

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS  
SAIPAN, MARIANA ISLANDS

VOLUME 23 NUMBER 06



JUNE 19, 2001

---

**COMMONWEALTH**

**REGISTER**

---

---

# COMMONWEALTH REGISTER

VOLUME 23 NUMBER 06

JUNE 19, 2001

## TABLE OF CONTENTS

### PROPOSED RULES AND REGULATIONS:

Proposed Rules and Regulations Regarding the Qualifying Certificate Program Within the Commonwealth Development Authority. <b>COMMONWEALTH DEVELOPMENT AUTHORITY AND THE DIVISION OF REVENUE AND TAXATION, DEPARTMENT OF FINANCE.....</b>	<b>17906</b>
Proposed Amendment to the Regulations of the CNMI Medical Profession Licensing Board <b>CNMI MEDICAL LICENSING BOARD.....</b>	<b>17935</b>
Proposed Amendments to the Regulations of the Commonwealth of the Northern Mariana Islands Election Commission <b>COMMONWEALTH ELECTION COMMISSION.....</b>	<b>17939</b>
Proposed Amendments to repeal and Revise Board of Education Policies Regarding Curriculum, Instruction, Admission Services and Student Rights and Conduct <b>BOARD OF EDUCATION.....</b>	<b>17965</b>

### ADOPTED RULES AND REGULATIONS:

Adoption of Regulations for the Control of Public Funds under the Jurisdiction of the Commonwealth Ports Authority <b>COMMONWEALTH PORTS AUTHORITY.....</b>	<b>18080</b>
Notice and Certification of Adoption of the Northern Mariana Islands Harmful Substance Clean Up Regulations <b>DIVISION OF ENVIRONMENTAL QUALITY.....</b>	<b>18084</b>
Notice and Certification of Adoption of the Northern Mariana Islands Solid Waste Management Regulations <b>DIVISION OF ENVIRONMENTAL QUALITY.....</b>	<b>18088</b>

### APPOINTED:

Acting Registrar of Corporations <b>OFFICE OF THE GOVERNOR.....</b>	<b>18178</b>
--	--------------


COMMONWEALTH DEVELOPMENT AUTHORITY AND  
THE DIVISION OF REVENUE AND TAXATION,  
DEPARTMENT OF FINANCE  
PUBLIC NOTICE OF THE PROPOSED RULES AND REGULATIONS  
OF THE  
QUALIFYING CERTIFICATE PROGRAM  
WITHIN THE  
COMMONWEALTH DEVELOPMENT AUTHORITY

The Division of Revenue and Taxation of the Department of Finance and the Commonwealth Development Authority (CDA), of the Commonwealth of the Northern Mariana Islands hereby notify the general public of its intent to adopt the proposed Rules and Regulations of the Qualifying Certificate Program. These Rules and Regulations are promulgated under Public 12-32, and in accordance with the Administrative Procedures Act, 1 CMC §9101, et.seq.

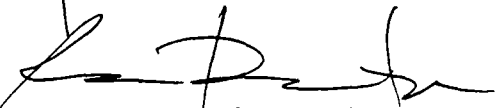
Copies of the proposed Qualifying Certificate Program Rules and Regulations are available at the office of the Commonwealth Development Authority, Gualo Rai, Saipan, MP 96950.


The Executive Director of the Commonwealth Development Authority and the Director of Revenue and Taxation, Department of Finance urge the general public to submit written comments and recommendations regarding the above-mentioned Rules and Regulations within thirty (30) days after the publication of this notice in the Commonwealth Register. Comments on the proposed Rules and Regulations may be sent to the Executive Director of the Commonwealth Development Authority, P. O. Box 502149, Saipan, MP 96950 or by e-mail at [cda@itecnmi.com](mailto:cda@itecnmi.com).

Dated this 14<sup>th</sup> day of June, 2001.

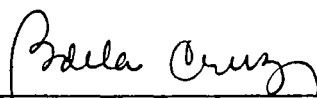
  
\_\_\_\_\_  
Juan S. Tenorio, Chairman

  
\_\_\_\_\_  
MaryLou S. Ada, Executive Director

  
\_\_\_\_\_  
Ronald T. Benavente, Acting Director  
Division of Revenue & Taxation

Received by:   
\_\_\_\_\_  
Jose I. Deleon Guerrero  
Special Assistant for Administration

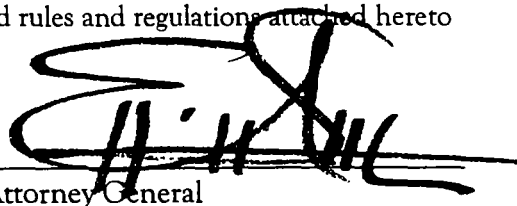
06/14/01  
\_\_\_\_\_  
Date

Filed and Recorded  
By:   
for Soledad B. Sasamoto, Registrar of Corporations

6/18/01  
\_\_\_\_\_  
Date

Pursuant to 1 CMC § 2153, as amended by P.L. 10-50, the proposed rules and regulations attached hereto have been reviewed and approved by the CNMI Attorney General.

Dated this 14<sup>th</sup> day of June, 2001.

  
\_\_\_\_\_  
Attorney General

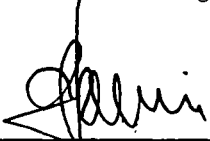
COMMONWEALTH DEVELOPMENT AUTHORITY YAN  
DIBISION REVENUE YAN TAXATION,  
DIPATTAMENTON FAINASIASAT  
NUTISIAN PUPBLIKU PUT PRINIPONEN AREKLAMENTO YAN REGULASION  
GI  
PROGRAMAN SETTIFIKUN KUALIFIKAO  
HALOM  
COMMONWEALTH DEVELOPMENT AUTHORITY

I Dibision Revenue yan Taxation gi Depattamenton Fainasiat yan Commonwealth Development Authority (CDA), Commonwealth i Sumangkattan Siha na Islas Marianas ginen este man 'na 'e nutisia para i pupbliku henerat put i intension-ña para u adapta i priniponen Areklamento yan Regulasion Programan Settifikun Kualifikao. Este siha na Areklamento yan Regulasion manmafatinas sigun fuetsan Lai Pupliku 12-32, yan sigun i Administrative Procedure Act, 1 CMC pap seksiona 9101, et seq.

Kopian i mapropopone na Areklamento yan Regulasion Programan Settifikun Kualifikao guaha gi ofisinan Commonwealth Development Authority, Gualo Rai, Saipan, MP 96950.

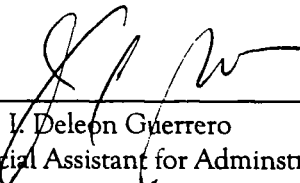
I Direktoran Eksekatibu para Commonwealth Development Authority yan i Direktot Revenue yan Taxation, Dipattamenton Fainasiat masosoyu' i pupbliku henerat para u fana 'halom komento yan rekomendasion gi tinige' put i sumanhilo' siha na Areklamento yan Regulasion ya u masatmiti halom trenta (30) dias despues di mapupblika este na nutisia gi Rehistran Commonwealth. Todu komento put i priniponen Areklamento yan Regulasion siña ha manahanao guato para i Direktoran Commonwealth Development Authority, P. O. Box 502149, Saipan, MP 96950 osino gi e-mail [cda@itecnmi.com](mailto:cda@itecnmi.com).

Ma fecha guine gi mina Kattotse na dia, este na mes Hunio, 2001.

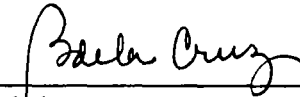
  
\_\_\_\_\_  
Juan S. Tenorio, Chairman

  
\_\_\_\_\_  
MaryLou S. Ada, Direktoran Eksekatibu

  
\_\_\_\_\_  
Ronald T. Benavente, Tahguen Direktot Revenue yan Taxation

Rinisibi as:   
\_\_\_\_\_  
Jose L. Deleon Guerrero  
Special Assistant for Administration

06/14/01  
\_\_\_\_\_  
Fecha

Ma file  
yan rinekod as:   
\_\_\_\_\_  
Soledad B. Sasamoto  
Rehistradoran Kotporasion

6/18/01  
\_\_\_\_\_  
Fecha

Sigun 1 CMC papa seksiona 2153, ni inamenda ni Lau Pupbliku 10-50, I mapropopone siha na areklamento yan regulasion ni chechetton guine esta manmaribisa yan apreba ginen Ofisinan Abugadun Henerat giya CNMI.

Ma fecha guine gi mina Kattotse na dia, este na mes Hunio, 2001.

/S/ ELLIOT SATTLER

Herbert D. Soll  
Abugadun Henerat

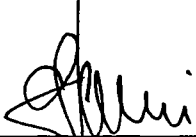
COMMONWEALTH DEVELOPMENT AUTHORITY ME  
DIVISION OF REVENUE AND TAXATION BWULASIYOL FINANCE  
ARONGORONGOL TOULAP REEL POMWOL FFÉÉRÚL ALLÉGH  
REEL MILLE QUALIFYING CERTIFICATE PROGRAM  
MELLÓL  
COMMONWEALTH DEVELOPMENT AUTHORITY


Division of Revenue bwal Taxation mellól Bwulasiyol Finance me bwal Commonwealth Development Authority (CDA) mewóól Commonwealth Metawal Wóól Falúwal Marianas ekke arongaar toulap reel igha e tipáli ebwe adopt li pomwol allégh kkaal reel mille Qualifying Certificate Program. Allégh kkaal a akkatééló faal aileéwal Alléghúl toulap ye 12-23 bwal ebwe ghol ngáli Administrative Procedures Act, 1 CMC subsection 9101, et. seq.

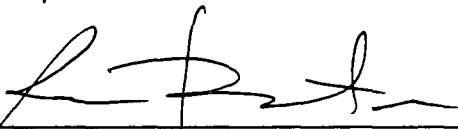
Copies reel pomwol allégh kkaal reel mille Qualifying Certificate Program nge eyoor reel Bwulasiyol Commonwealth Development Authority, iye e lo Amairaw Seipél, MP 96950.

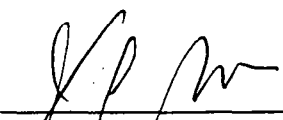
Executive Director mellól Commonwealth Development Authority bwal Director mellól Revenue me Taxation, Bwulasiyol Fiannce ekke amwescheliir toulap bwe rebwe ischilong yaar mángemáng me aisiis bwelle reel Allégh kka e apasal weiláng nge ebwe llól eliigh (30) rál mwiril toolongol arong yeel mereel Commonwealth Register. Mángemáng bwelle reel pomwol Allégh kkaal nge ebwe akkafáng ngáli Executive Director mellól Commonwealth Development Authority, P.O. Box 502149, Seipél MP 96950 ngare eew e-mail at [cda@itecnmi.com](mailto:cda@itecnmi.com).

