

AUDIT COMMITTEE AGENDA REPORT

Motion: Approve the Proposed Rescission of Port of Oakland ("Port") Administrative Policy and Procedures ("AP") 16 (Internal Review Protocol) and the Proposed Amendments to AP18 (Whistleblower Protection Policy), AP19 (Whistleblower Hotline Policy), and Article XI (Chief Audit Officer) of the By-Laws and Administrative Rules of the Board of Port Commissioners ("By-Laws") with a Recommendation that the Board Approve and Authorize the Rescission and the Proposed Amendments.

MEETING DATE: 4/15/2021

AMOUNT: \$0

SUBMITTED BY: Arnel Atienza, Acting Chief Audit Officer

APPROVED BY: Arnel Atienza, Acting Chief Audit Officer

ACTION TYPE: Motion

EXECUTIVE SUMMARY:

The requested action would require the Audit Committee, by motion, to approve the proposed rescission of AP16 (Internal Review Protocol) and the proposed amendments to AP18 (Whistleblower Protection Policy), AP19 (Whistleblower Hotline Policy), and Article XI (Chief Audit Officer) of the By-Laws.

Port staff initially presented proposed revisions to the above-referenced documents to the Audit Committee during its October 15, 2020 meeting to clarify and codify the Port's existing audit practices. After receiving input from the Audit Committee in open session, the Office of Audit Services ("OAS"), in coordination with the Port Attorney's Office, made additional proposed changes to AP18 and AP19 to: (a) address conflict of interest issues that may arise in the conduct of in-house investigations of whistleblower complaints; (b) clarify the proper Port appointing authorities responsible for initiating any appropriate personnel actions resulting from the whistleblower complaint investigation; and, (c) revise the current language to deter vexatious whistleblowers and to hold them accountable for their actions.

The proposed changes were then presented to the Board during its November 5, 2020 meeting for final adoption and approval, but the Board took no action. Instead, the Board instructed staff to go back to the Audit Committee to further discuss and address two issues that were raised during the Board meeting: first, whether the Whistleblower Hotline should be limited to Port employees only; and, second, whether the proposed revisions regarding vexatious complaints could be further strengthened to deter vexatious whistleblowers and hold them accountable for their actions. Port staff has since completed further analysis and research and have made additional revisions to address

those two issues. Other than the original proposed changes and the two additional changes discussed above, no further proposed revisions have been made by Port staff.

The initial proposed changes are redlined against the current versions of these documents and are attached as Exhibits A (AP16), B (AP18), C (AP19), and D (By-Laws) to this Agenda Report. The proposed changes made after the November 5, 2020 Board meeting and in response to issues raised by Board members at the meeting are both redlined and highlighted in yellow.

Finally, the requested action includes a recommendation from the Audit Committee to the Board that the Board approve and authorize the rescission and the proposed amendments at the Board's next regularly scheduled meeting on May 13, 2021.

BACKGROUND

Policies and procedures are living documents that should adapt as business and operational needs change over time. It is therefore a best practice to review these policies and procedures regularly to ensure that they are kept up to date and reflect current industry standards, legal requirements, and organizational needs. To this end, the OAS reviewed the following documents that guide its operations:

- AP16 - Internal Review Protocol;
- AP18 - Whistleblower Protection Policy;
- AP19 - Whistleblower Hotline Policy; and,
- Article XI of the Board's By-Laws.

After review and consultation with the Port Attorney's Office, the OAS has made several proposed amendments to each of the referenced documents that reflect current industry standards, legal requirements, and organizational needs that will benefit OAS operations.

DISCUSSION AND ANALYSIS

AP16 - Internal Review Protocol (Exhibit A)

AP16 was adopted by the Board under Port Resolution No. 03068 in March 2003. This document sets forth the policies and guidelines for a newly established function at the time of adoption called "internal reviews." This function required the performance of internal reviews of Port divisions and departments to assess overall regulatory compliance, operational efficiency, and performance of personnel, and it provided for the implementation of corrective measures as warranted. Over time, this internal review function has now evolved into a fully functioning "Internal Audit Section" of the OAS.

