COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS SAIPAN MARIANA ISLANDS

VOLUME 19 NUMBER 11



NOVEMBER 15, 1997

COMMONWEALTH REGISTER

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

2ND FLOOR ADMINISTRATION BLDG., CAPITOL HILL,

CALLER BOX 10007, SAIPAN, MP 96950

TELEPHONE: (670) 664-2341 TELECOPIER: (670) 664-2349

OFFICE OF THE ATTORNEY GENERAL CIVIL DIVISION

MEMORANDUM

To: All Recipients of Commonwealth Register

From: Deputy Registrar of Corporations

Date: October 31, 1997

Re: Replacement of October 15, 1997 Index for the Commonwealth Register

Enclosed with other information relative to the contents of the CNMI Commonwealth Register for November 15, 1997 is a "replacement index" for the materials published in the Commonwealth Register Volume 19 No. 10 on October 15, 1997. This replacement is necessitated to correct a typographical error regarding the governmental entity which adopted the Amended Medical Fee Schedule.

Please delete and discard the current index form immediately before at page 15700 as published in the Commonwealth Register on October 15, 1997 and replace it with the enclosed corrected index.

Remedio Mafnas Hollman

Deputy Registrar of Corporations

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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS STATE BOARD OF EDUCATION PUBLIC SCHOOL SYSTEM

P.O. BOX 1370 CK **SAIPAN, MP 96950**



CNMI STATE BOARD OF EDUCATION NOTICE OF MEETING

COMMISSIONER OF EDUCATION WILLIAM S. TORRES

CHAIRMAN DON A. FARRELL

VICE-CHAIRPERSON

MEMBERS THOMAS B. PANGELINAN DANIEL O. QUITUGUA MARJA LEE C. TAITANO

PUBLIC SCHOOL TEACHER JOVITA K. MASIWEMAI

NON PUBLIC SCH. REP. REV. JOHN A. KINSELLA

STUDENT REP. I . PATRINA SN. BORJA

LEGAL COUNSEL SEAN E. FRINK

Pusuant to Public Law, the CNMI Board of Education, hereby gives notice that the meeting of the Board of Education will be held at 10:00 a.m. Thursday, October 30, 1997 at the Nauru Building, Saipan.

The following items are on the agenda for the above referenced meeting:

PRELIMINARY MATTERS

- 1. Call to Order
- 2. Roll Call
- 3. Adoption of Agenda (August 28, 1997)

II. CAPITAL IMPROVEMENT PROJECT REPORT

- 1. 60 Classrooms Project
- 2. Dandan Elementary Construction
- 3. Kagman Elementary Construction
- 4. Tinian High School Status

III. CHAIRMAN'S REPORT

- 1. California Financial Services Loan Package
- 2. Reprogramming Authority
- 3. Continuing Resolution

PROGRAMS COMMITTEE REPORT IV.

- 1. High School Graduation Requirement
- 2. Bilingual Instruction Status
- 3. Language Arts Action Plan Amendment

v. PERSONNEL COMMITTEE REPORT

- 1. Counselor's Contract
- 2. Substitute Teachers
- 3. Food & Nutrition Sevice Contracts
- 4. Salary Inequities

VI. **BUSINESS**

- 1. Review of performance of Commissioner Torres
 - a. Outcome of Review
 - b. Determination

PUBLIC COMMENTS VII.

VIII. ADJOURNMENT

All interested persons are welcome to attend and to submit written or oral testimony on the above agenda items.

COMMONWEALTH REGISTER VOLUME 19 NOVEMBER 15, 1997 15740 NUMBER 11 PAGE TEL: (670) 664-3770/3720 FAX: (670) 664-3798/664-3791/664-3792

NOTICE OF EMERGENCY REGULATIONS AND NOTICE OF INTENTION TO ADOPT AMENDMENTS TO EXISTING REGULATIONS GOVERNING THE NUTRITION ASSISTANCE PROGRAM

EMERGENCY: The Secretary of Department of Community and Cultural Affairs finds that pursuant to the Commonwealth Code, Title 1, Division 9, Chapter 1, Section 9104 (b) (1 CMC Section 9104(b)), the public interest requires the adoption of Emergency Regulations, upon concurrence by the Governor, to implement changes to the existing regulations governing the Nutrition Assistance Program (NAP) with regard to citizenship and alien eligibility and income and benefit guidelines mandated by the Fiscal Year 1998 (FY 1998) Memorandum of Understanding (MOU) between the Commonwealth of the Northern Mariana Islands and the Food and Consumer Service of the United States Department of Agriculture (USDA). The Secretary finds that the public interest requires adoption of these guidelines within fewer than thirty (30) days notice for the reasons stated below. These regulations shall become effective immediately upon filing with the Registrar of Corporations and shall remain effective for 120 days.

REASON FOR EMERGENCY: The amendments to existing regulations must be adopted immediately in order for the NAP Office to implement the changes in citizenship and alien eligibility and income and benefit guidelines mandated by the FY1998 MOU recently signed by the United States and Commonwealth Governments. FY 1998 federal funding and the continued existence of the Nutrition Assistance Program require immediate implementation of the FY 1998 MOU changes. Thus, consistent with 1 CMC § 9104(b), an imminent peril to the public health, safety, or welfare exists which requires adoption of these amendments upon fewer than 30 days notice.

CONTENTS: The amendments change the existing citizenship and alien eligibility criteria in Section V. D of the existing regulations and manual governing the NAP. Many of the changes are mandated as a result of the United States Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA or Welfare Reform Act), U.S. Public Law 104-193, as amended by the Omnibus Consolidated Appropriations Act and the Balanced Budget Act of 1997. Another key change involves a recent reversal of USDA policy, where the USDA now regards CNMI citizens or CNMI permanent residents (i.e., individuals awarded CNMI permanent residency under CNMI Public Law 5-11 prior to its repeal on April 23, 1981) as ineligible for nutrition assistance. The USDA has also mandated a provision in the FY 1998 MOU which expressly excludes Micronesians (and other non-immigrants under the Compact of Free Association with the United States)

residing in the Commonwealth from nutrition assistance, unless they meet one of the other eligibility criteria.

The amendments also modify the Maximum Income Guidelines and Maximum Benefit Levels tables set forth in the existing NAP regulations and manual at Exhibits A and B, respectively. The increases in Maximum Income Guidelines set forth in Exhibit A are attributable to increases in the CNMI Consumer Price Index since June, 1994. The increases in Maximum Benefit Levels set forth in Exhibit B are attributable to increases in the food component of the CNMI Consumer Price Index since June, 1994.

INTENT TO ADOPT: The Secretary intends to adopt these amendments to existing regulations as permanent regulations pursuant to 1 CMC Section 9104(a)(1) and (2), and therefore, publishes in the Commonwealth Register this notice of opportunity to submit comments. If necessary, a hearing will be provided. Comments on the content of the regulations may be sent to: Secretary, Department of Community and Cultural Affairs, Caller Box 10007, Capitol Hill, Saipan, MP 96950.

AUTHORITY: The Secretary is authorized to promulgate these regulations pursuant to 2 CMC Section 5522(a).

Issued by:

Thomas A. Tebuteb

Secretary, Department of Community

and Cultural Affairs

Concurred by:

Froilan C. Tenof

Governør

Reviewed by:

Herman T. Guerrero

Office of the Governor

Date

Date

hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General's Office.

Dated this 3 day of Part of Pa

Registrar of Corporations

Pursuant to 1 CMC § 2153 as amended by PL 10-50, the rules and regulations attached

Section V.D. of the existing regulations and manual governing the Nutrition Assistance Program, previously published in the Commonwealth Register in Volume 5, Issue No. 5 at page 2028 on May 27, 1983, as amended in the Commonwealth Register in Volume 7, Issue No. 10 at page 4147 on October 17, 1985 and, Volume 7, Issue No. 12 at page 4161 on December 17, 1985, shall be replaced with the following:

D. Citizenship and Alien Status.

- 1. The Nutrition Assistance Program shall only authorize participation in the program by a person who is a resident of the CNMI and one of the following:
 - (a) a United States citizen;
 - (b) a United States National;
 - (c) a person born in the Northern Mariana Islands who was a citizen of the Trust Territory of the Pacific Islands on November 3, 1986, and who lived in the Northern Mariana Islands or the United States or any of its territories or possessions on that date;
 - (d) a person who was a citizen of the Trust Territory of the Pacific Islands on November 3, 1986, who lived continuously in the Northern Mariana Islands between November 3, 1981 and November 3, 1986, and who, unless under age, registered to vote in elections for the Mariana Islands District Legislature or for any municipal election in the Northern Mariana Islands prior to January 1, 1975;
 - (e) a person living in the Northern Mariana Islands on November 3, 1986, who, although not a citizen of the Trust Territory of the Pacific Islands, lived continuously in the Northern Mariana Islands beginning prior to January 1, 1974:
 - (f) a person born in the Commonwealth of the Northern Mariana Islands on or after November 4, 1986;
 - (g) a person who, within six months after November 4, 1986, or within six months after reaching the age of 18 years, whichever date was later, chose to become a United States National;
 - (h) a permanent resident alien admitted to the United States under the Immigration and Nationality Act who has worked 40 qualifying quarters as defined under title II of the Social Security Act, or who can be credited with such qualifying quarters as provided under section 435 of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), and in the case of any such qualifying quarter creditable for any period beginning after December 31, 1996, did not receive any Federal means-tested public benefit during such period;

- (i) an alien who has lawful residence and is a veteran with an honorable discharge, or who is on active duty in the Armed Forces of the United States, and has met the minimum active-duty service requirement of section 5303A (d), title 38, United States Code; or is the spouse or unmarried dependent child of a veteran or a person on active duty; the surviving spouse of a veteran or individual on active duty, provided the spouse has not remarried;
- (j) an alien granted asylum under section 208 of the Immigration and Nationality Act;
- (k) a refugee who is admitted to the United States under section 207 of the Immigration and Nationality Act;
- (l) an alien whose deportation is being withheld under section 243(h) of the Immigration and Nationality Act;
- (m) a Cuban or Haitian entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980;
- (n) an alien admitted to the United States as an Amerasian immigrant; or
- (o) a Filipino who served in the Philippine Commonwealth Army during World War II or after as a Philippine Scout.
- (p) a battered alien or a child of a battered alien parent.
- 2. No aliens other than those specified above shall be eligible to participate in the Program as members of any household. Micronesians living in the CNMI who are not United States citizens or nationals under the Covenant are ineligible unless they meet one of the provisions of section 403 of the PRWORA, as amended by the Omnibus Consolidated Appropriations Act of 1996 and the Balanced Budget Act of 1997.

Exhibits A and B of the existing regulations and manual governing the Nutrition Assistance Program, previously published in the Commonwealth Register on September 15, 1994 in Volume 16, Issue No. 9 at pages 12,377 and 12,378, respectively, (although previously labeled incorrectly as Exhibits C and D), shall be replaced with the attached Exhibits.

NUTISIA PUT REGULASION GOTPE NA NISISIDAT YAN NUTISIA INTENSION PARA U MA ADAPTA AMENDASION SIHA GI PRISENTI NA REGULASION NI HA GOBIEBIETNA I DIBISION NUTRITION ASSISTANCE NA PROGRAMA

GOTPE NA NISISIDAT: I Sekretariun Dipattamenton Community yan Cultural Affairs, ha sodda na sigun gi Kodikun Commonwealth. Titulu 1, Dibision 9, Kapitulu 1, Seksiona 9104 (b) (1 CMC Seksiona 9104 (b) na put para minaolek pupbliku, nisisariu para u ma adapta i Regulasion Gotpe na Nisisidat, gigon ha akonfotma i Gubetno, para u mana'guaha tinulaika gi prisenti na regulasion ni para u gobietna i Nutrition Assistance Program (NAP) put elihipblidat siudidanu yan estrangheru gihan suetdo yan benefisiu sigun i ginagagao gi 1998 Sakkan Fiskat (FY 1998) Memorandum of Understanding (MOU) entalo' i Commonwealth i Sangkattan siha na Islas Marianas yan i Food and Consumer Service gi halom i United States Department of Agriculture (USDA). I Sekretariu ha sodda' na put para minaolek pupbliku na nisisariu para u ma adapta este siha na dinirihi menos ki trenta (30) dias na nutisia, i rason ni masangan gi sampapa. Este siha na regulasion u fan efektibu ensegidas gigon ha ma file guatu gi Rehistradoran Kotporasion yan u efektibu ha gi halom siento bente (120) dias.

