and satisfying work conditions in order to provide all employees the opportunity to satisfy their needs for recognition, a sense of personal worth, and personal achievement.

§ 100-50-035 The Corporate Director

The provisions of this regulation shall govern the administration of the NMHC personnel management system. Pursuant to 2 CMC § 4433(q) and (s), the Corporate Director shall:

- (a) Be appointed by and serve at the pleasure of the Board of Directors;
- (b) Receive such salary and benefits as approved by the Board of Directors and otherwise authorized by statute;
- (c) Direct and supervise all administrative and technical personnel activities of the NMHC;
- (d) Oversee the administration of the personnel system for the NMHC;
- (e) Act for the Board of Directors in the exercise of its appointing authority under Public Law 20-87, specifically, to draft regulations for Board of Directors' promulgation on procurement, travel, and personnel matters;
- (f) Advise the Board of Directors on all matters concerning personnel management and administration, and employee training;
- (g) Formulate and recommend to the Personnel Committee policies and regulations needed to carry out the NMHC's personnel management responsibilities;
- (h) Lead the development of effective personnel administration practices within the NMHC;
- (i) Perform other tasks and duties required by the position or as assigned by the Board of Directors.

§ 100-50-040 The Office Manager

The Office Manager under the supervision of the Corporate Director will provide the administrative and personnel support to management staff and employees of the NMHC. The Office Manager will:

- (a) Foster and develop, in cooperation with division Managers programs to promote effective personnel management, improve employee efficiency, and increase employee productivity;
- (b) Develop and maintain an adequate position classification and compensation plan;
- (c) Administer recruitment and selection programs and determine when employees

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meet specific job qualification requirements;

- (d) Provide advice and assistance to management on matters of employee discipline and grievance and appeal procedures;
- (e) Assist employees and management in the resolution of employee-management problems;
- (f) Develop or arrange training programs to elevate employee skills and increase employee productivity;
- (g) Establish and maintain records of all NMHC personnel, maintaining archived records for former personnel;
- (h) Interpret and administer this regulation; and
- (i) Perform any other activities deemed necessary to assure effective implementation of the personnel management system.

§ 100-50-045 The Personnel Committee

The Personnel Committee shall review personnel policies and make recommendations to improve and enhance the personnel policies of NMHC. The Personnel Committee shall also assist in the following:

- (a) Ensure the establishment and maintenance of a comprehensive personnel management plan and personnel regulations for the smooth and effective operation of the NMHC;
- (b) Provide advice and assistance on personnel management issues referred by the Corporate Director;
- (c) Hold hearings and decide appeals of employees on disciplinary matters, for suspensions of more than three working days, demotions and dismissals from the NMHC. The Committee may utilize the services of qualified hearing officers or other professionals where such services are deemed essential by the Committee. Hearings shall be public except when the appealing employee requests a closed hearing;
- (d) Require the presence of witnesses or documents in any matter pending before the Committee.

Part 100 - Staffing

Subpart A - Application and Selection Processes

§ 100-50-101 Introduction

This part covers the staffing elements necessary to acquire, maintain, reassign, promote,

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and terminate employees of the NMHC. The subparts treat specifically and in detail the regulations which govern in the execution of the respective functions. Merit principles, open competition and, in specific application, employee seniority, shall underlie all considerations in implementing these staffing functions.

§ 100-50-102 Order of Priority for Filling a Job Vacancy

The following order shall be followed in the filling of job vacancies or in the best interest of NMHC:

- (a) Internal promotion or transfer of current NMHC employees;
- (b) Former NMHC employees on current and valid reemployment priority lists;
- (c) Applicants obtained through open competitive job vacancy announcements.

§ 100-50-103 Selected Announcement and Internal Posting of Job Vacancy

All vacant positions will be filled through transfer or promotion of internal NMHC applicants or persons on any current NMHC reemployment priority list before opening a vacancy announcement.

- (a) If there are no priority reemployment lists or no interested, qualified, or suitable reemployment applicants, the vacancy will be announced internally for five (5) working days.
- (b) Former NMHC employees on current and valid reemployment priority lists will be contacted and advised of the job vacancy.
- (c) All reemployment or internal applicants must meet the qualifications for the vacant position and meet standards of suitability that may be established by the Corporate Director.

§ 100-50-104 Competitive Hiring

All hiring shall be competitive and open to the public, except where specifically exempted. Candidates responding to a vacancy announcement will submit to NMHC, by the designated time, their records of education, training, experience and such other information as requested in the announcement, to be evaluated and rated by the NMHC Office Manager or other designated evaluator. The vacancy announcement shall stipulate the dates of opening and closing of the vacancy competition, the forms to be used for filing, and the address to which the forms and associated information shall be sent.

§ 100-50-105 Non-competitive Hiring

Non-competitive hiring may occur when, in the discretion of the Corporate Director, one

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of the following conditions or circumstances occur:

- (a) The position to be filled requires rare or special qualifications or training for which competition is unnecessary;
- (b) There are a lesser number of qualified applicants than there are positions to be filled;
- (c) There is a need to place a former employee with reinstatement eligibility.

§ 100-50-106 Vacancy Announcements

Vacancy announcements shall contain, at a minimum, the following information:

- (a) Class title, pay and pay level of the position;
- (b) Brief description of the duties and responsibilities;
- (c) Geographical and organizational location of the position;
- (d) Minimum bona fide occupational qualifications for the position to include general experience, specialized experience, and such qualitative evaluation elements as may be deemed appropriate and necessary;
- (e) Instructions on how to apply for the vacancy, including place or mailing address to apply, form of application required, and documentary support required; and
- (f) Period of the announcement. All announcements shall initially be for 15 calendar days. This period may be extended by the Corporate Director, if the response has been inadequate, by re-announcing the vacancy in the same manner as the original announcement.

§ 100-50-107 Publicity

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

§ 100-50-108 Applications for Vacancies

- (a) Applications for vacancies shall be made on forms prescribed by the NMHC. Proper completion of applications and submission of supplemental information shall be accomplished in accordance with the instructions on the vacancy announcement and established procedures.
- (b) Applications shall be signed and such signature shall certify to the truth of all

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statements contained therein. A knowingly false answer or statement shall be grounds for denying consideration or for disciplinary action if the applicant is a current NMHC employee.

(c) Applications for specific positions shall be accepted only during the period specified on the examination announcement. Applications submitted by mail shall be postmarked no later than the announced closing date. Late applications will not be accepted unless approved by the Corporate Director in unusual circumstances.

§ 100-50-109 Disqualification of Applicants

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

§ 100-50-110 Establishment of List of Eligible Applicants

(a) Following the ending of a vacancy announcement, the Office Manager shall review all applicants based upon their qualifications relative to the requirements of the announced position. Those applicants who meet the minimum qualifications for the position shall be rated based upon their qualifications and ranked according to their relative standing.

(b) In the event a list of eligible applicants for any position contains less than five names and the Corporate Director deems the range of choice to be inadequate, the Office Manager shall announce a new examination.

(c) An open competitive list of eligible applicants shall be created only after it has been determined that no qualified and suitable internal or reemployment candidate is available.

§ 100-50-111 Removal of Names from Lists of Eligible Applicants

The Office Manager may remove the name of any person who has been disqualified under § 100-50-109. The name of any person may also be removed if:

(a) The eligible applicant fails to respond within ten calendar days from the mailing or e-mailing date of an inquiry as to availability for employment, or from the date of actual personal contact, provided that the name may be restored for reasons deemed sufficient by the Corporate Director.

(b) The eligible applicant voluntarily withdraws.

(c) There is evidence of physical or mental inability to perform the duties of the position, as indicated by appropriate medical examination.

(d) The eligible applicant is found to be no longer qualified to perform the duties required of the class of position.

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(e) Intentional false statements, deception, or fraud is determined to have occurred in the application or in the interview process by the applicant or any other person involved in the application or selection process.

§ 100-50-112 Selection from Eligible Applicant Lists

(a) Appointments and promotions in the NMHC shall be made from certified eligible lists resulting from open competitive vacancy announcements, except as otherwise provided by this part 100. The list of certified eligible candidates will be prepared for the Corporate Director by the Office Manager from among the highest rated applicants in precise numerical order, highest rate first. Where the number of eligible applicants exceeds five names, only the top five names shall be certified. The Corporate Director shall be provided a certified list of the top five eligible applicants for each vacancy. However, when less than five persons comprise a list of eligible applicants, the Corporate Director may accept such lesser number or request the vacancy be re-announced in order to obtain at least five eligible applicants. If more than one position of the same classification must be filled, the number of certified applicants on the list shall be increased by one eligible for each additional position to be filled, where possible.

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

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

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

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

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

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

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

(i) All non-selected applicants, whether on the certified listing of applicants or not,

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will be notified of their non-selection.

§ 100-50-113 Duration of Lists of Eligible Applicants

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

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

§ 100-50-114 Reemployment Priority List

Any person who has held a permanent position in the NMHC and has been demoted or terminated through reduction-in-force shall be permitted to have his/her name placed on a reemployment priority list (provided such person so requests in writing to the Corporate Director). The name of such person shall be placed on the reemployment priority list for the same or related class of position as last held under a permanent appointment. Names shall be arranged on the reemployment priority list in the chronological order of their separation from their respective competitive levels. Names shall be removed from the reemployment priority list at the expiration of three years from the date of separation or demotion, or sooner if such person is reemployed in a position at the same or higher pay level as formerly held in the NMHC. The individual may be removed from the list if such person refuses a reasonable offer of employment. A reasonable offer is of the same position or one equivalent to that last held in the NMHC. Reemployment priority only applies to former NMHC employees who held a permanent classification and does not apply to former contracted or appointed employees.

Subpart B - Positions and Appointments

§ 100-50-120 Types of Positions

All positions within NMHC shall be identified by one of the designations as defined in this Subpart B.

§ 100-50-121 Permanent Position

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

§ 100-50-122 Temporary Position

A temporary position is a full-time or part-time position which is established based upon a short term program or project need of the NMHC which is authorized to continue less than one year.

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§ 100-50-123 Types of Appointments

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

(a) **Board of Directors Appointment.** The Corporate Director, Deputy Corporate Director and the Chief Financial Officer of the NMHC will be appointed by and serve at the pleasure of the NMHC Board of Directors. Benefits and conditions of employment will be as approved by the Board of Directors and as otherwise authorized or limited by statute. The policies, processes, and protections afforded by these regulations do not apply to a Board of Directors appointed position.

Contracted Appointment. Key positions within the NMHC, to include the Special Assistant for Housing and LIHTC programs, Mortgage and Credit Division Manager, Office Manager, Program and Housing Division (PHD) Manager, Asset Management Division (AMD) Manager, FSS Coordinator, Field Office Representatives, and the Chief Accountant will be employed on contracts, not to exceed two years in duration. Special Projects funded by one-time funding from appropriation from the U.S. Congress shall be employed on contract, not to exceed two years in duration. Benefits and conditions of employment will be as provided in the contracted terms and conditions of employment and as otherwise authorized or limited by statute. The policies, processes, and protections afforded by these regulations do not apply to contracted appointees except as included in the contracted terms and conditions of employment.

(b) **Probationary Appointment.** This is an appointment in which the appointee is selected from a list of eligible applicants resulting from an open vacancy announcement to fill a permanent position. The appointee shall serve a period of not less than six and not more than 12 months from the beginning of the probationary appointment and shall demonstrate a minimum of 26 consecutive weeks of satisfactory performance before being eligible for conversion to a permanent appointment. Separations during a probationary appointment do not require adverse action procedures and have no reduction-in-force (RIF) protection.

(c) **Permanent Appointment.** An employee who has been appointed to a permanent position and who has satisfactorily completed a probationary period is entitled to the full benefits of this regulation. Permanent appointments may be made to less than full-time positions with defined regular work schedules.

(d) **Limited-Term Appointment.** A limited-term appointment is one in which the appointee is appointed to a temporary position for a period of not more than one year. An employee serving a limited-term may serve in either a full-time or part-time position. Any person given a limited-term appointment must meet the minimum qualifications for the class of position to which appointed and hired through the selection process established in this regulation. If job circumstances require the continuation of a temporary appointment, the Corporate Director shall justify, in writing, to the Personnel Committee, the need for a second continuing limited-term appointment following the expiration of a one year appointment. A limited-term appointment may not be extended more than one time, but

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may be converted to a permanent appointment at the end of one (1) year or later, if a permanent need has been determined for the position. To retain the incumbent employee, the employee must have demonstrated 52 consecutive weeks of satisfactory performance.

(e) **Provisional Appointment.** A provisional appointment is usually limited to 90 days and is used to fill an immediate need in a permanent position in the absence of an appropriate listing of eligible applicants. The Corporate Director may authorize extension of a provisional appointment beyond 90 days for a maximum of 180 days when the job vacancy announcement fails to make available an adequate number of qualified candidates. Any person given a provisional appointment must meet the minimum qualifications for the class of position to which appointed.

(f) **“Acting” Appointment.**

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

(2) Whenever the “acting” assignment exceeds 90 days, the employee shall be temporarily promoted/appointed to the position if the employee meets the qualifications standards of the position.

- i. An employee whose position is reallocated/reclassified to a higher class shall be compensated at the lowest step in the higher pay level which at least equals the amount of a two-step increase in the lower pay level. The rate of compensation cannot exceed the rate of the maximum step in the higher pay level. The anniversary date for within-grade increases and other purposes.

§ 100-50-124 Pre-employment Condition Standards

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

(c) Persons offered positions within the NMHC must submit to a pre-employment urine test for the presence of drugs. Pre-employment drug tests are not considered to be medical examinations as defined in this section.

§ 100-50-125 Administration of Medical Examinations

Medical examinations and pre-employment drug testing shall be administered by medical

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personnel authorized by the NMHC to conduct such examinations for employment purposes, and shall be recorded on forms prescribed by the NMHC. The applicant pays for the medical examination and pre-employment drug testing.

§ 100-50-126 Prohibited Actions

- (a) Employment of any person without negative testing pre-employment drug testing is prohibited.
 - i. Including re-employment;
 - ii. Transfer of employment (from another agency)

- (b) Employment of any person without an approved personnel action is prohibited. Supervisors or management officials who permit an employee to report to work without an appropriate and formally approved personnel action shall be held personally liable for any claim for compensation resulting from such improper appointment.

- (c) Retroactive personnel actions shall not be made unless approved by the Personnel Committee prior to commencement of such action.

§ 100-50-127 Reemployment

- (a) An employee who has successfully completed a probationary period with the NMHC and subsequently left the employ of the NMHC for any reason other than cause shall be granted reemployment eligibility for a period following the separation equal to the employee's total full years of creditable service with the NMHC. This means that the former employee may be reappointed noncompetitively to the former position, if vacant, in the NMHC at the same pay level and step that the employee held upon separation. If reappointed to a higher class the employee shall be allowed to retain the former pay rate; if to a lower class, the employee shall be allowed to retain the former step in the new pay level.

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

§ 100-50-128 Orientation

New employees shall receive a standardized orientation of the NMHC as soon as is practical after being appointed, and at least within one week of appointment.

Subpart C - Merit Promotion Program

§ 100-50-140 Policy

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To the maximum extent possible, the Merit Promotion Program (MPP) provides for filling vacancies above the entry level by promotion of highly qualified existing NMHC employees. This policy does not restrict the right of NMHC to fill vacancies by transfer or other means when to do so is in the best interest of the government. In such cases the MPP mandates the meritorious selection of the best qualified candidate.

§ 100-50-141 Definitions

- (a) "Position Change": A promotion, transfer or demotion during an employee's continuous service.
- (b) "Promotion": The change of an employee to a higher position class and pay level.
- (c) "Career-Ladder Position": One of a group of positions in which an employee may be given successive promotions until the employee reaches the full performance level. All employees in positions in a career ladder must be given grade-building experience and training and may be promoted to the next higher level as they demonstrate ability to perform in a wholly adequate manner at the next higher level. Minimum time-in-grade requirements, where established, must be observed in making career ladder promotions.
- (d) "Promotion Competitive": Those eligible candidates whose experience, training, and potential substantially exceed the qualification standard for the position to a degree that they are likely to perform in a superior manner.
- (e) "Best Qualified Candidates": Those eligible candidates who rank at the top when compared with the other eligible candidates for a promotion within a general group, i.e., qualified or highly qualified.
- (f) "Position with Known Promotion Potential": A position which is to be filled below the specified performance level for the position. These may be trainee and understudy positions, career ladder positions, and positions filled one or more levels below the established level.

§ 100-50-142 Scope and Coverage

Competitive promotion procedures apply to:

- (a) All competitive positions in the NMHC when filled by promotion.
- (b) Any position which will be filled by a candidate at a basic pay level higher than the candidate's last position; and
 - (1) The position is filled by transfer; and
 - (2) The position is filled by selection of a permanent NMHC employee from an eligible list following an open competitive examination;
- (c) Any position with known promotion potential which is filled by transfer or selection from the reemployment priority list.

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§ 100-50-143 Areas of Consideration

NMHC's areas of consideration for the Merit Promotion Program will be limited to NMHC staff from any of its three locations. For positions opened to general consideration of non-NMHC staff, candidates from all islands will be considered unless reasons exist in the NMHC's interest to limit the consideration to a certain area.

§ 100-50-144 Methods of Locating Candidates

When the NMHC processes an open promotion request, it selects the appropriate method or combination of methods for locating. The following methods are generally used, singly or in combination, depending upon the nature of the position and availability of candidates.

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

- (1) Title, pay level and location of position(s);
- (2) Opening and closing dates (not less than 15 calendar days);
- (3) Area of consideration;
- (4) Duties of the position, briefed;
- (5) Conditions of employment, e.g., night work, hazards, standby, etc.;
- (6) Qualification requirements, including selective placement factors, if any;
- (7) How and where to apply;
- (8) Non-discrimination statement; and
- (9) Known promotional potential, if any.

§ 100-50-145 Transfers

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

§ 100-50-146 Qualification Standards

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

(b) Qualification standards (including any selective placement factors used) must be established and made a matter of record prior to the start of the promotion process for any specific position. All employees who meet the minimum qualification standards (including selective placement factors) have basic eligibility for promotion. The standards must be

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applied fairly and consistently to all employees being considered.

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

§ 100-50-147 Conditions of Employment

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

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

§ 100-50-148 Evaluation Process

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

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

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

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

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

§ 100-50-149 Evaluation Measures

The various measures for evaluating candidates are:

(a) **Written Tests.** Where appropriate, written tests may be used in the evaluation process, but may not be the sole means of evaluation. Written tests must be approved by the Corporate Director.

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- (b) **Appraisal of Performance.** A supervisory appraisal must be obtained for every employee who is qualified.
- (c) **Experience.** In evaluating experience the objective is to determine how closely the experience relates to the new position or level of work. Length of service is a factor only when there is a clear and positive relationship with quality of performance.
- (d) **Awards.** In considering awards received by the candidates, the weight assigned must be based on those elements necessary to successful performance for the position to be filled.
- (e) **Training.** An appropriate weight is given for pertinent training, self-development, and outside activities which would increase the employee's potential or effective performance in the position to be filled.
- (f) **Education.** Education may be considered only if it is clearly job-related or if it provides a measure of the learning ability essential for genuine trainee positions.
- (g) **Qualifications Investigation.** A qualification investigation may be used to assist in determining experience, training, degree of responsibility exercised and effectiveness. Inquiries may be made to assist in judging how well a candidate is likely to perform at a higher level or in a different kind of work.
- (h) **Oral Interview.** Individual or group interviews may be held. Oral questions may relate either to subject matter knowledge or to other matters pertinent to the position or the candidate. If oral questions are in the nature of a test, the same questions and sequence must be asked of each candidate and a record of their answers made part of the promotion record.

§ 100-50-150 Selection Procedure

- (a) Selection is based on the Corporate Director's judgment of how well the candidate will perform in the position to be filled and the candidate's potential for advancement. When there are less than five names available, the Corporate Director is not required to select someone from the merit promotion certificate. However, if returning the certificate, the selecting authority must state how the position will be filled.
- (b) The Office Manager notes the name of the person selected on the merit promotion certificate. Reasons for selection do not have to be cited. The Office Manager then notifies all eligible candidates of the selection, including the person selected.
- (c) When a first-line supervisory position is filled, a determination is made as to the amount of supervisory training needed to meet the standard. The Office Manager and the Corporate Director will determine and, where necessary, schedule the training needed to meet the standard.

§ 100-50-151 Information to Employees

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

(b) New employees will receive promotion program information as part of their orientation. All employees will receive this information again from time to time in meetings and written form.

§ 100-50-152 Employee Questions and Complaints

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

- (1) Eligibility requirements for a promotion;
- (2) If considered for promotion and, if so, whether found eligible;
- (3) Employee may inquire regarding the list of candidates from which selection was made; and
- (4) Who was selected for the promotion.

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

§ 100-50-153 Review of Promotion Program

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

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

Subpart D - Separations, Suspensions, and Demotions

§ 100-50-160 General

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

§ 100-50-161 Separations Not Involving Personal Cause

- (a) **Resignation.**
 - (1) Resignations shall be in writing and shall be submitted to their managers at least 14 calendar days in advance of the effective date. Management employees should provide a minimum of 30 days notice.
 - (2) The Manager shall submit a copy of the written resignation to the Office Manager for processing of the action.
 - (3) Withdrawal of a resignation may be permitted provided:
 - (i) The employee's wishes are made known, in writing, prior to the effective date; and
 - (ii) The Corporate Director agrees to the proposed withdrawal.

- (b) **Retirement, Voluntary.** An employee may be separated for the purpose of voluntary retirement. A voluntary retirement shall follow the same notification process as a resignation.

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

- (d) **Termination for Medical Reasons.**
 - (1) When an employee becomes mentally incapacitated or permanently physically disabled and is unable to satisfactorily perform the essential duties of the position to which assigned, the Corporate Director may terminate the employment, provided:
 - (i) No suitable reassignment can be made within the NMHC to which the employee is assigned;
 - (ii) Medical examination fitness-for-duty procedures have been conducted; and
 - (iii) All adverse action procedures have been followed.
 - (2) In all cases of termination for reasons of mental incapacity or physical disability, all provisions of the Americans with Disabilities Act (ADA) will be followed.
 - (3) An employee whose services are terminated under this part may be eligible for disability retirement under the Social Security system. The responsibility for applying for disability retirement rests with the employee, although it is the responsibility of the Office Manager to ensure that the employee is aware of such an opportunity.

- (e) **Voluntary Demotion.** An employee may volunteer for demotion to a lower class of position at a lower pay level. The approval of such a request by the Corporate Director must be contingent upon the following factors:
 - (1) A vacant position in the class and pay level must be available within NMHC.
 - (2) The employee must meet the qualifications for the position at the level sought and be capable of fulfilling the duties required of the position.

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- (3) No additional cost shall accrue to the NMHC as a result of or incident to the demotion action.
- (4) The salary of the demoted employee in the lower level position shall be set at the same numerical step in the lower level position as the employee received in the higher position.

§ 100-50-162 Disciplinary Actions for Reasons of Personal Cause (Adverse Actions)

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

- (a) **Authority to Take Adverse Action Disciplinary Measures.** Unless specified by law, the authority to hire is followed by the authority to effect adverse actions. For this purpose, the designated official will be the Corporate Director.
- (b) **Authority to Take Disciplinary Measures.** Unless otherwise restricted by the Corporate Director, Managers and supervisors are authorized to affect non-adverse action disciplinary measures and to recommend adverse action disciplinary actions. Managers and supervisors will keep the Corporate Director advised of performance and conduct problems.
- (c) **Employee Coverage.** This Subpart applies to all permanent employees of the NMHC but does not apply to Board-appointed, contracted, or probationary employees, except where stated elsewhere in this regulation.
- (d) **Merit of Disciplinary Action.** An action against an employee should only be taken under this part for "such cause as will promote the efficiency and the mandates of the NMHC."

§ 100-50-163 Non-Adverse Action Disciplinary Measures

- (a) **Verbal Admonishment.** A verbal admonishment, in the form of a counseling or warning, is an informal disciplinary measure. A Manager or supervisor may discuss at any time minor deficiencies in performance or conduct with the objective of improving an employee's effectiveness. Verbal admonishments shall not be made a matter of record in the employee's official personnel file (OPF).
- (b) **Written Admonishment.** A written admonishment, in the form of a counseling or warning, is also an informal disciplinary measure that normally occurs when minor deficiencies in performance or conduct reoccur after a Verbal admonishment or for a more serious deficiency or incident. Written admonishments will be maintained as a matter of record in the employee's OPF.
- (c) **Reprimand.** A reprimand is a formal means of calling to an employee's attention

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

(d) **Suspension Not to Exceed Three Working Days.**

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

(2) A suspension without pay for periods less than five working days shall only be imposed in respect to an employee who is covered by the overtime provisions of the Fair Labor Standards Act (FLSA). An employee who is exempt from the overtime provisions of the Fair Labor Standard Act (FLSA) must receive suspensions without pay in periods of a full five working days, except in situations of misconduct, defined by the FLSA as serious safety or work rule infractions, where a lesser period may be permitted by the FLSA. The period of suspension for an exempt employee for attendance or performance matters shall be served in five working day periods on consecutive days and for entire workweek.

§ 100-50-164 Adverse Action Disciplinary Measures

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

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

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

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

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

(1) An employee absent without leave (AWOL) without valid reason, for a combined total of ten (10) working days in any twelve (12) month period may be terminated from employment for job abandonment, provided all adverse action procedures are followed.

(2) An employee absent without leave (AWOL) without valid reason, for ten consecutive working days may be considered, in effect, a resignation. Adverse action procedures will not be required. The Corporate Director may elect not to effect such

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termination, however, if it is determined that circumstances warrant such cancellation. Nothing in this section shall preclude the Corporate Director from taking other disciplinary action against an employee for absence without leave.

(e) **Demotion/Reduction in Rank or Pay.** The Corporate Director may take action to reduce an employee in rank or pay for cause.

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

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

(f) **Separation during Probation**

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

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

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

§ 100-50-165 Procedure for Taking Adverse Actions

The Corporate Director must observe certain procedural requirements when processing adverse actions covered in this subpart. Procedures for removal, suspension for more than three (3) working days, furlough without pay and reduction in rank or pay are as follow:

(a) The Corporate Director must give the employee at least 30 days' advance written notice of the proposed action. In the event that criminal charges are filed against an employee, the employee may be immediately suspended without pay, reassigned, allowed to take annual leave, or be subject to such other action as management may deem necessary. In the event the charges are dismissed or the employee is found not guilty, the employee may be reinstated with benefits and pay but will not receive retroactive payment or reimbursement for any leave taken.