AP16 has not been revised since its inception in 2003. Because the protocol for an "internal review" in this policy significantly differs from the current "internal audit" process

that is conducted independently under the guidance of professional auditing standards, this policy is almost completely outdated. In fact, it has been removed from the Port's Administrative Policy Catalog for several years as part of the overall Portwide clean-up of APs in the mid-2010s. However, it was resurrected in 2019 because of the absence of an official Board resolution rescinding the policy.

The OAS recommends that the Committee approve the proposed rescission of AP16 in its entirety and recommend that the Board approve and authorize such rescission.

AP18 - Whistleblower Protection Policy (Exhibit B) and AP19 - Whistleblower Hotline Policy (Exhibit C)

The Board adopted AP18 and AP19 under Port Resolution No. 10-119 in September 2010 concurrent with the launch of the Port's Whistleblower Hotline Program. In short,

- AP18 affirms the Port's policy to protect employees, who act as whistleblowers, from retaliation and sets forth guidelines for submitting and investigating whistleblower retaliation complaints, including repercussions for Port officers and employees who are found to have violated this policy; and,
- AP19 establishes the Whistleblower Hotline to provide a confidential and timely process for reporting fraud, waste, abuse, or any violations of work-related laws or regulations. This policy sets forth the guidelines for submitting whistleblower complaints, investigating the complaints, and reporting the results of the investigations.

Although both AP18 and AP19 have been reviewed periodically, no formal update has been conducted since their adoption in 2010. As part of this current update process, the OAS:

- checked for any changes to governing laws and regulations;
- benchmarked the Port's current practices with other jurisdictions;
- reviewed industry benchmarking from our third-party Whistleblower Hotline in-take provider;
- reviewed other relevant Port administrative policies; and,
- checked for the consistency of policy level-type changes.

Because these procedures did not require any substantive revisions, the proposed stylistic changes, as initially presented to the Audit Committee on October 15, 2020, primarily included clean-up language to clarify and codify existing OAS practices pertaining to Whistleblower Complaints. Those changes are redlined in the attached APs.

However, after receiving input from the Audit Committee in open session during its October 15, 2020, meeting, Port staff also proposed the following substantive changes to AP18 and AP19:

- a) adding language to AP18, Section II(B) that requires the Chief Audit Officer (“CAO”) to refer a written finding that an employee filed a complaint that was “knowingly false or made in reckless disregard of the truth” to the employee’s appointing authority (as defined in the By-Laws) for appropriate disciplinary action;
- b) adding language to AP18, Section III(E) that requires the CAO to forward sustained findings of policy violations to the employee’s appointing authority (as defined in the By-Laws) for appropriate disciplinary action (with a copy to the Port Attorney and Human Resources Director for coordination); and,
- c) adding language to AP19, Section III(B)(2) to address a conflict of interest or the appearance of conflict of interest during the whistleblower complaint investigation process.

Finally, after receiving input from the Board in open session during its November 5, 2020 meeting, and in response to such input, Port staff further proposes the following substantive changes to AP18 and AP19:

- d) revising the previously proposed definition of “whistleblower” in AP18 Section II(A) to limit the definition of “whistleblower” to “Port officers and employees” only;
- e) revising the previously proposed change to AP19 Section II(C) to limit the use of the Whistleblower Hotline to Port employees only; and,
- f) adding language to AP19, Section III(B)(3) to address vexatious Whistleblower Reports and vexatious Whistleblowers and to provide for sanctions for both.

The initial proposed changes as well as the proposed changes that respond to the concerns raised by the Audit Committee are redlined in the draft versions of AP18 and AP19 and are attached as Exhibits B and C, respectively. The proposed changes that respond to the issues raised by the Board at its November 5, 2020 meeting are both redlined and highlighted in yellow in the referenced exhibits.