RASON PUT GOTPE NA NISISIDAT: I amendasion siha para i presenti na regulasion debi di u fanma adapta ensigidas kosa ki siña i Ofisinan NAP u impelementa i tinulaika put elihipblidat siudidano yan estrangheru gihan suetdo yan benefisiu sigun i ginagagao ni FY 1998 MOU ni pago' ha monhayan ma fitma entalo' Gobietnamenton Estado Unidos yan i Commonwealth. Sakkan Fiskat (FY 1998) fundo ginen federate yan I ma kontinuan I eksiste na Programan Nutrition Assistance ha nisisita para u ma implementa ensegidas I tinulaika siha gi halom FY 1998 MOU. Gi este na manera u akonfotma yan I 1 CMC § 9104(b), ni ti apmam masusedi komu namañao kontra hinemlo' pupbliku, safu, osino I prisenti na minaolek ni ha nisisita ma adapta este siha na amendasion menos di trenta (30) dias na nutisia.

SUHETU: I amendasion siha para u tulaika i prisenti na kondision elihipblidat para siudidano yan estrangheru sigun gi Seksiona V.D. gi prisenti na regulasion yan manual ni para u gobietna i NAP. Meggai guine siha na tinulaika manmachogue' komu ginen resuttan United States Personal Responsibility and Opportunity Reconciliation Act (PRWORA osion i Welfare Reform Act), U.S. Public Law 104-193 ni inamenda ni Omnibus Consolidated Appropriations Act yan i Balance Budget Act of 1997. I otro na tinulaika humalom i matulaikan Areklamenton USDA, pa'go anai I USDA ha trata kontra siudidanon CNMI (put ehemplo, ayu siha na indibiyuat ni manma sedi para u petmanenti na residentin CNMI sigun gi CNMI Lai Pupbliku 5-11 antes di u ma diroga gi Abrit 23, 1981) komu ti elihipble para nutrition assistance. I USDA lokkue' ha otden un prubinsion gi FY 1998 MOU ni ha ekspresia na ti man halom I Micronesians (yan pumalu siha na non-immigrants gi papa Compact Free Association yan I Estados Unidos) ya mañasaga gi Commonwealth komu ti siña man risibi nutrition assistance solu mankualifikao gi otro siha na kondision.

Lokkue' gi tinulaika siha i nisisidat siha para siudidano yan estrangheru elihipble, i amendasion para u renueba i Maximum Income Guidelines yan Maximum Benefit Levels gi mapa ni manggaige gi regulasion NAP yan manual gi Exhibit A yan B. I ma aomenta na Maximum Income Guidelines ni manggaige gi Exhibit A para u ma riferi guatu para i CNMI Consumer Prize Index desde Huniu 1994. I ma aomenta gi Maximum Benefits Levels ni manggaige gi Exhibit B u ma riferi guatu para i ma aomenta gi food component i CNMI Consumer Price Index desde Huniu 1994.

Intension i Sekretariu i para u adapta este siha na regulasion komu petmanente na regulasion sigun gi sinangan 1 CMC Seksiona 9104(a)(1) yan (2), yan u mapupblika gi Rehistran Commonwealth put este na nutisia hana guaha opputinidat para hayi interesao muna'halom komentu yan yanggen nisisariu, u mana guaha inekungok. I komentu siha debi du u fanma tuge' ya u mana hanao guatu para i Sekretariun, Dipattamenton Community and Culturual Affairs, Saipan, MP 96950.

ATURIDAT: I Sekretariu ma aturisa para u cho'gue'	este siha na regulasion sigun gi
sinangan 2 CMC Seksiona 55/12(a).	
Linaknos as: 1000 plulov	10-21-97 Fecha
Thomas A. Tebuteb	Fecha
Sekretariun Department of	
Inakonfotma as:	11/8/97
Froilan C. Tenorio	Fecha /
Rinibisa as: Aleman J. August	11/5/57
Herman T. Guerrero, Ofisinan Gubetno	Fecha
Sigun gi sinangan 1 CMC §2153 ni inamenda ni PL 10-50, chechetton guine esta manma inan maolek yan manma aj sufisiente na ligat ni CNMI Attorney General's Office.	
Ma fecha gi mina' 31 na dia Defober, 1997.	Attorney General (Acting) Robert B. Dunlap II
Ginen:	MALTON T A. SATTLER
	Assistant Attorney General
1 -	Elliott A. Sattler
Ma file yan Rekod as:	11/5/97
Soledad B. Sasamoto	Fecha
Rehistradoran Kotnorasion	

NOTIFICIAL SELECTION OF FICIAL SELECTION OF FI

P.O. BOX 5150 CHRB SAIPAN, MP 96950 TEL. NOS. (670) 322-4363/6954 FAX NO.: (670) 322-3327

CIVIL SERVICE COMMISSION NOTICE AND CERTIFICATION OF ADOPTION OF SICK LEAVE BANK RULES AND REGULATIONS

I, Eugene A. Santos, Chairman of the Civil Service Commission which is promulgating Sick Leave Bank Rules and Regulations, published in the Commonwealth Register, Vol. 19, No. 9, on September 15, 1997, at pages 15640 to 15648, by signature below hereby certify that as published such rules and regulations are a true, complete, and correct copy of the Sick Leave Bank Rules and Regulations previously proposed by the Civil Service Commission which, after the expiration of appropriate time for public comment, have been adopted with extensive modification or amendment.

By signature below, I hereby certify that the amended Sick Leave Bank Rules and Regulations attached hereto and published herewith are a true, correct and complete copy of the amended Sick Leave Bank Rules and Regulations adopted by the Civil Service Commission. I further require and direct that this Notice and Certification of Adoption be published in the CNMI Commonwealth Register.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 5th day of November, 1997, at Saipan, Commonwealth of the Northern Mariana Islands.

Eusene A. Santos, Chairman

Civil Service Commission

Pursuant to 1 CMC §2153, as amended by PL 10-50, the amended to the Personnel Service System Rules and Regulations attached hereto have been reviewed and approved by the CNMI Attorney General's Office.

Dated the

day of November, 1997.

Robert B. Dunlap, II CNMI Attorney General (Acting)

Assistant Attorney General

HERMAN T. GUERRERO

Recorded by: Gov's Ofc.

SOLEDAD B. SASAMOTO

Registrar of Corporations

Filed

P.O. BOX 5150 CHRB SAIPAN, MP 96950 TEL. NOS. (670) 322-4363/6954 FAX NO.: (670) 322-3327

KUMISION SETBISIUN SIBIT NUTISIA YAN SETTIFIKASION MA DAPTAN AREKLAMENTO YAN REGULASION PUT I SICK LEAVE BANK

Guahu, si Eugene A. Santos, Chairman, Kumision Setbisiun Sibit ni fumatinas este na Areklamento yan Regulasion put Sick Leave Bank, ni esta ma pupblika gi Rehistran Commonwealth Baluma 19, Numiru 9, gi September 15, 1997, gi pahina 15640 asta 15648 ginen I fitma-ku gi sampapa hu settifika na I manma pupblika siha na areklamento yan regulasion manmagahet, dinanche yan kumplidu na kopian I Areklamento yan Regulasion Put Sick Leave Bank ni hagas ma propone ni Kumision Setbisiun Sibit, gi anai makpo I tetminu para komenton pupbliku komu este manma adapta yan ma ribisa osion amenda.

Ginen I fittma-ku gi sampapa hu settifika na I ma amenda na Areklamento yan Regulasion put Sick Leave Bank nichechetton ma pupblika guine man magahet dinanche yan kimplidu na kopian I ma amenda na Areklamento yan Regulasion put Sick Leave Bank ni esta ma adapta ni Kumision Setbisiun Sibit. Lokkue' hu rekuesta yan dirihi na este na Nutisia yan Settifikasion Inadapta u mapupblika gi Rehistran Commonwealth CNMI.

Ha deklara gi papa pena chatmanhu'la ni manmofo'na magahet yan dinache ya este na deklarasion ma chogue guine gi mina _5th na dia gi halom este na mes November, 1997, giya Saipan Commonwealth gi Sangkattan siha na Islas Marianas.

EUGENE A. SANTOS

Chairman

Kumision Setbisiun Sibit

Sigun gi sinangan 1 CMC §2153, kimo inamenda ni Lai Pupbliku 10-50, I manma amenda siha na amendasion gi Areklamento yan Regulasion Personnel Service System ni chechetton guine este manma inan maolek yan ma apreba este na Ofisinan Attorney General giya CNMI.

Ma fecha gi mina 10 na dia guine mes i November, 1997.

	RT B. DUNLAP, II Attorney General (Acting)	
Ginen	ELECTT A. SATTIER	
•	Assistant Attorney General	

P.O. BOX 5150 CHRB SAIPAN, MP 96950 TEL. NOS. (670) 322-4363/6954 FAX NO.: (670) 322-3327

CIVIL SERVICE COMMISSION ARONG REEL CERTIFICATION OF ADOPTION REEL SICK LEAVE BANK

Ghaang Eugene A. Santos <u>Chairman</u>-nil Civil Service Commission ikke arongaawow Allegh kkaal reel mille <u>Sick Leave Bank</u> ikka a <u>poblikalong Commonwealth Register</u>, <u>Vol.</u> 19, <u>No.</u> 9, llol maramal Maan (<u>September</u>) 15, 1997 llol peighil kkaal 15640 ngali 15648, sangi yaay <u>signature</u> iye elo faal nge e alughulughuw bwe meta kka e <u>poblika</u> bwelle reel allegh kkaal nge e welewel, me scheescheel <u>kopiyaal</u> Alleghul <u>Sick Leave Bank</u> ikkewe a fasil ffeereta pomwol mereel <u>Civil Service Commission</u>, mwiril yaal <u>expiration</u> nge a fil bwe aramas toulap rebwele isisiilong yaar aiyegh ngare mangemang, a <u>adopted</u> reel ebwe schuulong llol lliiwel kkaal.

Sangi <u>signature</u> ye elo faal, I alughulughuuw bwe lliiwel kkaal reel Alleghul <u>Sick Leave Bank</u> ikka e aappasch ngali me <u>poblika</u>wow nge e welewel, ellet me scheescheel <u>kopiyaal</u> lliiwel kka eyoor llol Alleghul <u>Sick Leave Bank</u> ikka Civil Service Commission a <u>adopted</u>-lil. I tipeli me afala bwe arong kkaal reel Certification of Adoption ebwe <u>poblikalong CNMI</u> Commonwealth Register.

I ffailo faal mwuttaal misimis bwe alongal meta kka elo nge e welewel me e ellet ila mille e ffailo me alleghelo llol ral ye _5th llol maramal November, 1997, mewool Seipel, <u>Commonwealth</u> Metawal Wool Falaw kka Marianas.

EUGÈNÉ A. SANTOS

Chairman

Civil Service Commission

Sangi 1 CMC §2153, reel lliiwel kka elo 1161 PL 10-50, lliiwel kkaal reel Alleghul llol Personnel Service System ikka e appasch ngali nge ra takkal amweri me alleghelo sangi Bwulasiyool CNMI Attorney General.

Ral ye 10th Ilol maramal November, 1997.

ROBERT B. DUNLAP, II
CNMI Attorney General (Acting)

Merel ELLICIT A. SATTLER

Assistant Attorney General

The Civil Service Commission proposes to adopt separate Sick Leave Bank Regulations, and amend the Personnel Service System Rules and Regulations and the Excepted Service Personnel Regulations.

SICK LEAVE BANK REGULATIONS

1.0 INTRODUCTION

- 1.1 **AUTHORITY.** These regulations, promulgated by the Civil Service Commission under the authority of 1 CMC §8275, implement the Sick Leave Bank created by Public Law No. 8-25 and codified at 1 CMC §§8271, *et seq.*
- 1.2 **PURPOSE.** These regulations are intended to provide additional job and financial protection for employees experiencing prolonged absence from the workplace due to catastrophic illness or major injury.
- 1.3 **APPLICABILITY.** Except as otherwise provided, these regulations apply to all employees of the government of the Northern Mariana Islands, whether or not they are members of the Civil Service System.