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

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

(d) If the employee answers, the Corporate Director must consider that answer.

If at all practicable, the employee must be kept on active duty in the regular position during the notice period. Based upon the circumstances, however, the employee may be suspended during the advance notice period and placed on leave without pay (LWOP) or, with the employee's consent, carried on annual leave. An employee whose adverse action is drug-related as prohibited by Part 400, Subpart C, of this chapter will not be permitted to perform any safety-sensitive functions during the notice period.

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

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

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

§ 100-50-166 Summary of Steps for Taking Adverse Actions

(a) Misconduct triggering use of the adverse action procedural system

(b) Corporate Director's letter of proposed adverse action

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

(d) Corporate Director's letter of decision

(e) Employee's written appeal to Personnel Service Committee

(f) Personnel Service Committee hearing (if requested)

(g) Personnel Service Committee decision (administrative remedies exhausted at this point)

(h) Legal recourses

Subpart E - Reduction-in-Force (RIF)

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§ 100-50-170 General

A reduction-in-force, defined as the separation, furlough or reduction in class, pay level or hours of work of employees due to lack of work or funds, or other management requirements, but not for disciplinary reasons. The Corporate Director will exhaust all administrative alternatives to resolve the necessitating cause before reduction-in-force procedures are instituted. Adverse action procedures must be used to place an employee in furlough status for thirty (30) days or less.

§ 100-50-171 Policy

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

§ 100-50-172 Coverage

This subpart applies to all permanent employees of the NMHC, as defined in this chapter. Appointed and contracted employees are not covered by this policy.

§ 100-50-173 Reduction-in-Force Planning

When it becomes evident that a reduction-in-force (RIF) must be implemented, the Corporate Director shall notify the Board of Directors and the Governor of the necessity and provide all employees with written notice of NMHC's intention to take RIF action at least sixty (60) days in advance. The appointing authority shall then institute administrative procedures to assure that all legitimate possibilities for reassignment elsewhere in the government have been exhausted and that formal reduction-in-force is the only remaining alternative.

§ 100-50-174 Competitive Processes

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

(a) Competitive Areas. For all positions:

- (1) Area 1. Saipan
- (2) Area 2. Rota
- (3) Area 3. Tinian

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

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- (c) **Tenure Groups.** For the purposes of reduction-in-force, NMHC employees shall be classed in tenure groups as follows:
- (1) Tenure Group I - All permanent employees.
 - (2) Tenure Group II - Employees serving in a probationary appointment.
 - (3) Tenure Group III - Employees serving in limited term or provisional appointments.
- (d) **Competition within a Competitive Level.**
- (1) When a position is abolished within a competitive level, the incumbent shall displace the employee with the lowest retention standing in that competitive level. Employees in tenure groups III and II in any competitive level will be separated from employment in that order before the separation of any permanent employee in tenure group I.
 - (2) If an employee whose position is abolished does not have sufficient retention standing to displace another employee, that employee shall be allowed to exercise retreat rights.
- (e) **Retreat Rights.** When an employee has insufficient retention standing to compete within that employee's competitive level, the employee shall compete down the line of promotion. This is known as the exercise of retreat rights. An employee may displace the employee with the lowest retention standing below that of the released employee in the highest competitive level from which promoted. The employee shall continue to compete at successively lower levels along the line of promotion until placed or, if placement cannot be made, separated by reduction-in-force.
- (f) **Creditable Service for Reduction-in-Force.** Only the period of service worked with NMHC will count as creditable service in the calculation of the retention standing.
- (g) **Retention Standing.** Retention standing is derived by allotting one point for each year of creditable service, and an additional two points for each exceptional overall rating of 90 points or better. Missing performance evaluations cannot be made up. In competing with other employees for retention in a competitive level, the individual with lowest retention standing shall be released first.
- (h) **Reemployment Priority Lists.** Employees serving under permanent appointments who are separated by reduction-in-force shall be placed on a reemployment priority list for three years or until returned to duty in a permanent position with NMHC at any level.

§ 100-50-175 Limitations on Competition

Employees who are absent on military leave shall not be placed in RIF competition until they have returned to duty. Similarly, the employee's positions shall not be abolished until the employee returns to duty in that position. The Office Manager will keep a record that will assure recognition and protection of the position and its incumbent.

§ 100-50-176 Furlough and Separation

- (a) The Corporate Director may use furloughs for more than 30 days if there is reasonable assurance that the employees furloughed will be returned to duty within the next

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12 months. If there is reasonable doubt regarding the return to duty of furloughed employees, then the Corporate Director must separate the employees found to be in excess of management's needs and proceed according to reduction-in-force procedures.

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

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

§ 100-50-177 Vacant Positions

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

§ 100-50-178 Assignment Rights (Bumping)

(a) Due to the specific nature of the NMHC sections, retreat rights are limited to within the employee's section. Assignment rights (bumping) will not be authorized between sections.

(b) Reduction-in-force activities within NMHC will affect NMHC employees only. Service within NMHC will not provide a separated employee with bumping rights elsewhere in the government. Similarly, NMHC will not recognize bumping rights from separated employees who worked outside of NMHC.

§ 100-50-179 Elimination of Function

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

(b) Reduction-in-Force. The elimination of a function is a reduction-in-force action based upon the work no longer being required. The reduction-in-force procedures and protections in this section of the regulation apply.

(c) Employees with retreat rights may exercise those rights.

Part 200 - Employment Processes

Subpart A - Employee Grievances

§ 100-50-201 Policy

The NMHC, in accordance with the principles of good management, recognizes the

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

§ 100-50-205 Coverage

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

§ 100-50-210 Matters Not Covered

The grievance system will not cover the following:

- (a) An adverse action separately appealed;
- (b) A fitness-for-duty examination;
- (c) The content of published NMHC or other government policy;
- (d) Non-selection for appointment, promotion, or transfer from a group of properly ranked and certified candidates;
- (e) Non-recommendation or disapproval of a merit increase, performance award, or other kind of honorary discretionary award; and
- (f) An employee who is serving on probationary status.

§ 100-50-215 Freedom from Restraint

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

§ 100-50-220 Employee's Right to Representation

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

§ 100-50-225 Role of the Personnel Committee

The NMHC Personnel Committee serves as the ultimate appellate level for grievances of

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employees or groups of employees. It shall consider only those formal grievances which cannot be settled to the satisfaction of all concerned in accordance with the formal procedure defined in part 200.

§ 100-50-230 Employee's Right to Seek Advice

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

§ 100-50-235 Informal Grievance Procedure

(a) The grievance action shall first be initiated by the aggrieved employee who will discuss the problem informally with the supervisor, or if the employee feels the relationship with the immediate supervisor is such that the matter cannot be reasonably discussed, the employee may discuss it with the next level of supervision.

(b) A grievance concerning a particular act or occurrence must be presented within ten calendar days of the date of the act or occurrence or the date the aggrieved employee became aware of the act or occurrence.

§ 100-50-240 Formal Grievance Procedure

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

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

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

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

(d) If the grievance is against the Corporate Director, the employee may, after attempting to informally resolve the issue with the Corporate Director, formally submit the

grievance to the Personnel Committee.

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

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

(g) The Personnel Committee shall reach a decision and present it formally to the aggrieved employee and the Corporate Director within 15 working days following the close of the formal hearing. Decision by the NMHC Personnel Committee shall be made by a majority vote of the entire Committee and shall be final.

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

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

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

Subpart B - Employee Appeals

§ 100-50-245 General

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

§ 100-50-250 Rights of the Parties

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

(a) Right to a Hearing.

(1) If an appeal is filed by an employee, both NMHC and the employee will be entitled to a full and fair hearing before the Personnel Committee or a hearing officer designated

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by the Committee, to present evidence, and to be represented by counsel. At the hearing, although technical rules of evidence shall not apply, the testimony may be recorded, but will not be transcribed. Hearing minutes will be prepared and maintained. The Committee shall present its findings of fact and final decision in writing to all parties.

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

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

(b) Denial of a Hearing.

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

(2) If the Committee determines that no hearing is reasonably possible, NMHC and the employee will be notified to submit, in writing, any additional evidence they desire to present on the issues so that a decision can be made on the record presented.

(c) Freedom from Reprisal or Interference.

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

(2) No employee, whether acting in an official capacity for the NMHC or on any other basis, will be allowed to interfere with, or attempt to interfere with, another employee's exercise of rights under this subpart. The spirit as well as the letter of the requirement must be enforced. In addition to abstaining from overt acts or interference, the official is prohibited from making any statement or taking any action that has the appearance of a threat, interference, or intimidation.

(d) Employee Representation. Employees have the right to present at an appeal without representation or to be accompanied, represented, and advised by a representative of their choice. Employees may change their representative, but must notify the Committee of the change, in writing. Employees may select other government employees as their representative, provided that such employees are willing to represent them and are not disqualified because of conflict of position or unavailability to serve in that capacity because of priority needs of, or unreasonable cost to, their employee agency, as determined by the desired representative's appointing authority. Employees are free to select their representative from outside the government service, but entirely at their own expense.

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

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

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

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- (1) An employee will be entitled to one day of official time-off as administrative leave to prepare the appeal, if the employee is otherwise in an active duty status. The employee's work on the appeal will take place outside the NMHC work premises.
- (2) If the employee's representative is an employee of NMHC, the representative will also be entitled to one day of official time to help prepare the appeal if otherwise in an active duty status.
- (3) Both the employee who is appealing and the employee who is acting as representative shall make arrangements with the Office Manager for the use of official time. Leave forms will be utilized.
- (4) If the representative is a government employee from another agency, it is the employee's responsibility to determine if that agency will allow them time off to assist with the appeal.
- (5) If preparation requires more than one day off from work, the employee must request annual leave or unpaid time. If the appeal involves complicate issues that require extensive preparation time, the employee may request additional time, up to three additional days, from the Personnel Committee.
- (6) The employee may view and request copies of any documents being used to support the adverse action being appealed. These copies will be provided at the employee's expense.

Part 300 - Position Classification and Compensation

Subpart A - Position Classification

§ 100-50-301 General

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

§ 100-50-302 Definitions

- (a) "Position Classification": the process by which employment positions in an organization are identified, described and defined according to their duties and responsibilities, with like positions segregated into groups called "classes." A systematic record is made of the classes found and a listing is made of the particular positions found to be of each class.
- (b) "Class."
 - (1) "Class" means one position or a group of positions sufficiently similar in respect to their duties, responsibilities, and authority that the same title may be used with clarity to designate each position allocated to the said class. The same standard qualifications may be required of all incumbents, the same test of fitness may be used to choose qualified employees, and the same schedule of compensation may be applied with equity under the same or substantially the same employment conditions of a given class; although sufficiently dissimilar from any position or any other group of positions to warrant exclusion from those groups of positions.
 - (2) The class title assigned to a position in accordance with the Position Classification Plan shall be the official title and will be used for all personnel, budgetary, and financial

purposes, and should be used for all position organization charts.

(c) “Position”: the work, consisting of duties and responsibilities assigned by competent authority for performance by an employee.

(d) “Position Classification Plan”: classes of positions arranged in a systematic order to reflect all of the kinds and levels of work utilized in the NMHC Personnel Management System.

(e) “Allocation”: the assignment of a position to its appropriate class on the basis of analysis of the duties and responsibilities of the position.

(f) “Reallocation”: a position change resulting from a change of duties and responsibilities over a period of time, not a result of planned management decision and action.

(g) “Reclassification”: change of a position or group of positions to a different class as a result of a change in assigned duties and responsibilities, classification standards, or as a result of correcting a classification error.

(h) “Class Specification”: an official position classification plan document description of the general characteristics of a class, and includes the official class title, a detailed description of the scope of duties and responsibilities of the class, specific examples of work or typical duties performed, and a statement of the qualifications required to perform the work of the class.

(i) “Occupational Group”: a major subdivision of a position classification plan, generally embracing several series of classes of positions in associated or related work specialties, professions or related activities. (For example, “Clerical and Machine Operation” and “Administrative, Management, and Allied” are occupational groups.)

(j) “Series of Classes”: classes closely related as to occupational specialty but differing in level of difficulty, responsibility, and qualifications required. (For example, the three classes of Loan Specialist I, Loan Specialist II, and Loan Specialist III taken together make up a series of classes.)

(k) “Position Description”: a formal, official written statement by management which documents the description, assignment, or arrangement of the duties and responsibilities of a position.

(l) “Desk Audit”: a formal review of a position to determine if the duties being performed are consistent with the job description and grade level assigned.

(m) “Position Description”: document defining the duties, knowledge, skills, abilities, education, and experience requirements of the position.

§ 100-50-304 Principles and Policy

(a) The basic principles underlying the position classification system are:

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- (1) Equal pay for equal level of responsibilities, qualification requirements, and difficulty in differing position's assigned duties; and
- (2) Variations in pay in proportion to differences in difficulty, responsibility, and qualification requirements of the work.

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

§ 100-50-306 Responsibilities

(a) The Corporate Director

- (1) Ensures the development of a classification program which supports management's objectives, meets legal and regulatory requirements, and promotes participation by operating officials in the classification process.
- (2) Provides advice and assistance to management on the classification aspects of position structure needed to carry out the NMHC mission.
- (3) Ensures the conduct of periodic reviews to evaluate the effectiveness of the classification program and directs corrective action where appropriate.
- (4) Approves new classification standards, revises existing standards as needed, seeks the advice and counsel of an experienced desk auditor, as needed.
- (5) Groups positions into classes on the basis of their similarities in duties, responsibilities, and other significant factors.
- (6) Assigns a title to each class which shall apply to all positions in the class; prescribes the characteristics of each class; and sets the standards for employment in any position in the class subsequent to consultation with the personnel committee and the appropriate management officials.
- (7) Changes a position from one class to another where substantial changes have occurred in the duties and responsibilities.
- (8) Determines the status of occupants of positions which have been changed from one class to another.
- (9) Delegates authority to the degree the Corporate Director deems appropriate, to the Deputy Corporate Director, Office Manager, or other NMHC management staff, to review and modify position descriptions which have been approved and allocated within the classification plan.

(b) Managers and Supervisors

- (1) Plan, organize, develop, and assign duties and responsibilities to positions, whether occupied or vacant;
- (2) Consider the mission of the organization and structure positions for accomplishment of requirements in the most effective and economical manner possible;
- (3) Ensure that assigned duties and responsibilities do not duplicate or overlap those of other positions;
- (4) Assure that duties and responsibilities assigned to positions are completely and

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accurately described in position descriptions in full and sufficient detail for position classification and all related purposes;

(5) Assist employees to accomplish the foregoing.

(c) The Office Manager

(1) Develops, prepares, maintains, and submits to the Corporate Director, as required, factual and up-to-date functional statements and organizational position charts which clearly depict such information as assigned organizational and/or supervisory responsibility, organizational segment identification,

(2) Develops and maintains listings of positions, employee names with official class titles and pay levels for the positions to which assigned, the title and pay levels of vacant positions which are funded and approved, and other similar essential details.

§ 100-50-308 Position Planning

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

Subpart B - Compensation

§ 100-50-310 General

All employees of the NMHC shall be compensated in accordance with Commonwealth laws. Classified employees shall be assigned salaries commensurate with similarly graded positions at public housing agencies or agencies that administer federal programs in the U.S. and the provisions of this chapter. The NMHC compensation plan shall follow the base salary schedule as presented in the comparable salary study and as approved by the NMHC Board of Directors (authority given in PL 18-74).

§ 100-50-312 Compensation Plan

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

(a) Kind and level of work;

(b) Degree of difficulty and responsibility;

(c) Kind, quality, and level of qualification requirements;

(d) Relationship to other classes in its occupational group and of its occupational group to other occupational groups.

§ 100-50-314 Periodic Review of Compensation Plan

The Corporate Director shall periodically ensure the conduct of necessary and appropriate studies of rates of compensation and compensation practices in the Commonwealth and recommend to the Personnel Committee any recommended changes to the NMHC Compensation Plan. Following such review, the Committee shall make recommendations to the Board of Directors for any possible changes to the NMHC compensation plan.

§ 100-50-316 Establishing Salary upon Appointment

(a) Salary shall be fixed at the first step of the appropriate pay level upon initial appointment. Should a higher rate be deemed necessary to recruit, and is appropriate to the qualifications of the applicant, the salary may be fixed at any succeeding step not to exceed step 9. An initial salary above step 1 of the pay level must be approved by the Corporate Director. An initial salary above step 9 of the pay level must be approved by the Personnel Committee with the recommendation by the Corporate Director.

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

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

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

§ 100-50-318 Promotions

An employee who is promoted from a position in one class to an existing position in a higher class shall be compensated at the lowest step in the new pay level which at least equals the amount of a two-step increase in the old pay level. The rate of compensation must not exceed the rate of the maximum step in the higher pay level. The effective date of the promotion shall be the new service anniversary date for the promoted employee. Retroactive promotions shall not be made except when directed by a decision of the Personnel Committee pursuant to an employee's appeal.

§ 100-50-320 Temporary Promotions

A temporary promotion is utilized when it is anticipated that an employee will temporarily occupy a position for a period in excess of ninety (90) calendar days. An employee can be temporarily promoted only if such employee meets the qualifications standards of the new position. The employee temporarily promoted shall be compensated at the step in the new pay level which is at least equal to an increase of two steps at the current pay level. The employee must be informed in advance and agree, in writing, that at the expiration of the

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temporary promotion, the employee will be returned to the former salary (level and step) that s/he would be receiving had the employee remained in the former position. No temporary promotion shall exceed a period of one year.

§ 100-50-322 “Acting” Assignment

(a) An “acting” assignment is the designation, in writing, that an employee will act for a period of up to 30 calendar days in place of a supervisor. When the supervisor’s absence exceeds the initial thirty-day period, a new designation shall be made for an additional thirty days. This thirty-day renewal of the acting assignment is repeated until the supervisor returns to the position. Whenever the acting assignment exceeds 90 days, the employee shall be temporarily promoted if the employee meets the qualifications standards of the position. If the acting assignment exceeds 90 days and the employee does not meet the qualifications standards of the position, the employee shall be compensated with two steps in the current pay level, but may not exceed the maximum step.

(b) When an employee in the classified service is designated for an acting assignment to a contracted position, the employee shall be required to resign from the classified service in order to accept the said acting assignment. While in the acting assignment, the employee shall be entitled to receive a salary equivalent to the salary received by the previous incumbent of the position if the employee meets the qualifications for the contracted position, or a two step temporary increase if the employee does not.

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

§ 100-50-324 Demotion

(a) An employee demoted because of abolishment of position or reallocation of position to a lower pay level, except at the employee’s own request, shall be compensated at the salary rate which does not exceed the employee’s current pay rate. Where the employee’s current rate exceeds the rate of the maximum step of the lower pay level, the employee shall be compensated at such maximum step. An employee demoted as a disciplinary measure shall have his/her compensation reduced to the corresponding step of the lower pay level.

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

§ 100-50-326 Transfer

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

§ 100-50-328 Effect on Service Anniversary Date

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

§ 100-50-330 Reallocation/Reclassification of Position to Higher Pay

An employee whose position is reallocated/reclassified to a higher class shall be compensated at the lowest step in the higher pay level which at least equals the amount of a two-step increase in the lower pay level. The rate of compensation cannot exceed the rate of the maximum step in the higher pay level. The anniversary date of the new reallocation/reclassification shall become the employee's new anniversary date for within-grade increases and other purposes.

§ 100-50-332 Effective Date of Position Changes

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

§ 100-50-334 Within-Grade Increases

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

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

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

(d) A former employee reemployed with a break in service begins a new waiting period for a within-grade increase from the date of rehire.

(e) Time served during temporary, limited term, or provisional status shall not be counted toward the required waiting period in receiving a within-grade step increase, except that employees holding temporary promotions will be eligible for any within-grade increase due to their permanent position, and the temporary salary may be adjusted accordingly.

§ 100-50-338 Overtime Compensation

(a) Compensatory Time and Control. Any employee who exceeds 40 hours actually worked in an established one-week pay period shall be compensated for the hours in excess of 40 at the rate of one and one-half times the regular rate of pay, except as provided in this section.

(b) Exceptions. Bona fide executive, administrative, and professional employees are

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exempt from payment for overtime. These terms shall have the meanings given them in the federal Fair Labor Standards Act of 1938, as amended (FLSA). Under special circumstances such as: declared CNMI emergency declarations; CNMI disaster declaration; Presidential declared disaster declaration; or congressionally-federally-funded programs that have obligatory and expenditure deadlines, the Corporate Director may authorize the payment of overtime, and contingent on funding availability.

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

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

(c) Hours Actually Worked. Overtime compensation will only be paid for hours actually worked in excess of 40 hours a week. Paid leave, annual or sick, or holidays shall not be included in the computation of hours actually worked, except for administrative leave allowed to serve on government boards and commissions. Time during which an employee is required to remain at a prescribed workplace shall be included in the hours actually worked, even if no work is performed.

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

(1) Basic pay (one-eightieth of biweekly salary) for the first 40 hours actually worked in the workweek, including work on a holiday (but not the amount also paid for holiday leave), and including basic pay for work during a typhoon emergency (but not the amount also paid for administrative leave), regardless of whether actual compensation during such emergency is higher because any such work was performed outside of regular duty hours; and

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

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

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

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

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

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

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(2) The maximum authorized accumulation of compensatory time-off is 150 hours (100 hours of work time at one and one-half (1.5) times). When an employee has accumulated 150 hours of compensatory time off, all overtime must be paid in cash; and

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

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

(5) Compensatory time-off cannot be carried "off the books" through any in-house agreement or arrangement. All time work shall be officially recorded.

(f) **Reduction and Control of Overtime.** Intelligent and responsible control of overtime is a continuing management function and certain steps are to be taken by all appointing authorities and supervisors to reduce overtime. Overtime work should be directed to a specific objective or goal, and should not be work that can be completed during the regular workday, or postponed to the following day or days. Avoid use of compensatory time-off. Excessive use of compensatory time-off will take employees away from the workplace in the future and create a need for more overtime.

(g) **Approval of Overtime.** Overtime must be approved, in advance, by the Corporate Director on forms prescribed by the NMHC.

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

(2) The responsible management official has an obligation to discourage overtime which is not approved, and must take disciplinary action, when appropriate, against an employee who works overtime without authorization.

(3) As a general policy, an employee who has taken annual or sick leave or who plans to take annual or sick leave within the same work week will not be scheduled to work overtime.

(h) **Supervisors Working Overtime.** As a general policy, management officials should refrain from directing supervisory personnel to work overtime.

(i) **Supervision of Overtime Work.** In the event three or more employees are directed to work overtime, a supervisor must be present to ensure proper utilization of the overtime period.

§ 100-50-340 Standard Work Week

The standard work week commences on Monday at 7:30 a.m. and ends on the following Friday at 4:30 p.m. of each week. Depending on the needs of the agency, the Corporate Director may authorize an alternate work week for key staff.

§ 100-50-342 Use of Non-standard Work Week

Non-standard work weeks may be used to provide continuity of service, flexibility of work scheduling, or to fulfill other needs in NMHC's interest. Schedules for non-standard work

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weeks shall be devised, in advance, by the Corporate Director, not to exceed 40 hours per week. When it becomes necessary to change an employee from a standard work week to a non-standard work week, every effort will be made to give the employee notice three to five working days in advance of the effective date of the change.

§ 100-50-344 Holidays

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

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

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

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

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

§ 100-50-346 Merit Increase

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

(b) A recommendation for a merit increase is prepared and signed by the manager, and then forwarded to the Corporate Director for review and final approval.

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

§ 100-50-348 Premium Pay

(a) **On-call.** Employees who are required to remain on-call to duty outside of their regular working hours shall be fit to report for duty while on call and shall be paid a premium of one dollar and fifty (\$1.50) cents per hour they are scheduled to be on-call, provided that:

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- (1) Employees shall be compensated for hours actually worked instead of receiving an on-call premium for all hours in which they are required to be at a prescribed work place; and
 - (2) Hours of on-call duty must be for a regularly scheduled period of time in excess of the regular 40 hour work week. On-call schedules must be submitted to the timekeeper before the beginning of the work week involved; and
 - (3) There is a bona fide reason (i.e., the imminent destruction from a tropical storm or typhoon) for the employee to be on call; and
 - (4) Eligibility to be placed on-call is for a period of one year, and may be renewed for additional one year periods.
- (b) Typhoon Emergency. Employees who are required by the NMHC to work in a location and during a period of time in which a typhoon or tropical storm emergency has been declared by the Governor shall be compensated as follows:
- (1) For the employee's regularly scheduled work hours during which other NMHC employees are released from work as a result of the emergency, the employee shall receive pay for administrative leave, and shall also receive pay for the actual hours worked; and
 - (2) For all other hours such employees are required to work while such declaration of emergency shall remain in force, compensation shall be at the rate of two and one-half (2.5) times the base salary rate. Employees being paid typhoon emergency differential are not eligible to receive any other premium pay or overtime pay for the same time period.

§ 100-50-350 Approval of Premium Pay or Differentials

Proposals to either begin or discontinue premium pay differentials shall be submitted on a request for personnel action to the Corporate Director for review and approval. The request must be accompanied by a letter of justification addressing each of the criteria required to support the particular differential. Discontinuance of differentials does not constitute a "reduction in pay" and does not require a formal adverse action. The Corporate Director may initiate proposals to begin or discontinue premium pay differentials.

§ 100-50-352 Bar to Dual Compensation or Dual Employment

- (a) When an employee is engaged in government work other than in the employee's regular position with NMHC, such employee shall be
- (1) Placed in LWOP from the regular position, or
 - (2) Continue the NMHC salary provided employee resigns from the other government position.
- (b) Exception: When an employee is engaged as a classroom teacher outside the employee's regular work day to teach adult basic education or classes for the Northern Marianas College, such employee shall be paid for work as a teacher at the prevailing rate. Other exceptions may be made upon proper justification with the specific written approval of the Corporate Director.

§ 100-50-356 Timekeepers

It is essential that the NMHC have available accurate data concerning the time and attendance of employees. This information assists forecasting of future personnel needs

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and analysis of current practices. To provide the needed information, it is necessary that competent timekeepers be appointed and certified.

(a) **Appointment and Certification of Timekeeper.** The Corporate Director shall appoint not less than two timekeepers from among the NMHC employees on Saipan. Upon the appointment, each timekeeper will undertake a course of instruction in timekeeping procedures as provided by the Office of Personnel Management of the Civil Service Commission. No person may perform the duties of timekeeper without such certification.

(b) **Duty of the Timekeeper.**

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

(2) Time and attendance records, kept by the timekeeper, are subject to audit by the Corporate Director or his designee at least once a year. Noncompliance to the timekeeping procedures taught in the certification training may subject the timekeeper to immediate decertification and appropriate disciplinary action(s) as provided in these regulations.