The changes are as follows:

Policy:		Proposed changes:
AP18	Section I	Stylistic change to define the Port.
	Section II	<ul style="list-style-type: none"> a) Stylistic change to define whistleblower complaint. b) Change to further clarify that a whistleblower is limited to Port officers or employees. c) Change to define “Port officer or employee” as “employee” d) Changes to address a whistleblower who files a complaint knowingly false, made in reckless disregard of the truth, or that lacks any arguable basis to support its claims and to refer the whistleblower to their appointing authority for disciplinary action.
	Section III	Changes to further clarify that:

Policy:		Proposed changes:
		<ul style="list-style-type: none"> a) Certain provisions apply only to Port officers and employees (“employees”). b) The Office of Equal Opportunity’s role in investigating whistleblower retaliation complaints. c) The Port Attorney’s receipt of a copy of the CAO’s investigation report. d) The appropriate Port appointing authority who will be responsible for initiating any appropriate personnel action resulting from whistleblower complaint investigations. e) The Port Attorney’s receipt of a copy of the quarterly Whistleblower Hotline status report.
AP19	Section I	Change to specifically include the words “fraud, waste, and abuse” in the reportable items to the Whistleblower Hotline.
	Section II	A few edits to clarify that the Whistleblower Hotline is limited to Port employees only and to make language consistent.
	Section III	<ul style="list-style-type: none"> a) A few edits for consistency and clarity. b) Edits to delete unnecessary procedural steps that do not need to be included at the policy level. c) Language revision to clarify the recipients of a new hotline report, and that the third-party hotline provider sends a notification and not a copy of a new report of the complaint. d) Change to address potential conflict of interest issues that arise during whistleblower complaint investigations. e) Change to include protocols to address frivolous Whistleblower Complaints and vexatious Whistleblowers and to hold vexatious whistleblowers accountable for their actions.

Regarding frivolous Whistleblower Reports, the new language provides the Hotline Administrator with the authority, at any time, to dismiss a frivolous report. Doing so would require the Hotline Administrator to issue written findings that the Whistleblower Report lacks any arguable basis to support its claims, that it was made in reckless disregard of the truth, or that it was knowingly false. Further, the new language defines a vexatious Whistleblower as a Port employee who, based on the written findings of the Hotline Administrator, has filed more than one Whistleblower Report that was knowingly false, that was made in reckless disregard of the truth, or that lacked any arguable basis to support its claims. The Hotline Administrator may then make a disciplinary referral of the vexatious Whistleblower and/or summarily dismiss their Whistleblower Reports without investigation.

The OAS recommends that the Committee approve the referenced changes to both AP18 and AP19 and recommend that the Board approve and authorize such changes.

Article XI of the Board By-Laws and Administrative Rules (Exhibit D)

The By-Laws have historically been the document by which the Board has codified the rules governing its operations, including the assignment of its duties and the delegation of its powers. Article XI of the By-Laws provides guidance on the authority, duties, and responsibilities of the CAO, a direct reporting officer to the Board.

The best practice guidance from the Institute of Internal Auditors recommends that an Internal Audit function have a charter that primarily sets forth guidelines confirming an auditor's independence and objectivity; authority; access to records; professionalism; responsibilities; and, the completion of audit reports. Since the CAO's authority and responsibilities are already addressed in the By-Laws, it is more efficient and simpler to make the following changes to Article XI of the By-Laws instead of creating a new separate audit charter document:

Article XI, By-Laws:	Proposed changes:
Section 1	Adds language to require that the CAO's work be objectively conducted under the guidance of applicable professional standards.
Section 3	Adds this new Section to incorporate the CAO's authority to access Port's records during the conduct of surveys, reviews, and audits; and the corresponding responsibility to safeguard and keep the confidentiality of those records. This is a standard practice in the audit industry and has also been an ongoing but uncoded practice at the Port.
Section 5	Adds the word "independently" to describe and affirm the discretion of the CAO's professional opinions.

The OAS recommends that the Committee approve the referenced changes to Article XI of the By-Laws and recommend that the Board approve and authorize such changes.

OPTIONS

- Approve by Motion the proposed rescission of AP16 and the proposed amendments to AP18, AP19, and Article XI of the Board's By-Laws and the recommendation that the Board approve and authorize the rescission and amendments at its next regularly scheduled meeting on May 13, 2021. This is the recommended action.