2.0 CONTRIBUTIONS TO THE SICK LEAVE BANK

- 2.1 **ELIGIBILITY.** Any person employed by the Commonwealth government under a civil service or excepted service status may contribute sick leave hours to the Sick Leave Bank, provided that, after such contribution, he or she retains at least eighty (80) hours of accrued sick leave. Employees separating from service with the Commonwealth government for whatever reason, at the time of their separation, may contribute any or all of their accrued sick leave hours to the Sick Leave Bank.
- 2.2 **PROCEDURE.** All contributions shall be made on forms prescribed by the Director of Personnel Management. The contributor may elect to contribute sick leave hours to either or both:
 - (a) the General Account, available to any eligible employee, or
 - (b) a designated account, available only to the eligible employee designated by the contributor. If the designated employee does not use the hours contributed to his or her designated account within four pay periods of the contribution, the remaining hours will be deposited into the General Account.

3.0 WITHDRAWALS FROM THE SICK LEAVE BANK

- 3.1 **LIMITATION ON NUMBER OF HOURS.** Withdrawal of Sick Leave Bank hours for extended sick leave is a privilege, not a right. No employee may withdraw any hours from the Sick Leave Bank, whether from the General Account or from his or her designated account, if he or she has already withdrawn one hundred sixty (160) hours. However, if the employee has returned to the Bank some or all of those hours, as provided in Part 4, he or she may withdraw additional hours up to the amount returned. Examples:
 - (a) An employee has withdrawn 70 hours and has not returned any hours. That employee can withdraw up to an additional 90 hours.
 - (b) An employee has withdrawn 160 hours and has not returned any hours. That employee cannot withdraw additional hours.
 - (c) An employee has withdrawn 160 hours and has returned 160 hours. That employee can withdraw up to an additional 160 hours.
 - (d) An employee has withdrawn 160 hours and has returned 50 hours. That employee can withdraw up to an additional 50 hours.
- 3.2 **ELIGIBILITY.** Any person employed by the Commonwealth government, its agencies or instrumentalities, may apply for withdrawal of hours first from an account designated for his or her use, if any, and then from the General Account of the Sick Leave Bank provided that:
 - (a) the employee's need to be absent from work is due to the injury or illness of the employee, or the quarantine of the employee, the employee's family, or the employee's residence;
 - (b) the employee is not qualified for Workers' Compensation because the injury or illness is not work related;
 - (c) the employee is expected to have exhausted all personal sick leave, annual leave, and allowable advance sick leave prior to recovery from the illness or injury for which the additional sick leave hours are requested;
 - (d) the additional hours requested by the employee will not cause the employee to exceed the withdrawal limit established in Rule 3.1:
 - (e) the employee is expected to return to government service
 - (1) in the same position, or
 - (2) if the injury or illness prevents the employee from performing the essential job functions of the same position even with reasonable

- accommodation, to some other position with the Commonwealth government;
- (e) the request for sick leave does not extend beyond the term of the employee's employment;
- (f) the Sick Leave Bank has sufficient hours to accommodate the employee's request; and
- (g) the employee's appointing authority, as defined in the Personnel Service System Rules and Regulations Part III.D2(A), recommends approval of the employee's withdrawal request. An appointing authority can refuse to reccomend refusal only if:
 - (1) the employee's additional absence will significantly interfere with the agency's ability to perform its responsibilities; or
 - the employee is seeking the additional sick leave for recuperation from a work-related injury or illness that is otherwise compensable under the Workers' Compensation Act.
- 3.3 **PROCEDURE.** an employee shall request a withdrawal of hours from the Sick Leave Bank from the Office of Personnel Management, whether from a designated account or the General Account, as needed, in increments of up to eighty (80) hours, on a form prescribed by the Director of Personnel Management.
 - (a) The request must be received at the Office of Personnel Management at least five (5) working days before the proposed effective date, with all required approvals and supporting documents.
 - (b) The request must be supported by a statement of an attending physician which includes:
 - (1) an estimate of the time the employee must be absent from work;
 - (2) a confirmation of the employee's injury or illness, or the quarantine of the employee, the employee's family or the employee's residence; and
 - (3) a confirmation that the illness or injury will not constitute a permanent disability that, even with reasonable accommodation that can be made without undue hardship to the government employer, will prevent the employee from performing the essential job functions of his or her position.
- 3.4 The Director of Personnel Management shall grant or deny the request promptly in

writing. No properly supported request from a qualified employee shall be denied unless:

- (1) there are insufficient hours in the Sick Leave Bank to grant the request; or
- the employee's appointing authority, with adequate justification, has not approved the request; or
- the employee is expected to be compensated for any lost work time through Workers' Compensation; or
- (4) based on the employee's physician's statement, the Director of the Office of Personnel Management determines that the employee will not be able to return to work in the same position or any other government position due to a residual disability; or
- (5) the employee already has a withdrawal balance of one hundred sixty (160) hours.
- the Director of the Office of Personnel Management finds that there is sufficient evidence to believe the employee is malingering.

4.0 RETURNING HOURS USED FROM THE SICK LEAVE BANK

- 4.1 **GENERAL ACCOUNT.** Withdrawal of sick leave hours from the Sick Leave Bank's General account will be treated as a debt owed by the employee to the Sick Leave Bank.
 - (a) After recuperation and return to active service, an employee is required to return the hours he or she used from the Sick Leave Bank's General Account. The Department of Finance shall automatically deduct two (2) sick leave hours per pay period from the employee's regularly accruing sick leave until all of the hours the employee used from the General Account of the Sick Leave Bank have been returned.
 - (b) An employee may choose to pay for the hours used from the General Account, rather than have a deduction of sick leave hours. In that case, the employee must arrange with the Department of Finance for a allotment.
 - (c) If an employee leaves government service while he or she still owes hours to the General Account, the government shall
 - (1) assume any accrued unused sick leave or annual leave; or
 - (2) deduct the value of the hours from the employee's final pay check; or

- (3) reduce credited service time; or
- (4) seek other redress from the courts, except the government shall not seek recovery of any unrecovered hours against a decedent's estate.
- 4.2 **DESIGNATED ACCOUNT.** Hours withdrawn from a designated account are counted in determining whether the employee has reached the 160-hour limit established by Rule 3.1. Employees are therefore encouraged to return hours to the Sick Leave Bank withdrawn from a designated account. If an employee elects to return the hours withdrawn from a designated account, he or she shall arrange with the Department of Finance to deduct the hours from his or her accruing sick leave or arrange for an allotment from their pay checks, as provided in Rule 4.1(b).

4.3 HOURS PREVIOUSLY WITHDRAWN FROM THE SICK LEAVE BANK.

- (a) Any person who on the effective date of these regulations owed more than 160 hours to the Sick Leave Bank will have the hours in excess of 160 forgiven. The person's records will be amended to show that only 160 hours had been withdrawn from the Bank.
- (b) Persons will not be required to return hours withdrawn from the Sick Leave Bank prior to the effective date of these regulations because those hours shall be presumed to have been withdrawn from a designated account. However, persons are encouraged to voluntarily return the hours because they will be counted against the 160-hour limit established by Rule 30.

5.0 ACCOMMODATION AND DISABILITY

- PHYSICIAN'S STATEMENT. If the attending physician determines that the illness or injury for which the employee seeks extended sick leave will constitute a permanent disability preventing the employee from being able to perform the essential job functions of his or her previous position, the physician will issue a statement to that effect and describe the physical or mental limitations the employee is expected to experience.
- 5.2 **ALTERNATIVE POSITION.** In a case where an employee is not expected to be able to perform the essential job functions of his or her previous position, even with reasonable accommodation, the Director of Personnel Management must determine, based on the physician's statement, whether the disability precludes the employee from being reasonably accommodated in another equivalent government position that can be performed by a person with that particular disability.
- 5.3 **DISABILITY.** If the Director of Personnel Management determines that the expected disability precludes the employee from performing the essential job functions of any equivalent government position, the Director of Personnel Management shall deny additional sick leave hours to the employee. The Director

of Personnel Management shall then recommend the employee apply for disability retirement benefits.

6.0 MISCELLANEOUS

- 6.1 **APPEAL.** Any employee denied hours from the Sick Leave Bank has the following recourse:
 - The employee shall, within two (2) business days of the denial, request the (a) Director of Personnel Management reconsider his or her decision to deny the request. The employee may supplement the original withdrawal request with additional information. The Director of Personnel Management must issue a written final decision within five (5) business days of the request for reconsideration. If the Director affirms the original denial, the decision shall include the specific reason(s) for the denial and a summary of the evidence relied upon.
 - If the employee chooses to appeal the Director of Personnel Management's (b) final decision, the appeal must be filed at the Commission office within five (5) business days after the employee receives the final decision. The appeal shall be processed by the Commission in the same manner as it processes a grievance under Personnel Service System Rules and Regulations, Part III.G10(C) through Part III.G10(H).
- 6.2 **RECORDS.**The Director of Personnel Management or his designee shall maintain records of all hours contributed to, withdrawn from, and returned to the Sick Leave Bank.
- EFFECT ON FAMILY MEDICAL LEAVE ACT. All hours withdrawn from the sick 6.3 leave bank shall be counted towards the leave time provided by the Federal Family Medical Leave Act of 1993 and implemented in the Commonwealth by the Personnel Service System Rules and Regulations, Part VII.A5(F) (as amended, 19 Com. Reg. No. 1, p. 14906) and the Excepted Service Personnel Regulations, Part I.8(S) (as amended, 19 Com. Reg. No. 1, p.14891).

* * * * * * * * *

AMENDMENT TO EXCEPTED SERVICE REGULATIONS

Part III of the Excepted Service Regulations, Government Employees Sick Leave Bank, is repealed in its entirety.

AMENDMENT TO PERSONNEL SERVICE SYSTEM RULES AND REGULATIONS

Part VII.A4(G)(2) is repealed. Paragraphs (3) and (4) of Part VII.A4(G) are renumbered (2) and (3), respectively.

DULY ADOPTED AS REGULATIONS by the Civil Service Commission at its regularly scheduled meeting on the <u>16TH</u>day of <u>october</u>, 1997.

Eugené A. Santos, Chairman

P.O. BOX 5150 CHRB SAIPAN, MP 96950 TEL. NOS. (670) 322-4363/6954 FAX NO.: (670) 322-3327

CIVIL SERVICE COMMISSION

NOTICE AND CERTIFICATION OF ADOPTION OF AMENDMENTS TO THE PERSONNEL SERVICE SYSTEM RULES AND REGULATIONS GOVERNING ALCOHOL AND DRUG FREE WORKPLACE

I, Eugene A. Santos, Chairman of the Civil Service Commission which is promulgating amendments to the Personnel Service System Rules and Regulations governing Alcohol and Drug Free Workplace, published in the Commonwealth Register, Vol. 19, No. 8, on August 15, 1997, at pages 15520 to 15553, by signature below hereby certify that as published such regulations are a true, complete, and correct copy of the amendments to the Personnel Service System Rules and Regulations governing Alcohol and Drug Free Workplace previously proposed by the Civil Service Commission which, after the expiration of appropriate time for public comment, have been adopted with extensive modification or amendment. By signature below, I hereby certify that the amended Personnel Service System Rules and Regulations governing Alcohol and Drug Free Workplace attached hereto and published herewith are a true, correct and complete copy of the amended Personnel Service System Rules and Regulations governing Alcohol and Drug Free Workplace adopted by the Civil Service Commission. I further require and direct that this Notice and Certification of Adoption be published in the CNMI Commonwealth Register.

> Eugene A. Santos, Chairman Civil Service Commission

Pursuant to 1 CMC §2153, as amended by PL 10-50, the amended to the Personnel Service System Rules and Regulations attached hereto have been reviewed and approved by the CNMI Attorney General's Office.

Dated the odday of Morenia, 1997.