(c) **Protection of Timekeeper.** It is essential that timekeepers be able to fulfill their duties without harassment. No person may attempt to coerce, threaten, or otherwise attempt to hinder the timekeeper. Any person violating this provision shall be reported promptly by the timekeeper to the Corporate Director. Any person violating this provision may be subject to disciplinary actions as provided in these regulations or criminal sanctions.

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

Part 400 - Employee Management Processes

Subpart A - Communications

§ 100-50-401 General

The NMHC is committed to the policy of participative management. This means that employee views and opinions shall be actively sought. Managers and supervisors shall not take any steps, either covertly or overtly, which will diminish participation by employees in the management process through communication of ideas, comments, and suggestions to their supervisors and superiors. To this end, supervisors and managers shall make positive and continuing efforts to communicate with the employees in the following ways:

(a) Formally, through:

(1) The annual employee review system and the performance evaluation process;

(2) Staff meetings or other assemblies called for the purpose of informing subordinates; concerning the status of work and programs and discussion of current matters of mutual interest;

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(3) Such other devices as may be initiated by managers and supervisors to enhance communications.

(b) Informally, through:

(1) Frequent contact with employees at their work site to exchange comments concerning progress of work;

(2) Maintaining an "open door" policy which encourages employees to bring to the attention of supervisors and managers those problems of mutual concern;

(3) Adopting a helpful and supportive attitude toward the incentive awards program, especially the beneficial suggestion program;

(4) Passing along, promptly, to higher levels of management, complaints and concerns of employees which cannot be resolved or corrected at the lower levels of supervision;

(5) Resolving promptly those matters which fall within the authority of the supervisor;

(6) Encouraging morale and esprit de corps by:

(i) Occasional brief group meetings to recognize events and communicate plans of mutual interest to the employees in that office; and

(ii) Occasional social gatherings of employees and their families for picnics or holiday celebrations to promote better understanding and cooperation.

§ 100-50-402 Role of the Corporate Director

The Corporate Director shall:

(a) Monitor and guide managers and supervisors in the above listed actions to facilitate good intra-agency communications;

(b) Designate the Office Manager to monitor employee relations through advising managers and supervisors in such areas as:

(1) Advising supervisors and managers concerning effect and import of regulations concerning employees' rights and privileges, management's rights, employee conduct and performance appeals, grievances and communications;

(2) Advising and counseling employees concerning benefits to include the group life insurance, the group health insurance, and worker's compensation;

(3) Advising all employees on the impact of law and regulations concerning the personnel management function; and

(4) Advising all employees concerning conflict of interest as denounced in this subchapter.

Subpart B - Emotional and Mental Health

§ 100-50-404 General

(a) This subpart deals with employee conduct and performance when outside influences, other than substance abuse, adversely affect employees' effectiveness. These influences include, but are not limited to, the following:

Politics

Employee-supervisor conflict

Family problems

Divorce

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| Employee-employee conflict | Legal concerns |
| Perceived personal crisis | Financial problems |
| Retirement crisis | Death in family |

(b) Early recognition of deteriorating performance or conduct is a vital first step in the NMHC's program to help troubled employees retain or resume their place as productive members of the work force. Early recognition is also an integral part of supervision. Because the immediate supervisor must assume such a key role in helping troubled employees, this subpart is prepared to help the supervisor:

- (1) Recognize early signs indicative of personal problems;
- (2) Deal in an appropriate manner with employees whose work is suffering because of personal problems; and
- (3) Make employees aware of sources of help within the organization and community.

(c) This subpart does not deal with substance abuse. Subpart C describes for the NMHC's policy on creating an alcohol and drug free workplace.

§ 100-50-406 Policy on Emotional and Mental Health

(a) As employer, the NMHC is concerned with any personal or social situation which interferes with the individual employee's mental and physical well-being, or interferes with the efficient and safe performance of assigned duties, reduces dependability, or reflects discredit on the NMHC.

(b) It is the NMHC policy to offer assistance through confidential counseling and referral guidance when indicated. This assistance includes but is not limited to such areas as emotional problems, family and marital problems, indebtedness, interpersonal conflicts (employee-supervisor, employee-employee) and crisis situations, where it is determined by the employee or management that these problems adversely affect employee health and performance.

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

(d) Assistance available to employees voluntarily seeking help for substance abuse problems is described in subpart C for sick leave, annual leave, or leave without pay which may be granted for approved programs of treatment, counseling, or rehabilitation. The confidential nature of records in these cases will be maintained in the same manner as medical records.

§ 100-50-408 Action by Supervisors and Managers

(a) Supervisors and managers must be alert to indications of deteriorating performance on the part of employees under their supervision. Some of the indications which may occur are:

- (1) A marked change in behavior. This may show up as emotional outbursts, chronic irritability, excessive fatigue, or rule violations.

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- (2) Frequent short-term absences, notably the afternoon of pay day or the following Monday;
- (3) Repeated incidents leading to work-related accidents or damages;
- (4) Frequent complaints related to health;
- (5) Chronic inability to get along with fellow employees; or
- (6) Excessive problem drinking.

(b) Upon identification of presumed problems, the supervisor should approach the employee to determine the cause of performance change. Should such an approach be rebuffed, which is likely, the supervisor should continue to observe the employee's performance, recording occurrences which tend to support the supervisor's feeling that the employee is troubled. If the conduct continues for a lengthy period, the supervisor must again counsel with the employee and, if the employee is unresponsive, refer the matter to the Corporate Director.

§ 100-50-410 Action by the Corporate Director

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

§ 100-50-412 Further Actions

Should an employee's conduct and performance continue to deteriorate and the supervisor is convinced beyond a reasonable doubt that the cause is other than alcohol abuse or drug dependence, the supervisor should consult again with the Corporate Director. The Corporate Director should then seek assistance from an appropriate practitioner at the Community Guidance Center, the Commonwealth Health Center or other appropriate agency. Disciplinary action may be taken as provided under these regulations.

Subpart C - Alcohol and Drug-Free Workplace

§ 100-50-414 General Policy

(a) As an employer, the NMHC recognizes it has a responsibility to its employees and the public it serves to take reasonable steps to assure safety in the workplace and in the community. Furthermore, the NMHC is concerned about the adverse effect that alcohol and drug abuse have on safe and productive job performance. It also recognizes that any employee, whose ability to perform safely and productively is affected by the use of alcohol and other drugs, jeopardizes the integrity of the workplace and the achievement of the NMHC's mission. To maintaining an alcohol and drug free workplace, employees shall not

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

(b) The NMHC realizes that alcoholism, problem drinking, and drug addiction are treatable illnesses. The NMHC, 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.

§ 100-50-416 Procedure

The NMHC understands and accepts its obligation to maintain a workplace free of alcohol and illegal drugs. To ensure that the objectives of this policy are met, the NMHC will actively implement and maintain a drug-free program. The program will have the following elements: collection and testing, education and guidance, referral and rehabilitation.

The NMHC adopts the CNMI Government's "Alcohol and Drug Free Workplace Policy, NMIAC 10-20.2-414" (CNMI Drug Policy) and subsequent changes thereto, with the following revisions:

§ 100-50-418 Testing Occasions

- (a) Administrative or disciplinary hearings and any decisions regarding this policy will be conducted by the Corporate Director and the Personnel Committee as provided in these regulations.
- (b) References in the CNMI Drug Policy to the Director of Personnel Management means the NMHC Corporate Director as applied to NMHC except those noted in these regulations.
- (c) Random Testing

NMHC has elected to implement random testing of not less than every three months, of randomly selected employees in sensitive positions as provided in this section will be required to submit to breath-tests for alcohol and urine tests for cocaine, cannabis, opiates, amphetamines, and phencyclidine. The testing will be done during on-duty time. Except as otherwise provided, the NMHC shall pay for the testing.

(1) Sensitive positions designated for random testing. NMHC employees whose job functions relate to public health and safety are identified to occupy sensitive positions subject to testing. Such positions are characterized by critical safety or security responsibilities as related to the mission of NMHC (i.e., use of moving machinery, transportation of goods and persons, use of NMHC vehicles, or to enter or be in the dwelling of an NMHC tenant or Section 8 client). The job functions associated with such positions directly and immediately relate to public health and safety. Such positions are identified for random testing because employees occupying these positions are in a position to expose fellow employees or the general public to a heightened risk of harm, or may present harm to tenants and their families. The Corporate Director shall establish and maintain a listing of such positions for random testing according to the following criteria:

- (a) Any employee whose regular job function calls for them to operate machinery or a vehicle in the regular course of their employment; or

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(b) Any employee whose regular job function may require to enter or be in an inhabited dwelling of NMHC.

(2) Method of selection. Affected employees will be selected by a statistically valid method such as a random number table or computer-based random number generator that is matched with employee Social Security numbers, payroll identification numbers, or other comparable identifying numbers. The selection of such employees will be performed by Office of Personnel Management based on employee listings provided by the NMHC Corporate Director or designee pursuant to an agreement with OPM.

(3) Number to be tested. No more than twenty-five (25) percent of all employees in sensitive positions as provided in this section shall be required to submit to both breath-alcohol testing and urine testing. The actual percentage will be determined at the beginning of each fiscal year by the Corporate Director and the Office Manager after reviewing the NMHC's prior positive testing rates, reasonable suspicion and post-accident events, and referrals for service.

(d) Collecting and Testing Breath Specimens shall be as provided in NMIAC§10-20.2-426 (c)(d).

(e) Report to NMHC

The Medical Review Officer (M.R.O.) shall report all positive and negative urine drug test results, in a manner to assure confidentiality, to the NMHC Corporate Director. Other than as specified above, the M.R.O. shall not release the results of drug tests to any other individual without a written release from the tested employee.

§ 100-50-424 Prohibited Conduct

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

(a) Sale, Purchase, Possession with Intent to Deliver, or Transfer of Alcohol or Illegal Drugs. No employee shall sell, purchase, or transfer; attempt to sell, purchase, or transfer; or possess with the intent to deliver, any illegal drug while on NMHC property, in any NMHC vehicle or on any NMHC business.

(b) Possession of Illegal Drugs. No employee shall possess any illegal drug while on NMHC property, in any NMHC vehicle, or on any NMHC-related business.

(c) Possession of Open Containers of Alcohol. No employee shall possess an open container of alcohol in any vehicle while on NMHC properties, in any NMHC vehicle, or on any NMHC-related business.

(d) Under the Influence of Alcohol or Illegal Drugs. No employee shall be under the influence of alcohol or any illegal drug when at work, or reporting to work with the intention of working. As used in this subsection, alcohol includes any alcohol found in any prescription or non-prescription drug such as cough syrup used other than as directed by the physician or normal usage per nonprescription directions. An employee is presumed to be under the influence of alcohol or an illegal drug if:

(1) The employee has a B.A.C. of 0.02 or more;

(2) The employee has a detectable amount of any illegal drug in his or her urine;

(3) The employee uses alcohol or any illegal drug while on call when the employee

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knows he or she may be called upon to perform NMHC-related functions; or

(4) The employee uses alcohol or any illegal drug within four hours prior to reporting to work and expects to perform NMHC-related functions.

§ 100-50-426 Refusal to be Tested

No employee required to be tested for drugs or alcohol under any provision of this subpart shall refuse to be tested. The following conduct shall be considered a refusal to be tested:

(a) Refusing in writing to submit to testing after receiving clear and specific written notice of the requirement to be tested;

(b) Refusing verbally, in front of at least two witnesses, to submit to testing after receiving clear and specific written notice of the requirement to be tested;

(c) Failing to timely provide an adequate specimen for testing, without a valid medical explanation, after receiving clear and specific written notice of the requirement to be tested. An M.R.O. or consulting physician shall determine if there is any medical reason for failure to provide an adequate urine sample (shy bladder) or an adequate breath sample (shy lung);

(d) Engaging in conduct that clearly obstructs the specimen collection process;

(e) Failing to remain available for post-accident testing, or leaving the scene of an accident before a testing decision is made. An employee may leave the scene of an accident only to obtain necessary medical care or assistance in responding to the accident. If the employee leaves the scene, the employee must notify his or her supervisor as soon as possible of his or her location and reason for leaving the scene;

(f) Consuming alcohol or illegal drugs after an accident and before a testing decision is made;

(g) Failing to report, during the work shift in which an accident occurred, an accident which could have resulted in a testing decision; or

(h) Failing to report to the specimen collection site timely after being informed of the requirement to be tested.

§ 100-50-428 Other Actions Violating this Regulation

(a) Giving False Information. No employee shall give false information about a urine specimen or attempt to contaminate or alter the specimen.

(b) Refusal to Comply with Treatment Recommendations. No employee shall fail to comply with recommendations for treatment or after-care made by an M.R.O. or Substance Abuse Professional (S.A.P.) as a consequence of a prior positive drug or alcohol test result.

(c) Failure to Notify NMHC of Conviction. No employee shall fail to notify the Office Manager of any criminal drug statute conviction.

§ 100-50-430 Refusal to be Tested; Penalties and Consequences

(a) **Disciplinary Action.** An employee committing any act prohibited by this procedure shall be subject to an appropriate form of discipline, depending on the circumstances.

(1) Generally. Where an employee commits any act prohibited under this subpart, the employee shall be disciplined up to and including removal. At a minimum, the employee shall receive a formal reprimand. If the prohibited act committed by the employee relates to the use or possession of alcohol or illegal drugs, the employee shall be referred to an S.A.P. for assessment and treatment.

(2) **Serious offenses.** The following acts, even for a first offense, will result in an immediate disciplinary action for removal:

(i) The sale, purchase, possession with intent to deliver, or transfer of illegal drugs, or the attempt to sell, purchase, or transfer of illegal drugs;

(ii) Being involved in an accident at the job site, during working hours, resulting in a fatality while under the influence of alcohol or illegal drugs;

(iii) While performing and about to perform duties in a safety sensitive position, being under the influence of alcohol or illegal drugs;

(iv) An unexcused refusal to be tested;

(v) Giving false information, contaminating, or attempting to contaminate a urine sample;

(vi) Failing to notify the proper authority of conviction for a drug;

(vii) Testing positive for alcohol or illegal drugs within five years of a prior positive test; or

(viii) Breaching any term of a return to duty contract executed under the provisions of this procedure.

(b) **Counseling Concerning Treatment Options.** Those employees not removed from NMHC service after committing any act prohibited by this procedure shall be informed of resources available for evaluating and resolving problems associated with the use of alcohol and illegal drugs. At a minimum, the supervisor or Office Manager shall give the names, addresses, and telephone numbers of local substance abuse professionals and substance abuse counseling or treatment programs. The employees will then be required to fulfill all the specified steps of treatment before being considered ready for return to duty.

(c) **Report to Department of Public Safety.** NMHC shall report an employee committing any act prohibited by law to the Department of Public Safety for possible criminal prosecution.

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

§ 100-50-432 Return to Duty Procedures

Requirements. No employee who has tested positive for the presence of alcohol or illegal drugs shall be allowed to return to work until the employee has:

- (a) Complied with treatment recommendations of an M.R.O. or S.A.P. and been released for work by an S.A.P. in consultation, when appropriate, with the M.R.O. or a consulting physician;
- (b) Tested negative in a subsequent test paid for by the employee for the presence of alcohol, if the removal from duty was due to alcohol use; or cocaine, cannabis, opiates, amphetamines, and phencyclidine, if the removal from duty was due to drug use; and
- (c) Agreed to execute a return to duty contract.

§ 100-50-434 Return to Duty Contract

The return to duty contract shall include the following provisions:

- (a) Aftercare. An agreement to comply with aftercare and follow-up treatment recommendations for one to five years, as determined appropriate by the employee's S.A.P.;
- (b) Follow-up testing. An agreement to unannounced alcohol or drug testing, depending on the substance which resulted in the removal from duty, paid for by the employee, for one to five years, as determined appropriate by the employee's S.A.P., but there shall be no fewer than six tests in the first year after the employee returns to work;
- (c) Compliance with Rules. An agreement to comply with NMHC rules, policies, and procedures relating to employment;
- (d) Term. An agreement that the terms of the contract are effective for five (5) years after the employee's return to duty; and
- (e) Breach of Contract. An agreement that violation of the return to duty contract is grounds for termination.

§ 100-50-436 Administrative Considerations

- (a) Confidentiality. The NMHC shall not knowingly disregard an employee's right to confidentiality in matters relating to alcohol or drug testing or otherwise neglect his or her responsibilities under this procedure.
- (b) Job Security Maintained. Employees shall not have job security or promotional opportunities jeopardized solely because of a request for a drug or alcohol treatment referral.
- (c) Required Documentation. Although voluntary referrals or referrals made prior to testing are kept strictly confidential, documentation of poor performance or disciplinary

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actions taken due to drug or alcohol abuse shall be included in the employee's personnel file.

(d) Authority/Responsibility.

(1) Management/supervisory employees at all levels are responsible for implementing program elements to ensure that the objectives of the program are communicated to all employees and that problems are handled in a confidential, timely, and professional manner.

(2) The Office Manager will:

(i) Ensure that all employees are given a copy of the NMHC's personnel regulation and policy and procedures;

(ii) Be responsible for establishing management and employee alcohol and drug free workplace training programs.

(iii) Liaise with the Commonwealth government's Alcohol and Drug Free Workplace Coordinator, testing facilities, and the medical review officer;

(iv) Additionally, the Administrative Division will be the central contact point for company interaction with the employee assistance programs and for maintaining documentation on rehabilitative actions.

Subpart D - Employee and Management Responsibilities

§ 100-50-438 Code of Ethics for NMHC Personnel Service

(a) All employees of NMHC shall:

(1) Put loyalty to the highest moral principles and the country above loyalty to persons, party, or government office.

(2) Uphold the laws applicable in the Commonwealth and in all subdivisions thereof and never be a party to their evasion.

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

(4) Seek to find and employ more efficient and economic ways of getting tasks accomplished.

(5) Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for him/herself or his/her family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his/her governmental duties.

(6) Make no private promises of any kind binding upon the duties of office, since a government employee has no private word which can be binding on public duty.

(7) Engage in no business with the government, either directly or indirectly, which is inconsistent with the conscientious performance of governmental duties.

(8) Never use any information coming confidentially in the performance of governmental duties as a means for making private profit or benefitting others.

(9) Expose corruption wherever discovered.

(10) Uphold these principles, ever conscious that public office is a public trust.

(b) In addition, custodians of federal funds shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees, or agents engaged in the award and administration of contracts supported by federal funds. No

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employee, officer, or agent of the grantee shall participate in the selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer, or agent, or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's and contractor's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements. To the extent permitted by law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's officers, employees, or agents, or by contractors or their agents.

(c) The NMHC expects its employees to be representatives of its legal self. Like any other employer, it has the right to expect the employees to foster its business and well-being. The government's, inclusive of NMHC, first business is the maintenance of law and order at all times (even after regularly scheduled working hours) because without law and order, the government's goals and objectives cannot be realized. An illegal or dishonorable act of an agent or employee may degrade and embarrass the government and the NMHC and lessen their effectiveness.

(d) To protect its credibility and rapport in the community, the NMHC has the right to take administrative action as necessary and justifiable against employees who violate its laws or detract from its policies. Such administrative action is aside from any court action which may ensue from a criminal act or omission.

(e) It is a mistake for anyone to believe that good discipline is simply a matter of enforcement by those at the head of the administration. Good discipline requires employee leadership, not only enforcement procedures. Most of all, it involves the active support of the employees. The employees of NMHC, as a group, have a greater stake in improving the quality of the NMHC's service than any other interested party. An organization can take genuine pride and provide an opportunity to find a meaningful outlet for abilities and an opportunity for advancement in accordance with employee contribution. Leadership which meets these needs of employees will have no difficulty getting employee support.

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

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

§ 100-50-440 Policy on Employee Conduct

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

(b) Employees of the NMHC are expected to comply with all laws and regulations. Legal requirements are essentially concerned with official conduct, i.e., behavior of the employee in the course of or in relation to official duties. NMHC employees are required to conduct themselves in such a manner that the work of the NMHC is effectively accomplished and to observe the requirements of courtesy, consideration, and promptness in dealing with or serving the public or its business clientele.

(c) Personal and private conduct of an employee (as opposed to official conduct), that reflects adversely upon the dignity and prestige of the NMHC, is also a matter of concern to management. All employees are expected to cultivate those personal qualities which characterize a good civil servant-loyalty to the government and NMHC, a deep sense of responsibility for the public trust, and a standard of personal deportment which will be a credit to the individual and the NMHC.

§ 100-50-442 Subordination to Authority

An employee is required to carry out the announced policies and programs of the Commonwealth and the NMHC. While policies related to work are under consideration, the employee may, and is expected to, express opinions and points of view; but once a decision has been rendered by those in authority, the employee will be expected unreservedly to assure the success of programs which it is the employee's responsibility to effectuate. If the employee fails to carry or out any lawful regulation, order, or policy, or deliberately refuses to obey the proper requests of superiors having responsibility for the employee's performance, the employee is subject to appropriate disciplinary action.

§ 100-50-444 Management Responsibility

The NMHC shall establish and maintain internal procedures by means of which all employees are adequately and systematically informed of the content, meaning, and importance of the regulations in this subpart. Copies of the regulations in this subpart shall be given to each employee within ninety days from the effective date of these regulations and to new employees upon entrance to duty. The Corporate Director shall remind his or her employees of the regulations in this subpart periodically, at least once annually, through a publication or memorandum issued to all employees.

§ 100-50-446 Employee Responsibility

(a) It is the responsibility of employees to familiarize themselves and to comply with the regulations in this subpart. Employees are expected to consult with their managers and the Office Manager on general questions they may have regarding the applicability of the

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regulations, both on specific ethical and conduct matters and for guidance on questions of conflict of interest.

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

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

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

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

§ 100-50-448 Disciplinary and Other Remedial Action

(a) Violations of the regulations in this subpart by an employee may be cause for appropriate disciplinary action which may be in addition to any penalty prescribed by law.

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

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

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

§ 100-50-450 Conflict of Interest

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

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matters solely for the benefit of the NMHC.

- (b) Examples of conflict of interest include, but are not limited to:
 - (1) Outside activities that have negative effect on an employee's ability to perform the job requirement of his/her position at the NMHC.
 - (2) Outside jobs or business interests that are in competition with the company's business.
 - (3) Outside activities that involve the use of confidential information learned directly or indirectly through employment at the NMHC.
 - (4) Use of NMHC position to obtain private gain for the NMHC employee or his or her immediate family member.

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

- (d) The NMHC reserves the right to determine when an activity conflicts with the NMHC's interests and to take whatever remedial action is necessary to resolve the conflict. Such actions might include:
 - (1) Changes in assigned duties;
 - (2) Divestment by the employee of the conflicting interest;
 - (3) Disciplinary action; and/or
 - (4) Disqualification for a particular assignment.

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

§ 100-50-452 Ethical and Other Conduct and Responsibilities of Employees

- (a) Gifts, Entertainment, and Favors.
 - (1) Except as provided in subsections (b) and (c) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:
 - (i) Has, or is seeking to obtain, contractual or other business or financial relations with the NMHC;
 - (ii) Conducts operations or activities that are regulated by the NMHC; or
 - (iii) Has interests that may be substantially affected by the employee's performance of official duty.
 - (2) Except as specifically authorized by law, employees are not authorized to accept on behalf of the NMHC voluntary donations or cash contributions from private sources for travel expenses, or the furnishing of services in-kind, such as hotel accommodations, meals, and travel accommodations.
 - (3) The prohibitions of subsection (a) do not apply in the context of obvious family, non-official, or personal relationships, such as those between the parents, children, or spouse of the employee, when the circumstances make it clear that it is those relationships, rather than the business of the persons concerned, which are the motivating factors.
 - (4) An employee may accept food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may properly be in attendance.

- (b) An employee may accept loans from banks or other financial institutions on customary terms to finance proper and usual activities, such as home mortgage loans.
- (c) An employee may accept unsolicited advertising or promotional material such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value.
- (d) An employee shall avoid any action, whether or not specifically prohibited by this subpart, which might result in, or create the appearance of:
 - (1) Using public office for private gain;
 - (2) Giving preferential treatment to any person;
 - (3) Impeding NMHC efficiency or economy;
 - (4) Losing independence or impartiality;
 - (5) Making a NMHC decision outside official channels; and/or
 - (6) Affecting adversely the confidence of the public in the integrity of the NMHC.
- (e) An employee shall not solicit a contribution from another employee for a gift to an official superior, or accept a gift from an employee receiving less pay. However, this subsection does not prohibit a voluntary gift of nominal values or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.
- (f) An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by law or by the Constitution.
- (g) This section does not prohibit receipt of bona fide reimbursement, unless prohibited by law, for actual expenses for travel and such other necessary subsistence as is compatible with this part for which no NMHC payment or reimbursement is made. However, an employee may not be reimbursed and payment may not be made on the employee's behalf, for excessive personal living expenses, gifts or entertainment, nor does it allow an employee to be reimbursed by a person for travel on official business under NMHC orders when reimbursement is prescribed by law.

§ 100-50-454 Outside Work and Interests

- (a) Policy: Outside work is permitted to the extent that it does not prevent an employee from devoting the employee's primary interests, talents, and energies to the accomplishment of work for the NMHC or tend to create a conflict between the private interests of an employee and official responsibilities. The employee's outside employment shall not reflect discredit on the NMHC.
- (b) Definitions:
 - (1) The term "outside work" means all gainful employment other than the performance of official duties. It includes, but is not limited to self-employment and working for another private business (including personally owned businesses, partnerships, corporations, and other business entities).
 - (2) The term "active proprietary management" refers to a business affiliation in which substantial ownership is coupled with responsibility for day-to-day management efforts.
 - (3) A "conflict of interest" is one in which an NMHC employee's private interests,

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usually of an economic nature, conflict or raise a reasonable question of conflict with the employee's public duties and responsibilities. Potential conflict of interest is prohibited and is to be avoided whether it is real or only apparent.

(c) Restrictions: An employee shall not engage in outside activity incompatible with the full and proper discharge of the duties and responsibilities of the employee's NMHC employment. Any activity involving an incompatibility of interest is prohibited. Any work assignment or employment affiliation which might encourage on the part of

members of the general public a reasonable presumption of a conflict of interest falls in this category. Incompatible activities include but are not limited to:

- (1) Acceptance of a fee, compensation, gift, payment of expenses, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of conflicts of interest.
- (2) Outside employment which tends to impair an employee's mental or physical capacity to perform NMHC duties and responsibilities in an acceptable manner. An employee shall not receive any salary or anything of monetary value from a private source as compensation for services to the NMHC.

