COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

CIVIC CENTER, SAIPAN, MARIANA ISLANDS

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NOTICE

We regret that the Commonwealth Register was not published on June 15, 1985. The publication was delayed due to a conflict between the considerable work required prior to the adoption of the substantial regulations proposed in May and the responsibility of the Office of the Attorney General to provide legal counsel to the Second Northern Marianas Constitutional Convention. We apologize for any inconvenience this may have caused.

REXFORD C. KOSACI Attorney General



Commonwealth of the Northern Mariana Islands

Filed thi

OFFICE OF THE SUPERINTENDENT DEPARTMENT OF EDUCATION SAIPAN, CM 96950
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Public Notice

ADOPTED POLICY

Department of Education

Authority

The Board of Education, in accordance with Public Law 3-43, Section 203 (a) (b), wishes to advise the public that the following policy has been officially adopted for the Department of Education.

Subject Matter

The adopted policy is:

1. Special Education Teacher Certification

Public Comment

During the period of time designated for public comment, comments were received from Department of Education staff concerning the titles of certain courses, which were reworded to more accurately reflect courses offered by regional universities. No major substantive changes occurred from the original promulgation.

7/9/60 Date

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503.4

All special education teachers must take courses leading to regular education certification and to an AA or BA as required by previous Board Policy 503.

All teachers of special education classes must be certified to teach special education classes.

Special Education Teacher Certification shall consist of:

- a. Regular teacher certification,
- b. Satisfactory progress toward an AA or BA accordingly to an IDP, and
- c. Completion of a series of approved courses in the area of special education in which the teacher will work,

Certification shall be in five areas:

- a. Occupational/Physical Therapy
- b. Communication Disorders
- c. Learning Disabilities
- d. Mental Retardation
- e. Early Childhood Education

The seven courses shall consist of three core courses required by teachers seeking certification in any of the five areas, as follows:

- a. Physiology
- b. Psychology
- c. Human Growth and Development

The remaining four courses for each area are as follows:

- A. Occupational/Physical Therapy
 - 1. Intro to Occupational Therapy in Pediatrics
 - 2. Advanced Occupational Therapy in Pediatrics
 - 3. Intro to Physical Therapy in Pediatrics
 - 4. Advanced Physical Therapy in Pediatrics

B. Communication Disorders

- 1. Normal Speech Language Hearing Development
- 2. Speech Language and Hearing Disorders
- 3. Teaching Methods and Curriculum Development
- 4. Intro to Sign Language and Total Communication

C. Learning Disabilities

- 1. Direct Reading and Math Instruction
- 2. Methods and Materials
- 3. Resource Room Operation
- 4. Curriculum Design

Mental Retardation

- 1. Introduction to Mental Retardation
- 2. Methods, Materials and Curriculum
- 3. Behavior and Classroom Management
- 4. Social, Survival and Vocational Skills Development

E. Early Childhood Education

- 1. Observation and Assessment
- 2. Teaching Young Children
- 3. Developmental Disorders
- 4. Parent and Family Involvement

Satisfactory progress toward compliance with this policy shall be demonstrated by the successful completion of a course or courses, in the appropriate area, as offered per school year by the Northern Marianas College, beginning with school year 1985-86.

Any teacher who has received certification in a specific area of special education by a U.S. State Education Agency is exempt from this policy upon providing satisfactory evidence to the Superintendent of such certification.

OFFICIAL SEAL

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS of Corporations OFFICE OF THE CIVIL SERVICE COMMISSION the Northern Mariana Islands

Filed this

P.O. BOX 150, CHRB SAIPAN, CM 96950

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PUBLIC NOTICE

OF ADOPTION OF THE CLASSIFICATION AND COMPENSATION MANUAL FOR THE EXECUTIVE BRANCH

The Northern Mariana Islands Civil Service Commission, pursuant to 1 CMC \$8116, and in accordance with the provisions of 1 CMC \$9104 (a) and \$2153 (f), hereby gives notice to the public of its intention to adopt the Classification and Compensation Manual for the Executive Branch civil service employees.

The text of the manual is as proposed on April 16, in Vol. 7 No. 2 at page 3503 of the Commonwealth Register, without ammendment.

Dated, this 11th day of June, 1985.

SUBMITTED BY:

APPROVED BY:

JESUS P. MAFNAS

Personnel Officer

Civil Service Commission

Chairman, Civil Service Commission

PUBLIC NOTICE

ADOPTED REGULATIONS

Providing for Distribution of Headnote 3(a) Production Under the Limited Waiver Provided by Administrative Arrangement.

The Director of Finance, under his customs authority, as provided by 1 CMC $\S\S2553(1)$ and 2557, hereby adopts the June 6, 1985 rules and regulations which provide a distribution plan for manufacturers of the Headnote 3(a) limited waiver.

The changes in the May 21, 1985 proposed regulations are explained in the July 6, 1985 notice of proposed regulations.

These regulations, which are attached, shall take effect in 10 days following their publication.

Certified by:

TOMAS B. ALDAN Director of Finance

Office of Registrar of Corporations Commonwealth of the Northern Mana Islands

EMERGENCY and PROPOSED REGULATIONS Providing for Distribution of Headnote 3(a) Production Under the Limited Waiver Provided by Administrative Arrangement.

The Director of Finance, under his customs author-Authority: ity as provided for by 1 CMC §§2553(i) and 2557, hereby promulgates emergency regulations and proposed regulations for subsequent adoption which provide a distribution plan for manufacturers of the Headnote 3(a) limited waiver.

Emergency: The Director of Finance hereby finds under 1 CMC §9105(b) that the public interest requires adoption of regulations providing a distribution plan for the limited waiver prior to providing public notice of thirty (30) days. This is necessary because the practical elimination of Headnote 3(a) manufacturing by Treasury Regulations (T.D. 84-171 and 85-38) in the Commonwealth of the Northern Mariana Islands has caused severe curtailment of production and the loss of numerous jobs to residents. An administrative arrangement with the United States government has lifted the restrictions imposed by the Treasury Regulations of 70,000 dozen sweaters. Production may commence and employment may be renewed as soon as this waiver is equitably distributed among Commonwealth manufacturers. These regulations provide for immediate distribution and shall remain in effect for one hundred and twenty (120) days or until adopted with or without amendments whichever occurs first.

Amendment of May 21, 1985 Regulations: These regulations are identical to the regulations proposed on May 21, 1985 with four (4) exceptions:

Number of Local Workers - section 202(a)(4) has been amended to allow for a gradual growth in local employment up to 40% to ensure proper training for local workers to assume skilled employment.

Date of Application - sections 202(b) and (c) have extended the application and award periods in order to provide

sufficient notice of these amendments.

Surrender of Waiver - section 205 has been amended to require companies to surrender any anticipated unused portion of their share prior to the last quarter. Failure to do so may result in a loss of a portion of one's share in the subsequent

Import Inspection - section 301(b) has been amended to allow presentation of a Customs ruling for a similar style of

sweater as well as for the same style.

<u>Comment</u>: Interested persons may submit in writing any data, views or arguments during the next thirty (30) days to the Director of Finance and the Attorney General. All comments will receive careful consideration prior to any action.

Certified by: June 06, 1985

TOMAS B. ALDAN

Director of Finance

Concurred by: PEDRO F. TENORIO

Governor

Date/of Filing with the Registrar

REGISTRAR OF CORPORATIONS

Filed this 6 th day of

Office of Registrar of Corporations
REGULATIONS PROVIDING FOR DISTRIBUTION Worthern Margan Islands
OF HEADNOTE 3(a) PRODUCTION UNDER THE OF HEADNOTE 3(a) PRODUCTION UNDER THE LIMITED WAIVER PROVIDED BY ADMINISTRATIVE ARRANGEMENT

ARTICLE I. GENERAL PROVISIONS

Section 101. Purpose. These regulations shall provide for a division among CNMI sweater manufacturers of the import limit placed by the United States upon cotton, wool and man-made fiber sweaters in Categories 345, 445, 446, 645 and 646 assembled in the CNMI from a minimum of four major sweater parcels which originate in a country whose sweater exports to the United States are subject to quota.

Section 102. Findings. The following administrative findings constitute the basis for these regulations:

- (a) On January 9, 1978 upon the inception of the government of the Commonwealth of the Northern Mariana Islands General Headnote 3(a) to the Tariff Schedules of the United States, 19 U.S.C. 1202, provided a country of origin rule specifically for insular possessions of the United States. That rule provides that an article is a product of the insular possessions if it does not contain foreign materials exceeding 50% of the total appraisal value of the product. There are no quota restrictions or duties applicable to insular possessions.
- (b) On February 22, 1983 the United States Customs Service recognized that Headnote 3(a) applied to the Commonwealth of the Northern Mariana Islands under Section 603(c) of the Covenant which provides the same treatment for imports from the Northern Mariana Islands into the United States as imports from Guam into the United States.
- (c) Based upon that decision, certain corporations located sweater factories in the Commonwealth and began assembly operations under Headnote 3(a).
- (d) On August 3, 1984 the Customs Service published interim regulations governing the importation of textiles and textile products into the United States (T.D. 84-171). These regulations, which applied to insular possessions, provide that articles which consist of materials which originated in a foreign country shall be considered as products of an insular possession only if the article has been substantially transformed by means of a substantial manufacturing or processing operation into a new and different article of commerce with a name, character or use distinct from the article or material from which it was so transferred. Essentially, assembly operations which contribute 50% to the final appraisal value of an article will no longer qualify the article as originating in the Commonwealth of the Northern Mariana Islands.

- (e) As a result of the interim regulations, the sweater manufacturers have been unable to import sweaters into the United States Customs Territory, thereby threatening the existence of such an industry in the Commonwealth.
- (f) On April 4, 1985 the Customs Service adopted the interim regulations, with minor amendments, as a final rule (T.D. 85-38).
- (g) As a result of many months of discussion with the Committee for the Implementation of Textile Agreements (CITA) and the Office of the United States Trade Representative an administrative arrangement for the waiver of the regulations for 70,000 dozen sweaters annually was agreed to by the United States government and the government of the Northern Mariana Islands on January 30, 1985. A directive from the Chairman of CITA to the Commissioner of Customs establishes an import limit and certification requirements to be effective on April 15, 1985. However, the annual period commenced on November 1, 1984.
- (h) The amount of the annual waiver was established by the United States as the annual production capacity of the sweater manufacturers which were engaged in manufacturing under Headnote 3(a) in the CNMI.
- (i) It is necessary to establish a system for the distribution of the waiver among those factories.

ARTICLE II. WAIVER CERTIFICATE

Section 201. Waiver Certificate. The Chief of the Division of Customs shall issue a waiver certificate to applicants who meet the criteria set forth in Section 202 which will entitle the holder to a pro rata share of the waiver. The certificate shall specify the number of sweaters in the share.

Section 202. Eligibility for Certificate.

- (a) An applicant is eligible for a waiver certificate upon proof of:
 - (1) incorporation in the Commonwealth of the Northern Mariana Islands prior to January 30, 1985;
 - (2) a valid license to conduct a sweater manufacturing business prior to January 30, 1985;
 - (3) CNMI certificates of origin evidencing production in excess of 7,500 dozen sweaters under Headnote 3(a) prior to January 30, 1985; and
 - (4) full time employment of workers in garment manufacturing operation who are either United States citizens, certificate of identity holders, Public Law

JULY 22, 1985

- No. 5-11 permanent residents, or Trust Territory citizens who comprise the following percentages of the company's labor force:
 - (i) upon the effective date of this section 20%;
 - (ii) within 90 days 25%;
 - (iii) before January 1, 1986 30%; and
 - (iv) before January 1, 1987 40%.
- (b) Application for a waiver certificate shall be made before June 8, 1985.
 - (c) Certificates shall be awarded prior to June 15, 1985.
 - (5) Failure to maintain this minimum requirement at any time during the year shall cause a certificate to be suspended until proof of compliance.
- Section 203. Duration of Certificate. A waiver certificate shall be valid for one year. The Chief shall reissue certificates annually in October. The Director may amend the eligibility requirements in Section 202 in his discretion.
- Section 204. Non-Assignable Certificates. Waiver certificates cannot be assigned, sold, or transferred by the holder to any other person or entity.

Section 205. Change in Pro Rata Shares.

- (a) Upon any decrease in the amount of the waiver by the United States, the effect of the decrease shall be shared equally among each of the holders of waiver certificates, to the maximum extent practicable.
- (b) If the Chief determines upon a hearing that a company cannot be reasonably expected to utilize its entire waiver within the year, the share of the company may be re-assigned in equal shares to the remaining companies which can reasonably be expected to utilize the remainder.
- (c) If it appears to any certificate holder that the manufacturer will be unable to produce a sufficient number of sweaters in order to utilize its entire waiver within the year, the holder shall surrender to the Chief the expected remainder prior to August 1. If a company fails to utilize more than 10% of its waiver in a year, the unused portion shall be deducted from its share for the next year. Any surrendered remainders or deductions from shares shall be distributed pro rata among other certificate holders who can be reasonably expected to utilize the increase in their share.

Section 206. Retroactive Effect. The waiver certificates issued in June of 1985 shall be retroactive to November 1, 1984 and shall expire on October 31, 1985. All shipments already documented by certificates of origin which entered the United States as part of the 70,000 dozen waiver shall be debited against the amounts of the certificate holders.

Section 207. Increase of Waiver.

- The division of shares of any waiver in excess of the 70,000 dozen agreement shall not be by pro rata share.
- Such division shall ensure a continued commitment by manufacturers to the training and employment of resident workers. Resident workers are those described in Section 202(a)(4).
- (c) To the pro rata share of each company of the increased waiver shall be added a percentage of the entire amount of the increased waiver for certain achievements which shall be subtracted equally from the other companies' shares. The achievements of each company shall be assessed by the Chief of Customs in consultation with the Director of Commerce and Labor looking at the company's performance over the year. The achievements and percentages are:
 - for the company which employs the most resident workers (the number of man hours per year) . . . 5%
 - (2) for the company which has paid the most total salary for resident workers over a year . . . 5%
 - (3) for the company which has provided the
 - (4) for the company which has placed resident workers in more different positions in stages of

Example: If there are three companies eligible and the waiver is increased to 130,000 dozen, if one company received all the awards, then it would be entitled to 23,333 dozen (base pro rata share of 70,000 dozen) plus 20,000 (base pro rata share of 60,000 increase) plus 12,000 (20% of the 60,000 increase). The other companies would receive 23,333 plus 14,000 dozen each.

ARTICLE III. CERTIFICATION PROCESS

Section 301. Commonwealth Imports.

(a) Imports of any component parts which come under the administrative agreement must be identified as such to Customs upon inspection.

- (b) A company with a waiver certificate shall identify upon inspection the style of sweater to be assembled and shall provide the Customs inspector with a copy of a Customs ruling for assembly of that style or a similar style.
- (c) The Customs inspector shall inspect the component parts of each shipment and compare them with the components called for by the ruling. If the component is a more finished product than specified, the Customs inspector shall notify the Chief of Customs. The Chief shall not issue a certificate of origin or a sweater quota exemption certification for any sweater utilizing the nonconforming component piece.
- (d) All completed sweater samples shall be clearly and individually marked as samples. In addition, their container shall clearly indicate that samples are enclosed.
- (e) The Chief of Customs shall cause records to be kept to identify imported component parts in exported finished sweaters.

Section 302. Commonwealth Exports.

- (a) A company seeking a sweater quota exemption certification shall apply to Customs by executing under penalty of perjury an affidavit which states:
 - (1) the quantity of sweaters;
 - (2) the MFA category;
 - (3) the style number;
 - (4) the country of origin of the component part; and
 - (5) that each of the sweaters was assembled in the Northern Mariana Islands from a minimum of four separate major sweater panels.
- (b) The Customs inspector shall check the shipment against the record of importation and shall stamp the front of the original commercial invoice in blue ink only if he reasonably believes the shipment qualifies under the certification agreement.
- (c) The affidavit shall be kept in a file for that company with a deduction made from the company's share of the waiver.
- Section 303. Perjury. In addition to criminal prosecution, the Chief of Customs may revoke a portion of a company's present or future quota if he finds, after an administrative hearing, proof by a preponderance of the evidence of perjury in the affidavit submitted under Section 302.

ARTICLE IV. CUSTOMS RECORDS

Section 401. Signature Authority. The Chief of Customs shall designate by letter to the Director of Finance four officials, including himself, authorized to issue and sign the certificates.

Section 402. Certification Stamp. The Chief of Customs shall be responsible for the security of the sweater quota exemption certification stamp.

Section 403. Records.

- (a) At the minimum, the following records must be maintained by the Customs Division:
 - (1) importation of component parts listing quantities, style numbers, countries of origin, fiber, and recipient;
 - (2) affidavits upon exportation under the waiver;
 - (3) certificates of origin; and
 - (4) a current account of the remaining share of each company.

Section 404. Inspection of Premises. Customs inspectors shall make periodic inspections of business premises, paying particular attention to:

- (1) the processes of manufacturing;
- (2) the component parts utilized;
- (3) the number of resident workers and the types of tasks assigned, and
 - (4) the presence of any training programs for resident workers.
- Section 405. Audit. As a condition of accepting a waiver certificate, a company consents to provide the Public Auditor of the Commonwealth of the Northern Mariana Islands with access to and the right to examine and copy any records, data, or papers relevant to the manufacturing process in the Commonwealth.

PUBLIC NOTICE

ADOPTED REGULATIONS

DIVISION OF PROCUREMENT AND SUPPLY, DEPARTMENT OF FINANCE

Authority

The Director of Finance in accordance with Title 1 section 2557 of the Commonwealth Code is authorized to adopt rules and regulations necessary to perform his duties and responsibilities which includes the administration of the Division of Procurement and Supply pursuant to 1 CMC section 2553 (j).

Subject matters

The adopted Procurement Regulations includes the following subjects:

Article 1 - General Provisions

Part A - General

Part B - Definitions

Part C - Public Access

Article 2 - Procurement Organization

Part A - Chief of Procurement of Supply

Part B - Chief of Procurement function

Article 3 - Source selection and contract formation

Part A - Source selection

Part B - Cancellation

Part C - Qualifications and Duties

Part D - Types of Contracts

Part E - Inspection and Audit

Part F - Reports and Records

Article 4 - Procurement of Construction and Architect Engineer services

Article 5 - Protests and Disputes

Article 6 - Ethics and Public contracting

Part A - Definitions

Part B - Standards of Conduct

Effective date

These regulations shall take effect ten (10) days after publication.

Tomas B. Aldan

Director of Finance

CNMI PROCUREMENT REGULATIONS

Article 1 - GENERAL PROVISIONS Part A - General

Section 1-101 Purposes.

- Interpretation. These regulations shall be construed and applied to promote their underlying purposes and policies.
- (2) Purposes and Policies. The underlying purposes and policies of these regulations are:
 - (a) to provide for increased public confidence in the procedures followed in public procurement;
 - (b) to insure the fair and equitable treatment of all persons who deal with the procurement system of the Commonwealth:
 - (c) to provide increased economy in Commonwealth procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds:
 - (d) to foster effective broad-based competition within the free enterprise system; and
 - (e) to provide safeguards for the maintenance of a procurement system of quality and integrity.

Section 1-102 Authority.

These regulations are promulgated under the authority of 1 CMC §2553(j) which gives the Director of Finance the duty to be in control of and be responsible for procurement and supply in the Commonwealth.

Section 1-103 Supplementary General Principles of Law Applicable.

Unless displaced by the particular provisions of these regulations, 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 these regulations.

Section 1-104 Requirement of Good Faith.

These regulations require all parties, including government employees and contractors, involved in the negotiation, bidding, performance or administration of government contracts to act in good faith.

Section 1-105 Application of Regulations.

Except as otherwise specified by law, these regulations apply to every expenditure of public funds irrespective of source, including federal assistance monies and Covenant funds, which are not subject to federal procurement requirements. These regulations do not apply to contracts between the government and its political subdivisions or other governments. Nothing in these regulations shall be construed to prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, cooperative agreement or memoranda of understanding.

Section 1-106 Severability.

If any provision of these regulations or any application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of these regulations which can be given effect without the invalid provision or application, and to this end, the provisions of this Code are declared to be severable.

Section 1-107 Validity of Contract.

No government contract covered by these regulations shall be valid unless it complies with these regulations.

Section 1-108 Remedy Against Employee.

Any procurement action of an employee of government in violation of these regulations is an action outside the scope of his or her employment. The government 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.

Part B - Definitions

Section 1-201 Definitions.

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

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- 1. "Attorney General" means the Attorney General of the Northern Mariana Islands.
- 2. "Chief" means the head of the central procurement office of the government. The word Chief means the Chief of Procurement and Supply or designee.
- "Construction" means the process of building, alterating, 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.
- "Contract" means all types of agreements, regardless of what they may be called for the procurement of supplies, services or construction.
- "Cost-Reimbursement Contract" means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and these regulations, and a fee, if any.
- "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.
- "Employee" means an individual receiving a salary from the government, including appointive and elective officials and non-salaried individuals performing personal services for the government. This definition extends to the Governor, Lt. Governor and members of their staff. Consultants, independent contractors and part-time workers shall be considered employees.
- "Goods" means all property, including but not limited to equipment, materials, supplies, and other tangible personal property of any kind or nature, printing, insurance, leases of real and personal property, and sale or other disposal of real and personal property, and sale or other disposal of personal property.
- 9. "Government" means the Commonwealth of the Northern Mariana Islands Government which includes the executive, legislative and judicial branches. Public corporations and independent agencies established by Commonwealth law shall adopt these regulations or comparable regulations for their procurement.
- "Governor" means the Governor of the Northern Mariana Islands.
- 11. "Invitation for Bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

- 12. "Official with Expenditure Authority" means that public official who may expend, obligate, encumber or otherwise commit public funds under the Planning and Budget Act or under any annual appropriation act.
- 13. "Person" means an individual, sole proprietorship, partner-ship, joint venture, corporation, other unincorporated association or a private legal entity.
- 14. "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 contract, and all phases of contract administration.
- 15. "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.
- 16. "Responsible" in reference to a bidder, means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.
- 17. "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.
- 18. "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.

Part C - Public Access

Section 1-301 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 Chief.

Article 2 - PROCUREMENT ORGANIZATION
Part A - Chief of Procurement and Supply

Section 2-101 Creation of Procurement and Supply Division.

There is hereby created in the Department of Finance a Division of Procurement and Supply to assist the Director of Finance in the

execution of those duties authorized under 1 CMC §2553(j) and §§2581 - 2590.

Section 2-102 Chief of Procurement and Supply.

The Director of Finance shall appoint a Chief of Procurement and Supply to administer and supervise the day-to-day activities of the Division. The Chief of Procurement and Supply may be assisted in carrying out his functions and duties by employees of the Procurement and Supply Division.

Section 2-103 Duties of the Chief.

The duties and responsibilities of the Chief include, but are not limited to, the following:

- (1) oversee that these regulations are observed in all government procurement;
- (2) hear all appeals of protests and disputes;
- (3) conduct bidding, procurement, negotiation or administration of government contracts upon request of the official with expenditure authority;
- (4) provide advanced planning for the centralized purchase of government supplies;
- (5) exercise general supervision and control over all inventories of supplies belonging to the Commonwealth; and
- (6) establish and maintain programs for the inspection, testing and acceptance of supplies.

Section 2-104 Contract Oversight.

- (1) Before the execution of a contract, it must be reviewed and approved by the Chief. The Chief shall review all contracts for construction, the procurement of goods, leases, the sale of goods and for services by an independent contractor to insure compliance with these regulations, that the contract is for a public purpose, and does not constitute a waste or abuse of public funds.
- (2) A contract shall next be approved by the Director of Finance or his designee who shall certify the availability of funds.
- (3) A contract shall be approved first by the Chief and the Director of Finance before it is signed by either party. The

Chief shall cause such review to occur in a prompt and timely manner.

- (4) Upon his own initiative or upon the request of the Public Auditor, the Chief may refer any contract to the Public Auditor for a recommendation before he approves or disapproves of the contract.
- The Attorney General or his designee shall certify the form and legal capacity of every government contract, change order, or purchase order. No contract for personal services or employment shall be approved if it is retroactive for more than thirty (30) days.
- The Personnel Officer or his designee shall approve of all contracts for employment or personal services, including excepted services contracts and contracts for services by an independent contractor in a nonemployment status.
- A contract may be referred back to the Chief by the Director of Finance, Personnel Officer, Attorney General or Public Auditor for further review based on additional evidence that it may not comply with these regulations. Ιf the Chief withdraws approval or refuses to approve a contract, he shall state in writing the basis for his determination.
- It is the responsibility of the official with expenditure authority to ensure that the contractor does not sign the contract or incur any expenses under it until all necessary government signatures have been obtained. supervision and inspection of a project is the primary responsibility of the official with expenditure authority.
- No contract is effective against the Commonwealth until all of the Commonwealth officials whose signatures appear on the contract form have signed the contract. A contract shall contain a Right to Audit Records Clause.

Section 2-105 Split Contracts.

COMMONWEALTH REGISTER

If the Chief Procurement Officer determines that a contract has been split into subcontracts for the purpose of avoiding bidding or if a change order or modification is unreasonably being made in a contract to increase the contract price where a contract has been bid and awarded to the lowest responsible and responsive bidder, then the Chief may require the contract or the modification to be competitively bid. An unreasonable modification or change order would be, for example, one which would have been reasonably foreseeable at the time of the formation of the contract.

Section 2-106 Acceptance of Gratuities by Chief and Procurement and Supply Division Employees.

- (1) In addition to the restrictions found in Section 6-205, the Chief and the employees of the Procurement and Supply Division shall be subject to these additional restrictions to avoid the appearance of impropriety.
- The Chief or his employees cannot accept from any person any gift of value given with them with the intent to influence their business judgment.

Part B - Procurement Function

Section 2-201 Decentralized Procurement.

Officials with expenditure authority may conduct bidding, procurement, negotiation and the administration of contracts involving funds appropriated to their own office, department, agency or branch. All such activity must be shown to the reasonable satisfaction of the Chief to be in compliance with the regulations.

Section 2-202 Procurement Services.

Upon request of any official with expenditure authority, the Chief shall provide assistance or conduct the bidding, procurement, negotiation or administration of a particular contract.

Section 2-203 Centralized Procurement of Supplies.

The Chief may, with the approval of the Director of Finance, purchase certain government supplies in large quantities to be relied upon by all departments, agencies, offices and branches when in the best interest of the Commonwealth. No separate contract or purchase order for these supplies will be approved.

> Article 3 - SOURCE SELECTION AND CONTRACT FORMATION Part A - Source Selection

Section 3-101 Methods of Source Selection.

Unless otherwise authorized by law or by regulation, all government contracts shall be awarded by competitive sealed bidding, except as provided in:

- (1) Section 3-103 (Small Purchases);
- (2) Section 3-104 (Sole Source Procurement);

- (3) Section 3-105 (Emergency Procurement);
- (4) Section 3-106 (Competitive Sealed Proposals);
- (5) Section 3-107 (Professional Services):
- (6) Section 4-102 (Architect-Engineer Services).

Section 3-102 Competitive Sealed Bidding.

- Invitation for Bids. An invitation for bids shall be issued and shall include at the minimum:
 - (a) an invitation for bids number;
 - (b) date of issuance;
 - (c) name, address and location of issuing office;
 - (d) specific location where bids must be submitted
 - (e) date, hour and place of bid opening;
 - (f) a purchase description in sufficient detail to permit full and open competition and allow bidders to properly respond;
 - (g) quantity to be furnished;
 - time, place and method of delivery or performance requirements;
 - (i) essential contractual terms and conditions; and
 - (j) any bonding requirements.
- (2) Public Notice. Adequate public notice of the Invitation for Bids shall be given a reasonable time prior to the date set forth for the opening of bids. Publication of notice in a newspaper of general circulation in the Commonwealth once in each week over a period of thirty (30) calendar days shall be deemed to be adequate notice.
- (3) Bidding Time. A bidding time of at least thirty (30) calendar days shall be provided, unless the Chief determines a shorter period is reasonable and necessary.
- (4) Bid Receipt. All bids shall be submitted to the Office of the Chief of the Division of Procurement and Supply. Bids shall be received prior to the time set for opening and shall be maintained sealed in a locked receptacle at that office.

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 Chief. No information contained in the bid shall be disclosed prior to the bid opening. The Chief shall cause the opened bid to be placed into the sealed receptacle.

- (5) Bid Opening. The bid opening shall be conducted by the Chief of Procurement and Supply at the Office of the Division of Procurement and Supply. 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 Chief 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 Chief shall prepare a written summary of the bid opening.
- (6) Bid Acceptance and Bid Evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in these regulations. 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.
- (7) Bid Rejection. A bid may be rejected for any of the following reasons:
 - (a) failure to conform to essential requirements of the Invitation for Bids such as specifications or time of delivery;
 - (b) imposition of conditions or restrictions in the bid which modify requirements of the invitation or limit the bidder's liability to the government. For example, bids shall be rejected in which the bidder:
 - (i) protects against future changes in conditions, such as increased costs;
 - (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

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- (iv) limits the rights of government.
- (c) unreasonableness as to price;
- (d) a bid from a nonresponsible bidder.

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- (8) Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids, before or after award, or cancellation of awards or contracts based on bid mistakes must be approved by the Chief in writing. After the bid opening, no changes in bid price or other provisions of bids prejudicial to the interest of the government or fair competition shall be allowed. Whenever a bid mistake is suspected, the government shall request confirmation of the bid prior to award. In such an instance, if the bidder alleges an error, the government shall only permit correction of the bid or withdrawal of the bid in accordance with subparagraph (a) or (b).
 - (a) 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 may not be permitted to correct a bid mistake resulting from an error in judgment.
 - (b) Withdrawal of Bids. Withdrawal of a bid shall only be permitted where the otherwise low bidder alleges a mistake and there is clear and convincing evidence as to the existence of a mistake.
 - (c) 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.

(9) Award.

(a) 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 these regulations. Unsuccessful bidders shall also be promptly notified.

- (b) 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 orally or by letter. No acceptance of an offer shall occur nor shall any contract be formed until a government contract is written and has been approved by all the officials required by law and regulation. Government 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.
- (c) 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 (5%), and time or economic considerations preclude resolicitation of work of a reduced scope, the official with expenditure authority may be authorized by the Chief 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.

Section 3-103 Small Purchases.

- (1) 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.
- (2) No bidding is required but is encouraged for procurement under \$1,000.00.
- (3) Bidding is not required for procurement under \$5,000.00. The official with expenditure authority must obtain price quotations from at least three (3) vendors and base the selection on competitive price and quality for procurement valued at \$1,000.00 to \$5,000.00.
- (4) Purchase orders may be utilized for small purchases in subparagraphs (2) and (3) only. In no other instance may purchase orders be utilized instead of contracts.

Section 3-104 Sole Source Procurement.

(1) A contract may be awarded for a supply, service or construction item without competition when the Chief determines in writing that there is only one source for the required supply, service or construction item.

- (2) The written determination shall be prepared by the official with expenditure authority and shall contain the following information:
 - (i) the unique capabilities required and why they are required and the consideration given to alternative sources.

Section 3-105 Emergency Procurement.

- (1) Notwithstanding any other provision of these regulations, the government may make emergency procurements when there exists a threat to public health, safety or welfare under emergency conditions. An emergency procurement must be as competitive as practicable under the circumstances.
- (2) A written determination of the basis for the emergency and for the selection of the particular contractor must be made by the official with expenditure authority and approved by the Chief.

Section 3-106 Competitive Sealed Proposals.

- (1) Conditions for use. When an official with expenditure authority determines in writing that the use of a competitive sealed bidding is either not practical or not advantageous to the government and receives the approval of the Chief Procurement Officer, a contract may be entered into by competitive sealed proposals.
- (2) Request for proposals. Proposals shall be solicited through a request for proposals.
- (3) Public notice. Adequate public notice of the request for proposals shall be given in the same manner as provided for in competitive sealed bids.
- (4) 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.
- (5) Evaluation factors. The request for proposals shall state the relative importance of price and other evaluation factors.
- (6) 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.

(7) Award. Award shall be made to the responsible offeror whose proposal is determined in writing to be most advantageous to the Commonwealth 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.

Section 3-107 Competitive Selection Procedures for Professional Services.

- (1) Procurement method. The services of accountants, physicians or lawyers shall be procured as provided in this section except when authorized as a small purchase, emergency procurement or sole-source procurement.
- (2) 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 Chief 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.
- (3) 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.
- (4) Discussions. 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.

(5) Award. Award shall be made to the offeror determined in writing by the official with expenditure authority 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 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.

Part B - Cancellation of Invitation for Bids or Requests for Proposals

Section 3-201 Cancellation.

An invitation for bids or request for proposals may be cancelled, and any and all bids or proposals may be rejected, when such action is determined in writing by the official with expenditure authority and approved by the Chief to be in the best interest of the government based on:

- (1) inadequate or ambiguous specifications contained in the solicitation:
- (2) specifications which have been revised;
- (3) goods or services being procured which are no longer required;
- (4) inadequate consideration given to all factors of cost to the government in the solicitation;
- (5) bids or proposals received indicate that the needs of the government can be certified by a less expensive good or service:
- (6) all offers with acceptable bids or proposals received are at unreasonable prices; or
- (7) bids were collusive.

Part C - Qualifications and Duties

Section 3-301 Responsibility of Bidders and Offerors.

(1) Awards shall be made only to responsible contractors.
To be determined responsible, a prospective contractor must:

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- (a) have adequate financial resources to perform the contract, or the ability to obtain them;
- (b) be able to comply with the required delivery or performance schedule;
- (c) have a satisfactory performance record;
- (d) have a satisfactory record of integrity and business ethics:
- (e) have the necessary organization, experience and skills, (or the ability to obtain them), required to successfully perform the contract;
- (f) have the necessary production, construction and technical equipment facilities, or the ability to obtain them; and
- (g) be otherwise qualified and eligible to receive an award under applicable laws and rules.
- (2) Obtaining information. Prior to award, the official with expenditure authority shall obtain information from the bidder or offeror necessary to make a determination of responsibility using the factors in paragraph 1 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.
- (3) Right of non-disclosure. Information furnished by a bidder or offeror pursuant to paragraph 2 may not be disclosed outside of the office of the official with expenditure authority, the Chief Procurement Officer, the Attorney General or any involved government agency without prior consent by the bidder or offeror.
- (4) Nonresponsibility 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 nonresponsible, a written determination shall be signed by the official with expenditure authority stating the basis for the determination and this shall be placed in the contract file.

Section 3-302 Prequalification of Contractors.

Prospective suppliers of goods or services may be prequalified for particular types of construction, goods and services when determined necessary by the Chief. 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, prequalified suppliers. In no event will bidders be allowed to qualify after the bid opening.