Robert B. Dunlap, II
CNMI Attorney General (Acting)

Bv:

Recorded by:

Filed by:

HERMAN T. GUERRERO Governor's Office

SOLEDAD B. SASAMOTO

Registrar of Corporations

COMMONWEALTH REGISTER VOLUME 19 NUMBER 11 NOVEMBER 15, 1997 PAGE 15758

P.O. BOX 5150 CHRB SAIPAN, MP 96950 TEL. NOS. (670) 322-4363/6954 FAX NO.: (670) 322-3327

KUMISION SETBISIUN SIBIT

NUTISIA YAN SETTIFIKASION INADAPTAN AMENDASION SIHA GI AREKLAMENTO YAN REGULASION SISTEMAN SETBISIUN PETSONAT NI PARA U GOBIETNA I ADKAHOT YAN DRUG FREE GI SAGAN

Guahu si Eugene A. Santos, chairman I Kumision Setbisiun Sibit Civil Service Commission ni chumo'gue este siha na amendasion gi Areklamento yan Regulasion ni para u gobietna para taya adkahot yan Drugs (Alcohol and Drug Free) gi sagan cho'cho komu hagas ma pupblika gi halom Rehistran Commonwealth, Baluma 19, Numiru 8, gi Agusto 15, 1997 gi pahina 15520 asta 15553 ginen I fitma-ku gi sampapa hu settifika komu manma pupblika este siha na regulasion man magahet, komplidu yan dinanche na kopian I amendasion siha gi Areklamento yan Regulasion Personnel Service System ni para u gobietna I Alcohol yan Drug Free gi sagan cho'cho' ni hagas manma proponi ni Kumision Setbisiun Sibit ya gi anai mana'e I pupbliku tiempo para u fana'halom komento esta ma adapta yan ma matulaika todu gi halom I amendasion siha. Ginen I fitma-ku gi sampapa hu settifika na I manma amenda siha na Areklamento yan Regulasion gi Personnel Service System ni para u gobietna I Alcohol and Drug Free Workplace ni chechetton guine magahet dinanche yan kumplidu na kopian I manma amenda siha Areklamento yan Regulasion Personnel Service System put ginobietnan Alcohol and Drug Free Workplace ni esta inadapta ni Kumision Setbisiun Sibit. Lokkue' hu dirihi na este na nutisia yan settifikasion inadapta u ma pupblika gi Rehistran Commonwealth CNMI.

. deklara gi papa pena chatmanhu'la ni I manmofo'na magahet yan dinanche ya este na deklarasion ma chogue guine gi mina 5th na dia gi halom este na mes November, 1997, giya Saipan Commonwealth gi Sangkattan siha na Islas Marianas.

EUGENE A. SANTOS

Chairman

Kumision Setbisiun Sibiti

Sigun gi sinangan 1 CMC 2153, kimo inamenda ni Lai Pupbliku 10-50, I manma amenda siha na amendasion gi Arfeklamento yan Regulasion Personnel Service System ni chechetton guine este manma inan maolek yan ma apeba este na Ofisinan Attorney General giya CNMI.

Ma fecha gi mina 10 na dia guine mes I November, 1997.

ROBERT B. DUNLAP, II

CNMI Attorney General (Acting)

nen ELLIOTT A. SATTLER

Assistant Attorney General

P.O. BOX 5150 CHRB SAIPAN, MP 96950 TEL. NOS. (670) 322-4363/6954 FAX NO.: (670) 322-3327

CIVIL SERVICE COMMISSION

ARONG REEL <u>CERTIFICATION</u> OF ADOPTION REEL LLIIWEL MEELLOL ALLEGHUL <u>PERSONNEL</u> SERVICE SYSTEM IKKA E LEMELI ASCHI ME SAFEY NNGOW DRUGS MELLOL LELIYAL ANGAANG

Ghaang, Eugene A. Santos, Chairman-nil Civil Service Commission ikke arongaawow lliiwel kkaal reel Alleghul Personnel Service System ikka e lemeli aschi me Safey Nngow (Drugs) mellol Leliyel Angaang, a poblikalong llol Commonwealth Register, Vol. 19, No. 08, llol maramal Eluwel (August) 15, 1997, llol peighil kkaal (pages) 15520 ngali 15553 sangi yaay signature ye elo faal nge e alughulughuw bwe meta kka e poblika bwelle reel allegh kkaal nge e welewel, me scheescheel kopiyaal lliiwel kka eyoor mellol Alleghul Personnel Service System ikka e lemeli Aschi me Safey nngow (Drugs) mellol Leliyel Angaang ighiwe afasil ffeereta pomwol mereel Civil Service System, mwiril yaal expiration nge a fil bwe aramas toulap rebwe isisiilong yaar mangemang ngare aiyegh, a adopted reel ebwe schuulong llol lliiwel kkaal. Sangi signature ye elo faal, I alughulughuuw bwe lliiwel kkaal reel Alleghul llol Personnel Service System ikka e lemeli Aschi me Safey nngow mellol Leliyel Angaang ikka e appasch ngali me poblikawow nge e welewel, ellet, me scheescheel kopiyaal lliiwel kka eyoor mellol Personnel Service System ikka e lemeli asche me safey nngow mellol leliyel angaang ikka Civil Service Commission a adopted-lil I bwal tipeli me afala bwe Arong yeel me Certification of Adoption ebwe poblikalong llol CNMI Commonwealth register.

I ffailo faal myuttaal misimis bwe alongal meta kka elo nge e welewel me e elle lla mille e ffalo me

alleghelo llol ral ye _5 th _ llol maramal November, 1997, mewool Seipel, <u>Commonwealth</u> Metawal Wool Faluw kka <u>Marianas</u> .
Chairman
Civil Service Commission
Sangi 1 <u>CMC</u> §2153, reel lliiwel kka elo llol <u>PL</u> 10-50, lliiwel kkaal reel Alleghul llol Personnel Servic System ikka e appasch ngali nge ra takkal amweri me alleghelo sangi Bwulasiyool <u>CNMI Attorney General.</u> Ral ye
ROBERT B. DUNLAP II
CNMI Attorney General (Acting)
Civin Attorney General (Acting)
Merel MULICITY A. SATTLER
Assistant Attorney General
Assistant Attorney Schera

CIVIL SERVICE COMMISSION

AMENDMENTS TO THE

PERSONNEL SERVICE SYSTEM RULES AND REGULATIONS

SECTION I. BACKGROUND

These regulations are promulgated by the Civil Service Commission for the purpose of establishing an alcohol and drug free workplace for government employees. The Commission's authority to promulgate these regulations is found at 1 CMC §8117(a).

A new Part V, Sub-Part C, shall be inserted into the Personnel Service System Rules and Regulations. See, Section II, below. Related amendments for other sections of the Personnel Service System Rules and Regulations are found in Section III, below.

SECTION II. ALCOHOL AND DRUG FREE WORKPLACE

PART V, SUB-PART C ALCOHOL AND DRUG FREE WORKPLACE

V.C1 POLICY

As an employer, the government recognizes it has a responsibility to its employees and the public it serves to take reasonable steps to assure safety in the workplace and in the community. Furthermore, the government is concerned about the adverse effect alcohol and drug abuse have on safe and productive job performance. It also recognizes that any employee, whose ability to perform safely and productively is affected by the use of alcohol and other drugs, jeopardizes the integrity of the workplace and the achievement of the government's mission. The government realizes that alcoholism, problem drinking and drug addiction are treatable illnesses. The government, therefore, encourages employees who have problems with drugs or alcohol to utilize all available resources to resolve their problems before those problems affect their job performance.

V.C2 DEFINITIONS

For the purposes of this sub-part, the following definitions apply:

- A. <u>Accident</u>. An event which causes (1) a fatality, (2) an injury to a person requiring professional medical treatment beyond simple at-scene first aid, or (3) an economic loss, including property damage, greater than \$2,500.00.
- B. <u>Assessment</u>. A determination of the severity of an individual's alcohol or drug use problem and an analysis of the possible courses of treatment, made by an expert in the field of substance abuse.
- C. <u>Breath Alcohol Concentration (B.A.C.)</u>. The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an Evidential Breath Testing Device (E.B.T.).
- D. <u>Breath Alcohol Technician (B.A.T.)</u>. An individual authorized to collect breath specimens under Part V.C7(B) and who operates an E.B.T.
- E. <u>Consulting Physician</u>. A licensed physician retained or employed by the government to advise on drug testing.
- F. <u>Drug.</u> A substance (1) recognized in the official United States Pharmacopoeia, the official Homeopathic Pharmacopoeia of the United States, or the official National Formulary, or any supplement to any of them; or (2) intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or other animals; or (3) other than food, minerals, or vitamins, intended to affect the structure or any function of the body of a human or other animal; or (4) intended for use as a component of any article specified in clause (1), (2), or (3) above. Devices or their components, parts, or accessories are not considered drugs under this definition.
- G. Evidential Breath Testing Device (E.B.T.). A device which is (1) approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath; and (2) is on the NHTSA's Conforming Products List of E.B.T.s; and (3) conforms with the model specifications available from the NHTSA, Office of Alcohol and State Programs.
- H. <u>Illegal Drug.</u> A drug that (1) is not obtained legally; or (2) is knowingly used for other than the prescribed purpose or in other than the prescribed manner; or (3) is a "designer drug" or drug substance not approved for medical or other use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration.
- I. <u>Invalid Test</u>. A breath or urine test that has been declared invalid by a Medical

- Review Officer (M.R.O.), including a specimen that is rejected for testing by a laboratory for any reason. An invalid test shall not be considered either a positive or a negative test result.
- J. <u>Medical File</u>. The file containing an employee's medical examination form, mental health referrals, alcohol and drug test results and other health related documents, maintained by the Office of Personnel Management separate from an employee's Official Personnel Folder, in accordance with the PSSRR, Part XI.B3(C).
- K. <u>Medical Review Officer (M.R.O.)</u>. A licensed physician, appointed by the government, with specialized training in substance abuse disorders and in the use and evaluation of drug test results. The M.R.O. shall be the only person authorized to receive laboratory drug test results and shall be the primary contact for technical inquiries to the drug testing laboratory.
- L. Reasonable Suspicion. A perception based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of an individual or on specific facts, circumstances, physical evidence, physical signs and symptoms, or on a pattern of performance or behavior that would cause a trained supervisor to reasonably conclude that the individual may be under the influence of alcohol or illegal drugs while on duty.
- M. <u>Safety-Sensitive</u>. A word describing activities which directly affect the safety of one or more persons, including the operation of motor vehicles or heavy machinery or the carrying of firearms. Each department, entity, or organization head, in conjunction with the Director of Personnel Management, shall identify all positions to be considered safety-sensitive positions due to the amount of time the employee spends performing safety-sensitive functions.
- N. <u>Statement of Fitness for Duty</u>. A written statement from a Substance Abuse Professional (S.A.P.), certifying that the named employee is not dependent on alcohol or any drug to the extent such dependence will affect safe and productive work.
- O. <u>Substance Abuse Professional (S.A.P.)</u>. A physician, psychologist, psychiatrist, or social worker with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders; or a counselor certified by the National Association of Alcoholism and Drug Abuse Counselors.
- P. <u>Under the Influence</u>. A condition where a person's behavior, attention, or ability to perform work in the usual careful fashion has been adversely affected by the use of alcohol or drugs; intoxicated.
- Q. <u>Vehicle</u>. A device in, upon or by which any person or property is or may be

propelled or moved on a highway, on a waterway, or through the air.

V.C3 PROHIBITED CONDUCT

- A. Sale, Purchase, Possession with Intent to Deliver, or Transfer of Illegal Drugs.