- Approve by Motion different amendments to AP16, AP18, AP19, and Article XI of the Board's By-Laws and the recommendation that the Board approve and authorize such different amendments at its next regularly scheduled meeting on May 13, 2021.
- Do not approve the amendments and leave the documents as they are.

RECOMMENDATION

It is recommended that the Audit Committee approve by Motion the proposed rescission of AP16 and the proposed amendments to AP18, AP19, and Article XI of the By-Laws and the recommendation that the Board approve and authorize the rescission and amendments at its next regularly scheduled meeting on May 13, 2021.

**PORT OF OAKLAND
Administrative Manual****Policies and
Procedures****INTERNAL REVIEW PROTOCOL – POLICIES AND GUIDELINES****SECTION: Basic Policy****POLICY NUMBER: AP 16****INITIAL DATE PREPARED: March 4, 2003****LAST DATE REVISED:****I. PURPOSE**

To assure compliance with all applicable laws and regulations as well as efficiency, productivity and compliance with sound business practices in all Port operations, as set forth in Port Resolution No. 03068 (March 4, 2003).

II. POLICY

It is the policy of the Port of Oakland to examine from time to time its various divisions, departments and functions by way of internal review to evaluate performance of personnel and to implement any appropriate measures to enhance, improve or correct performance consistent with legal, business and operational needs and requirements.

III. GUIDELINES AND CONDITIONS**A. Commencement of Internal Review**

1. The Port Internal Auditor shall undertake review of Port operations as directed by the Board of Port Commissioners or the Executive Director as the designated representative of the Board. Prior to commencement of the review, the Auditor shall consult with the Port Attorney to determine whether there are legal requirements or needs that the review be conducted under the direction of the Port Attorney due to existing or potential litigation, in order to preserve any attorney-client confidentiality or attorney work product as may be appropriate and as allowed by law.

B. Conduct of Internal Review

1. The review is conducted in order to assist the Board of Port Commissioners and Port Management in evaluating the performance of Port personnel in the various Port divisions, departments and functions. In order to assure candor on the part of all participants and to assure full and unqualified access to information and candid disclosures to the Auditor, the contents of the review and its working papers will be kept confidential to the extent permitted by law.

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2. Notwithstanding the confidential nature of the review, the Port reserves its right to take any appropriate corrective action, including any personnel or disciplinary action necessary to respond to facts, conditions or performance discovered in the course of the review.

C. Internal Review Reports

1. Upon completion of the review process, the Port Internal Auditor shall prepare a preliminary draft report referred to as “AP 16 Internal Personnel Report” for discussions with Port management and the Audit Budget Finance Committee. Thereafter, the Committee shall authorize preparation of a final draft AP 16 Internal Personnel Report (AP 16 report). After approval of the final draft AP 16 report by the Committee, it shall be submitted to the Board of Port Commissioners for acceptance at a duly noticed meeting of the Board.
2. During the course of the review, if there is any attorney-client, attorney work product or other privileged confidential information or material covered by the review or any part of the review process, such information or material shall be maintained in a separate report to the Port Attorney marked “confidential” and will not appear in the AP 16 report. Notwithstanding any other provision in this policy, at the direction of the Port attorney, any report or review may be delivered orally to the Audit Budget Finance Committee or to the Board under conditions determined by the Port Attorney to be appropriate, including oral delivery in closed session.
3. Preliminary drafts, notes and memoranda utilized in preparation of the AP 16 report are not maintained in the due course of business of the Port and the public interest in obtaining candid disclosures in furtherance of the integrity of the review process that outweighs any public interest in their disclosure. Such preliminary drafts, notes and memoranda are to be discarded to the extent they were working documents, unless retention is required by law, or they were needed for official duties and were made with intent to preserve informational content for future reference.
4. Preliminary or final AP 16 reports may be discussed in closed session in conjunction with, and as relevant to, closed session evaluation of performance of the Port employee responsible for the division, department or function which is the subject of

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the review, or any other Port employee as to whose performance evaluation the report is relevant. Reports marked “confidential” may be discussed by the Port Attorney with the Board in closed session as allowed by law.