E fféer llól Ráalil ye Seigh me faarál, Maramal Alimaté, 2001.

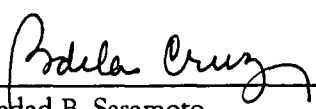
  
\_\_\_\_\_  
Juan S. Tenorio  
Chairman

  
\_\_\_\_\_  
MaryLou S. Ada  
Executive Director

  
\_\_\_\_\_  
Ronald T. Benavente, Acting Director  
Division of Revenue & Taxation

Bwughiyal:   
\_\_\_\_\_  
Jose I. Deleon Guerrero  
Special Assistant for Administration

Ral: 06/14/01

Isaliyal:   
\_\_\_\_\_  
Soledad B. Sasamoto  
Registrar of Corporation

Ral: 6/18/01

Sáangi 1CMC ss iye a lliwel mereel Alléghúl Toulap 10-05, pomwol allégh kkaa ikka e appash ngali nge  
attakkal amweri me alúghúlúg ló mereel Bwulasiyol CNMI Attorney General.

E fféer llól Ráálil ye Seigh me faarál, Maramal Alimaté, 2001.

/S/ ELLIOT SATTLER

Herbert D. Soll  
Attorney General

COMMONWEALTH DEVELOPMENT AUTHORITY  
AND THE DIVISION OF REVENUE & TAXATION,  
DEPARTMENT OF FINANCE  
PUBLIC NOTICE OF PROPOSED RULES AND REGULATIONS  
OF THE QUALIFYING CERTIFICATE PROGRAM  
WITHIN THE  
COMMONWEALTH DEVELOPMENT AUTHORITY

**Statutory Authority:** Pursuant to §3323, Public Law 12-32 and in accordance with the Administrative Procedure Act (1 CMC §9101, *et. Seq.*).

**Short Statement of**


**Goals and Objectives:** Public Law 12-32, titled "Investment Incentive Act of 2000" is a new chapter to Title 4, Division 2 of the Commonwealth Code to promote economic development in the Commonwealth by offering tax abatement and/or rebated incentives in exchange for the development of desirable facilities or activities. The purpose of this Public Notice is to implement the procedures outlined in this chapter.

**Brief Summary of the Proposed Rules and Regulations:** The proposed Qualifying Certificate Rules and Regulations governs the Qualifying Certificate Program to be administered by the Commonwealth Development Authority.


**Contact Person:** Interested parties may contact MaryLou S. Ada, Executive Director of the Commonwealth Development Authority at (670) 234-6245/7146/7145.

**Related or Affected Statutes, Regulations, and Orders:** None.

Date: June 14, 2001

  
MaryLou S. Ada, Executive Director  
Commonwealth Development Authority

Date: June 14, 2001

  
Ronald T. Benavente, Acting Director  
Division of Revenue & Taxation



**COMMONWEALTH DEVELOPMENT AUTHORITY  
AND THE DIVISION OF REVENUE AND TAXATION**

**CNMI QUALIFYING CERTIFICATE PROGRAM  
RULES AND REGULATIONS**

**TABLE OF CONTENTS**

<b><u>Chapter</u></b>		<b><u>Page No.</u></b>
I.	Authority and Definitions	1
II.	Administration of the Qualifying Certificate Program	5
III.	Additional Submission Requirements	6
IV.	Notice of Application, Public Hearing and Issuance	7
V.	Requirements of the Beneficiary	7
VI.	Tax Compliance by the Beneficiary	10
VII.	Certificate of Compliance	16
VIII.	Modification, Suspension, and Revocation	17
IX.	Review of the Application	19
X.	CDA Board Meeting on Application	20
XI.	Confidentiality	20
XII.	Amendments	20
XIII.	Effective Date	21

**RULES AND REGULATIONS  
CNMI QUALIFYING CERTIFICATE PROGRAM  
COMMONWEALTH DEVELOPMENT AUTHORITY  
AND THE DIVISION OF REVENUE AND TAXATION**

Pursuant to 4 CMC §3323, these rules and regulations are issued by the Director of Revenue and Taxation and by the Commonwealth Development Authority Board of Directors to assist in the implementation of the Investment Incentive Act of 2000, as amended (4 CMC §3301, *et seq.*).

**CHAPTER I. AUTHORITY AND DEFINITIONS**

**A. Authority.**

These rules and regulations are issued pursuant to 4 CMC §3323 and in accordance with the Administrative Procedures Act (1 CMC §9101, *et seq.*).

**B. Definitions.**

For purposes of these rules and regulations and the interpretation of the Investment Incentive Act of 2000 (4 CMC §3301, *et seq.*):

1. “Administrator” shall mean the Executive Director of the Commonwealth Development Authority.
2. “Aquarium” shall mean a place for the public exhibition of aquatic animals and plants capable of accommodating at least 500 people.
3. “CDA” shall mean the Commonwealth Development Authority.
4. “CDA Board or Board” shall mean the Board of Directors of the Commonwealth Development Authority.
5. “CNMI Based Airlines” shall mean commercial airlines whose primary hub is in the Commonwealth of the Northern Mariana Islands, including

the location of its repair and maintenance facilities, administrative offices and plane storage or hangar.

6. “Capital Investment” shall mean:
- (a) the actual money invested in the project for, excluding interest on any loan for:
    - (i) the acquisition of estate land, including improvements thereon, if any, within the Commonwealth;
    - (ii) cost of construction;
    - (iii) start-up costs to include the following:
      - (A) furniture and fixtures;
      - (B) salaries and miscellaneous personnel costs;
      - (C) machinery;
      - (D) equipment;
      - (E) inventory;
      - (F) supplies, and other expenses incurred in the development of the activity under a Qualifying Certificate.
  - (b) any funds paid to or in-kind contribution transferred to and accepted by the government as a public benefit contribution.
7. “Condominium” means a system of separate ownership of individual units in multiple-unit buildings used for dwelling.
8. “Convention Center” shall mean a building facility capable of accommodating a group of at least 500 people.

9. “Cultural Center” shall mean a place capable of accommodating an average daily crowd of at least 500 for the public exhibition of the social, artistic, and cultural expression peculiar to an island society.
10. “Dinner Theater” shall mean a restaurant that presents a show during or after dinner and is capable of accommodating seating for at least 300 people.
11. “Expansion” shall mean the extent or amount by which a building, project or activity is increased in dimension, size, volume, capacity or an increase in the number of locations or branches from which the Beneficiary conducts business. In no event, however, shall an event or a collection of events or action that was intended to qualify as an expansion be deemed an expansion if it does not result in a corresponding increase in commercial revenues, products or services, and employment that can be attributed to the purported expansion. The renovation of an existing building, project or activity does not qualify as an expansion except as provided in subsection 18 of this section.
12. “Franchise Restaurant” shall mean a restaurant that has been endowed or granted authority by a restaurant chain to use its name, trademarks, service marks and to distribute or sell its products.
13. “Golf Course” shall mean a professionally designed course consisting of at least eighteen (18) holes, a driving range, a pro shop, clubhouse, and practice putting green.
14. “High Technology Products” shall mean computer, bio-medical equipment, and electronic related goods.

15. “Immediate Family” shall mean a spouse, mother, father, stepfather, stepmother, brother, sister, natural and adopted child.
16. “Internet Related Businesses and/or Businesses Engaged in Internet Commerce” shall mean businesses engaged in internet commerce that promote and sell products online.
17. “Public Benefit Contributions” shall mean the donation of money or property to the CNMI Government that is beneficial to the general public, which is approved by CDA.
18. “Renovation” shall mean the modernization, reconstruction, remodeling, upgrading or substantial improvement of an existing building, project or activity which substantially increases the commercial potential of the building, project or activity.
19. “Resort Hotel” shall mean an establishment that provides transient lodging and includes: a private bathroom for each room; adequate air conditioning for each room; dining room/restaurant facility(ies); multi-use facility(ies) to serve as a banquet/meeting room or rooms; related shop facilities; and various recreational facilities such as swimming pools, tennis courts; etc.
20. “Special Events” shall mean events that attract wide international participation such as concerts, sporting events, conventions, and expositions.
21. “Theme Park” shall mean a commercially operated enterprise that offers rides, games, and other forms of family entertainment.
22. “Water Park” shall mean a recreational park or facility in which the primary functions are entertainment and activities using water.

**CHAPTER II. ADMINISTRATION OF THE QUALIFYING CERTIFICATE PROGRAM**

The Qualifying Certificate Program shall be administered by the Executive Director of CDA who shall for purposes herein be known as the Administrator.

**A. Duties and Responsibilities of the Administrator.**

Under the direction of the CDA Board, the Administrator shall have the following duties and responsibilities:

1. to accept applications for Qualifying Certificates and to complete initial review of such applications to check for compliance with the law and the submission requirements contained herein;
2. to reject applications that do not comply with the law or any requirements;
3. to organize, arrange and conduct the necessary public hearings as required by law or regulation; and
4. to do any other acts or take any other action deemed necessary by the CDA Board.

**B. Additional Duties and Responsibilities of the Administrator.**

In addition to his or her responsibility for the acceptance and review of applications, the Administrator shall also be responsible for the management and administration of the Qualifying Certificate compliance program and for the issuance of all Certificates of Compliance. The Administrator may delegate any of his or her initial or additional duties or responsibilities, including inspections, monitoring and reporting, to other CDA employees.

### **CHAPTER III. ADDITIONAL SUBMISSION REQUIREMENTS**

In addition to the submission requirements contained in the Act, each applicant shall complete and submit to the Administrator the following:

1. Current Balance Sheets of Stockholders/Corporation;
2. Any necessary business documents indicating: organization is in accordance with the laws of the CNMI; current business ownership information, percentages, investments and addresses; and acceptance and certification of the business organization by the appropriate agencies of the CNMI Government;
3. A CNMI Business License;
4. A Business Plan, including: Market Analysis; Direct/Indirect Impact to Industry and Community; Project Description; Company Portfolio with Goals and Objectives; Number of Employees; Employee Benefits Package; 20-Year Financial Plan, including: Income, Balance, and Cash Flow Statements and Financial Forecast and Assumptions;
5. Certified Maps showing project location and lot description; Certified Land Documents that establish the applicant's ownership interest in the land on which the applicant's project is or is to be located; if requested, a Current Title Report indicating that such ownership interest has not been transferred or limited in a manner that would prevent the project from proceeding or succeeding; and a Lease Agreement, if property is being leased;
6. An Economic Impact Study showing the importance of the proposed activities to the economy of the CNMI and to the official economic policies of the CNMI government;
7. Notarized Affidavit of Qualifying Certificate Applicant;

8. Release of Information Authorization;
9. And such other information as required by the Administrator or the CDA Board.