 No employee shall (1) sell, purchase, or transfer; (2) attempt to sell, purchase, or transfer; or (3) possess with the intent to deliver, any illegal drug while on government property, in any government vehicle or on any government business. It is a defense to this provision that the employee is employed by a law enforcement agency and the conduct occurs as part of the employee's assigned duties for the purpose of investigating illegal drug trafficking.
- B. <u>Possession of Illegal Drugs</u>. No employee shall possess any illegal drug on government property, in any government vehicle, or while on government business. It is a defense to this provision that the employee is employed by a law enforcement agency and the conduct occurs as part of the employee's assigned duties for the purpose of investigating illegal drug trafficking.
- C. <u>Possession of Open Containers of Alcohol</u>. No employee shall possess an open container of alcohol in any vehicle while on duty or in any government vehicle at any time. No employee shall possess an open container of alcohol while at his or her workplace.
- D. <u>Under the Influence of Alcohol or Illegal Drugs</u>. No employee shall be under the influence of alcohol or any illegal drug when at work, or reporting to work with the intention of working. As used in this subsection, alcohol includes any alcohol found in any prescription or non-prescription drug such as cough syrup. An employee is presumed to be under the influence of alcohol or an illegal drug if:
 - (1) The employee has a B.A.C. of 0.02 or more;
 - (2) The employee has a detectable amount of any illegal drug in his or her urine;
 - (3) The employee uses alcohol or any illegal drug while on call when the employee knows he or she may be called upon to perform safety-sensitive functions;
 - (4) The employee uses alcohol or any illegal drug within four (4) hours prior to reporting to work and expects to perform a safety-sensitive duty.
- E. <u>Refusal to be Tested</u>. No employee required to be tested for drugs or alcohol under any provision of this sub-part shall refuse to be tested. The following conduct shall be considered a refusal to be tested:
 - (1) Refusing in writing to submit to testing after receiving clear and specific

- written notice of the requirement to be tested;
- (2) Refusing verbally, in front of at least two witnesses, to submit to testing after receiving clear and specific written notice of the requirement to be tested;
- (3) Failing to timely provide an adequate specimen for testing, without a valid medical explanation, after receiving clear and specific written notice of the requirement to be tested. An M.R.O. or consulting physician shall determine if there is any medical reason for failure to provide an adequate urine sample (shy bladder) or an adequate breath sample (shy lung);
- (4) Engaging in conduct that clearly obstructs the specimen collection process;
- (5) Failing to remain available for post-accident testing, or leaving the scene of an accident before a testing decision is made. An employee may leave the scene of an accident only to obtain necessary medical care or assistance in responding to the accident. If the employee leaves the scene, the employee must notify his or her supervisor as soon as possible of his or her location and reason for leaving the scene;
- (6) Consuming alcohol or illegal drugs after an accident and before a testing decision is made:
- (7) Failing to report, during the work shift in which an accident occurred, an accident which could have resulted in a testing decision; and
- (8) Failing to report to the specimen collection site timely after being informed of the requirement to be tested.
- F. <u>Giving False Information</u>. No employee shall give false information about a urine specimen or attempt to contaminate or alter the specimen.
- G. Refusal to Comply with Treatment Recommendations. No employee shall fail to comply with recommendations for treatment or after-care made by an M.R.O. or S.A.P. as a consequence of a prior positive drug or alcohol test result.
- H. <u>Failure to Notify Government of Conviction</u>. No employee shall fail to notify the Director of Personnel Management of any criminal drug statute conviction, within five (5) days of such conviction, if the violation of the criminal drug statute occurred while the employee was conducting Commonwealth business, or while on or using Commonwealth property.
- I. <u>Supervisor's Responsibility for Confidentiality</u>. No manager or appointing authority shall knowingly disregard an employee's right to confidentiality in

matters relating to alcohol or drug testing or otherwise neglect his or her responsibilities under this sub-part.

V.C4 PENALTIES AND CONSEQUENCES

- A. <u>Disciplinary Action</u>. An employee committing any act prohibited by Part V.C3 shall be subject to an appropriate form of discipline, depending on the circumstances.
 - (1) Generally. Where an employee commits any act prohibited by V.C3, without valid reason, the employee shall be disciplined up to and including removal. At a minimum, the employee shall receive a formal reprimand. If the prohibited act committed by the employee relates to the use or possession of alcohol or illegal drugs, the employee shall be referred to an S.A.P. for assessment and treatment.
 - (2) First offense, under the influence. An employee found to be under the influence of alcohol or illegal drugs in violation of Part V.C3(D), for a first offense, shall not be subject to removal solely for being under the influence of alcohol or illegal drugs. However, if the person is also involved in an accident, depending on the circumstances, the appointing authority may decide to initiate an adverse action for removal, even on a first offense.
 - (3) Serious offenses. The following acts, even for a first offense, will result in an immediate adverse action for removal in accordance with PSSRR, Part III.D2(J) and (M):
 - (a) The sale, purchase, possession with intent to deliver, or transfer of illegal drugs, or the attempt to sell, purchase or transfer illegal drugs in violation of V.C3(A);
 - (b) Being involved in an accident resulting in a fatality while under the influence of alcohol or illegal drugs, in violation of V.C3(D);
 - (c) While performing and about to perform duties in a safety sensitive position, being under the influence of alcohol or illegal drugs, in violation of V.C3(D);
 - (d) An unexcused refusal to be tested, in violation of V.C3(E);
 - (e) Giving false information, contaminating or attempting to contaminate a urine sample, in violation of V.C3(F);
 - (f) Failing to notify the proper authority of conviction for a drug offense in violation of V.C3(H);

- (g) Testing positive for alcohol or illegal drugs within five years of a prior positive test; and
- (h) Breaching any term of a Return to Duty Contract executed under the provisions of Part V.C5(B).
- B. <u>Information Concerning Treatment Options</u>. Those employees not removed from government service after committing any act prohibited by Part V.C3 shall be informed of resources available for evaluating and resolving problems associated with the use of alcohol and illegal drugs. At a minimum, the Office of Personnel Management's Alcohol and Drug Free Workplace Coordinator shall give the names, addresses, and telephone numbers of local S.A.P.s and substance abuse counseling or treatment programs. The employees will then be required to fulfill all the specified steps of treatment before being considered ready for return to duty.
- C. Report to Department of Public Safety. An employee committing any act prohibited by V.C3.A or V.C3.B shall be reported, by the appointing authority, to the Department of Public Safety for the purpose of possible criminal prosecution.
- D. Duty/Pay Status Pending Adverse Action. Unless the employee was involved in an accident resulting in a fatality, an employee subject to an adverse action for committing any act prohibited by Part V.C3, except for V.C3(g), shall be allowed to remain on the job pending resolution of any proposed adverse action but shall not be allowed to perform a safety-sensitive function, even if that means assigning to the employee duties the employee would not otherwise be performing. An employee subject to an adverse action for committing any act prohibited by Part V.C3 who was involved in a fatal accident shall be placed on leave without pay pending resolution of the adverse action for removal.

V.C5 RETURN TO WORK PROCEDURES

- A. <u>Prerequisites to Returning to Duty</u>. No employee who has tested positive for the presence of alcohol or illegal drugs shall be allowed to return to work until the employee has:
 - (1) Complied with treatment recommendations of an M.R.O. or S.A.P. and been released for work by an S.A.P. in consultation, when appropriate, with the M.R.O. or a consulting physician;
 - (2) Tested negative in a subsequent test paid for by the employee for the presence of alcohol, if the removal from duty was due to alcohol use; or cocaine, marijuana, opiates, amphetamines, and phencyclidine, if the removal from duty was due to drug use; and
 - (3) Agreed to execute a Return to Duty Contract.

- B. Return to Duty Contract. The Return to Duty Contract shall include the following provisions:
 - (1) Aftercare. An agreement to comply with aftercare and follow-up treatment recommendations for one to five (1-5) years, as determined appropriate by the employee's S.A.P.;
 - (2) Follow-up testing. An agreement to unannounced alcohol or drug testing, depending on the substance which resulted in the removal from duty, paid for by the employee, for one (1) to five (5) years, as determined appropriate by the employee's S.A.P., but there shall be no fewer than six (6) tests in the first year after the employee returns to work;
 - (3) Compliance with rules. An agreement to comply with government rules, policies, and procedures relating to employment;
 - (4) Term. An agreement that the terms of the contract are effective for five years after the employee's return to duty; and
 - (5) Breach of contract. An agreement that violation of the Return to Duty Contract is grounds for termination.

V.C6 <u>TESTING OCCASIONS</u>

- A. Pre-Employment Testing. At the time of application, persons applying for any position within the Civil Service will be notified that any offer of employment is contingent upon a negative urine test. After receiving an offer of employment, the candidate shall be tested for the presence of cocaine, marijuana, opiates, amphetamines, and phencyclidine in the urine. The test shall be paid for by the candidate. Testing shall be in compliance with Part V.C8, below. Applicants who were previously employed by the government and applicants who have had an offer for government employment withdrawn due to a previous positive urine test result, must also provide a written release of drug testing history for the two (2) years immediately preceding the application date.
 - (1) No new Civil Service candidate may be assigned to work in any position until he or she presents the results of a urine test, taken after the offer for employment has been made, that shows negative for the presence of cocaine, marijuana, opiates, amphetamines, and phencyclidine.
 - (2) If the candidate's test result is positive for the presence of a tested drug, without a legitimate explanation, the offer of employment will be withdrawn
 - (3) If the candidate presents a drug testing history showing a positive drug

test within two (2) years prior to the application date, the offer of employment will be withdrawn unless the candidate submits a Statement of Fitness for Duty and agrees to execute an agreement similar to a Return to Duty Contract described in Part V.C5(B).

- B. Reasonable Suspicion Testing. Where there is a reasonable suspicion that an employee is under the influence of alcohol or drugs while at work or about to begin work, he or she shall submit to a breath or urine test for the presence of alcohol, cocaine, marijuana, opiates, amphetamines, and phencyclidine, upon written notice from the employee's supervisor. Except as otherwise provided, the government shall pay for the testing.
 - (1) Properly trained supervisor. Only a supervisor with government-approved training in the physical, behavioral, and performance indicators of probable drug and alcohol use is permitted to make reasonable suspicion testing decisions.
 - (2) Objective inquiry. The properly trained supervisor will observe the employee suspected of being under the influence of alcohol or illegal drugs. A decision to request testing shall be based on eye witness reports, facts of the event, and observed physical and behavioral characteristics of the employee. Prior to making the decision to require testing, the supervisor will question the employee in a private area to ascertain whether there are any reasons other than alcohol or drug use for any behavior observed.
 - (3) Verification. No employee shall be required to submit to a drug or alcohol test based on reasonable suspicion unless the need for the test is verified by a second properly trained government employee. The required verification shall be done in person.
 - (4) Transportation assistance. The employee shall be accompanied to the collection site by a supervisor or manager, and shall be provided transportation home from the collection site. If the individual refuses and demands to drive his/her vehicle, the supervisor or manager shall notify the Department of Public Safety.
 - (5) Duty pending test results. Until the results of the drug and alcohol test are complete and verified, no employee tested based upon reasonable suspicion shall be allowed to perform or continue to perform a safety-sensitive duty.
 - (6) Report. The supervisor ordering reasonable suspicion testing shall put in writing, in detail, the facts leading to the decision. This report shall be

considered confidential and will be maintained in the employee's medical file, which is confidential, until needed for a disciplinary action. Only at that time will the report be filed in the employee's Official Personnel Folder.

- C. <u>Post-Accident Testing</u>. As soon as practical after an accident any employee whose action or inaction may have contributed to the accident must submit to breath and urine tests for the presence of alcohol, cocaine, marijuana, opiates, amphetamines, phencyclidine, upon written notice from the employee's supervisor. Except as otherwise provided, the government shall pay for the testing.
 - (1) Supervisor training. Only a supervisor with government-approved training in the physical, behavioral, and performance indicators of probable drug and alcohol use is permitted to make post-accident testing decisions.
 - (2) Objective inquiry. A supervisor's decision to request testing shall be based on eye witness reports, facts of the event, and observed physical and behavioral characteristics of the employee. Specifically, the properly trained supervisor shall require the driver of any government vehicle or the operator of any government equipment involved in the accident to be tested.
 - (3) Transportation assistance. The employee shall be accompanied to the collection site by a supervisor or manager, and shall be provided transportation home from the collection site. If the individual refuses and demands to drive his/her vehicle, the supervisor or manager shall notify the Department of Public Safety.
 - (4) Duty pending test results. Until the results of the drug and alcohol test are complete and verified, no employee reasonably suspected of having been under the influence of alcohol or drugs at the time of the accident shall be allowed to perform or continue to perform a safety-sensitive duty.
 - (5) Report. The supervisor ordering post-accident testing shall put in writing, in detail, the facts leading to the decision. This report shall be considered confidential and will be maintained in the employee's medical file, which is confidential, until needed for a disciplinary action. Only at that time will the report be filed in the employee's Official Personnel Folder.
- D. Random Testing. During each calendar year randomly selected employees performing safety-sensitive functions will be required to submit to breath tests for alcohol and urine tests for cocaine, marijuana, opiates, amphetamines, and phencyclidine. The testing will be done during on-duty time. Except as

otherwise provided, the government shall pay for the testing.