(d) Among other things, abuse of leave privileges to engage in outside work shall be treated as an interference with official performance. Active proprietary management of any except the smallest business is questionable because of the probability that such management responsibilities may interfere with the employee's obligations to the employee's primary employer, the NMHC. Employees are especially urged to seek the advice of the Office Manager or Corporate Director before committing themselves to such activities.

(e) An employee shall not perform outside work:

- (1) Which is of such a nature that it may be reasonably construed by the public to be the official act of the NMHC.
- (2) Which involves the use of NMHC facilities, equipment, or supplies of whatever kind.
- (3) Which involves the use of official information not available to the public.

(f) While an employee is not prohibited from performing outside work solely because the work is of the same general nature as the work the employee performs for the NMHC, no employee may perform outside work:

- (1) If the work is such that the employee would be expected to do it as a part of regular duties.
- (2) If the work involves active proprietary management of a business closely related to the official work of the employee.
- (3) If the work for a private employer is of the same type or closely kin to that involved in the program responsibilities of the office in which the employee is employed.
- (4) If the work would tend to influence the exercise of impartial judgment on any matters coming before the employee in the course of official duties.

(g) This section does not preclude an employee from:

- (1) Participation in the activities of political parties not prescribed by applicable law.
- (2) Participation in the affairs of, or acceptance of an award for, meritorious public

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contribution or achievement given by a charitable, religious, professional, social, fraternal, non-profit educational, recreational, public service, or civic organization.

§ 100-50-456 Financial Interests

(a) An employee shall not:

(1) Have a direct or indirect financial interest that conflicts with NMHC duties and responsibilities.

(2) Engage in directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through NMHC employment.

(b) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the NMHC, so long as it is not prohibited by law, the Constitution, or the regulations in this part.

§ 100-50-458 NMHC Property

General Responsibility. Employees shall be held accountable for NMHC properties and money entrusted to their individual use in connection with their official duties. It is their responsibility to protect and conserve NMHC property and to use it economically and for official purposes only.

§ 100-50-460 Information

It is the policy of the NMHC to accord the public access to information about its activities and to make available to the public records of the NMHC except in cases where the disclosure of the record is prohibited by statute or constitutes an invasion of privacy of any individual concerned, or the record is exempt from the disclosure requirements, and sound grounds exist which require application of an applicable exemption.

§ 100-50-462 Gambling, Betting, and Lotteries

While on NMHC-owned or leased property or while on duty for the NMHC, an employee shall not participate in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket, unless the activity has prior approval by the NMHC Board of Directors and is a required NMHC duty.

§ 100-50-464 Other Types of Conduct

(a) Negotiations for Post-NMHC Employment.

It is the policy of the NMHC that employees shall not, without proper clearance, negotiate for future non-NMHC employment with persons or organizations having business with the NMHC and to which the employee is called upon officially to render advice or make judgments. In the event an employee desires to negotiate for such employment, the employee must inform the Corporate Director of his/her intentions. If the Corporate Director determines that the proposed negotiations will not adversely affect the NMHC's

interests, the employee may be authorized to proceed.

(b) **Selling or Soliciting.** Employees and other persons are prohibited from selling or soliciting for personal gain within any building occupied or used by the NMHC without proper permission. This prohibition applies to:

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

§ 100-50-466 Community and Professional Activities

Employees are encouraged to participate in the activities of professional societies and of civic organizations whose purposes and objectives are not inconsistent with those of the departments in which they are employed. Affiliation with such groups may be mutually beneficial to the employee and to the NMHC; however, such participation must not affect adversely an employee's performance of regularly assigned duties.

Subpart E - Political Activity

§ 100-50-468 Political Activities

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

§ 100-50-470 Rights of Employees

All employees in the NMHC shall have the following rights:

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

§ 100-50-472 Prohibited Activities

Employees of the NMHC shall not:

- (a) Use their office or official influence to interfere with an election or to affect the results of an election.
- (b) Use their official authority to coerce any person or political party in reference to any politically related activity.
- (c) Be obligated to contribute to any political fund or render service to any political

activity.

(d) Solicit or receive political contributions from anyone while on NMHC time, on NMHC property, or on NMHC business.

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

(f) Promote or oppose legislation relating to programs of the NMHC without the official sanction of the proper NMHC authority. (It should be clearly understood, however, that nothing in this policy is to be considered as restricting or interfering with the obligation of employees to respond freely and candidly to any inquiries made of them in regard to appropriations or related matters.)

§ 100-50-474 Public Office

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

§ 100-50-476 Penalty

An employee found guilty of a prohibited activity described in Section 472 of this Part shall be subject to disciplinary action.

§ 100-50-480 Government Ethics Code

The provisions in these regulations are in addition to the Government Ethics Code (GEC) codified at 1 CMC §§ 8501-8577. All employees are expected to be familiar with the GEC and to act in a manner consistent with the provisions and the policies of GEC and these regulations. If there is any conflict between the GEC and these regulations, the GEC shall prevail.

Part 500 - Fair Treatment in the Workplace

§ 100-50-501 Equal Employment Opportunity Policy

(a) It is the policy of the NMHC that there shall be no discrimination based on such factors as race, creed, color, ancestry, membership in a labor organization, political affiliation, place of origin, disability, sex, religion, age, sexual orientation, veterans status, and similar matters not related to individual merit and fitness.

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

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

§ 100-50-505 Prohibition of Harassment

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

§ 100-50-510 Prohibition of Sexual Harassment

(a) Sexual harassment of employees by their supervisors, coworkers, vendors, or customers will not be tolerated and should be promptly addressed. Employees at all levels are expected to conduct themselves in a courteous and professional manner at all times. Any behavior that is coercive, intimidating, harassing, or sexually offensive in nature is inappropriate and prohibited.

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

- (1) Submission to such conduct is an explicit or implicit term or condition of employment.
- (2) Submission to or rejection of the conduct is used as the basis for an employment decision.
- (3) The conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

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

§ 100-50-515 Expectation of Non-Discriminatory and Non-Harassing Behavior

All employees, and especially supervisors and managers, are expected to implement and enforce the equal employment opportunity policy at all times. Discrimination for or against any employee on the basis of any of the protected factors listed above, or any other basis prohibited by federal or Commonwealth law shall not be tolerated. The NMHC shall maintain its workplace free from unlawful harassment, including sexual harassment. Any employee or official who engages in any act of discrimination or harassment on the basis of any of the above factors violates NMHC and government policy, and such misconduct will subject an employee to corrective action ranging from counseling to adverse action up to and including termination. Such harassment by a non-employee (for example, a client or contractor) is also prohibited. Supervisors and management officials shall not tolerate any such outside harassment and shall take necessary action to prevent its continuation or recurrence.

§ 100-50-520 Complaint Process

(a) Any employee who believes that he or she have been the subject of, or have witnessed, job-related harassment or discrimination (whether by an employee, agent, contractor, vendor, or client of the NMHC, or others doing business with the NMHC), promptly report it to a supervisor or manager, or the Office Manager.

(b) If any supervisor or manager is considered to be the discriminating or harassing agent, the employee may go directly to the Office Manager or the Corporate Director. Confidentiality will be maintained to the extent permitted by the circumstances.

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

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

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

(f) After the investigation is completed, the NMHC will take appropriate disciplinary action, if warranted. Discipline may include: EEO training, counseling, written warning, demotion, discharge, or any other action deemed appropriate. The NMHC will also

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communicate with the complainant its decision on the results of the investigation and any corrective or remedial actions taken or proposed.

§ 100-50-525 Retaliation

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

§ 100-50-530 Equal Employment Opportunity Officer and Representative

The Corporate Director of the NMHC shall be the Equal Employment Opportunity Officer for the NMHC with the responsibility for ensuring compliance with the NMHC EEO program. The EEO Officer shall appoint and be assisted by the Office Manager, as the NMHC's EEO representative, who shall fulfill this role as part of that person's regular duties. The Office Manager shall advise employees, including managers and other supervisors, regarding their rights and responsibilities under this policy and applicable federal and Commonwealth laws and shall be provided with appropriate training for such purpose. The Office Manager must be accessible to employees and capable of assisting them in the complaint process.

§ 100-50-535 Nepotism

- (a) For the purpose of this regulation, nepotism is defined as employment or employment benefit bestowed on the basis of family relationship and not in consideration of merit.
- (b) For the purpose of this regulation, an immediate relative is defined as a spouse, parent, sibling, or child related by blood, legal marriage, common-law marriage, legal adoption, or cultural adoption.
- (c) The basic criteria for the appointment and promotion of all NMHC employees shall be appropriate qualifications and performance. There shall be no discrimination, for or against, based on relationship by family or marriage in any employment action.
- (d) Employment or employment benefit by reason of blood or marriage relationship rather than merit is prohibited.
- (e) No employee shall supervise an immediate family member except in emergency situations.
- (f) No applicant will be hired to a position with a direct reporting relationship to an immediate relative or where a relationship or association exists that creates a reasonable assumption that that person, as an employee, would be in a favored position in relationship to other employees.

§ 100-50-540 Political Affiliation

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

§ 100-50-545 Coercion

An NMHC employee shall not use NMHC employment to coerce, or give the appearance of coercing, a person to provide financial benefit to self or another person, particularly one with whom the employee has family, business, or financial ties.

Part 600 - Employee Benefits and Services

§ 100-50-601 Policy

The NMHC will provide benefits and services to its employees in keeping with the general practices of the CNMI government and private enterprise and as limited or prescribed by law. This part delineates those benefits and services which include:

- (a) Leaves of absence; and
- (b) Insurance, such as group life and health insurance, accident and health insurance, and worker's compensation coverage.
- (c) Retirement

Subpart A - Leaves of Absence

§ 100-50-605 Purpose

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

§ 100-50-610 Types of Government Service that Qualify for Leave Accrual Purposes

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

- (a) Employment within the departments of the executive branch.
- (b) Employment within the judicial branch.

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(c) Employment within the legislative branch.

(d) Employment within government corporations, agencies, commissions, and instrumentalities.

- (e) Employment within the offices of the mayors and the municipal councils.

§ 100-50-615 Kinds of Leaves

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

§ 100-50-620 Leaves with Pay

(a) Annual Leave.

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

(2) NMHC employees who have less than three years of creditable service shall earn annual leave at the rate of four hours per pay period; except that newly appointed employees shall undergo a waiting period of 90 calendar days before being credited with annual leave. Employees with three but less than six years of creditable service shall earn annual leave at the rate of six hours per pay period. Employees who have six or more years of creditable service shall earn annual leave at the rate of eight hours per pay period.

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

(b) Sick Leave.

(1) Sick leave shall be earned at a rate of four hours per pay period and shall be allowed whenever the employee is to be absent from duty because of illness or injury or because of medically required quarantine of the family and/or residence. Use of sick leave is appropriate for medical, dental, optometric or mental health counseling or other necessary treatment which the employee personally must undergo.

(2) If an employee is absent because of illness, injury, or quarantine in excess of two days, the employee may be required to furnish a certification as to the incapacity from the attending physician. The Corporate Director may require certification for such other period(s) of illness as is determined appropriate due to suspected abuse of the sick leave benefit.

(3) If the required certification is not furnished, all absence which would have been covered by such certification shall be indicated on the time and attendance record and the payroll as absent without leave (AWOL).

(4) Sick leave may be accumulated and carried over to succeeding leave years without limitation. A report showing the accrued sick leave balance will be provided the employee each pay period.

(5) The generality of the foregoing is subject to the following special provisions:

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

(ii) Sick leave with pay shall be allowed during leaves of absence or vacations; provided, however, that any sick leave taken by an employee while on vacation must be

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

(iii) Sick leave with pay may be granted in advance of earning sick leave as provided under subsection (d). If an employee is separated from the service without having earned all of the sick leave allowed and taken, there shall be deducted from any money due the employee at the time of separation an amount equal to salary for the period of unearned sick leave allowed and taken.

(6) Sick leave accrued for service with the government in any branch or agency shall vest in the employee upon accrual and shall remain vested so long as the individual is employed by the government, provided that if such employee is separated from government service (other than through retirement) for a period longer than three years, the employee shall be divested of accumulated sick leave.

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

(1) An employee may apply for leave to attend to an immediate family member who is sick. For leave in excess of two (2) consecutive days, such request shall be supported by a certified medical statement. Leave taken for this purpose shall be deducted from the employee's earned sick leave.

(2) Per Public Law No. 15-116 the following definitions apply for family sick leave:

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

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

(3) Employees are authorized to use up their accrued hours of earned sick leave hours supported by a certified medical statement from a physician.

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

(5) An employee may not utilize this benefit:

(i) until all annual leave has been exhausted

(ii) if it brings the employee's sick leave balance to less than forty (40) hours.

(d) Leave Advance.

(1) Where, for good reason, an employee requires additional annual or sick leave in addition to the amounts accrued, the Corporate Director, with recommendation of the employee's section manager, may grant advance leave. For permanent employees the advance leave will be limited to a maximum of one-half of the total earnable leave credits for which the employee is eligible for one year from the date the application is received. In the case of limited term or probationary employees, advance leave can be approved up to a maximum of one-half of the total earnable leave credits for which the employee is eligible during the remainder of the employment term, whichever is shorter. Subsequent accrued leave earnings shall serve to replace the amount of advance leave granted and taken. Requests for leave advance must be in writing from the employee with a recommendation from the section manager.

(2) Leave advance granted and taken:

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- (i) Constitutes a legal contract between the employee and the NMHC; and
 - (ii) Must be repaid, even if the employee separates or transfers from the NMHC. Recovery of advance leave that is unpaid may be through the NMHC's assumption of employee's accrued unused leave, payroll deductions, matched reduction of service time, and/or recourse to the courts.
- (e) **Compassionate Leave.** Employees may be granted compassionate leave with pay of no more than five consecutive work days in cases of death in the immediate family of the employee. For the purpose of this subpart, the term "immediate family" shall be defined as an employee's mother, father, brother, sister, spouse, immediate off-spring (natural and culturally or legally adopted), grandfather, grandmother, grandchild, mother-in-law, or father-in-law. Compassionate leave must be taken within eighteen days after the death of the immediate family member. The Corporate Director will be responsible for approving compassionate leave requests.
- (f) **Administrative Leaves.** An absence from duty administratively authorized, without loss of pay and without charge to accrued leave, is administrative leave. The governor or the Corporate Director may approve administrative leave requests. The following are the three general classes into which administrative leaves fall:
- (1) Administrative leave may be authorized under emergency conditions beyond the control of management, e.g., typhoons, or for participation in civic activities of interest to the government, or for such reasons as the Governor may determine (such as a shortened work day on Christmas Eve).
 - (2) Administrative leaves may be authorized relative to disciplinary actions. The Corporate Director may place an employee in non-working status with pay for up to three work days pending an investigation or preparation of a notice of proposed suspension for up to thirty calendar days or termination of employment.
 - (3) Administrative leave may be granted to employees serving on government boards and commissions, provided such employees do not receive compensation from the boards and commissions.
- (g) **Court Leave.** The NMHC encourages its employees to fulfill their obligations as citizens of the Commonwealth. Thus, employees who are called upon to serve as jurors may, at their option, be granted court leave for such period as the jury may be impaneled. Employees who are called to jury duty shall present their juror summons to their section manager together with a completed request for leave for the Corporate Director's approval. Employees who serve as jurors using court leave to cover the period of absence shall turn over to the Commonwealth Treasurer such jury fees (as distinct from expense allowances) as they receive from a Commonwealth court. Expense allowances paid the employee for whatever purpose may be retained by the employee to defray the expenses for which granted. The employee may retain any jury fee paid by the federal court. An employee subpoenaed as witness, except as a government witness, shall charge such absence to annual leave or leave without pay. Court leave shall be granted to an employee subpoenaed in litigation in which the government has no interest, to serve as a witness in the employee's present or past official capacity as a government employee and who may be required to present government records in testimony. Such employee must inform the Corporate Director of the required testimony as soon as possible after being subpoenaed.
- (h) **Military Leave.** Military leaves of absence with pay, not to exceed fifteen working

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days in any calendar year, regardless of the number of training periods in the year, may be granted by the Corporate Director to employees who are members of the United States National Guard and reserve components of the United States Armed Forces, when directed under orders issued by proper military authority. Administrative leave will not be granted in order to extend leave time for any additional training days.

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

(j) **Paternity Leave.** Paternity leave shall be granted to a male employee who is absent from work because of his wife's confinement for childbirth. Such paternity leave shall not exceed two (2) work days encompassing the date of childbirth. The appointing authority shall have the responsibility for approving paternity leave requests.

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

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

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

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

(4) The NMHC Administrative Office will provide access to this regulation and will assist employees in submitting applications for this benefit.

(5) The NMHC establishes Sick Leave Bank within the agency for the purpose of providing additional job and financial protection for employees experiencing prolonged absence from the workplace due to catastrophic illness or major injury.

i. NMHC shall promulgate similar policies and procedures as prescribed in NMIAC § 10-50: Sick Leave Bank Regulations.

§ 100-50-625 Leaves without Pay

(a) **Leave Without Pay for Personal Reasons.** An employee may be granted leave without pay not to exceed 90 consecutive work days if the Corporate Director considers it justified. Leave without pay may be extended up to 90 additional consecutive work days only with the approval of the Board of Directors Personnel Committee, upon recommendation by the Corporate Director. Such leave without pay may be granted to permit the employee to attend to important family affairs, or for justifiable personal or

business reasons.

(b) **Leave Without Pay in Extension of Annual or Sick Leave.** An employee may be granted leave without pay (LWOP) for the purpose of extending annual or sick leave. When sick leave is so extended, the attending physician must provide medical certification as to the necessity of the extension. The Corporate Director is responsible for approving or disapproving requests for leave without pay, upon recommendation by the section manager.

(c) **Tardiness.**

(1) At the end of each pay period accumulated tardiness in excess of fifteen (15) minutes shall be charged to leave without pay (LWOP) or absence without leave (AWOL). In respect to each incident of tardiness,

(i) If the period of lateness is less than one hour it will be charged to LWOP or annual leave at the employee's election.

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

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

(d) **Extended Military Leave.** The federal Uniformed Services Employment and Reemployment Act (USERRA) generally requires the Commonwealth government to provide extended military leave for its career employees, regardless of whether the service is voluntary or involuntary. The cumulative length of all absences due to military leave and extended military leave shall not exceed five years, unless extended for good reason documented in writing by the Corporate Director. The employee must give advance notice to the Corporate Director, unless military necessity or circumstances make this impossible or unreasonable. In most cases, the employee is guaranteed reinstatement rights and certain seniority rights upon return from leave. The employee must also comply with requests for documentation and with the requirements of this subchapter regarding the timing of applications for reemployment. For details, employees and managers should contact the U.S. Department of Labor.

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

(1) The federal Family and Medical Leave Act of 1993 (FMLA), as amended, entitles employees who have worked for the Commonwealth for at least one year and who worked at least 1,250 hours over the previous 12 months to take up to 12 weeks of LWOP for any of the following reasons:

(i) To care for the employee's child after birth or placement for adoption or foster care;

(ii) To care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or

(iii) For a serious health condition that makes the employee unable to perform the employee's job.

(iv) For specified situations relating to family members in military service.

(2) Annual leave, sick leave, maternity leave, or paternity leave may be substituted for LWOP for FMLA purposes. All leave qualifying under the FMLA shall be documented as FMLA leave either before it is taken or promptly thereafter. The NMHC can designate a

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leave as a FMLA leave.

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

(4) The definitions, benefit eligibility, and limits and notification procedures comply with the federal Family and Medical Leave Act (FMLA) of 1973 as amended in November 2008.

§ 100-50-630 Basis for Accrual

(a) Employees shall accrue annual leave and sick leave for each biweekly pay period in which they are in pay status for the entire ten days. Pay status will include paid annual or sick leave, holidays, administrative leave, and overtime work hours. No annual leave will be earned if the pay period includes unpaid periods where the total time worked is less than eighty (80) hours per pay period. If the work week is shortened due to the needs of the NMHC, the shortened work week will then be the basis for leave accrual.

(b) Provided, however, employees serving on government boards and commissions who elect to take leave without pay (LWOP) during such performance shall accrue leave for that service time.

(c) Part-time employees with regular scheduled tours of duty of forty (40) to seventy (70) hours during a biweekly pay period will accrue annual and sick leave at one-half the rate of full-time employees and will be eligible for other paid leaves, as provided in § 620 at this rate.

(d) Part-time employees with regular scheduled tours of duty of less than forty (40) hours during a biweekly pay period will not accrue annual or sick leave benefits or be eligible for the other paid leave benefits. Part-time employees must be in a pay status for their full regular scheduled tour of duty for the entire ten (10) days; otherwise there shall be no accrual for such period.

§ 100-50-635 Unauthorized Leave

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

§ 100-50-640 Disposition of Leave upon Separation

(a) Annual Leave.

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

For example:

If an employee has 360 hours annual leave to his credit upon separation that represents 45 days of annual leave. If the employee returns to government employment before the passage of 45 work days, the employee is required to make a refund for the unexpired term of leave remaining. To calculate the amount of repayment, subtract the number of work days (exclusive of holidays or other paid days off) from the annual leave amount paid to the employee.

(2) Repayment may be through lump-sum cash prior to resuming duty status, payroll deduction, or assigning to the government all annual leave accrued subsequent to returning to duty until the repayment is completed.

(b) Sick Leave. An employee separated from the NMHC for any reason shall have all sick leave accrued to the employee's account held in the leave records for three (3) years. Should the person be reemployed in any government agency at any time during that three (3) year period, the sick leave balance may be recredited to the employee's sick leave account and available for use from the first day of reemployment provided the other government agency approves the recrediting. Provided, however, that an employee separated from the NMHC for retirement purposes, and whose unused sick leave has been converted to service time to determine eligibility in the retirement program, shall not be recredited for such sick leave balance.

§ 100-50-645 Administration of the System

(a) Leave Year. For administrative convenience, leave accumulations and usages are based upon the leave year. A "leave year" is that period of 52 consecutive weeks (26 pay periods) which begins on the first day of the first full pay period of the calendar year and ends on the last day of the last pay period which begins in that calendar year.

(b) Employee's Right to Annual Leave. Employees have a legal right to accumulate annual leave, but the right to use that leave is contingent upon management's requirements. Thus, it is incumbent upon managers and employees to agree mutually as to the duration of annual leave and the period of taking. A manager is wholly within managerial rights to deny an employee's request for annual leave if that denial is based upon demands of NMHC. The manager is obligated, in event of a denial, to suggest to the employee a more appropriate time for taking annual leave.

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

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

Subpart B - Insurance

§ 100-50-650 General

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

§ 100-50-655 Nature of Coverage

- (a) In the event of an on-the-job work-related injury or illness, the employee may be entitled to benefits under the NMHC's Workers' Compensation Insurance program.
- (b) The NMHC will only pay part of the cost of the CNMI government's group health and group life insurance coverage and the employee may pay his/her share through payroll. In addition, the NMHC will pay part of the cost of the group dental insurance.
- (c) Employees have the option to waive dental, health/medical, and life insurance.
- (d) Managers and supervisors are responsible to know the provisions of the several plans for coverage of the employees under their supervision and the procedures necessary to present claims.
- (e) Employees are responsible to familiarize themselves with reporting procedures so that they may be assured of proper coverage in event of injury or illness.

Subpart C - Retirement

§ 100-50-660 Mandatory Participation in Federal "Social Security" System/Voluntary Participation in the Retirement Fund

- (a) Mandatory Participation in the Federal Social Security System: Public Law 17-82, the CNMI Pension and Recovery Act of 2012, requires mandatory participation in the federal Social Security System for all government employees.
- (b) Defined Contribution Retirement Plan: Eligible employees may participate in the Government's Defined Contribution Retirement plan established under PL 15-13 and administered through the Department of Finance.

Part 700 - Performance Evaluation

§ 100-50-701 Employee Performance Evaluation Process

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

- (a) Improve employee effectiveness by:
 - (1) Providing a working atmosphere in which an employee may be motivated to

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achieve the highest performance potential; and

(2) Identifying work performance standards agreed to by both management and employee.

(b) Strengthen the employee-supervisory relationship by:

(1) Establishing a framework for continuing employee-supervisor communications regarding performance standards and development of employee potential; and

(2) Guaranteeing employees the opportunity to participate in the establishment of performance standards.

(c) Provide management with an objective basis for relating employee work performance to a wide variety of pertinent personnel management activities.

§ 100-50-705 Policy

(a) The Corporate Director shall ensure that managers/supervisors in their respective jurisdictions reach and maintain a clear understanding with their subordinates of the standards of work performance which must be met in order to successfully accomplish assigned work. The supervisor and the employee, on a person-to-person basis, must understand and agree on the work objectives set, the manner in which they can be reached, and the way they will be evaluated. A review of the employee's position description is necessary, therefore, to assure such understanding of the duties, performance standards, and work objectives established.

(b) A written rating of performance shall be submitted by the employee's manager/supervisor annually, commencing at the anniversary of the employee's employment date, based upon the preceding twelve months performance record and other pertinent factors. The performance rating will be acknowledged by the employee and concurred by the Corporate Director, on forms prescribed by the Personnel Committee, for each permanent, probationary, and limited-term employee. The NMHC Office Manager shall administer the performance rating report ensuring timely and justified implementation of the program and will alert the Corporate Director to any problem or changes needed for improvement to the program.

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

§ 100-50-710 Responsibilities

(a) The Personnel Committee shall be responsible to:

(1) Develop, evaluate, and improve the NMHC's annual employee review system and performance rating report; and

(2) Provide advice, assistance, and supervision in the administration of the system.

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

(1) Provide assistance to supervisors and employees, as needed, in preparing the annual performance rating;

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- (2) Provide training to managers/supervisors so they can effectively evaluate employee performance; and
 - (3) Assure that employees understand the provisions, procedures, and objectives of the performance evaluation plan.
- (c) Managers/supervisors are responsible to:
- (1) Ensure that position descriptions accurately reflect the duties and responsibilities assigned;
 - (2) Determine jointly with each employee the performance standards to be met and keep each employee advised of strengths, weaknesses, and opportunities for improvement;
 - (3) Provide periodic counseling to employees throughout the evaluation year and document significant incidents of good or poor performance;
 - (4) Conduct the annual employee performance reviews; and
 - (5) Initiate appropriate personnel actions in cases of continuing unsatisfactory performance.
- (d) The employee is responsible to:
- (1) Request clarification from the manager/supervisor of any performance ratings, work objectives, or duties which are not clearly understood;
 - (2) Advise the manager/supervisor of any fact or circumstance which the employee believes should be considered during the review process;
 - (3) Participate in performance appraisal discussions and in the development of performance standards, and make suggestions for improving performance; and
 - (4) Acknowledge the performance ratings.
- (e) In the event the employee disagrees with any of the ratings, the employee must so indicate on the performance rating form and must submit a written statement to the Corporate Director for review and inclusion in the employee's official personnel folder along with the appraisal.