5. AP 16 reports after acceptance by the Board shall be filed with the Secretary of the Board, who shall maintain them by date in the order received. Upon request, copies shall be made available to the public, provided, however, any AP 16 reports prepared under the direction of the Port Attorney pursuant to Section III.A.1 herein shall be filed with the Port Attorney under conditions of confidentiality as allowed by law.

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WHISTLEBLOWER PROTECTION POLICY

SECTION: Basic Policy

POLICY NUMBER:

AP 18

INITIAL DATE PREPARED: August 27, 2010

LAST DATE REVIEWED:

I. PURPOSE

To define and affirm the Port of Oakland's ("Port") policy to protect all Port employees who act as whistleblowers from retaliation.

II. POLICY

- A. A "whistleblower" is an Port officer or employee anyone who reports through the Port's Whistleblower Hotline any information (i.e., "complaint") which, if true, would constitute one of the following:
1. a work-related violation by a Port officer or employee (hereinafter, "employee") of any law or regulation;
 2. fraud, waste, or mismanagement of Port assets or resources;
 3. gross abuse of authority;
 4. a specific and substantial danger to public health or safety due to an act or omission of a Port officer or employee;
 5. use of a Port office, position, or resources for personal gain.
- B. A whistleblower ~~nyone filing a complaint concerning a suspected violation~~ must be acting in good faith and have a reasonable basigrounds for believing the information disclosed falls within one or more of the enumerated categories in Subsection II-A. Upon a written finding by the Chief Audit Officer ("CAO") that a ~~indicates a violation that would constitute any of the foregoing items. An individual~~ Port officer or employee filed a complaint that was knowingly false or was made in reckless disregard of the truth, or that it lacks any arguable basis to supports its claims, the CAO shall refer the findings to the Port officer's or employee's appointing authority as defined in the Board of Port Commissioner's ("Board") By-Laws and Administrative Rules ("By-Laws") for appropriate ~~who deliberately or maliciously provides false information may be subject to disciplinary action. (up to and including discharge).~~
- C. To the extent permitted by law, reports of suspected violations will be kept confidential. A reporter's identity may be shared, however, when necessary to conduct an adequate

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investigation.

- D. No ~~officer or Port~~ employee ~~of the Port~~ shall use or threaten to use any official authority or influence to restrain or prevent any other person who is acting as a whistleblower in good faith and upon reasonable belief ~~as a whistleblower~~. Further, no ~~officer or Port~~ employee ~~of the Port~~ shall use or threaten to use any official authority or influence to cause an adverse employment action as a reprisal against a Port employee who acts as a whistleblower in good faith and with reasonable belief that improper conduct has occurred.
- E. Any ~~officer or Port~~ employee ~~of the Port~~ who knowingly engages in conduct prohibited by this policy shall be disciplined, up to and including discharge.

III. PROCEDURES

- A. Any ~~officer or Port~~ employee ~~of the Port~~ who believes that he or she has been subjected to an adverse employment action as a result of being a whistleblower may file a written complaint of retaliation within 30 days from the date of the alleged retaliatory action with the ~~Chief Audit Officer (CAO)~~ or ~~the Port Attorney~~, if the CAO is the subject of the complaint, with the Port Attorney.
- B. The complainant shall at least include:
1. A description of the nature of the alleged retaliatory action taken or threatened in violation of this policy;
 2. The date(s), time(s), and location(s) and a detailed description of the alleged violation(s);
 3. The name(s) of the alleged offender(s);
 4. The name(s) of witnesses, if any;
 5. The facts which led the employee to believe that the person or persons initiating or threatening to initiate retaliatory action have knowledge of the employee's having made or filed any complaints which if true would constitute any of the items enumerated in Subsection II-A of this policy; and

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6. Any other information that would be of assistance in the investigation.