- (1) Method of selection. Employees will be selected by a statistically valid method such as a random number table or computer-based random number generator that is matched with employee Social Security numbers, payroll identification numbers, or other comparable identifying numbers.
- (2) Number to be tested. No more than twenty-five percent (25%) of all employees performing safety-sensitive functions in each department or agency each year shall be required to submit to breath alcohol testing and no more than fifty percent (50%) shall be required to submit to urine testing. The actual percentage will be determined at the beginning of each fiscal year for each department or agency by the Office of Personnel Management's Alcohol and Drug Free Workplace Coordinator, in consultation with the appointing authority and the MRO after reviewing the department's or agency's prior positive testing rates, reasonable suspicion and post accident events, and referrals for service.

V.C7 COLLECTING AND TESTING BREATH SPECIMENS

- A. <u>Collection Site</u>. Breath specimens shall be collected only at a site approved by the Director of Personnel Management or at the scene of an accident if proper equipment and personnel can be made immediately available.
- B. <u>Collection Protocol</u>. Breath specimens shall be collected only by a B.A.T. trained in the collection of breath specimens at a course approved by the United States Department of Transportation in accordance with standard collection protocols as specified in 49 CFR, Part 40(C) "Procedures for Transportation Workplace Drug Testing Programs Alcohol Testing," except as otherwise provided in this section. However, the M.R.O. or a consulting physician, when requested, may assist in facilitating the collection for post-accident testing.
- C. <u>Confirming Test</u>. Breath specimens shall first be subjected to a screening test for alcohol. If that test indicates a probable breath alcohol concentration of 0.02 or greater, a second test, confirming the first and providing quantitative data of alcohol concentration, shall be performed. No alcohol test shall be considered positive unless both the screening test and the confirming test show a B.A.C. of 0.02 or greater.
- D. <u>Results.</u> The breath test results shall be transmitted by the B.A.T., in a manner to assure confidentiality, to the employee, to the employee's appointing authority, and to the Director of Personnel Management.
- E. <u>Confidentiality</u>. Other than as specified above, no person involved in the testing

- process shall release the results of breath tests to any other individual without a written release from the tested employee.
- F. <u>Invalid Test</u>. If the Director of Personnel Management determines the test is invalid, using the factors found at 49 CFR, Part 40.79, the test result shall be reported as negative.
- G. <u>Statistical Reporting</u>. The B.A.T. shall compile statistical data, that is not name-specific, related to testing results. The B.A.T. shall release the statistical data to the Director of Personnel Management upon request.

V.C8 COLLECTING AND TESTING URINE SPECIMENS

- A. <u>Collection Site</u>. Urine specimens shall be collected only at a site approved by an appropriate government agency, and identified by the Director of Personnel Management.
- B. <u>Collection Protocol</u>. Urine specimens shall be collected by persons trained in the collection process developed by the Substance Abuse and Mental Health Service Administration, United States Department of Health and Human Services, in accordance with standard collection protocols as specified in 49 CFR, Part 40(B), "Procedures for Transportation Workplace Drug Testing Programs Drug Testing," except as otherwise provided in this section. However, the M.R.O. or a consulting physician, when requested, may assist in facilitating the collection for post-accident testing.

C. Splitting Sample.

- (1) After collecting a sample of the employee's urine, the sample will be split into two specimens. Both specimens will be shipped to the laboratory selected for performing tests for the government.
- One specimen, called the primary specimen, shall be tested for the government. The other specimen, called the secondary specimen, shall be the property of the employee, to be tested only upon request of the employee.
- D. <u>Confirming Test</u>. Primary urine specimens shall first be subjected to a screening test. Only if the screening test shows positive for the presence of a prohibited drug, will a second test be conducted on the same urine specimen to identify the presence of a specific drug or metabolite, using a gas chromatography/mass spectrometry (GC/MS) test. No drug test shall be considered positive unless both the screening test and the confirming test show the presence of one or more of the drugs tested for.

- E. Results. The laboratory conducting the urine test shall give the results only to the M.R.O. The M.R.O. shall discuss the test result with the tested individual.
- F. <u>Invalid test</u>. If the M.R.O. decides that the test is invalid, the candidate shall immediately submit another urine specimen for testing.
- G. <u>Employee Test</u>. If the government's test shows positive for the presence of a specific drug or drugs, the employee may request that the M.R.O. have the secondary specimen tested at another laboratory certified by the United States Department of Health and Human Services, for the presence of the drug or drugs found in the primary specimen.
 - (1) The employee must make the request in writing, within 72 hours of receiving notice of the result of the government's test.
 - (2) The results of the second test shall be given to the M.R.O. who shall discuss the result with the employee.
 - (3) The employee shall pay for the cost of the second test.
- H. Alternative Explanations for Positive Test Results.
 - (1) Upon receiving a report of a positive test result, the M.R.O. shall determine if there is any alternative medical explanation for the result, including the use of prescribed medication by the employee. Such a determination shall be based on information received from the employee such as the tested individual's medical history and records. If the M.R.O. determines it to be necessary he or she may request pertinent analytical records from the laboratory or require a re-analysis of the specimen.
 - (2) The M.R.O. shall report the urine test result as negative and shall take no further action if he or she determines:
 - (a) There is a legitimate medical explanation for a positive test result, other than the use of the specific drug; or
 - (b) Based on a review of laboratory inspection reports, quality assurance and quality control data, and other drug test results, the positive drug test result is scientifically insufficient for further action.
- I. <u>Illegal Use of Opium</u>. If the GC/MS does not confirm the presence of 6-monoacetylmorphine, the M.R.O. shall determine whether there is clinical evidence, in addition to the urine test result, of illegal use of any opium, opiate or opium derivative.

- J. Report to Government. The M.R.O. shall report all positive and negative urine drug test results, in a manner to assure confidentiality, to the employee's appointing authority, and to the Director of Personnel Management.
- K. <u>M.R.O.</u> and <u>Confidentiality</u>. Other than as specified above, the M.R.O. shall not release the results of drug tests to any other individual without a written release from the tested employee.
- L. <u>Statistical Reporting</u>. The M.R.O. shall compile statistical data, that is not name-specific, related to testing and rehabilitation. The M.R.O. shall release the statistical data to the Director of Personnel Management upon request.

V.C9 <u>EMPLOYEE AWARENESS AND REHABILITATION</u>

- A. <u>Employee Awareness Training</u>. All employees shall receive information concerning the effects and consequences of drug and alcohol use on personal health, safety, and the work environment; the manifestations and behavioral clues indicative of drug and alcohol use; and the resources available to the employee in evaluating and resolving problems associated with the use of illegal and legal drugs and alcohol.
- B. <u>Employees Seeking Voluntary Assistance</u>. Government employees shall be allowed to voluntarily seek assistance for alcohol or drug use at any time prior to being required to be tested under the reasonable suspicion, post-accident or random testing procedures.
 - (1) Referrals. Employees may request referral to an S.A.P. for treatment, may refer themselves, or may be referred by a supervisor as part of a performance counseling. Such referrals shall only be made a part of the employee's medical file and shall not be a part of the employee's Official Personnel Folder. Referrals shall be kept confidential.
 - (2) Voluntary referrals. Employees who voluntarily seek assistance in dealing with drug and alcohol problems or accept referrals, before job performance is compromised, shall be provided the same leave benefits for recommended treatment as provided for any other health problem.
 - (3) Accountability for job performance. Regardless of participation in or requests for referrals, employees shall be held accountable for acceptable job performance. In no case where job performance has been compromised will disciplinary action be waived for employees asking for assistance and referral. However, such requests may be considered a mitigating factor in determining the appropriate form of discipline.
- C. <u>Job Security Maintained</u>. Employees shall not have job security or promotional

- opportunities jeopardized solely because of a request for a drug or alcohol treatment referral.
- D. <u>Required Documentation</u>. Although voluntary referrals or referrals made prior to testing are kept strictly confidential, documentation of poor performance or disciplinary actions taken due to drug or alcohol abuse shall be included in the employee's Official Personnel Folder.

V.C10 <u>DISSEMINATING INFORMATION ON REGULATIONS</u>

- A. <u>Distribution to Employees</u>. All current employees shall receive a copy of these Regulations at least thirty (30) days before the implementation date. New employees hired after the effective date of this policy will be given a copy of this policy at the time of hire. Each employee shall sign a form prescribed by the Director of Personnel Management which acknowledges the receipt of the policy and the employee's understanding that he or she is bound by this policy. This acknowledgment shall be kept in the employee's Official Personnel Folder.
- B <u>Posting</u>. These regulations will be posted in all government workplaces for at least sixty (60) days following their implementation.

V.C11 RECORD RETENTION AND REPORTING REQUIREMENTS

- A. <u>Administrative Records</u>. Records relating to the administration of this policy, including policy and program development, employee awareness training, supervisory training, collection site training, program administration, and calibration documentation, shall be kept by the Director of Personnel Management and the M.R.O. for five years.
- B. Records Relating to Collection Process. Records relating to the breath and urine collection process shall be kept by the Director of Personnel Management, the M.R.O., and the specimen collector at the collection site for two years.
- C. Refusals, Referrals, and Test Results. The Director of Personnel Management shall keep a copy of all records of refusals to be tested, breath and urine test results, and referrals to an S.A.P. in the employee's medical file, not the employee's Official Personnel Folder, at least until such time as disciplinary action is taken. The M.R.O. shall keep a copy of all urine test results and the B.A.T. shall keep a copy of all breath test results in a manner to assure confidentiality. No test results shall be available for use in a criminal prosecution of the employee without the employee's consent.
 - (1) Positive test result records, records of refusals to be tested and referrals to an S.A.P. shall be kept for five (5) years.

- (2) Negative test result records shall be kept for a period of one (1) year.
- D. Report to Federal Contract Agency. To comply with the Drug Free Workplace Act of 1988, 41 U.S.C. §701(a)(1)(E), the Director of Personnel Management shall notify the federal contracting agency of the conviction of any employee for selling, manufacturing or dispensing any illegal drug on government business property or government time, within 10 days of the conviction.

SECTION III. AMENDMENTS TO RELATED REGULATIONS

III.B4 PRE-EMPLOYMENT CONDITION STANDARDS

All persons appointed to positions in the Personnel Service System must be examined by medical personnel (see Part III.B5) and certified as physically capable of performing the duties of the position. They must be free from communicable diseases and any present or potential medical condition which would be detrimental to the successful performance of duty or to the health of other employees, or reflect discredit upon the Personnel Service System. However, if a claim is made by a candidate or appointee that the condition constitutes a disability under the federal Americans with Disabilities Act (ADA), the provisions of that Act shall be followed, as applicable. Persons offered positions within the Civil Service must also submit to a urine test for the presence of drugs. See Part V.C6(A).

III.B5 ADMINISTRATION OF PHYSICAL AND MEDICAL EXAMINATIONS

Physical and medical examinations shall be administered by medical personnel authorized by the Commonwealth Government to conduct such examinations for employment purposes, and shall be recorded on forms prescribed by the Director of Personnel Management. Urine tests for candidates shall be conducted in accordance with Part V.C8.

Part III.D2(M): Procedure for Taking Adverse Actions.

(5) If at all practicable, the employee must be kept on active duty in the regular position during the notice period. In an emergency, however, the employee may be suspended during the advance notice period and placed on Leave Without Pay (LWOP) or, with the employee's consent, carried on annual leave. An employee whose adverse action is based on conduct prohibited by Part V.C3 shall not be allowed to perform any safety-sensitive functions. If there are no safety sensitive functions an employee can perform, an emergency exists and the employee must be placed on leave without pay. If an employee's adverse

action is based on conduct prohibited by Part V.C3 and the employee was involved in an injury-causing accident, the employee shall be placed on LWOP pending resolution of the proposed adverse action. See, Part V.C4(D).

Part V, Sub-Part B

EMOTIONAL AND MENTAL HEALTH [Change of Title]

V.B1 GENERAL

This sub-part deals with employee conduct and performance when outside influences, other than substance abuse, adversely affect employees effectiveness. The influences include, but are not limited to, the following:

Politics Family problems

Employee-Supervisor conflict Divorce

Employee-Employee conflict

Perceived personal crisis

Retirement crisis

Legal concerns

Financial problems

Death in the Family

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

- A. Recognize early signs indicative of personal problems;
- B. Deal in an appropriate manner with employees whose work is suffering because of personal problems; and
- C. Make employees aware of sources of help within the organization and the community.