Part D - Types of Contracts

Section 3-401 Types of Contracts.

- (1) Use of a cost-plus-a-percentage-of-cost and percentage of construction cost methods of contracting are prohibited.
- (2) Government contracts shall utilize a firm fixed price unless use of a cost reimbursement contract is justified under paragraph 3.
- (3) A cost reimbursement contract may be used when the official with expenditure authority determines in writing which is attached to the contract that:
 - (a) 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:
 - (b) use of a firm fixed price contract could seriously effect the contractor's financial stability or result in payment by the government for contingencies that never occur; or
 - (c) use of a cost reimbursement contract is likely to be less costly to the government than any other type due to the nature of the work to be performed under the contract.

Part E - Inspection and Audit

Section 3-501 Right to Inspect Place of Business.

The government, 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 government.

Section 3-502 Right to Audit Records.

As required by section 404 of Public Law No. 3-91, 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 a government 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 government contracts and obligations.

Part F - Reports and Records

Section 3-601 Report of Anticompetitive or Deceptive Practices.

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 to the Attorney General without delay:

- (1) unfair methods of competition;
- (2) deceptive acts; or
- (3) unfair business practices.

These acts are more fully defined at 4 CMC §§5101 through 5206.

Section 3-602 Retention of Procurement Records.

- (1) All procurement records shall be retained by the official with expenditure authority and the chief procurement officer for their respective agencies.
- (2) The Chief Procurement Officer shall maintain a record listing all contracts made under sole-source procurement or emergency procurements for a minimum of five (5) years. The records shall contain:
 - (a) each contractors name;
 - (b) the amount and type of each contract; and
 - (c) a listing of the supplies, services or construction procured under each contract.
- (3) All procurement records, except those designated herein as not subject to disclosure, shall be available to public inspection.

Article 4 - PROCUREMENT OF CONSTRUCTION AND ARCHITECT-ENGINEER SERVICES

Section 4-101 Construction Procurement.

- Invitation for Bids. (1)
 - (a) Deposit. The official with expenditure authority shall determine the amount of deposit required for potential bidders to obtain the invitation for bids.

- (b) Contents. The invitation for bids shall be prepared in accordance with section 3-102(1). In addition, the following items shall be included in the Invitation for Bids:
 - (i) Notice to Bidders. General information regarding 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;

(2) Bid Security.

- Requirement. Bid security shall be required for all competitive sealed bidding construction contracts where the price is estimated by the Chief to exceed \$25,000.00 or when the Chief determines it is in the interest of the Commonwealth. Bid security shall be on a bid bond, in cash, by certified check, cashiers check or other form acceptable to the government. A surety company shall hold the certificate of authority from the U.S. Secretary of the Treasury as an acceptable surety or other surety acceptable to the Attorney General.
- (b) 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 Invitations for Bids depending upon the source of funding.
- (c) Rejection of Bid. Failure to furnish bid security, when required by the invitation, shall result in rejection of the bid as nonresponsive.
- (3) Contract Performance and Payment Bonds.
 - (a) When a construction contract is awarded in excess of \$25,000.00, the following bonds or security shall be delivered to the government and shall become binding on the parties upon the execution of the contract:

- a performance bond satisfactory to the government, executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to the Commonwealth, in an amount equal to one hundred percent (100%) of the price specified in the contract; and
- (ii) a payment bond satisfactory to the Commonwealth, executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to the Commonwealth, 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.
- (4) Suits 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 (90) days 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 suit and to prosecute said action for the sum or sums justly due such 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.
- (5) Suits on Payment Bonds; Where and When Brought. Every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction for the Commonwealth; but no such suit shall be commenced after the expiration of one (1) year after the day on which the last of the labor was

performed or material was supplied by the person bringing suit. The obligee named in the bond need not be joined as a party in any such suit.

(6) Fiscal Responsibility. Every contract modification, change order, or contract price adjustment under a construction contract shall be subject to prior written certification by the Director of Finance 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 therefor, 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 contract modification, change order or adjustment in contract 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.

Section 4-102 Architect-Engineer Services.

- (1) Procurement Method. Architect-engineer services shall be procured as provided in this section except when authorized as a small purchase or emergency procurement.
- (2) 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.
- (3) Selection. The chief procurement officer and the Technical Services Division of the Department of Public Works 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 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.
- (4) Negotiation. The official with expenditure authority shall negotiate a contract with the highest qualified architect-engineer firm at a price determined to be fair and

reasonable to the government. If a fair and reasonable price cannot be negotiated, negotiations shall be terminated and negotiations shall be undertaken with the second highest qualified firm. If a fair and reasonable price cannot be negotiated, negotiations shall be terminated and negotiations shall be undertaken with the third highest qualified firm. If a fair and reasonable price cannot be negotiated with any of the firms, then the officer with expenditure authority shall select additional firms in order of competence and qualifications and continue negotiations until a fair and reasonable price is agreed upon.

> Article 5 - PROTESTS AND DISPUTES Part A - Bid Protests and Appeals

Section 5-101 Protests to the Chief.

(1) General

- (a) 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 Chief. The protest shall be received by the Chief in writing within ten (10) days after such aggrieved person knows or should have known of the facts giving rise thereto. The Chief shall consider all protests or objections to the award of a contract, whether submitted before or after award. If a protest is oral and the matter cannot be resolved, written confirmation of the protest shall be requested by the Chief. The written protest shall state fully the factual and legal grounds for the protest;
- (b) Other persons, including bidders, involved in or affected by the protest shall be given notice of the protest and its basis in appropriate cases. These persons shall also be advised that they may submit their views and relevant information to the Chief within a specified period of time. Normally, the time specified will be one (1) week;
- The Chief shall decide the protest within thirty (30) calendar days after all interested parties have submitted their views unless he certifies that the complexity of the matter requires a longer time, in which event he shall specify the appropriate longer time:
- (d) When a protest, before or after award, has been appealed to the Public Auditor, as provided in these procedures, and the Chief is requested to submit a report, the Chief should include with his report a copy of:

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- (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 Chief's signed statement setting forth findings, actions, and recommendations and any additional evidence or information deemed necessary in determining the validity of the protest. statement shall be fully responsive to the allegation of the protest. If the award was made after receipt of the protest, the Chief's report will include the determination prescribed in subparagraph (2)(d) below.
- (e) Since timely action on protests is essential, they should be handled on a priority basis. Upon receipt of notice that an appeal from the Chief's decision has been taken to the Public Auditor, the Chief shall immediately begin compiling the information necessary for a report as provided in subsection (d) above. To further expedite processing, the official who furnishes the agency's report should, upon request of the protester or the Public Auditor, simultaneously furnish a complete copy (except for information privileged by law or which the Chief deems must be confidential in order to benefit from competitive bidding) to the protester. In such instances, the protester shall be requested to furnish a copy of any comments on the administrative report directly to the Public Auditor as well as the Chief.

(2) Protests Before Award:

(a) The Chief shall require that written confirmation of an oral protest be submitted by the time specified in section 5-101(1)(a) 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. An award may be made in the normal manner unless the Chief finds it necessary in his discretion to take remedial action.

- (b) When a proper 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 readvertisement. In the event of failure to obtain such extensions of bids, consideration shall be given to proceeding with an award under subparagraph (c) below.
- (c) When a written protest is received, award shall not be made until the matter is resolved, unless the Chief determines that:
 - (i) the materials and services to be contracted for are urgently required:
 - (ii) delivery or performance will be unduly delayed by failure to make award promptly; or
 - (iii) a prompt award will otherwise be advantageous to the Commonwealth.
- (d) If award is made under subparagraph (c) above, the Chief shall document the file to explain the need for an immediate award. The Chief also shall give written notice to the protester and others concerned of the decision to proceed with the award.

(3) Protests After Award:

Although persons involved in or affected by the filing of a protest after award may be limited, in addition to the Chief, at least the contractor shall be furnished the notice of protest and its basis in accordance with subparagraph (1)(b) 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 Government's interest, the Chief should consider seeking a mutual agreement with the contractor to suspend performance on a no-cost basis.

(4) Computation of Time:

- (a) Except as otherwise specified, all "days" referred to in this part are deemed to be working days of the Commonwealth Government. The term "file" or "submit" except as otherwise provided refers to the date of transmission.
- 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.

- (1) Jurisdiction; Exhaustion of Remedies. A written appeal to the Public Auditor from a decision by the Chief may be taken provided that the party taking the appeal has first submitted a written protest to the Chief as provided in section 5-101 of these Procedures, and the Chief has denied the protest or has failed to act on the protest within the time provided for in section 5-101(1)(c) above.
- (2) Form of Appeal. No particular form of pleading is required for filing an appeal to the Public Auditor. The appeal shall, however:
 - (a) Include the name and address of the appellant;
 - (b) Identify the contracting agency and the number of the solicitation or contract;
 - (c) Contain a concise, logically arranged, and direct statement of the grounds for appeal; and
 - (d) Specifically request a ruling by the Public Auditor.
- (3) Time for Filing Appeal. An appeal from the Chief's decision must be received by the office of the Public Auditor not later than ten (10) days after the appellant receives the decision of the Chief, or, in the event that the Chief has not decided the protest within ten (10) days from the date that he should have decided the protest pursuant to section 5-101(1)(c) 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 Commonwealth should the appeal be considered.
- (4) Notice of Protest, Submission of Chief's Report and Time for Filing of Comments on Report.
 - (a) The Public Auditor shall notify the Chief by telephone and in writing within one (1) day of the receipt of an appeal, requesting the Chief 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 Chief shall be requested to furnish in accordance with section 5-101(1)(b) of these Procedures copies of the protest and appeal documents to such parties with instructions to communicate further directly with the Public Auditor.

- 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.
- The Public Auditor shall request the Chief to submit a complete report on the appeal to the Public Auditor as expeditiously as possible (generally within 25 working days) in accordance with section 501(1)(d) of these Procedures and to furnish a copy of the report to the appellant and other interested parties as defined in section 4-101(4)(c).
- 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 the agency office which furnished the report and to other interested parties. Any rebuttal an appellant or interested party may care to make shall be filed with the Public Auditor within five (5) days after receipt of the comments to which rebuttal is directed, with a copy to the agency office which furnished the report, the appellant, and interested parties, as the case may be. Unsolicited agency rebuttals shall be considered if filed within five (5) days after receipt by the agency of the comments to which rebuttal is directed.
- (e) The failure of an appellant or any interest party to comply with the time limits stated in this section may result in resolution of the appeal without consideration of the comments untimely filed.
- (5) Withholding of Award. When an appeal has been filed before award, the Chief will not make an award prior to resolution of the protest except as provided in this section. In the event the Chief determines that award is to be made during the pendency of an appeal, the Chief will notify the Public Auditor.
- (6) 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.

(7) Time for Submission of Additional Information. 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. If it is necessary to obtain additional information from the Chief, the Public Auditor will request that such information be furnished as expeditiously as possible.

(8) Conference.

- (a) 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 Chief. 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.
- (b) 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.
- Any written comments to be submitted and as deemed appropriate 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.
 - Time for Decision; Notice of Decision: The Public Auditor shall, if possible, issue a decision on the appeal within 25 days after all information necessary for the resolution of the appeal has been received. A copy of the decision shall immediately be mailed or otherwise transmitted to the appellant, other participating parties, and the Chief.

(9) Request for Reconsideration:

(a) Reconsideration of a decision of the Public Auditor may be requested by the appellant, any interested party who submitted comments during consideration of the protest, the Chief, and any agency involved in the protest. 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.

- (b) Request for reconsideration of a decision of the Public Auditor shall be filed not later than ten (10) days after the basis for reconsideration is known or should have been known, whichever is earlier. The term "filed" as used in this section means receipt in the Office of the Public Auditor.
- (c) A request for reconsideration shall be subject to these bid protest procedures consistent with the need for prompt resolution of the matter.

Section 5-103 Remedies:

- (1) Remedies Prior to Award. If prior to award the Chief or the Public Auditor determines that a solicitation or proposed award of a contract is in violation of law or regulation, then the solicitation or proposed award shall be:
 - (a) cancelled; or
 - (b) revised to comply with law or regulation.
- (2) Remedies After an Award. If after an award the Chief or the Public Auditor determines that a solicitation or award of a contract is in violation of law or regulation, then:
 - (a) if the person awarded the contract has not acted fraudulently or in bad faith:
 - (i) the contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the Commonwealth; or
 - (ii) the contract may be terminated 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;
 - (b) if the person awarded the contract has acted fraudulently or in bad faith:
 - (i) the contract may be declared null and void; or
 - (ii) the contract may be ratified and affirmed 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.
- (3) Finality of Findings of Fact by the Public Auditor. A determination of an issue of fact by the Public Auditor under these Procedures shall be final and conclusive unless arbitrary, capricious, fraudulent, or clearly erroneous.

Section 5-104 Effective Date.

All protests as to the manner of bidding, the failure to properly award a bid, the failure of government to contract with a business after bidding, or the cancellation of bids which may or may not be the subject of lawsuit but have not reached final judgment as of the effective date of these regulations shall be heard in accordance with this Part upon the request of the actual or prospective bidder, offeror, or contractor who is aggrieved.

Part B - Disputes

Section 5-201 Disputes.

- (1) Any dispute between the government and a contractor relating to the performance, interpretation of or compensation due under a contract, which is the subject of these regulations, must be filed in writing with the official with expenditure authority within ten (10) calendar days after knowledge of the facts surrounding the dispute.
- (2) When a claim by or against a contractor cannot be satisfied or settled by mutual agreement and a decision on the dispute is necessary, the officer with expenditure authority shall review the facts pertinent to the dispute, secure necessary legal assistance and prepare a written description that shall include:
 - (a) description of the dispute;
 - (b) reference to pertinent contract terms;
 - (c) statement of the factual areas of disagreement or agreement; and
 - (d) statement of the decision as to the factual areas of disagreement and conclusion of the dispute with any supporting rationale.
- (3) Appeals. The Chief shall review and render a decision on an appeal from an adverse decision timely taken by a contractor. The Chief may require a hearing or that information be submitted on the record, in his discretion. The Chief may affirm, reverse or modify the decision or remand it for further consideration.
- (4) Duty to Continue Performance. A contractor that has a dispute pending before the official with expenditure authority or an appeal before the Chief must continue to perform according to the terms of the contract and failure to 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 expenditure authority.

Article 6 - ETHICS IN PUBLIC CONTRACTING Part A - Definitions

Section 6-101 Definitions of Terms.

- "Confidential information" means any information which is available to an employee only because of the employee's status as an employee of this government and is not a matter of public knowledge or available to the public on request.
- "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.
- "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.
- "Financial interest" means: 4.
 - 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
 - holding a position in a business such as an officer, director, trustee, partner, employee or the like or holding any position of management.
- "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.
- "Immediate family" means spouse, children, parents, brothers and sisters.

Part B - Standards of Conduct

Section 6-201 Policy.

Public employment is a public trust. In governmental contracting, public employees shall discharge their duties impartially so as to:

- insure fair competitive access to governmental procurement by reasonable contractors; and
- (2) conduct themselves in a manner as to foster public confidence in the integrity of the government.

Section 6-202 General Standards.

- (1) 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 a public trust. In order to fulfill this ethical standard, employees must meet the requirements of these regulations.
- (2) Contractors. Any effort to influence any public employee to breach the standards of ethical conduct set forth in these regulations is also a breach of ethical standards.

Section 6-203 Employee Disclosure Requirements.

- (1) Disclosure of benefit received from contract. Any employee who has, or obtains any benefit from, any government contract with a business in which the employee has a financial interest shall report such benefit to the Chief Procurement Officer.
- (2) 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.

Section 6-204 Employee Conflict of Interest.

- (1) 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:
 - (a) the employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;
 - (b) a business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
 - (c) 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.
- (2) 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 Chief 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.

Section 6-205 Gratuities and Kickbacks.

- (1) 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.
- (2) 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 adducement for the award of a subcontractor or order.

Section 6-206 Prohibition Against Contingent Fees.

- (1) 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 government contracts upon an agreement or 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.
- (2) Representation of contractor. Every person, before being awarded a government 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.

Section 6-207 Contract Clauses.

The prohibitions against gratuities, kickbacks and against contingent fees shall be conspicuously set forth in every contract and solicitation therefor.

Section 6-208 Restrictions on Employment of Present and Former Employees.

(1) Present employees. It shall be a breach of ethical standards for any employee who is participating directly or

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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.

- 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 the government, in connection with any:
 - (i) judicial or other proceeding, application, request for a ruling or other determination;
 - (ii) contract;
 - (iii) claim; or
 - (iv) 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 the government is a party or has a direct or substantial interest.

- (3) 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 government, in connection with any:
 - judicial or other proceeding, application, request for a ruling or other determination;
 - (b) contract;
 - (c) claim; or
 - (d) 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 responsible, where the government is a party or has a direct and substantial interest.

Section 6-209 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.

Section 6-210 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 the contract was obtained by a bidder or bidders by reason of collusive or secret agreement among the bidders to the disadvantage of the government.

Section 6-211 Penalties.

- (1) Government employees. Government employee is any person whether appointed, elected, excepted service or civil service. An employee who violates the provisions of these rules and regulations is subject to adverse action as may be appropriate in his or her particular circumstances. This action includes but is not limited to reprimand, suspension without pay, termination of employment, civil injunction, civil suit for damages or return of government money, or criminal prosecution.
- (2) Contractors. A contractor who violates a provision of these rules and regulations shall be subject to a written warning of reprimand, the termination of the contract or suspension from being a contractor or subcontractor under a government contract in addition to other penalties prescribed by law.
- (3) All proceedings under this section must be in accordance with due process requirements.

Section 6-212 Authority to Debar or Suspend.

(1) Authority. After reasonable notice to the person involved and reasonable opportunity for the person to be heard under the Administrative Procedures Act, the Chief Procurement Officer after consultation with the official with expenditure authority and the Attorney General, shall have authority to have debar a person for cause from 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.

- Causes for debarment or suspension. The causes for debarment or suspension include the following:
 - 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;
 - (b) 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;
 - (c) conviction under Commonwealth or federal antitrust statues arising out of the submission of bids or propos-als such as in Chapter 2 of Division 5 of Title 4 of the Commonwealth Code:
 - (d) violation of contract provisions, as set forth below, of a character which is regarded by the Chief Procurement Officer to be so serious as to justify debarment action:
 - 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;
 - any other cause that the Chief Procurement Officer determines to be so serious and compelling as to effect responsibility as a government contractor, including debarment by another governmental entity; and
 - (f) for violation of any of the ethical standards set forth in Article 6.

- (3) Decision. The Chief Procurement Officer shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken.
- (4) Notice of decision. A copy of the decision shall be mailed or otherwise furnished immediately to the debarred or suspended person.

Article 7 - MISCELLANEOUS

Section 7-101 Severability.

If any provision of these regulations or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end, the provisions of these regulations are severable.

Filed this day of

Office of Registrar of Corporations
Public Notice Commonwealth of the Northern Mariana Islands

Adopted Regulations

Division of Procurement and Supply, Department of Finance

Authority

The Director of Finance in accordance with Title 1 section 2557 of the Commonwealth Code is authorized to adopt rules and regulations necessary to perform his duties and responsibilities which includes the administration of the Division of Procurement and Supply pursuant to 1 CMC section 2553(j).

Subject matter

The adopted cost and price Analysis Regulations included the following general subjects:

Section 1-100	Overview and summary
Section 1-101	Definition
Section 1-102	Policy
Section 1-103	General
Section 1-104	Cost and pricing Data
Section 1-105	General
Section 1-106	Subcontract pricing considerations
Section 1-107	Prenegotiation objectives
Section 1-108	Price negotiation memorandum
Section 1-109	Reserved
Section 1-200	Profit
Section 1-300	Effective Date

Amendments

Except for the following changes in the numbering of certain sections, the regulation is adopted in its entirety.

Proposed	<u>1</u>	Adopted	
Part A	- General	Deleted	
Section	1-104-3	Section	1-104-1
17	1-104-4	11	1-104-2
11	1-104-5	ır	1-104-3
17	1-104-6	n	1-104-4
11	1-104-7	11	1-104-5
	1-105-1	11	1-105
11	1-105-2	11	1-105-1
ŧI	1-105-3	II .	1-105-2
\$1	1-105-4	ır	1-105-3
11	1-105-5	n	1-105-4
11	1-301-1	18	1-300

There were no Public comments.

Tomas B. Aldan
Director of Finance

PUBLIC NOTICE

Adoption of Regulations

Comprehensive Immigration Regulations

The Attorney General, under the authority vested by Section 5(b)(1) of Public Law No. 3-105, hereby adopts comprehensive regulations governing the Office of Immigration and Naturalization.

Numerous letters providing public comment on the May 20, 1985 proposed regulations were received. In addition, a public hearing was held on June 19, 1985 at the House of Representatives on the regulations which was well-attended. As a result of the public comments received some changes have been made prior to adoption of the regulations. The most significant changes are:

- Section 403(D): a registration procedure is provided for nonresident workers whose labor permits are being processed for renewal.
- Section 607(B): the interest rate on late bills is raised to 15% in accordance with established law.
- Section 703: short-term tourist entry is expanded to 30 days.
- Section 706(D): permit for immediate relatives of nonaliens replaces white permanent resident cards.
- Section 706(E): permit for immediate relatives of alien changed from 120 days entry to one year. This is required by the Nonresident Workers Act. Any change must be made by legislation.
- Section 706(F): permit for consular official extended to an additional three staff members and their immediate relatives.
- Sections 706(L) and (M): permits added for religious ministers and missionaries.
- Section 707(E): no applications will be accepted from persons who are present solely because of pending court or administrative action until they prevail.

- XIII PERMANENT RESIDENCE: permanent residence is limited to residence established under Public Law No. 5-11. New tan-colored cards will be issued for valid holders of Public Law 5-11 green cards. Only the tan cards will be officially recognized.

The text of the adopted regulations follows. Any persons who wish to comment further on the regulations are invited to provide written comments to the Office of the Attorney General.

Certified by:

REXEORD C. KOSAC Attorney General

IMMIGRATION AND NATURALIZATION REGULATIONS

I. GENERAL

<u>Section 101. Purpose</u>. These regulations shall replace those rules and regulations repealed by Section 29 of Public Law No. 3-105.

Section 102. Definitions. The words and phrases used in these regulations have the meanings ascribed to them in Section 3 of Public Law No. 3-105. As used herein, "inspector" shall include registrars, examiners, inspectors, and all officers of the Immigration and Naturalization Office.

II. APPOINTMENTS

Section 201. Immigration and Naturalization Officer. The Immigration and Naturalization Officer shall be appointed by a letter of appointment signed by the Attorney General delivered to the Immigration and Naturalization Officer and the Governor.

Section 202. Inspector.

- A. Inspectors shall perform all the duties of the Office of Immigration and Naturalization under Public Law Nos. 1-8 and 3-105.
- B. Inspectors shall be appointed by memoranda of the Immigration and Naturalization Officer with the written concurrence of the Attorney General. To become effective, the appointments must be followed by the execution of an oath of office.

Section 203. Examiner.

- A. Examiners shall provide further examination of persons excluded at the borders by an inspector. An examiner shall have the powers and duties described in Sections 14-16 of Public Law 3-105 specifically and those of an inspector generally.
- B. Examiners shall be designated by memoranda of the Immigration and Naturalization Officer with notice to the Attorney General. Appointment to the position of examiner does not entitle the examiner to an increase in compensation and shall not be considered as a promotion or demotion. There shall be one examiner on duty with an inspector at each port of entry when clearing vessels.

Section 204. Registrar.

- A. Registrars shall register aliens in accordance with Section 24 of Public Law No. 3-105 and the regulations issued thereunder.
- B. Registrars shall be inspectors designated as registrars by the Immigration and Naturalization Officer with notice to the Attorney General. Appointment to the position of registrar does not entitle the registrar to an increase in compensation and shall not be considered as a promotion or demotion. There shall at all times be at least two registrars whose duty station shall be at the Main Office.

III. CONDUCT OF INSPECTORS

Section 301. Personnel Service System Rules and Regulations. The Personnel Service System Rules and Regulations, as finally adopted by the Civil Service Commission, shall apply to all inspectors. All amendments thereafter shall apply. In particular, the Code of Ethics, Part V(D), applies to every inspector. The Immigration and Naturalization Officer shall cause a copy of the Code of Ethics to be delivered to every inspector to be kept at his or her work station.

Section 302. Dress.

- A. No inspector shall report to duty unless dressed in full uniform. Full uniform consists of black shoes, dark socks, dark blue pants, black leather belt, light blue shirt, name tag and badge. Those items issued by the government cannot be substituted. In cold weather, the government-issued dark blue jacket shall be worn.
- B. Clothing shall be clean and ironed. Shoes shall be shined. The inspector must be clean shaven and neat.

Section 303. Punctuality.

- A. An inspector shall arrive at his assigned station on time for his shift in uniform and prepared to work. Failure to do so may result in suspension or termination. This is particularly important at the ports of entry where the commercial activities of the Commonwealth depend upon Immigration to promptly clear vessels and aircraft.
- B. If an inspector is unable to arrive on time or is unable to show up to work, he shall immediately notify his supervisor in advance. If his supervisor is unavailable, he shall notify the Assistant Chief or the Immigration and Naturalization Officer. Failure to do so may result in suspension or termination.

Section 304. Chain of Command.

- A. Requests or grievances shall be brought within the chain of command in order to provide for an orderly, non-partisan resolution of problems within the Office. An employee shall not pursue a grievance with a higher rank supervisory official until he has done so with a lesser rank official.
- B. The one exception to the rule is that informal grievances may be brought to the Personnel Officer in order to seek advice.

IV. REGISTRATION

<u>Section 401. Purpose</u>. These regulations shall provide for a system of annual registration as required by Section 24 of Public Law No. 3-105.

<u>Section 402. Definitions</u>. The words and phrases used in these regulations have the meanings ascribed to them in Section 3 of Public Law No. 3-105.

Section 403. Registration.

- A. Every alien who remains in the Commonwealth longer than ninety (90) days shall register with the Office of Immigration and Naturalization.
- B. Every alien who is present in the Commonwealth on the first day of a calendar year shall register within forty-five (45) days with the Office of Immigration and Naturalization. This is a continuing obligation which must be renewed annually.
- C. Parents and legal guardians are responsible for the registration of aliens under the age of 18.
- D. Non-resident workers who have applied for renewal of their status but whose papers have not yet been processed to completion must register. However, their registered alien card shall be held by Immigration until a new entry permit has been issued.

Section 404. Registered Alien Card.

- A. Aliens who file the required documents, pay the required fee, and who are legally present in the Commonwealth shall receive a Registered Alien Card.
- B. The Registered Alien Card shall have the alien's photograph on one side and the signature of the Immigration and Naturalization Officer or a Registrar on the other side. The

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card shall also include a physical description, the name and address of the alien's employer, the expiration dates of the entry permit, passport, and labor certificate, as well as the alien's local address. The front of the card shall have the seal of the Commonwealth of the Northern Mariana Islands printed in the background.

C. Any alien 18 years old or older shall keep his or her Registered Alien Card in their personal possession.

Section 405. Registration Fee. No Registered Alien Card shall issue until the alien has paid a ten dollar (\$10.00) application processing fee to the Treasurer of the Commonwealth of the Northern Mariana Islands. Any alien issued a card without payment of the fee shall not be deemed to have registered as required by law.

Section 406. Application.

- A. The alien must complete an Alien Registration Application and sign it under penalty of perjury before a Registrar.
- B. Any alien who is a nonresident worker must submit a completed Affidavit of Employer of Nonresident Worker. The affidavit must be signed under penalty of perjury.

Section 407. Examination.

- A. Upon registration the alien must appear before a registrar in the Office of Immigration and Naturalization.
- B. The registrar shall require the alien to take an oath under penalty of perjury that the information submitted is true and correct and witness the alien's signature to that effect upon the Alien Registration Application. In addition, the alien must answer under oath questions relevant to the application and the alien's immigration status.

Section 408. Not Evidence of Legal Status.

- A. The purpose of the Alien Registration Card is to provide the alien with acceptable identification.
- B. The purpose of the application is to provide the government of the Commonwealth of the Northern Mariana Islands with background information on each alien, statistical data for the purpose of analyzing immigration in the Commonwealth, and a means of a detecting overstays among aliens.
- C. The issuance of a Registered Alien Card is not an adjudicatory act determining the legality of an alien's status. It is evidence only of the receipt of information for the above purposes.

Section 409. Immigration Processing. The Immigration and Naturalization Officer shall cause the information received to be recorded on computer or on a card file. In addition, a current file system shall be established with a file for each alien containing, at the minimum, the application forms and a photograph of the alien.

Section 410. Effective Date. This Part shall apply to registration during 1985. However, those aliens who have registered prior to the notice of these regulations shall be deemed to have validly registered if they have submitted the required documents, the Commonwealth Treasurer retains their application fee and they have been issued an Alien Registration Card.

V. PORTS OF ENTRY

Section 501. Purpose. The Attorney General shall designate Ports of Entry for arriving aliens under Section 26 of Public Law No. 3-105.

Section 502. Saipan and Northern Islands. There are hereby designated only two ports of entry for the island of Saipan and those islands of the Commonwealth north of Saipan:

- Saipan International Airport (at Aslito Field) for air carriers,
- B. Charlie Dock (Tanapag Harbor, Saipan) for ocean carriers.

Section 503. Tinian. There are hereby designated two ports of entry for the islands of Tinian and Aguigan:

- North Field Airport, Tinian for air carriers,
- Β. Tinian Harbor for ocean carriers.

There are hereby designated three ports of Section 504. Rota. entry for the island of Rota:

- Rota International Airport for air carriers, Α.
- В. West Dock (Sasanlago Harbor),
- C. East Dock (Sasanhaya Harbor).

Section 505. Exclusive Ports of Entry. The ports of entry designated in Sections 502, 503 and 504 are exclusive. Any person who unlawfully enters or attempts to enter the CNMI or any alien who enters or attempts to enter the CNMI at a place other than these ports of entry is guilty of a crime under Section 25(a) of Public Law No. 3-105. In addition, any carrier, master,

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commanding officer, purser, person in charge, agent, owner or consignee of any vessel or aircraft who knowingly brings or attempts to bring or aid, abet or assist in bringing any person into the Commonwealth at other than these ports of entry may be punished by a civil penalty of not more than Five Thousand Dollars (\$5,000.00) for each occurrence.

VESSEL AND AIRCRAFT ENTRY VT.

Section 601(A). Permission to Enter. No vessel or aircraft, unless military, shall enter the CNMI without first having received permission from the Immigration and Naturalization Officer. A vessel or aircraft master or pilot may file an Application For Vessel Or Aircraft To Enter The Northern Mariana Request for permission to enter shall contain the Islands. following information:

1. Vessels:

- Name of vessel, а.
- Ъ. Place of registry and registration number,
- Name, nationality and address of operator, c.
- d. Name, nationality and address of owner,
- Radio call sign, e.
- f. Length, breadth and depth of vessel,
- g. Gross tonnage,
- h. Last port of call,
- Date of last entry, i.
- j. Purpose of entry,
- k. Approximate duration of stay,
- 1. Port of next destination,
- Name and address of agent, m.
- Estimated time of arrival. n.

2. Aircraft:

Type and serial number of aircraft, a.

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Ъ. Name, nationality and address of senior pilot, COMMONWEALTH REGISTER

- c. Name, nationality and address of owner,
- d. Plan of flight route,
- e. Landing weight,
- f. Date of last entry.
- g. Port of next destination,
- h. Name and address of agent,
- i. Purpose of entry,
- j. Estimated time of arrival.

Section 601(B). Aircraft may obtain multiple entry permission upon submission of the type and serial number of the aircraft, the name, nationality and address of the owner, the purpose of entry, the name, address and phone number of the agent, and roster of all flight staff. This multiple entry permission shall remain in effect for one (1) year and is specifically conditioned on the local agent providing at least seven (7) days in advance to the Immigration Officer an estimated passenger forecast and the port of last call for the aircraft.

<u>Section 601(C)</u>. Non-commercial pleasure vessels or aircraft may arrive at the ports of entry without prior permission to enter if:

- 1. They immediately notify the port authority of their entry and their lack of permission to enter from the Immigration and Naturalization Officer,
- 2. The total number of crew and passengers is less than ten (10) persons,
- 3. The master or pilot immediately reports to port authority to request Immigration clearance,
- 4. The master or pilot fills out the form entitled "Application For Vessel Or Aircraft To Enter The Northern Marianas", and
- 5. No member of the crew leaves the vessel or aircraft until directed to do so by an Immigration Inspector.

Section 602. Emergency Entry. Upon request, the Immigration and Naturalization Officer may authorize the emergency entry of a vessel or aircraft to CNMI port of entry in the event of distress, weather, mechanical, or medical emergency. Post-entry authorization may be granted where circumstances do not permit pre-entry authorization. No vessel or aircraft which has entered a CNMI port by reason of an emergency shall be permitted to depart the

CNMI until a written report of the emergency incident, bearing the subscription of the master of such vessel or senior pilot of such aircraft, is filed with and evaluated by the Immigration and Naturalization Officer with the concurrence of the Attorney General. If the emergency is not verified by such report, the entry shall be considered as being unlawful. The period of stay authorized by an emergency entry shall be limited to that length of time until the emergency circumstances have been resolved. The owners, agents, crew, passenger and master of any such vessel or aircraft shall be liable for the costs of inspectors providing services at hours other than working hours in accordance with Section 605.

<u>Section 603. List of Crew and Passengers</u>. The master or pilot of every vessel or aircraft arriving in the CNMI from a port outside the CNMI shall furnish a list of the crew and passengers aboard before the commencement of inspection.

Section 604. Departure of Vessel or Aircraft. The privilege of a vessel or aircraft to enter the CNMI may be revoked or suspended at any time by the Immigration and Naturalization Officer. Grounds for revocation or suspension include violation of any section of these Regulations or violations of Section 22 of Public Law No. 3-105. An aircraft or vessel's privilege to enter shall be suspended if the aircraft or vessel abandons any of its crew in the CNMI. The period of suspension shall be at the discretion of the Immigration and Naturalization Officer.

Section 605. Compensation for Services Rendered.

- A. Established working hours for Immigration inspectors are on Mondays through Fridays, except legal holidays, from 0730 to 1630 hours.
- B. All carriers and persons who require the services of inspectors at other than established working hours shall pay the overtime costs of the inspectors providing such services. The rate overtime compensation is one and one-half $(1\frac{1}{2})$ times the inspector's basic pay.
- C. There shall be a minimum charge of two hours overtime. Otherwise, charges shall be based on actual time.
 - 1. On legal holidays, the rate shall be at holiday pay. The holiday pay rate is two (2) times the base salary rate or the adjusted salary rate. A salary rate may be adjusted by overtime compensation.
 - 2. In the event that an inspector is entitled by law to any other adjustment in pay (\underline{eg} . hazardous pay), then such charges shall be passed on to the carrier.