#### **CHAPTER IV. NOTICE OF APPLICATION, PUBLIC HEARING AND ISSUANCE**

##### **A. Notice of Application.**

Following submission of an application, the applicant shall cause to be published in a CNMI newspaper of general circulation, at the applicant's expense, a brief resume of the application in a form prescribed and approved by CDA.

##### **B. Notice of Public Hearing.**

Prior to the scheduled hearing date, CDA shall cause to be published in a CNMI newspaper of general circulation a notice of public hearing on the applicant's request for a Qualifying Certificate.

##### **C. Notice of Issuance.**

Upon issuance by the Governor of a Qualifying Certificate, the Beneficiary shall cause to be published in a CNMI newspaper of general circulation a notice of the Governor's approval and issuance of the Qualifying Certificate. The notice must be pre-approved by CDA and shall be published within five (5) days of issuance, once a week for two (2) consecutive weeks.

#### **CHAPTER V. REQUIREMENTS OF THE BENEFICIARY**

##### **A. Reports.**

1. Reports Prior to Commencement of Operations. No later than the last day of each month, the Beneficiary shall submit to the Administrator the following reports:



- a. A report on the status of construction, including whether construction has been delayed, and if so, the length of delay and reason for such delay;
- b. A report on the status of employee hiring and training, including the current number of employees; and
- c. A report on the status of any necessary equipment acquisition, and whether such acquisition, if delayed, will delay commencement of operation, and if so, the length of delay and the reason for such delay.

2. Reports After Commencement of Operations.

No later than the last day of the month following the end of the quarter, the Beneficiary shall submit to the Administrator the following reports:

- a. A report on the number of employees and total gross payroll broken down by managerial and non-managerial positions, with rates of pay, with identification of all employees not residents of the CNMI for the preceding quarter;
- b. A report on all purchases outside of the CNMI during the preceding quarter; and
- c. A report on employee training programs offered during the preceding quarter.

No later than forty-five (45) days after the end of the year, the Beneficiary shall submit to the Administrator the following reports:

- a. A report on public/community benefits provided during the preceding year;
- b. Non-audited financial statements for the preceding year; and

- c. A report on the overall benefits to the CNMI economy during the preceding year.

No later than ninety (90) days after the end of the year, Beneficiaries must submit to the Administrator audited financial statements for the preceding year.

The Beneficiary shall submit other reports as required by the Administrator.

**B. Goods Required to be Purchased Locally.**

1. Every Beneficiary is required to provide a report of any goods and merchandise purchased, or obtained for use within its business operation, outside the CNMI. The report shall set forth the price of goods or merchandise obtained, and a verifiable price of comparable goods or merchandise available for sale in the CNMI. If the goods or merchandise are not available in the CNMI, the Beneficiary shall provide such a statement in the report and shall include the date and vendor(s) surveyed for such goods or merchandise.
2. When determining the price of goods or merchandise bought outside the CNMI, the Beneficiary shall include in the actual cost of the goods or merchandise all costs associated in bringing the goods or merchandise into the CNMI such as, freight and handling, insurance, excise taxes (as computed even if not paid), etc.

**C. Inspections.**

Beneficiaries must adhere to the following inspection requirements:

1. Beneficiaries shall permit CDA to conduct on-site inspections as needed during the term of the Qualifying Certificate.

2. During the course of all inspections, the Beneficiary shall provide, for review, copies of all records and documents requested in order to determine:
  - (a) Adherence to these Rules and Regulations and to the Investment Incentive Act of 2000; and
  - (b) Adherence to the terms and conditions of the Qualifying Certificate.

## **CHAPTER VI. TAX COMPLIANCE BY THE BENEFICIARY**

### **A. General Requirements.**

Except as provided within the Investment Incentive Act of 2000 and these regulations, every Beneficiary is required to comply with all the tax laws of the Government of the Northern Mariana Islands.

### **B. Filing of Tax Returns.**

1. Every Beneficiary is required to file a tax return and shall file a return in accordance with the form prescribed by the Division of Revenue and Taxation; and
2. Tax returns are required to be filed on or before the due date as provided by CNMI tax laws.

### **C. Payment of Taxes.**

Taxes shown as due on a tax return which are required to be paid shall be paid within the time period prescribed by CNMI tax laws unless otherwise provided by the Qualifying Certificate or these regulations.

#### **1. Tax Abatement.**

- (a) In the case of a tax abatement granted to the Beneficiary pursuant to a Qualifying Certificate, the tax subject to abatement is not

required to be paid on the return but should be allowed as a provisional tax abatement. When the Beneficiary is issued a Certificate of Compliance by CDA and furnishes that certificate to the Director of Revenue and Taxation, and upon review of the tax return, the provisional tax abatement shall be made official and recorded by the Director of Revenue and Taxation and a certificate confirming the nature and amount of tax abated shall be issued to the Beneficiary within 180 days from the date of the filing of the tax return and receipt of a Certificate of Compliance.

- (b) Any remaining tax not subject to the Provisional Tax Abatement application of paragraph (a) of this subsection shall be paid in full within the time prescribed for filing and payment of taxes. Any tax required to be paid, and not paid within the prescribed time shall be subject to all penalty and interest charges.
- (c) Computation of Provisional Tax Abatement and Payment of Taxes.
  - (i) Provisional Tax Abatement means the portion of the computed tax liability that is to be abated pursuant to a contract entered into between the Beneficiary of a Qualifying Certificate and the CNMI Government. The Provisional Tax Abatement is computed by calculating the tax, and then multiplying the tax by the percentage of tax abatement specified within the Qualifying Certificate.
  - (ii) For purposes of paragraph (b), the remaining tax that is not subject to abatement shall be paid in full within the time prescribed for payment of tax. For example, a Beneficiary

receives a Qualifying Certificate abating 80% of gross revenue tax. The gross revenue earned for the first quarter is \$1,000,000. The normal tax on this gross revenue is \$50,000. Pursuant to subparagraph (i) of this paragraph, the taxpayer is allowed to take a Provisional Tax Abatement of \$40,000 (80% x \$50,000). Thus, the remaining \$10,000 (\$50,000 - \$40,000) must be paid in accordance with this subparagraph. In the case of 1<sup>st</sup> quarter return, such tax shall be paid no later than the last day of the month following the end of the quarter (most instances April 30).

- (d) Excise Tax Abatement. In the case of an excise tax abatement granted to the Beneficiary pursuant to a Qualifying Certificate, the abatement on such tax shall only be made after a Certificate of Compliance has been issued by CDA setting forth that the Beneficiary is entitled to the abatement of such excise taxes. However, the Beneficiary shall be allowed to claim a provisional abatement on such tax pending a Certificate of Compliance from CDA, provided that the Beneficiary furnishes the Director of Customs a copy of the Qualifying Certificate and a statement certifying that such goods being imported are covered under the tax abatement benefit of the Beneficiary's Qualifying Certificate.
- (e) Developer's Tax Abatement. In the case of a Developer's Tax abatement granted to the Beneficiary pursuant to a Qualifying Certificate, the abatement on such tax shall only be made after

CDA certifies that the Beneficiary's project has been completed and sets forth that the Beneficiary is entitled to the abatement of the Developer's Tax. However, the Beneficiary shall be allowed to claim a provisional abatement of tax pending a certification from CDA, provided that the Beneficiary furnishes the Secretary of Finance a copy of the Qualifying Certificate and a statement certifying that the development is covered under the tax abatement benefit of the Beneficiary's Qualifying Certificate.

2. Tax Rebate.

- (a) In the case of a tax rebate granted to the Beneficiary pursuant to a Qualifying Certificate, the tax subject to rebate is required to be paid on the return within the time period provided by CNMI laws. When the Beneficiary is issued a Certificate of Compliance by CDA and furnishes that certificate to the Director of Revenue and Taxation, and upon review of the tax return, the Director of Revenue and Taxation shall, within the normal rebate period, rebate to the Beneficiary the amount of tax paid pursuant to the Qualifying Certificate. For purposes of this paragraph, the normal rebate period is 180 days after the Division of Revenue and Taxation's receipt of the Certificate of Compliance from the Beneficiary.
- (b) Excise Tax Rebate. In the case of any excise tax rebate granted to the Beneficiary pursuant to a Qualifying Certificate, the rebate on such tax shall only be paid after a Certificate of Compliance has been issued by CDA setting forth that the Beneficiary is entitled to

the rebate of such excise taxes pursuant to the Qualifying Certificate. In the case of excise tax paid during the development period of the Beneficiary's activity, such taxes shall not be rebated until the completion of the development has been certified by CDA.

(c) **Developer's Tax Rebate.** In the case of a Developer's Tax rebate granted to the Beneficiary pursuant to a Qualifying Certificate, the Beneficiary is first required to pay such tax and the rebate on such tax shall only be made after CDA certifies that the Beneficiary's project has been completed and sets forth that the Beneficiary is entitled to the rebate of the Developer's Tax pursuant to the Qualifying Certificate.

(d) Any remaining tax not subject to application of paragraphs (a) through (c) of this subsection shall not be rebated.

3. **Penalty and other late charges.** Any tax required to be paid, and not paid within the prescribed time shall be subject to all penalty and interest charges.

**D. Rebate of NMTIT on Income from Sources Within the CNMI.**

1. In the case of a tax rebate granted to the Beneficiary pursuant to a Qualifying Certificate, the tax subject to rebate is required to be paid on the return within the time period provided by CNMI laws. When the Beneficiary is issued a Certificate of Compliance by CDA and furnishes that Certificate of Compliance to the Director of Revenue and Taxation, and upon review of the tax return, the Director of Revenue and Taxation shall within the normal period required by CNMI law, rebate to the

Beneficiary the amount of tax to be rebated. The rebate to the Beneficiary shall be the higher of the rebate granted in the Qualifying Certificate or the rebate provided under the NMTIT.

2. Any remaining tax not subject to application of subsection (1) of this section shall not be rebated, nor shall estimated tax penalty, as defined under the NMTIT, be rebated.