§ 100-50-715 Relationship to Other Personnel Management Activities

- (a) By using the employee anniversary date system (as contrasted to a fixed due date), managers/supervisors will have a full year to better consider and evaluate each employee and coordinate the employee's performance evaluation with the other factors which make up the totality of the employee review system.
- (b) Managers/supervisors do not have a right to retain an employee in a position in which the employee's overall rating is "unsatisfactory." To permit such a situation would not be in the best public interest and would not be consistent with good management principles. In such cases, the manager/supervisor must initiate the necessary personnel action to have such an employee reassigned, demoted, or separated from the position at the earliest possible date in accordance with the provisions of this regulation.
- (c) An employee with a current official rating of "outstanding/exceptional" will receive an additional two points of retention credit for reduction-in-force purposes.

§ 100-50-720 Performance Rating

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

§ 100-50-725 Rating Probationary Employees

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

§ 100-50-730 Appeals

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

Part 800 - Training and Employee Development

§ 100-50-801 Policy

As appropriate training increases workers' effectiveness in jobs, improves morale, decreases labor turnover, prepares new employees to do jobs for which they are not trained, provides an effective means of screening and placement, and prepares employees for filling responsible jobs and upward mobility, NMHC acknowledges its commitment to train and develop a viable workforce within the NMHC.

§ 100-50-805 Responsibilities

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

- (b) The Office Manager will hold the secondary role of training officer for the NMHC and shall work with managers/supervisors to:
 - (1) Identify and define training needs for developing the NMHC workforce;
 - (2) Determine training goals to be met for each NMHC job category;
 - (3) Establish training and development goals to be met by NMHC employees for promotion and career development;
 - (4) Evaluate all training programs to ensure that manpower development programs accomplish their objectives;
 - (5) Assure that training and education services in the Commonwealth are fully utilized

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before seeking outside sources; and

- (6) Develop a recommended training schedule to be submitted with the annual budget;
- (7) Provide advice and assistance to managers/supervisors as they conduct employee development activities;
- (8) Locate, evaluate, and determine the cost of training resources within and outside the Commonwealth, as needed;
- (9) Maintain current training records for all employees;
- (10) Improve quality of training through evaluation of course content and practical testing of skills and knowledge gained through training.

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

- (1) Plan to release employees when needed for formal classroom instruction;
- (2) Inform trainees of the content of the training programs, the objectives and benefits, and the employees' responsibility to absorb and use the instruction provided;
- (3) Encourage employees to engage in self-improvement activities which may lead to improved performance and possible promotion; and
- (4) Deliver or assist in the delivery of instruction within the limits of their individual capabilities.

§ 100-50-810 Coverage

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

(a) Orientation: Within one (1) week after an employee enters employment with NMHC, the NMHC Office Manager and the employee's manager/supervisor will conduct an orientation for the new employee in the policies, procedures, rules, and regulations which are specific to the employee and to the performance of the employee's job.

(b) Job Skills: training to:

- (1) Improve an employee's performance in the position currently occupied; and
- (2) Prepare an employee to move laterally in the same or closely related class of position.

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

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

(e) Supervisory, Managerial, and Executive Training:

- (1) In as much as the work of the government is the best and most important training resource for potential managers, opportunity should be given to qualified employees to participate in progressively responsible work within the area(s) of intended succession.
- (2) Opportunities for supervisory, managerial, professional, and executive training will be offered to potential managers if value to NMHC can be identified and if funding is available.

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(3) Employees entering a supervisory position must receive supervisory/management training not earlier than six (6) months prior to such promotion and no later than six (6) months after entry into such position.

§ 100-50-815 External Training Sources

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

§ 100-50-820 Training Costs Defined

(a) The term "all costs," when used in this part to define the NMHC's intent to support an employee undergoing training, means:

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

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

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

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

§ 100-50-825 Support for Training

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

§ 100-50-830 Evaluation of Training

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

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

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

§ 100-50-835 Unsponsored Training Activities

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

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

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

Part 900 - Performance Management Evaluation

§ 100-50-901 Purpose

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

§ 100-50-905 NMHC Mission Statement

As stated in Section 100-50-005, the NMHC mission statement is:

Providing efficient and responsive delivery of housing, mortgage and community development programs to the people of the Commonwealth; affording fair and equal opportunity to housing programs and services for all, with special emphasis to very-low, low and moderate income individuals, elderly and persons with disabilities; increasing and implementing home ownership programs with houses that is safe, decent, sanitary and affordable; encouraging and promoting economic independence, self-sufficiency and upward mobility for families; and implementing programs to address the growing and future needs and cost effective viability of the communities in the Commonwealth.

§ 100-50-915 Objectives of the NMHC Performance Management Evaluation Program

The objectives of the Performance Management Evaluation Program are to:

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

§ 100-50-920 Responsibilities

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

§ 100-50-925 Annual Report

- (a) Report of the Performance Management Evaluation Program shall be made to the NMHC Board in its annual report not later than March 31 of each year. The report shall be based upon:
 - (1) a comprehensive performance management evaluation report on the projects completed and the goal-related objectives reached for each section;
 - (2) the overall successful goal achievement performance of the NMHC programs; and
 - (3) the NMHC's financial status on the last day of the fiscal year.
- (b) The Office Manager in consultation with the Corporate Director shall develop the

evaluation plan and the format for reporting.

§ 100-50-930 Action

Using the observations and the findings in the annual comprehensive Performance Management Evaluation Program Report, the Corporate Director shall:

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

Part 1000 - Records and Reports

§ 100-50-1001 Purpose

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

§ 100-50-1005 Policy

NMHC shall establish a system of records for all personnel presently or previously employed by the NMHC. The records shall be separated so that those of active employees are filed separately from those of former employees. Other supporting records, as deemed appropriate by the Personnel Committee, may also be maintained. The Office Manager shall develop and maintain the personnel records for the NMHC.

§ 100-50-1010 Records Required

- (a) Official Personnel Folder (OPF). For each employee an official personnel folder (or file) shall be maintained (including electronic filing). The folder shall contain, at a minimum, the following elements of primary information covering the employee:
 - (1) Formal application for employment.
 - (2) Copy of the certificate of eligible applicant listing from which selected.
 - (3) Form on which prior creditable service is listed and service computation date is derived.
 - (4) Letter of original selection signed by an authorized selecting official.
 - (5) Copy of each personnel action affecting the employee.
 - (6) Copy of each form reflecting choice of health benefits or group life insurance coverage, designation of beneficiary, and other legal and binding assignments or designations.
 - (7) Adverse action supporting material, if the action is consummated.
- (b) Secondary information, as contrasted to permanent-type information as delineated above, shall be kept in the OPF. Examples of temporary material include:
 - (1) Performance evaluation reports;
 - (2) Annual employee review documentation sheets;

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

(c) Employee Record Card. This card record summarizes critical data concerning the identity, status, movement, and separation of an employee. Every personnel action taken will be recorded on the employee record card. Exceptional or less than satisfactory performance ratings shall be noted on the employee record card showing the rating and date thereof.

(d) Medical Records.

(1) Medical examination forms and drug and alcohol test result forms for each employee shall be maintained in a file separate from the OPF. This is essential to protect the privacy of the individual. The records shall be maintained in a locked filing cabinet or safe with access allowed only to personnel authorized by the Corporate Director. Access must be restricted only to persons who have a “need to know” as determined and approved by the Corporate Director.

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

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

(e) Records of EEO Cases, Disciplinary Investigations, and Official Inquiries. Any records of an EEO case, disciplinary investigation, or official inquiry concerning an employee shall be filed in a separate folder, clearly identified by the employee’s name, date of birth, and Social Security number. The material shall be kept in a locked filing cabinet or safe, with access allowed only on a “need to know” basis and upon approval by the Corporate Director. The existence of any of these files shall be noted in the OPF, filed on top of the last entry therein.

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

§ 100-50-1015 Disposition of Records

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

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

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

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(d) Records of alcohol and drug test results shall be retained in the employee's medical file until the time period for retention, established as one year for negative testing results, two (2) years for testing program records, and five years for all positive testing results, has passed. At that time, the test records shall be destroyed.

§ 100-50-1020 Access to Official Personnel Folder

Employees may have access to their own official personnel folders at any time during regular working hours provided the Office Manager or another responsible employee assigned by the Corporate Director watches as the employees' reviews take place. Employees are entitled access to their medical records, but investigation reports are not available to the employees. If employees persist in their desire to see investigation reports, they should be referred to the agency which prepared the report or secure a court order authorizing the Corporate Director to allow the employee access to the investigation report.

§ 100-50-1025 Information Available to the Public

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

§ 100-50-1030 Reports

(a) Accurate and timely reports are invaluable to the management of a workforce. They are important to the processes of budgeting, manpower planning, forecasting staffing needs and declines, and other management areas.

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

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

§ 100-50-1035 Timekeeping Records

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

Part 1100 - Special Provisions

NORTHERN MARIANAS HOUSING CORPORATION-(NMHC)

§ 100-50-1101 Financial Austerity Measures

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

(b) The suspension shall expire upon subsequent notice to all NMHC staff of its expiry. Upon such expiration, all employees who qualified for the increases during the time of suspension shall receive the pay increases effective the date the suspension expired. The increases shall not be made retroactive to any earlier date.

Part 1200 Miscellaneous Provisions

§ 100-50-1001 Internal Policies and Procedures

- (a) The Office Manager in consultation with the Corporate Director shall implement Standard Operating Procedures for all personnel matters.
- (b) All NMHC Division's shall have policies and procedures governing their programs and in compliance with applicable U.S. Department of Housing and Urban Development (HUD) program rules and regulations.
- (c) The Corporate Director and the Office Manager shall ensure all policies and procedures are maintained and updated periodically in each division.
- (d) All new employees shall have a copy of the NMHC Personnel Regulations.
- (e) Amendments and Modifications to the NMHC Personnel Regulations shall be approved by the Personnel Committee.



NORTHERN MARIANAS HOUSING CORPORATION

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PUBLIC NOTICE

PROPOSED REGULATIONS FOR THE NORTHERN MARIANAS HOUSING CORPORATION PROCUREMENT REGULATIONS

Notice of Intended Action: The Board of Directors of the Northern Marianas Housing Corporation proposes to promulgate its Procurement Regulations. Pursuant to the Administrative Procedure Act, 1 CMC § 9104 (a). If adopted, these regulations will become effective ten (10) calendar days after publication of a Notice of Adoption in the Commonwealth Register after compliance with 1 CMC § 9102, 9104 (a), and 9105 (b).

Authority: These regulations are promulgated pursuant to Public Law 20-87, to amend Title 2, Division 4, Chapter 4, Article 3, § 4433 of the Commonwealth Code and to add new subsection (s) through (u) and appropriately re-designating current subsections (s) and (t) as subsections (v) and (w).

Terms and Substance: These proposed regulations are established to provide the Northern Marianas Housing Corporation (NMHC) its own procurement regulations to attain best-value outcomes through strategic procurement, contract management, financial management policies and procedures compliant with local and federal laws and regulations.

Citation of Related and/or Affected Statutes, Rules and Regulations. The proposed regulations were formulated pursuant to CNMI Public Law 20-87, amending Title 2, Division 4, Chapter 4, Article 3, § 4433 of the Commonwealth Code and to add new subsections (s) through (u) and re-designating current subsections (s) and (t) as subsections (v) and (w) and to read as follows:

(s) To employ agents and employees of NMHC. They shall be exempt from the application of 1 CMC §8101 et seq., the Commonwealth Civil Service Act. NMHC and the Commonwealth Development Authority (CDA) shall establish through regulations its own compensation, wage and salary scales which shall be commensurate with those paid by other public housing agencies/entities requiring comparable education, training, and experience. NMHC and CDA shall also promulgate regulations governing the selection, promotion, performance evaluation, demotion, suspension and other disciplinary action for its employees similar to the regulations of the Civil Service Commission.

(t) To adopt regulation its own procurement policies and procedures similar to the regulations of the Department of Finance to purchase or lease supplies, goods, materials, professional services and commodities and to furnish and supply services for the operation of NMHC.

“NMHC is a fair housing agency and an equal opportunity, lender and employer”

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Tinian Field Office: Tel: (670) 433-9213
Fax: (670) 433-3690

(u) To establish through regulations reasonably necessary travel policies and procedures for NMHC and CDA consistent with the United States Federal Travel Regulations (41 C.F.R. Subtitle F).

Directions for Filing and Publication: These proposed Personnel regulations shall be published in the Commonwealth Register in the section on proposed and newly adopted regulations (1 CMC § 9102 (a)(1)) and posted in convenient places in the civic center and in local government office in each senatorial district, both in English and in the principal vernacular (1 CMC § 9104 (a)(1)).

Comments: Interested parties may submit written comments on the proposed amendments to Jesse S. Palacios, Corporate Director, NMHC, to the following address, fax, or email address, with the subject line "Proposed Personnel Regulations"

NORTHER MARIANAS HOUSING CORPORATION

P.O. Box 500514

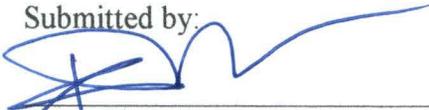
Saipan, MP 96950

Fax: (670)234-9021

Email Address: nmhc@nmhc.gov.mp

Comments, data, views, or arguments are due within thirty (30) calendar days from the date of publication of this notice. 1 CMC § 9104 (a)(2). If you may have any questions, you may reach NMHC at telephone numbers (670)234-6866/9447.

Submitted by:



Kimo M. Rosario
Acting-Chairman
NMHC Board of Directors

Date: 26 DEC 2019

Received by:



Ms. Mathilda A. Rosario
Special Assistant for Administration

Date: 12/30/19

Filed and Recorded by:



Ms. Esther SN. Nesbitt
Commonwealth Registrar

Date: 01-23-2020

I certify, pursuant to 1 CMC § 2153 (e) and 1 CMC § 9104 (a)(3), that I have reviewed and approved these regulations as to form and legal sufficiency.



Mr. Edward Manibusan
Attorney General

Date: 1/22/2020



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NUTISIAN PUPBLIKU

I MANMAPROPONI NA REGULASION PARA I REGULASION PROCUREMENT SIHA GI NORTHERN MARIANAS HOUSING CORPORATION

NUTISIA I MA'INTENSIONA NA AKSION: I Kuetpun Direktot siha gi "Northern Marianas Housing Corporation" maproponi para u macho'gui iyon-ñiha Regulasion "Procurement" siha. Sigun para i Áktun "Administrative Procedure," 1 CMC § 9104(a). Yanggin ma'adapta, esti na regulasion siha para u ifektibu gi hálum dies (10) dihas dispues di publikasion i Nutisian Adáptasion gi hálum i Rehistran "Commonwealth" dispues di compliance yan i CMC §§ 9102 yan 9104 (a), yan 9105(b).

ÁTURIDÁT: Esti na regulasion siha manmacho'gui sigun para Lai Pupbliku 20-87, para u amenda i Titulu 2, Dibision 4, Pátti 4, Attikulu 3, § 4433 gi "Commonwealth Code" yan para u na'danña hálum nuebu na "subsections" (s) asta (u) yan mata'lun madisignan máulik i nuebu na "subsections" (s) asta (t) kumu "subsections" (v) yan (w).

I TEMA YAN SUSTANSIAN I PALÁBRA SIHA: Esti i manmaproponi na regulasion siha ma'estaplesi para u pribeni i "Northern Marianas Housing Corporation (NMHC)" iyon-ñiha regulasion "procurement" para u taka' i más báli na hiniyung ginin i "strategic procurement," kontrátan inenkatga, areklamentun inenkatgan finansiát yan i manera ni pumarehu yan i local yan i lai fedirát yan regulasion.

SITASION I ASOSIÁT YAN/PAT I MANINA'FEKTA NA STATUTES, AREKLAMENTU YAN REGULASION SIHA: I maproponi na regulasion siha manmafotma sigun para "CNMI" Lai Pupbliku 20-87, amemenda i Titulu 2, Dibision 4, Pátti 4, Attikulu 3, §4433 gi "Commonwealth Code" yan para u na'danña hálum nuebu na "subsections" (s) asta (u) yan mata'lun disigna i nuebu na "subsections" (s) yan (t) kumu "subsections" (v) yan (w) yan para u mataitai kumu tinattiyi siha:

(s) Para u ma'impleha ayenti yan impli'áo siha gi "NMHC." Debi na "exempt" ginin i aplikasion i 1 CMC § 8101 et seq., i Áktun "Commonwealth Civil Service." I "NMHC" yan i "Commonwealth Development Authority (CDA)" debi na u ma'istaplesi ginin i regulasion i iyon-ñiha ápas suetdu, suetdu yan "salary scales" ni debi di u "commensurate" yan atyu siha i manma'apási ginin otu na "public housing" na ahensia siha/ "entities" ni manisisita "comparable" na edukasion, "training" yan ekspirensia. I NMHC yan i CDA debi lokkui' na u macho'gui i regulasion ni ha gubietna i sileksion, subida, ibaluasion cho'chu', "demotion," suspendasion yan otu na aksion arekláo para impli'áo-ñiha kulang atyu yan i regulasion i "Civil Service Commission."

(t) Para u adapta ginin i regulasion iyon-ñiha procurement na areklamentu yan maneran siha kulang atyu yan i regulasion i Dipáttamentun Finansiát para u mafáhan pat atkila "supplies," fektus, matiriát, **"NMHC is a fair housing agency and an equal opportunity, lender and employer"**

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profesot na setbisiu siha yan “commodities” yan para u “furnish” yan suplika setbisiu siha para i operasion i NMHC.

(u) Para u istapblesi ginin regulasion rasonâppli nisisâriu para i “areklamentu travel” yan manera siha para NMHC yan CDA ni kunsisti yan i Regulasion Fedirât “Travel” i Estâdus Unidus (41 C.F.R. “Subtitle F”).

DIREKSION SIHA PARA U MAPO’LU YAN PUPBLIKASION: Esti i Maproponi na Regulasion “Procurement” debi na u mapupblika gi hâlum i Rehistran Commonwealth gi hâlum seksiona i maproponi yan nuebu na ma’adâpta na regulasion siha (1 CMC § 9102(a)(1)) yan u mapega gi hâlum i mangkumbinienti na lugât gi hâlum i Civic Center yan i hâlum ufisinan gubietnamentu siha gi kada distritun senadot, parehu English yan i dos na lingguâhi Chamorro yan Refaluwasch. (1 CMC § 9104(a)(1)).

UPIÑON SIHA: I intirisao na petsona siha siña muna’hâlum tinigi’ upiñon put i manmaproponi na amendasion siha guatu as Jesse S. Palacios, Corporate Director, NMHC gi sigienti na address, fax, pat email address, yan i râyan suhetu “Maproponi na Regulasion Personnel siha.”

NORTHERN MARIANAS HOUSING CORPORATION
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Saipan, MP 96950
Fax 234-9021
Email address: nmhc@nmhc.gov.mp

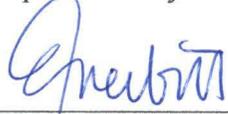
I upiñon, infotmasion yan kunistasion siha debi na u hâlum gi hâlum trenta (30) dihas ginin i fetchan pupblikasion esti na nutisia. 1 CMC § 9104(a)(2). Yanggin guaha maseha hâfa na kuestion-mu, siña un âgang i NMHC gi numerun tilifon gi 234-6866/9447.

Nina’halum as: 
Kimo M. Rosario
Acting-Kabesiyu
Kuetpun Mandirektot NMHC

Fetcha: 26 DEC 2019

Rinisibi as: 
Ms. Mathilda A. Rosario
Ispisiât Na Ayudânti Para I Atministrasion

Fetcha: 12/30/19

Pine’lu yan Ninota as: 
Ms. Esther SN. Nesbitt
Rehistran Commonwealth

Fetcha: 01-23-2020

Hu sitifika, sigun para i 1 CMC § 2153(e) yan 1 CMC § 9104(a)(3), na hu ribisa yan aprueba esti siha na regulasion kumu para u fotma yan ligat na sufisienti.



Mr. Edward Manibusan
Abugadu Henerat

Fecha: 1/22/2020



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ARONGORONGOL TOULAP

REEL POMMWOL MWÓGHUTUGHUT NGÁLI MWÓGHUTUGHUTÚL PROCUREMENT NGÁLI BWULASIYOL ALILLISIL IMWEER TOULAP

Arongorong reel Mángemángil Mwóghut: Board of Directors sáangi Bwulasiyol Alillisil Imweer Toulap re pommw reel rebwe arongawow reel Mwóghutughutúl Procurement. Sáangi Administrative Procedure Act, 1 CMC § 9104 (a). Ngáre re adóptááli, ebwe bwunguló mwóghutughut kkal llól seigh ráál mwiril aal akkatéewow Arongorongol Adópta me llól Commonwealth Register mwiril aal angúungú fengál me 1 CMC § 9102 (a), me 9105 (b).

Bwángil: Ebwe arongowow mwóghutughut kkal sáangi Alléghúl Toulap 20-87, rebwe liiweli Title 2, Division 4, Chapter 4, Article 3, § 4433 reel Commonwealth Code me rebwe aschuulong ffél subsection (s) mwet ngáli (u) me fféerú sefááliy bwe ebwe ffil subsections ikka e lo (s) me (t) reel subsections (v) me (w).

Kkapasal me Aweewel: Re ayoora pommwol mwóghutughut kkal reel ebwe itittiw le ayoorai ngáli Bwulasiyol Alillisil Imweer Toulap (NMHC) reel aar mwóghutughutúl procurement reel ebwe bwughi mille e ghatch mwotal iye e toowow sáangi strategic procurement, contract management, financial management policies me mwóghutughutúl angúungú fengál reel local me alléghúl federal me mwóghutughut.

Citation reel Milikka e lo me/ngare Affected Statutes, Allégh, me Mwóghutughut: Re ammwala pommwol mwóghutughut kkal sáangi CNMI Alléghúl Toulap 20-87, Liiweli Title 2, Division 4, Chapter 4, Article 3, § 4433 reel Commonwealth Code me aschuulong ffél subsections (s) mwet ngáli (u) fféerú safááliy subsections ikka e lo (s) me (t) bwe subsections (v) me (w) me ebwe árághárágh milikka e amwirimwiritiw:

(s) Rebwe ayoora agents me schóól angaang ngáli NMHC. Rebwe exempt-liir sáangi application reel 1 CMC § 8101 et seq. Commonwealth Civil Service Act. NMHC me Commonwealth Development Authority (CDA) rebwe itittiw sáangi mwóghutughut llól aar compensation, óbwóss me salary scales iye ebwe commensurate-liir schóó kka re óbwóssur sáangi akkááw public housing agencies/entities
"NMHC is a fair housing agency and an equal opportunity, lender and employer"

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ikka re tipáli comparable education, sóssót me experience. NMHC me CDA rebwe bwal arongowow mwóghutughut ikka ebwe lemeli áffilil, promotion, performance evaluation, demotion, suspension me akkááw mwóghutughutúl disciplinary ngáli layúr employees ikka e weewe ngáli mwóghutughutúl Civil Service Commission.

(t) Rebwe adóptááli mwóghutughut sáangi aar procurement policies me procedures ikka e weewe ngáli mwóghutughutúl Depattamentool Finance reel rebwe akkamé ngáre atkkilaay supplies, goods, materials, professional services me commodities me rebwe furnish me ayoorai supply services ngáli mwóghutughutúl NMHC.

(u) itittiwel mwóghut ikka e ffil ngáli travel policies me mwóghutughut ngáli NMHC me CDA ikka e weewe ngáli Mwóghutughutúl United States Federal Travel (41 C.F.R Subtitle F).

Afal reel Ammwelil me Akkatééwowul: Pommwol mwóghutughutúl Procurement akkatééwow me llól Commonwealth Register llól tálil pommwol me ffél mwóghut ikka ra adóptááli (1 CMC § 9102(a)(1) me ebwe appaschetá llól civic center me llól bwulasiyol gobetnameento llól senatorial district, fengál reel English me mwáliyaasch (1 CMC § 9104(a)(1)).

Kkapas: Schóó kka re tipáli rebwe isiisilong ischil kkapas wóól pommwol liiwel kkal rebwe isiis ngáli Jesse S. Palacios, Corporate Director, NMHC, ngáli address, fax, ngáre email address, ebwe lo wóól subject line bwe “Pommwol Mwóghutughutúl Personnel”.

NORTHERN MARIANAS HOUSING CORPORATION

PO Box 500514

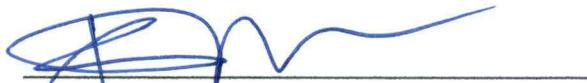
Saipan, MP 96950

Fax: 234-9021

Email Address: nmhc@nmhc.gov.mp

Fóós, data, views, ngáre angíngi ebwe toolong llól eliigh ráál mwiril aal akkatééwow arongorong yeel. 1 CMC § 9104(a)(2). Ngáre eyoor yóómw aiyegh, faingiló NMHC reel 234-6866/9447.

Isáliyalong:



Kimo M. Rosario
Acting-Chairman
NMHC Board-il Directors

Ráál: 26 DEC 2019

Bwughiyal:



Ms. Mathilda A. Rosario
Special Assistant ngáli Administration

Ráál: 12/30/19

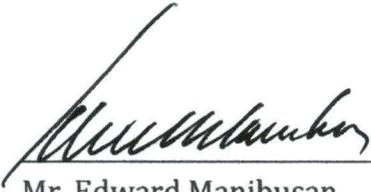
Ammwelil:



Ms. Esther SN. Nesbitt
Commonwealth Register

Ráál: 01-23-2020

I átirow, sáangi 1 CMC § 2153(e) me 1 CMC § 9104(a)(3), bwe I ya amwuri fischiiy me átirowa pommwol mwóghutughut kal bwe aa lléghló reel fféerúl me legal sufficiency.