- D. Computation of time:
 - If services are requested, but need not or cannot be performed through no fault of the inspector, the minimum charge shall be assessed.
 - If services are rendered for more than one vessel/ aircraft of the same owner arriving within two hours of one another, the charge shall be computed on a continuous basis.
 - If in Section 605(d)(2), the vessels have different owners, the service charges shall be apportioned among
 - for passenger inspection, the charges shall be apportioned based on each carrier's passenger count.
 - for non-passenger inspection, the charges shall be based on actual time, and
 - for a combination of non-passenger and passenger inspection, the charges shall be based on actual time.
 - If the vessels arrive two or more hours apart, the period shall not be continuous and the two hour minimum charge shall apply to each arrival.

Section 606. Clearance During Journey.

- Clearance services may be provided during the journey of a vessel or aircraft upon request.
- The charges shall be according to Section 605(b) and (c).
- All necessary transportation shall be furnished by the master, owner or agent. The master, owner, or agent shall provide to the inspector per diem at the prevailing government rate or adequate hotel accommodations if the vessel departure is delayed and the inspector is required to wait for more than three (3) hours between 10:00 p.m. and 5:00 a.m. or for more than six (6) hours between 6:00 a.m. and 10:00 p.m. for the departure.
- During the voyage, accommodations provided passengers must be provided to the inspector.
- The master, owner or agent shall assume responsibility for necessary medical expenses incurred while away from the primary duty station in order to provide clearance during a journey.

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Section 607. Billing.

- A. Charges shall be billed monthly.
- B. Late payment shall be charged at 15% per annum.
- C. All bills not paid within ninety (90) days shall be reported to the Attorney General for civil suit and to revoke a carrier's entry privilege.

VII. ENTRY PERMIT

<u>Section 701. Requirement</u>. An alien may enter the CNMI only upon evidence of a valid entry permit granted in advance of his arrival at the port of entry.

Section 702. Exceptions by Waiver. Section 701 is waived for:

- A. Tourist entry,
- B. Short-term business entry permits,
- C. Employees of the CNMI government and their immediate relatives.

Section 703. Tourist Entry.

- A. An alien arriving by licensed carrier possessing a valid passport may enter the CNMI for thirty (30) days for the purpose of tourism.
- B. An Immigration Landing Card, Form 958, must be filled out upon entry and submitted to an inspector under penalty of perjury.
- C. Entry shall be without charge.
- D. An inspector shall be satisfied that there are no grounds for exclusion prior to admitting the alien tourist.
- E. An alien admitted as a tourist is prohibited from seeking employment or from engaging in any business activities.
- F. A tourist entry permit shall be granted only if an inspector has no reasonable cause to believe the visit is for purposes other than tourism.

Section 704. Short-term Business Entry Permit.

A. A short-term business entry permit need not be obtained in advance of arrival at the port of entry. The application

- may be completed under penalty of perjury and reviewed at the port of entry.
- The short-term business entry permit permits a stay of В. fourteen (14) days only.
- No extension of the short-term business entry permit can be granted. Instead, a stay can be lengthened only upon the grant of a regular-term business entry permit.
- Change in status to a regular-term business entry permit should be sought four (4) days in advance of expiration of a current permit. In compelling circumstances when in the interest of the Commonwealth, the Immigration and Naturalization Officer may, in his discretion, grant a three (3) day extension to the short-term permit in order to process the regular-term application.
- Business entry is for the purpose of conducting negotiations, formulating plans, and surveying prospects. permit holder may not become a member of the work force in any capacity.
- An alien who seeks a short-term business entry permit shall not be granted such a permit within thirty (30) days of the expiration of the alien's previous short-term business entry permit.

Section 705. CNMI Employees.

- CNMI alien employees and immediate relatives may enter for twenty (20) days without an entry permit if they possess a valid passport and a valid CNMI government travel order that specifies the immediate relatives to accompany the employee.
- It is specifically a condition of such entry that applications for CNMI employee entry permits shall be filed within ten (10) days of the arrival.
- Immigration must grant or deny the entry permits within seven (7) days of application.
- Should employment terminate for any reason during the twenty (20) day period, the alien and the supervisor must report this fact to the Immigration and Naturalization Officer within twenty-four (24) hours.

Section 706. Classifications of Entry Permits.

Regular-term Business Entry Permit - permits an alien to remain in the CNMI for either one (1) ninety (90) day stay or multiple visits totalling no more than ninety (90) days

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- within one twelve (12) month period.
 - 1. An annual permit shall be granted to aliens and their immediate relatives who have issued foreign investor permits.
- B. CNMI Employee Entry Permit permits alien to remain in the CNMI for one (1) year so long as the alien is employed by the CNMI government. Alien may not enter into any other employment agreements while in the CNMI other than with the government. If the employee continues employment beyond the entry permit, then the permit may be renewed. In no circumstance shall the permit last longer than seven (7) days past employment.
- C. Long-term Tourist Entry Permit permits alien to remain in the CNMI for sixty (60) days. A permit shall not be granted within thirty (30) days of the expiration of any previous tourist entry permit. Alien can conduct no business and perform no services during stay. Extensions will be granted only upon showing that it is in best interests of the Commonwealth.
- D. Immediate Relative of Nonalien Entry Permit permits immediate relatives of persons who are not aliens to remain in the CNMI for one (1) year so long as the immediate relative status is in effect. The permit may be renewed.
- E. Immediate Relative of Alien Entry Permit An immediate relative of an alien may enter under a permit for the same term as the alien's entry if the alien posts cash as a bond with the Chief of Immigration in the amount of twice the cost of return travel to the point of origin at the time of application.
- F. Diplomat or Consular Entry Permit permits a designated principal resident representing a foreign government which government is recognized in law by the United States and his immediate relatives to remain in the CNMI for the duration of his appointment. Also permits three (3) officially designated staff members and their immediate relatives to remain for the term of their appointment. There shall be no fee for this permit.
- G. Foreign Investor Visa An alien granted a certificate of foreign investment by the Department of Commerce and Labor and has complied with Part IX of these regulations.
- H. Foreign Student Entry Permit An alien with residence in a foreign country which he has no intention of abandoning who is a bona fide student qualified to pursue a full course of study at an established institution of learning or other

recognized place of study in the CNMI which is approved by the Immigration and Naturalization Officer may remain in the CNMI for one (1) year. The permit is renewable annually.

- 1. The Immigration and Naturalization Officer designates the following as recognized places of study:
 - a. Northern Marianas Community College
- I. Foreign Press Entry Permit An alien who is a bona fide representative of foreign press, radio, film, or other foreign information media, who seeks to enter the Commonwealth solely to engage in such vocation, and the spouse and children of such representative which have joined him may remain in the CNMI for six (6) months. The permit is renewable.
- J. Distinguished Merit Entry Permit An alien who has a residence in a foreign country which he does not intend to abandon who is of distinguished merit and ability and who is coming temporarily to the CNMI to perform temporary service of an exceptional nature requiring such merit and ability may remain for ninety (90) days. This permit is renewable indefinitely.
- K. Nonresident Worker Entry Permit An alien who is coming temporarily to the CNMI to perform temporary service or labor who has been certified as an eligible nonresident worker by the Department of Commerce and Labor may be granted an entry permit in accordance with Public Law No. 3-66.
- L. Minister of Religion Permit permits an alien who, for at least two (2) continuous years before seeking admission, has been engaged as a minister of religion, and who seeks to enter the CNMI solely for the purpose of engaging in that occupation, provided his or her services are needed by a denomination having a bona fide organization in the CNMI.
- M. Religious Missionary permits an alien who is a bona fide missionary of a religion who seeks to enter the CNMI solely for the purpose of engaging in missionary work provided his or her services are needed by a denomination having a bona fide organization in the CNMI to enter.

Section 707. Application Procedure.

A. Applications for entry permits shall be submitted to the Main Office for Immigration and Naturalization. The application will not be accepted without the necessary supporting documents. All applications and supporting documents become the property of the Office of Immigration and Naturalization. Applications shall be processed within seven (7) days of submission. Entry permits will be signed only by the

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Immigration and Naturalization Officer except for Short-term Business Entry Permits. All documents shall be filled out under penalty of perjury.

- В. Necessary documents for filing include:
 - 1. a completed application form,
 - 2. certified copy of birth certificate,
 - a police clearance from place of residence for last twelve (12) months.
 - any documents necessary to prove one's classification, and
 - one and one-quarter inch $(1\frac{1}{4}")$ frontal photograph (non-polaroid) in either black and white or color.

Further documents may be required to gain admission based upon subsequent investigation.

- The application fee shall be deposited with the CNMI Treasurer prior to filing the necessary documents. The fee is non-refundable. Application may be made my mail. Checks must be made to "Treasurer of the CNMI".
- The application shall include a pre-stamped and selfaddressed envelope for the return of the entry permit. Permits will be returned only by mail to the applicant.
- Applications shall not be accepted from aliens present in the Commonwealth whose presence is permitted solely because they have a pending labor, immigration or legal matter. However, once said matter is decided, the alien may apply for an entry permit, renewal or change of status if the alien prevailed in the labor, immigration or legal matter.

Section 708. Valid Passport. No entry permit shall be issued for a period of time which, at the time of entry, is not covered by a valid passport or other valid travel document recognized by the Chief.

Section 709. Landing Card.

Issuance - All aliens entering the CNMI must complete the Immigration Landing Card Form CNMI-958 prior to entry. The form shall be affixed in the passport or upon the return ticket of the alien. All entries are subject to the condition that the 958 form be kept within the passport or upon the return ticket until departure.

- Collection An airline or shipping agent must collect the original white copy of the Form CNMI-958 and entry permit when an alien departs the CNMI. The agent must present an immigration inspector with the vessel or aircraft manifest with a 958 form and entry permit for every departing alien immediately after departure.
 - In the event that the alien claims that he is returning to the CNMI upon the same entry permit, then only the 958, and not the entry permit, shall be collected.

Section 710. Alien Tracking System.

- The Immigration and Naturalization Officer shall, at all times, keep an accurate record of all aliens who are present in the CNMI. This may be stored by computer or by card file.
- The Alien Tracking System shall file aliens by departure dates. Within each date's file, the names shall be in alphabetical order. Each day, the 958 forms collected upon departure shall be compared with the day's file in order to detect overstays. The file on each overstay shall be delivered by the following day to the Immigration and Naturalization Officer for appropriate action.

Section 711. Denial of Permit, Review.

- The denial of an entry permit shall be in writing stating the reasons for the denial. This writing shall be provided to the applicant.
- The denial of an entry permit may be appealed to the Attorney General by the person excluded. The Attorney General in his discretion may rely solely on the documents submitted or may supplement them with additional information. He shall provide the denied alien with all the opportunities to be heard made available in Section 16 of Public Law No. 3-105. He may affirm, modify, or reverse the decision.
- Section 712. Renewal or Extension of Permit. No entry permit shall be renewed or extended unless a completed application is filed with the government before the date of expiration.

VIII. EXCLUSION

Section 801. Threat to Public Health. Any dangerous contagious disease designated by the U.S. Public Health Service and listed at 42 C.F.R. §34.2(b) shall be considered a threat to public health. Additionally, any physical condition designated as a threat to public health in the Commonwealth by the Director of Public Health and Environmental Services shall be so considered.

Section 802. Economic Grounds.

- The following persons will be considered to have no demonstrable means of support:
 - paupers, professional beggars and vagrants.
 - 2. persons who either have no return ticket or do not have sufficient funds to support a stay for the duration of the entry permit, and
 - any person who by reason of poverty, insanity, disease or disability will probably become a charge upon the public.
- Entry may be allowed, in the discretion of the Immigration and Naturalization Officer, if relatives or friends in the CNMI will post sufficient cash with Immigration to ensure the alien's support for the duration of the entry permit. The full amount of cash deposited with the Immigration and Naturalization Office shall be kept in a trust account until the departure of the alien.
- Section 803. Record of Examination. An examiner shall prepare a summary of the essential information obtained in the interview. Following this shall be the decision of the examiner written in a separate section.

IX. FOREIGN INVESTOR VISAS

Section 901. Definitions.

- A. "Approved Investment" means an investment made by an Alien Investor in the Commonwealth pursuant to a Certificate of Foreign Investment issued by the Director of Commerce and Labor.
- B. "Alien Investor" means any individual, but not legal entities such as corporations, partnerships or other entities existing solely by virtue of the law. An "Alien Investor" is a person without United States citizenship, Commonwealth permanent residency or certificate of identity, or Trust Territory citizenship, that qualifies as a holder of a Certificate of Foreign Investment issued by the Director of Commerce and Labor.
- "Certificate of Foreign Investment" means a Certificate issued by the Director of Commerce and Labor pursuant to rules and regulations issued by the Director of Commerce and Labor. The Certificate constitutes proof of the holder's participation as an Alien Investor in an Approved Investment in the Commonwealth of the Northern Mariana Islands.

- D. "Chief" means the Chief of Immigration in the Office of the Attorney General for the Commonwealth of the Northern Mariana Islands.
- "Family" of a holder of a Certificate of Foreign Investment means the holder's spouse, the holder's children by blood and the holder's children by legal adoption effective one (1) year prior to the date of application for Certificate of Foreign Investment.
- "Foreign Investor Visa" means a Visa issued by the Chief to a holder of a Certificate of Foreign Investment that complies with the conditions of issuance of a "Foreign Investor Visa" provided herein. The Visa is issued for purposes of providing entry into and exit from the Commonwealth of the Northern Mariana Islands for a holder of a Certificate of Foreign Investment, as long as the Certificate remains in force and effect. A "Foreign Investor Visa" is issued to any holder of a valid Certificate of Foreign Investment, and members of the holder's family complying with the conditions enumerated below.

Section 902. Foreign Investor Visa.

- The Chief shall issue a Foreign Investor Visa to any Alien Investor (and members of his family):
 - who presents to the Office of the Chief a current Certificate of Foreign Investment issued to himself or to a person of such relation that the applicant would be considered a member of a Certificate holder's family, and
 - who submits evidence of good moral character in seeking such permit, which evidence shall be obtained from a competent authority of and certified by an officer in the United States Consulate, or law enforcement official, of the country in which the Alien Investor permanently resides, and
 - who submits payment of a non-refundable application fee for issuance of a Foreign Investor Visa, as specified below, and
 - who presents a currently valid passport or certificate of identity for himself and any member of his immediate family seeking such permit.
- The Foreign Investor Visa shall allow the Alien Investor entry and exit, of any frequency or duration, to and from the Commonwealth of the Northern Mariana Islands. The Visa shall

- have no effect other than for the purposes of Foreign Investment and shall not vest in the holder thereof, or his immediate family, any rights to permanent residence for reasons unrelated to operation of an Approved Investment, or rights to CNMI citizenship or United States citizenship.
- The Foreign Investment Visa shall be valid for an indefinite period of time, subject to revocation upon the conditions specified below.
- The Chief shall review and take action (issuance or D. denial) within fifteen (15) days following receipt of a complete application.
- In the event the Chief denies the Alien Investor's application for a Foreign Investor Visa, he shall state the reasons for the denial, in writing, within the time period specified in Section 902(d).

Section 903. Revocation of Foreign Investor Visa.

- Upon written notification from the Director of Commerce and Labor that a Certificate of Foreign Investment has been revoked, the Chief shall revoke the Visas of the holder and his family, provided, however, that the revocation shall not take effect until six (6) months following the date of revocation of the Certificate of Foreign Investment.
- Upon written notice from the Director of Commerce and Labor of the revocation of a Certificate of Foreign Investment, the Chief shall send written notice of revocation of the Foreign Investor Visas for the Certificate holder and his family to the Certificate holder. This written notice shall specify the date of termination of the Visas which shall be six (6) months from the date of revocation of the Certificate of Foreign Investment.

Section 904. Schedule of Fees.

- An application for a Foreign Investor Visa shall be accompanied by:
 - a non-refundable application fee of five hundred dollars (\$500.00) for the holder of the Certificate of Foreign Investment, and
 - a non-refundable application fee of five hundred dollars (\$500.00) for each member of the holder's family for which he or she desires issuance of a Foreign Investment Visa.

X. HEARINGS

Section 1001. Procedure. Hearings on certificates of identity and permanent residence shall be conducted in accordance with the CNMI Administrative Procedures Act (1 CMC §9101).

XI. EFFECT OF REGULATIONS

Section 1101. Grandfather Clause. All entry permits validly issued upon the effective date of these regulations shall remain valid until their expiration date. The renewal of any entry permit shall for the purpose of these regulations be treated as an initial application.

Section 1102. Severability. If any provision of these regulations, or order issued under these regulations, or the application of any rule, regulation or order to any person or circumstances shall be held invalid by a court of competent jurisdiction, the remainder of these rules, regulations, or orders issued under these rules and regulations, or the application of such rule, regulation, or order to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

XII. FEES

Section 1201. Fees. The following schedule of fees shall apply to cover the cost of services provided by the Immigration and Naturalization Office. These fees cover administrative costs and are non-refundable.

A.	Certificate of Identity\$ 5.00
В.	Entry Permit10.00
С.	Application for Extension or Renewal of Entry Permit10.00
D.	Application for Foreign Investor Visa500.00
Ε.	Vessel or Aircraft Permission to Land10.00

XIII. PERMANENT RESIDENCE

Section 1301. Definition. Permanent Residence refers only to the status granted under Public Law No. 5-11.

Section 1302. Permanent Resident Identification Card.

- A. A permanent resident shall receive a tan-colored card with a blue seal of the CNMI government that states in green ink "Commonwealth of the Northern Mariana Islands Permanent Resident". This shall be the only recognized proof of permanent residence.
- The Chief shall forthwith issue said cards to persons who qualify for permanent residence under Public Law No. 5-11 upon submission of a green card and sufficient proof of eligibility.
- Holders of white cards issued under INO Regulation 11.8(b) shall not be considered permanent residents.

PUBLIC NOTICE

ADOPTED REGULATIONS

Northern Marianas College

Authority

The Board of Regents, in accordance with Public Law 3-43, Section 203 (a)(b), wishes to advise the public that the following policies have been officially adopted for Northern Marianas College.

Subject Matter

The adopted policies include the following subjects:

- 1. Student Financial Aid Policy
- 2. Registration Fees

Public Comment

During the period of time designated for public comment, comments were received from NMC staff concerning the proposed policies which were incorporated as minor changes. No major substantive changes occured from the original promulgation.

DATE

Juan N. Babauta Chairman

Board of Regents

FINANCIAL AID POLICY

Section 1. Purpose:

There is hereby established by the Board of Regents a postsecondary education financial assistance fund for the purposes of aiding eligible applicants who desire postsecondary education within and without the Commonwealth through grants, loans and/or scholarships. In providing such financial assistance, it is the intent of the Board to supplement, not replace, other sources of financial assistance which may be available to the student.

Section 2. Definitions:

The following terms whenever used in this Policy shall be the meanings given below, except when the context clearly requires otherwise:

- a. "Board" means the Board of Regents.
- b. "Committee" means the Financial Aid Committee which shall be comprised of four voting members: one to represent Tinian, one to represent Rota, one to represent Saipan and the Chairman of the Fiscal Affairs Committee of the Board. In addition, the College's Financial Aid Specialist will serve as an ex-officio member. The Chairman of the Board in consultation with the President will appoint the members to represent Rota, Tinian and Saipan.
- c. "Scholarship" means financial assistance awarded to students on the basis of superior academic ability and scholastic achievement: a minimum grade point average of 3.25 is required.
- d. "Grant" means financial assistance awarded to students who maintain a minimum cumulative grade point average of 2.0.
- e. "Loan" means financial assistance awarded to students with an obligation by the recipients to repay under the terms and COMMONWEALTH REGISTER VOL. 7 NO. 7 JULY 22, 1985 PAGE 3797

conditions established by the Board: a minimum cumulative grade point average of 2.0 is required.

Section 3. Responsibilities of the Committee:

The responsibilities of the Committee are:

- a. to determine the levels and types of financial assistance.
- b. to review and take action on financial assistance applications compiled by the Financial Aid Office.
- c. to report to the Board its actions after each regular and special meeting.

Section 4. By-laws of the Committee:

The Committee shall operate as follows:

- a. the presence of at least three members shall constitute a quorum.
- b. all acts of the Committee shall be voted for by at least a simple majority.
- c. regular meetings shall be called in August and December annually. Special meetings may be called by the Fiscal Affairs Committee Chairman as needed.
- d. the Committee may adopt or amend any by-laws as they see necessary.

Section 5. Financial Aid Office:

A section within the Financial Aid Office of the Northern Marianas College is established for the following purposes:

a. to provide financial assistance to eligible applicants who are or will be attending a postsecondary institution within or without the Commonwealth.

- b. to process applications and recommend applicants.
- c. to maintain accurate and up-to-date files on students.
- d. to prepare reports on the status of funds and students receiving financial assistance for submission to the Board.

Section 6. Funding:

The Financial Aid Office will receive funds through appropriations by the Legislature, gifts, bequests, donations or other lawfully made contributions to the Commonwealth and the Northern Mariana Islands Student Financial Assistance Program. Unless otherwise specified, these funds shall be divided into three categories:

- a. Grant Program.
- b. Loan Program.
- c. Scholarship Program.

Section 7. Maintenance of Funds:

Funds received through appropriations by the Legislature will be kept in a trust fund of the College. The Financial Aid Specialist, CNMI and the Director of Financial Aid will have access to the fund. A Memorandum of Request for Payment will be forwarded to the Dean of Administration and Business Affairs. The Memorandum of Request for Payment will include the names of recipients, amount and type(s) of aid the recipient is to receive and the account(s) to be charged.

Funds received through gifts, bequests, donations, etc., will be kept under separate accounts at the Business Office of the Northern Marianas College. The Director of Financial Aid will have access to the fund. A Memorandum of Request for Payment will be submitted to the Dean, Administration and Business Affairs when appropriate. The Memorandum of Request for Payment will include the names of recipients, amount and type(s) of aid the recipient is to receive and the account(s) to be charged.

Section 8. Eligibility Criteria for Financial Assistance:

No person shall receive a grant, loan, scholarship or a combination award unless they meet the following criteria:

- a. <u>Citizenship</u>: The person shall not be an alien as defined in Section 3(a) of P.L. 3-105.
- b. Residency: The person shall be a resident of the Commonwealth as defined herein:
 - 1) a dependent student is a resident of the state or territory where his parents reside.
 - 2) dependency is defined as a student who lived with the parents for more than six weeks in a calendar year, whose parents claimed the student as a U.S. income tax exemption, and who received more than \$750 worth of support from the parents.
 - 3) an independent student must have five years of actual continuous residence in the CNMI prior to the leaving of the Commonwealth for purposes of going to school.
 - 4) independent students who come to the CNMI for the purpose of pursuing higher education must be in continuous residence for 12 months to be considered CNMI residents.
- c. <u>Applied for Federal Financial Assistance</u>: Any person who applies for CNMI financial assistance shall provide proof that he has applied first for federal financial assistance.
- d. Enrollment: An applicant must be admitted or enrolled in an accredited or CNMI government funded postsecondary institution.

 The applicant must maintain a full-time course of study (as defined by that institution) during the academic school year

except those students attending a CNMI government funded postsecondary institution.

e. <u>Minimum Scholastic Achievement</u>: An applicant must have a cumulative grade point average of 2.0 on a 4.0 system.

Exceptions:

New Incoming Freshmen:

An applicant who will be attending a postsecondary institution or program will be considered for financial assistance even if his/her grade point average (GPA) is below the 2.0 GPA requirement. The applicant is given two (2) semesters or three (3) quarters to raise his/her GPA to the 2.0 GPA requirement.

Returning Student:

An applicant who is returning after being away from school for at least one academic year and has a GPA of less than 2.0 will be considered for financial assistance. He/she will have two (2) semesters or three (3) quarters to raise his/her GPA to the 2.0 GPA requirement.

If the recipient, after the two (2) semesters or three (3) quarters, failed to raise his/her cumulative GPA to 2.0, financial assistance for subsequent quarters/semesters will be discontinued.

f. <u>Limited Duration</u>: Eligible students may receive CNMI financial assistance for no more than 4.5 years except when enrolled in a 5-year program as undergraduate students, or for 2 years when enrolled as graduate students.

g. <u>Prohibited Courses of Study</u>: Eligible students may not major in a course of study leading to degrees in divinity, theology, or religious education.

Section 9. Conditions of Receipt of Award:

No grant, loan, scholarship or combination thereof shall be provided unless:

- a. the student first obligates himself to reside within the CNMI and apply the skills/knowledge acquired for a period equal to that for which financial assistance was provided.
- b. the student shall sign a "Statement of Educational Purpose" affirming that any funds received will be used solely for expenses related to attendance at the institution.
- c. the student shall not be in default on any CNMI educational loan.

Section 10. Application Process:

The following procedures must be followed to apply for a grant, loan, scholarship or combination thereof:

- a. New applicants must submit:
 - 1. application,
 - 2. recent official transcript mailed directly to the NMC Financial Aid Office from the Registrar's Office at last institution attended,
 - 3. an official letter as proof of admission,
 - 4. proof of application for federal financial assistance, and
 - 5. copy of documents establishing citizenship status as defined in Section 8(a).

- b. Continuing applicants must submit:
 - 1. up-to-date official transcript or grade reports for prior term postmarked no later than January 20th.
- c. Applications for the fall semester must be postmarked by July 15th and applications for the spring semester must be postmarked by November 15th.
- d. For those students who are able to attend school for the summer term only due to the nature of employment within the CNMI may be eligible for financial assistance.

Section II. Procedure for Review:

- a. A completed application shall be processed by the Financial Aid Office.
- b. The completed application shall be transmitted to the Committee for final review.

Section 12. Appeal:

An applicant may appeal a disapproval to the Board of Regents. The following procedure must be followed:

- a. Application consists of:
 - 1. letter of grievances; the reasons for petitioning the Board for special consideration must be stated;
 - 2. documents supporting the petition for special consideration; a letter from a doctor, instructor, or other school officials;
 - 3. remedial course of action the student plans to take in order to meet any of the requirements that were not met and which led to the denial of financial assistance.

- Application for an appeal must be made within 14 days of the receipt of the notification of the disapproval. It must be submitted to the Chairman of the Board of Regents.
- c. The Board must decide on the appeal within 15 working days of receipt of the appeal application by the Chairman.

Section 13. Scholarship Awards:

a. An award based upon scholarship will be in the following amounts per semester throughout the award period dependent upon the student's grade point average (GPA) on a 4.0 scale.

3.51 -	4.00 GPA	\$375.00
3.25 -	3.50 GPA	\$250.00

However, a student with the minimum number of hours per semester for full-time attendance who has a pass or credit for a course rather than an A through F or numerical grade will not be eligible to receive a scholarship based on that semester.

b. In the case of students attending a school on the quarter system the same rules apply, however, awards will be based only upon the performance during the Fall and Spring Quarters.

Section 14. Grant Awards:

- a. <u>Definition</u>: A grant means financial assistance awarded to students who maintain a minimum cumulative grade point average of 2.0.
- b. Amount: Grants shall be the following per semester (or per half year for students on quarter system):

Undergraduate	\$	700
Graduate	1,	000
Professional	1,	,000

Section 15. Loans:

a. Students may be eligible to receive loans up to the following amount per semester (or per half year for students on quarter system):

Undergraduate \$ 500 Graduate 1,500 Professional 2,000

- b. Loan recipients are required to execute a promissory note before release of loan check.
- c. Loan repayments are subject to the following conditions:
 - 1. a student who returns to the CNMI and is gainfully employed will receive a 10% cancellation against their principle amount of loan per each year employed.
 - 2. a student who is not employed within CNMI must repay the loan at the rate of 10% of the principle per year.
 - 3. a student who is in default must pay the entire loan at 3% interest per year he is in default.
- d. Loan becomes due and payable one (1) year after the date of actual termination of formal studies.
- e. In the event of the borrower's death or total and permanent disability, the unpaid indebtedness hereunder shall be cancelled.
- f. Upon the occurrence of default, the holder of the note shall have the right, at its option, and without notice, to declare the whole sum of principal and interest and any other indebtedness or obligation, immediately due and payable together with interest at the rate of 3% per annum on the total amount due, and no waiver

of this right shall be effective unless in writing and signed by the holder.

Section 16. Change in Funding Levels:

The Committee may change the award levels for loans, grants, and scholarships based on availability of funding upon filing of a notice of emergency regulation with the Registrar of Corporations in compliance with the CNMI Administrative Procedures Act. However, loans, grants and scholarships already awarded shall not be affected.

REGISTRATION FEE

The Board proposes to include the following fees:

1. Registration Fee \$5.00

2. Late Registration 10.00

filed this 09

PUBLIC NOTICE

Commonwealth of the Normern Mariana Islande

OF

PROPOSED REGULATIONS

FOR THE LOBBYING DISCLOSURE

ACT

Pursant to Section 7 of Public Law No. 4-25 and Sections 2153(f) and 9104(a) of 1CMC, the Public Auditor for the Commonwealth of the Northern Mariana Islands hereby gives notice to the public of its intention to adopt the attached proposed regulations for the Lobbying Disclosure Act of.

The proposed regulations are available for review during regular working hours, Monday through Friday, at the Office of the Public Auditor, 5th Floor, Nauru Building, Susupe, Saipan, CM 96950.

Persons interested in commenting on the proposed regulations may do so by submitting comments in writing to the Public Auditor within thirty (30) days from the date this Notice is published in the Commonwealth Register.

Dated this 23 rd day of March, 1985.

REX I. PALACIOS,
PUBLIC AUDITOR, CNMI

Filed this 27 day o

Office of Registrar of Con

Commonwealth of the Norther Mariana Isla

NOTICIAN PUBLIKO POT I

MA PRUPOPONI NA REGULASION

PARA I LOBBYING DISCLOSURE ACT

I Public Auditor i sankatan na islas Marianas, komo inatoririsa nu i Seksiona 7, Lai Publiko Numero 4-25 yan Seksiona 2153(f) and 9104(a), Titulo Uno, Codigon i Commonwealth, esta guiya na mannanai noticia para i publiko pot i intensiona na para una guaha yi regulasion pot i Lobbying Dislcosure Act of.

Este na regulasion sina ma examina duratin regulat na chocho gobietno, lunes asta bietnes, gi ofician i Public Auditor, 5th Floor, Nauru Building, Susupe, Saipan, CM 96950.

Todo taotao niman interesanti na u famakumento nuesti na regulasion, usatmite i kumentona guato gi ofician i Public Auditor gi halom 30 dias ginen i ma publikan este na noticia gi Commonwealth Register.

Fecha: 5/31/85

REX I. PALACIOS,
PUBLIC AUDITOR, CNMI

PUBLIC AUDITOR REGULATIONS UNDER THE

LOBBYING DISCLOSURE ACT

PURPOSE

While the Lobbying Disclosure Act encourages all efforts of interested persons or classes to advocate the adoption of desired legislative measures it wants to insure that this advocacy is done in an open and fair manner. These regulations provided for by Public Law 4-25 (The Lobbying Disclosure Act) are designed to provide the public with a full and accurate disclosure from the persons or interest groups who influence government and the manner in which they do so.

Section 1: Definitions

When used in these regulations --

- The term "contribution" includes a gift, subscription, loan, advance or deposit of money or anything of value and includes a contract, promise or agreement, whether or not legally enforceable, to make a contribution.
- "expenditure" includes The term a payment, tribution, loan, advance, deposit, or gift of money anything of value, and includes a contract, promise, agreement, whether or not legally enforceable, to make an expenditure.
- The term "immediate family" means spouse, children, parents and siblings of the effected person.
- The term "lobbyist" means any person engaging in the activities described by Section 2.
- The term "person" includes an individual, partnership. committee, association, corporation, and any other organization or group of persons.

Section 2: Persons to Whom Regulations Are Applicable

The provisions of these regulations shall apply to any person, who by himself or through any agent or employee or other persons in any manner whatsoever, directly or indirectly, solicits, collects or receives money or any other thing of value to be used in any manner to aid in the accomplishment of any of the following:

- (a) The passage or defeat of any legislation by the Northern Mariana Islands Legislature;
- (b) The signing or vetoing of any legislation by the Governor;
- (c) The adoption or failure to adopt any regulation, rule, rate, standard or decision of any board or commission of the Commonwealth, which has rule making authority granted by law, regulation or the Constitution.

Section 3: Registration and Licensing

Any person employed or retained to perform the functions of Section 2 shall register with the Commonwealth Board of Elections before performing those functions.

Section 4: Requirements of Registration

Each person shall register by filing with the Common-wealth Board of Elections a recent passport size black-and-white photograph of himself, a written authorization to act as a lobbyist from each person by whom he is employed or with whom he contracts, and a statement under penalty of perjury containing:

- (a) His full name, business address, (both local and foreign) and telephone number;
- (b) the country of his residence;
- (c) his citizenship;
- (d) the name and business address of each person by whom he

- (e) how much he is paid and is to receive, by whom he is paid or is to be paid, how much he is to be paid for expenses and what expenses are to be included;
- (f) any prior felony convictions;
- (g) a list of businesses by name and type of business that he or members of his immediate family have an interest in or are employed by;
- (h) a statement as to whether he is a government employee, elected or appointed government official.

Section 5: Renewal

Each Registered Lobbyist shall renew his registration within 30 days prior to January 15 of each year by filing:

- (a) a new photograph
- (b) a new registration statement
- (c) a statement of account for the preceding calendar year.

Section 6: Statement of Account

- (a) Every person who was in the business the preceding calendar year of receiving any contributions or expending any money for the purposes designated in sub-paragraphs (a), (b), or (c) of Section 2 of these regulations, shall file with the Board of Elections between the first and fifteenth day of each January, a statement containing complete as of the day next preceding the date of filing:
 - (1) The name and address of each person who has made a contribution of \$25 or more in the preceding calendar year;
 - (2) the purpose for which each such payment was received. The specific bill or action must be referred to, a general statement such as "lobbying the legislature" is insufficient;

- (3) the total sum of all contributions made to or for such persons during the preceding calendar year;
- (4) the name and address of each person to whom an expenditure in one or more items of the aggregate amount or value, within the preceding calendar year, of \$10 or more has been made by or on behalf of such persons, and the amount, date, and purpose of such expenditure;
- (5) the total sum of all contributions made to or for the person in the preceding calendar year;
- (6) the total sum of all expenditures made by or on behalf of such persons in the preceding calendar year.

Section 7: Retention of Receipts

It shall be the duty of each person registered under these regulations to obtain and keep a receipted bill, stating the particulars, for every expenditure of such funds exceeding \$10 in amount, and to preserve all receipted bills and accounts required to be kept by this section for a period of five years from the date of filing of the statement requiring such items.