- C. Upon receipt of a complaint, the CAO (or the Port Attorney, if the CAO is the subject of the complaint), will refer the complaint to the~~work with~~ Port's Office of Equal Opportunity ~~for and thereupon conduct an~~ investigation. In the event that the CAO or the Port Attorney determines that an investigation conducted by Port staff would present a conflict of interest, an independent investigator shall be appointed. The investigation should be completed within 90 days, absent any extraordinary circumstances.
- D. Upon completion of the investigation, the CAO (or the Port Attorney, if the CAO is the subject of the complaint), shall provide the Port Attorney, Executive Director, and the Board ~~of Port Commissioners~~ with a written investigative report indicating the ~~results~~final outcome. Any reports regarding retaliation shall be confidential and not subject to disclosure.
- E. ~~In the event it is determined by~~ the investigation sustains a Port employee's that retaliation occurred in violation of this policy, the CAO shall forward the written investigative report to the Port Attorney, Human Resources Director, and the employee's appointing authority, as defined in the Board By-Laws, for appropriate disciplinary action, ~~up to and including discharge shall be instituted against the person(s) found to have engaged in such conduct.~~
- F. The CAO shall provide the Executive Director, Port Attorney, and the Board of Port Commissioners with a quarterly summary of all complaints received during the quarter including the status of each complaint as of the end of each quarter.

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WHISTLEBLOWER HOTLINE POLICY

SECTION: Basic Policy

POLICY NUMBER:

AP 19

INITIAL DATE PREPARED: August 27, 2010

LAST DATE REVIEWED: ~~May 2015~~

I. PURPOSE

To provide a confidential process for reporting any fraud, waste, abuse, or potential violations of work-related laws or regulations in a manner that will permit the anonymity of the reporter; if so desired; and, to ensure timely identification and resolution of all issues that may adversely affect the Port of Oakland ("Port") or Port employees ~~or the organization~~.

II. POLICY

A. All employees are responsible for reporting any information, which if true, would constitute one of the following:

1. a work-related violation by a Port officer or employee (hereinafter, "employee") of any law or regulation;
2. fraud, waste, or mismanagement of Port assets or resources;
3. gross abuse of authority;
4. a specific and substantial danger to public health or safety due to an act or omission of a Port officerial or employee;
5. use of a Port office, position, or resources for personal gain.

B. As outlined in Port Policy AP 13, an "open-door policy" will be maintained at all levels of management to encourage employees to report problems and concerns. Employees are strongly encouraged to report problems and concerns via the chain-of-command. However, the Whistleblower Hotline ("Hotline") is always available if special circumstances exist, if issues are not being properly addressed, or if an employee feels more comfortable using this channel of reporting.

C. The Port has established and ~~will maintain~~ a Hotline that employees and non-employees may use to report fraud, waste, abuse, or violations of work-related laws or regulations ~~problems and concerns~~ either anonymously or in confidence. The Hotline telephone number and website address ~~are will be made~~ readily available to all employees ~~as by~~ conspicuously ~~posting such information~~ in the Port's common work areas, on the Port's intranet, and on the Port's website.

D. Employees who report problems in good faith and with reasonable grounds any information

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~~pursuant to Subsection II-A above and concerns~~ via the ~~H~~hotline ~~in good faith~~ will be protected from any form of retaliation or retribution as outlined in Port Policy AP18 – Whistleblower Protection Policy.

- E. All staff employed in the ~~H~~hotline operation will act with utmost discretion and integrity in assuring that information received through the Hotline is acted upon in a timely, reasonable, and proper manner.
- F. The Chief Audit Officer (“CAO”) or his designee will serve as the ~~designated~~ Hotline Administrator.
- G. The CAO has the responsibility for directing all investigations. In a case where the allegation is a criminal violation of law, the Hotline Administrator may need to involve the Port Attorney to determine whether there is sufficient evidence to support referral of the case to an appropriate ~~duly authorized~~ law enforcement agency.
- H. Management must take appropriate measures to ensure support for this policy and encourage the reporting of problems or concerns. At a minimum, actions should be taken to ensure that employees are made aware of this policy and the ~~W~~whistleblower ~~P~~protection ~~P~~policy (“AP18”).