Mr. Edward Manibusan
Soulemelemil Allégh Lapalap

Ráál: 1/22/2020

TITLE 70: NORTHERN MARIANAS HOUSING CORPORATION

**SUBCHAPTER 100-60
PROCUREMENT REGULATIONS**

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Part 001 - General Provisions

Subpart A - General

§ -60-001 Purposes

- (a) Interpretation. The regulations in this subchapter shall be construed and applied to promote their underlying purposes and policies.
- (b) Purposes and Policies. The underlying purposes and policies of the regulations in this subchapter are:
 - (1) To simplify, clarify, and modernize the procurement policies and practices of Northern Marianas Housing Corporation (NMHC);
 - (2) To make as consistent as possible the procurement policies and practices for NMHC;
 - (3) To provide for increased public confidence in the procedures followed in public procurement;
 - (4) To insure the fair and equitable treatment of persons who deal with the procurement system of NMHC;
 - (5) To provide increased economy in the NMHC procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds;
 - (6) To foster effective broad-based competition within the free enterprise system; and
 - (7) To provide safeguards for the maintenance of a procurement system of quality and integrity.

TITLE 70: NORTHERN MARIANAS HOUSING CORPORATION

§ 100-60-005 Authority

The regulations in this subchapter are promulgated under the authority of 2 CMC § 4432(t) which permits the Northern Marianas Housing Corporation (NMHC) to establish and adopt its own procurement rules and regulations for purchasing or leasing supplies, goods, materials, professional services and commodities and for furnishing and supplying services for the operation of NMHC.

§ 100-60-010 Supplementary General Principles of Law Applicability

Unless displaced by the particular provisions of this subchapter, the principles of law and equity including, but not limited to, the Uniform Commercial Code of the Commonwealth and common law of fraud, conflicts of interest, waste, false pretenses, and public purpose shall supplement the regulations in this subchapter.

§ 100-60-015 Requirement of Good Faith

The regulations in this subchapter require all parties, including NMHC employees, contractors, and suppliers, involved in the negotiation, bidding, performance, or administration of NMHC contracts to act in good faith.

§ 100-60-020 Application of Regulations

The regulations in this subchapter apply to every expenditure of public funds irrespective of source, including federal assistance monies. The regulations, however, do not apply to contracts between NMHC and the Commonwealth, any of its agencies including public corporations or autonomous agencies, or political subdivisions, or other governments. The regulations in this subchapter also do not apply to employment contracts.

§ 100-60-025 Severability

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

§ 100-60-030 Validity of Contract

No NMHC contract shall be valid unless it complies with the regulations in this subchapter.

TITLE 70: NORTHERN MARIANAS HOUSING CORPORATION

§ 100-60-035 Remedy Against Employee

Any procurement action of an employee of the NMHC in violation of the regulations in this subchapter is an action outside the scope of his or her employment. The NMHC will seek to have any liability asserted against it by a contractor which directly results from these improper acts to be determined judicially to be the individual liability of the employee who committed the wrongful act.

Subpart B - Definitions

§ 100-60-040 Definitions

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

- (a) "Attorney General" means the Attorney General of the Commonwealth of the Northern Mariana Islands.
- (b) "Chairperson" means the Chairperson of the NMHC Board of Directors.
- (c) "Chief Financial Officer" means the Chief Financial Officer of NMHC.
- (d) "Construction" means the process of building, altering, repairing, improving, or demolishing of a public structure or building or public improvements commonly known as "capital improvements." It does not include the routine maintenance of existing structures, buildings, or public real property.
- (e) "Contract" means all types of agreements, regardless of what they may be called for the procurement of supplies, services, or construction, including purchase orders.
- (f) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are allowable and in accordance with the contract terms and the regulations in this subchapter, and a fee, if any.
- (g) "Corporate Director" means the principal administrative executive of NMHC.
- (h) "Definite-quantity contract" means a contract which provides for delivery of a definite quantity of specific supplies or services for a fixed period. This type of contract may be used when it can be determined in advance that a definite quantity of supplies or services will be required during the contract period.
- (i) "Dispute" means a disagreement concerning the legal rights and obligations of contracting parties, which, if not settled by mutual agreement, must be referred to a neutral third party for resolution.

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- (j) “Employee” means an individual receiving a salary from NMHC including non-salaried individuals performing personal services for the Northern Marianas Housing Corporation. This definition extends to NMHC Board of Directors. Consultants, independent contractors and part-time workers shall be considered employees only with respect to ethics in public contracting in Part 700.
- (k) “Firm-fixed-price contract” means a contract which provides for a price that is not subject to any subsequent adjustment as a result of the contractor’s cost experience in performing the contract. This type of contract places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss.
- (l) “Goods” means all property, including but not limited to equipment, materials, supplies, and other tangible personal property of any kind or nature, printing, insurance, and leases of real and personal property.
- (m) “Government” or “Commonwealth” means the Government of the Commonwealth of the Northern Mariana Islands, which includes the executive, legislative, and judicial branches. It also includes government agencies, political subdivisions, public corporations and agencies of local government, all collectively referred to herein as “public agencies.”
- (n) “Governor” means the Governor of the Commonwealth of the Northern Mariana Islands.
- (o) “Invitation for bids” means all documents, whether attached or incorporated by reference, utilized for soliciting bids.
- (p) “Official with expenditure authority” means the Chairman of the NMHC Board of Directors or other director, officer or employee of NMHC duly authorized to expend, obligate, encumber, or otherwise commit public funds under the Planning and Budgeting Act or under any annual appropriation act.
- (r) “Person” means an individual, sole proprietorship, partnership, joint venture, corporation, other unincorporated association, private non-profit/non-government organization or a private legal entity.
- (s) “Procurement” means buying, purchasing, renting, leasing, or acquiring construction, goods, or services. It also includes all functions that pertain to the obtaining of construction, goods, or services, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.
- (t) “Procurement Officer” means the principal head of the Division of Procurement and Supply within the NMHC.

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- (u) "Purchase description" means the words used in a solicitation to describe the goods, services, or construction to be purchased and includes specifications attached to, or made part of, the solicitation.
- (v) "Requirements contract" means a contract which provides for filling all actual purchase requirements of designated NMHC activities for supplies or services during a specified contract period, with deliveries or performance to be scheduled with the contractor.
- (w) "Responsible" in reference to a bidder, means a person who has the capacity, competence, and capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.
- (x) "Responsive" in reference to a bidder, means a person who has submitted a bid which conforms in all material respects to the invitation for bids.
- (y) "Services" means the furnishing of time, labor, or effort by a person other than an employee, and not involving the delivery of a specific end product other than reports, plans, and incidental documents.

Subpart C - Public Access

§ 70-30.045 Public Access to Procurement Information

Procurement information shall be a matter of public record and shall be available for public inspection. Procurement information may be kept confidential when necessary to insure proper bidding procedures. This decision shall be made only by the Procurement Officer.

Part 100 - Procurement Organization

Subpart A - Officer of Procurement and Supply

§ 100-60-101 Creation of Procurement and Supply Division

There is created in the NMHC a Division of Procurement and Supply to assist the Corporation in the execution of those duties authorized under 2 CMC § 4432(t).

§ 100-60-105 Procurement Officer

The Corporate Director shall appoint a Procurement Officer to administer and supervise the day-to-day activities of the Division. The Procurement Officer shall be assisted in carrying out his functions and duties by employees of the Procurement and Supply Division.

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§ 100-60-110 Duties of the Procurement Officer

The duties and responsibilities of the Procurement Officer include, but are not limited to, the following:

- (a) Ensure that the regulations in this subchapter are observed in all NMHC procurement;
- (b) Provide advance planning for the centralized purchase of NMHC supplies;
- (c) Procure or supervise the procurement of all supplies, goods, and services needed by the NMHC;
- (d) Conduct bidding, procurement, negotiation, or administration of NMHC contracts upon request of the official with expenditure authority;
- (e) Sell, trade, or otherwise dispose of surplus property belonging to and no longer needed by the NMHC;
- (f) Exercise general supervision and control over all inventories of supplies belonging to the NMHC;
- (g) Exercise general oversight and control on the use of physical assets and other capital equipment to prevent waste or abuse or other unauthorized use;
- (h) Establish and maintain programs for the inspection, testing, and acceptance of supplies;
- (i) Hear all protests and disputes; and
- (j) Oversee the administration of the NMHC contracts.

§ 100-60-115 Contract Review, Processing and Oversight

- (a) All contracts must first be prepared by the Procurement Officer for the official with expenditure authority or his/her designee and who shall certify that he/she has complied with the Procurement Regulations, codified in this subchapter, and that the proposed contract is for a public purpose, and does not constitute a waste or abuse of public funds. All contract documents must be complete including attachments and exhibits, if they are incorporated into the contract by reference.
- (b) The contract shall then be approved by the Chief Financial Officer (CFO) or his designee who shall certify the availability of funds. If the CFO finds any aspect of the

TITLE 70: NORTHERN MARIANAS HOUSING CORPORATION

contract to be deficient or defective in any respect, he shall return the contract to the Procurement Officer for appropriate resolution with the official with expenditure authority.

- (c) The third review is that of the Attorney General or his designee who shall certify the contract as to form and legal capacity.
- (d) The contract is then reviewed and approved by the Corporate Director.
- (e) The contract shall then be approved by the Chairperson of the Board of Directors.
- (f) After the Chairperson's approval, the Procurement Officer shall forward the contract to the contractor for his approval and signature.
- (g) After the signature of the contractor, the Procurement Officer shall review the contract documents for completeness. If he is satisfied, he shall sign in the appropriate space and shall:
 - (1) Inform in writing the official with the expenditure authority, the Corporate Director and the Chairperson of the Board of Directors that the contract has been signed by all parties and that he may proceed with contract implementation according to the terms contained therein; and
 - (2) Provide copies of said contract to the:
 - (i) CFO
 - (ii) Attorney General, and
 - (iii) Contractor.
- (h) A contract may be referred back to the Procurement Officer by the CFO or the Attorney General for further review based on additional evidence that it may not comply with this subchapter. The Procurement Officer then informs the expenditure authority, the Corporate Director and the Chairperson of the situation. The contract may be disapproved or rescinded with a written determination by the expenditure authority.
- (i) It is the responsibility of the Procurement Officer to ensure that the contractor does not sign the contract or incur any expenses under it until all necessary government signatures have been obtained. The supervision, inspection, and administration of an NMHC contract is the primary responsibility of the Corporate Director.
- (j) No contract is effective against the NMHC until all of the parties whose signatures are required on the contract form have signed the contract. A contract shall contain a right to audit records clause.

§ 100-60-120 Split Contracts

If the Procurement Officer determines that a contract has been split into two or more contracts for the purpose of avoiding bidding, then he may require the contract to be competitively bid.

§ 100-60-125 Acceptance of Gratuities by the Procurement Officer and Procurement and Supply Division Employees

In addition to the restrictions found in § 100-60-725, the Procurement Officer and the employees of the Procurement and Supply Division shall not accept from any person any gift of value given to them with the intent to influence their business judgment.

Subpart B - Procurement Function

§ 100-60-130 Procurement Services

Upon request of the official with expenditure authority, the Procurement Officer shall aid or conduct the bidding, procurement, negotiation or administration of a particular contract.

§ 100-60-140 Centralized Procurement of Supplies

The Procurement Officer may, with the approval of the Corporate Director, purchase certain supplies in large quantities to be relied upon by all division of the agency. No separate contract or purchase order for these supplies will be approved.

Part 200 - Source Selection and Contract Formation

Subpart A - Source Selection

§ 100-60-201 Requirements for Competition

The NMHC shall provide for full and open competition through use of the competitive procedure that is best suited to the circumstances of the contract action. The competitive procedures available for use in fulfilling the requirement for full and open competition are as follows:

- (a) Competitive sealed bidding (§ 100-60-205)
- (b) Competitive sealed proposals (§ 100-60-210)
- (c) Architect-engineer services (§ 100-60-305); and
- (d) Competitive selection procedures for professional services (§ 100-60-310).

§ 100-60-205 Competitive Sealed Bidding

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(a) All NMHC procurement shall be awarded by competitive sealed bidding under this section, except as provided in:

- (1) § 100-60-210 (Competitive Sealed Proposals);
- (2) § 100-60-220 (Small Purchases);
- (3) § 100-60-225 (Sole Source Procurement);
- (4) § 100-60-230 (Emergency Procurement);
- (5) § 100-60-235 (Expedited Purchasing in Special Circumstances);
- (6) § 100-60-305 (Architect-Engineer Services); and
- (7) § 100-60-310 (Competitive Selection Procedures for Professional Services)

(b) Invitation for Bids.

(1) An invitation for bids shall be issued and shall include at the minimum:

- (i) An invitation for bids number;
- (ii) Date of issuance;
- (iii) Name, address, and location of issuing office;
- (iv) Specific location where bids must be submitted;
- (v) Date, hour, and place of bid opening;
- (vi) A purchase description in sufficient detail to permit full and open competition and allow bidders to properly respond;
- (vii) Quantity to be furnished;
- (viii) Time, place, and method of delivery or performance requirements;
- (ix) Essential contractual terms and conditions; and
- (x) Any bonding requirements.

(2) Purchase descriptions of construction, goods, or services shall detail to the greatest extent practicable the specific requirements the contractor is expected to perform or deliver. An adequate purchase description shall adequately set forth the essential physical and functional characteristics of the construction, goods, or services necessary to fulfill NMHC's minimum requirements.

(c) Application for Brand Name Descriptions. An acquisition that uses a brand name description or other purchase description to specify a particular brand name, product, or feature of a product peculiar to one manufacturer is not normally allowed regardless of the number of sources solicited. It shall be allowed only when justified and approved in accordance with the procedures on justifying sole-source procurement. Specifically, the justification shall indicate that the use of such descriptions in the acquisition is essential to the NMHC's requirements, thereby precluding consideration of a product manufactured by another company. "Brand-name or equal" descriptions, and other purchase descriptions that permit prospective contractors to offer products other than those specifically referenced by brand name, provide for full and open competition and do not require justifications and approvals to support their use.

(d) Bid Solicitation Accuracy. The bid solicitation shall accurately reflect the NMHC requirement. It shall adequately state what is to be done or what is to be delivered to NMHC in order to allow bidders to properly respond and evaluations to be made on a uniform basis. Exact quantities shall be stated in the statement of deliverables, unless use of a requirements contract is justified under § 100-60-265.

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(e) **Publication.** The Procurement Officer shall publicize all invitation for bids in order to increase competition and broaden industry participation. The bidding time (i.e., the time between issuance of the solicitation to the public and opening of bids) shall be prescribed as follows:

(1) **Minimum Bidding Time.** A bidding period of at least thirty (30) calendar days shall be provided unless the Procurement Officer determines that a shorter time is reasonable and necessary. Such shorter bidding period must afford potential bidders a reasonable opportunity to respond considering the circumstances of the individual acquisition, such as the complexity, and urgency. The bidding period, however, shall never be less than fourteen (14) calendar days.

(2) **Extended Bidding Period.** Because of limited bidding time in certain cases, potential sources may be precluded from bidding and others may be forced to include contingencies that, with additional time, could be eliminated. To avoid unduly restricting competition or paying higher-than-necessary prices, the Procurement Officer may increase the 30-day bidding period by not more than 60 additional calendar days, considering such factors as:

- (i) Degree of urgency;
- (ii) Complexity of requirements;
- (iii) Anticipated extent of subcontracting;
- (iv) Geographic distribution of bidders; and
- (v) Normal transmittal time for invitations and bids.

(f) **Public Notice.** The Procurement Officer shall advertise the invitation for bids in the following forms of advertisement: in a newspaper of general circulation in the Commonwealth; website; and all forms of social media or public media outlets, at least once in each week from the time the solicitation is issued, including the week when the bidding period expires.

(1) Before advertising the invitation for bids, the official with expenditure authority shall certify in writing to the Procurement Officer whether there is adequate local competition for the solicited goods or services based on past experience, or if necessary, based on a survey of available local vendors. If there is adequate local competition (i.e., evidence of two or more vendors preliminarily determined to be responsible bidders or offerors), the advertisement shall be made only within the Commonwealth. The Procurement Officer may choose to have a separate solicitation package for bid details which cannot be practically stated within the advertisement; in such case, the advertisements shall state that solicitation package(s) are available at the particular agency. For solicitations amounting to \$50,000 and above, the advertisement shall be printed in a separate box and shall appear prominently among other advertisements.

(2) If there is no adequate local competition, the invitation for bids shall also be advertised in at least one regional newspaper or at least one national publication or on the internet; in such case, the Procurement Officer shall consider extending the bidding period as provided in § 100-60-205(e)(2).

(g) **Bid Receipt.**

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(1) All bids shall be submitted to the office of the Procurement Officer. Bids shall be received prior to the time set for opening and shall be maintained sealed in a locked receptacle at the office. Bids submitted from vendors outside the Commonwealth must be postmarked by the date set in the invitation for bids and must be received within seven working days of that date. Bidders outside the Commonwealth must notify the Procurement Officer in writing of their intent to bid in order to receive this additional seven days for the receipt of the actual bid documents. This notice of intent to bid may be by any mode of written communication including telex, facsimile, or other electronic transmission.

(2) If a bid is opened by mistake, it shall be resealed and the person who opened the bid shall write his signature and print his title on the envelope and deliver it to the Procurement Officer. No information contained in the bid shall be disclosed prior to the bid opening. The Procurement Officer shall cause the opened bid to be placed into the sealed receptacle.

(h) **Bid Opening.** The bid opening shall be conducted by the Procurement Officer or designee at the NMHC Central Office. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The Procurement Officer or designee shall be present at the bid opening. The bids received prior to the bid closing date shall be publicly opened. The amount of each bid, together with the name of each bidder shall be recorded, the record and each bid shall be open to public inspection. The Procurement Officer or designee shall prepare a written summary of the bid opening.

(i) **Bid Acceptance and Bid Evaluation.** Bids shall be unconditionally accepted without alteration or correction, except as authorized in this subchapter. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria as is necessary to reasonably permit a determination as to the acceptability of the bid for the particular purpose intended.

(j) **Responsiveness of Bids.** To be considered for award, a bid must comply in all material respects with the invitation for bids. Bids must be filled out, executed, and submitted in accordance with the bid instructions. A bid may be considered only if

(1) The bidder accepts all material terms and conditions of the invitation, and

(2) Any future award based upon the bid would result in a binding contract with terms and conditions that do not vary from the requirements of the invitation. Electronic or facsimile bids shall not be considered unless permitted by the invitation.

(k) **Bid Rejection.** A bid may be rejected for any of the following reasons:

(1) Failure to conform to essential requirements of the invitation for bids such as specifications or time of delivery;

(2) Imposition of conditions or restrictions in the bid which modify requirements of the invitation or limit the bidder's liability to NMHC. For example, bids shall be rejected in which the bidder:

(i) Protects against future changes in conditions, such as increased costs;

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- (ii) Fails to state a price and indicates that price shall be the price in effect at the time of delivery;
 - (iii) States a price but qualifies it as subject to price in effect at time of delivery; or
 - (iv) Limits the rights of NMHC.
- (3) Unreasonableness as to price;
- (4) A bid from a non-responsible bidder as defined in § 100-60-245.

(l) **Correction or Withdrawal of Bids; Cancellation of Awards.** Correction or withdrawal of inadvertently erroneous bids, before or after award, or cancellation of awards based on bid mistakes must be approved by the Procurement Officer in writing. After the bid opening, no changes in bid price or other provisions of bids prejudicial to the interest of NMHC or fair competition shall be allowed. Whenever a bid mistake is suspected, NMHC shall request confirmation of the bid prior to award. In such an instance, if the bidder alleges an error, NMHC shall only permit correction of the bid or withdrawal of the bid in accordance with subsection (l)(1) or (l)(2).

(1) **Correction of bids.** Correction of bids shall only be permitted when:

(i) An obvious clerical mistake is clearly evident from examining the bid document. Examples of such mistakes are errors in addition or the obvious misplacement of a decimal point; or

(ii) The otherwise low bidder alleges a mistake and the intended bid is evident from the bid document or is otherwise supported by clear and convincing evidence as to the bid intended and the corrected bid remains the low bid. A low bidder shall not be permitted to correct a bid mistake resulting from an error in judgment.

(2) **Withdrawal of bids.** Withdrawal of a bid shall only be permitted where the otherwise low bidder alleges a mistake and there is a clear and convincing evidence as to the existence of a mistake.

(3) **Cancellation of awards.** Cancellation of awards or contracts shall only be permitted when:

(i) Evidence as to the existence of the mistake is not discovered until after the award;

(ii) There exists no clear and convincing evidence to support the bid intended; and

(iii) Performance of the contract at the award price would be unconscionable.

(m) **Award.**

(1) The contract must be awarded with reasonable promptness by written notice to the lowest responsive bid by a responsible bidder whose bid fully meets the requirements of the invitation for bids and the regulations in this subchapter. Unsuccessful bidders shall also be promptly notified.

(2) Notice of an award shall only be made by the presentation of a contract with all of the required signatures to the bidder. No other notice of an award shall be made. No acceptance of an offer shall occur nor shall any contract be formed until a contract is written and has been approved by all the officials required by law and regulation. Contracts shall contain a clause which states that the signature of the private contractor shall be the last in time to be affixed to a contract and that no contract can be formed prior to the approval of all required government officials.

(3) In the event all bids exceed available funds and the bid of the lowest responsive and responsible bidder does not exceed those funds by more than five percent, and time or

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economic considerations preclude re-solicitation of work of a reduced scope, the official with expenditure authority may authorize the Procurement Officer to negotiate an adjustment of the bid price including changes in bid requirements, with the lowest responsive and responsible bidder in order to bring the bid price within the amount of available funds. The negotiation shall be documented in writing and attached to the bidding documents.

§ 100-60-210 Competitive Sealed Proposals

- (a) Conditions for use. When the official with expenditure authority determines in writing that the use of a competitive sealed bidding is either not practical or not advantageous to NMHC, a contract may be entered into by competitive sealed proposals.
- (b) Request for proposals. Proposals shall be solicited through a request for proposals.
- (c) Public notice. Adequate public notice of the request for proposals shall be given in the same manner as provided for in competitive sealed bids.
- (d) Receipt of proposals. Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be prepared and opened for public inspection after contract award.
- (e) Evaluation factors. The request for proposals shall state the relative importance of price and other evaluation factors. Price or cost to NMHC shall be included as an evaluation factor in every solicitation of proposals. The Procurement Officer must ensure that the following requirements are complied with in any evaluation of proposals.
 - (1) All evaluation factors stated in the solicitation shall be considered in determining proposals in the competitive range (i.e., those allowed to participate further in the selection process), and any subsequent evaluations (including evaluation of best and final offers from the competitive range offerors).
 - (2) Competitive range. The official with expenditure authority shall determine which proposals are in the competitive range, based on the recommendations of the evaluator or evaluation team, for the purpose of conducting written or oral discussions, and shall include all proposals that have a reasonable chance of being selected for award. When there is doubt as to whether a proposal is in the competitive range, the proposal shall be included. Proposals determined to have no reasonable chance of being selected for contract award shall no longer be considered for selection. A proposal is not reasonably susceptible of being selected for award and can be excluded from the competitive range if it is clear that:
 - (i) Its contents are so unacceptable that a revision of the proposal in the negotiation stage would be equivalent to accepting a new proposal, or
 - (ii) In comparison with other proposals, such proposal clearly has no chance of being selected for award.
 - (3) Technical evaluation. If any technical evaluation is necessary beyond ensuring that the proposal meets the minimum requirements in the solicitation, the evaluator or evaluation team shall document the technical evaluation which shall include:

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- (i) The basis for the evaluation;
 - (ii) An assessment of each offeror's ability to accomplish the technical requirements;
 - (iii) A summary, matrix, or quantitative ranking of each technical proposal in relation to the best rating possible; and
 - (iv) A summary of findings. The supporting documentation prepared for the selection decision shall show the proposals' comparative strengths, weaknesses, and risks in terms of the evaluation factors.
- (4) When technical criteria (generally, criteria other than price) are involved, the Procurement Officer shall determine in writing that appropriate qualified personnel are assigned to conduct a technical evaluation of the proposals. In forming an evaluation team, the Procurement Officer shall insure that --
- (i) The evaluators, including any other personnel responsible for the selection of competitive range offerors or final selection of an offeror, are formally designated to exercise such responsibility by the official with expenditure authority; and
 - (ii) Before conducting any evaluation, the official with expenditure authority in consultation with the Procurement Officer, approves an evaluation plan which at a minimum shall include: --
 - (A) A statement of the evaluation factors and any significant subfactors and their relative importance;
 - (B) A description of the evaluation process, methodology, and techniques to be used; and
 - (C) Documentation requirements.
- (f) Notification to offerors excluded in the competitive range. The Procurement Officer shall promptly notify offerors when they are excluded from the competitive range or otherwise excluded from further consideration. The notice shall state the basis for the exclusion.
- (g) Discussion with responsible offerors and revisions to proposals. As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification and to insure full understanding of, and responsiveness to, solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submission and prior to award for the purpose of obtaining the best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.
- (h) Award. Award shall be made to the responsible offeror whose proposal is determined in writing to be most advantageous to NMHC taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation and the contract file shall contain the basis on which the award is made. Within five (5) working days after the date of contract award, the Procurement Officer shall provide written notification to each unsuccessful offeror (unless pre-award notice was given under § 100-60-210(f)). The notice shall include, as applicable: --

- (1) The number of offerors solicited;
- (2) The number of proposals received;
- (3) The name and address of each offeror receiving an award;
- (4) The items, quantities, and unit prices of each award (if the number of items or other factors makes listing unit prices impracticable, only the total contract price need be furnished); and
- (5) In general terms, the reason the offeror's proposal was not accepted, unless the price information in item (h)(4) of this subsection readily reveals the reason. In no event shall an offeror's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other offeror.

§ 100-60-215 Circumstances Permitting Other than Full and Open Competition

- (a) The following procurement methods permit contracting without using full and open competition.
 - (1) Small purchases (§ 100-60-220);
 - (2) Sole source procurement (§ 100-60-225);
 - (3) Emergency procurement (§ 100-60-230); and
 - (4) Expedited purchasing in special circumstances (§ 100-60-235).
- (b) Use of the methods in (a)(2), (a)(3), and (a)(4) above is subject to the following requirements.
 - (1) Requesting official with expenditure authority, before executing the contract, shall provide a written justification to the Procurement Officer in writing on the following:
 - (i) The need for contracting, the purpose of the contract, how the expected outcome would help the agency achieve its objectives, and that the services do not unnecessarily duplicate any previously performed work or services.
 - (ii) The non-availability of resources within and without the agency;
 - (iii) Vendor qualifications. The official with expenditure authority shall review any contractor evaluation on file with the Procurement Officer. For professional services contract, a completed resume for each contractor participant who will exercise a major role in the completion of the contract will be required; and
 - (iv) Reasonableness of price. No presumption of reasonableness shall be attached to the incurring of costs by a contractor. The following factors will be used in determining whether costs are justified: cost information in sufficient detail to support and justify the contract; cost information for similar services, with differences noted and explained; and special factors affecting the costs under the contract. For contract amendments, the agency shall examine price considerations in the same manner as one would examine them for a basic contract. If the independent NMHC estimate appears to be defective, other means of comparison, such as a history of contracts with similar requirements, or current market prices, shall be used.
 - (v) Documentation of the above should be contained in a form prescribed by the Procurement Officer.