Section 8: <u>Direct or Indirect Benefit</u>

An expenditure must be accounted for in Section 6, if it confers either a direct or indirect benefit on a public official, and is intended to so benefit him. A direct benefit, by way of illustration, would include campaign contributions, of any kind, free or reduced lodging, transportation, newspaper or radio advertisements, meals, the use of office space or equipment, etc. An indirect benefit would include expenditures made to benefit any business the public official or a member of his immediate family has an interest in, or any expenditure made to directly benefit a member of the official's immediate family.

Section 9: Preservation of Statement; Public Record

A statement received by the Board of Elections shall be preserved by the Board for 5 years from the date of filing, shall constitute part of the public records of his office, and shall be open to immediate public inspection.

Section 10: Frequency of Reports

The Board of Elections can, upon approval of the Public Auditor, require registration statements to be updated more frequently so long as it is not more frequent than quarterly.

Section 11: Public Official as Lobbyist

Before the Board of Elections may accept the application of a person who is an elected official, appointed official or full-time government employee, the applicant must first submit a written agreement showing all particulars of his employment including compensation, the precise purpose for the employment and the amount of pay or type of consideration to be received. This agreement shall be a public record open to immediate public inspection.

Section 12: Exclusions

The provisions of these regulations shall not apply to any person who merely appears without compensation before a committee of the Legislature in support of or in opposition to legislation; nor to any public official acting in his official capacity; nor to the owner, publisher or reporter of a newspaper or other periodical which in the ordinary course of business publishes news items, editorials or other comments, or paid advertisements, which directly or indirectly urge the passage or defeat of legislation, if such newspaper, periodical or individual engages in no further or other activities in connection with the passage or defeat of such legislation other than to appear before a committee of the legislature in support of or in opposition to such legislation.

Section 13: Gifts

Whenever a person who is registered under these regulations gives a gift to a legislator, the Governor, Lieutenant Governor or any member of a Board or Commission, he will be deemed to be acting in connection with his activities as a lobbyist.

Section 14: Statement Under Penalty of Perjury

All reports and statements required by these regulations shall be made under penalty of perjury.

Refusal to Register Section 15:

The Board of Elections can refuse to register or it can revoke the registration of an applicant whose application is incomplete, untruthful or shows that the applicant has been convicted within 7 years prior to submission of the application, of a felony involving moral turpitude.

Whenever the Board refuses to register an applicant for the reasons stated in this Section, the Board shall give the applicant the reasons for the refusal, in writing.

Section 16: Registration Approval

When a registration application or renewal application is submitted for approval to the Board of Elections the Board has 10 working days to either register the applicant or deny his request for application. If no action is taken on a complete application within 10 working days, it will be deemed approved.

Section 17: Bribery

Nothing in these regulations shall absolve or protect from strict and absolute compliance with 6CMC §3201 dealing with bribery.

Section 18: Fee

There is a fee of \$50 for each registration application and renewal.

LOBBYING DISCLOSURE ACT REGISTRATION STATEMENT (PUBLIC LAW 4-25)

NAME:	
FOREIGN ADDRESS:	
PHONE NUMBERS:	
COUNTRY OF RESIDENCE:	
CITIZENSHIP:	
NAME & ADDRESS OF EMPLOYERS	CONTRACT TERMS (Including any provisions for expenses)

- 8. Have you ever been convicted of a felony? If yes, when were you convicted and what was the felony?
- Name and type of business you or members of your immediate family own an interest in (applicable only if business has 9. contacts in Commonwealth).
- Attach a written authorization to act as a Lobbyist from each 10. person who has employed you.

11. Are you a full-time government employee, elected or appointed government official? If yes, then you must attach all lobbying contracts to this application. If your contract is oral, you must reduce it to writing.

I swear under penalty of perjury the foregoing info	ormation is true,
complete and correct. Executed in Saipan, CM on	
	(date)
	, ,

Signature

Passport photo must be attached.

LOBBYING DISCLOSURE ACT RENEWAL OF REGISTRATION (PUBLIC LAW 4-25)

1.

1.	Must have new passport photo.					
2.	Must attach new registration statement (unless there has been \underline{no} changes)					
3.	Stat	ement of Account	for Preceding	g Calendar Y	<u>ear</u>	
	a.	Persons who made preceding calend			use in	
NAME		ADDRES	<u>s</u>	AMOUNT	PURPOSE	
	b.	Total sum of abo	ve contribut	ions was \$	•	
	с.	Each person to whom you made an expenditure of \$10 or more in preceding calendar year; when; purpose.				
NAME		ADDRESS	AMOUNT	PURPO	DSE DATE	
	d.	Total amount of you in preceding	expenditures calendar ye	made by or ar \$	through	
COMMONWEALT	H REG	ISTER VOL. 7	NO. 7	JULY 22, 198	5 PAGE 3818	

e. List all other expenditures other than money and give their approximate fair market value (e.g. lunches, use of boat or property, advertising, food, etc.)

NAME

TYPE OF EXPENDITURE

VALUE

I swear under penalty of perjury the foregoing is true and correct. Executed on _____ at Saipan, CM. _____ at Saipan, CM.

Signature



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

BOARD OF EDUCATION/REGENTS

DEPARTMENT OF EDUCATION

SAIPAN, CM 96950



AN, OM 00000

PUBLIC NOTICE

DOE: 9311/982**7/9823** NMC: 7542/764**2**

CHAIRMAN
 Juan N. Babeuta

 VICE-CHAIRMAN Joaquin M. Aguon

MEMBERS - SAIPAN
 Sr. Mary Louise Balzarini, MMB
 Maximo L. Olopal
 Elizabeth D. Rechebel

MEMBERS - TINIAN
 Esteven M. King
 isaac P. Palacios

MEMBERS - ROTA
 Oscar Q. Quitugua
 M. Lee Taitano

 STUDENT REPRESENTATIVE Jane M. Tudeta Proposed Rules & Regulations
Department of Education

The Board of Education of the Northern Mariana Islands, in accordance with Public Law 3-43, is proposing to adopt a policy.

The proposed policy includes the following subject area:

1. Fire Safety

2. Bus Maintenance

3. Student Transportation

4. Flag Ceremonies

5. Field Trips

6. Use of Facilities and Equipment by Outside Agencies

7. Chartering of Non-Public Schools

Copies of the proposed regulations may be obtained from Juan N. Babauta, Chairman of the Board of Education, at CHPDA, 5th Floor, Nauru Building, Saipan, CM 96950.

The Board of Education is soliciting views, opinions, facts, and data for or against the proposed policy from the general public.

Anyone interested in commenting on the proposed policies may do so by submitting comments in writing to the Chairman of the Board of Education, P.O. Box 570, Saipan, CM 96950 within thirty (30) days from the date this notice is published in the Commonwealth Register.

date: 6/7/85

CHAIRMAN, BOARD OF EDUCATION



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

BOARD OF EDUCATION/REGENTS

DEPARTMENT OF EDUCATION

SAIPAN, CM 96950



DOE: 9311/9827/9823 NMC: 7542/7642

NUTISIA PARA I PUBLIKU

CHAIRMAN Juan N. Babeuts

- VICE-CHAIRMAN Joaquin M. Aguon
- MEMBERS SAIPAN Sr. Mary Louise Balzarini, MMB Maximo L. Olopai Elizabeth D. Rechebe
- MEMBERS TINIAN Esteven M. King Issac P. Palecice
- MEMBERS ROTA Oscar Q. Quitugua M. Lee Taitano
- STUDENT REPRESENTATIVE Jane M. Tudela

I MAPROPOPONI NA RIPARASION POT I REGULASION GI HALOM I DEPATTAMENTON EDUKASION

Sigun gi Lain Pupbliku numiru 3-43, i Board of Education i san kattan siha na Islas Marianas, ha propoponi rumipasa i regulasion.

I manmapropoponi siha na regulasion ni para u fanmaripasa ha inklulusu i manatatte siha na arean suhetu:

- 1. Inadahi Kontra Kimasson
- Proteksion Bas
- Sahyan Estudiante
- Sirimonias Bandera
- Karera Pot Leksion
- Ma'usan Fasilidat yan Makinista Nu i Ahensian san hiyong.
- 7. Fotma na Dokumenton Eskuelan San Hiyong

I kopian i manmapropoponi siha na regulasion sina manmachule' ginen as Sinot Juan N. Babauta, Chairman i Board of Education, gi ufisinan i CHPDA, 5th Floor, Nauru Building, Saipan, CM 96950.

I Board of Education lokkue' ha solilista opinion, fakto, yan enfotmasion siha para osino kontra i manmapropoponi siha na regulasion ginen i pupbliku hinerat.

Todu ayu siha i manenteresao manmanlaknos rekomendasion pot i mapropoponi na tinilaika gi regulasion siha, sina manmangge' guatu gi Chairman i Board of Education, P.O. Box 570, Saipan, CM 96950, gi halom i trenta (30) dias desde i fecha ni mapupblika este na nutisia gi Commonwealth Register.



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

BOARD OF EDUCATION/REGENTS

DEPARTMENT OF EDUCATION

SAIPAN _- ME:I:I:I:I



DOE: 9311/9827/9823 NMC: 7542/7642

ARONGORONGOL TOWLAP

Allegh Llol Bwulasiyool Meleitey

CHAIRMAN
 Juan N. Babauta

VICE-CHARMAN
 Joaquin M. Aguon

MEMBERS - SAIPAN
 Sr. Mary Louise Balzarini, MMB
 Maximo L. Olopel
 Elizabeth D. Rechebel

MEMBERS - TINIAN
 Esteven M. King
 Isaac P. Pelacios

MEMBERS - ROTA
 Oscar O. Oultugua
 M. Lee Taitano

STUDENT REPRESENTATIVE
Jane M. Tudels

Board of Education mellol Northern Mariana Islands, sangi arongorong towlap ye 3-43 e kke pomoli ebwe adoptaay allegh.

Pomol allegh kka rebwe adoptaay nge milikka e tattaletiw faal.

- 1. Ammwelil Fiighas
- 2. Ammwelil Baas
- 3. Taayeer Attel Meleitey
- 4. Attirowul Ghalleera
- 5. Owruur Fetal Fengal me Akkabwung
- 6. Yaayaal Peiraagh Reer Schooy Lughul Bwulaasiyo Yeey
- 7. Appilughulughul Imwal Raghefisch Kka Saabw Imwal Meleiteyil Publiko

Koopiyaal mwoghutughutul allegh kkaal emwel u bwe bwebwogh me reel Juan N. Babauta, Chairman-nil Board of Education, me CHPDA, 5th Floor me Nauru Building, Saipan, CM 96950.

Board of Education e tottongor ngali ghaami mengemeng reel ngare ow afischi me ow abwura kkapasal allegh ye e toowow reer aramas towlap.

Le e tipeli bwe ebwe isiisilong meta mengemeng reel allegh yeel emwel schagh ebwe feeru ngare e isch ngali Chairman-nil Board of Education, P.O. Box 570, Saipan, CM 96950 llol elligh (30) ral sangi igha re arongaawow arongorongol towlap ye e toowow mellol Commonwealth Register.

MERAM, RAL, RAAGH

ÁTÁIRMAN-NIL, BOARD OF EDUCATION

- 803 <u>Fire Safety</u>
- The Superintendent shall direct a fire safety inspection of all public and private schools on annual basis. It is the responsibility of each school to correct any identified fire hazard as soon as possible after it has been reported to the Superintendent.
- Each public and private school shall develop a fire drill evacuation plan for its students, teachers, and staff. An orientation workshop on fire drill procedures and fire -safety precautions shall be held at the beginning of each school year for all students, teachers and staff. Fire drills shall be conducted at each school at least twice a year. Each school will designate a fire alarm sounding device, which will be used solely for the purposes of conducting fire drills and evacuating students.
- 803.3 The Superintendent shall endeavor to place a fire extinguisher in at least every other public school classroom.
- The Superintendent shall coordinate with the Department of Public Safety the placement of fire hydrants in proximity to the schools.

804 Bus Maintenance

The Superintendent shall periodically cause safety and routine maintenance inspections of all school busses. Procedural guidelines and checklists shall be adopted by the Department of Education regulating maintenance inspections.

Student Transportation

- All bus-riding students are to receive a copy of the rules and regulations issued by the Department of Education at the beginning of the school year regarding student conduct on the loading, riding and unloading of school busses.
- 310.5 All school bus drivers shall be required to adhere to the school bus driving regulations issued by the Department of Education. Newly-employed bus drivers shall participate in a two-week orientation period to acquaint them with the rules and operating procedures of school bus driving.

410 Field Tris

- Field trips are recognized as an important component of the instructional program. Classroom teachers are permitted to take their class on field trips which are educational in nature and which related to the curriculum being taught or school-sanctioned extra curricular activities.
- 410.2 Regulations and procedures governing field-trips, must be developed and approved by the Superintendent or his designee. No field trip shall be approved where a threat or hazard to the reasonable safety of the students exists.

306. Fr Ceremonies

All public schools shall display the United States and Commonwealth flags during regular government working hours. A flag ceremony with the singing of the CNMI National Anthem shall be held bi-monthly at all public schools.

No public school building, equipment or property shall be used for any non-Department of Education activity except with the expressed approval of that school building's principal.

All requests for the use of public school facilities shall be made in writing on a designated form available in the principal's office to the school principal at least three days in advance of the proposed usage.

Each request must state the purpose and nature of the proposed use, and the name(s) of the responsible party. For the use of a building, the requestor must state the approximate time involved, the estimated number of people to be in attendance, and any other pertinent information requested by the principal.

The school principal shall have the authority to grant such approval, provided no approval whatsoever shall be granted for any use which will impose on or adversely affect the school's normal operations. However, the Superintendent has the right to overrule the principal's decision if, in his opinion, it is in the interests of the CNMI government.

Any persons or agency using a public school building, equipment or property for a non-Department of Education activity shall be responsible for any damages; losses, repairs, etc., incurred as a result of that usage. The requesting party is solely responsible for returning the facilities or equipment to its previous condition after its usage. A statement of liability shall be signed by the requesting party prior to the actual usage of the public school facilities or equipment.

In the event a school is declared by the Governor to be a typhoon shelter, the persons occupying the school shall be responsible for cleaning and restoring the facility to its previous condition.

Fees covering the use of facilities, busses, equipment, or property shall be promulgated by the Superintendent. A \$50.00 deposit is required for the rental of such equipment or facilities fully refundable if no damages are incurred.

309 Authority

Public Law 3-43 Section 203 (r) authorizes the Board of Education "to grant charters to non-public schools." Section 701 provides for the Board to set standards for the issuance of a charter. NON-PUBLIC SCHOOLS MUST COMPLY WITH ALL OTHER APPLICABLE LAWS OF THE COMMON-WEALTH.

309.1 Definitions

- a. "Board" refers to the Board of Education of the Commonwealth of the Northern Mariana Islands.
- b. "Charter" means a formal document issued by the Board of Education whereby permission is granted to operate a non-public school within the Commonwealth under specific conditions.
- c. "Department" refers to the Department of Education, Commonwealth of the Northern Mariana Islands
- d. "Non-public school" means a privately-owned or church-affiliated pre-school, kindergarten, or school for grades 1-12.

309.2 <u>Application Procedure</u>

An application for a charter to operate a non-public school shall be made to the Board of Education upon forms provided for this purpose. NO NON-PUBLIC SCHOOL MAY OPERATE UNTIL A CHARTER HAS BEEN GRANTED BY THE BOARD OF EDUCATION. The following must accompany the application:

- a. Name of applicant and school.
- b. Proposed location of school.
- c. Proposed language and courses of instruction.
- d. Summary of financing, including tuition and fees schedule.
- e. Purpose of the school.
- f. Enrollment requirements.
- g. Auspices under which the school will operate.
- h. Description and qualifications of faculty members and administrators.
- i. Dates and hours of operation.
- j. Safety clearance from the Department of Public Works.
- k. Health and sanitation clearance from the Department of Public Health.

- 1. Fire safety clearance from the Department of Public Safety.
- negative active tuberculosis records of school personnel m. issued by the Department of Public Health.
- a non-refundable charter fee of \$100.00 payable to the n. Government of the Northern Marianas.
- Copy of business license and if incorporated articles of 0. incorporation.

The Board shall have not more than three months from the date of receipt of a complete application to approve or disapprove a charter.

309.3 Limitations

A charter issued to a non-public school is granted upon the conditions included in the application. The non-public school must notify the Board in writing within five (5) days of any changes from the original application.

The life of a charter shall be three years. However, the Board, after notice and opportunity for hearing, may suspend or revoke the charter if in its judgment the holder has violated the terms of the charter or is not providing the education requested by its charter.

The granting of a charter does not automatically qualify a school for all services provided by the Department. Local and federal law and Board policy shall determine the extent of public assistance to non-public schools.

309.4 School Records

A school granted a charter by the Board of Education shall keep adequate records for each student containing personal data, attendance, grades and such information as required by the Department of Education. Student records of courses taken shall be kept on file by the school for at least five years and a list of all graduates shall be made part of the school's permanent files.

309.5 Reforts

Each school shall submit an annual report and other reports as requested by the Department.

309.6 Certificates and Di:lomas

Upon completion of a course of study, whether be it kindergarten or a certain grade, a student shall be given a certificate or diploma stating the student has satisfactorily completed the requirements.

JULY 22, 1985

:09.7 Display of Charter

A school granted a charter shall display it in plain view in the administrative office at all times.

309.8 Curriculum and Instruction

The school is required to provide 300 minutes of secular instruction daily. The school year must encompass a minimum of 180 full days of instruction.

The Board shall have the right to review the curriculum of the non -public school upon request.

309.9 Teacher Certification

Classroom teachers of non-public schools shall fall under the teacher certification policies adopted by the Board.

309.10 Advertisin•

No school may advertise to the public by the use of unfair, misleading, false or deceptive statements. Such acts or practices shall constitute grounds for suspension or revocation of a school's charter.

309.11 Tuition, Fees and Refunds

The standard tuition and fee rates shall be published in the school literature. A school is required to have a published refund policy.

309.12 Ins ection

The Board reserves the right to inspect a non-public school prior to the issuance of a charter and may inspect a chartered school at its discretion.

309.13 Public Access

Schools must post outside the administrative office the regular hours of operation. The school must provide public access to its administrative office of the school facility by parents and other interested persons. Classroom visitations are to be arranged at the request of a parent.

309.14 Revocation of Charter

Failure on the part of a school to maintain the standards and conditions set forth at the time of chartering the school, or to not provide the education required by its charter, shall be considered reason for suspension or revocation of the school's charter.

309.15 <u>Filing of Complaints</u>

When any person, persons, agency or institution desires to file a formal complaint regarding the violation of any part of the chartering policy, and which looks to the suspension or revocation of the charter of a school, such complaint shall be submitted as follows:

- a. all complaints must be presented in writing and signed by the complainant, detailing the nature and particulars of the complaint.
- b. if the complaint is in reference to sales literature, advertising or other printed material, a copy of such material should be submitted with the complaint.
- c. all complaints should be sent to the Board where an investigation will be made and appropriate action taken based on the findings.



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Office of the Governor Commonwealth of the Northern Mariana Islands Saipan, CM 96950

CABLE ADDRESS GOV. NMI SAIPAN

Public Notice

Proposed Government Deposits Regulations

Department of Finance

The Director of Finance pursuant to 1 CMC section 2557 and Public Law 4-33 section 5 may adopt rules and regulations necessary and consistent with all applicable laws affecting the administration of the Department of Finance which includes the deposit of public funds.

The proposed regulations contain specific requirements for the safeguard of public funds deposited in private banks which includes the following general topics:

> General provisions Part I. Section 101 Authority Section 102 Purposes Section 103 General

> Definitions Part II. Section 201 Definitions

Part III. Policies Section 301 Deposits Section 302 Bank Preferences Section 303 Deposit Restrictions Section 304 Access of Records Section 305 Responsibility of Depositor

Part IV. Effective Date and Penalties Section 401 Penalties Section 402 Effective Date

Copies of these regulations are available at the office of the Director of Finance at Capitol Hill, Saipan, CM.

The Banking Associations, and general public are asked to comment, provide opinions and/or information in writing concerning these regulations, their impact and implementation in the Commonwealth to the following address:

Director of Finance Office of the Governor Commonwealth of the Northern Mariana Islands Saipan, CM 96950

Director of Finance



Department of Finance

Office of the Governor Commonwealth of the Northern Mariana Islands Saipan, CM 96950

CABLE ADDRESS GOV. NMI SAIPAN

NOTICIA PARA I PUBLIKO

Propocitu Na Regulacion Pot Man Depocitan Salape Gobetno

Depatamentun Fainanciat

Segun gi titulu 1 CMC sekciona 2557 yan lai numero 4-33 sekciona 5, ma atorisa i Direktot Fainanciat na una guaha necesario siha na areglu ni para ukonciste yan iman tineteka siha na lai yan areglu pot asuntun administracion fainanciat especiatmente i para ma depocita i salape publiko.

I propocitu na regulacion ha nececita siha probencion pot para uma protehi i salape publiko ni gaige gi banko. Guiya este siha na probencion:

- Pate I. Enerat siha na probencion Sekciona 101 Autoridad Sekciona 102 Chochu ni para umanasetbi Sekciona 103 Yan otro siha na asuntu
- Pate II. Definition Sekciona 201 Definitions
- Pate III. Areglu
 Sekciona 301 Depocitan Salape Publiko
 Sekciona 302 Amanu na Banku mas ma rekomenda
 Sekciona 303 Ina dahi gi man depocita salape
 publiko
 Sekciona 304 Para umalie i leblon salape ni ma
 depocita
 Sekciona 305 Responsablidadna i man depocicita
 salape publiko
- Pate IV. Efectibo na fecha yan pena Sekciona 401 Pena Sekciona 402 Efectibo na fecha

Guaha kopia nu este na propocitu gi oficinan Direktot Fainaciat gi Capitol Hill.

Manma konbibida todo enerat publiko especiatmente i hinetnon Banku Na inetnunacion na yangin man malago manmamatina opinion pat rason pot para ukontra osino para ufabot i propocitu, tugi i opinionmu ya unna hanau guato gi este na oficina:

> Director of Finance Office of the Governor Commonwealth of the Northern Mariana Islands Saipan, CM 96950

Tomas B. Aldan Direktot Vainaciat

JULY 22, 1985 PAGE 3834

Commonwealth Deposit Regulations

Part I. General Provisions

Section 101. Authority. These regulations are promulgated pursuant to Public Law (P.L.) 4-33, Section 5 and Title 1, Section 2557 of the Commonwealth Code.

Section 102. Pur ose. These regulations are intended to provide safeguards for all Commonwealth Government bank deposits, and establish banking regulations for the deposit of government funds. These regulations setforth the conditions for safequarding the deposit of government resources with banks and establish provisions for bank secured collateral on certain deposits of public funds.

Section 103. General. These regulations shall govern all deposits which bear the fiscal as well as accounting entity of the Commonwealth of the Northern Mariana Islands. The entity of the Commonwealth of the Northern Mariana Islands includes the Executive Branch, the Legislative Branch, the Judicial Branch, all Commonwealth Government Corporations, and all non-profit corporations receiving Commonwealth funds including Federal Grants for public purposes. These non-profit corporations include but are not limited to--

- (i) Catholic Social Services,
- (ii) Micronesian Legal Services,

The Commonwealth Government Corporations includes but are not limited to--

- (i) Economic Development Loan Fund.
- Commonwealth of the Northern Mariana Islands (ii) Retirement Fund,
- (iii) Mariana Islands Housing Authority,
- (iv) Commonwealth Port Authority,
- (v) Marianas Public Land Corporation,
- Marianas Public Land Trust (vi)

Part II. Definitions

Section 201. Definitions. The following terms as used hereafter shall mean as defined hereto unless the context requires otherwise:

- "Agency of the United States Government" means the--(a)
 - Federal Deposit Insurance Corporation
 - Federal Savings and Loans Insurance (2) Corporation

- (b) "Bank" means as defined on section 102(b) P. L. 3-104.
- (c) "Collateral" means United States Treasury Bill, United States Treasury Notes, or any money in any form as obligations bearing the full faith and credit of the United States of America owned by the local bank or its Headquarters outside of the Commonwealth.
 - (d) "Collateral Presentation" means--
 - Exhibiting or showing to the Director or his designee, or depositor the necessary collateral at the time of deposit or five (5) working days thereafter, or
 - (2) By presenting a letter certifying collateral sufficiency, if in the opinion of the Director, his designee, or depositor is satisfactory.
- (e) "Commonwealth" means the Commonwealth of the Northern Mariana Islands, or the Commonwealth Government.
- (f) "Deposit" means money placed in a bank by depositor in the following bank accounts:
 - (1) Demand Deposit Account, Checking,
 - (2) Time Certificate of Deposit (TCD),
 - (3) Passbook Savings Account, and
 - (4) All other means of bank accounts.
- (g) "Depositor" means an entity or agency of the commonwealth of the Northern Mariana Islands or its authorized representative.
- (h) "Director" means the Director of Finance of the Commonwealth of the Northern Mariana Islands.
- (i) "Market Value" for purposes of collateral means the lesser of--
 - (1) the value of the collateral offered to the general public by the issuing agency, or
 - (2) the book value of the collateral of the bank;
 - (3) at the time the deposit is made or at the time the deposits exceeds the \$100,000.00 insured amount, or as provided under Section 301(d).

j) "United States Treasury listed Surety Agency" means those Agencies listed under the Department Circular No. 570, publish every July 1 of year by the Treasury Department.

Part III. Policies

Section 301. Deposits.

- (a) The Director, his designee, or other depositor, shall not make deposits to any banking or financial institution that is incapable of obtaining and providing the necessary collateral to assure deposit security, insure and protect the deposit of public resources against loss.
- The bank or financial institution shall present collateral (in the form as defined under Part II. Definitions. Section 201 (c)) with a market value ten percent (10%) higher than the deposit value at the time of the deposit, or five working days thereafter for the total value of the deposit in excess of \$100,000.00.
- The collateral shall not include assets that are identified as securing or collaterializing other contracts, obligations, or commercial banking activities. The collateral securing the deposits must be a pledge in which the Commonwealth deposits take priotity.
- Collateral is not necessary for amounts equal to or less than \$100,000.00 if the bank is a member of --
 - (1) Any of the Agency of the United States Government, or
 - (2) Any of the United States Treasury Listed Surety Agency.
- (e) As the amount of deposits increases or decreases the amount of the collateral shall proportionately increase or If the bank is not able to adequately provide the necessary collateral in case of increases, it shall immediately notify the Director, his designee, or the depositor, of such collateral deficiency;
 - A separate collateral presentation for the (1) increases shall not be necessary. However, the Director, his designee, or any depositor, from time to time may require the bank and the bank shall make collateral presentation at such time.

- 2) Acceptance of the additional deposits by the bank is an implied agreement which satisfies all the deposit requirements under this part.
- (3) However, because Demand Deposits (Checking) and Savings Account may fluctuate to extreme high and low continously, securing the necessary collateral may be impractical. bank shall make sufficient collateral to an amount equal to 110% of prior (last) month average daily balance on the current month for checking or savings account whichever is applicable.
- (f) A bank may be permitted to secure written agreement with another bank to provide security for the deposits if the other underwriting bank--
 - (1) Pledges its collateral,
 - Satisfies the necessary deposit requirements (2) under this part, and
 - Make the necessary collateral presentation when requested by the Director, his designee, or depositor.

Section 302. Bank Preferences.

- (a) All deposits shall be made to banks in the following order of preferences:
 - (1)The bank is located in the Commonwealth,
 - (2) The bank is capable of complying with Section 301(a) to (f) of this Part as applicable,
 - The bank that offers the best (highest), (3) interest rate (investment return) for funds deposited, over the term requested,
 - (4) The bank that offers the best (lowest) interest rate to the Commonwealth residents on loans for -
 - (i) Residential Housing
 - (ii) Small Business Loans
 - (iii) Agricultural and Fishing Development loans, and

That the type of loans identified in Section 302 (a)(4) are currently, and actively being offer to the Commonwealth residents.

Section 303. Restrictions on De•osits. The bank in which the deposit is made shall not reinvest the same deposit anywhere outside of the Commonwealth. The deposit shall be made available in the Commonwealth for loans such as—

- (a) Residential Housing loans,
- (b) Small Business loans,
- (c) Agricultural and Fishing Development Loans,
- (d) Any Commercial loans, or
- (e) Personal loans

Section 304. Access of Records. The Director or his designee shall have full access to review, obtain records of all deposits made by all depositors of public resources with any bank. The Public Auditor shall have the equal authority in inspecting, reviewing, and obtaining deposit records.

Section 305. Responsibility of De•ositor. The depositor shall report to the Director all bank accounts certifying to the effect that the deposit(s) is/are adequately protected and that compliance requirements under this Part are satisfied. The information required with the certification shall include the--

- (i) The name of the bank,
- (ii) Account title,
- (iii) Account number,
- (iv) Amount of deposit, and
- (v) Amount and type of collateral, if applicable.

Part IV. Effective Date and Penalties

<u>Section 401. Penalties</u>. In addition to the criminal penalties provided under P.L. 4-33, Section 7, the Director may suspend the bank from receiving deposits of public funds in the following manner:

- (a) First offense may be suspended for not more than five (5) years,
- (b) Second offense may be suspended for not more than ten (10) years, and
- (c) The third offense may be suspended for infinite time.

Section 402. Effective Date. The effective date shall be the publication date of these regulations in the Commonwealth Register. Except that any changes upon publication of the notice of adoption will take effect immediately upon publication of the notice of adoption in the Commonwealth Register. Except that current deposits may have thirty (30) more days from the adoption date of these regulations to attain compliance of these regulations.

Director of Finance



Department of Financerice ce

35.73

Office of the Governor Commonwealth of the Borthern Mariana Island

Filed this

Commonwealth of the Northern Mariana Islands
Saipan, CM 96950

CABLE ADDRESS GOV. NMI SAIPAN

PUBLIC NOTICE

PROPOSED REGULATIONS

FOR THE

TAXATION OF FOREIGN SALES CORPORATION

The Governor of the Commonwealth of the Northern Mariana Islands in accordance with Public Law 4-15, designates authority to the Director of Finance for the purpose of establishing the rules and regulations relating to the taxation of Foreign Sales Corporation (FSC). The Director of Finance is proposing to promulgate these rules and regulations to be used in the implementation of Title 4, Chapter 9 of the Commonwealth Code.

The Department of Finance is soliciting views, opinions, facts and data for or against the proposed Foreign Sales Corporation Rules from the general public.

Anyone interested in commenting on the proposed FSC rules may do so in writing to the Director of Finance, Office of the Governor, Commonwealth of the Northern Mariana Islands, Saipan, CM. 96950, within thirty (30) days from the date this notice is published in the Commonwealth Register.

Pedr. P. Tenorio Governor

Tomas B. Aldan
Director of Finance

6 20/85

Date

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Department of Finance

Office of the Governor Commonwealth of the Northern Mariana Islands Saipan, CM 96950

CABLE ADDRESS GOV, NMI SAIPAN

NOTICIA PARA I PUBLIKO PROPOSITU POT PARA UMANA GUAHA AREGLU POT ASUNTUN TAX GI BANDAN FOREIGN SALE CORPORATION

Segun gi lai publiko 4-15, I Gobietnon Marianas hanae autoridadna I Direktot Fainanciat na unaguaha necessario na areglu pot asuntun Tax gi bandan Foreign Sales Corporation.

I Direktot Fainanciat malago na uanuncia todo areglu siha ni para umana setbe kosa kesina ma implementa I titulu 4, Chapter 9 gi Commonwealth Code.

I Depatamentun Fainanciat hakonbibida I enerat Publiko na ufanmamatinas opinion pat rason, ja unfabot pat ukontra, ayu na areglu ni para umana guaha pot bandan Foreign Sales Corporation.

Gi halum trenta (30) dias despues di ayu na fecha ni matutuhon ma anunciana este na noticia, haje malago sumangan I sinentena pot este pot fabot tugi opinionmu pat rasonmu ya una hanau quato gi este na Oficina:

Director of Finance
Office of the Governor

Commonwealth of the Northern Mariana Island

Saipan, CM. 96950

Pedro A. Tenorio
Governor

Date

Tomas B. Aldan

Director of Finance

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Date

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COMMONWEALTH REGISTER

GOVERNMENT OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Department of Finance
Division of Revenue and Taxation

RULES FOR FOREIGN SALES CORPORATIONS

ACTION: Pro osed Regulations

<u>SUMMARY</u>: This document contains proposed regulations relating to the taxation of Foreign Sales Corporations ("FSC's") incorporated in the Commonwealth of the Northern Mariana Islands ("the Commonwealth").

These proposed regulations provide taxpayers with the guidance necessary to qualify for benefits granted FSCs in the Commonwealth pursuant to the Foreign Sales Corporation Incentive Act of 1984, Commonwealth Public Law 4-15, and to comply with the Commonwealth's general revenue and taxation laws, including the Northern Marianas Territorial Income Tax, (P.L. 4-24, as amended) which implements in mirror form the U.S. Internal Revenue Code of 1954. The temporary regulations are supplemented with explanatory questions and answers. questions and answers are intended to clarify the taxation of FSCs by the Commonwealth. Taxpayers may rely for guidance on the provisions of these regulations and the supplementary questions and answers to determine the principles which the Division of Revenue and Taxation will follow in resolving issues concerning Commonwealth taxation of FSCs.

The regulations are issued in proposed form effective Date: for taxable years beginning after December 31, 1984.

For Further Information Contact:

Tomas Aldan, Director of Finance Government of the Commonwealth of the Northern Mariana Islands Capitol Hill, Saipan, C. M. 96950 Telephone: 011-670-9818

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document contains proposed Income Tax Regulations to implement Title 4, Chapter 9 of the Commonwealth Code, pursuant to the specific authority conferred by Section 6 of the Foreign Sales Corporation Incentive Act of 1984, P. L. 4-15, and the general rulemaking authority of the Government of the Commonwealth of the Northern Marianas under P. L. 1-8, 4 CMC Section 1818, and Section 601 and 602 of the Commonwealth Covenant, United States Public Law 94-241, 90 Stat. 263, 48 U.S.C. Section 1681, March 24, 1976. These amendments provide regulations under new sections 1900 to 1906 of Title 4 of the Commonwealth Code, which were added by the corresponding sections of P. L. 4-15, and under sections 1305(a) and 1305(b) of Title 4 of the Commonwealth Code, which were added by Section 4 of P. L. 4-15.

DESCRIPTION OF PROPOSED REGULATIONS

These proposed regulations are intended to address comprehensively the issues raised by Sections 1900-1906 of

P. L. 4-15 as they relate to the operation and effect of new sections 921 through 927 of the Internal Revenue Code of 1954, as added by the Tax Reform Act of 1984 (P. L. 98-369, 98 Stat. 1000) (sometimes referred to as the "Deficit Reduction Act of 1984"). The proposed regulations, together with the accompanying discussion, clarify the benefits which accrue to a FSC operating in the Commonwealth under both U. S. and Commonwealth tax legislation.