**E. Cap on Tax Incentives.**

The Cap on Tax Benefit shall be the amount and/or term of tax benefit specified within the Qualifying Certificate issued to the Beneficiary.

**F. Effect of Revocation , Suspension , or Voluntary Suspension of Tax Incentive Benefit.**

1. When a Qualifying Certificate has been suspended or revoked, the tax benefits afforded to the Beneficiary pursuant to the Qualifying Certificate shall cease, and all CNMI tax requirements shall then apply to the Beneficiary as if it was not eligible for the Qualifying Certificate.
2. Any provisional tax abatement previously allowed a Beneficiary during the revoked or suspended period shall be disallowed and the tax, if any, shall become due and payable to the CNMI Government within 30 days from the date of the revocation or suspension. Any tax not paid within the 30-day period shall be assessed all applicable late charges retroactive to the date when such tax payment was first required as if the Beneficiary was not eligible for a Qualifying Certificate. Any rebate granted under a Qualifying Certificate shall be disallowed and any rebate previously paid to the Beneficiary shall be due the CNMI Government and paid within 30 days from the date of revocation.



## **CHAPTER VII. CERTIFICATE OF COMPLIANCE**

### **A. Issuance.**

When it has been determined by CDA that the terms and conditions stipulated on the Qualifying Certificate have been fulfilled by the Beneficiary, the Administrator shall issue a Certificate of Compliance to the Beneficiary. The Administrator shall issue each Certificate of Compliance on or before the 31<sup>st</sup> of January of each year.

### **B. Non-Compliance.**

1. When there is a determination of non-compliance, CDA shall provide the Beneficiary a notice of intent not to issue a Certificate of Compliance and provide the Beneficiary the opportunity for a hearing in accordance with the provisions of the Administrative Procedures Act. Any request for a hearing must be made by the Beneficiary within fifteen (15) days of receipt of the notice.
2. In the event the Beneficiary is required to temporarily discontinue operations due to extenuating circumstances which are acceptable to the CDA Board, then the CDA Board may recommend to the Governor a “voluntary suspension” of the Qualifying Certificate for a period not to exceed one (1) year. If after the suspension period the Beneficiary is still unable to continue operations, the CDA Board may recommend revocation to the Governor or may accept a “voluntary surrender” of the Qualifying Certificate.

## **CHAPTER VIII. MODIFICATION, SUSPENSION, AND REVOCATION**

### **A. Grounds for Modification, Suspension, or Revocation.**

The CDA Board may recommend the modification, suspension, or revocation of a Qualifying Certificate for failure of the Beneficiary to comply with any of the terms or conditions contained therein or within these Rules and Regulations or the Investment Incentive Act of 2000.

### **B. Modification, Suspension or Revocation Procedure.**

1. Upon initial determination by the CDA Board that there may be grounds for modification, suspension or revocation of a Qualifying Certificate, the Administrator shall give the Beneficiary fifteen (15) days written notice of the opportunity for a hearing conducted in accordance with the provisions of the Administrative Procedures Act, 1 CMC §9101 *et seq.* The purpose of the hearing shall be to determine if there are sufficient grounds to modify, suspend or revoke the Beneficiary's Qualifying Certificate.
2. For purposes of the Administrative Procedures Act, a Qualifying Certificate shall be deemed a "license" and the recommendation of the CDA Board shall be deemed an "agency action" subject to direct jurisdictional review pursuant to 1 CMC §9112.
3. No recommendation for modification, suspension or revocation of a Qualifying Certificate shall be made to the Governor without notice in accordance with the Administrative Procedures Act and the opportunity for the Beneficiary to be heard before the CDA Board.
4. Any hearing requested by the Beneficiary pursuant to the Administrative Procedures Act shall be held and a recommendation be rendered within

forty-five (45) days of receipt of the request for hearing. The CDA Board shall either:

- (a) Dismiss the matter and direct the Administrator to issue the Certificate of Compliance;
  - (b) Recommend that the Governor suspend or revoke the Qualifying Certificate; or
  - (c) Recommend that the Qualifying Certificate be modified to address the particular failures or difficulties of the Beneficiary.
5. Any recommendations for modification, revocation or suspension submitted to the Governor shall be accompanied by a written memorandum containing the findings, conclusions, conditions, and recommendations of the CDA Board.
  6. Any recommendation forwarded to the Governor for modification, revocation or suspension not approved by the Governor within forty-five (45) calendar days shall be deemed disapproved on the forty-sixth (46<sup>th</sup>) day following such receipt.
  7. The CDA Board shall, at the same time as it forwards the recommendations to the Governor, also forward a copy of its recommendations for modification, revocation or suspension to the Director of Revenue and Taxation for his or her information.
  8. Upon modification, suspension or revocation of a Qualifying Certificate, CDA shall cause to be published in a CNMI newspaper of general circulation a notice of such modification, suspension or revocation.

**CHAPTER IX. REVIEW OF THE APPLICATION**

Upon the submission of a complete application:

1. The Administrator shall review the application for compliance.
2. The applicant shall cause to be published in a CNMI newspaper of general circulation, at the applicant's expense, a brief resume of the application.
3. CDA shall publish a notice of public hearing on the applicant's request for a Qualifying Certificate.
4. The Administrator shall conduct a public hearing and may hire any consultants and experts deemed necessary.
5. The CDA Board shall evaluate the application.
6. The CDA Board shall make its final recommendation to the Governor in the form of a written memorandum containing its specific findings. The written memorandum shall also contain all recommendations regarding terms or conditions of the tax benefits including, but not limited to, a cap on the amount of tax benefits, a public contribution requirement, or a requirement to purchase goods or services from CNMI vendors and businesses.
7. Upon issuance by the Governor of a Qualifying Certificate, the applicant shall cause to be published in a CNMI newspaper of general circulation a notice of the Governor's approval and issuance of the Qualifying Certificate.

**CHAPTER X. CDA BOARD MEETING ON APPLICATION**

**A. Director of the Division of Revenue and Taxation.**

The Director of Revenue and Taxation or his or her designee shall be present at all meetings where an application for a Qualifying Certificate is discussed.

**B. Appearance before the Administrator or the CDA Board.**

When deemed necessary by the Administrator or the CDA Board, the applicant may be required to appear before the Administrator or the CDA Board for the purpose of clarifying or amplifying representations made in the submitted application. Any failure of the applicant to comply with a request for an appearance is sufficient justification for the rejection of an application.

**CHAPTER XI. CONFIDENTIALITY**

No member of the CDA Board or employee of CDA who becomes privy to any confidential information, data figures, projections, estimates, customer lists, tax records, personnel history, accounting procedures, promotions or information otherwise privileged as a result of his or her official position with CDA shall reveal such information to any person, firm, corporation, or other entity outside the course of his or her official duties except on the direct authorization of the CDA Board, or its designee.

**CHAPTER XII. AMENDMENTS**

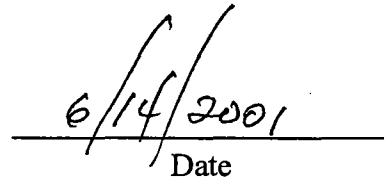
These Rules and Regulations may be amended from time to time upon approval of the CDA Board and the Director of Revenue and Taxation.

**CHAPTER XIII. EFFECTIVE DATE**

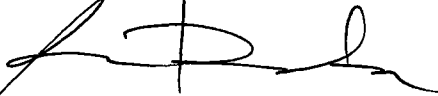
These Rules and Regulations shall be effective upon adoption and in accordance with 1 CMC §9105 (b).



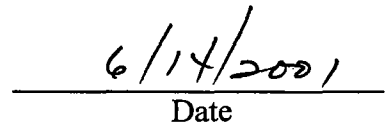
Juan S. Tenorio, Chairman  
CDA Board of Directors



6/14/2001  
Date



Ronald T. Benavente, Acting Director  
Revenue and Taxation



6/14/2001  
Date

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS  
OFFICE OF THE GOVERNOR

Caller Box 10007  
Saipan, MP 96950  
Tel. (670) 664-2280  
Fax. (670) 664-2211

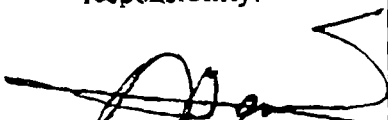
**MEMORANDUM**

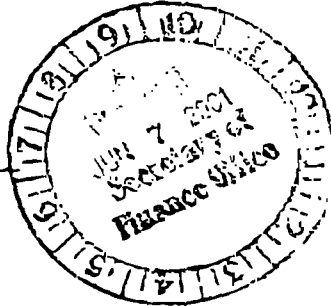
**Date:** 0 1 JUN 2001

**TO:** All Department and Activity Heads  
**FROM:** Governor  
**SUBJ.:** Acting Director of the Division of Revenue and Taxation

Effective June 7, 2001, Mr. Ronald Benavente is designated Acting Director of the Division of Revenue and Taxation within the Department of Finance.

Please extend your full cooperation and assistance to Mr. Benavente as he assumes this additional responsibility.

  
PEDRO P. TENORIO



# PUBLIC NOTICE

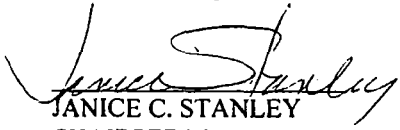
## PROPOSED AMENDMENT TO THE REGULATIONS OF THE CNMI MEDICAL PROFESSION LICENSING BOARD

Pursuant to the authority granted the Medical Profession Licensing Board by 1 CMC § 2605 and Public Law 11-40, and 3 CMC § 2214 (a) to promulgate rules and regulations for the licensing of medical professionals in the Commonwealth, the Medical Professional Licensing Board, acting through the Chairman on its behalf is proposing to repeal section 3.3 (b) page 16721 and section 3.4 (a) (3) page 16722 of the Rules and Regulations Governing the Importation, Sales and Distribution of Drug and Pharmaceutical Products in the Commonwealth Register Volume 21 Number 04, published April 19, 1999.

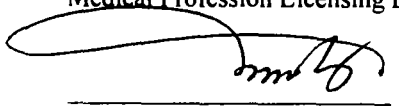
The regulations and the proposed change may be inspected at, and copies obtained from, the Medical Licensing Board office on Capital Hill. The Medical Licensing Board is soliciting comments on this proposed change in the regulations from the general public.

Anyone interested in commenting on this proposed change to the regulations may do so in writing addressed to the Medical Profession Licensing Board PO Box 501458 CK, Saipan MP 96950. Written comments may also be delivered to the Medical Profession Licensing Board office or faxed to (670) 664-4813. All comments must be received 30 days from the date of this notice is published in the Commonwealth Register.