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(2) If the expenditure authority's written determination was that the request for contract execution was not justified based on the analysis of items in subsection (b)(1) above, he shall promptly notify the NMHC officials of his disapproval in writing.

§ 100-60-220 Small Purchases

(a) Any procurement not exceeding the amounts established herein may be made in accordance with small purchase procedures. However, procurement requirements shall not be artificially divided so as to constitute a small purchase.

(b) Bidding is not required for procurement under \$3,000.00.

(c) Bidding is not required but is encouraged for procurement over \$3,000.00 and under \$50,000.00. The official with expenditure authority must obtain price quotations from at least three vendors and base the selection on competitive price and quality for procurement valued at \$3,000 to \$50,000. Any price quotations obtained must be written, documented, and submitted for the record.

(d) Purchase orders may be utilized for small purchases under subsections (b) and (c).

(e) Any lease or purchase of vehicles shall be procured pursuant to § 100-60-315. Any lease or purchase of machinery and equipment in excess of \$3,000 shall be procured pursuant to § 100-60-205 or other applicable provisions of the regulations in this subchapter.

§ 100-60-225 Sole Source Procurement

(a) A contract may be awarded for a supply, service, or construction without competition when:

(1) The unique capabilities required and why they are required and the consideration given to alternative sources.

(2) The Procurement Officer determines in writing that there is only one source for the required supply, service, or construction; or

(3) To obtain professional services for the purpose of facilitating the process of obtaining needed critical infrastructure funding in order to harden and enhance the capability of protecting critical infrastructure of the NMHC property assets or the Commonwealth; or

(4) Solely for the purpose of obtaining expert witnesses for litigation; or

(5) For legal services; or

(6) For policy consultants for NMHC.

(b) For any sole source procurement pursuant to subsection (a)(1), a written justification for sole source procurement shall be prepared by the official with expenditure authority and shall contain the specific unique capabilities required; the specific unique capabilities of the contractor; the efforts made to obtain competition; and the specific

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considerations given to alternative sources and specific reasons why alternative sources were not selected.

(c) For any sole source procurement pursuant to subsections (a)(2) or (a)(4), the official with expenditure authority shall provide a written copy of the applicable federal grant or act under which the services are authorized or required.

§ 100-60-230 Emergency Procurement

(a) Notwithstanding any other provision of the regulations in this subchapter, the Board of Directors may make emergency procurement when there exists a threat to its clients' health, safety or welfare under emergency conditions. An emergency procurement must be as competitive as practicable under the circumstances.

i. three-fourth ($\frac{3}{4}$) majority vote from the Board of Directors to utilize the emergency procurement

ii. The Board of Directors shall dictate the timeframe utilization of the emergency procurement (e.g. 30 days, 60 days, 90 days).

(b) Emergency declarations made by the Governor (e.g. Disaster Declaration, State of Emergency Declarations).

(c) A written justification of the basis for the emergency and for the selection of the particular contractor must be made by the official with expenditure authority.

§ 100-60-235 Expedited Purchasing in Special Circumstances

(a) When special circumstances require the expedited procurement of goods or services including professional services for the purpose of facilitating the process of obtaining needed critical infrastructure funding in order to harden and enhance the capability of protecting critical infrastructures of the NMHC, the official with expenditure authority may opt for expedited procurement without the solicitation of bids for proposals.

(b) The factor to be considered in approving or disapproving this request shall be:

(1) The comparative costs of procuring the goods or service from a sole source or through the competitive process;

(2) The availability of the goods or service in the Commonwealth and the timeliness in acquiring it; and

(3) Any other factors establishing the expedited procurement is in the best interest of the NMHC.

(c) Upon the expenditure authority's written determination that the factors in (b) above justify an expedited purchase, he shall process the necessary document(s) and assist the

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Procurement Officer in procuring the required goods or services in the most efficient manner.

(d) The expedited procurement shall be as competitive as possible under the circumstances.

(e) The total amount of goods or service that may be approved under this section shall not exceed \$100,000, except when such goods or services are procured for the purpose of facilitating the process of obtaining needed critical infrastructure funding in order to harden and enhance the capability of protecting critical infrastructures of the NMHC.

Subpart B - Cancellation of Invitation for Bids and Request for Proposals

§ 100-60-240 Cancellation

An invitation for bids or request for proposals may be canceled, and any and all bids or proposals may be rejected, when such action is determined in writing by the official with expenditure authority in consultation with the Procurement Officer to be in the best interest of the NMHC based on:

- (a) Inadequate or ambiguous specifications contained in the solicitation;
- (b) Specifications which have been revised;
- (c) Goods or services being procured which are no longer required;
- (d) Inadequate consideration given to all factors of cost to NMHC in the solicitation;
- (e) Bids or proposals received indicate that the needs of NMHC can be satisfied by a less expensive good or service;
- (f) All offers with acceptable bids or proposals received are at unreasonable prices;
- (g) Bids were collusive; or
- (h) Cancellation is determined to be in the best interest of NMHC.

Subpart C - Qualifications and Duties

§ 100-60-245 Responsibility of Bidders and Offerors

- (a) Awards shall be made only to responsible contractors. To be determined responsible, a prospective contractor must:
 - (1) Have adequate financial resources to perform the contract, or the ability to obtain them;
 - (2) Be able to comply with the required delivery or performance schedule;

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- (3) Have a satisfactory performance record;
- (4) Have a satisfactory record of integrity and business ethics;
- (5) Have the necessary organization, experience, and skills, (or the ability to obtain them) required to successfully perform the contract;
- (6) Have the necessary production, construction, and technical equipment facilities, or the ability to obtain them;
- (7) Provide evidence of validity to conduct business in the Commonwealth (valid business license(s), up-to-date BGRT payments, Certificate of Good Standing from NMI Department of Labor, Certificate of Insurance Compliance from NMI Department of Commerce, Payment and Performance Bond Insurance (as applicable), Employees listing with valid permits and identification to reside and work in the Commonwealth, etc.); and
- (8) Be otherwise qualified and eligible to receive an award under applicable laws and rules.

(b) **Obtaining information.** Prior to award, the Procurement Officer shall obtain information from the bidder or offeror necessary to make a determination of responsibility using the factors in subsection (a) above. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for determination of non-responsibility with respect to that bidder or offeror.

(c) **Right of non-disclosure.** Information furnished by a bidder or offeror pursuant to subsection (b) may not be disclosed outside of the office of the Procurement Officer, or any other NMHC official involved without prior consent by the bidder or offeror.

(d) **Non-responsibility determination.** When a bid or proposal on which a contract award would otherwise be made is rejected because the prospective contractor is found to be non-responsible, a written determination shall be signed by the Procurement Officer stating the basis for the determination and this shall be placed in the contract file.

§ 100-60-250 Pre-qualification of Contractors

Prospective suppliers of goods or services may be pre-qualified for particular types of construction, goods and services when determined necessary by the Procurement Officer. Opportunity for qualification before solicitation shall be afforded to all suppliers. Solicitation mailing lists of potential contractors shall include, but shall not be limited to, pre-qualified suppliers. In no event will bidders be allowed to qualify after the bid opening.

Subpart D - Types of Contracts

§ 100-60-255 Permissible Types of Contracts

NMHC contracts shall utilize a firm fixed price unless the use of a cost reimbursement contract is justified under § 100-60-260. NMHC contracts shall also use definite-quantity contracts unless a requirements contract is justified under § 100-60-265. Use of cost-plus-

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a-percentage-of-cost and percentage of construction cost methods of contracting are prohibited.

§ 100-60-260 Cost-reimbursement Contracts

(a) **Policy.** Cost-reimbursement contracts must contain a ceiling which the contractor shall not exceed without the recommendation of the official with expenditure authority and in consultation with the Procurement Officer.

(b) **Application.** A cost-reimbursement contract may be used when the Procurement Officer attaches to the contract a written determination that:

- (1) Uncertainties in the work to be performed make the cost of performance too difficult to estimate with the degree of accuracy required for a firm fixed price contract;
- (2) Use of a cost reimbursement contract is likely to be less costly to NMHC than any other type due to the nature of the work to be performed under the contract.

(c) **Limitations.**

(1) A cost-reimbursement contract may only be used when the Procurement Officer determines that the contractor's accounting system is adequate for determining costs applicable to the contract, and NMHC surveillance in the form of a construction management contract will be obtained to ensure the use of efficient methods and effective cost controls in the performance of the contract;

(2) The use of cost-reimbursement contracts is prohibited for the acquisition of commercially available items.

(d) **Cost-plus-fixed-fee contracts.**

(1) **Description.** A cost-plus-fixed-fee contract is a cost-reimbursement contract that provides for payment to the contractor of a negotiated fee that is fixed at the inception of the contract. The fixed fee does not vary with actual cost, but may be adjusted as a result of changes in the work to be performed under the contract, authorized pursuant to § 100-60-410(a).

(2) **Application.**

(i) A cost-plus-fixed-fee contract is suitable for use when the conditions of § 100-60-260(b) are present and the contract is for the performance of research or preliminary exploration or study, and the level of effort required is unknown.

(ii) A cost-plus-fixed-fee contract normally must not be used in development of major systems once preliminary exploration, studies, and risk reduction have indicated a high degree of probability that the development is achievable and NMHC has established reasonably firm performance objectives and schedules.

(3) **Limitations.** No cost-plus-fixed-fee contract shall be awarded unless the official with expenditure authority complies with all limitations in § 100-60-260(c).

§ 100-60-265 Requirements Contracts

(a) For the information of offerors and contractors, the official with expenditure authority shall state a realistic estimated total quantity in the solicitation and resulting

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contract. This estimate is not a representation to an offeror or contractor that the estimated quantity will be required or ordered, or that conditions affecting requirements will be stable or normal. The official with expenditure authority may obtain the estimate from records of previous requirements and consumption, or by other means, and shall base the estimate on the most current information available.

(b) The contract shall state, if feasible, the maximum limit of the contractor's obligation to deliver and the NMHC's obligation to order. The contract may also specify maximum or minimum quantities that NMHC may order under each individual order and the maximum that it may order during a specified period of time. The contract shall specify that failure of NMHC to order such estimated minimum or maximum quantities will not entitle the contractor to any equitable adjustment in unit price.

(c) Application. A requirements contract may be appropriate for acquiring supplies or services when NMHC anticipates recurring requirements but cannot predetermine the precise quantities of supplies or services that designated NMHC activities will need during a definite period.

Subpart E - Inspection and Audit

§ 100-60-270 Right to Inspect Place of Business

The NMHC, may at reasonable times, inspect the place of business of a contractor or any subcontractor, which is related to the performance of any contract awarded or to be awarded by the NMHC.

§ 100-60-275 Right to Audit Records

As required by § 404 of Public Law No. 3-91 (1 CMC § 7845), the contractor and subcontractor or grantee and subgrantee at all levels shall provide the Public Auditor of the Commonwealth with access to and the right to examine and copy any records, data, or papers relevant to an NMHC contract or grant for a period of three (3) years after the final payment under the contract or grant. A clause to this effect shall appear in all NMHC contracts and obligations.

Subpart F - Reports and Records

§ 100-60-280 Report of Anti-competitive or Deceptive Practices

(a) When for any reason any person suspects the following practices are occurring among bidders, offerors, contractors, or subcontractors, a notice of the relevant facts shall be transmitted by the Procurement Officer to the Attorney General without delay:

- (1) Unfair methods of competition;
- (2) Deceptive acts; or
- (3) Unfair business practices.

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- (b) These acts are more fully defined at 4 CMC § 5101 through § 5206.

§ 100-60-285 Retention of Procurement Records

- (a) All procurement records shall be retained by the Procurement Officer for a period of five (5) years after completion of construction, or full delivery of the goods or services under the contract.
- (b) The Procurement Officer shall maintain a record listing all contracts for a minimum of five (5) years. The records shall contain:
- (1) Each contractor's name;
 - (2) The amount and type of each contract; and
 - (3) A listing of the supplies, services, or construction procured under each contract; and
 - (4) A listing of contracts per agency and by fiscal year.
- (c) All procurement records, except those designated herein as not subject to disclosure, shall be available to public inspection.

Part 300 - Procurement of Construction and Architect-Engineer Services, Professional Services, Vehicles and Special Conditions for Computer Software and Hardware

§ 100-60-301 Construction Procurement

- (a) Invitation for Bids.
- (1) Deposit. The Procurement Officer shall determine the amount of deposit required for potential bidders to obtain the invitation for bids.
 - (2) Contents. The invitation for bids shall be prepared in accordance with § 100-60-205(b). In addition, the following items shall be included in the invitation for bids:
 - (i) Notice to Bidders. General information regarding the project;
 - (ii) Instructions to Bidders. Information on the preparation of bids, bid security requirements and forms and certifications that must be submitted with the bid;
 - (iii) General Conditions. Standard contract clauses governing the performance of work;
 - (iv) Special Conditions. Special contract clauses depending on the nature and dollar amount of the work to be performed; and
 - (v) Technical Specifications. Specifications governing the technical aspects of the work to be performed.
- (b) Bid Security.
- (1) Requirement. Bid security shall be required for all competitive sealed bidding construction contracts where the price is estimated by the Procurement Officer to exceed \$25,000.00 or when the Procurement Officer determines it is in the interest of the NMHC. Bid security shall be on a bid bond, in cash, by certified check, cashiers' check or other form acceptable to NMHC. A surety company shall hold the certificate of authority from

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the U.S. Secretary of the Treasury as an acceptable surety or other surety acceptable to the Attorney General.

(2) Amount. Bid security shall be an amount equal to at least fifteen percent (15%) of the amount of the bid or other amount as specified in the invitation for bids depending upon the source of funding.

(3) Rejection of Bid. Failure to furnish bid security, when required by the invitation, shall result in rejection of the bid as non-responsive.

(c) Contract Performance and Payment Bonds.

(1) When a construction contract is awarded in excess of \$25,000.00, the following bonds or security shall be delivered to the NMHC and shall become binding on the parties upon the execution of the contract:

(i) A performance bond satisfactory to the NMHC pursuant to subsection (c)(2) below, executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to the NMHC, in an amount equal to one hundred percent (100%) of the price specified in the contract; and

(ii) A payment bond satisfactory to the NMHC pursuant to subsection (c)(2) below, executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to the NMHC, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred percent (100%) of the price specified in the contract.

(2) Acceptability of payment and performance bonds. The Procurement Officer shall ensure that the bonding company's pledged assets are sufficient to cover the bond obligation. Prior to the execution of the contract, the Procurement Officer shall require the selected contractor to submit: –

(i) A current license from the bonding company showing that it has authority to issue bonds, and

(ii) A certification from the bonding company that the unencumbered value of its assets (exclusive of all outstanding commitments on other bond obligations) exceed the penal amount of each bond.

(3) A contractor submitting an unacceptable payment or performance bond may be permitted a reasonable time, as determined by the Procurement Officer, to substitute an acceptable bond prior to executing a contract. When evaluating payment and performance bonds, the Procurement Officer shall confirm the acceptability of the bonding company from other government agencies, such as the Insurance Office under the Department of Commerce.

(d) Right to Sue on Payment Bonds; Right to Institute. Every person who has furnished labor or material to the contractor or its subcontractors for the work provided in the contract, in respect of which a payment bond is furnished under this section, and who has not been, paid in full therefor before the expiration of a period of ninety days (90) after the day on which the last of the labor was done or performed by such person or material was furnished or supplied by such person for which such claim is made, shall have the right to sue on the payment bond for the amount, or the balance thereof, unpaid at the time of institution of such lawsuit and to prosecute said action for the sum or sums justly due such

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person; provided, however, that any person having a direct contractual relationship with a subcontractor of the contractor, but no contractual relationship express or implied with the contractor furnishing said payment bond, shall have a right of action upon the payment bond upon giving written notice to the contractor within ninety (90) days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material upon which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such notice shall be personally served or served by mailing the same by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts its business.

(e) **Lawsuit on Payment Bonds; Where and When Brought.** Every lawsuit instituted upon a payment bond shall be brought in a court of competent jurisdiction for the Commonwealth. The obligee named in the bond need not be joined as a party in any such lawsuit.

(f) **Fiscal Responsibility.** Every contract modification, change order, or contract price adjustment under a construction contract shall be subject to prior written certification by the Corporate Director or his designee as to the effect of the contract modification, change order or adjustment in contract price on the total project budget or the total contract budget. In the event that the certification discloses a resulting increase in the total project budget and/or the total contract budget, such contract modification, change order or adjustment in contract price shall not be made unless sufficient funds are available therefore, or the scope of the project or contract is adjusted so as to permit the degree of completion that is feasible within the total project budget and/or total contract budget as it existed prior to the price under consideration; provided, however, that with respect to the validity, as to the contractor, of any executed contract modification, change order or adjustment in contract price which the contractor has reasonably relied upon, it shall be presumed that there has been compliance with the provisions of this subsection.

§ 100-60-305 Architect-Engineer Services

(a) **Procurement Method.** Architect-engineer services shall be procured as provided in this section except when authorized as a small purchase, expedited, or emergency procurement.

(b) **Policy.** It is the policy to publicly announce all requirements for architect-engineer services and negotiate contracts on the basis of demonstrated competence and qualifications at a fair and reasonable price.

(c) **Selection.** The Procurement Officer and the Corporate Director or its designee shall jointly maintain files of current statements of qualifications of architect-engineer firms. After public announcement of requirement for architect-engineer services, current statements shall be reviewed together with those that may be submitted by other firms in response to the announcement. Discussions shall be conducted with at least three (3) of the

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firms regarding the contract requirements and technical approach and selection made therefrom, in order of preference, of no less than three (3) firms determined to be the most highly qualified to perform the services required. Fee proposals may be solicited upon public announcement; however, this information shall not be considered in the selection of the most highly qualified firms. Such fee proposals may be used by the Procurement Officer in determining a fair and reasonable contract price.

(d) **Negotiation.** The Procurement Officer shall negotiate a contract with the highest qualified architect-engineer firm at a price determined to be fair and reasonable to NMHC. In determining what constitutes a fair and reasonable price to NMHC, the Procurement Officer shall consider factors such as the prices proposed by other firms responding to the solicitation. If a fair and reasonable price cannot be negotiated with the highest-ranking qualified firm, then the Procurement Officer may select additional firms in order of competence and qualifications and continue negotiations until a fair and reasonable price is agreed upon.

§ 100-60-310 Competitive Selection Procedures for Professional Services

(a) **Procurement method.** The services of accountants, consultants, physicians, or lawyers shall be procured as provided in this section except when authorized as a small purchase, emergency procurement, expedited procurement or sole-source procurement.

(b) **Policy.** It is the policy to publicly announce all requirements for professional services and negotiate contracts on the basis of demonstrated competence and qualifications at a fair and reasonable price. The Procurement Officer shall maintain files of current statements of qualifications of professional firms. Persons engaged in providing professional services may submit statements of qualifications and expressions of interests providing such types of services. Persons may amend these statements at any time by filing a new statement.

(c) **Public announcement and form of request for proposals.** Adequate notice of the need for such services shall be given by the official with expenditure authority through a request for proposals. The request for proposals shall describe the services required, list the type of information and data required of each offeror, and state the relative importance of particular qualifications.

(d) **Discussions.** The Procurement Officer or the official with expenditure authority may conduct discussions with any offeror who has submitted a proposal to determine such offerors qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.

(e) **Award.** Award shall be made to the offeror determined in writing by the Procurement Officer to be the best qualified based on the evaluation factors set forth in the request for proposals, and negotiation of compensation determined to be fair and reasonable. If compensation cannot be agreed upon with the best qualified offeror then negotiations will be formally terminated with the selected offeror. If proposals were

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submitted by one or more other offerors determined to be qualified, negotiations may be conducted with such other offeror or offerors, in the order of their respective qualification ranking, and the contract may be awarded to the offeror then ranked as best qualified if the amount of compensation is determined to be fair and reasonable.

§ 100-60-315 Lease or Purchase of Vehicles

(a) **Policy.** Any lease or purchase of NMHC vehicles shall be governed by this section. It applies to both the initial acquisition of vehicles and the renewal or extension of vehicle leases. The lease or purchase of vehicles shall be procured using an invitation for bids, unless it qualifies for other procurement methods. The Procurement Officer shall establish standard vehicle specifications which shall be updated on a regular basis (not less frequently than every 2 years). All vehicles leased or purchased shall be procured in the name of the NMHC, and shall conform to CNMI and federal laws, including the CNMI Government Vehicle Act (1 CMC § 7406), and associated rules and regulations.

(b) **Whether to Lease or Purchase.** The NMHC shall consider whether to lease or purchase vehicles based on a case-by-case evaluation of comparative costs and other factors. The following factors are the minimum that shall be considered, and a record reflecting the application of these factors shall be provided in a form prescribed by the Procurement Officer and shall be included in the file:

- (1) Estimated length of the period in which the vehicle is to be used and the extent of use within that period.
- (2) Financial and operating advantages of alternative types and makes of vehicles.
- (3) Cumulative rental payments for the estimated period of use.
- (4) Net purchase price.
- (5) Maintenance and other service costs.
- (6) The following additional factors shall be considered, as appropriate,
 - (i) Availability of purchase options,
 - (ii) Potential for use of the vehicle by other agencies after its use by the acquiring agency is ended,
 - (iii) Trade-in or salvage value,
 - (iv) Imputed interest, and
 - (v) Availability of a servicing capability; e.g., whether the vehicles can be serviced by the NMHC or other sources if it is purchased.

(c) **Purchase method.** The purchase method is appropriate if the vehicles will be used beyond the point in time when cumulative leasing costs exceed the purchase costs.

(d) **Lease Method.** The lease method is appropriate if it is to the NMHC's advantage under the circumstances. The lease method may also serve as an interim measure when the circumstances require immediate use of vehicles to meet program or system goals; but do not currently support acquisition by purchase.

(e) **Lease with Option to Purchase.** If a lease is justified, a lease with option to purchase is preferable. Generally, a long-term lease shall be avoided, but may be appropriate if an

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option to purchase or other favorable terms are included. If a lease with option to purchase is used, the contract shall state the purchase price or provide a formula which shows how the purchase price will be established at the time of purchase. The option to purchase may only be exercised by NMHC. The expenditure authority shall notify the Procurement Officer thirty (30) days in advance if it does not intend to exercise the purchase option.

§ 100-60-320 Computer Software and Hardware

(a) Notwithstanding any other provision of these regulations, commercial computer software, including documentation, and hardware may be procured pursuant to this part.

(b) Commercial computer software, including commercial computer software documentation, may be acquired under a license customarily provided to the public to the extent such license is lawful and satisfies the NMHC's needs.

(c) In acquiring commercial software, the NMHC shall not generally require offerors and contractors to:

(1) Furnish technical information related to commercial computer software or commercial computer software documentation that is not customarily provided to the public;

(2) Transfer intellectual property rights or otherwise relinquish to, or otherwise provide, NMHC the rights to use, modify, reproduce, release, perform, display, or disclose commercial computer software or commercial computer software documentation, except as mutually agreed to by the parties. With regard to commercial computer software and commercial software documentation, the NMHC shall have only those rights specified in the license therefor.

(d) Competitive bidding, or competitive procurement shall not be required for commercial software upon a showing that:

(1) the software is advertised for sale to the public at prices which are readily determinable from public sources, including but not limited to, sources on the internet;

(2) proof of contemporaneous pricing which is actually available to CNMI purchasers is supplied in the contract package; and

(3) the other prices shown are within 10% of the pricing selected, or, the selected vendor will provide support for the software of a value which compensates for the difference in price.

(e) Competitive bidding, or competitive procurement shall not be required with respect to software for the following:

(1) software purchased is an updated version of software previously purchased;

(2) an extension of the license for previously-purchased software;

(3) an extension of maintenance services for previously-purchased software; or

(f) The purchase of computer hardware, software, and/or related services, which is/are purchased pursuant to a US General Services Administration (GSA) blanket contract which had been negotiated by the federal government, shall be presumptively concluded to be in

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compliance with the competitive procurement requirements of these Regulations. This presumption shall apply not only to commercially available products, but also to products which are designed, manufactured and/or assembled according to GSA specifications.

Part 400 - Contract Terms and Administration of Contracts

§ 100-60-401 Contract Clauses

(a) **Price.** In executing contracts, agencies shall set the maximum amount that can be charged under the contract and disallow open-ended contracts, i.e. contracts which do not specify the maximum contract price. Whatever contract type is selected, the NMHC shall limit contracts to a fixed price or a ceiling price, and the contractor shall not exceed the price set unless a change order is approved (See § 100-60-410, change order). Provided, however, in the case of contracts for legal or lobbying services obtained pursuant to a contingency fee agreement, the NMHC shall put a fixed price on any cost to be borne by the agency out of the general fund, including but not limited to any price to be charged by the contractor in lieu of a percentage of an award obtained as a result of the contractor's services.

(b) **Payment Terms.** Payments shall be made only upon submission of evidence of work performed and adherence to contract terms and specifications. Generally, a one-time payment shall be made after the official with expenditure authority has certified completion of work or delivery of goods or services. Other types of payments are as follows:

(1) **Advance Payments.** Advance payments shall be authorized only in certain circumstances as provided in (b)(1)(i), in (b)(1)(ii), or in (b)(1)(iii) below.

(i) The contractor fails to qualify as a responsible contractor due solely to the absence of financial capability, and it is justified under § 100-60-225 that the contractor is the only available source, subject to the following conditions:

(A) General requirements - the contractor pledges adequate security, and the official with expenditure authority determines, based on written findings, that the advance payment is in the public interest.

(B) The standards for advance payment determination are:

(I) The advance payments will not exceed the contractor's interim cash needs based on an analysis of the cash flow required for contract performance, consideration of the reimbursement or other payment cycle, and employment of the contractor's own working capital;

(II) The advance payments are necessary to supplement other funds or credit available for the contract;

(III) The recipient is otherwise qualified as a responsible contractor in all areas other than financial capability; and

(IV) Paying the contractor in advance will result in specific advantages to NMHC.

(C) Advance payments shall be limited to not more than 25 percent of the contract price or an amount equivalent to a 60-day working capital requirement, whichever is lower.

(ii) The official with expenditure authority demonstrates in writing that the common business practice of a particular industry requires buyers to pay on an advance payment basis. Such advance payment shall be limited to not more than 50 percent of the contract

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price. Pertinent documents supporting such business practice shall be attached to the written justification.