III. PROCEDURES

A. FILING A REPORT

1. ~~Any one Port employee~~ with knowledge of information that ~~falls within could result in any of the items~~ enumerated categories set forth in Subsection II-A of this policy has an affirmative duty to report that information and to utilize through the ~~H~~hotline, if the individual so chooses to use this channel.
1. —
2. —
2. The ~~H~~hotline will be operated by an outside provider and available 24 hours a day, 365 days a year. It will be answered by a live person who will debrief the caller and make a report of ~~fn~~ all information provided on a sequentially numbered ~~Calls will be documented on the~~ confidential ~~H~~hotline intake form. All callers will be assigned a confidential report number and will be asked to contact the Hotline in

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10 business days for any required follow-up. The Hotline Administrator will ensure that any required follow-up information is provided to the Hotline provider prior to the scheduled call-back date.

~~-records will be logged and sequentially numbered upon receipt on this form, and placed in the care and custody of the hotline provider on behalf of the Port.~~

3. When a new ~~H~~hotline report is submitted, the outside ~~H~~hotline provider will send a notification copy of the report simultaneously to the ~~Chief Audit O,~~ designated audit staff, ffreer and the ~~President of~~

President of the Board of Port Commissioners to advise that a new report has been received. All callers will be assigned a confidential report number and asked to contact the hotline in 10 business days for any required follow-up. The Hotline Administrator will ensure that any required follow-up information is provided to the hotline provider in advance of the scheduled call-back date.

- ~~3.4.~~ No attempt will be made to identify a caller who requests anonymity. Whenever callers disclose their identity, it will be held in confidence to the fullest extent allowed by law.

B. INVESTIGATION

1. The Hotline Administrator will ensure that all ~~H~~hotline reports are addressed in an appropriate and timely manner, as well as in accordance with this policy and all related policies and procedures.
2. Upon receipt of a ~~H~~hotline report, the Hotline Administrator will review the report to determine the most appropriate course of action to address the allegations. In the event the Hotline Administrator or the Port Attorney determines that an investigation conducted by Port staff would create a conflict of interest or the appearance of a conflict of interest, the CAO or the Port Attorney shall appoint an outside independent investigator to conduct the investigation.

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3. The Hotline Administrator can determine, at any time, that a Whistleblower Report is frivolous and dismiss it. A dismissal under these circumstances requires the Hotline Administrator to issue written findings that the Whistleblower Report lacks any arguable basis to support its claims, that it was made in reckless disregard of the truth, or that it was knowingly false. The Hotline Administrator may refer a vexatious Whistleblower for disciplinary action pursuant to Administrative Policy and Procedure 18, Section II(B) and/or may summarily dismiss their Whistleblower Reports without investigation. A vexatious Whistleblower is a Port employee who, based on the written findings of the Hotline Administrator, has filed more than one Whistleblower Report that was knowingly false, that was made in reckless disregard of the truth, or that lacked any arguable basis to support its claims.
4. Depending upon the report's allegation(s), the Hotline Administrator can refer a Hotline~~ertain~~ reports ~~from the hotline will be referred~~ to the appropriate division director for further action to be completed within 30 days of receipt.
- ~~3. Hotline reports that are found to be malicious or frivolous will be dismissed. Employees who file these types of reports persistently (vexatious whistleblowers) will be subject to appropriate disciplinary action in accordance with AP18 Section II(B).~~
- ~~4.5.~~ For a H~~h~~otline reports warranting investigation, the Hotline Administrator will conduct an initial inquiry which may include document review, interviews, audit, or other investigative techniques. The investigation should be completed within 90 days, absent any extraordinary circumstances.
- ~~5.6.~~ Those charged with investigation will maintain ~~ensure protection of~~ the confidentiality of the sources of information.
- ~~6.7.~~ At the conclusion of an investigation, the Hotline Administrator will provide the Executive Director, Port Attorney, and ~~President of~~ the Board of Port

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Commissioners with a written report indicating the ~~final~~ results of the investigation.