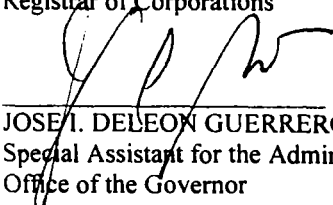
The Medical Profession Licensing Board intends to adopt this change to the regulations.

Certified By:   
JANICE C. STANLEY  
CHAIRPERSON  
Medical Profession Licensing Board

6/8/01  
DATE

Filed By:   
SOLEDAD B. SASAMOTO  
Registrar of Corporations

6/11/01  
DATE

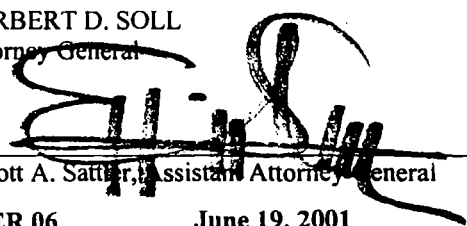
Received By:   
JOSE I. DELEON GUERRERO  
Special Assistant for the Administration  
Office of the Governor

06/14/01  
DATE

Pursuant to 1 CMC 2153, as amended by PL10-50, the change in the rules and regulations attached hereto have been reviewed and approved as to form and to legal sufficiency by the CNMI Attorney General Office.

Dated this 11<sup>th</sup> day of June, 2001

HERBERT D. SOLL  
Attorney General

  
Elliott A. Satter, Assistant Attorney General



# NUTISIAN PUPBLIKU


## I MAPROPONE SIHA NA AMENDASION GI REGULASION GI YA CNMI MEDICAL PROFESSION LICENSING BOARD

Sigun aturidat ni mana'e i Medical Profession Licensing Board ginen 1 CMC papa seksiona 2605 yan i pupbliku lai 11-40, yan ginen 3 CMC papa seksiona 2214 (a) para u fanmamatinas areklamento yan regulasion para i licensan profesinat pot medico giya Commonwealth, aksion entre chairman yan enkuenta ni ha propone para u madiroga i presente na regulasion seksiona 3.3 (b) gi pahina 16721 yan seksiona 3.4 (a) (3) gi pahina 16722 gi areklamento yan regulasion ni genebietbietna i Inpotasion i ma bendi yan ma patté i ámot yan todo kalasin amot siha gi Rehistran Commonwealth Baluma 21 numiru 04 mafecha Aprit 19, 1999.

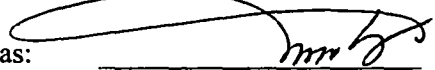
I manpropopone siha na regulasion sina ha manma ina yan fanule kopia gi ofisinan Medical Licensing Board giya Capital Hill. I Medical Licensing Board masosoyu komentu ginen i pupbliku para i priniponen este siha na regulasion.

Hayio interesao mamatinas komento put i manmapropopone siha na regulasion sina há ,atugé papa ya u ma adres guata para i Medical Licensing Board PO Box 501458 CK, Saipan, MP 96950. Todu i manmatugé siha na komento sina ha lokkué machulé guato gi ofisinan i Medical Licensing Board osino ma fax guatu guine na numiru i (670) 664-4813. Todo komento siha debi di u fanmarisibi halom trenta (30) dias despues di mapupblika huyong este na nutisia gi Rehistran Commonwealth.

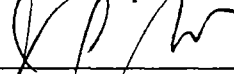
I Medical Profession Licensing Board ha' intensia para u adapta i matulaikan este na regulasion.

Sinettifika as:   
JANICE C STANLEY  
CHAIRMAN  
Medical Profession Licensing Board

6/8/01  
FECHA

Ma file as:   
SOLEDAD B. SASAMOTO  
Rehistradoran Kotporasion

6/11/01  
FECHA

Rinisibi as:   
JOSE I. DELEON GUERRERO  
Espisat na Ayudanten Administrasion  
Ofisinan Gubetno

06/18/01  
FECHA

Sigun 1 CMC 2153, ni inamenda ni Lai Publiku 10-50, i areklamento yan regulasion siha guine esta manmaribisa yan apreba ginen Ofisinan Abugadun Hinerat.

Ma Fecha guine gi mina 11 na dia Hunio, 2001.

Herbert D. Soll  
Abugado Henerat

15/  
Elliott Sattler, Assistant Attorney General

# PROPOSED AMENDMENT TO THE REGULATIONS OF THE MEDICAL PROFESSION LICENSING BOARD OF THE CNMI

**Statutory Authority:** 1 CMC § 2605 and Public Law 11-40, and 3 CMC § 2214 (a), which grants the Medical Profession Licensing Board the authority to draft rules and regulations for the orderly conduct of all aspects of the medical professions in the Commonwealth.

**Goals and Objectives:** The Commonwealth adopted rules and regulations governing the importation, storage, sales and distribution of drug and pharmaceutical products April 19, 1999. In the regulations Sections 3.3 and 3.4 are rules governing the licensure of pharmacists in the Commonwealth. Subsections 3.3 (b) and 3.4 (a) (3) state that a pharmacist applying for a license by reciprocity must have 2000 hours of practice as a licensed pharmacist within the last five years preceding the date of application. These subsections do not allow many qualified, new pharmacy graduates to apply for a license within the Commonwealth for at least the first year after graduation and licensure. It is felt that this does not benefit the Commonwealth or the profession of Pharmacy and is an unnecessarily restriction placed on recruitment of otherwise qualified personnel.

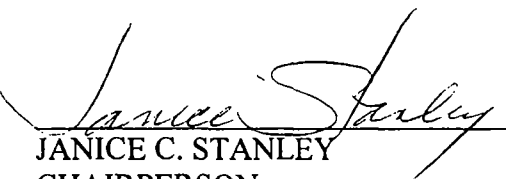
**Brief Summary of the Proposed Change:** It is therefore proposed to eliminate Section 3.3 (b) and Section 3.4, subsection (a) (3) from the Rules and Regulations governing the Importation, Storage, Sales and Distribution of Drug and Pharmaceuticals.

**Contact Person:** Interested parties with questions may contact Janice Stanley, Chairperson of the Medical Profession Licensing Board at (670) 323-5003. Written comments may be directed to the Medical Profession Licensing Board at PO Box 501458 CK, Saipan MP 96950, faxed to (670) 664-4813, or delivered to the Medical Licensing Board Office on Saipan, on Capital Hill, within 30 days of publication of these proposed rules and regulations.

**Related or Effect Statute, Regulations and Orders:** This proposed change would effect the Rules and Regulations governing the Importation, Storage, Sales and Distribution of Drug and Pharmaceutical Products Commonwealth Register Volume 21, No. 04 adopted April 19, 1999.

Dated: \_\_\_\_\_

*6/8/01*

  
JANICE C. STANLEY

CHAIRPERSON

Medical Profession Licensing Board

# PROPOSED AMENDMENT TO THE RULES AND REGULATIONS GOVERNING THE IMPORTATION, STORAGE, SALES AND DISTRIBUTION OF DRUGS AND PHARMACEUTICAL PRODUCTS

As set forth below in Section 3.3 Temporary License and Section 3.4 Application and Requirements for Pharmacist License by Reciprocity both will be amended to eliminate the requirement for two thousand hours practice as a licensed pharmacist within the last five years. This is further indicated by the strike through(s) below.

3.3 Temporary License. An application for a temporary license for pharmacist, which shall not exceed ninety (90) days or other time period approved by the Board, shall be made under oath and shall not be considered complete unless accompanied by the required documentation and application fee which shall not be refunded. Following a determination by the Board that the qualifications for admission listed above in Section 3.2 exist, a temporary license may be issued, provided the applicant:

- (a) Submits a photocopy of a current and valid license to practice pharmacy in another state of jurisdiction; and
- ~~(b) Submits evidence that the applicant has practiced for at least two thousand hours as a licensed pharmacist within the five years preceding the date of application.~~

## 3.4 Application and Requirements for Pharmacist License by Reciprocity

- (a) An application for licensure for a pharmacist by reciprocity shall be made under oath on forms provided by the Board and shall not be considered complete unless accompanied by the required documentation and fees, which shall not be refunded. The applicant shall:
  - (1) Submit evidence of current and valid licensure to practice pharmacy in another state or jurisdiction with qualifications which equal or exceed those of the CNMI as set forth in Section 3.2 of these Rules and Regulations;
  - (2) Submit information regarding any disciplinary action taken or any unresolved complaints pending against the applicant;
  - ~~(3) Submit evidence of having practiced for at least two thousand hours as a licensed pharmacist within the last five years preceding the date of application;~~
  - (4) Submit evidence that the applicant does not have an encumbered license or a pending disciplinary action or unresolved complaint in the practice of pharmacy in any state or territory of the United States, or if any license has been or is encumbered, the applicant shall provide any information requested by the Board;
  - (5) Disclose whether the applicant has ever submitted false or fraudulent material in connection with any application for the manufacture or distribution of any drugs;
  - (6) Disclose whether the applicant has ever had a license for the manufacture or distribution of any drugs, including controlled substances, suspended or revoked by the CNMI or Federal governments;
  - (7) Disclose whether the applicant has complied with all licensing requirements for previously issued licenses for the manufacture or distribution of drugs, including controlled substances;
  - (8) Disclose any other factors or criteria that the Board considers relevant and consistent with the public safety and welfare.

## PUBLIC NOTICE

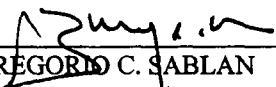
### PROPOSED AMENDMENTS TO THE REGULATIONS OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS ELECTION COMMISSION

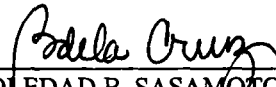
Pursuant to the authority granted the Election Commission by 1 CMC § 6105(PL 12-18) to promulgate rules and regulations regarding elections in the Commonwealth, the Election Commission, acting through its Executive Director and on its behalf is proposing these regulations which will regulate the disclosure of campaign contributions and campaign spending for all elections in the Commonwealth.


The proposed regulations may be inspected at, and copies obtained from, the Election Commission Office located at Building 1313 in Capitol Hill. These proposed regulations are also published in the Commonwealth Register. The Elections Commission is soliciting comments on these proposed regulations from the general public.

Anyone interested in commenting on these proposed regulations may do so in writing addressed to the Commonwealth Election Commission PO Box 500470, Saipan, MP 96950. Written comments may also be delivered to the Election Commission office or faxed to (670) 664-8689. All comments must be received in 30 days from the date this notice is published in the Commonwealth Register.