DISCUSSION

STATUTORY PROVISIONS

The Foreign Sales Corporation Incentive Act of 1984, P. L. 4-15, added new sections 1900-1906 to Title 4 of the Commonwealth Code. Section 1900 describes the legislative intent to provide special income tax and gross revenue tax incentives to create an extremely favorable climate for the operation of FSCs in the Commonwealth. Section 1902(a) establishes a tax exemption of "foreign trade income" of a FSC incorporated in the Commonwealth. Section 1902(b) preempts all other provisions of Commonwealth tax law to relieve a FSC ("which qualifies under subsection (c) of Section 1902") from (1) any and all tax on its business •ross revenue, (2) any and all license fees except the required FSC license fee and (3) any tax on any income under the Northern Marianas Territorial Income Tax. Section 1902(b)(3) extends the exemption to all income of a FSC, including, but not limited to, "foreign trade income", "non-foreign trade income",

interest, dividends, royalties, and other investment income, and carrying charges, as defined by Sections 923(b), 921(d)(2), (3), 927(c) and 927(d), of the U. S. Internal Revenue Code of 1954, respectively. Accordingly, a FSC's income will be free from all taxes on all income in the Commonwealth.

Section 1 of these regulations establishes rules for administering the complete exemption from "any tax on any income under the Covenant Section 601 mirror image Territorial Income Tax," (Section 1902(b)(3), P. L. 4-15), as the exemption applies to both foreign trade income and non-foreign income, as defined by Section 921 of the Internal Revenue Code of 1954. Section 1 offers guidance on the extent to which the exemption applies to catagories of non-forei•n trade income of a FSC. Activities generating such income must be "rationally related" to the FSC's international trading activities, as defined by Section 1 of these Regulations.

For example, income from the performance of construction services outside the United States will not be qualified "foreign trade income" under the definition of such income established by Section 924 of the Internal Revenue Code of 1954, unless such services are deemed to be "engineering and architectural services" for construction outside the United States under Section 924(a)(4). However, since income of a FSC generated by construction services is "rationally related" to the international trading activities of a FSC, engaged in the

performance of engineering and architectural services, such income would qualify for the exemption from Northern Marianas Territorial Income Tax, pursuant to Section 1902(b) of P. L. 4-15. Likewise, exports of services which are not "related and subsidiary" to the export of U. S. property (for example, where the value of services sold exceeds the value of products exported) do not generate qualified foreign trade income under Section 924(a)(3) of the Internal Revenue Code. However, under P. L. 4-15 a FSC receiving such income would be free of all Territorial Income Tax since such services would be deemed to be "rationally related" to the international trading activities of the FSC.

It is intended that the complete exemption of all income of a FSC makes the Commonwealth an extremely attractive location for FSCs of U. S. service sector companies, import-export companies, and others whose international business activities may be expected to generate both foreign trade and non-foreign trade income, as these terms are defined under U. S. law.

Without the complete exemption of all income of such FSCs provided by Commonwealth law, such companies might not be expected to avail themselves of the benefits of the U. S. tax incentive for exporters or otherwise establish FSCs in the Commonwealth to conduct international trading activities here.

The complete exemption of <u>all</u> income of an FSC provides a number of significant incentives for the COMMONWEALTH REGISTER VOL. 7 NO. 7 JULY 22, 1985 PAGE 3847

establishment of a FSC in the Commonwealth. First, section 1902 introduces increased certainty as to the overall tax consequences of FSC operations under U. S. and Commonwealth laws, since the Commonwealth exemption from income tax will not depend on whether the FSC's particular items of income or gross receipts qualify for the exemption under U. S. law. eliminate problems which would otherwise arise in determining overall tax liability of a FSC. Second, income generated by exports of "excluded property", including: property leased or rented by a FSC for use by any member of a controlled group of corporations; patents, inventions, models, designs, formulas, or processes; oil or gas; property "subsidized by the United States or an agency thereof" or intended for use by the United States (or any instrumentality, thereof) where required by law or regulation, would not produce foreign trade income under Sections 927(a)(2) and 924 of the Internal Revenue Code of However, income generated by such exports would not be subject to income tax in the Commonwealth.

Where exports of "excluded property" are part of the overall export and trading operations of a FSC, the P. L. 4-15 provides a significant incentive to establish a FSC in the Commonwealth.

Further, the exemption from all income tax on <u>any</u> income provided by Section 1902(b)(3) of the Commonwealth's Foreign Sales Corporation Incentive Act of 1984 makes the Commonwealth an attractive location for FSCs engaged in local

manufacture and value-added operations, component assembly, local processing and other international business activities. Since FSCs engaging in such activities will generate both foreign trade income and non-foreign trade income under Section 924 of the Internal Revenue Code of 1954, the complete exemption provided under Section 1902 of P. L. 9-14 provides a significant incentive to FSCs in the Commonwealth. While other eligible jurisdictions may choose to tax such non-foreign trade income, the Government of the Commonwealth wishes to create a climate favorable to the operation of Foreign Sales Corporations by not taxing such income.

The United States Congress clearly intended that a FSC may engage in activities which do not generate "foreign trade income" without being disqualified for the tax exemption provided by Section 923(a) (1) or otherwise have the corporation's status terminated as an FSC under U. S. law. Accordingly, unlike the requirement that 95% or more of the gross receipts of a Domestic International Sales Corporation must consist of qualified "export receipts" pursuant to Section 992(a) of the Internal Revenue Code of 1954, no specific percentage of a FSC's gross receipts must be qualified "foreign trading gross receipts".

Section 1902(b) (1) or (2) of P. L. 9-14 excludes a FSC from any and all tax on its business gross revenue and any and all license fees except the required FSC license. Section 2 of these Regulations clarifies the interpretation and administration of those provisions.

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Section 3 of these Regulations clarifies the exemption for investment income and carrying charges provided by Section 1902(b)(3).

Section 4 clarifies the rules applicable to determine the source of FSC's income under the mirror principles adopted through enactment of the Northern Marianas Territorial Income Tax and the exemption therefrom.

Section 5 also clarifies the operation of the mirror image tax with respect to dividends, interest and royalty income received by an FSC from sources outside the United States. Such dividends, interest or royalties will not be subject to a 30% withholding tax applicable under Section 881(a) of the Internal Revenue Code of 1954 when paid to a foreign corporation from fixed or determinable annual or periodical income not effectively connected to a U. S. trade or business. Section 5 also clarifies that there will be no withholding tax on distributions from an FSC to its shareholders out of foreign trade or non-foreign trade income.

Section 6 clarifies the operation of the "back-up"

100% rebate of the Northern Marianas Territorial Income Tax

provided by Section 1906 of P. L. 4-15 to the extent a FSC's

income becomes includable within the gross income of a FSC

because of the operation of the Northern Marianas Territorial

Income Tax. Section 6 of these regulations also provides a tax

credit equal to the amount of any liability imposed by the mirror system for payment of the Territorial Income Tax on FSC income from sources outside the Commonwealth.

Section 7 of the Regulations clarifies the tax impact on FSC operations in the Commonwealth from the selection of one or more of the pricing methods provided by law. Section 7 of these Regulations is intended to clarify the total tax savings and benefits from FSC operations in the Commonwealth, including FSCs engaged in local manufacture and local processing of products produced within and without the Commonwealth.

PROPOSED REGULATIONS

Section 1 COMPLETE EXEMPTION OF FSC FROM NORTHERN MARIANAS TERRITORIAL INCOME TAX

The following rules and regulations clarify the exemption from Northern Marianas Territorial Income Tax that Foreign Sales Corporations are entitled to under Title 4 of the Commonwealth Code.

Definitions

(a) A "Foreign Sales Cor oration ("FSC")" is a business entity (1) incor orated in the Commonwealth of the Northern Mariana Islands which is a FSC or small FSC as that term is defined in Section 922 of the United States Internal Revenue Code of 1954 and; (2) the holder of a valid FSC business license.

Regulations, a corporation incorporated in the Commonwealth is presumed to be the holder of a "valid business license," if the license has been issued by the Department of Commerce and Labor, and no steps under Section 1.3 of this Regulation have been taken to revoke or cancel the license.

(b) "Forei in Trade Income", for the purposes of the tax exemption provided by Section 1902 of P. L. 4-15, means income which is "foreign trade income" as defined in Section 923 of the

United States Internal Revenue Code of 1954, as the same may be amended from time to time.

(c) "Income", for the purposes of the exemption from "any tax" under the Covenant 601 mirror image Territorial Income Tax of the Commonwealth provided to FSCs pursuant to Section 1902(b)(3), is not restricted to foreign trade income (as defined in Section 1(b) of this Regulation) but includes both foreign trade income and non-foreign trade income which is "rationally related" to international trading activities (as defined in Section 1.1 of this Regulation.)

Section 1.1 Income which is "Rationally Related" to the International Trading Activities of a FSC.

"Income" eligible for the complete exemption from
"any tax on any income under the Covenant Section 601 Mirror Image
Territorial Income Tax of the Commonwealth", conferred by Section
1902(b)(3) of P. L. 4-15, need not fall within the definition of
"foreign trade income" pursuant to Section 1901(b) of P. L. 4-15
or Section 923 of the United States Internal Revenue Code of 1954,
providing that such income is "rationally related" to the
"international trading activities" of the FSC as defined by this
Section 1.1.

"International trading activites" means the purchase, sale, or other disposition of goods grown, manufactured, extracted, assembled, processed or otherwise produced in one country (including the United States, the Commonwealth of the

Northern Mariana (Stander) Guam and other territories or possessions of the United States) for sale or use in another country (including the United States, the Commonwealth of the Northern Mariana Islands, Guam and other territories or possessions of the United States.) "International trading activities" also includes the performance of personal services in a foreign country or in a possession of the United States (including the Commonwealth of the Northern Mariana Islands).

An item of income realized by an FSC is "rationally related" to the international trading activities of a FSC and eligible for the complete exemption under Section 1902(b)(3) of P. L. 4-15 if it is generated by activities which;

(1) facilitate <u>or</u>; (2) are otherwise necessary for the successful conduct of the FSC's international trading activities, <u>or</u>; (3) are an integral part of an FSC's international trading activities, <u>or</u>; (4) are ordinarily conducted in connection with such trading activities <u>or</u>; (5) involve the investment by an FSC of "foreign trade income", as that term is defined by Section 1901(b) of P. L. 4-15;

and at least twenty-five percent of the FSC's
income is "foreign trade income."

An activity "facilitates" the successful conduct of the FSC's international trading activity if it involves the production, processing, assembly, packaging, labeling or manufacture of a product in one country for sale in another or the

purchase of materials, parts or components used for the production, processing, assembly, packaging, labeling or manufacture of a product in one country for sale in another country or the performance of a service in one country in connection with the sale of a product or the performance of a service in another country.

An activity is "otherwise necessary" for the successful conduct of the FSC's trading activities if it involves market development, sales representation, commercial factoring, or the preparation of market, investment or feasibility studies in furtherance of the business and purpose of engaging in the international trading activities of the FSC.

An activity is "ordinarily conducted" in connection with a FSC's international trading activities if it is the custom and practice in a given trade or industry for such activity to be undertaken in the ordinary course of business. The term "custom or practice" and "ordinary course of business" has the same meaning as it has in Title 5 of the Commonwealth Code (Uniform Commercial Code) and judicial decisions interpreting or applying Title 5 of the Commonwealth Code.

An activity "involves the investment b' an FSC of forei; n trade income" if 100% of the assets used in the activity are purchased with the FSC's "foreign trade income", exclusive of any debt financing which may be received to purchase such assets.

The non-foreign trade income of a FSC shall be presumed to be "rationally related" to a FSC's international trading activities if it involves (1) the production, processing, assembly, packaging, labeling or manufacture of a product or the performance of a service which is similar or complimentary to a product or service sold by the FSC in transactions which generate "foreign trade income" as defined by section 1901(b) of P. L. 4-15 and (2) 25% of the income of such FSC is qualified "foreign trade income" as defined by section 1901(b) of P. L. 4-15 or is derived from the sale of product produced, grown, extracted or manufactured within the Commonwealth and sold outside the Commonwealth. For the purpose of this section the terms "produced, grown, extracted or manufactured" have the same definitions as those terms have under Section 993(c) of the Internal Revenue Code of 1954 ("export property" of a Domestic International Sales Corporation) and Treasury regulations promulgated pursuant to Section 993(c), except that the "Commonwealth" shall be substituted for the "United States" in such regulations.

The non-forei n trade income of a FSC shall be presumed not to be "rationally related" to a FSC's international trading activities if such income is produced by a trade or business which was conducted within the Commonwealth by the FSC, a predecessor to the FSC, a company related to or affiliated with an FSC, or such predecessor, or a member of a controlled group of corporations of which the FSC is a member,

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•rior to making the election to be treated as a FSC under Section 927(b)(1) of the Internal Revenue Code of 1954, unless at least 50% of the income of such FSC is foreign trade income as defined by Section 1901(b) of P. L. 15-4.

Section 1.3 License Revocation or Cancellation.

So long as a licensed FSC pays its annual license fees and complies with Section 1903, it is presumed to be validly In the event the Director of Commerce and Labor has any cause to believe that the holder of a valid license is not in compliance with "applicable Commonwealth Law," or that the license was invalidly issued, the Director shall provide written notice to the FSC, specifying the grounds for revocation or cancellation of the FSC license. The FSC shall have 90 days to correct any deficiencies or bring itself into compliance with the Commonwealth law or show cause to the Director that it is not in violation of any provision of Commonwealth law. After the 90 day period following the receipt by the resident director of notice of intention to cancel the license, if the Director believes the FSC is still not in compliance, the Director will, upon 30 days written notice to the FSC's resident director, conduct a hearing. Thereafter the Director will revoke or cancel the FSC license if it is established at the hearing upon a preponderance of substantial, competent evidence that the FSC license holder is not in compliance with applicable Commonwealth law.

Any cancellation or revocation order issued by the Director of Commerce and Labor is subject to judicial review

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In the Commonwealth Trial Court under the Administrative Procedure Act, Commonwealth Code, Title 1, Division 9.

In no case shall revocation or cancellation be effective until all administrative <u>and</u> judicial remedies have been exhausted, and no tax whatsoever shall be imposed on any income of an FSC before the effective date of revocation or cancellation of the FSC license.

Section 1902(c) of P. L. 4-15 states that in accordance with Section 927(e)(5) of the United States Internal Revenue Code of 1954, as amended, and notwithstanding any other law to the contrary, no tax shall be imposed by the Commonwealth on any foreign trade income derived before January 1, 1987.

Accordingly, while an FSC may be subject to tax on its non-foreign trade income in the event of a FSC licence revocation or cancellation, pursuant to Section 1902(b) (which requires qualification as an FSC); it will not be subject to any tax by the Commonwealth on its foreign trade income under Section 1902(c) whether or not its FSC license has been revoked or cancelled pursuant to Section 1905 of P. L. 4-15 and Section 1(d) of these Regulations, providing that within 120 days of the revocation of its license it will cease all activities within the Commonwealth which may generate additional foreign trade income.

PROPOSED REGULATIONS

Section 2. EXEMPTION FROM TAX ON BUSINESS GROSS REVENUE

An FSC which qualifies under subsection (c) of Section 1902 of P. L. 4-15 is exempt from any and all tax on its business gross revenue normally imposed under the Commonwealth Code. Under Title 4, Section 1301 of the Commonwealth Code there is normally imposed on annual gross revenue of a corporation a tax at graduated rates of 1.5% to a maximum of 5%. Manufacturers, wholesalers and shippers are taxed at a maximum rate of 2% on their gross revenue earned. Manufacturers who derive gross revenue from export sales are exempt from the gross revenue tax on such gross revenues. See 4 CMC Section 1305.1

An FSC would be free of "any and all tax" on its business gross revenue under Chapter 3 of the Commonwealth Code, whether or not such revenue constitutes "foreign trading gross receipts" as defined by Section 923 of the Internal Revenue Code or whether or not the income derived from such gross receipts

1. 4 CMC Section 1305 provides:

[&]quot;Section 1305. (a) Exemetion of Exporters. Any person who sells goods, resources, food or agricultural produce which is delivered outside the Commonwealth shall be exempted from any tax levied under this Chapter upon the gross revenue derived solely from such export sales.

⁽b) Gross Revenue Tax Exemption of FSCs. A FSC is exempted from any tax levied under this Chapter upon the gross revenues derived from its operations."

constitutes "foreign trade income" under Section 1901(b) of P. L. 4-15, providing that such business gross revenue is "rationally related" to the international trading activities of the FSC.

For the purpose of this section of the regulations, the terms "rationally related" and "international trading activities" have the same meaning as they have in Section 1 of these Regulations.

PROPOSED REGULATIONS

Section 3. EXEMPTION FROM INCOME TAX ON INVESTMENT INCOME AND CARRYING CHARGES OF A FSC

Section 1902(b)(3) of P. L. 4-15 exempts from taxation any tax on any income of a FSC, "including but not limited to all interest, dividends, royalties, and other investment income, and all carrying charges, received or accrued by a FSC, as defined in Section 921(d)(2) and (3) and 927(c) and (d) of the U. S. Internal Revenue Code of 1954 as amended."

Investment income need not be derived from activities which are related to or effectively connected with the trade or business of the FSC which produces its foreign trade income and may be generated through reinvestment of "investment income", as defined by this Section.

"Investment income" means investment income as defined in Section 927(e) of the Internal Revenue Code of 1954 whether or not such income is derived from investment of the foreion trade income or non-foreion trade income of the FSC.

Investment income also includes income realized from the lease, rental or sale of real property.

"Carrying charges" means carrying charges as defined in Section 927(d) (1) of the Internal Revenue Code of 1954.

Other jurisdictions exempt an FSC's investment income only if such income is considered to be "effectively connected with a U. S. trade or business", <u>i.e.</u> subject to U. S. tax and only if such income is generated by investment of foreign trade income. In addition, a withholding tax may be imposed upon dividend distributions of the investment income to the FSC's shareholders by other jurisdictions. P. L. 4-15 imposes no such restrictions on FSCs in the Commonwealth and exempts <u>all</u> investment income of FSCs without qualification.

PROPOSED REGULATIONS

Section 4 RULES APPLICABLE FOR DETERMINING SOURCE OF FSC'S INCOME

The source of income rules to be applied by the Commonwealth Department of Finance to determine whether items of income of an FSC are from sources within the Commonwealth or "foreign" sources shall be determined under Section 861 of the Internal Revenue Code of 1954.

The source of income or gain from the sale or other disposition by the FSC of moveable property is determined by the place of sale under Section 861(a)(6) of the Internal Revenue Code. Courts have consistently held that this occurs when and where the parties intend beneficial title to pass to the purchaser. See Campania General v. Collector, 279 U.S. 386 (1929); Piedras Negros Broadcastin. Co. v. Comr., 43 B.T.A. 297 (1941), aff'd, 127 F.2d 260 (5th Cir. 1942); Barber-Greene Americas, Inc. v. Comr., 35 T.C. 365, 389 (1960); Ronrico Cor. v. Comr., 44 B.T.A. 1130 (1941).

Pursuant to the "place of sale" rule, the source of income from personal property is allocated entirely to the place of effective delivery of the property according to the contract of sale. Where the contract of sale specifies that title and beneficial ownership shall pass to the buyer in the Commonwealth, then the income generated from the sale will be deemed to be from sources within the Commonwealth. This rule applies regardless of the place of purchase.

Where the intention of the parties to pass title and beneficial ownership of the exported goods within the Commonwealth is not expressed, the intention to do so may be inferred from trade law and usage. Factors to be considered in determining the intent of the parties to pass title to the exported goods within the Commonwealth include (1) the place of final performance by the seller; (2) the place of contract; (3) the place of shipment and; (4) shipping terms.

The ".lace of final performance by the seller" will be considered to be within the Commonwealth if the last act required of the seller in order to obtain payment for the goods occurs within the Commonwealth. U. S. v. Balanovski, 236 F.2d 298, 304-305 (2nd Cir. 1956).

The "•lace of contract" is the place where sales are subject to confirmation and where absolute control as to the terms and conditions of the sale rests. If the confirmation of the order is from within the Commonwealth or other final acts making the sale effective take place within the Commonwealth, the income from the sale will be from sources "within the Commonwealth".

The "place of shipment" may determine the place where title passes in the case of goods which are first ascertained and appropriated from within the Commonwealth for shipment to the buyer. Therefore, income from sale of products transhipped in bulk to the Commonwealth [and not appropriated to a specific buyer until they reach the Commonwealth] is deemed to be income from "sources within the Commonwealth".

Shipping terms may also indicate intention to pass title to the goods from within the Commonwealth. For example, the use of the price term F.O.B. "free on board" permits shipment to be made from any designated departure point. Title will be deemed to pass at that point so that the sale may be made, for example, F.O.B. "Saipan" and title will be deemed to pass in the Commonwealth.

In the case of goods purchased in the Commonwealth, Guam, or other U. S. Territories or possessions for sale in the United States, Section 863(b) (3) of the Internal Revenue Code deems income from such sales to be "partly from sources within and without" the United States. In all such cases, however, the income from such sales shall be considered to be "effectively connected with the conduct of a trade or business within the Northern Mariana Islands".

If an FSC manufactures a product within the Commonwealth for sale outside the Commonwealth, an allocation must be made between income from sources within and without the Commonwealth, i.e., partly to the place of production and partly to the elace of sale, pursuant to Section 863(b) (2) of the Internal Revenue Code of 1954. Since the "passage of title" rule applies to determine the place of sale for purposes of Section 863(b) (2), where title to products manufactured within the Commonwealth (for buyers outside the Commonwealth) passes within the Commonwealth, proceeds from both the manufacture and sale of

the product will be deemed to be from "sources within the Commonwealth".

Section 602 of the Covenant to establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, P. L. 94-241, grants to the Commonwealth the power to rebate any taxes received by it on income derived from sources within the Northern Mariana Islands. The source of income rules described in these Regulations will apply for all purposes, including the application of the back-up 100% rebate described in Section 6 of these Regulations.

PROPOSED REGULATIONS

Section 5 TAX TREATMENT OF DIVIDENDS, INTEREST AND ROYALTIES RECEIVED BY THE FOREIGN SALES CORPORATION FROM SOURCES OUTSIDE THE COMMONWEALTH

Dividends, interest, royalties or other "annual or periodical fixed and determinable income", as that term is defined for purposes of Section 871(a) (1) of the Internal Revenue Code of 1954, received by an FSC from sources within the United States will be exempt from U.S. tax under Section 881(b). By operation of Section 601(c) of the Covenant, this exemption applies to FSCs incorporated in the Commonwealth. Although dividends and interest or similar payments would normally be subject to a 30% withholding tax when paid to a foreign corporation, payments of such income to a FSC in the Commonwealth shall be tax free to the FSC.

PROPOSED REGULATIONS

Section 6 BACK-UP 100% REBATE OF TERRITORIAL INCOME TAX AND ALTERNATIVE TAX CREDIT

In enacting P. L. 4-15, the Commonwealth has determined that FSCs incorporated here will be free of <u>any</u> tax and license fees other than the \$500 annual license fee established by P. L. 4-15. Specifically, Section 1902(b) (3) of P. L. 4-15 states that FSCs will be exempt from "any tax on any income under the Covenant Section 601 mirror image Territorial Income Tax of the Commonwealth." <u>1</u>/ It was intended that this exem•tion be without limitation, in keeping with the intent of the U. S. Congress in enacting the Foreign Sales Corporation provisions into law. Further, the Commonwealth intends that this exemption from tax continue to apply <u>after</u> January 1, 1987. The effect of Section 1902 of P. L. 4-15 is to exem•t FSC income from the application of the Territorial Income Tax ("mirror" tax code).

Accordingly, Section 1902(b) (3) of the P. L. 4-15 will act as complete exemption of all income of a FSC from income and business gross revenue tax, regardless of the source of such income. Further, to provide added assurance of its intention to exempt FSCs from the operation of the Northern Marianas

Territorial Income Tax ("mirror code"), P. L. 4-24, in a way which would not defeat the purpose and benefits of the Foreign Sales

Corporation Incentive

^{1/} Covenant Section 601 makes the United States income tax laws applicable to the Commonwealth as a local ("mirror image") territorial income tax.

Act, P. L. 4-15, or the federal Foreign Sales Corporation Act of 1984 (Sections 921, et seq. of the Internal Revenue Code of 1954), Section 1906(a) provides a 100% rebate to FSCs of any and all mirror taxes. This extends to the items of FSC income which "at any time now or hereafter became includable within the gross income of a FSC because of the operation of the mirror image Commonwealth Territorial Income Tax". (Emphasis added) The 100% "back-up" rebate provided by Section 1906(a) extends to all items of FSC income which are otherwise exem•t from taxation under Section 1902 of P.L. 4-15 and these implementing Regulations. The FSC shall receive the 100% rebate provided by Section 1906(a) regardless of whether FSCs receive a partial exemption of tax on Foreign Trade Income pursuant to the Internal Revenue Code of 1954.

Section 6.1 Alternative Local Law FSC Tax Credit

Section 1906(a) is limited to FSC income derived from sources within the Commonwealth by any other law or regulation, a "local law" tax credit will be granted to FSCs in an amount equivalent to any income tax liability on income derived by a FSC from sources outside the Commonwealth. This "local law" tax credit is granted in order to fully execute the intent of the Legislature in enacting Sections 1902 and 1906 of P. L. 4-15 and is consistent with the local taxing authority conferred by Section 602 of the Covenant.

The local law tax credit will appear on a new last line on 1120 CM or any other form to be filed by Foreign Sales COMMONWEALTH REGISTER VOL. 7 NO. 7 JULY 22, 1985 PAGE 3869

Corporation as follows: "Local Law FSC Tax Credit (equal to the tax due on income derived from sources other than the CNMI)

\$ ".

The application of the Northern Marianas Territorial Income Tax to a FSC with income from sources outside the Commonwealth would be manifestly incompatible with the intent of the Commonwealth Government that FSCs operating in the Commonwealth will be free of any and all tax on all catagories of their income. Further, application of the Territorial Income Tax to FSC income from sources outside the United States without such credit would be manifestly incompatible with the federal Foreign Sales Corporation Act of 1984, because the latter, by definition, characterizes "all interest, dividends, royalties and other investment income received or accrued by an FSC..." as income from sources within the United States. (Sec. 921(d)(2)(3) of the Internal Revenue Code of 1954.) Further, foreign trade income determined by use of the "administrative pricing rules", pursuant to Section 923(a) (3) is deemed to be "derived from sources within the United States". Accordingly, in conformity with the intention of the United States Congress, such income shall not be subject to tax by the Commonwealth, irrespective of its source.

PROPOSED REGULATIONS

- Section 7

 EFFECT OF FSC TRANSFER PRICING UNDER SECTION 925 OF
 THE INTERNAL REVENUE CODE OF 1954; OVERALL TAX
 BENEFITS IN COMMONWEALTH
- (a) Forei:n Trade Income. A Commonwealth FSC will receive a (30-32%) exemption [depending on whether it has individual or corporate shareholders] of income from taxation by the United States on its foreign trade income, in cases where the FSC is purchasing its product for resale from a "non-related supplier". Section 923(a)(2). The non-exempt portion of the FSC's foreign trade income and all non-foreign trade income will not in such cases, be taxed by the United States until such income is distributed to the shareholders of the FSC. The Commonwealth has not imposed any income or business gross receipts tax on such income. Accordingly, such income is generated free of all tax until it is distributed to the FSC's shareholders.

Where the FSC is purchasing from a "related supplier" it may elect to set its prices at "arm's-length" pursuant to the provisions of Section 482 of the Internal Revenue Code of 1954 or, alternatively, it may use the "administrative pricing rules" under Section 925. If it elects to use the "administrative pricing rules" to determine foreign trade income, the FSC will be subject to tax currently by the United States on its foreign trade income, because such income will be treated as "effectivel, connected" U.S.-source income and only 15%-16% of such income will be exempt from U. S. tax. However, such income will be free of all Commonwealth tax.

- (b) Non-Forei n Trade and Investment Income. As set forth in these Regulations, non-foreign trade income which is "rationally related" to the international trading activities of a FSC and all investment income, will also be free of all Commonwealth income and business gross revenue tax. Such income will not be taxed by the United States until it is distributed by the FSC to its shareholders. Accordingly, non-foreign trade income will be indefinitely deferred from U. S. taxation and free of all Commonwealth tax.
- Commonwealth. A FSC may manufacture goods in the Commonwealth for export into the customs territory of the United States at a preferential or zero rate of duty. United States law requires that at least 50% of the value added in the manufacturing and shipping process be deemed to have been added in the Commonwealth. Currently, there are three textile manufacturing companies in the Commonwealth that have taken advantage of the Headnote 3(a) program. FSC or other manufacturers in the Commonwealth are subject only to a three percent local tax on the gross value of any merchandise to be certified as eligible for the Headnote 3(a) program. 1

^{1.} Public Law 4-14, Section 3 provides in pertinent part: "Any person requiring the Customs Service Certification for purposes of Headnote 3(a) and other related requirements shall be charged a user fee. The user fee shall be three percent (3%) of the gross value of the merchandise to be certified which shall become due and payable to the Commonwealth Treasury upon certification."

Further information about the Headnote 3(a) program can be obtained by writing: Jesus Sablan, Director of Commerce and Labor, Government of the Commonwealth of the Northern Mariana Islands, Saipan, CM 96950, Tel. 011-670-7261.

(d) <u>Conclusion</u>. The operation of the Commonwealth's Foreign Sales Corporation Incentive Act of 1984, P. L. 4-15, makes the Commonwealth an ideal location for companies engaged in personnel service business, import-export activities, value-added and manufacturing operations, in conjuntion with the exportation of products produced in the United States and the Commonwealth.

QUESTIONE AND ANSWERE.

Question 1. What is the relationship between the Government of the United States and the Government of Commonwealth of the Northern Mariana Islands?

Answer 1. The relationship between the Government of the United States and the Government of the Commonwealth of the Northern Mariana Islands is established by a Covenant which has been approved by plebiscite in the Northern Mariana Islands and by public law in the United States. (See Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, Public Law 94-241, 90 Stat. 263, 48 U.S.C.A. Section 1681(b) footnote). Internally, the Government of the Northern Mariana Islands is similar to that of many states with its two house legislature, elected governor, and judicial branch with final appeals to the United States Federal Courts.

•uestion 2: What constitutes the tax system of the Commonwealth?

Answer 2: The tax system of the CNMI is primarily based upon four taxes: (1) the mirror image Internal Revenue Code (or "Northern Marianas Territorial Income Tax") imposed by the Covenant, (2) the business gross revenue tax, (3) the business excise tax, and (4) the individual wage and salary tax. The CNMI tax code is found in Title 4 of the Commonwealth Code, Division 1 ("4 CMC, Div. 1"), as amended by Public Laws 4-15, the FSC Incentive Act of 1984, and 4-24, the Northern Marianas Territorial Income Tax act.

Answer 3: Public Law 4-15 comprehensively addresses the taxation of CNMI FSCs in Section 3, which adds a new Chapter 9, Sections 1900 through 1906, to the CNMI tax code. Section 1902 provides that CNMI FSCs which meet the five requirements of the Section are exem•t from (1) any and all tax on business gross revenue, (2) and all license fees other than the \$500 annual FSC license fee, and (3) any tax on an income under the Covenant Section 601 mirror image Territorial Income Tax of the Commonwealth. In brief, Section 1902 basically provides that a CNMI FSC is free of tax by the CNMI on any income it may earn.

Question 4: What categories of the FSC income are exempt from mirror code taxation under Section 1902 (b) (3)?

Answer 4: Section 1902 (b) (3) exempts from mirror code taxation any income that would be otherwise includable as taxable income under the Internal Revenue Code ("IRC") as applied to the CNMI by Covenant Sections 601 and 602 and the Northern Marianas mirror image territorial Income Tax. The categories of FSC income include:

- (1) exempt foreign trade income;
- (2) non-exempt foreign trade income;
- (3) investment income;
- (4) carrying charge income;
- (5) any other income derived from any source, provided such income is "rationally related" to the international trading activities of the FSC.

Question 5: If Section 1902 (b) (3) exempts a CNMI FSC from any tax on any income received by it, what is the purpose of Section 1906?

Answer 5: Section 1906 offers an additional guarantee of a CNMI FSCs tax free status. It provides a contingency plan if Section 1902 (b) (3) should ever be preempted by the U. S. Congress or courts.

Question 6: Who administers and enforces tax laws in the Commonwealth of the Northern Mariana Islands?

Answer 6: All tax laws, including the Northern Marianas
Territorial Income Tax, are administered and enforced by the CNMI
Government's Department of Finance. The U. S. Internal Revenue
Service has no authority to administer or enforce any Commonwealth
tax laws, including the mirror image Northern Marianas Territorial
Income Tax Code (NMTIT). Covenant Sections 601 and 602 grant such
authority to the CNMI Government.

Question 7: What is the effect of the CNMI excise tax upon FSCs?

Answer 7: The Commonwealth excise tax applies to goods imported into the customs territory of the Commonwealth for business purposes and which are not for reexport. The excise tax is set at

a maximum rate of 5% of the value of the goods imported and may be rebated upon proof that the items imported were sold, leased or rented outside the customs territory of the Commonwealth. See 4 CMC Section 1407(a). Manufacturers who import goods for the purposes of assembly and reexport under the Headnote 3(a) program are exempt from the excise tax, but are subject to a 3% user fee tax on the gross value of the merchandise to be certified for reexport under the Headnote 3(a) program. See P. L. 4-14.

Question 8: How long will the tax laws of the Commonwealth exempt FSCs from taxation?

Answer 8: The Commonwealth Government pledged in its Foreign Sales Corporation Incentive Act that the tax exemption would "remain in effect for so long as foreign sales corporations receive a tax exemption for foreign trade income under the United States Internal Revenue Code of 1954, as amended." (See Section 1902(d) of P.L. 4-15.) In other words, the Commonwealth will grant a tax exemption to FSCs indefinitely. Only an amendment by the US Congress of the US IRC that ended the tax exemption for FSCs would trigger an end to the Commonwealth's generous program.

^{1. 4} CMC Section 1407 - Refunds: Ex•orts provides: "Section 1407. Refunds: Ex•orts. (a) Upon application to the Director, any person who imports goods, merchandise, or commodities into the customs territory of the Commonwealth for sale, lease or rental and exports them to a buyer outside of the customs territory of the Commonwealth shall be entitled to a refund of taxes actually paid on those items."

•uestion 9: Who do I contact in the Commonwealth Government about FSCs and other business information?