This sub-part does not deal with substance abuse. See Part V, Sub-Part C, for the government's policy on creating an Alcohol and Drug Free Workplace.

V.B2. POLICY ON EMOTIONAL AND MENTAL HEALTH

As an employer, the government is concerned with any person or social situation which interferes with the individual employee's mental and physical well-being, or interferes with the efficient and safe performance of assigned duties, reduces dependability, or reflects discredit on the Personnel Service.

It is the government's policy to offer assistance through confidential counseling and referral guidance when indicated. This assistance includes but is not limited to such

areas as emotional problems, family and marital problems, indebtedness, interpersonal conflicts (employee-supervisor, employee-employee) and crisis situations, where it is determined by the employee or management that these problems adversely affect employee health and performance. Assistance available to employees voluntarily seeking help for substance abuse problems is described in Part V.C9. Sick leave, annual leave or leave without pay may be granted for approved programs of treatment, counseling or rehabilitation. The confidential nature of records in these cases will be maintained in the same manner as medical records.

V.B3 [Repealed]

V.B3 ACTION BY SUPERVISORS AND MANAGERS [Amended and renumbered]

- A. Supervisors and managers must be alert to indications of deteriorating performance on the part of employees under their supervision. Some of the indications which may occur are:
 - (1) A marked change in behavior. This may show up as emotional outburst, chronic irritability, excessive fatigue, or rule violations;
 - (2) Frequent short-term absences, notable the afternoon of pay day or the following Monday;
 - (3) Repeated accidents;
 - (4) Frequent complaints related to health;
 - (5) Chronic inability to get along with fellow employees; or
 - (6) Excessive problem drinking.
- B. Upon identification of presumed problems, the supervisor should approach the employee to determine the cause of performance change. Should an approach be rebuffed, which is likely, the supervisor should continue observation of the employee's performance, recording occurrences which tend to support the supervisor's feeling that the employee is troubled. If the conduct continues for a lengthy period, the supervisor must counsel with the employee and, if the employee is unresponsive, refer the matter to the Director of Personnel Management.

V.B4 <u>ACTION BY DIRECTOR OF PERSONNEL MANAGEMENT</u> [Amended and renumbered]

Upon referral of a case to the Director of Personnel Management by a supervisor, the Director of Personnel Management should contact the Department of Public Health for

assistance. Once arrangements for assistance have been made, the Director of Personnel Management should seek out the employee and counsel the employee to seek appropriate help. If the employee is agreeable, the Director of Personnel Management should notify the supervisor concerned so that arrangements can be made for the employee to seek help. If the employee is not agreeable, the Director of Personnel Management should advise the employee that if the unsatisfactory performance continues, disciplinary action may result.

V.B6 [Repealed]

V.B5 <u>FURTHER ACTIONS</u> [Amended and renumbered]

Should an employee's conduct and performance continue to deteriorate and the supervisor is convinced beyond a reasonable doubt that the cause is other than alcohol abuse or drug dependence, the supervisor should consult with the Director of Personnel Management. The Director of Personnel Management should then seek assistance from an appropriate practitioner at the Department of Public Health.

Once the availability of professional help has been arranged, the Director of Personnel Management should meet with the employee and candidly discuss the problem and offer to assist the employee in seeking professional help from the Department of Public Health.

The course of action to be taken after referral to professional attention depends on the professional recommendation given.

V.D <u>RESPONSIBILITIES OF EMPLOYEES AND MANAGEMENT</u> [Numbering change]

V.C14 [Repealed]

V.D14 Specific Types of Conduct [Numbering change]

V.D15 Community and Professional Activities [Numbering change]

XI.B3 RECORDS REQUIRED

- C. Medical Records. Medical examination forms and drug and alcohol test result forms for each employee shall be maintained in a file separate from the OPF. This is essential to protect the privacy of the individual. The records shall be maintained in a locked, fire resistant file with access allowed only to personnel authorized by the Director of Personnel Management. Access must be restricted only to persons who have a "need to know" as determined and approved by the Director of Personnel Management. Whenever access to a medical record is allowed, the Director of Personnel Management shall record:
 - date of access;

- 2. name of persons allowed such access; and
- 3. reason therefore.

This memorandum shall be kept in the folder of the individual medical record.

Part XI.B4 is amended to read:

XI.B4 <u>DISPOSITION OF RECORDS</u>

Upon the separation of an employee for whatever reason, the employee's Official Personnel Folder shall be closed and removed to storage. Prior to sending the file to storage, all temporary material filed on the left side of the folder shall be removed and either given to the employee or destroyed. Medical examination records and investigation file material shall be placed in the OPF so that the record is accurate and complete. Records of alcohol and drug test results shall be retained in the employee's medical file until the time period for retention, established at Part V.C11(C) has passed. At that time, the records shall be destroyed.



NORTHERN MARIANAS HOUSING CORPORATION

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234-7670

Fax: (670) 234-9021

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Plasido Tagabuel Director

MaryLou S. Ada Corporate Director

NOTICE AND CERTIFICATION OF ADOPTION OF RULES REGARDING DEFINITION OF A FIRST TIME HOMEOWNER

I, MaryLou S. Ada, Corporate Director of the Northern Marianas Housing Corporation, which is promulgating the Rules regarding the Definition of a First Time Homeowner as published in the Commonwealth Register Vol. 19, No. 9 on September 15th, 1997 at pages 15649 to 15656, by signature below hereby certify that as published such Rules are a true, complete and correct copy of the Rules regarding the Definition of a First Time Homeowner previously proposed by the NMHC which, after the expiration of appropriate time for public comment, have been adopted without modification or amendment. I further request and direct that this Notice and Certification of Adoption be published in the CNMI Commonwealth Register.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 30th day of October, 1997 at Saipan, Commonwealth of the Northern Mariana Islands.

SOELDAD В. Registrar of Corporations

Ada, Corporate Director Northern-Marianas Housing Corporation

Pursuant to 1 CMC 2153 as amended by PL 10-50 the rules and regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General's Office.

Assistant

NOVEMBERA 1Sttle 1997 NUMBER 11 PAGE 15781 COMMONWEALTH REGISTER VOLUME 19 "NMHC is an equal employment and fair housing public agency"

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Plasido Tagabuel

MaryLou S. Ada Corporate Director

NOTICE AND CERTIFICATION OF ADOPTION OF RULES REGARDING REVISIONS TO THE LOAN PROCESSING PROCEDURE

I, MaryLou S. Ada, Corporate Director of the Northern Marianas Housing Corporation, which is promulgating the Rules regarding the Revisions to the Loan Processing Procedure as published in the Commonwealth Register Vol. 19, No. 9 on September 15th, 1997 at pages 15656 to 15667, by signature below hereby certify that as published such Rules are a true, complete and correct copy of the Rules regarding the Revisions to the Loan Processing Procedure previously proposed by the NMHC which, after the expiration of appropriate time for public comment, have been adopted without modification or amendment. I further request and direct that this Notice and Certification of Adoption be published in the CNMI Commonwealth Register.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 30th day of October, 1997 at Saipan, Commonwealth of the Northern Mariana Islands.

Filed by SOLEDAD B. SASAMOTO
Registrar of Corporations

decorded by HERMAN T. GUERRERO Governor's Executive Assist. MaryLou S Ada, Corporate Director
Northern Marianas Housing Corporation

Pursuant to 1 CMC 2153 as amended by PL 10-50 the rules and regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General's Office.

Dated this 6th day of 600, 1997

By:

Assistant Attorney General Elliott A. Sattler

COMMONWEALTH REGISTER VOLUME 19 NUMBER 11 NOVEMBER 15, 1997 PAGE 15782 "NMHC is an equal employment and fair housing public agency"

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Plasido Tagabuel Director

MaryLou S. Ada Corporate Director

NOTICE AND CERTIFICATION OF ADOPTION OF RULES REGARDING REVISED PERSONNEL MANUAL

I, MaryLou S. Ada, Corporate Director of the Northern Marianas Housing Corporation, which is promulgating the Rules regarding the Revised Personnel Manual as published in the Commonwealth Register Vol. 19, No. 9 on September 15th, 1997 at pages 15668 to 15696, by signature below hereby certify that as published such Rules are a true, complete and correct copy of the Rules regarding the Revised Personnel Manual previously proposed by the NMHC which, after the expiration of appropriate time for public comment, have been adopted without modification or amendment. I further request and direct that this Notice and Certification of Adoption be published in the CNMI Commonwealth Register.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 30th day of October, 1997 at Saipan, Commonwealth of the Northern Mariana Islands.

Filed by SOLEDAD B. SASAMOTO
Registrar of Corp.

Mary Lou S. Ada, Corporate Director Northern Marianas Housing Corporation

Governor's Executive Assist.

Pursuant to 1 CMC 2153 as amended by PL 19-50 the rules and regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General's Office.

Dated this Cott day of NOV , 199 3

Ву: ___

Assistant Attorney General
Elliott A. Sattler

Robert B. Dunla

COMMONWEALTH REGISTER VOLUME 19 NUMBER 11 NOVEMBER 15 1997 PAGE 15783
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NOTICE OF PROPOSED RULES AND REGULATION OF THE TINIAN COCKFIGHTING BOARD OF DIRECTORS

The Tinian Cockfighting Board of Directors hereby notifies the general public of its intent to adopt Rules and Regulations. These Rules and Regulations are proposed and will be promulgated under the Tinian Cockfighting Act, 10 CMC § 2411 et seq. in accordance with the CNMI Administrative Procedures Act, 1 CMC § 9101, et seq.

Copies of the proposed Rules and Regulations are available at the office of the Tinian Cockfighting Board at the address set forth below.

The Board urges the public to submit in writing therein data, news, arguments, comments and recommendations regarding the above-mentioned Proposed Rules and Regulations within thirty (30) days after the publication of this notice in the Commonwealth Register. All written data, news, arguments, comments and recommendations should be submitted to the Board at the following address:

Tinian Cockfighting Board c/o Tinian Mayor's Office P. O. Box 59 San Jose Village Tinian, MP 96952

Dated this 15th of November, 1997.

Francisco B, Evangelista, Chairman

Tinian Cockfighting Board

Received at Governor' Office:

Filed:

Herman T. Guerrero

Governor's Executive Assistant

Soledad B. Sasamoto

Registrar of Corporations

NOTICIA NI' MA PROPOPONI I AREKGLAMENTU YAN AREKGLU GINEN I GURUPON DIRECTOT GAYERAN TINIAN

I Gurupon Direktot Gayeran Tinian man nana'i notisia gi henerat publiku pot i intension na para u ma'adopta i Areklamentu yan Areklu. Este na Areklamentu yan Areklu ma propoponi yan ma ababansa ginen i <u>Tinian Cockfighting Act, 10 CMC sub-section 2411 et seg.</u> ginen i fotmasion i <u>CNMI Administration Act, 1 CMC sub-section 9101 et seg.</u>

Kopia siha pot i maproponen i Areklamentu yan Areklu, guaha gi Ofisinan Gurupon Gayeran Tinian.

I Gurupu ha petdidika i publiku na u entrega gi tinige' na banda rinikohen infotmasion, notisia, agumentu, kommendasion yan rekommendasion pot i mapropoponen Areklamentu yan Areklu trenta (30) dias despues di ma publika este na notisia gi Commonwealth Register.

Todo i rinikohen infotmasion, notisia, agumentu, kommendasion yan rekommendasion u ma entrega gi Gurupu:

Tinian Cockfighting Board c/o Tinian Mayor's Office P.O. Box 59 San Jose Village Tinian, MP 96952

Dated this 15th of November, 1997.
Many
Francisco B. Evengellsta, Chairman Tinian Cockfighting Board

Received at the Governor's Office:

Filed:

By: ferma V. Suer

Herman T. Guerrero

Governor's Executive Assistant

Soledad B. Sasamoto

Registrar of Corporations

Konsisti gi 1 CMC sub-section 2153 ni ma amendi gi PL 10-50 gi Areklamentu yan Areklu ni' ma metton ya ma ribisa yan ma apreba gi sufisienti na fotmasion yan legat ginen i CNMI Ofisinan Henerat Abugao.

Dated this 15th day of November, 1997.