The Election Commission intends to adopt these regulations.

Certified By:  6/13/01  
GREGORIO C. SABLAN  
Executive Director  
Commonwealth Election  
Commission  
DATE

Filed By:  6/18/01  
for SOLEDAD B. SASAMOTO  
Registrar of Corporations  
DATE

Received by:  06/14/01  
JOSE A. DELEON GUERRERRO  
Special Assistant for Administration  
Office of the Governor  
DATE

Pursuant to 1 CMC § 2153, as amended by PL 10-50, the rules and regulations attached hereto have been reviewed and approved by the CNMI Attorney General.

Dated this 14<sup>th</sup> day of June 2001

HERBERT D. SOLL  
Attorney General

  
Elliott A. Battler  
Assistant Attorney General

**PROPOSED AMENDMENTS TO REGULATIONS OF THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS  
ELECTION COMMISSION**

**Statutory Authority:** 1 CMC § 6105 which grants the Election Commission the authority to draft rules and regulations for the orderly conduct of all aspects of elections in the Commonwealth.

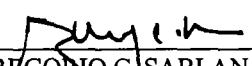
**Goals and Objectives:** The Commonwealth amended the Election Code in September of 2000, PL 12-18. That law created changes in the disclosure requirements regarding Campaign Finance. The purpose of these rules is to set up a uniform set of procedures for candidates to follow when disclosing contributions and campaign spending after an election. They provide detailed definitions for important terms in the law, that were previously undefined. It is the goal of the commission to assist candidates in meeting their disclosure requirements. These regulations provide suggested forms for a candidate to use which will fully comply with all disclosure requirements in the law.

**Brief Summary of the Proposed Rules:** These proposed rules are a compliment to the comprehensive Commonwealth Election Law that was passed in September of 2000. These regulations will greatly enhance a candidate's knowledge on how to comply with the Campaign Finance Disclosure requirements of the law. It accomplishes this by providing definitions of critical terms previously undefined in the law, such as "contributors, supporters, in-kind contributions and campaign spending." They also provide guidance to candidates regarding their obligations, and which contributors are required to be disclosed. They ban anonymous contributions and require all contributions to be reported regardless of the amount. They preclude a candidate from using campaign contributions for personal use, and provide assistance to candidates in filing the required Campaign Statement of Account. To accurately report all campaign contributions and spending a candidate may use the suggested forms which are included in the regulations. They may also use their own reporting format so long as the required information is disclosed. If expenses are proportioned among a group of candidates, they will allow for effective and fair reporting of those expenses. The regulations clarify a distinction regarding loans that a candidate may receive, but are unpaid at the time of reporting. Finally it establishes specific acts for a candidate to perform to establish reasonable diligence in disclosing all contributions from supporters so that they may accurately report campaign spending.

**Contact Person:** Interested parties with questions may contact Gregorio C. Sablan, Executive Director of the Election Commission at (670) 664-VOTE (8683). Written comments may be directed to the Election Commission at PO Box 500470 Saipan, MP 96950, faxed to (670) 664-8689 or delivered to the Commission's office on Saipan, Building 1313, Capitol Hill, within 30 days of publication of these proposed rules and regulations.

**Related or Effected Statutes, Regulations and Orders:** These proposed regulations would effect the comprehensive Election Law, 1 CMC § 6001- 6706, as well as the previous rules and regulations of the Election Commission as published in the Commonwealth Register Vol.23 No. 3, page 17724, March 22, 2001 and adopted in Vol. 23 No. 5, page 17854, May 24, 2001.

Dated: 6/13/01

  
\_\_\_\_\_  
GREGORIO C. SABLAN  
EXECUTIVE DIRECTOR  
Election Commission

# NUTISIAN PUPBLIKU


## MAPROPONEN AMEDASION GI REGULASION COMMONWEALTH I SUMANKATTAN SIHA NA ISLAS MARIANAS KUMISION ELEKSION

Sigun i aturidat ni ma entrega i Kumision Eleksion ginen 1 CMC papa Seksiona 6105(Lai Pupbliku 12-18) para u famatinas areklamento yan regulasion put eleksion gi Commonwealth, i Kumision Eleksion, entre i Direktot Eksekatibu yan enkuenta di guiya mapropopone este siha na regulasion ni para u maneha yan annok kontribusion campaign tanto gaston campaign para todo eleksion siha gi halom Commonwealth.

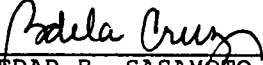
I mapropone siha na regulasion siña manma ina yan guaha lokkue' kopia siña manmachule' gi Ofisinan Eleksion gaige' gi Guma' Numiru 1313 giya Capitol Hill. Este siha na regulasion manma pupblika lokkue' gi Rehistran Commonwealth. I Kumision Eleksion masosoyo' i pupblika henerat para u fana'halom komento put i maproponen este siha na regulasion.

Hayi interesante mamatinas komento put maproponen regulasion siha, siña macho'gue gi tinige' yan adres guatu para i Commonwealth Kumision Eleksion P.O. Box 500470, Saipan, MP 96950. Todo u manmatuge' siha na komento siña ha' lokkue' machule' guato gi Ofisinan Kumision Eleksion osino fax guato guine na numiru i (670) 664-8689. Todo i komento debi di u fanmarisibi trenta (30) dias despues di mapublika este na nutisia gi Rehistran Commonwealth.

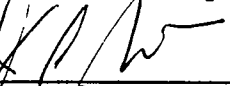
I Kumision Eleksion ha intensiona para u adapta este siha na regulasion.

Sinettefika as:   
GREGORIO C. SABLAN  
Direktot Eksekatibu  
Commonwealth Kumision Eleksion

6/13/01  
FECHA

Ma file as:   
SOLEDAD B. SASAMOTO  
Rehistradoran Kotporasion

6/18/01  
FECHA

Rinisibi as:   
Jose I. Deleon Guerrero  
Espisiat Na Ayudanten Administrasion  
Ofisinan Gubetno

06/14/01  
FECHA

Sigun 1 CMC papa seksiona 2153, ni inamenda ni Lai Pupbliku, i areklamento yan regulasion siha ni chechetton guine esta manmaribisa yan apreba ginen Ofisinan Abugadon Henerat gi CNMI.

Mafecha gi mina' 18 na dia, Huniu 2001

HERBERT D. SOLL  
Abugadon Henerat

/S/ ELLIOT SATTLER  
Elliott A. Sattler  
Assistant Attorney General

# ARONGORONGOL TOULAP

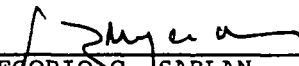
## POMWOL FFÉÉRÚL LLIIWEL MELLÓL AUTOL ALLÉGHÚL COMMONWEALTH FALÚW KKA MARIANAS BWULASIYOOL ELECTION COMMISSION

Reel bwáng ye re ngalleey Election Commission sáangi l CMC faal tálil ye 6105(Alléghúl Toulap 12-18) bwe ebwe fféér allégh reel elections mellól Commonwealth nge Election Commission, me Executive Director faal ital igha rekke pomwoli allégh kkaal iye ebwe abwááriló mwóghutughutul campaign contributions me qóstool reel alongal elections mellól Commonwealth.


Allégh kka re pomwoli nge emmwel schagh bwe rebwe ló amwuri fischiy, me bweibwogh kopiyaal me Bwulasiyool Election Commission Building 1313 iye elo Capitol Hill. Pomwol fféérúl allégh kkaal nge ebwal aorongowow llól Commonwealth Register. Bwulasiyool Election Commission nge ekke tingór ngáliir toulap bwe rebwe ischiitiw meta mángemángiir reel pomwol fféérúl allégh kkaal.

Aramas ye e tipáli bwe ebwe atotoolong mángemáng me tiip reel pomwol fféérúl allégh kkaal nge emmwel schagh bwe ebwe ischiitiw nge a afanga ngáli Bwulasiyool Commonwealth Election Commission P.O. Box 500470, Seipél MP 96950. Alongal mángemáng me tiip kka re ischiitiw nge emmwel schagh bwe repwal bwughiiló reel Bwulasiyool Election Commission ngare faxliiló reel numuro ye (670) 664-8689. Alongal mángemáng me tiip nge ebwe atotoolong llól eliigh (30) rál sáangi igha e rongoló arongorong yeel llól Commonwealth Register.

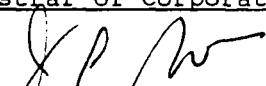
Election Commission nge a mángiyy fischiy bwe ebwe adoptli allégh kkaal.

Alléghúyal:   
GREGORIO C. SABLAN  
Executive Director  
Commonwealth Election Commission

6/13/01  
RAL

Isáliiyal:   
SOLEDAD B. SASAMOTO  
Registrar of Corporations

6/18/01  
RAL

Bwughiiyal:   
JOSE I. DELEON GUERRERO  
Special Assistant for Administration  
Office of the Governor

06/14/01  
RAL

Reel bwánil l CMC faal tálil 2153, igha e lliiwel sáangi Alléghúl Toulap 10-50, nge allégh kkaal a takkal mwir me angúungú sáangi Bwulasiyool CNMI Attorney General.

E fféér ráalil ye 18 maramal Alimaté 2001

HERBERT D. SOLL  
Attorney General

/S/ ELLIOT SATTLER  
Elliott A. Sattler  
Assistant Attorney General

**Proposed Amendments to the Regulations of the  
Commonwealth of the Northern Mariana Islands  
Election Commission**

**Section 1a    General Provisions**

Section 1.1a    **Authority.** The authority for the adoption and promulgation of the Commonwealth of the Northern Mariana Islands Election Commission Rules and Regulations is by virtue of the authority and directions set forth in 1 CMC §6000 et. seq. and the Commonwealth Administrative Procedures Act, 1 CMC §9101 et. seq.

Section 1.2a    **Purpose and Scope.** The purpose of these amendments is to further develop and clarify the Election Reform Act of 2000 by adopting rules and procedures regarding political campaign finance and spending disclosure. These amendments relate to the CNMI Election Commission Regulations, as published in the Commonwealth Register Vol. 23 No. 3, page 17724, March 22, 2001 and adopted Volume 23, No. 5, page 17854, May 24, 2001.