Answer 9: The Commonwealth has established an Economic Development Loan Fund. It can be contacted by writing:

Executive Director
Economic Development Loan Fund
Government of the Commonwealth of the
Northern Mariana Islands
Saipan, CM 96950 USA

Tel: 011-670-7145 011-670-7146 011-670-6293

PUBLIC NOTICE

Proposed Regulations for the

Northern Marianas College

The Board of Regents of the Northern Mariana Islands, in accordance with Public Law 3-43, Section 203 (a) and (b), is proposing to adopt policies for Northern Marianas College.

The proposed policies include the following subject areas:

- 1. Professional Staff Running for Political Office
- 2. Retention and Promotion of Faculty

Copies of the proposed regulations may be obtained from Juan N. Babauta, Chairman of the Board of Regents, c/o Commonwealth Health Planning and Development Agency (CHPDA), 5th floor, Nauru Building, Saipan, CM 96950 or Agnes M. McPhetres, President, Northern Marianas College, P.O. Box 1250, Saipan, CM 96950.

The Board of Regents is soliciting views, opinions, fact and data for or against the proposed College Policy from the general public.

Anyone interested in commenting on the proposed policies may do so by submitting comments in writing to the Chairman of the Board of Regents within thirty (30) days from the date this notice is published in the Commonwealth Register.

Chairman, Board of Regents

NUTISIA PARA I PUPBLIKU

I MAPROPOPONI NA RIPARASION POT I REGULASION I ESKUELA GI HALOM I DEPATTAMENTON EDUKASION

Sigun gi Lain i Pupbliku numiru 3-43, i Board of Education i Sankattan siha na Islas Marianas, ha propoponi rumipasa i regulasion i Northern Marianas College.

I manmapropoponi siha na regulasion ni para u fanmaripasa ha inklulusu i manatatte siha na arean suhetu:

- 1. Prufesional na emplehao ni manmalalagu para pusision pulitika
- Maditeni yan mahatsan i ma'estro(a)

I kopian i manmapropoponi siha na regulasion sina manmachule' ginen as Sinot Juan N. Babauta Chairman i Board of Regents/ c/o Commonwealth Health Planning and Development Agency, 5th floor, Nauru Building, Saipan, CM 96950 pat si Agnes M. McPhetres, Presidentan i Northern Marianas College, P.O. Box 1250, Saipan, CM 96950.

I Board of Regents lokkue' ha solilisita opinion, fakto, yan enfotmasion siha para osino kontra i manmapropoponi siha na regulasion eskuela ginen i pupbliku henerat.

Todu ayu siha i manenteresao manmanlaknus rekomendasion pot i mapropoponi na tinilaika gi regulasion siha, sina manmangge' guatu gi Chairman i Board of Regents gi halom i trenta (30) dias desde i fecha ni mapupblika este na nutisia gi Commonwealth Register.

JUAN N. BABAUTA

Crairman, board of Regents

RETENTION AND PROMOTION OF FACULTY

All proposed promotions should be reviewed by the College Personnel Committee. The Committee has the responsibility for insuring that each retention and promotion file is complete, that is, it contains the necessary documentation of teaching performance, of student guidance-advisement activities, and of community service/educational leadership activities before submission to the President. The Committee's recommendation will be forwarded to the President for the Board of Regents' action.

In case of disapproval of such a promotion, the President will inform the faculty member in writing and notify the Academic Vice-President. If promotion is denied, a faculty member may be retained in the same position for a period not to exceed six years. After six years, promotion must be granted or non-renewal notice must be given.

Notification of non-renewal shall be given six months in advance of the expiration date written on the contract agreement.

PROFESSIONAL STAFF RUNNING FOR POLITICAL OFFICE

Professional staff, officers and instructors employed by the College shall tender their resignation to the President within fourteen calendar days after being certified by the Board of Elections as an official candidate for political office.

EMERGENCY REGULATIONS

COASTAL RESOURCES MANAGEMENT OFFICE

The Coastal Resources Management Office within the Office of the Governor the Commonwealth of the Northern Mariana Islands, hereby promulgates regulations relating to the management of coastal resources under the authority of Public Law 3-47, sections 8(d) and 9(c) and section 9104(b) of Title I of the Commonwealth Code. The Coastal Resources Management Office hereby finds that there is a need to immediately promulgate regulations and that it is in the public interest that these regulations take effect prior to public notice and public hearing under section 9105(b)(2) of Title I of the Commonwealth Code. The substance of these regulations were first proposed on November 15, 1984 and were adopted with amendments on December 15, 1984. However, uncertainty exists as to whether these regulations are in effect. Providing public notice and public hearing would require 40 days; hence, the present uncertainty regarding whether the substance of these regulations are in effect would persist during that period of time. uncertainty as to whether the regulations adopted on December 15. 1984 are in effect was engendered by Immigration and Naturalization Service v. Chadha, 103 S.Ct. 2764 (1983) and Attorney General Opinion No. 84-131 (September 4, 1984). That attorney general opinion found that the requirement that regulations relating to coastal resource management become effective only upon approval of both houses of the NMI legislature, specified to CNMI Public Law No. 3-47, section 8(e) was unconstitutional under Chadha. Consequently, the regulations were not submitted to the legislature for approval. However, section 22 of those regulations makes the regulations effective upon approval of both houses of the legislature; hence, the regulations on their own terms are ineffective until the legislature approval requirement is satisfied. It is the government's position that the regulations adopted December 15, 1984 have always been in effect; consequently, actions taken thereunder are valid actions. However, to remove any uncertainty as to the full force and effect of law of the regulations adopted on December 15, 1984, the substance of those regulations, minus section 22, are being adopted as emergency regulations.

In addition, a typographical error appearing in the substance of the regulations adopted on December 15, 1984 in the definition of "direct and significant impact" in section 5(k) is being corrected in these regulations. The word "any" is being substituted for the word "all" where it appears in that section.

In addition, a savings clause, preserving any rights of action which may have accrued under the regulations adopted on December 15, 1984 is also included.

These regulations shall become effective upon filing with the Registrar of Corporations and shall remain in effect for 120 days.

Certified by:

Acting Administrator, CRM

Concurred by:

PEDRO : TENORIO Governor

with Registrar Date of Filing

Registrar of Corporations

IMPOTTANTE NA AREKLAMENTON I OFFISINAN I COASTAL RESOURCE MANAGEMENT

I Offisinan i Coastal Resources Management gi Commonwealth gi san katan siha na islan Marianas ma propoponi i areklamento pot i inkatgan i coastal resources gi papa i areklamenton i Public Law 3-47, section 8(d) yan 9(c) yan section 9104(b) gi finenena na titulon i lain Commonwealth. I offisinan i Coastal Resources Management ha soda na sumen impottante na uma proklama areklamento siha ya para interest i publiku na debi esti na areklamento u efektibu antes de umana huyong notisa para i publiko yan lokkue antes di u ma e'kungok nue publiku qi papa section 9105(b)(2), gi finenena na titulon i lain i Commonwealth. I areklamento finenena ma introdusi gi Nobiembre dia kinse mit nuebe siento ochentai kuatro, ya ma adopta yan lokkue ma amenda qi Diciembre dia kinse mit nuebe siento ochentai kuatro. Lao guaha dinida kao esta efektibu esti na areklamento. Nesisita quarenta dias (40 days) antes di umana huyong notisia para i publiko yan quaha qi presente dinida pot esti na areklamento kao efektibu qi duranten esti na tiempo. I dinida put esti na areklamento ni ma adopta gi Deciembre dia kinse mit nuebe siento ochentai kuatro mu efektibu ya ma produsi gi offisinan i Immigration yan Naturalization Service v. chadha, 103 s. ct. 2764 (1983) yan i opinon i fiskat numeru 84-131 (Septiembre dia kuatro (4) mit nuebe siento ochentai kuatro). I opinion i fiskat ha sodda na antes de u efektibu i areklamenton i coastal resources management debi di uma passa gi todo i dos na guma gi leyeslaturan i san katan siha na islan Marianas segun gi lain i Commonwealth numeru 3-47, section 8(e). Ginen esti na ti ma nahalom gi leyeslatura para uma apreba. Hayu na guaha denida kao efektibu esti na areklamento ni ma adopta gi Deciembre dia kinse mit nuebe siento ochentai kuatro ni humalom gi section bente dos (22) gi eyo na areklamento ni muna efektibu despues di ma apreba gi todo i dos na guma i leyeslatura. Ginen i position i gobietnamento na efektibu este na areklamento ni ma adopta gi Deciembre dia kinse, mit nuebe siento ochentai kuatro. Pues ayo na todo i aksion ginen enao bumabali-ha. Pues hayo na taya esta dinida desti ki mana efektibu i lai ni ma adopta gi Deciembre dia kinse mit nuebe siento ochentai Todos esti na areklamento fiera i section bente dos ma adopta kumu prisisu na areklamento.

Pot otro guaha lokkue siha linache gi halom i areklamento ni ma adopta gi Deciembre dia kinse mit nuebe siento ochentai kuatro gi definision mano ma "ditetmina yan siknifikante na lugat" gi section 5(k) gi areklamento manmana dinanche. Lokkue ayo na palabra i "maseha mano" gi halom i areklamento ma'funas ya ma na halom "todo logat".

Ayo lokkue na aksion ni manma protetehi sina manafansetbi gi halom areklamento ni ma inclusu gi man ma adopta gi Diciembre dia kinse, mit nuebe siento ochentai kuatro. Esti na areklamento siempre efektibu insigidas giya Saipan para siento bente dias.

Settifika

TAMI GROVE

Administradot, CRMO
COMMONWEALTH REGISTER VOL. 7 NO. 7

La te

JULY 22, 1985

PAGE 3885



Ha'ani ni ma ehistra

PROPOSED RULES AND REGULATIONS OFFICE OF COASTAL RESOURCES MANAGEMENT

THE COASTAL RESOURCES MANAGEMENT OFFICE OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IS PROPOSING TO PROMULGATE NEW RULES AND REGULATIONS FOR THE PROTECTION AND PRESERVATION OF OUR VALUABLE COASTAL RESOURCES. THESE REGULATIONS WILL BE USED UNDER THE AUTHORITY OF CNMI PUBLIC LAW NO. 3-47.

The purpose of these regulations is to establish permitting standards and requirements necessary for the control of activities within defined coastal areas such as wetlands, mangroves, and other designated areas of particular concern, as determined by the Coastal Resources Management Office and Program Agency Officials.

The proposed regulations include the following subject areas:

- 1. CRM permit requirements
- 2. Exceptions of CRM permit requirements
- 3. CRM permit process
- Standards of CRM permit issuance 4.
- CRM permit conditions 5.
- CRM permit amendment 6.
- Enforcement of CRM permit 7.
- Enforcement of CRM standards and policies 8.
- 9. Public information and education
- CRM Coastal Advisory Council 10.
- CRM public Records 11.
- 12. CRM Access to records
- Savings and Severability Provisions 13.
- 14. Repealer

COMMONWEALTH REGISTER

Copies of the proposed regulations may be obtained from the Coastal Resources Management Office, 6th Floor Nauru Building.

Anyone interested in commenting on the proposed CRM Rules and Regulations may do so by submitting comments in writing to, CRM Administrator, Coastal Resources Management Office 6th Floor Nauru Building, Saipan, CM 96950, within thirty (30) days from the date this notice is published in the Commonwealth register.

Acting Administrator, CRMO

July 19, 1985

JULY 22, 1985

MAPROPONI NA AREKLAMENTO YAN REGULASION I UFISINAN I COASTAL RESOURCES MANAGEMENT

I OFISINAN I COASTAL RESOURCE MANAGEMENT GI COMMONWEALTH I SANGKATTAN SIHA NA ISLAN MARIANAS MANPROPONI POT PARA U NA MATUNGO I NUEBO NA AREKLAMENTO YAN REGULASION POT PARA PROTEKSION YAN MA ADAHEN I PRESIOSON I URIYAN TANO TA. ESTE NA REGULASION PARA U MAUSA GI PAPA I ATURIDAT I CNMI LAIN PUBLIKU NUMIRU 3-47.

I entension este siha na regulasion pot para u ma estapblisa yan u mapetmiti i mas prisente na mudelu van ginagao ni maditetmina van matattitiyi yan manasaonao na ahesia anai prisisu na u gote i aktebidat siha qi halom i mansangan na luqat siha tatkomu i finasisonya, kanada yan ottro siha ni madisikna ni mantinitika i maproponi na regulasion ha inglulusu i mansigiente siha na patte:

- 1. Ginagagao na petmison i CRM
- 2. Fuera na ginagao petmison i CRM
- 3. Macho quen i petmison i CRM
- Presente na mudelu pot para malaknos i petmison CRM
- Konsision i petmison CRM 5.
- Ma amendan i petmison CRM 6.
- 7. Ma apreban i petmison CRM
- 8. Ma apreban i presente na mudelu yan areklon i CRM
- 9. Enfotmasion van edukasion i pupbleku
- Akonsihon i CRM coastal 10.
- 11. Dokumenton pupbleku pot CRM
- 12. M usan van direchon i dokumenton i CRM
- 13. Satba van man tension
- 14. Diroga

Sina machule i kopia ni maproposni na regulasion ginen i ufisinan i Coastal Resource Management qi mina sais bibendan i Nauru Building.

Hayi enterisao na u fanna i ayudu pot i maproponi na areklamento yan regulasion i CRM u tugi'i i atmenestradot gi Coastal Resource Management gi mina sais bibenda qi Nauru Building qi entalo i trenta (30) dias desde ki mapubleka-na gi Commonwealth Register.

Acting Administrator, CRMO

chely 19, 1985

OFFICE OF COASTAL RESOURCES MANAGEMENT RULES AND REGULATIONS

Department of Natural Resources Department of Commerce and Labor Department of Community and Cultural Affairs Department of Public Health Department of Public Works

Section 1. SHORT TITLE.

These Rules and Regulations shall be cited as the "Coastal Resources Management Rules and Regulations of 1984."

Section 2. AUTHORITY.

Pursuant to the authority of CNMI Public Law 3-47, §8(d) and 9(c), and 1 CMC §9115, the following Rules and Regulations are hereby established. They shall apply to all areas designated by CNMI P.L. 347, §7, as subject to the jurisdiction of the CRM Program.

Section 3. PURPOSE.

These Rules and Regulations govern practice and procedure within the federally-approved CRM Program and set standards for the CRM program in implementing its responsibilities, as approved by the Office of Coastal Resources Management, U.S. Department of Commerce. Provisions of these Rules and Regulations are not intended to negate or otherwise limit the authority of any agency of the Commonwealth Government with respect to coastal resources. provided that actions by agencies shall be consistent with provisions contained herein. These Rules and Regulations shall be consistent with the Federal Coastal Zone Management Act (CZMA) and applicable rules and regulations.

Section 4. CONSTRUCTION.

These Rules and Regulations shall be construed to secure the just and efficient administration of the CRM Program and the just and efficient determination of the CRM Permit process. In any conflict between a general rule or provision and a particular rule or provision, the particular shall control over the general.

Section 5. DEFINITIONS.

"APC" means an Area of Particular Concern consisting of a delineated geographic areas within the coastal zone which is subject to special management

- within the standards established in Section 9(B). APCs addressed in these Rules and Regulations include lagoon and reef, wetland and mangrove, shoreline, and port and industrial, all of which are separately defined herein. shall also include new APCs as may be designated hereinafter.
- "A uaculture or Mariculture Facility" means a facility, either land or water based, for the culture or commercial production of aquatic plants or animals, for research or food production, sales or distribution.
- "Beach" means an accumulation of unconsolidated deposits along the shore with their seaward boundary being at the low-tide or reef flat platform level and extending in a landward direction to the strand vegetation of first change in physiographic relief to topographic shoreline.
- "Coastal Land" means all lands and the resources thereon and therein located within the jurisdiction of the CRM Program.
- "Coastal Resources" means all coastal lands and waters and the resources therein located within the jurisdiction of the CRM Program.
- "Conclusions of Law" means statements of the propositions of law that the decision maker arrives at after, and as a result of, finding certain facts in a case.
 - "CRM" means Coastal Resources Management.
- H. "CRM Administrator" means the Coastal Resources Management Program Administrator, appointed by the CNMI Governor to administer the CRM Program, pursuant to CNMI P.L. 347, §2.
- "CRM Agency Official" means a designated representative of a Coastal Resources Management Regulatory Agency; such agencies include the departments of Natural Resources, Commerce and Labor, Public Works, Public Health and Environmental Services (Division of Environmental Quality), and Community and Cultural Affairs (Division of Historic Preservation).
- "CRM Appeals Board" means the Coastal Resources Management Appeals Board, consisting of three members appointed by the CNMI Governor, pursuant to CNMI P.L. 347, §10.
- "CRM Coastal Advisory Council" means the council established by CNMI P.L. 3-47, §5, comprised of the mayors of Rota, Tinian, Saipan and the Northern Islands, the Special Assistant for Carolinian Affairs, Chairman of the Marianas Public Land Corporation, the Executive Director of the Commonwealth Ports Authority, the Executive Director of Marianas Visitors Bureau, the President of the Chamber of Commerce, and the Historic Preservation Officer. In addition, the Council includes one member of the public representing fisheries, one member of the public representing the construction industry, one member of the public representing a subsistence lifestyle and one staff member each from the Commonwealth Legislature House and Senate Committees on Resources and Development.

JULY 22, 1985

- "CRM Office" means the Coastal Resources Management Office, within the Office of the CNMI Governor, headed by the CRM Administrator, pursuant to CNMI P.L. 347, §2.
- "CRM Permit" means a permit that is issued by CRM Agency Officials for a proposed project that is subject to CRM Program jurisdiction.
- "CRM Program" means the Coastal Management Program established by CNMI P.L. 3-47, including the CRM Office, the CRM Administrator, the CRM Agency Officials, the CRM Appeals Board, and the CRM Coastal Advisory Council, all of which are charged with implementing coastal resources management in the Commonwealth of the Northern Mariana Islands.
- "CRM Variance" means a variance, issued by the CRM Program Agency Officials which provides for commencement of a proposed project on a site subject to CRM jurisdiction without obtaining a CRM Permit prior to initiation and completion of the project.
- "De•radation" means a diminution or reduction of strength, efficacy, value or magnitude.
- "Develo•ment" means the placement or erection of any solid material or structure, discharge or disposal of any dredge materials or of any gaseous, liquid, solid, or thermal waste, the grading, removing, dredging, mining, or extraction of any materials, a change in the density or intensity of use of land including, but not limited to, subdivision of land and any other division of land including lot parcelling, a change in the intensity of use of water, the ecology related thereto, or the access thereto, a construction or reconstruction, demolition, or alteration of any structure, including any facility of any private or public utility, and the removal of significant vegetation.
- "Direct and Significant Im•act" means the impact which is casually related to or derives as a consequence of a proposed project, use, development, activity or structure which contributes to a material change or alteration in the natural or social characteristics of any coastal resources.
- "Endangered or Threatened Wildlife" means species of plants or animals which are: 1 determined to be of such limited numbers as to be in immediate danger of extinction or reduction to a critically low population level in and around the Commonwealth of the Northern Mariana Islands if subjected to continued taking or reduction, or alteration of habitat; or 2) so designated by the U.S. Department of Interior's Fish and Wildlife Service on the latest list of "Endangered and Threatened Wildlife and Plants."
- "Findin•s of Fact" means determination of fact by way of reasonable interpretation of evidence.
- "La•oon and Reef APC" means that geographic area of particular concern consisting of a partially enclosed body of water formed by sand pits, baymouth bars, barrier beaches or coral reefs, of the Northern Mariana Islands chain.

- V. "Littoral Drift" means the movement of sedimentary material within the near-shore zone under the influence of tides, waves and currents.
- W. <u>"Major Siting"</u> means any proposed project which has the potential to directly and significantly impact coastal resources, as provided for in Section 9(D) of these regulations.
- X. "Marine Resources" means those resources found in or near the coastal waters of the Commonwea th such as fish, dissolved minerals, aquatic biota and other resources.
- Y. <u>"Party"</u> means a person, legal or natural, or any department of government, organization or other entity that is a CRM Permit applicant or intervenor, or a successor in interest.
- Z. "Permit Holder" means a person or entity that holds the beneficial interest in a CRM Permit and may be either a CRM Permit applicant, a successor in interest if the project site has been sold, leased, or otherwise transferred, or a real party in interest if the benefit of the CRM Permit is for one other than the applicant or a successor in interest.
- AA. "Person" means the Government of the United States of America or any agency or department thereof; or the Government of the Commonwealth or any agency or department of any municipality thereof; any sovereign state or nation; a public or private institution; a public or private corporation, association, partnership, or joint venture, or lessee or other occupant of property, or individual, acting singly or as a group.

The term "•erson" does not otherwise apply to the United States or any agency or instrumentality of the United States Government with respect to the requirement to obtain coastal permits or with respect to penalties, or to the Commonwealth of the Northern Mariana Islands with respect to obtaining coastal permit or with respect to penalties.

- BB. <u>"Port and Industrial APC"</u> means the land and water areas of particular concern surrounding the commercial ports of the Northern Mariana Islands chain which consists of projects, industrial uses and all related activities.
- CC. "Project" means any structure, use, development or other activity subject to CRM Program jurisdiction.
- DD. <u>"Resources"</u> means natural advantages and products including, but not limited to, marine biota, vegetation, minerals and scenic, aesthetic, cultural and historic resources subject to the jurisdiction of the CRM Program.
- EE. "Shoreline APC" means the geographic area of particular concern consisting of the area between the mean high water mark or the edge of a shoreline cliff and one hundred fifty (150) feet inland on the islands of the Northern Mariana Islands chain.
 - FF. "Under Penalty of Perjury" means any statement, oral or written,

certified as true and correct under penalty of perjury, pursuant to CNMI P.L. 3-48, and which precludes the necessity of a notarized affidavit for written statements, as in the following example:

I declare under the penalty foregoing is true and correc declaration was executed on	
at	, CNMI.
(Signatu	ure)

- "Water-demendent Use" means a waterfront location that is necessary for its physical function, such as seaports and other similar facilities.
- HH. "Water-oriented Use" means facing or overlooking the shoreline or water, but not requiring a location on the shoreline or waterfront, such uses include but are not limited to restaurants, hotels and residential developments. Such uses must have adequate setbacks from the shoreline.
- II. "Wetland and Mangrove APC" means any geographic area of particular concern which include areas inundated by surface or ground water with a frequency sufficient to support a prevalence of plant or aquatic life that require saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands include swamps, marshes, mangroves, lakes, natural ponds, surface springs, streams, estuaries and similar areas in the Northern Mariana Islands chain.
- JJ. "Federally Excluded Lands" those federal lands, the use of which is owned, leased, or by law subject solely to the discretion of or which are held in trust by the Federal Government, its officers or agents.
- "Hazardous Material" means a material or combination of materials which may: 1 cause or contribute to an increase in mortality or an increase in serious illness; 2) pose a potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.
- "Im act" is any modification in an element of the environment, including modification as to quality, quantity, aesthetics, or human or natural use thereof.
- MM. "Infrastructure" means those structures, support systems appurtenances necessary to provide the public with such utilities as are required for economic development, including but not limited to systems providing water, sewerage, transportation and energy.
 - NN. "Infrastructure Corridors" means a strip or strips of land, not

including highways, forming passageways which carry infrastructure.

- Oo. "Coastal Resources Management Program Boundaries" the coastal waters (including the lands therein and thereunder and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shoreline and further including islands, transition and intertidal areas, salt marshes, wetlands and beaches, which boundaries extend seaward to the extent of the territorial waters of the Commonwealth. The Coastal Resources Management boundaries extend inland from the shorelines to include the total land areas of the Commonwealth, with the exception of federally-excluded lands.
- PP. "Coastal Waters" all waters and the submerged lands under the marine resources located within the boundaries of the Coastal Resources Management Program.
- QQ. "Water-related Use" means requiring water itself as a resource, but does not require a waterfront location. Includes most industries requiring cooling water, or industries that receive raw material via navigable waters for manufacture or processing. Such uses must have adequate setbacks, as required by the CRM Office.
- RR. "Minor Permits" are those permits specified in Section 7(D) (iv) of these regulations.
- SS. <u>"Intervenors"</u> means a department, agency or official of the CNMI or Federal Government or an individual who has a property interest that may be affected by the permit application or could show that the general public interest would be adversely affected by the proposed CRM Permit project.
 - TT. "Underground Injection" means a "well injection".
- UU. "Well Injection" means the subsurfaced emplacement of "fluids" through a bored, drilled, or driven "well", or through a dug well, where the depth of the dug well is greater than the largest surface dimension.
- VV. <u>"Fluid"</u> means any material or substance which flows or moves, whether in a semisolid, liquid, sludge, gas, or any other form or state.
- WW. "Well" means a bored, drilled or driven shaft, or a dug hole, whose depth is greater than the largest surface dimension.

Section 6. CRM PERMIT REQUIREMENT.

- A. When CRM Action Required. Prior to the commencement of a proposed project wholly or partially within an APC, or which constitutes a Major Siting under Section 9(D) herein, the party responsible for initiating the proposed project shall obtain a CRM Permit.
- B. Multile APC Permit. If a proposed project is to be located in more than one APC, CRM Permit standards and policies for each applicable APC shall be evaluated in a single CRM Permit decision.

Section 7. EXCEPTIONS OF ON PERMI REPUIREMENTS.

A. Excluded Federal Lands. Notwithstanding the language of Section 6, a CRM Permit shall not be required for proposed projects on federal lands the use of which is by law subject solely to the discretion of the Federal Government, its officers and agents, or lands leased or held in trust by the Federal Government; provided that all activities on federally-excluded lands shall be consistent with these rules and regulations and applicable Federal and Commonwealth laws.

B. CRM Variances.

- (i). General CRM Variance Re-uirements. A CRM Permit shall not be required for proposed projects granted a CRM Variance by the CRM Administrator. A party seeking a CRM Variance shall submit a petition for CRM Variance to the CRM Office stating facts sufficient to establish conformity with variance standards listed below. A petition for CRM Variance shall be signed by the petitioner or its designated representative under penalty of perjury.
- (ii). <u>CRM Variance Issuance</u>. Upon application, the CRM Program Agency Officials may grant, by their unanimous approval, a CRM Variance if the applicant demonstrates that:
 - (a-1) enforcement of the applicable CRM regulations will cause the applicant extreme difficulty and undue hardship, and
 - (a-2) such hardship results from conditions peculiar to the applicant's property, and
 - (a-3) such conditions could not reasonably have been anticipated by the CRMO when the regulations were adopted, and
 - (a-4) the proposed project is consistent with the spirit, purpose and intent of the CRMP regulations and the policies set out in Section 3 of P.L. 3-47; or
 - (b-1) there is an urgent need to provide emergency services or repairs as a result of catastrophe.

If the CRM Administrator issues a CRM Variance, it shall be in writing, accompanied by findings of fact and conclusions of law, and subject to the following notice provisions.

(iii). Notice of CRM Variance and Intervention. If a variance is sought under subsection B(iii)(a) of this Section, the CRM Administrator shall publish notice of a proposed CRM Variance in a newspaper of general circulation within the Commonwealth at least two (2) weeks prior to its issuance. The notice shall state the essential terms of the petition for CRM Variance, and invite petitions for intervenor in opposition to, or in support of, the CRM Variance. Petitions for intervenor shall be filed within fourteen (14) days of first publication of

7the notice at the CRM Office in Saipan, and shall conform to the requirements of intervenor as provided in §8(G). The decision on the variance application shall be published within ten (10) days in a local newspaper of general circulation.

If the variance is sought under subsection B(iii)(b) of this Section, the CRM Administrator shall follow these notice requirements where practicable.

- (iv). Review of Issuance of Variance. Parties denied a CRM Variance may not appeal that decision but may seek a CRM Permit through normal permit procedures. Existing intervenors who oppose the granting of a CRM Variance may seek review of the Variance granted before the CRM Appeals Board.
 - C. Exceitions from Coastal Permit Requirements.
- (i) A coastal permit may not be required for the following types of projects, except as set forth in clauses (ii) and (iii) of this subsection C. Any relief from coastal permit requirements does not remove a project proponent's responsibility to comply with CRM Program goals and policies, nor does it exempt a project from any other commonwealth regulatory authority.
 - (a) A proposed project situated completely outside of any APC and which does not constitute a major siting.
 - (b) Agricultural activities on lands which have been historically used for such activities; cutting of trees and branches by hand tools, not driven by power or gas.
 - (c) Hunting, fishing and trapping.
 - (d) The preservation of scenic, historic, and scientific areas, including wildlife preserves which do not require any development.
 - (e) Construction of small scale non-intensive projects such as single family dwellings, duplexes, out-buildings and small neighborhood businesses outside of an APC.
- (ii). If any proposed project exempted by Subsection C(i), above, may have a direct and significant impact on coastal resources, then the project proponent shall notify the CRM Office and provide such information regarding the proposed projects as may be required by the CRM Office in deciding whether the proposed project requires a coastal permit.
- (iii). Should it be found that a particular proposed project exempted by Subsection C(i) above may have a direct and significant impact on coastal resources, the CRM Office or its designee may conduct such investigation(s) as may be appropriate to ascertain the facts and may require the person(s) applying for such proposed project(s) to provide all of the necessary information regarding the project in order that a determination may be made as to whether the proposed project requires a coastal permit.

- D. Permits for Minor Developments Under Expedited Procedures.
- (i). Applications for permits for minor developments shall be expeditiously processed so as to enable their promptest feasible disposition.
- (ii). Applications for permits for minor developments shall be considered and determined by the CRM Program Administrator utilizing these CRM Rules and Regulations.
- (iii). Failure of the CRM Program Administrator to approve or deny an application for a minor permit within ten (10) working days from receipt of application shall be treated as approval of the application, provided that the CRM Program Administrator may extend the deadline by not more than an additional ten (10) days where necessary.

(iv). Minor develorments shall include:

- (a) Normal maintenance and repair activities for existing structures or developments which cause only minimal adverse environmental impacts;
- (b) Normal maintenance and repair of: roads; existing rights of way; underground utility lines, including water, sewer, power and telephone; minor appurtenant structures to such; pad mounted transformers and sewer pump stations, provided that normal maintenance and repair shall not include the extension or expansion of existing lines, structures or rights of way;
- (c) Temporary pala pala construction for fundraising, carnival or cultural activities;
- (d) Construction of picnic shelters (pala palas), picnic tables and/or barbeque pits;
 - (e) Construction of non-concrete volleyball or tennis courts;
- (f) Temporary photographic activities (such as advertising sets) which are demonstrated by the applicant to have an insignificant impact on coastal resources;
 - (g) Public landscaping and beautification projects;
- (h) Memorial and monument projects covering ten (10) square meters or less;
 - (i) Security fencing which does not impede public access;
- (j) Placement of swimming, navigation or temporary or small boat mooring bouys;
- (k) Single family residential expansion including sewer connections;

- (1 Archeo rejical/scientific research, evaluated on a case-by-case basis, and found by CRMO to cause no adverse environmental impacts;
 - (m) Agricultural activities;
 - (n) Debris incineration;
 - (o) Normal maintenance and repair of existing drainage channels;
 - (p) Strip clearing for survey sighting activities, except in Wetland APC;
 - (q) Construction of bus stop shelters;
 - (r) Construction of an accessory building incident to an existing acceptable activity in the Port and Industrial APC.

(v). Condition for minor permits.

- (a) In granting or extending a minor permit, the CRM Program Administrator may attach conditions or modifications and restrictions regarding the location, character or other features of the proposed development to ensure that mitigating measures are employed to minimize impacts on coastal resources.
- (b) Issuance of a minor permit does not exempt the applicant from otherwise complying with the goals, policies and use regulations of CRM.
- (c) When denying a permit, the CRM Program Administrator shall make findings of fact in support of stated conclusions that the proposed development would be inconsistent with the specific objectives and policies of the CRMP. If a minor permit is denied, the applicant has the option to treat the project as major.

(vi). Ap real.

Any decision to grant or deny the issuance of a minor permit by the CRM Program Administrator may be appealed to the CRM Appeals Board by either the applicant or an aggrieved party.

(vii). Minor Permits: Evaluation.

CRM Minor permit application will involve a full evaluation of individual and cumulative impacts and include an application review, site inspection and the issuance of a standard permit (with appropriate conditions). The conditions to be attached to the minor permit will be based on a case-by-case evaluation of each particular project.

In the case of projects to be located on Rota and Tinian, the above mentioned review will be conducted by the respective Coastal Coordinator

and the permit application will be sent to Saipan for the approval and certification by the CRM Program Administrator. For projects proposed for location on Saipan, the permit application will be reviewed and processed by CRMO.

Section 8. CRM Permit Process

All persons proposing to conduct any activities affecting or which may affect the coastal resources of the Commonwealth shall apply for a CRM Permit. A pre-application conference shall be conducted with the applicant by the staff of the CRM Program at a designated time. The pre-application conference shall be held to discuss the proposed activity, to provide the applicant with information pertaining to the CRM Program goals, policies, and requirements, and to answer questions the applicant may have regarding the CRM Program and its requirements. The following permit process shall govern all coastal permit applications.

- A. Application. CRM permit application forms shall be maintained at the CRM Office on Saipan. Copies of the application form shall also be maintained at CRM Branch Offices on Rota and Tinian. CRM Permit applicants shall complete and file an application for each proposed project within an APC, or those constituting a Major Siting as defined in Section 5 herein. The following conditions shall apply to all CRM Permit applications:
 - (i). Co:ies. The applicant shall file an original CRM Permit application with exhibits and attachments, and five (5) copies thereof.
 - (ii). <u>Filing Location</u>. CRM Permit applications shall be filed at the CRM Office in Saipan, though filing may be at the CRM Branch Office on Rota or Tinian, if the proposed project is to be on either of those islands.
 - (iii). <u>Certification</u>. CRM Permit applications shall be certified by the applicant that the information supplied in the application and its exhibits and attachments are true. The certification shall be by affidavit or declaration under the penalty of perjury.
 - (iv). <u>Attachments</u>. CRM Permit applications shall, to the extent necessary, contain attachments and necessary supporting materials including statements, drawings, maps, etc., which are relevant to the CRM Permit application.