(iii) The official with expenditure authority demonstrates in writing that the advance payment is made pursuant to procurement of goods and services as provided in § 100-60-225(a)(2), (a)(3), or (a)(4), or § 100-60-235(b)(1).

(2) Progress Payments. Contracts may provide for progress payments to contractors for work performed or costs incurred in the performance of the contract. Not less than ten percent (10%) of the contract amount shall be withheld pending final completion of the contract and an evaluation of the contractor's performance. However, if the contract consists of the performance of separate and distinct tasks, then any funds so withheld with regard to a particular task may be paid upon completion of that task and an evaluation of the contractor's performance. No official with expenditure authority shall make progress payments on a contract unless it has first been established that the covered work or service has been delivered in accordance with the contract. Payments shall be allowed on stored materials only upon arrival of materials in the CNMI, not prior to shipment, and only after inspection by the official with expenditure authority.

(c) The contract shall accurately reflect the actual NMHC requirement, stating adequately what is to be done or to be delivered to NMHC. For instance, definite quantities shall be stated in the statement of deliverables, unless use of a requirements contract was justified under § 100-60-265. Contracts with general requirements shall be disallowed.

§ 100-60-405 Contract Administration

(a) The primary responsibility for ensuring compliance in contracting rests with the official with expenditure authority. The official with expenditure authority must comply with requirements for advertising the availability of contracts, soliciting bids from potential contractors, evaluating the bidding contractors, drafting the contracts to conform with applicable requirements, obtaining the appropriate approvals, approving payment for services, and evaluating the contractors upon completion of the contracts.

(b) The oversight responsibility for the NMHC's administration and enforcement of its contracts rests primarily with the Procurement Officer. He or she shall be responsible for developing standard contract administration procedures to be used by officials with expenditure authority, maintaining a central depository of contractor evaluations, and making the evaluations available to other agencies upon request.

(c) Contract Monitoring.

(1) Contract monitoring shall be accomplished through "production surveillance and reporting." Production surveillance is a function which the official with expenditure authority uses to determine contractor progress and to identify any factors that may delay performance. It shall involve NMHC review and analysis of:

(i) Contractor performance plans, schedules, controls, and industrial processes, and

(ii) The contractor's actual performance under them.

(2) When information on contract performance status is needed, officials with expenditure authority shall require contractors to submit production progress reports. The

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official with expenditure authority shall review and verify the accuracy of contractor reports and advise the Procurement Officer of any action he plans to take because of any potential or actual delay in performance, including withholding of payments.

(d) The Procurement Officer shall verify, whenever necessary and practicable, the results of monitoring by the official with expenditure authority. The Procurement Officer shall determine the extent of surveillance based on several factors such as the contractor's history of contract performance, the contractor's experience with the contract supplies or services, and the contractor's financial capability. For construction contracts (including architect-engineer services), contract monitoring is performed by the Procurement Officer or his/her designee pursuant to § 100-60-115(i).

(e) Evaluating Results.

(1) The officials with expenditure authority or designee shall complete, within 15 days of the end of the contract, a post-evaluation of each contractor which shall be kept on file for 36 months. The official with expenditure authority or designee shall report at least the following information to the Procurement Officer on a prescribed form:

(i) Whether the contracted work or service was completed as specified in the contract, and the reasons for and amount of any cost overruns or delayed completions.

(ii) Whether the contracted work or services met the quality standards specified in the contract.

(iii) Whether the contractor fulfilled all the requirements of the contract, and if not, in what ways the contractor did not fulfill the contract.

(iv) Factors outside the control of the contractor that caused difficulties in contractor performance.

(v) How the contract results and findings will be utilized to meet the goals of the official with expenditure authority.

(2) The post evaluation of each contractor shall be submitted before final payment and close-out of the contract is done.

(3) Final payment shall not be made unless the contractor has submitted a tax clearance verifying the filing of all required Commonwealth employment, excise, gross revenue, and income tax returns and payment of all amounts owing on such returns.

(4) The Procurement Officer shall establish and maintain a central depository of all contract administration documents, which should include, but not be limited to, progress performance and post-evaluation documents. These documents shall be made available to any expenditure authority or designee upon request to the Procurement Officer.

§ 100-60-410 Change Order

(a) Execution of a change order shall only be allowed if an increase, decrease, or change in the scope of work is substantively merited and required, which was not reasonably foreseeable at the time of the formation of the contract. However, no change order resulting in an increase in contract cost or time shall be allowed when it is a direct result of the contractor's inexperience, inefficiency, or incompetence.

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(b) Before adding significant new work to existing contracts, the NMHC shall thoroughly assess whether or not it would be more prudent to seek competition. Change orders on construction and A&E contracts, which exceed twenty-five percent (25%) of the cumulative contract price shall automatically be procured through competitive procedures pursuant to § 100-60-201, except when the procurement of the additional work is authorized without using full and open competition under § 100-60-215.

(c) Contractors shall not be allowed to continue working beyond the expiration term of an original contract in the absence of an approved new contract or change order. Change orders shall be processed using the procedures for processing new contracts in § 100-60-115.

(d) **Extension of Services.** Award of contracts for recurring and continuing service requirements are often delayed due to circumstances beyond the control of contracting offices. In order to avoid negotiation of short extensions to existing contracts, the Procurement Officer may include an option clause in solicitations and contracts which will enable NMHC to require continued performance of any services within the limits and at the rates specified in the contract. The option provision may be exercised more than once, but the total extension of performance thereunder shall not exceed 6 months.

Part 500 - Protests and Disputes

Subpart A - Bid Protests and Appeals

§ 100-60-501 Protests to the Corporate Director

(a) General

(1) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Procurement Officer. The protest shall be received by the Corporate Director in writing within ten (10) days after such aggrieved person knows or should have known of the facts giving rise thereto. The Corporate Director shall consider all protests or objections to the award of a contract, whether submitted before or after award. If a protest is made orally and the matter cannot be resolved, written confirmation of the protest must be submitted to the Corporate Director within the ten-day period which shall state fully the factual and legal grounds for the protest;

(2) The Corporate Director shall give notice of the protest to all persons who submitted bids or proposals and appear to have a substantial and reasonable prospect of receiving an award if the protest is denied. Notice may be satisfied by fax or through email as indicated in the contact information provided to NMHC. These persons shall also be advised that they may submit their views and relevant information to the Corporate Director within one week of the date of the notice sent by NMHC. NMHC may extend the deadline based on exceptional circumstances and will do so only sparingly;

(3) The Corporate Director shall decide the protest within ten (10) calendar days after all interested parties have submitted their views unless he certifies that the complexity of

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the matter requires a longer time, in which event he shall specify the appropriate longer time;

(4) When a protest, before or after award, has been appealed to the Public Auditor, as provided in these procedures, and the Corporate Director shall submit a report to the Public Auditor, including his decision of the protest and a copy of:

- (i) The protest;
- (ii) The bid submitted by the protesting bidder and a copy of the bid of the bidder who is being considered for award, or whose bid is being protested;
- (iii) The solicitation, including the specifications on portions relevant to the protest;
- (iv) The abstract of offers or relevant portions;
- (v) Any other documents that are relevant to the protest; and
- (vi) The Corporate Director's signed statement setting forth findings, actions, and recommendations and any additional evidence or information deemed necessary in determining the validity of the protest. The statement shall be fully responsive to the allegation of the protest. If the award was made after receipt of the protest, the Corporate Director's report will include the determination prescribed in subsection (b)(4) below.

(5) Since timely action on protests is essential, they should be handled on a priority basis. Upon receipt of notice that an appeal from the Corporate Director's decision has been taken to the Public Auditor, the Corporate Director shall immediately begin compiling the information necessary for a report as provided in subsection (a)(4) above. To further expedite processing, the Corporate Director, upon request of the appellant or the Public Auditor, shall simultaneously furnish a complete copy (except for information privileged by law or which the Corporate Director deems must be confidential in order to benefit from competitive bidding) to the Public Auditor and the appellant. In such appeals, the appellant shall furnish a copy of any comments on the NMHC's administrative report directly to the Public Auditor, as well as to the Corporate Director.

(b) Protest Before Award

(1)(i) The Corporate Director shall require that written confirmation of an oral protest be submitted by the time specified in subsection (a)(1) and may inform the protester that the award will be withheld until the specified time. If the written protest is not received by the time specified, the oral protest may be disregarded.

(ii) An award may be made in the normal manner unless the Corporate Director finds it necessary in his discretion to take remedial action.

(2) When a proper written protest against the making of an award is received, the award will be withheld pending disposition of the protest. The bidders whose bids might become eligible for award shall be informed of the protest. In addition, those bidders shall be requested, before expiration of the time for acceptance of their bids, to extend the time for acceptance to avoid the need for re-advertisement. In the event of failure to obtain such extensions of bids, consideration shall be given to proceed with an award under subsection (b)(3) below.

(3) When the Corporate Director receives a protest, a contract may not be awarded pending the resolution of the protest and appeal to the Public Auditor, if any, (including the time period for filing an appeal), unless it is determined in writing that urgent and compelling circumstances which significantly affect the interest of NMHC will not permit awaiting the decision of the Corporate Director or the Public Auditor.

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(4) The Corporate Director is authorized to make the determination in subsection (b)(3) above after receiving the recommendation of the expenditure authority. The determination of the urgent and compelling situation shall be submitted to the Attorney General for review, and absent objection from the Attorney General within five (5) working days of such submittal, the Procurement Officer's determination becomes final. A contract award shall not be authorized until the Procurement Officer has notified the Public Auditor of his determination in subsection (b)(3) above. The Corporate Director also shall give written notice to the protester and other bidders or proposers who have received notice of the protest in accordance with subsection (a)(2) of the decision to proceed with the award.

(c) **Protests After Award**

Although persons involved in or affected by the filing of a protest after award may be limited, in addition to the Procurement Officer, at least the contractor shall be furnished the notice of protest and its basis in accordance with subsection (a)(2) above. When it appears likely that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to the NMHC's interest, the Procurement Officer should consider seeking a mutual agreement with the contractor to suspend performance on a no-cost basis.

(d) **Computation of Time**

(1) Except as otherwise specified, all "days" referred to in this part are deemed to be working days of the NMHC. The term "file" or "submit" except as otherwise provided refers to the date of transmission.

(2) In computing any period of time prescribed or allowed by these procedures, the day of the act or event from which the designated period of time begins to run shall not be included.

§ 100-60-505 Appeals of Corporate Director's Decisions to the Public Auditor

(a) **Jurisdiction; Exhaustion of Remedies.** A written appeal to the Public Auditor from a decision by the Procurement Officer may be taken provided that the party taking the appeal has first submitted a written protest to the Corporate Director as provided in section § 100-60-501 of these procedures, and the Corporate Director has denied the protest or has failed to act on the protest within the time provided for in § 100-60-501(a)(3) above.

(b) **Form of Appeal.** No particular form of pleading is required for filing an appeal to the Public Auditor. The appeal shall, however:

- (1) Include the name and address, email, fax number of the appellant;
- (2) Identify the number of the solicitation or contract;
- (3) Contain a concise, logically arranged, and direct statement of the grounds for appeal; and
- (4) Specifically request a ruling by the Public Auditor.

(c) **Time for Filing Appeal.** An appeal from the Procurement Officer's decision must be received by the office of the Public Auditor not later than five (5) days after the appellant receives the decision of the Corporate Director, or, in the event that the Corporate Director

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has not decided the protest within ten (10) days from the date that he should have decided the protest pursuant to § 100-60-501(a)(3) above. Any appeal received after these time limits shall not be considered by the Public Auditor unless good cause is shown or unless the Public Auditor determines that the appeal presents issues significant to procurement practices that are not outweighed by the detriment to the NMHC should the appeal be considered.

(d) Notice of Appeal, Submission of Corporate Director's Report and Time for Filing of Comments on Report

(1) The Public Auditor shall notify the Corporate Director by telephone, through email and in writing within one (1) day of the receipt of an appeal, requesting the Corporate Director to give notice of the appeal to the contractor if award has been made or, if no award has been made, to all bidders or proposers who appear to have a substantial and reasonable prospect of receiving an award if the appeal is denied. The Corporate Director shall include in its notice of the appeal a statement that copies of the protest and appeal documents (except for information privileged by law or which the Corporate Director deems must be confidential in order to benefit from competitive bidding) are available for inspection at the NMHC office with further instructions to communicate directly with the Public Auditor. Copies will be made available upon request for a reasonable fee assessed by NMHC.

(2) Material submitted by an appellant will not be withheld from any Commonwealth or federal agency which may be involved in the appeal except to the extent that the withholding of information is permitted or required by law or regulation. If the appellant considers that the protest contains material which should be withheld, a statement advising of this fact must be affixed to the front page of the appeal document and the allegedly proprietary information must be so identified wherever it appears.

(3) The Public Auditor shall request the Corporate Director to submit a complete report on the appeal to the Public Auditor as expeditiously as possible (generally within ten (10) working days) in accordance with § 100-60-501(a)(4) of these procedures and to make available a copy of the report as provided in in § 100-60-501(a)(5) of these procedures.

(4) Any comments on the agency report shall be filed with the Public Auditor within ten (10) days after the Public Auditor's receipt of the report, with a copy to NMHC and to the other bidders or proposers who appear to have a substantial and reasonable prospect of receiving an award if the appeal is denied. Any rebuttal to such comments by an appellant, other bidders or proposers shall be filed with the Public Auditor within five (5) days after receipt of the comments by the Public Auditor. NMHC may file rebuttals to comments to the report which shall be considered if filed within five (5) days after receipt by the Public Auditor.

(5) The failure of an appellant or any other bidder or proposer to comply with the time limits stated in this section may result in resolution of the appeal without consideration of the comments untimely filed.

(e) Withholding of Award. When an appeal has been filed before award, the Procurement Officer, will not make an award prior to resolution of the protest except as provided in this section. In the event the Corporate Director determines that award is to be

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made during the pendency of an appeal, the Corporate Director will notify the Public Auditor.

(f) **Furnishing of Information on Protests.** The Public Auditor shall, upon request, make available to any interested party information bearing on the substance of the appeal, which has been submitted by interested parties or agencies except to the extent that withholding of information is permitted or required by law or regulation. Any comments thereon shall be submitted within a maximum of ten (10) days as determined by the Public Auditor.

(g) **Time for Submission of Additional Information.** Any additional information requested by the Public Auditor from the appellant or interested parties shall be submitted no later than five (5) days after the receipt of such request.

(h) **Conference.**

(1) A conference on the merits of the appeal with the Public Auditor may be held at the request of the appellant, any other interested party, or the Corporate Director. Request for a conference should be made prior to the expiration of the time period allowed for filing comments on the agency report. Except in unusual circumstances, requests for a conference received after such time will not be honored. The Public Auditor will determine whether a conference is necessary for resolution of the appeal.

(2) Conferences normally will be held prior to expiration of the period allowed for filing comments on the agency report. All interested parties shall be invited to attend the conference. Ordinarily, only one conference will be held on an appeal.

(3) Any written comments to be submitted and as deemed appropriately by the Public Auditor as a result of the conference must be received in the Office of the Public Auditor within five (5) days of the date on which the conference was held.

(4) **Time for Decision - Notice of Decision:** The Public Auditor shall, if possible, issue a decision on the appeal within twenty-five (25) days after all information necessary for the resolution of the appeal has been received. A copy of the decision shall be immediately transmitted to the appellant, other participating parties, and the Procurement Officer by fax, email or regular mail.

(i) **Request for Reconsideration.**

(1) Reconsideration of a decision of the Public Auditor may be requested by the appellant, any other bidder or proposer who submitted comments during consideration of the appeal and appears to have a substantial and reasonable prospect of receiving an award if the appeal is denied, and NMHC. The request for reconsideration shall contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not previously considered.

(2) Request for reconsideration of a decision of the Public Auditor shall be filed not later than ten (10) days after the date of the Public Auditor's decision. The term "filed" as used in this section means receipt in the Office of the Public Auditor.

(3) A request for reconsideration shall be subject to these bid protest procedures consistent with the need for prompt resolution of the matter.

§ 100-60-510 Remedies

(a) Remedies Prior to Award. If prior to award the Corporate Director or the Public Auditor determines that a solicitation or proposed award of a contract is in violation of law or regulation, then the Corporate Director or the Public Auditor shall have the solicitation or proposed award:

- (1) Canceled; or
- (2) Revised to comply with law or regulation.

(b) Remedies After an Award. If after an award the Corporate Director or the Public Auditor determines that a solicitation or award of a contract is in violation of law or regulation, then the Corporate Director or the Public Auditor may:

- (1) If the person awarded the contract has not acted fraudulently or in bad faith:
 - (i) Ratify or affirm the contract provided it is determined that doing so is in the best interest of the Commonwealth; or
 - (ii) Terminate the contract and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit, prior to termination;
- (2) If the person awarded the contract has acted fraudulently or in bad faith:
 - (i) Declare the contract null and void; or
 - (ii) Ratify or affirm the contract if such action is in the best interests of the Commonwealth, without prejudice to the Commonwealth's rights to such damages as may be appropriate.

§ 100-60-515 Effective Date

All protests as to the manner of bidding, the failure to properly award a bid, the failure of NMHC to contract with a business after bidding, or the cancellation of bids which may or may not be subject of lawsuit but have not reached final judgment as of the effective date of the regulations in this subchapter shall be heard in accordance with this subpart upon the request of the actual or prospective bidder, proposer, offeror, or contractor who is aggrieved.

Subpart B - Disputes

§ 100-60-520 Disputes

(a) Any dispute between the NMHC and a contractor relating to the performance, interpretation of or compensation due under a contract, which is the subject of the regulations in this subchapter, must be filed in writing with the Corporate Director and the official with the expenditure authority within ten calendar days after knowledge of the facts surrounding the dispute.

(b)(1) The official with contracting authority or designee will attempt to resolve the dispute by mutual agreement. If the dispute cannot be settled either party may request a decision on the dispute from the Corporate Director. The Corporate Director shall review

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the facts pertinent to the dispute, secure necessary legal assistance and prepare a decision that shall include:

- (i) Description of the dispute;
 - (ii) Reference to pertinent contract terms;
 - (iii) Statement of the factual areas of disagreement or agreement; and
 - (iv) Statement of the decision as to the factual areas of disagreement and conclusion of the dispute with any supporting rationale.
- (2) The Corporate Director may require a hearing or that information be submitted on the record, in his discretion.

(c) **Duty to Continue Performance.** A contractor that has a dispute pending before the official with expenditure authority or the Corporate Director must continue to perform according to the terms of the contract and failure to do so continue shall be deemed to be a material breach of the contract unless he obtains a waiver of this provision by the official with the expenditure authority.

Part 600 - Additional Requirements

§ 100-60-601: Agency Internal Policies

- (a) NMHC shall promulgate internal policies and procedures determining procurement methods for \$0.01 to \$3,000.00 and \$3,001.00 to \$50,000.00.
- (b) NMHC shall promulgate internal policies and procedures to ensure efficient and prompt delivery of goods and services for the agency.

§ 100-60-602: Compliance with Federal Regulations

- (a) NMHC shall ensure full compliance with 2 CFR 200 in all procurement matters.
- (b) NMHC shall comply with all applicable laws and regulations governing the use of funds provided by the U.S. Department of Housing and Urban Development (HUD).

Part 700 - Ethics in Public Contracting

Subpart A - Definitions

§ 100-60-701 Definitions of Terms

- (a) "Confidential information" means any information, which is available to an employee only because of the employee's status as an employee of NMHC, and is not a matter of public knowledge.
- (b) "Conspicuously" means written in such special or distinctive form, print, or manner that a reasonable person against whom it is to operate ought to have noticed it.

(c) "Direct or indirect participation" means involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or 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 or in the future entitled to receive compensation; or

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

(e) "Gratuity" means a payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

(f) "Immediate family" means spouse, children, parents, brothers, and sisters.

Subpart B - Standards of Conduct

§ 100-60-705 Policy

Public employment is a public trust. In governmental contracting, employees of NMHC shall discharge their duties impartially so as to:

(a) Ensure fair and competitive access to governmental procurement by responsible contractors in a transparent and accountable manner; and

(b) Conduct themselves in a manner as to foster public confidence in the integrity of the government procurement process.

§ 100-60-710 General Standards

(a) Employees. Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of the a public trust. In order to fulfill this ethical standard, employees must adhere with the requirements of the regulations in this subchapter.

(b) Contractors. Any effort to influence any public employee to breach the standards of ethical conduct set forth in this subchapter is also a breach of ethical standards. Thus, subject to any number of standard adverse actions to preserve the public trust.

§ 100-60-715 Employee Disclosure Requirements

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- (a) Disclosure of benefit received from contract. Any employee who has, or obtains any benefit from, any NMHC contract with a business in which the employee has a financial interest shall report such benefit to the Procurement Officer.
- (b) Failure to disclose benefit received. Any employee who knows or should have known of such benefit and fails to report such benefit is in breach of these ethical standards.

§ 100-60-720 Employee Conflict of Interest

- (a) Conflict of interest. It is a breach of ethical standards for any employee to participate directly or indirectly in a procurement when the employee knows 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 negotiating or has an arrangement concerning prospective employment is involved in the procurement.
- (b) Discovery of actual or potential conflict of interest, disqualification and waiver. Upon discovery of an actual or potential conflict of interest, an employee shall promptly file with the Procurement Officer a written statement of disqualification and shall withdraw from further participation in the transaction involved. The employee may, at the same time, apply to the Public Auditor for an advisory opinion as to what further participation, if any, the employee may have in the transaction.

§ 100-60-725 Gratuities and Kickbacks

- (a) Gratuities. It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract or to any solicitation or proposal therefor.
- (b) Kickbacks. It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontractor or order.

§ 100-60-730 Prohibition Against Contingent Fees

- (a) Contingent fees. It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure NMHC contracts upon an agreement or

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understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

(b) Representation of contractor. Every person, before being awarded a NMHC contract, shall represent, in writing that such person has not retained anyone in violation of this section. Failure to do so constitutes a breach of ethical standards.

§ 100-60-735 Contract Clauses

The prohibitions against gratuities, kickbacks and against contingent fees shall be conspicuously set forth in every contract and solicitation therefor.

§ 100-60-740 Restrictions on Employment of Present and Former Employees

(a) Present employees. It shall be a breach of ethical standards for any employee who is participating directly or indirectly in the procurement process to become or be, while such an employee, the employee of any person contracting with the governmental body by whom the employee is employed.

(b) Restrictions on former employees in matters connected with their former duties. Permanent disqualification of former employee personally involved in a particular matter. It shall be a breach of ethical standards for any former employee knowingly to act as a principal, or as an agent for anyone other than NMHC, in connection with any:

- (1) Judicial or other proceeding, application, request for a ruling or other determination;
- (2) Contract;
- (3) Claim; or
- (4) Charge or controversy, in which the employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while an employee, where NMHC is a party or has a direct or substantial interest.

(c) Disqualification of business when an employee has a financial interest. It shall be a breach of ethical standards for a business in which an employee has a financial interest knowingly to act as a principal, or as an agent for anyone other than NMHC, in connection with any:

- (1) Judicial or other proceeding, application, request for a ruling or other determination;
- (2) Contract;
- (3) Claim; or
- (4) Charge or controversy, in which the employee either participates personally and substantially through decision, approval, disapproval recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of the employee's official responsibility, where NMHC is a party or has a direct and substantial interest.

§ 100-60-745 Use of Confidential Information

It shall be a breach of ethical standards for any employee or former employee to knowingly use confidential information for actual or anticipated personal gain, or the actual or anticipated personal gain of any other person.

§ 100-60-750 Collusion by Bidders

Collusion or secret agreements between bidders for the purpose of securing an advantage to the bidders against the authorizing agent in the awarding of contracts is prohibited. The official with the expenditure authority may declare the contract void if he finds sufficient evidence after a contract has been let that contract was obtained by a bidder or bidders by reason of collusive or secret agreement among the bidders to the disadvantage of the government.

§ 100-60-755 Civil and Administrative Remedies

In addition to existing remedies provided by law, any person who violates any of the provisions of the regulations in this subchapter may be subject to one or more of the following:

- (a) NMHC employees.
 - (1) NMHC employee is any person whether appointed, excepted service or civil service, and includes the members of the Board of Directors. An employee who violates the provisions of the rules and regulations in this subchapter is subject to adverse action as may be appropriate in his or her particular circumstances.
 - (2) This action includes but is not limited to reprimand, suspension without pay, termination of employment, civil injunction, civil suit for damages or return of NMHC money, or criminal prosecution.
- (b) Contractors. A contractor who violates a provision of the rules and regulations in this subchapter shall be subject to a written warning of reprimand, the termination of the contract, or suspension from being a contractor or subcontractor under a NMHC contract in addition to other penalties prescribed by law.
- (c) All proceedings under this section must be in accordance with due process requirements.

§ 100-60-760 Authority to Debar or Suspend

(a) Authority. After reasonable notice to the person involved and reasonable opportunity for the person to be heard under the Administrative Procedure Act [1 CMC §§ 9101, et seq.], the Procurement Officer after consultation with the official with expenditure authority and the Attorney General, shall have authority to debar a person for cause from

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consideration for award of contracts. The debarment shall not be for a period of more than three (3) years. The same officer, after consultation with the official with expenditure authority and the Attorney General, shall have authority to suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding three (3) months.

(b) Causes for debarment or suspension. The causes for debarment or suspension include the following:

(1) Conviction for commission of a criminal offense is an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

(2) Conviction under Commonwealth or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, violation of the Consumer Protection Act (4 CMC §§ 5101, et seq.), violation of any unfair business practices as prescribed by 4 CMC § 5202, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects its responsibility as a government contractor;

(3) Conviction under Commonwealth or federal antitrust statutes arising out of the submission of bids or proposals such as in chapter 2 of division 5 of title 4 of the Commonwealth Code;

(4) Violation of contract provisions, as set forth below, of a character which is regarded by the Procurement Officer to be so serious as to justify debarment action:

(i) Deliberate failure without good cause to perform in accordance with the specifications within the time limits provided in the contract; or

(ii) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered a basis for debarment;

(5) Any other cause that the Procurement Officer determines to be so serious and compelling as to affect responsibility as a government contractor, including debarment by another governmental entity; or

(6) For violation of any of the ethical standards set forth in part 700.

(c) Decision. The Procurement Officer shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken.

(d) Notice of decision. A copy of the decision shall be mailed or otherwise furnished immediately to the debarred or suspended person. A copy of the decision shall also be provided to other Commonwealth procurement offices.