Section 1.3a    **Definitions.** Unless the context clearly requires a different interpretation, the following terms shall have the following meanings:

- (i)    “Aggregate” means the cumulative total fair market value of contributions received from one contributor or supporter, or the cumulative total fair market value of expenses and campaign spending for a particular type of expenditure.
- (ii)    “Campaign Spending” means all payments, obligations, or transfer of anything of value by a supporter, contributor, candidate, potential candidate, or anyone or anything in support of a campaign.
- (iii)    “Cash” means currency, coins, checks, credit or debit card charges, money orders, travelers checks, cashier’s check, bonds, stock certificates or any other form of monetary instrument commonly accepted in trade or business for the transaction of business or repayment of legal debts.
- (iv)    “Contributed Property” includes, but is not limited to, goods, tangible items, equipment, supplies, livestock, vehicles, objects or other items donated to a campaign, candidate, potential candidate, or committee with the intent to transfer ownership, and which once transferred will not be returned to the contributor or supporter after the campaign.



- (v) “Contributor” means any individual, corporation, political party, association, family trust, business, partnership, foreign national, political action committee, candidate, organization, group, committee, elected official, citizen, non-resident worker, or any other entity that provides money, property, advertising, independent expenditures, expendable goods or services, or anything else of value to a candidate, potential candidate, for that candidate’s campaign.
- (vi) “Detailed Financial Statement of Account” is the “Campaign Statement of Account” (as defined by 1 CMC § 6421(a)), including all necessary supporting details which relate to the candidate’s campaign financial activity.
- (vii) “Expenditures For The Operation Of A Permanent Political Party Headquarters” include expenditures such as rent, utilities, telephone service, furniture and furnishings, equipment and supplies, and salaries of political party headquarters staff.
- (viii) “Fair Market Value” means the value of goods and/or services received or expended by a candidate, potential candidate, measured by reasonable local community standards.
- (ix) “Fund-Raising Event” means any gathering, party, event, meeting, outing, raffle or other occasion intended or designed to encourage contributors and supporters to attend and make contributions for the benefit of a campaign, by buying tickets or otherwise making contributions which support a candidate, potential candidate, or their campaign.
- (x) “Independent Expenditure” means any payment, service, advertising, expense, expendable good or service, or anything else of value that any contributor or supporter directly incurs and pays for on behalf of a candidate, potential candidate, for purposes of benefitting or promoting that candidate’s campaign.
- (xi) “In-Kind Contributions” include, but are not limited to:
  1. expendable items: such as food, drinks, t-shirts, print-ads, banners, posters, lumber, construction materials, supplies or the like.
  2. the reasonable value of donated services such as: advertising, trucking, transportation, entertainment, tents or lodging, catering, or the like.
  3. the reasonable rental value of real or personal property loaned out or used for free, such as the use of buildings, computers, tents and canopies.

- (xii) "Personal Use" means a use that primarily furthers individual or family purposes not connected with the performance or activities as a candidate for or holder of a public office, and includes the personal use of an asset purchased with the contribution, and the personal use of any interest or other income or benefit earned from a contribution.
- (xiii) "Reasonable Diligence" means such a measure of prudence, activity or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent man under the particular circumstances.
- (xiv) "Supporters" include any individual, corporation, political party, association, family trust, business, partnership, foreign national, political action committee, candidate, organization, group, committee, elected official, citizen, non-resident worker, or any other entity that provides money, property, advertising, independent expenditures, expendable goods or services, or anything else of value to a candidate or potential candidate, for that candidate's campaign. Supporters can also be individuals who advocate the election of one or more candidates or approval or rejection of an issue on the ballot or otherwise support a campaign, but do not make a contribution.

NOTE: The previous regulations contained 10 Sections. These rules will add a new Section 11 to the regulations of the Election Commission which will provide for rules and procedures regarding Campaign Finance Disclosure consistent with the statutory requirements of the Election Reform Act of 2000.

## **Section 11 Campaign Finance Disclosure**

Section 11.1 Duties and Obligations of Candidates. Accurate, full and detailed campaign financial disclosure is ultimately the responsibility of the candidate for office. The candidate shall appoint a treasurer who may assist the candidate in order to fully comply with the law. The candidate shall keep a written record of all contributions from contributors and supporters, and all campaign expenses paid to insure full accountability of all campaign financial activity. This duty to keep a written record of all contributions and expenses begins at the time the first contribution is received or the first expenditure is made in furtherance of a potential candidate's campaign, no matter how far back in time that goes. The candidate shall insure that an accurate and detailed record of all contributor and supporter names and campaign expense details is maintained in order to comply with reporting requirements.

Section 11.2 Names and Identities of Contributors, Supporters and Expenses. A candidate shall disclose the names and identities of all contributors and supporters who contribute in the aggregate \$100 or more in cash or fair market value of property to a candidate, potential candidate, campaign or committee. A candidate or potential candidate is required to keep a written record of all contributions since a contributor or supporter may contribute less than a \$100 at one time, but make multiple contributions at different periods which, in the aggregate, may total \$100 or more.

Section 11.3 Anonymous Contributions Prohibited. Since candidates are required to identify the names of all contributors and supporters who contribute \$100 or more, acceptance of anonymous contributions of any amount is not allowed. Any such anonymous contribution must be immediately returned to the contributor or supporter. If the candidate receives a contribution that is non-traceable or non-identifiable, a candidate must immediately forward the contribution to the Commonwealth Treasurer for deposit to the Commonwealth general fund.

Section 11.4 All Contributions are Reportable. All contributions are required to be reported on the candidate's Campaign Statement of Account. If a candidate receives a contribution of less than \$100 from a contributor or supporter, then the amount of that contribution is required to be reported regardless of the amount, even though the name of the contributor need not be disclosed. The candidate must identify any contributor who has contributed \$100 or more in the aggregate. For example, if a contributor bought five \$20 raffle tickets at several fund raising events, the candidate must identify and report the name of the contributor in the Campaign Statement of Account. However, if such contributor bought less than \$100 in tickets during the campaign, the candidate would not be required to identify the contributor in the Campaign Statement of Account, but must still account for the contribution and post the amount received.

Section 11.5 Classifying Contributions. To assist in preparing the suggested forms and schedules, it is recommended that a candidate and the candidate's treasurer collect all contributions and place them in the following categories:

- (1) Gross proceeds from fund-raising events such as lunches, dinners, raffles, and similar fund-raising events.
- (2) Other monetary contributions received as direct monetary donations rather than as receipts generated from the sale of fund-raising tickets, lunches, dinners, etc.
- (3) In-kind contributions include:
  - (a) expendable items, such as food, drinks, t-shirts, print-ads, banners, posters, lumber, construction materials, and the like

- (b) reasonable value of donated services, i.e., advertising, trucking, transportation, entertainment, tents, lodging, catering, and the like.
  - (c) reasonable rental value of real or personal property loaned out or used for free, such as use of computers, tents, canopies, and the like.
- (4) Contributed property, such as computers, components and accessories, furniture, vehicles, tools, equipment, and the like given to a candidate with the intent of transferring the ownership to the candidate and allowing the candidate to retain or keep the property after the election.

Section 11.6 Classifying Expenses. To assist in preparing the suggested forms and schedules, it is recommended that a candidate and the candidate's treasurer collect all expenses and place them in the following categories:

1. Fund-raising expenditures (monetary) directly related to fund-raising events, such as the cost of food and drinks, printing of tickets, advertising, and the like.
2. In-kind expenditures, such as the fair market value of donated goods and services (shown as deductions from contributions received).
3. Multi-candidate expenses - expenses which have been allocated to various candidates and/or committees.
4. Contributions to other candidates or committees, such as transfer of campaign funds or property assets.
5. General expenditures - all other expenses not falling under the above classifications.

Section 11.7 Contributions are for Election Campaigns Only. All contributions from supporters are to be used for campaigns and election purposes only. Contributions are not to be used for personal use. If a candidate has campaign funds remaining after an election, he or she may retain those funds for a future election campaign, in a designated bank account identified on their Campaign Statement of Account. These funds may be used for legitimate purposes in future elections or campaigns. Nothing in this section shall prevent a candidate from using campaign funds for having one or more post-election meetings, rallies or parties.

Section 11.8 Campaign Statement of Account. All candidates are required to file an original and two copies of a Campaign Statement of Account with the Public Auditor, and provide a copy to the Election Commission (bearing the OPA stamp), within 50 days after the election. The Campaign Statement of Account may be delivered by certified mail as long as it is postmarked no later than the 50<sup>th</sup> day after the election. The Campaign Statement of Account shall be verified under oath by both the candidate and the candidate's treasurer. Such verification shall attest that

the candidate and treasurer have used all reasonable diligence in the preparation of the Statement and all supporting documents, and that the Statement is true, full and explicit. [Attached as Exhibit "A" to these regulations is the required "Campaign Statement of Account" form that candidates must use.] This form will be available at both the Public Auditor's office and the Election Commission office. The Statement shall include the names and contributions of contributors and supporters who make cash or in-kind contributions, consistent with the requirements of Section 11.4 above. It must also include a detailed statement of campaign spending. For campaign financial disclosure filing purposes only, candidates for Governor and Lt. Governor are considered one candidate, and are only required to file a single Statement of Account to be signed and verified by both individuals and their treasurer.

Section 11.9 Suggested Schedules and Reporting. In order to comply with the law, there is additional information that a candidate is required to report and disclose. Unlike the Campaign Statement of Account form, the law does not mandate particular forms to report and disclose this additional information. In order to assist candidates, the Public Auditor and the Commission will make available suggested schedules and reports to enable filers to comply with all other statutorily required reporting requirements.[Attached as Exhibit "B" are copies of the suggested schedules and reports].

Section 11.10 Fund-raising Activity Reporting. A candidate shall submit an itemized report for all fund-raising activities, which shall list the gross proceeds from fund-raising events, in-kind contributions received and contributed property. It shall also list fund-raising expenses, and allow for an adjustment of all in-kind contributions received. All candidates shall be required to report total receipts and total disbursements for all fund-raising activities.

Section 11.11 Contributions and Expenses From Fund-raising Events. Receipts or contributions from fund-raising events are reported on a "gross" basis. For example, in fund-raising events where tickets are sold, "contributions" would be reflected at their sales value rather than at the net proceeds of the event. Fund-raising expenses are those expenses incurred at a fund-raising event that are directly related to the event, such as the cost of food and drinks, printing of tickets, advertising, and the like.