Except for minor permit applications, CRM shall require the applicant to demonstrate by a fair preponderance of evidence that the project will not have a significant adverse impact on the coastal environment or its resources. Adverse impacts may include but are not limited to:

(a) The alteration of chemical or physical properties of coastal or marine waters so that they no longer provide a suitable habitat for natural biological communities;

- (b) The accumulation of toxins, carcinogens or pathogens which threaten the welfare of man or aquatic organisms;
- (c) Disruption of the ecological balances in coastal or marine waters upon which natural biological communities depend;
- (d) The addition of man-made substances foreign to the coastal or marine environment for which organisms have had no opportunity for adaptation and whose impacts are largely known;
 - (e) The disruption or burial of bottom communities; or
 - (f) Interference with fishing activities.
- (v). Fees. CRM Permit applications shall be accompanied by a non-refundable CRM Permit application fee in accordance with the following fee schedule, by check made payble to CNMI Treasurer.
 - (a) No fee for government projects.
 - (b) \$10.00 fee for minor permits and variances.
 - (c) For all others, the fee shall be as follows:

FEI	E AMOUNT	SIZE OF PROJECT
\$25	5.00	Under or equal to \$30,000.00
\$75	5.00	Over \$30,000, but less than or equal to \$50,000.00
\$15	50.00	Over \$50,000.00, but less than or equal to \$250,000.00
\$20	00.00	Over \$250,000.00, but less than or equal to \$500,000.00
\$27	75.00	Over \$500,000.00, but less than or equal to 1,000,000.00
\$35	50.00	Over \$1,000,000.00.

For each \$1 million increment in the cost/size of the project, there shall be assessed an additional fee of \$250.00.

- (vi). <u>Information</u>. CRM Permit applications shall require the following for review by the CRM Office:
 - (a) applicant's name;
 - (b) applicant's representative (if any);
 - (c) site owner (if different from applicant);

- (d owner makeresentative (if any);
- (e) project name;
- (f) site description and location;
- (g) construction methods;
- (h) vegetation, wildlife, and wildlife habitat description;
- (i) excavation requirements;
- (j) distance from mean high water;
- (k) environmental impacts -
 - (1) air,
 - (2) noise,
 - (3) water;
- (1) budget;
- (m) other necessary permits;
- (n) adjacent site descriptions;
- (o) alternative site construction;
- (p) adjacent property owners;
- (q) current and projected utility requirements and connections;
- (r) exhibits -
 - (1) vicinity or location map,
 - (2) topographic view or site plan,
 - (3) elevation,
 - (4) title documents,
 - (5) certification of truth of statements;
- (s) effect on statutory policy set out in Section 3 of Public Law 3-47;
- (t) proof of conformity with applicable standards contained in these regulations;

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The above information shall be notarized or declared under penalty of perjury.

(vii). Certification of Completion of Application.

Within thirty (30) days of the date on which an application for a CRM Permit is received by the CRM Office, the CRM Administrator shall review the application and certify its completion to the applicant or notify the applicant of any defects or omitted necessary information. commencing review of an application specified in Section 8(C) shall begin on the date an application is certified complete.

- Notice of Application. The CRM Office shall cause notice of each application for CRM Permit to be published in a newspaper of general circulation within the Commonwealth within fifteen (15) days of receipt of the application. The notice shall state the nature, scope and location of the proposed project, invite comments by the public, provide information on requesting a public hearing and also for petitioning by intervenor in the permit process pursuant to Section 8(F).
- The CRM Administrator and the CRM Agency Review of Application. Officials shall have sixty (60) days following certification of completion of application to grant or deny a CRM Permit. For purposes of Section 9(a) of the Coastal Resources Management Act of 1983 (P.L. 3-47), the term "receipt of any request for review" shall mean "CRM Certification of Completion of a permit application." The CRM Office shall review the application, publish notice of its contents, schedule a CRM Permit hearing if mandatory or requested by a party or intervenor, and transmit the application to the CRM Agency officials for review. The CRM Office shall provide technical findings on the impacts of proposed project to assist CRM Agency officials in reaching a unanimous decision on CRM Permit applications and ensure compliance of CRM Permit decisions with these Rules and Regulations and CNMI P.L. 3-47. Where a decision cannot be reached, the matter shall be submitted to the Governor for his determination pursuant to Section 9(d) of P.L. 3-47.
- CRM Permit Hearin. When a hearing on a permit application is required or requested pursuant to Section 8(B), the CRM Administrator shall schedule the hearing, inform the party or parties involved of the hearing date and publish notices of the hearing two times in a newspaper of general circulation in the Commonwealth at least fourteen (14) days prior to the hearing.
 - (i). When Permit Hearing Approriate. The CRM Administrator shall schedule a CRM Permit hearing if:
 - (a) The proposed project constitutes a Major Siting within the definition established by Section 5, or as determined by the CRMO pursuant to Section 9(D); or
 - (b) The proposed project does not constitute a Major Siting but falls within one of the coastal APCs and the applicant or an intervenor submits a written request for hearing; or

- (c) If the CRM agency officials require a hearing on a proposed project.
- (ii). Review Period. The sixty (60) day period of review shall be begin on the day the application is certified to be complete by the CRM Office.
- (iii). Presiding Officer. The CRM Administrator or his designee shall preside at CRM Permit hearings. The presiding officer shall control the taking of testimony and evidence. Evidence offered in a hearing need not conform with any prescribed rules of evidence; further, the presiding officer may allow and limit evidence and testimony in any manner he reasonably determines to be just and efficient.
 - (iv). Public Invited. CRM Permit hearings shall be open to the public.
- (v). Location. Public meetings may be held at any location within the Commonwealth. Public hearings pursuant to permit applications shall be conducted on the island where the proposed project is located. Appellate hearings shall be held on the same island as the permit hearings, or if no CRM Permit hearing was held, on the island where the proposed project is located. All other public hearings shall be conducted on Saipan.
- (vi). Parties. Any party to a hearing on a CRM Permit application may appear on his her own behalf. Parties may appear through an authorized representative of a partnership, corporation, trust or association. authorized employee or officer of a government department or agency may represent the department or agency in any hearings.
- (vii). Record. The CRM Office shall provide for an audio recording or a stenographic record of CRM Permit hearings. Transcription of the record shall not be required unless requested by a CRM Permit applicant or intervenor, or the CRM Administrator, and except for the latter, any party requesting transcription shall pay the cost incurred in the preparation of the transcript. Public access to the contents of the record and CRM records retention responsibilities are discussed in Section 16.
- Filin. of Documents. Documents filed in support of, or in opposition to, CRM Permit applications shall conform to the following standards.
 - (i). Form and Size. Pleadings and briefs shall be bound by staple in the upper left hand corner and shall be typewritten upon white paper eight-and-a-half by eleven inches $(8\frac{1}{2}$ " x 11") in size. Tables, maps, charts, exhibits or appendices, if larger, shall be folded to that size where practicable. Text shall appear on one side of the paper and shall be double-spaced, except that footnotes and quotations in excess of a few lines may be single-spaced.
 - (ii). <u>Title and Number</u>. Petitions, pleadings, briefs, and other documents shall show the title and number of the proceeding and the name and address of the party or its attorney.

- (iii). Signatures. The original of each application, petition, amendment or other legal document shall be signed in ink by the party or its counsel. If the party is a corporation or a partnership, the document may be signed by a corporate officer or partner. Motions, petitions, notices, pleadings and briefs may be signed by an attorney. Certifications as to truth and correctness of information in the document shall be by affidavit or declaration under penalty of perjury by the person charged with making the statements contained therein.
- (iv). Copies. Unless otherwise required, there shall be filed with the CRM Office an original and five (5) copies of each document.

F. Intervenor.

(i). <u>Petition for Intervenor.</u> Petitions for intervenor shall be in writing and filed with the CRM Administrator no later than fourteen (14) days following the first publication of the notice of the CRM Permit Application as provided in Section 8(B).

(ii). Intervenors allowed.

- (a) <u>Government</u>. All departments, agencies or official representatives of the Commonwealth or Federal Governments may be admitted as parties upon timely filing of a petition for intervenor.
- (b) <u>Interested Landholders</u>. All persons who have a property interest in the land subject to the CRM Permit application or who lawfully reside on the land subject to the CRM Permit application, or who are an adjacent landowner, shall be admitted as parties upon timely filing of a petition for intervenor.
- (c) <u>Injury to the Public</u>. Any person who can show that the general public would be adversely affected by the proposed CRM Permit project shall be admitted as parties upon timely filing of a petition for intervenor.
- (iii). Discretionary Denial of Intervenor. The CRM Administrator shall grant the petition for intervention if any of the above criteria is satisfied except that the CRM Administrator may deny an otherwise qualified petitioner the opportunity to intervene if:
 - (a) The position of the petitioner is substantially the same as the position of an existing party, and
 - (b) The existing party is capable of adequately representing the rights of the petitioner.
- (iv). <u>Contents of Petition for Intervention</u>. The Petition shall, where applicable, refer to the following:
 - (a) The nature of the petitioner's right to intervene;

- extent of the petitioner's (b) The nature and property interests, and if an abutting property possessor or owner shall provide, a description or map of the property;
- (c) The effect of a decision in the permit process on the petitioner's interest, whether it be property or otherwise;
- (d) the extent that the petitioner's interest will not be represented by existing parties;
- (e) The extent that the petitioner's interest differs from that of existing parties;
- (f) How the petitioner's intervention will assist in developing a complete record and promote the public interest.
- (v). Opposition to Intervention. If any party opposes a petition for intervention, the party shall file its response to the petition within seven (7) days after being served with the petition for intervention.
- (vi). Grant or Denial of Petition. A petition for intervenor shall be decided by the CRM Administrator within seven (7) days of receipt of the petition or seven (7) days of receipt of a response in opposition thereto, whichever is later. The CRM Administrator shall issue his decision in writing which shall state findings as to whether the petition satisfies the criteria for intervention.
- (vii). Appeal of Decision of Petition to Intervene. A party aggrieved by a decision of the CRM Administrator on a petition for intervention may appeal to the CRM Appeals Board, as provided in these regulations.
- Decision on CRM Permit. The CRM Agency Officials shall review the CRM Permit application, hearing transcripts, if any, CRMO technical findings, supporting documentation and relevant laws, rules and regulations, and issue a unanimous written decision to grant, deny or grant, with conditions, a CRM Permit in accordance with the policies of CNMI P.L. No. 3-47 and applicable rules and regulations. In reviewing a CRM Permit application, the following procedures shall apply.
 - (i). Voluntary Disqualification. CRM Agency Officials participating in decisions regarding CRM Permits shall do so in an impartial manner. They shall not contribute to decisions on CRM Permits where there exists an appearance of bias, or where actual bias may prevent them from exercising Should a CRM Agency Official determine, after independent judgement. considering the subject matter of a CRM Permit application, that bias, or the appearance of bias, might appear to prevent him from exercising independent judgement, he shall excuse himself from that decision and appoint an alternate with comparable qualifications to act in his stead.
 - (ii). Disqualification by Challenge. If a CRM Agengy Official refuses to disqualify himself under Section 8(G)(i), an applicant or intervenor may petition the CRM Administrator at any time prior to the issuance of a

permit decision, for disqualification of a CRM Agency Official because of bias or the appearance of bias. A petition for disqualification shall be accompanied by a declaration under the penalty of perjury containing facts supporting the assertion of bias. The CRM Administrator shall review the petition and determine whether the facts give rise to a significant inference of bias, and if so, he shall inform the challenged CRM Agency Official, who shall disqualify himself. If a CRM Agency Official is disqualified, the CRM Administrator shall appoint a qualified alternate from the same Department, to act in the disqualified CRM Official's stead. Alternates are also subject to disqualification by challenge of a party or intervenor.

- (iii). Unanimous Decision Required. Decisions regarding issuance or denial of CRM Permits by the CRM Officials shall be by unanimous vote. Disagreements among the CRM Agency Officials shall be mediated by the CRM Administrator, and he shall assist in the preparation of a joint decision in order to achieve unanimous consent. Further, the CRM Administrator shall certify that each CRM Permit decision complies with CNMI P.L. 3-47 and applicable rules and regulations.
- (iv). Deadlock Resolution by Governor. In the event that the unanimity required by Section 8(G)(iii) is not obtained, and/or the CRM Administrator is unable to certify that a unanimous decision of CRM Agency Officials complies with CNMI P.L. 3-47 and/or applicable rules and regulations, the CRM Administrator shall forward the CRM Permit application to the Governor for resolution of the deadlock.
 - (a) Referral. Determination that a deadlock exists regarding a decision over a CRM Permit application shall be made by the CRM Administrator within the sixty (60) day period of review by CRM Agency Officials specified by Section 8(C). A deadlocked CRM Permit application shall be referred to the Governor for resolution within ten (10) days following this determination.
 - (b) <u>Supporting Documentation</u>. In addition to the deadlocked CRM Permit application, the CRM Administrator shall forward all supporting documentation, including additional briefs, if any, filed by the applicant or any intervenor, and statements of support or opposition by CRM Agency Officials. If a deadlock results solely from the CRM Administrator's denial of certification of compliance with CRM Laws, then he shall supply a statement of his objections. If a deadlock results from dispute among CRM Agency Officials, then statements reflecting the divergent views on the CRM Permit application shall be obtained from the CRM Agency Officials and forwarded with the CRM Permit application to the Governor for his review.
 - (c) <u>Decision</u>. After receipt of the deadlocked CRM Permit application and accompanying documents, briefs and statements referred to above, the Governor shall have thirty (30) days to render his decision. He may either grant, deny or conditionally grant a CRM Permit, but he must issue written findings of facts and conclusions of law for his decision.

- (d) Review. The decision of the Governor in a deadlock resolution uneer this Section shall be conclusive for purposes of permit issuance or denial. Parties or intervenors objecting to the Governor's decision may, if they seek review of the Governor's decision, appeal directly to the appeals Board.
- (v). Written Findines and Conclusions. Decisions rendered by the CRM Agency Officials on granting, denying or conditionally granting CRM Permits shall be accompanied by written findings of facts and conclusions of law. The CRM Office shall assist the CRM Agency officials in preparing a consensus draft of findings of fact and conclusions of law for signature by CRM Agency Officials and the CRM Administrator.
- (vi). Issuance of CRM Permit. If the CRM Agency Officials unanimously agree on the issuance or conditioned issuance of a CRM Permit and the CRM Administrator certifie that the CRM Permit complies with CNMI P.L. 3-47 and applicable rules and regulations, the CRM Permit shall be issued. In the case of a deadlocked CRM Permit application, if the Governor finds that it is proper to grant or conditionally grant a CRM Permit, then the CRM Office shall prepare a written CRM Permit stating the terms and conditions of issuance and obtain the signatures of the following on the CRM Permit:
 - (a) The CRM Agency Officials; and
 - (b) The CRM Administrator
- (vii). "He Who Decides Must Hear." In those cases where public hearing is held on a CRM Permit application, the CRM Agency Officials shall review and consider the matters discussed or presented at the hearing. To this end, CRM Agency officials shall, whenever practicable, attend CRM Permit hearings, and if unable to attend a hearing, they shall listen to the audio recording of the hearing, or obtain and read a stenographic transcript prior to rendering any decision on the affected CRM Permit application.
- Apreal of CRM Permit Decision. Any person aggrieved by a decision of the CRM Agency Officials to grant, deny or condition a new CRM Permit or Variance may appeal the decision to the CRM Appeals Board by filing a notice of appeal with the CRM Office within thirty (30) days of the issuance of the CRM Permit decision.
 - (i). Any Person Aggrieved. "Any person aggrieved" shall mean any applicant or intervenor whose position as advanced in the CRM Permit process is substantially adverse to the decision rendered. Administrator shall then schedule an appellate hearing before the CRM Appeals Board.
 - (ii). Dis•ualification; Voluntary or by Challenge. In the same manner and for the same reasons specified for URM Agency Officials in Section 8(G), the three members of the CRM Appeals Board shall render decisions on CRM Permit applications in an impartial manner. They shall voluntarily disqualify themselves for bias or the appearance of bias, and they are

subject to disqualification by challenge in the manner prescribed for CRM Agency Officials in Section 8(G).

- (iii). •uorum, Vote. At least two (2) members of the CRM Appeals Board shall constitute a quorum and must be present to act upon review of a CRM Agency Official decision and the vote of at least two (2) members is necessary for Board action on the appeal.
- (iv). Briefs, Statements. Any aggrieved person who requests an appeal before the CRM Appeals Board shall file with the CRM Office within fifteen (15) days following its request for appeal, a written statement of objections to the CRM Permit decision. In addition, any existing party or existing intervenor may, within five (5) days of receipt of appellant's statement, submit to the CRM Office a statement or brief providing arguments in support of or in opposition to, the permit decision. Statements filed under this subsection shall be filed in accordance with the format and standards listed in Section 8(E).
- (v). Papers Considered by CRM Appeals Board. For the purpose of reviewing the CRM Permit app ication decision, the CRM Appeals Board shall receive and review the following:
 - (a) Findings of facts and conclusions of law adopted by the CRM Agency Officials;
 - (b) CRM Permit application;
 - (c) CRM Permit, if issued;
 - (d) Record of the CRM Permit hearing, if any;
 - (e) Statements filed with the CRM Office in support of, or in opposition to, the appeal; and
 - (f) Any other documents, correspondence or testimony considered in the permit decision-making process.
- (vi). Oral Aroument. Upon written request to the CRM Office by the appellant or other party to the appeal, oral argument shall be permitted. The scope of oral argument shall be limited to the written statements in support of, or in opposition to, the appeal. Oral argument shall be scheduled by the CRM Administrator before the full membership of the CRM Appeals Board. Oral argument shall be heard after the submission of written statements by the appellant and opponents, if any, and within twenty-five (25) days after the issuance of the CRM Permit by CRM Agency Officials.
- (vii). <u>Scope of Appeal.</u> In reviewing the CRM Permit decision of CRM Agency Officials, the CRM Appeals Board shall reverse the decision below, and remand if necessary when:

- (a) It is clearly erroneous in light of CRM rules and regulations and the policies established in CNMI P.L. 3-47; or
- (b) It is in violation of applicable Federal or CNMI constitutional or statutory provisions; or
- (c) It is arbitrary or capricious; or
- (d) It was not issued in accordance with required procedures.
- (viii). Written Decision. After reviewing the record and considering the arguments, the CRM Appeals Board shall render a written decision detailing the reasons in support of its determination. The decision of the Board shall be the final administrative decision, subject to judicial review. In drafting its decision, the Appeals Board may utilize the resources of the CRM Office.
- (ix). Automatic Affirmance. If no decision is rendered by the CRM Appeals Board within thirty 30) days of the date the notice of appeals was received by the Coastal Resources Management Office, the CRM Administrator shall issued a notice of summary affirmance of the CRM Permit decision. The party or parties aggrieved by the CRM Permit decision, as defined at Section 8(H)(i), may then appeal to the Commonwealth Trial Court, pursuant to Section 8(I).
- I. Commonwealth Trial Court. Any aggrieved person may seek judicial review of a fina CRM Program action, ruling, or order, provided that he has exhausted his administrative remedies as set forth in these regulations. Actions may include declaratory judgments and complaints for prohibitory or mandatory injunctions.
 - (i). Score of Review. To the extent necessary to review a CRM Permit decision and when presented, the reviewing court, pursuant to 1CMC §9112(b), shall decide relevant questions of law, interpret constitutional and statutory provisions and determine the meaning or applicability of CRM Program rules and regulations. The reviewing court shall hold unlawful and set aside CRM Program actions, findings, and conclusions found to be:
 - (a) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
 - (b) Contrary to constitutional right, power, privilege or immunity;
 - (c) In excess of statutory jurisdiction, authority or limitations, or short of statutory rights;
 - (d) Contrary to procedures required by law; or
 - (e) Unsupported by substantial evidence on the record taken as a whole.

Section 9. STANDARDS FOR CRM PERMIT ISSUANCE.

- A. General Standards for All CRM Permits. In the course of reviewing all CRM Permits for proposed projects located wholly, partially or intermittently within an Area of Particular Concern (APC), or designated as a Major Siting, the CRM Agency Officials and the CRM Administrator shall base their decisions on technical findings and the policy set out in Section 3 of P.L. 3-47 and shall apply the following general standards.
 - (i). Cumulative Imeact. The CRM Administrator and CRM Agency Officials shall determine the impact of existing uses and activities on coastal resources and determine whether the added impact of the proposed project seeking a CRM Permit will result, when added to the existing use, in a significant degradation of the coastal resources.
 - (ii). Commatibility. The CRM Administrator and CRM Agency Officials shall determine, whether the proposed project is compatible with existing adjacent uses and is not contrary to designated land and water uses being followed or approved by the Commonwealth Government, its departments or agencies.
 - (iii). <u>Alternatives.</u> The CRM Administrator and CRM Agency Officials shall determine whether or not a reasonable alternative site exists for the proposed project.
 - (iv). <u>Conservation</u>. The CRM Administrator and CRM Agency Officials shall determine, to the extent practicable, the extent of the impact of the proposed project on the marine, freshwater, wetland and terrestrial habitat, and preserve, to the extent practicable, the physical and chemical characteristics of the site necessary to support living resources.
 - (v). Compliance with Local and Federal Laws. The CRM Administrator and CRM Agency Officials shall require compliance with Federal and CNMI laws, including, but not limited to, air and water quality standards, land use, Federal and CNMI Constitutional standards, and applicable permit processes necessary for completion of the proposed project.
 - (vi). Right to a Clean and Healthful Environment. Projects shall be undertaken and completed so as to maintain and, where appropriate, enhance and protect the Commonwealth's inherent natural beauty and natural resources, so as to ensure the protection of the people's constitutional right to a clean and healthful environment.
 - (vii). Effect on Existing Public Services. Activities and uses which would place excessive pressure on existing facilities and services to the detriment of the Commonwealth's interests, plans and policies, shall be discouraged.
- B. Specific Standards; Areas of Particular Concern. Prior to the issuance of any CRM Permit for a proposed project within an APC, the CRM Agency Officials and the CRM Administrator shall evaluate the proposed project in terms of its compatability with the standards and relative priorities listed below,

and the General Standards provided above in Section 9(A). If more than one project requiring a CRM Permit is proposed for a particular location, the project determined by the CRM Regulatory Officials to be the most compatible with the General and Specific standards provided herein shall be given priority over the less compatible project.

(i). Lagoon and Reef APC; Management Standards.

- (a) Any project proposed for location within the Lagoon and Reef APC shall be evaluated to determine its compatibility with the following standards:
 - (1) Subsistence usage of coastal areas and resources shall be insured;
 - (2) Living marine resources, particularly fishery resources, shall be managed so as to maintain optimum sustainable yields;
 - (3) Significant adverse impacts to reefs and corals shall be prevented;
 - (4) Lagoon and reef areas shall be managed so as to maintain or enhance subsistence, commercial and sportfisheries;
 - (5) Lagoon and reef areas shall be managed so as to assure the maintenance of natural water flows, natural circulation patterns, natural nutrient and oxygen levels and to avoid the discharge of toxic wastes, sewage, petroleum products, siltation and destruction of productive habitat;
 - (6) Areas and objects of historic and cultural significance shall be preserved and maintained; and
 - (7) Underwater preservation areas shall be designated.

(ii). La.oon and Reef APC; Use Priorities.

(a) General La.oon and Reef APCs. Activities listed within a use priority category are neither priority-ranked nor exhaustive. Use priority categories for the lagoon and reef APCs of the Northern Mariana Islands are as follows:

(1) Hi hest.

(a) Projects promoting conservation of open space, high water quality, historic and cultural resources;

- (b) Projects promoting or enhancing public recreation and access;
- (c) Water-dependent projects which are compatible with adjacent uses;
- (d) Sport and small-scale taking of edible marine resources within sustainable levels;
- (e) Activities related to the prevention of beach erosion;
- (f) Projects preserving fish and wildlife habitat.

(2) Moderate.

- (a) Commercial taking of edible marine resources within sustainable levels;
- (b) Aquaculture projects which do not adversely affect the productivity of coastal waters or natural beach processes;
- (c) Piers and docks which are constructed with floating materials or which, by design, do not impede or alter natural shoreline processes and littoral drift.

(3) Lowest.

- (a) Point source discharge of drainage water which will not result in significant permanent degradation in the water quality of the lagoon;
- (b) Dredge and fill activity for the purpose of constructing piers, launching facilities, infrastructure, and boat harbors, if designed to prevent or mitigate adverse environmental impacts.

(4) Unacce table.

- (a) Discharge of untreated sewage, petroleum products or other hazardous materials;
- (b) Taking of sand and aggregate materials not associated with permitted activities and uses;

- (c) Destruction of coralline reef matter not associated with permitted activities and uses:
- (d) Dumping of trash, litter, garbage or other refuse into the lagoon, or at a place on shore where entry into the lagoon is inevitable;
- (e) Dredge and fill activities not associated with permitted construction of piers, launching facilities, infrastructure and boat harbors.
- (b) <u>Lagoon and Reef APC; Managaha.</u> Use Priority Categories for Managaha Island (Saipan), in addition to those listed for general Lagoon and Reef APCs, shall be as follows:

(1) Hi hest.

(a) Maintenance of the island as an uninhabited place used only for cultural and passive recreational purposes.

(2) Moderate.

(a) Improvements for the purposes of sanitation and navigation.

(3) Lowest.

(a) Commercial activity situated on the island related to cultural and passive recreational pursuits.

(4) Unacce table.

- (a) Development, uses or activities preclude or deter or are unrelated to the use the island by residents of of the Commonwealth for cultural or passive recreational purposes.
- (c) <u>Lagoon and Reef APC; Anjota Island.</u> Use Priority Categories for Anjota Island (Rota) shall be as follows:

(1) Hichest.

(a) Maintenance of that part of the island outside the port and industrial APC as a wildlife sanctuary and for passive recreation.

- (2) Unacce table.
 - (a) Expansion of the Port and Industrial Section of Aniota Island which would encroach upon or have significant adverse impact upon the maintenance of a wildlife preserve or upon recreational uses of the island.
- (d) Lagoon and Reef APC; Coral Reefs. The Use Priority Categories for the Coral Reefs of Saipan, Tinian and Rota shall be as follows:
 - (1) Hi•hest.
 - (a) Maintenance of highest levels of primary productivity.
 - (b) Creation of underwater preserves in pristing

(2) Moderate.

Dredging of moderately productive corals and reefs associated with permitted uses and activities.

(3) Lowest.

- (a) Taking corals for cultural use (i.e. production of lime).
- Unacce table. (4)
 - of reefs (a) Destruction and corals not permitted associated with projects; and
 - (b) Taking corals for other than scientific study.

(iii). Wetland and Mangrove APC; Mana ement Standards.

- (a) Any project proposed for location within the wetland and mangrove APC shall be evaluated to determine its compatibility with the following standards:
 - (1) Significant adverse impact on natural patterns, the destruction of important habitat and the discharge of toxic substances shall be prohibited; adequate water flow, nutrients and oxygen levels shall be ensured.
 - (2) The natural ecological and hydrological processes and mangrove areas shall be preserved.

- (3) Critical wetland habitat shall be maintained and, where possible, enhanced so as to increase the potential for survival of rare and endangered flora and fauna;
- (4) Public landholdings in and adjacent to the wetland and mangrove APC shall be maintained and, to the extent possible, increased, for the purpose of access and/or hazard mitigation, through land trades with Marianas Public Land Corporation, land purchasers, creation of easement or through taking by eminent domain;
- (5) Wetland resources shall be utilized for appropriate agriculture, recreation, education, public open space and other compatible uses which would not degrade productivity.

(iv). Wetland and Manerove APC; Use Priorities.

(a) Activities listed within a use priority category are neither priority ranked nor exhaustive. Use priority categories for the wetland and mangrove APC are as follows:

(1) Hishest.

- (a) Preservation and enhancement of wetland and mangrove areas;
- Preservation of wildlife, primary productivity, conservation areas and historical properties in both wetland and mangrove areas.

(2) Moderate.

- (a) Non-intensive agriculture benefitted by innundation, low density grazing;
- Infrastructure (b) corridors designed to significant adverse impacts to hydrological processes and values as wildlife habitat:
- Non-commercial recreation including light duty. elevated, non-permanent structures such as footbridges, observation decks and similar non-enclosed recreational and access structures.

(3) Lowest.

Residential development designed to avoid adverse environmental impacts and which is not susceptible to damage by flooding.

- (4) Unacce table.
 - (a) Land fill and dumping not associated with flood control and infrastructure corridors or other allowable activities and uses;
 - (b) Land clearing, grading or removal of natural vegetation not associated with allowable activities, which would result in extensive sedimentation of wetland, mangrove areas and coastal waters.

(v). Shoreline APC; Management Standards.

- (a) Any project proposed for location within the shoreline APC shall be evaluated to determine its compatibility with the following standards:
 - (1) The impact of onshore activities upon wildlife, marine or aesthetic resources shall be minimized;
 - (2) The effects of shoreline development on natural beach processes shall be minimized;
 - (3) The taking of sand, gravel or other aggregates and minerals from the beach and near shore areas shall not be allowed;
 - (4) Removal of hazardous debris from beaches and coastal areas shall be strongly encouraged;
 - (5) Where possible public landholdings along the shore shall be maintained and increased, for the purpose of access and hazard mitigation, through land trades with Marianas Public Land Corporation (MPLC), purchases, creation of easements. and where no alternative exists. practicable through the constitutional authority of eminent domain; and
- (b) In addition to deciding whether the proposed project is consistent with the above standards, CRM Agency Officials shall consider the following in their review of coastal permit applications:
 - (1) Whether the proposed project is water-dependent or water-oriented in nature.
 - (2) Whether the proposed project is to facilitate or enhance coastal recreational, subsistence, or cultural opportunities. (i.e., docking, uut, fishing, swimming, picnicking, navigation devices).

- (3) Whether the existing land use, including the existence of roadways, has irreversibly committed the area to uses compatible with the proposed project, particularly water oriented uses, and provided that the proposed project does not create adverse cumulative impacts.
- (4) Whether the proposed project is a single-family dwelling in an existing residential area and would occur on private property owned by the same owner as of the effective date of the program, of which all or a significant portion is located in the Shoreline APC, or no reasonable alternative is open to the property owner to trade land, relocate or sell to the government.
- (5) Whether the proposed project would be safely located on a rocky shoreline and would cause significant adverse impacts to wildlife, marine or scenic resources.
- (6) Whether the proposed project is designed to prevent or mitigate shoreline erosion.
- (7) Whether the proposed project would be more appropriately located in the Port and Industrial APC.

(vi). Shoreline APC; Use Priorities.

(a) Activities listed within a use priority category are neither priority ranked nor exhaustive. Use priority categories for the shoreline APCs of the entire Northern Mariana Islands chain are as follows:

(1) Hi•hest.

- (a) Public recreational uses of beach areas, including the creation of public shoreline parks and the construction of structures enhancing access and use, such as barbeque grills, picnic tables, docks, shelters or boardwalks;
- (b) Compatible water-dependent development which cannot be reasonably accommodated in other locations;
- (c) Traditional cultural and historic practices;
- (d) Preservation of fish and wildlife habitat;
- (e) Preservation of natural open areas of high scenic beauty and scientific value;

(f) Activities related to the prevention of beach erosion through non-structural means.

(2) Moderate.

- (a) Single-family dwelling in existing residential areas:
- which requires or is (b) Agricul ture/aguacul ture enhanced by conditions inherent in this APC;
- (c) expansion of Improvements to or existing water-oriented structures which are compatible with designated land uses and do not otherwise conflict with or obstruct public recreational use of coastal areas or other water-dependent water-related uses.

(3) Lowest.

- Projects which result in growth or improvements to existing commercial, non-recreational public, or multi-unit residential uses;
- Water related and new water-oriented development compatible with designated land uses, which cannot be accommodated in other locations and which neither conflicts with recreational uses nor restricts access to or along the shoreline.

(4) Unacce table.

- New commercial structures, industrial structures, or non-recreational public structures which are water-dependent, water-oriented water-related;
- (b) Disposal of litter and refuse; and
- The taking of sand for other than cultural usage, and mining of gravel and extraction of minerals, oil and gas, or other extractive uses.

(vii). Port and Industrial APC; Management Standards.

- (a) Any project proposed for location within the Port and Industrial APC shall be evaluated to determine its compatibility with the following standards:
 - (1) Projects shall be undertaken and completed so as to maintain and, where appropriate, enhance and protect the Commonwealth's inherent natural beauty and natural

resources and so as to ensure the protection of the people's constitutional right to a clean and healthful environment.

- (2) In the siting of port and industrial development, its suitability in terms of meeting the long-term economic and social expectations of the Commonwealth.
- (3) Recognize the limited availability of the port and industrial resources in making allocation decisions.
- (4) Ensure that development is done with respect for the Commonwealth's inherent natural beauty and the people's constitutionally protected right to a clean and healthful environment.
- (5) Develop improvements to infrastructure in the Port and Industrial APC.
- (6) Prohibit projects which would result in significant adverse impacts, including cumulative impacts on coastal resources outside the Port and Industrial APC.
- (7) Conserve shoreline locations for water-dependent projects.
- (8) Consider and assist in resolution of possible conflicts by identifying and planning for the potential exercise of Military Retention Area options affecting port resources.
- (9) Locate, to the maximum extent practicable, petroleum based coastal energy facilities within the Port and Industrial APC.
- (10) Consider development proposals from the perspective of federal port related opportunities and constraints which are applicable to the Commonwealth.
- (11) The amount of shoreline frontage utilized by any project, regardless of the extent to which the project may be water-dependent, shall be minimized to the greatest extent practicable.

(viii). Port and Industrial APC; Use Priorities.

(a) Activities listed within a use priority category are neither priority ranked nor exhaustive. Use priority categories for the port

and industrial APCs in the entire Northern Mariana Islands chain are as follows:

(1) Highest.

- (a) Water-dependent port and industrial activities and uses located on the APC shoreline.
- (b) Industrial uses that are not water-dependent but would cause adverse impacts if situated outside the Port and Industrial APC and would not be sited directly on the Port and Industrial APC shoreline, and would not preclude the opportunity for water-dependent activities and uses.
- (c) Industries and services that support water-dependent industry and labor, which are not located on the Port and Industrial APC shoreline and do not interfere with water-dependent uses.

(2) Moderate.

- (a) Recreational boating facilities;
- (b) Clearing, grading or blasting which does not have long-term adverse effects and environmental quality, drainage patterns or adjacent APCs, so long as the activity is related to the permitted project.

(3) Lowest.

- (a) Indefinite storage or stockpiling of hazardous materials;
- (b) Indefinite storage of goods, not awaiting water-borne transport, in a shorefront location;
- (c) Uses or activities which are acceptable in other APCs and which do not enhance or are not reasonably necessary to support permissible uses, activities and priorities in the Port and Industrial APC.

(4) Unacce table.

(a) Non-port and industrial related activities and uses which, if permitted, would result in conversion to other uses at the expense of Port and Industrial related growth, or would induce

- port and industrial related growth into other APCs or areas; and
- (b) activities which would Uses and have an adverse impact on other APCs, the American Memorial Park, Anjota Preserve. historic significant coastal properties and other resources.