~~7.8.~~ The Port Attorney will review the written report's findings and will advise the Executive Director and the Board of Port Commissioners about the facts, circumstances, and proper courses of action to address the findings and close the investigation.

C. REPORTS

The Hotline Administrator shall provide the Executive Director and the Board of Port Commissioners with a quarterly summary of all reports received from the ~~H~~hotline during the quarter including the status of each report as of the end of each quarter.

BY-LAWS AND ADMINISTRATIVE RULES

BOARD OF PORT COMMISSIONERS

ARTICLE XI.

Chief Audit Officer.

1. The Board shall appoint the Chief Audit Officer by resolution. The Chief Audit Officer shall conduct surveys, reviews, and audits of Port operations as the Chief Audit Officer deems to be in the best interest of the Port and the public, subject to direction and approval by the Board, or as directed by the Board. For these purposes, the Chief Audit Officer's surveys, reviews, and audits shall be objectively conducted under the guidance of applicable professional auditing standards and may include, but not be limited to:

a. Reviewing and appraising the effectiveness, adequacy, and application of accounting, functional, and operating controls and reliability and timeliness of accounting and other data generated within the Port organization;

b. Evaluating the Port's internal controls to ensure that the Port's assets and resources are adequately safeguarded from fraud, waste, and mismanagement;

c. Ascertaining compliance with the Board's resolutions and policies and the Executive Director's instructions and directives, as well as applicable Law and regulations;

d. Conducting investigations of Whistleblower Complaints consistent with applicable Law and Port policies;

e. Responding to requests for audit and reviews;

f. Auditing the records of Port vendors and tenants to ensure compliance with applicable agreements, ordinances, resolutions, and other related Law and policies; and

g. Reporting to the Board as appropriate or as directed by the Board, as part of a deliberative process, on recommendations for corrective actions or for taking action to adopt new policies.

2. The Chief Audit Officer shall conduct any other audits and report to the Board, as directed by the Board.

3. The Chief Audit Officer shall have complete and unrestricted access to the Port's records, systems, physical properties, and personnel relevant and necessary to conduct a survey, review, audit, or Whistleblower Complaint investigation.

a. The Chief Audit Officer shall maintain and safeguard the confidentiality of Port records consistent with applicable law and Port policy.

b. The Chief Audit Officer shall consult with the Port Attorney about Port records and their confidential status when such records are, or should be, subject to confidentiality pursuant to the attorney-client privilege and/or attorney work-product doctrine.

43. Subject to Article XII of these By-Laws, the Chief Audit Officer shall have the authority to appoint one or more assistant or senior auditors and other staff auditors to assist in the performance of duties of the Chief Audit Officer and may designate and instruct any such assistant to act or perform the duties of the Chief Audit Officer in case of the Chief Audit Officer's absence or disability. The Chief Audit Officer shall prescribe and supervise the duties of and have the authority to assign, evaluate, reassign, release, and discipline (including, but not limited to, suspension, dismissal, and termination) any such employees appointed by the Chief Audit Officer provided the exercise of such power shall be subject to Article XII of these By-Laws and any applicable Laws and employment agreements, including, but not limited to, collective bargaining agreements, Port of Oakland Personnel Rules and Procedures, and/or salary and compensation schedules adopted by the Board by Ordinance.

54. The Chief Audit Officer shall consult the Port Attorney relating to any questions of law that may arise in an audit's findings or recommendations; provided that the Port Attorney has no conflict of interest in the audit's findings or recommendations and provided that the content of any audit, audit findings, or audit recommendations shall remain within the professional discretion and reflect the independent professional opinion of the Chief Audit Officer.

| 65. The Chief Audit Officer shall be the custodian of surveys, reviews, and audits conducted by the Office of Audit Services.

| 76. The Chief Audit Officer shall provide assistance to other Direct-Reporting Officers, their designees, and Port staff in order to enhance the effectiveness, efficiency, and economy of Port operations consistent with Board policies and direction.