Robert B. Dunlap ll Attorney General (Acting)

By:

ELLIOTT A. SATTLER

Assistant Attorney General Elliot A. Sattler

NOTICIA NI' MA PROPOPONI I AREKGLAMENTU YAN AREKGLU GINEN I GURUPON DIRECTOT GAYERAN TINIAN

I Gurupon Direktot Gayeran Tinian man nana'i notisia gi henerat publiku pot i intension na para u ma'adopta i Areklamentu yan Areklu. Este na Areklamentu yan Areklu ma propoponi yan ma ababansa ginen i <u>Tinian Cockfighting Act, 10</u> <u>CMC sub-section 2411 et seg.</u> ginen i fotmasion i <u>CNMI Administration Act, 1</u> <u>CMC sub-section 9101 et seg.</u>

Kopia siha pot i maproponen i Areklamentu yan Areklu, guaha gi Ofisinan Gurupon Gayeran Tinian.

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Tinian Cockfighting Board c/o Tinian Mayor's Office P.O. Box 59 San Jose Village Tinian, MP 96952

Dated this 15th of November, 1997.

Francisco B. Evengelista, Chairman

Tinian Cockfighting Board

NOTICIA NI' MA PROPOPONI I AREKGLAMENTU YAN AREKGLU GINEN I GURUPON DIRECTOT GAYERAN TINIAN

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Tinian Cockfighting Board c/o Tinian Mayor's Office P.O. Box 59 San Jose Village Tinian, MP 96952

Francisco B. Evangelista, Chairman Tinian Cockfighting Board		
Received at the Governor's Office: By: Legy (1/15/97 Herman T. Guerrero Governor's Executive Assistant	By: Amelia M. Hallman Soledad B. Sasamoto Registrar of Corporations	
Konsisti gi 1 CMC sub-section 2153 ni ma amendi gi PL 10-50 gi Areklamentu		

Dated this 15th of November, 1997.

Robert B. Dunlap ll Attorney General (Acting)

By:

ELLIOTT A. SATTLER

Assistant Attorney General Elliot A. Sattler

PROPOSED RULES AND REGULATIONS FOR COCKFIGHTING IN THE SECOND SENATORIAL DISTRICT (TINIAN)

Pursuant to the powers vested in the Tinian Cockfighting Board of Directors (hereinafter the "Board") under the provisions of TLL 6-2 the "Tinian Cockfighting Act of 1988" (10 CMC § 2411 et seq. hereinafter "the Act") and the CNMI Administrative Procedure Act (1 CMC § 9101 et seq. hereinafter the APA) as each may be from time-to-time amended; in order to effectively carry out its functions and responsibilities, the following RULES AND REGULATIONS are hereby proposed:

Section 1. TITLE

These rules and regulations shall be known and may be cited as the "RULES AND REGULATION of the TINIAN COCKFIGHTING BOARD" of Directors (hereinafter RULES AND REGULATIONS).

Section 2. MEETING OF THE BOARD

- (A) <u>Regular Meetings</u> The Board shall hold its regular meeting once a month at a time. place and location to be determined by the Board.
- (B) <u>Special Meetings</u> Special meetings may be held either on call by the Chairman or upon request of a majority of the members of the Board at such place and time as the Board may set.
- (C) <u>Notice of Meetings</u> Notice of place and time of regular or special meeting shall be given according to the law including, but not limited to, the CNMI APA.
- (D) Quorum Two (2) members of the Board shall constitute a quorum at a regular or special meetings. A majority of the quorum is necessary for the Board to take any action on matters requiring Board approval.
- Section 3. DEFINITION OF TERMS As used in these RULES AND REGULATIONS, the following terms shall be understood, applied and construed as follows:
- (A) <u>Cockfighting</u> Means a cockfight or cockfighting held pursuant to a license issued by the Board and shall embrace and include the commonly known term "cockfight", "cockfighting" or "derby" or its equivalent.

- (B) <u>Cockpit</u> A properly enclosed premises or compound provided with one or more gates or doors for definite points of entrance and exit which facility is licensed pursuant to these RULES AND REGULATION for the holding of cockfighting, derby or its equivalent.
- (C) <u>Cockfight</u> The actual fight or physical combat of two (2) pitted or evenly-matched gamecocks, where bets on either side are, or may be, laid.
- (D) <u>International</u> <u>Derby</u> Means a cockfight promotion which accepts entries from within and outside the CNMI.
- (E) <u>National Derby</u> Means a cockfight promotion which accepts entries only from within the CNMI.
- (F) <u>Pit Manager</u> A person who professionally, or regularly manages a cockpit and/or cockfights therein. He may or may not be the owner of the cockpit.
- (G) Referee A person who watches and oversees the progress of the cockfight and decides its result by announcing the winner or declaring a draw or a nocontest.
- (H) Bet Manager A person who calls and takes care of bets from the owners of both gamecocks and those of other bettors before he or she orders commencement of the cockfight and, at the conclusion of each cockfight, distributes winning bets to the winners after deducting a certain commission which commission shall not exceed an amount set by the Board in terms of either dollars or percentage of the bet.
- (I) Bet Taker A person who participates in cockfights and with the use of money or other things of value, bets with other bettors or through other bet takers and wins or loses his bets depending upon the result of the cockfight as announced by the referee. A bet taken shall receive no commission for transaction in which they participated.
- (J) <u>Knife man</u> or <u>Gaffer</u> A person knowledgeable in the technique of arming fighting cocks with a slasher knifes or gaffs of either or both legs of the gamecock.
- (K) <u>Handler</u> A person who inside the arena takes physical custody and control of a pitted gamecock and who then physically releases the same for actual fight and combat in a cockfight.
- (L) <u>Promoter</u> A person licensed by the Board who is engaged in the convening, meeting, holding and celebration of all types of cockfighting, and specially programmed or arranged cockfighting including national derbies and international derbies of competitions.

- (M) <u>Gamecock</u> A domesticated fowl whether imported or locally bred, trained, conditioned for actual cockfighting or for propagation and breeding purposed for eventual use in cockfighting.
- (N) <u>Breeder</u> A person engaged in gamefowl breeding or propagation for personal or commercial purposes for eventual use in cockfighting.
- (O) <u>Cocker</u> A person who participates and bets on cockfighting as a sport, amusement, recreation or form of relaxation.
- (P) Zoning Law or Ordinance Any local or CNMI-wide legislation which in accordance with previously prescribed standards and guidelines logically arranges, prescribes, defines and apportions a defined area into specific land uses.
- (Q) <u>License</u> Any permit, or authorization issued by the Board to implement or carry out the requirements of either the Act or these RULES AND REGULATIONS.

Section 4. - OWNERSHIP OF COCKPITS

Pursuant to the terms an conditions of the Act the following persons or entitles may be licensed to own, operate or manage a cockpit.

- (A) An individual
- (B) A partnership or corporations licensed and authorized to do business in the CNMI.

Section 5. - NUMBER OF COCKPITS ALLOWED

Unless otherwise provided by the Act only one (1) cockpit shall be established, maintained or operated in Tinian with operation and management of the cockpit at the discretion of a successful franchise license holder as approval by the Board.

Section 6. - SITE AND CONSTRUCTION OF COCKPITS

Cockpits shall be constructed and operated within the appropriate areas as prescribed in zoning laws or ordinance. In the absence of such zoning laws or ordinance, no cockpit shall be established, maintained and/or operated within a radius of one hundred (100) lineal yards from any existing commercial area, hospital, school building, church or other public buildings. Cockpits may also be established within, and/or as an adjunct to resorts, sports and/or recreational project sites regardless of whether such location is within a radius of one hundred (100) lineal yards of any existing commercial area, hospital, school building, church or other public building. Approval or issuance of building permits for the construction of cockpits shall be made in accordance with applicable CNMI laws and these RULES AND REGULATIONS.

Section 7. - REQUIREMENT FOR LICENSING OF COCKPITS

The following requirement must be fully complied with before the Board will consider the issuance if a cockpit license.

- (A) New License Every application for new license to operate or to maintain a cockpit shall be submitted to the Board and accompanied by the following:
 - 1. The location and vicinity plan of the cockpit:
- 2. The cockpit building plan/design and a certification by the applicant or contractor to the effect that they constructed the cockpit by such approved plan/design in the area allowed by the zoning law/ordinance, or without a zoning law/ordinance, either a certification by the Tinian Mayor's Office or other equivalent proof acceptable to the Board to the effect that the location/site of the cockpit is not within a radius of one hundred (100) lineal yards from any existing commercial area, hospitals, school buildings, churches or other public buildings.
- 3. Official receipts showing payment of all taxes, fees and other levies due to the CNMI or Tinian Municipal government.
 - 4. Other information as required by the Board.

Section 8. - COCKFIGHTING OFFICIALS

The following cockfighting officials are required to register with an be licensed by the Board.

- A. Promoters, operators, general managers or hosts
- B. Pit managers
- C. Referees
- D. Bet managers
- E. Bet takers
- F. Knife man or Gaffers
- G. Cashiers, and
- H. Matchmakers

No person shall promote, operate or participate or officiate any cockfight herein authorized without first securing a license or certificate of registration from the Board which license or certificate shall be issued by the Board after the applicant submits to the Board any and all information required by the Board to establish that the applicant is suitable and qualified to hold the license or certificate for which he or she is applying. Any license or certificate of registration is renewable every year on or before January 31 of each calendar year. For cause the Board may pursuant to the procedures of the CNMI APA revoke or suspend any or all such licenses or certificates which they have issued.

Section 9. - PERMIT REQUIRED

(A) No cockfights shall be conducted on Tinian unless conducted by a licensee of the Board authorized by a permit from the Board. Application for such permits shall be filed with the Board at least thirty (30) days before the event. The owner/operator of the cockpit and licensee shall sign every application where such cockfights are to be conducted.

Section 10. - COMPLAINTS AND PROTESTS

The Board shall take cognizance of complaints or protests related to the operation and management of cockpits or the conduct of cockfights, and violations of the Act or these RULES AND REGULATIONS, which complaints or protests must be submitted in compliance with applicable CNMI laws including, but not limited to, the Act these RULES AND REGULATIONS and the CNMI APA.

Section 11. - OTHER PROHIBITED GAMBLING GAMES

Other than wagering on cockfights no gambling of any other kind shall be permitted upon the grounds of or within the premises of the cockpit.

Section 12. - STANDARD RULE GOVERNING COCKFIGHTING

To bring out uniformity in the management of cockpits and the conduct of cockpits, the Board may also prescribe and promulgate "STANDARD COCKFIGHTING RULES" for use in Tinian cockpit.

Section 13. - FORMS

The Board may prescribe such forms as may be necessary for it to carry out its functions.

Section 14. - BOOKS OF ACCOUNT AND RECORDS

Both promoters and cockpits are required to keep, in English only, one set of proper accurate books of account and records in connection with their operations. The

Board or its duly authorized representatives shall at all times have the power to inspect these books of account and records.

Section 15. - WAIVERS

The Board may, for good cause shall waive in writing one or more of the requirements of these Rules and Regulation.

Section 16. - MINORS PROHIBITED

No person under the age of eighteen years shall enter upon the grounds where the cockfighting arena is located or, under any circumstances, be present within the cockfighting arena or cockpit for a period of thirty (30) minutes before the first cockfight starts or thirty (30) minutes after the last cockfight concludes.

Section 17. - REPEALING CLAUSE

The RULES AND REGULATIONS shall repeal, revoke, and otherwise supersede the rules and regulations, if any there be, relating to cockfighting on Tinian.

Section 18. - EFFECTIVITY

The RULES AND REGULATIONS shall take effect upon publication and adoption in compliance with the CNMI APA. By signature below we do hereby certify that by the affirmative vote of the undersigned Members of the Board that the above PROPOSED RULES AND REGULATION were duly adopted and approved at the meeting of the Board held on the 15th day of September, 1997 at San Jose Village, Tinian.

FRANCISCO B. EVANGELISTA

CHAIRMAN

VICENTE & REYES

VICE-CHAIRMAN

AGNACIÓ A. CABRERA

SECRETARY

Pursuant to 1 CMC § 2153 as amended by PL 10-50 the Rules and Regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General's Office.

Dated this

Robert B. Dunlap II Attorney General (Actin

By:

Assistant Attorney General

Elliot A. Sattler