C. Standards for APC Creation and Modification.

- (i). <u>Authority</u>. The CRM Agency Officials or the CRM Administrator may seek designation of any area within the Commonwealth as an APC or propose a change in any APC boundary. Further, the CRM Administrator may review requests from private parties for designation or modification of APC's.
- Requests for new or modified APCs shall (ii). Procedure. detailed documentation supporting the APC designation or boundary change. The documentation shall be based on criteria set forth in subparagraph (iii) below, but may include other information pertinent to the area nominated or proposed boundary change. Within thirty (30) days of a nomination or proposed boundary change, the CRM Administrator shall circulate it to the CRM Agency Officials and the CRM Coastal Advisory The CRM Administrator shall, within that same period, publish notice of the nomination or proposed boundary change, describing the area involved, in a newspaper of general circulation within the Commonwealth. The CRM Office shall be available to receive public comment for a period of forty-five 45) days from the date such notice is published. Within the forty-five (45) day comment period, the CRM Agency Officials and the CRM Coastal Advisory Council shall submit to the CRM Office comments and recommendations, and a public hearing shall be conducted by the CRM Office. Within thirty (30) days after the closure of the comment period, the CRM Coastal Advisory Council shall, after adequate consideration of the comments received, issue a recommendation on the nomination to the CRM Agency Officials who shall make the final decision regarding the proposed creation or modification.
- (iii). Criteria for Creation and Modification. In reviewing a request for designation or modification of an APC, the CRM Administrator and the CRM Agency Officials shall consider whether the areas requiring special management are:
 - (a) Areas of unique, scarce, fragile or vulnerable natural habitat; have a unique or fragile physical configuration (e.g. Saipan Lagoon); are of historical significance, cultural value or scenic importance (including resources on or determine to be eligible for the National or CNMI Register of Historic Places);
 - (b) Areas of high natural productivity or essential habitat for living resources, including fish, wildlife and endangered

- species and the various trophic levels in the food web critical to their well-being;
- (c) Areas of substantial recreational value or potential;
- (d) Areas where developments and facilities are dependent either upon the utilization of, or access to coastal waters or of geographic significance for industrial or commercial development or for dredge spoil disposal;
- (e) Areas of urban concentration where shoreline utilization and water uses are highly competitive;
- (f) Areas which, if development were permitted, might be subject to significant hazard due to storms, slides, floods, erosions, settlement or salt water intrusion;
- (g) Areas needed to protect, maintain or replenish coastal lands or resources, including coastal flood plains, aquifiers and their recharge areas, estuaries, sand dunes, coral and other reefs, beaches, and offshore sand deposits;
- (h) Areas needed for the preservation or restoration of coastal resources due to the value of those resources for conservation, recreational, ecological, or aesthetic purposes.
- (iv). New APC Standards and Use Priorities. Upon a determination to designate a new APC, the CRM Administrator shall draft management standards and use priorities. Designation of the area as an APC and publication of the new Standards and Use Priorities shall be effected by publication of the designated APC and Standards and Use Priorities in the Commonwealth Register pursuant to 1 CMC, D.W.9, Chapter 1.
- D. <u>Determination of Major Siting</u>. The determination of whether a proposed of whether a proposed project, inside or outside a coastal APC, constitutes a Major Siting shall be issued by the CRM Office based on a documented consensus of CRM Program agencies stating the rationale therefor. Major Sitings requiring a CRM permit, shall include but not be limited to the following:
 - (i). Energy related facilities, waste-water treatment facilities, pipelines, transportation facilities, surface water control projects, harbor structures.
 - (ii). Sanitary land fills, disposal of dredged materials, mining activities, quarries, basalt extraction, incinerator projects;
 - (iii). Dredging and filling in marine or fresh waters, point source discharge of water or air pollutants, shoreline modification, ocean dumping, artificial reef construction;

- (iv). Proposed projects with potential for significant adverse effects on submerged lands, groundwater recharge areas, cultural areas, historic or archeological sites and properties, designated conservation and pristine areas, or uninhabited islands, sparsely populated islands, mangroves, reefs, wetlands, beaches and lakes, areas of scientific interest, recreational areas, limestone, volcanic and cocos forest, and endangered or threatened species or marine mammal habitats;
- (v). Major recreational developments and major urban or government developments:
- (vi). Construction and major repair of highways and infrastructure development;
- (vii). Aquaculture or mariculture facilities, and silva-culture or timbering operations; and
- (viii). Any project with the potential of affecting coastal resources which requires a federal license, permit or other authorization from any regulatory agency of the U.S. Government.
- (ix). Any project, or proposed project, that may cause underground injection of hazardous wastes, of fluids used for extraction of minerals, oil and energy, and of certain other fluids with potential to contaminate ground water. Any such project, or proposed project, shall be primarily governed by the CNMI Underground Injection Control Regulations supplemented by these Regulations.
- (x). Any other proposed project which, by consensus of the CRM Agency Officials, has the potential for causing a direct and significant impact on coastal resources.
- All major siting shall be in conformity with the policy enumerated in Section 3 of P.L. 3-47.
- Secific Standards; Major Sitings. The CRM Agency Officials and the CRM Administrator shall evaluate a proposed project which may constitute a major siting based on the specific standards listed below, as well as the general standards for all CRM Permits listed in Section 9(A) above.
 - (i). Project Site Development. The proposed project site development shall be planned and managed so as to ensure compatibility with existing and projected uses of the site and surrounding area.
 - (ii). Minimum Site Presaration. Proposed projects shall, to the extent practicable, se located at sites with pre-existing infrastructure, or which require a minimum of site preparation (e.g. excavation, filling, removal of vegetation, utility connection).
 - (iii). Adverse Impact on Fish and Wildlife. The proposed project shall not adversely impact fragile fish and wildlife habitats, or other environmentally sensitive areas.

- (iv). Cumulative Environmental Imeact. The proposed project site shall be selected in order to minimize adverse primary, secondary or cumulative environmental impacts.
- (v). Future Development $0 \cdot \text{tions}$. The proposed project site shall not unreasonab y restrict the range of future development options in the adjacent areas.
- (vi). Mitigation of Adverse Im act. Wherever practicable, adverse impact of the proposed project on the environment shall be mitigated.
- (vii). <u>Cultural-historic Values</u>. Consider siting alternatives that promote the Commonwealth's goals with respect to cultural-historic values.

Section 10. CRM PERMIT CONDITIONS.

- A. Use of Conditions in CRM Permits. CRM Agency Officials may delineate the scope of an approved activity, or otherwise limit CRM Permits, by issuing conditions to CRM Permits. The conditions shall be set out individually in writing, shall be accompanied by a specific reason for each condition and shall be issued contemporaneously with the CRM permit. Satisfaction of or compliance with the CRM Permit conditions shall be required for the CRM Permit to be valid. In permitted projects of an ongoing nature, the requirement for satisfaction of or compliance with CRM Permit conditions shall continue for the duration of the permitted activity. Violation of a CRM Permit condition at any time shall be cause for the CRM Administrator to take enforcement action pursuant to Sections 12 and 13.
- B. Purose and Scope. The purpose of issuing CRM Permits subject to specific conditions is to ensure that a permitted project complies with the Standards for CRM Permit Issuance listed in Section 9, and CRM Program policies. Any lawful condition consistent with the standards and policies reffered to above may be the basis of a CRM Permit condition.
- C. <u>Mandatory Conditions</u>. All CRM Permits shall contain at least the following conditions.
 - (i). Instection. The CRM Administrator or his designee shall have the right to make reasonable inspections of the out-of-doors portions of a permitted project site at any reasonable time in order to assess compliance with the CRM Permit and its conditions.
 - (ii). Timin and Duration. Permitted physical development of the project site subject to a CRM Permit shall begin within one (1) year of the date of the issuance of the CRM Permit and be completed within three (3) years. The permittee shall deliver to the CRM Office a Completion Certificate. If the project is not completed within three (3) years, the permit will be reviewed by CRM Agency Officials who will do one of the following: (1) extend or amend the permit or (2) terminate the permit. Conditions attached to the permit shall be of perpetual validity unless action is taken to amend, suspend, revoke or otherwise modify the CRM Permit.

- (iii). <u>Duty to Inform</u>. The CRM Permit holder, whether it be the applicant, a successor in interest or a real party in interest, shall be required to notify the CRM Administrator in writing if he/she has knowledge that any information in the CRM Permit application was untrue at the time of its submission or if he/she has knowledge of any unforeseen adverse environmental impacts of the permitted project. A CRM Permit holder shall further have the duty to inform any successor in interest of the permit granted and the conditions attached thereto, if any; and the successor in interest shall, within five (5) days thereafter, advise the CRM Office of his/her interest in writing.
- (iv). <u>Compliance with Other Law</u>. The CRM Permit is valid only if the permitted project is otherwise lawful and in compliance with other necessary governmental permits.

Section 11. CRM PERMIT AMENDMENT.

An amended CRM Permit shall be required of all projects before they are significantly altered or substantially expanded. Such an amendment shall require submittal of a revised CRM Permit application to the CRM Office. Alterations and expansions requiring amended CRM Permits include, but are not limited to, project changes which exceed \$5,000.00 of the monetary value of the permitted project as described in the original CRM Permit application. Where a substantially new project is proposed, a new and different permit must be obtained.

Section 12. ENFORCEMENT OF CRM PERMITS.

- A. Puriose. The provisions of this Section are intended to establish procedures whereby the CRM Administrator may enforce the terms and conditions of CRM Permits. The actions of the CRM Administrator based upon this Section are directly reviewable only by the Commonwealth Trial Court pursuant to Section 8(I).
- B. <u>Grounds for Action</u>. The CRM Administrator shall take action to enforce compliance with CRM Program policies and CRM Permit conditions in any of the following cases.
 - (i). <u>Misstatement</u>. The CRM Permit applicant, a party or any participant in a hearing on the CRM Permit application made a material misstatement that directly and significantly affected the CRM Permit decision.
 - (ii.) Permit Violation. The CRM Permit applicant, its successor in interest, or a rea party in interest has violated a material term or condition of the CRM Permit.
 - (iii). Supervenine Illegality. The permit project, as constructed or operated, has become unlawful by subsequent case law, statute, regulation or other illegality.

- iv. New Environmenta Dimeact. The permitted project has a newly discovered adverse environmental impact.
- C. Warnin. The CRM Administrator, upon a determination that a permitted project violates one or more provisions of Section 12(B), may issue a cease and desist order to the CRM Permit holder declaring notice of intent to undertake CRM Permit suspension or revocation proceedings unless the CRM Permit holder accomplishes corrective measures. The cease and desist order shall state corrective measures necessary to satisfy CRM Permit compliance and provide for a period in which compliance shall be effected. This warning procedure shall not affect the CRM Administrator's duties and responsibilities under Section 12(D).
- D. <u>Permit Enforcement Notice</u>. If, within thirty (30) days of determining a violation under Section 12(B), the CRM Administrator has issued a cease and desist order under Section 12(C), and the CRM Permit holder has failed to take corrective action, or continues to be in violation of its CRM Permit, the CRM Administrator shall issue a written Permit Enforcement Notice to issue to the CRM Permit holder.
 - (i). Content of Notice. A Permit Enforcement Notice shall include a statement of facts or conduct constituting the violation and shall indicate the intended action to be taken by the CRM Administrator. A Permit Enforcement Notice shall provide for Permit Enforcement hearings, if requested, and inform the CRM Permit holder of his responsibilities and rights under this Section.
 - (ii). <u>Service</u>. A Permit Enforcement Notice shall be delivered by the CRM Office staff in person to the CRM Permit holder, or served by certified U.S. mail addressed to the CRM Permit holder, or his designated agent.
 - (iii). Resionse to Notice. If the CRM Permit holder disagrees with the facts or conduct constituting violation in the Permit Enforcement Notice and desires a Permit Enforcement Hearing, he/she shall respond in writing to the CRM Administrator within thirty (30) days of service of the Permit Enforcement Notice. This response shall include a written statement indicating the CRM Permit holder's arguments.
 - (iv). Emergency Suspension. If the CRM Administrator determines that a CRM Permit holder has willfully violated a provision of Section 12(B) or the public health, safety, or welfare imperatively requires immediate action, the CRM Administrator may order emergency summary suspension of a CRM Permit pending proceedings for revocation or other action, notwithstanding, any notice requirement under this Section. If a Permit Enforcement Hearing is requested, the proceeding shall be promptly instituted and determined pursuant to Section 8(D).
- E. <u>Permit Enforcement Hearing</u>. Upon receipt of a request for Permit Enforcement Hearing, the CRM Administrator shall schedule a hearing within fifteen (15) days. Permit Enforcement Hearings shall conform to the provisions of Section 8(D). The CRM Administrator shall issue a decision within ten (10) days of the close of the Permit Enforcement Hearing, and all orders shall be in

- writing and accompanied by written findings of fact and conclusions of law.
- F. <u>Remedies</u>. Upon a determination by the CRM Administrator and/or CRM Agency Officials that a violation did occur, the CRM Administrator may order any or all of the following remedies.
 - (i). Revocation. The CRM Permit may be revoked in its entirety.
 - (ii). Sustension. The CRM Permit may be temporarily suspended for a given periot, or until the occurrence of a given event or satisfaction of a specific condition.
 - (iii). <u>Corrective Measures</u>. Measures may be ordered of the CRM Permit holder so that the project conforms to the CRM Permit terms and conditions.

Section 13. ENFORCEMENT OF CRM STANDARDS AND POLICIES.

- A. Puriose. The provisions of this Section are intended to establish procedures wherey the CRM Administrator and/or CRM Agency Officials may enforce penalties against persons conducting activities or participating in projects within the jurisdiction of the CRM Program either without a required CRM Permit or CRM Variance or in violation of a CRM Permit or Variance terms and conditions. Remedies listed herein are cumulative and not exclusive and shall be in addition to remedies provided in Section 12 and those at law or equity. The actions of the CRM Administrator and/or CRM Agency Officials based upon this Section are reviewable by the Commonwealth Trial Court.
- B. Investigation. The CRM Administrator shall have the authority to direct investigations of suspected or known violations of CNMI P.L. 3-47 or CRM Rules and Regulations. The CRM Administrator may direct the investigation of any fact, circumstance or activity that is reasonably related to his duties and responsibilities. If practicable, the CRM Administrator shall first request the person or persons having knowledge or custody of the information to voluntarily produce or allow access to it. If voluntary production of or access to the information is not forthcoming, the CRM Administrator may implement the following measures to compel disclosure.

(i). Authority to Search.

- (a) Consent from Permit Application. The CRM Administrator or his designee may enter, at any reasonable time, the site of a proposed project for which there exists a signed CRM Permit application on file with the CRM Office pursuant to the consent in the application.
- (b) <u>Permit Authorization</u>. The CRM Administrator or his designee may enter, at any reasonable time, the site of a project for which there has been granted a CRM Permit.
- (c) <u>Search Warrant</u>. The CRM Administrator may, if necessary, apply to the Commonwealth Trial Court for a search warrant allowing entry onto a project site on land or water

subject to CRM Program jurisdiction, pursuant to applicable law of administrative searches, regardless of the existence of a pending CRM Permit application or a currently valid CRM permit.

- C. <u>Prohibited Activites</u>. The CRM Administrator may act pursuant to this Section upon a reasonable determination that a violation of CNMI P.L. 3-47 or CRM Rules and Regulations has occured. Such violations include, but are not limited to, projects undertaken without a required CRM Permit or CRM Variance and activities that do not conform to CRM Permit terms and conditions. Specific provisions regarding CRM Permit revocation, suspension or other action affecting the status of an issued CRM Permit, as provided in Section 12, are in addition to, and not exclusive of, the remedies in this Section.
- D. Warnin. Upon a determination that a violation of law subject to CRM Program juris iction has occured, the CRM Administrator may issue a cease and desist order to the person(s) responsible for the violation and state notice of intent to undertake legal proceedings unless corrective measures are undertaken. The letter shall state the corrective measures necessary and shall provide for a period in which compliance shall be effected.
- E. <u>Enforcement</u>. Upon a determination that a person other than a CRM Permit holder is in violation of CNMI P.L. 3-47 or applicable rules and regulations, the CRM Administrator shall promptly issue an Enforcement Notice to the offending party. The Enforcement Notice shall be delivered personally to the offending party or, if such service is not reasonably possible, it may be sent by certified mail to his residence or place of business.

(i). Content of Enforcement.

- (a) Completed Violation. If acts constituting a violation are complete and the violation is not of an ongoing nature, the Enforcement Notice shall include a statement of the facts and conduct constituting the violation, the amount of an imposed fine, if any, a warning not to repeat the unlawful activity and a statement that a hearing on the fine is available if the CRM Administrator is so requested, in writing, within seven (7) days of service of the Enforcement Notice.
- (b) Continuin. Violation. If acts constituting a violation are of an ongoing nature or likely to be repeated, the Enforcement Notice shall include a statement of facts and conduct constituting the violation, a statement of an imposed, continuing fine, if any, an order to cease and desist the activity giving rise to a violation, a warning that additional fines may be imposed for failure to cease and desist the prohibited activity and a statement that an Enforcement Hearing on the fine is available if the CRM Administrator is so requested, in writing, within seven (7) days of service of the Enforcement Notice.

- (ii). Response to Notice. If the party to whom Enforcement Notice is sent objects to the finding of violation, or seeks an Enforcement Hearing on the fine, he shall submit a written response to the Enforcement Hearing within seven (7) days of service of the Enforcement Notice. Failure to provide written response or to demand an Enforcement Hearing within the prescribed period shall be deemed a waiver of defenses and the right to an Enforcement Hearing and the fine, as set in the Enforcement Notice, shall upon expiration of the seven (7) day period, become immediately due and payable to the CNMI Treasurer. All fines shall be paid by check made payable to the Treasurer of the CNMI. A copy of the payment receipt shall be provided the CRM Office by the violator.
- F. Determination of Fines. The CRM Administrator shall, in his sound discretion, set ines in an amount calculated to compel compliance with applicable law and shall consider the value of the existing and potential value of the damage to the environment proximately caused by the violation. In no event, however, shall any fine imposed exceed the ceiling imposed by Section 12 of P.L. 3-47.
- G. Enforcement Hearing. If a written response to an Enforcement Notice is filed with the CRM Office requesting an Enforcement Hearing, an Enforcement Hearing shall be conducted by CRM Administrator in accordance with the provisions of Section 8(D). The decision of the CRM Administrator shall be final as within the CRM Program. Appeal from an enforcement decision shall be directed to the Appeals Board within thirty (30) days following issuance of a written enforcement decision by the CRM Administrator.
- H. Enforcement by Commonwealth Trial Court. Fines and cease and desist orders issued by the CRM Administrator for purposes of enforcement constitute official agency orders and must be complied with by persons determined in violation of CRM Program policies or CRM Permit conditions. In the event fines are imposed or cease and desist orders issued, and compliance with either is refused, the CRM Administrator shall have the power to file in the Commonwealth Trial Court seeking court enforcement.
 - (i). Attorney General Representation. Whenever it is necessary for the CRM Administrator to file an action in the Commonwealth Trial Court for enforcement of imposed fines or cease or desist orders, he shall be advised and represented by the Office of the Attorney General.
 - (a) Collection of Civil Fines. The CRM Administrator shall, with the advise and representation of the Attorney General, file an action in the Commonwealth Trial Court for nonpayment of fines imposed.
 - (b) Cease and Desist Orders. The CRM Administrator shall, with the advise and representation of the Attorney General, file an action for injunctive relief in the Commonwealth Trial Court for failure to comply with a cease and desist order.
- I. Enforcement by Criminal Prosecutions. If the CRM Administrator has reason to believe that a person in violation of CRM Program policies or CRM

Permit conditions has committed criminal offense within the definition provided in CNMI P.L. 3-47 §12, he shall promptly submit a report of the violation to the Attorney General.

Section 14. PUBLIC INFORMATION AND EDUCATION.

The CRM Office shall make information and educational materials available to the public and CRM Agency Officials. The CRM Office, under the direction of the CRM Administrator, shall assist a CRM permit applicant any CRM Permit intervenors, CRM Variance applicants, CRM Agency Officials, the Governor and the CRM Appeals Board, by explaining the policies and procedures of the CRM Permit process.

- (i). <u>Vernacular</u>. When requested and reasonably necessary, the CRM Office shall provide translation of official business into the appropriate vernacular.
- (ii). Media. The CRM Office shall, to the extent practicable, develop and maintain a continuing program of public information and education. Information regarding coastal resources management and conservation shall be disseminated through newspapers, television, radio, posters and brochures supplied by the CRM Office.
- (iii). Public Hearines. Any hearing or meeting held for purposes of the CRM Permit or Enforcement process, or the Coastal Advisory Council, shall be open to the public.
- (iv). APC Ma.s. The CRM Office shall maintain a current series of island maps c early showing the Areas of Particular Concern.

Section 15. CRM COASTAL ADVISORY COUNCIL.

Pursuant to CNMI P.L. 3-47, §6, a CRM Coastal Advisory Council (CAC) shall be established, consisting of those members listed in Section 15(E) herein.

- A. Adort Internal Procedures. The CAC shall adopt internal procedures which shall govern its meetings, provided that CAC shall have no coastal resources management regulatory authority of its own.
- B. Advise CRM. The CAC shall advise the CRM Office and the CRM Administrator on any proposed change in the CRM Program or the CRM Permit process or any proposed rules and regulations considered useful for implementing the CRM Program.
- C. <u>Conduct Meetings</u>. The CAC shall conduct meetings from time to time in public sessions, in order to receive information from the public on the impact or advisability of programs and policies in the CRM Program. Meetings shall be scheduled by the Council or as requested by CRM Administrator, as he deems necessary for purposes of obtaining input and advice, and shall be scheduled at least twice each calendar year.

Section 16. CRM PUBLIC RECORDS.

- A. <u>Retention</u>. The CRM Office shall retain and preserve the following documents for a minimum of five (5) years following their receipt or acquisition, unless the CRM Office determines that they shall be retained for a longer period of time. After five (5) years, all pertinent materials shall be safely stored.
 - (i). <u>CRM Permit Application Materials</u>. All applications, permits, variances, pleadings, motions, affidavits, charts, petitions, statements, briefs or other documentation submitted in support of or opposition to applications for CRM Permits or Variances, or prepared by the CRM Office in the course of the CRM Permit Process, shall be retained and preserved.
 - (ii). <u>CRM Hearing Records</u>. Stenographic or tape recordings of all CRM Permit or <u>Enforcement Hearings</u> and written minutes of CAC meetings shall be retained and preserved.
 - (iii). <u>Coastal Resources Materials</u>. All studies, guides, plans, policy statements, charts, special reports, educational materials or other information obtained or prepared by the CRM Office in order to provide public information and education shall be retained and preserved.
- B. <u>Public Access to CRM Records</u>. All CRM Program records shall be available for inspection for a period of five (5) years by any person during established business hours at the CRM Office in Saipan. The public's right to inspect records shall not extend to any record otherwise deemed confidential by law.
 - (i). Minutes and Transcriets. Minutes of CAC meetings and transcripts or tapes of CRM Permit or Enforcement Hearings shall be made available upon request to the public within thirty (30) days after the meeting or hearing involved, except where the disclosure would be inconsistent with law, or where the public distribution of minutes of meetings held in executive session would defeat the lawful purpose of the executive meeting. All CRM Permit or Enforcement Hearings must be open to the public, and all transcripts of the hearing shall be made available upon request; provided, however, that those persons requesting transcription shall pay the costs of transcription at the time of the request.
 - (ii). Cooles of Documents. Copies of CRM public records shall be made available to any member of the public requesting them provided that reasonable fees or costs incurred in reproducing the records shall be paid by check into the CNMI Treasury by the requesting party.
 - (iii). <u>Denial</u> of Insection. Any person aggrieved by a denial of access to CRM Program records, or transcription or copying thereof may apply to the Commonwealth Trial Court for an order directing inspection or copies or extracts of CRM Program public records. The Court shall grant the order after hearing upon finding that the denial was not for just and proper cause.

Section 17. CRM ACCESS TO RECORDS.

The Administrator, on behalf of himself, the CRM Office, the CRM Agency Officials, the Governor, the CRM Appeals Board and the CRM Coastal Advisory Council, shall have access to such records necessary for conducting official CRM business.

- A. <u>CNMI Government Records</u>. The CRM Administrator shall have access to relevant <u>CNMI governmental records</u> for the purpose of obtaining information for official CRM business. This access may include government reports, reviews, policy statements and any other data not protected as confidential by law. The CRM Administrator shall keep his requests reasonable in scope and accompany his requests for information with payment for copying or gathering of specific information.
- B. <u>Private Records</u>. The CRM Administrator shall request from interested parties such records and documents deemed necessary for the CRM permit process.

Section 18. COMPUTATION OF TIME.

In computing any period of time under these Rules and Regulations, the time begins with the day following the act, event or default, and includes the last day of the period unless it is a Saturday, Sunday, or legal holiday, in which event, the period runs until the end of the next work day. When the prescribed period of time is ten (10) days or less, Saturdays, Sundays, or holidays within the designated period shall be excluded from the computation.

Section 19. FEDERAL CONSISTENCY.

A. General Law.

Federal activities and development projects which directly affect the coastal zone must be conducted or supported in a manner which is, to the maximum extent practicable, consistent with the CRM Program. Federally licensed or permitted activities and the provisions for federal financial assistance for activities affecting land or water uses of the coastal zone must be consistent with the CRM Program. Furthermore, any federal agency proposing to undertake any development project in the coastal zone shall insure that the project is, to the maximum extent practicable, consistent with the CRM Program. The implementation of these federal consistency provisions will be carried out in accordance with Section 307 of the CZMA and Federal Regulations at 15 CFR ,Part 930.

B. Standards for Determining Consistency.

The CRMO shall apply the following enforceable standards in making consistency determinations:

- (i). The goals and policies set forth in CNMI Public Law 3-47;
- (ii). The standards and priorities set forth in these Regulations;

- (iii). Federal air and water quality standards and regulations, to the extent applicable to the Commonwealth of the Northern Mariana Islands; and
- (iv). Air and water quality standards and regulations of the CNMI, including, but not limited to, the CNMI Underground Injection Control Regulations and the CNMI Drinking Water Regulations; and
- (v). Any additional policies, regulations, standards priorities and plans that are enforceable and incorporated into any amendment of the CRM Program in the future.

C. Federal Activities and Development Projects.

- (i). A Federal development project includes any Federal activity involving the planning, construction, modification or removal of public works, facilities, or other structures, and the acquisition, utilization or disposal of land or water resources.
- (ii). "Federal activities" include those Federal agency actions which are either development projects or licenses, permits, or assistance actions as described herein below. Examples include Federal agency activities requiring a Federal permit and Federal assistance to entities other than the local government. Although Federal lands in the CNMI are excluded from the CRM Program jurisdiction pursuant to Section 7 of P.L. 3-47, Federal activities occurring on Federal lands which result in spillover impacts which directly affect the Commonwealth's coastal zone must be consistent, to the maximum extent practicable, with the CRM Program.
- (iii). In the event that a Federal agency plans to undertake a Federal activity, including a development project, which is likely to directly affect the coastal zone, the Federal agency must notify the CRMO of the proposal at least ninety (90) days before any final decision on the Federal action, unless both the Federal agency and CRMO agree to an alternative notification schedule. Such notification must include a brief statement indicating how the proposed project will be undertaken in a manner consistent, to the maximum extent practicable, with the CRM Program. The Federal agency's consistency determination must be based upon an evaluation of the relevant provisions of the CRM Program. Consistency determinations must include:
 - (a) A detailed description of the proposed project;
 - (b) The project's associated facilities;
 - (c) The combined, cumulative coastal effect of the project; and
 - (d) Data and information sufficient to support the Federal agency's conclusion.
- (iv). If CRMO does not issue a written response within forty-five (45) days from the receipt of the Federal agency notification, the Federal agency may presume CRMO's agreement that the activity is consistent with

- the CRM Program. Requests for an extension of time may be made for a period of not more than fifteen (15) days, unless the Federal agency agrees to longer or additional extension requests. CRMO agreement shall not be presumed if CRMO requests an extension of time within the forty-five (45) day review period.
- (v). CRMO's concurrence with or objection to a Federal agency's consistency determination must be set forth in writing with reasons and information supporting the agreement or disagreement and sent to the Federal agency. In case of disagreement, CRMO will attempt to resolve its differences with the Federal agency's consistency determination within the ninety (90) day notification period.
- (vi). In the event that the CRMO and the Federal agency are unable to come to an agreement on the manner in which a Federal activity or development project may be conducted or supported in a manner consistent, to the maximum extent practicable, with the CRMP, the CRMO or Federal agency may request mediation of the disagreement pursuant to the procedures set forth in Section 307 of the Federal Coastal Zone Management Act of 1972 (P.L. 92-583, as amended) and 15 CFR 930, Subpart H.

Federal Licenses and Permits. D.

- (i). Federal licenses and permits include any authorization. certification, approval or other form of permission which any Federal agency is empowered to issue to an applicant.
- (ii). An applicant includes any individual or organization, except a Federal agency, which, following management program approval, files an application for a Federal license or permit to conduct an activity affecting the coastal zone.
- (iii). An applicant for a Federal license or permit for an activity affecting the coastal zone must file, along with the application, a certification that the activity will be conducted in a manner consistent with the CRM Program. A copy of the application and certification, along with all necessary data and information, should also be sent to the CRMO. The Federal agency shall not issue the license or permit unless CRMO concurs in the consistency certification or its concurrence is presumed because CRMO has failed to respond in six (6) months. The applicant's consistency certification statement, which will then be reviewed along with the application by the CRMO, must be accompanied by sufficient information to support the applicant's consistency determination.
- (iv). The Federal agency licenses and permits that the CRM Office will review for consistency with the CRMP are those listed in Attachment A, incorporated and made a part hereof. If, in the future, it is found that the issuance of the types of Federal permits and licenses cause direct and significant impact on coastal land and water resources, the said listing will be expanded as necessary.

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CRMO shall be responsible for providing the above list to the relevant Federal agencies who in turn shall make the information available to applicants.

- (v). If any project which requires a Federal license or permit also requires a coastal permit, applications for both should be filed simultaneously. A certification of consistency with the CRM Program shall be filed with both applications. The issuance or denial of a CRM Permit will indicate consistency or the lack of consistency with the CRM Program and the CRMO shall notify the Federal agency of the CRM permitting decision for its use in its federal permitting decision. A Federal agency shall not issue a federal license or permit if CRMO objects to the applicant's certification statement, unless the Secretary of Commerce decides, pursuant to Section 307(c)(3)(A) or (B) of the CZMA, and 15 CFR 930, Subpart H, that the activity is consistent with the objectives or purposes of the CZMA, or is necessary in the interest of national security.
- (vii). A certification of consistency shall include the following clause:

"The proposed activity complies with the CNMI CRM Program and will be conducted in a manner consistent with such program."

Supporting information must be attached to the certification. This information will include a detailed description of the proposal, a brief assessment of the probable coastal zone effects and a brief set of findings indicating that the proposed activity, its associated facilities and their effects, are all consistent with the provisions of the CRM Program, including the application standards listed in Section 19(B) above.

- (viii). Interested parties may assist the applicant in providing information to the CRMO. In addition, the CRMO will, upon the request of the applicant, provide assistance to the applicant in developing the assessment and findings required.
- (ix). CRMO review begins at the time the Office receives both the applicant's consistency certification and the supporting information and determines that the information is complete. Timely public notice of the proposed activity will be made by CRMO. The public notice will include a summary of the proposal, an announcement that information submitted by the applicant is available for public inspection and a statement that public comments are invited.
- (x). At the earliest practicable time and within six (6) months after the date of receipt, the CRMO will notify the issuing Federal agency of its concurrence or objection. If CRMO has not issued a decision within three (3) months after the date of receipt, it must notify the applicant and the Federal agency of the status of the matter and the basis for futher delay, if any.

In the event that CRMO objects to the applicant's consistency determination, the Office must set out its objection, in writing, with reasons and supporting information and alternative measures, if they exist, which, if adopted, would permit the activity to be conducted in a manner consistent with the CRM Program. A CRMO objection will include a statement informing the applicant of a right to appeal to the Secretary of Commerce as provided in Section 307 of the Federal Coastal Zone Management Act, as amended.

E. Federal Assistance.

- (i). "Federal assistance" means assistance provided under a Federal grant program to an applicant agency through grant or contractual agreements, loans, subsidies, guarantees, insurance or other forms of financial aid for activities which affect the coastal zone.
- (ii). An applicant refers to any unit of the CNMI Government, which, following CRM Program consistency concurrence, submits an application for Federal assistance.
- (iii). The CRMO shall be notified of any application submitted to the Planning and Budget Affairs Office for any federal assistance program listed in the Catalog of Federal Domestic Assistance in addition to applications to the Office of Ocean and Coastal Resource Zone Management for Coastal Energy Impact Program grants through the CNMI Clearinghouse process which provides for the evaluation, review and coordination of Federally assisted programs pursuant to Presidential Executive Order 12372 and CNMI Public Law 3-68.
- (iv). Application for federal assistance for activities affecting the coastal zone must go through the clearinghouse notification and review process to ensure that the CRMO has an opportunity to review the proposed action for consistency with the CRMP. Such applications must include a certification of consistency which meets the information requirements set out in these Regulations.
- (v). If a coastal permit is required for a project utilizing federal assistance, then the coastal permit and the federal assistance applications shall be filed simultaneously.
- (vi). In the event that CRMO finds that the proposed federal assistance is not consistent with the CRMP, the application shall not be approved unless the CRMO's objection is resolved through information discussions among the Federal Program agencies, the applicant and the CRMO or the objection is set aside on appeal to the Secretary of Commerce pursuant to Section 307 of the Federal Coastal Zone Management Act. CRMO's objection must be set forth in writing with reasons, supporting information and alternative measures. The Planning and Budget Affairs Office must then notify the applicant agency and the Federal agency of CRMO's objection and must inform the applicant agency of its right to appeal to the Secretary of Commerce. If CRMO does not object to an application proposal during the clearinghouse process, the Federal agency may grant the federal assistance.

Section 20. REPEALER.

The Rules and Regulations promulgated pursuant to CNMI Executive Order Number 15 are hereby repealed in their entirety upon the effective date of these Rules and Regulations.

Section 21. SEVERABILITY PROVISION.

If any provision of these Rules and Regulations, or the application of any provision of these Rules and Regulations to any person or any other instrumentality or circumstances shall be held invalid by a court of competent jurisdiction, the remainder of these Rules and Regulations and the application of the affected provision to other persons, instrumentalities and circumstances, shall not be affected thereby.

SECTION 22. SAVINGS.

The repeal of the CRM Rules and Regulations which notice of adoption was published in the Commonwealth Register on December 15, 1984 does not release or extinguish any penalty, forfeiture, or liability incurred or right occuring or occured under such law. The regulation shall be treated as remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of the right, penalty, or forfeiture.

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