Section 11.12 Multi-Candidate Apportionment and Reporting. A candidate must report contributions that are made for the benefit of more than one candidate. Where contributions and/or expenditures are made to benefit more than one candidate, each candidate benefitting shall report his or her equal and/or agreed upon share. For example, if a candidate's name and photo are advertised in a newspaper as

part of a group, then each candidate shall report the contribution or independent expenditure as an equal or agreed upon share of the cost of the advertisement. The requirements for multi-candidate apportionment are applicable to all groups of more than one candidate for expenses, independent expenditures, fund-raising events, rallies, meeting, gatherings, parties or any other event where expenses are incurred, and more than one candidate benefits from the event.

Section 11.13 General Contribution and Expense Reporting. All candidates are required to report all contributions, expenses and independent expenditures that are otherwise not related to fund-raising. These contributions and expenses must be listed separate and apart from the fund-raising event report. A candidate must report all receipts of general contributions to include monetary contributions from non-fund-raising events, in-kind contributions and contributed property received from their contributors and supporters. A candidate shall also report all expenses and independent expenditures such as general expenditures, contributions to other candidates and an adjustment for in-kind contributions received. All candidates are required to report total receipts and total disbursements that are not related to fund-raising.

Section 11.14 Contributed Property. Property contributions are reported at the fair market value of the contributions.

Section 11.15 Contributions To Other Candidates. A candidate is required to report all contributions, either cash, in-kind or donated property, that they make to other candidates. Regardless of whether they use their own personal funds or campaign committee funds.

Section 11.16 Loan Forgiveness. A candidate who received a loan from any contributor or supporter for the purpose of benefitting their election campaign shall report that loan as a contribution, if the loan was forgiven or otherwise not repaid in full by the date that the candidate is required to file his or her Campaign Statement of Account. If a partial payment has been made then the net amount forgiven shall be the value of the reported contribution.

Section 11.17 Interest Free Loans. A candidate shall report the value of the fair market interest rate on all interest free loans as a contribution, regardless of whether the loan has been repaid on the date that the candidate is required to file his or her Campaign Statement of Account.

Section 11.18 Extension of Deadline. A candidate may request a 15-day extension of time to file the Campaign Statement of Account, however a candidate will be fined a non-waivable \$100 penalty by the Commission for each day the financial report is late

unless the candidate has his or her deadline extension request approved by the Commission by the filing due date of the Campaign Statement of Account.

**Section 11.19** Acts to Establish All Reasonable Diligence. A candidate is required to use all reasonable diligence to discover and report all multi-candidate expenses and independent expenditures made directly by supporters and political parties on their behalf, or on behalf of “multi-candidates,” where the expense shall be apportioned. The following will establish all reasonable diligence:

1. Writing a letter of request to the supporter or political party.
2. Asking the supporter or political party in that letter what expenses were multi-candidate apportioned or what independent expenditures were made on his or her behalf.
3. If the supporter or political party responds, then the candidate must report what the supporter or political party expended on their behalf, and what portion was attributable to them where such independent expenditures were multi-candidate apportionments.
4. If no response is received from the letter, then either a telephone call or personal visit to the supporter or political party who made the multi-candidate apportionment or independent expenditure should be attempted.
5. If still no response is received, then after a reasonable time has elapsed, the candidate shall have met their reasonable diligence requirement so long as the information was requested within a reasonable time prior to the filing deadline. A candidate shall be required to provide a good faith estimate of all known multi-candidate expenses and independent expenditures, which shall clearly state that it is a good faith estimate. If the candidate subsequently becomes aware of the accurate multi-candidate expense or independent expenditure information after the filing deadline, the candidate must promptly, within 10 days, file an “amended” Campaign Statement of Account. Upon a showing of good cause by the candidate, no penalty will be assessed for an “amended” Campaign Statement of Account filed after the deadline and in accordance with this provision.

**Section 12** Severability. If any provision of these regulations shall be held invalid by a court of competent jurisdiction, the validity of the remainder of the regulations shall not be affected thereby.

**Section 13** Effective Date. These regulations shall take effect upon the Notice of Adoption and upon final publication in the Commonwealth Register.

# **EXHIBIT "A"**





COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
CAMPAIGN FINANCIAL DISCLOSURE

Report Type:
Final Report
Amendment

CAMPAIGN STATEMENT OF ACCOUNT
GENERAL ELECTION

IMPORTANT: FILE THIS REPORT NOT LATER THAN
FILE ORIGINAL AND TWO COPIES WITH THE OFFICE OF THE PUBLIC AUDITOR.

Candidate Name (Last Name, First Name, MI): Office Sought:
Treasurer Name (Last Name, First Name, MI): Preferred Mailing (P.O. Box) Address: Telephone:

SUMMARY OF RECEIPTS AND DISBURSEMENTS

This Campaign Statement of Account form is mandatory. Candidates may use the suggested reports and schedules furnished by the Election Commission, or they may use their own detailed formats. Should you use an alternative schedule format, you must provide, at a minimum, detailed information as required in the Act.

Table with columns: RECEIPTS, DISBURSEMENTS, NET RECEIPTS AND DISBURSEMENTS, CASH, IN-KIND. Rows include: 1. RECEIPTS FROM FUNDRAISING EVENTS, 2. MULTI-CANDIDATE CONTRIBUTIONS, 3. RECEIPTS FROM GENERAL CONTRIBUTIONS, 4. OTHER RECEIPTS, 5. TOTAL RECEIPTS, 6. DISBURSEMENTS FOR FUNDRAISING EVENTS, 7. MULTI-CANDIDATE EXPENSES, 8. DISBURSEMENTS FOR GENERAL EXPENDITURES, 9. OTHER DISBURSEMENTS, 10. TOTAL DISBURSEMENTS, NET RECEIPTS AND DISBURSEMENTS (Subtract Line 10 from Line 5).

VERIFICATION

Commonwealth of the Northern Mariana Islands )
Island of ) s.s.
I, (Candidate), being duly sworn on oath, depose and say:

That I am the individual named above; that I prepared the foregoing Campaign Statement of Account, that I have used all reasonable diligence in preparing this Statement, and that the contents thereof, including the contents of all supporting attachments, are a true, full and explicit accounting of all contributions received and expenses incurred in aid of the campaign. I understand that providing false information herein may subject me to civil and criminal penalties as provided by the Northern Mariana Islands Election Reform Act of 2000, 1 CMC §6428.

Signature of Candidate Date (Month, Day, Year)

Subscribed and sworn before me this of 200

Notary Stamp

Notary Seal

Commonwealth of the Northern Mariana Islands )
Island of ) s.s.
I, (Treasurer), being duly sworn on oath, depose and say:

That I am the individual named above; that the foregoing Campaign Statement of Account, and the contents thereof, including the contents of all supporting attachments, are true, full and explicit accounting of all contributions received and expenses incurred in aid of the campaign. I understand that providing false information herein may subject me to civil and criminal penalties as provided by the Northern Mariana Islands Election Reform Act of 2000, 1 CMC §6428.

Signature of Treasurer Date (Month, Day, Year)

Subscribed and sworn before me this of 200

Notary Stamp

Notary Seal



**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS  
CAMPAIGN FINANCIAL DISCLOSURE**

**CAMPAIGN STATEMENT OF ACCOUNT  
FOR GOVERNOR AND LT. GOVERNOR CANDIDATES  
GENERAL ELECTION**

<b>Report Type:</b>
<input type="checkbox"/> Final Report
<input type="checkbox"/> Amendment

**IMPORTANT:** FILE THIS REPORT NOT LATER THAN \_\_\_\_\_  
FILE ORIGINAL AND TWO COPIES WITH THE OFFICE OF THE PUBLIC AUDITOR.

Name of Candidate for Governor Name (Last Name, First Name, MI):	Name of Candidate for Lt. Governor Name (Last Name, First Name, MI):	
Treasurer Name (Last Name, First Name, MI):	Preferred Mailing (P.O. Box) Address:	Telephone:

**SUMMARY OF RECEIPTS AND DISBURSEMENTS**

This Campaign Statement of Account form is mandatory. Candidates may use the suggested reports and schedules furnished by the Election Commission, or they may use their own detailed formats. Should you use an alternative schedule format, you must provide, at a minimum, detailed information as required in the Act.

RECEIPTS	CASH	IN-KIND
1. RECEIPTS FROM FUNDRAISING EVENTS		
2. MULTI-CANDIDATE CONTRIBUTIONS		
3. RECEIPTS FROM GENERAL CONTRIBUTIONS		
4. OTHER RECEIPTS		
5. <b>TOTAL RECEIPTS</b> (Add Lines 1 through 4)		
DISBURSEMENTS	CASH	IN-KIND
6. DISBURSEMENTS FOR FUNDRAISING EVENTS		
7. MULTI-CANDIDATE EXPENSES		
8. DISBURSEMENTS FOR GENERAL EXPENDITURES		
9. OTHER DISBURSEMENTS		
10. <b>TOTAL DISBURSEMENTS</b> (Add Lines 6 through 9)		
<b>NET RECEIPTS AND DISBURSEMENTS</b> (Subtract Line 10 from Line 5)		

**VERIFICATION**

<p>Commonwealth of the Northern Mariana Islands ) Island of _____ ) s.s.</p> <p>I, _____, being (Candidate for Governor)</p> <p>duly sworn on oath, depose and say:</p> <p>That I am the individual named above; that I prepared the foregoing Campaign Statement of Account, that I have used all reasonable diligence in preparing this Statement, and that the contents thereof, including the contents of all supporting attachments, are a true, full and explicit accounting of all contributions received and expenses incurred in aid of the campaign. I understand that providing false information herein may subject me to civil and criminal penalties as provided by the Northern Mariana Islands Election Reform Act of 2000, 1 CMC §6428.</p> <p>_____ Signature of Candidate      Date</p> <p>Subscribed and sworn before me this _____ day of _____, 200__.</p> <p align="center">Notary Seal</p>	<p>Commonwealth of the Northern Mariana Islands ) Island of _____ ) s.s.</p> <p>I, _____, being (Candidate for Lt. Governor)</p> <p>duly sworn on oath, depose and say:</p> <p>That I am the individual named above; that I co-prepared the foregoing Campaign Statement of Account, that I have used all reasonable diligence in preparing this Statement, and that the contents thereof, including the contents of all supporting attachments, are a true, full and explicit accounting of all contributions received and expenses incurred in aid of the campaign. I understand that providing false information herein may subject me to civil and criminal penalties as provided by the Northern Mariana Islands Election Reform Act of 2000, 1 CMC §6428.</p> <p>_____ Signature of Candidate      Date</p> <p>Subscribed and sworn before me this _____ day of _____, 200__.</p> <p align="center">Notary Seal</p>	<p>Commonwealth of the Northern Mariana Islands ) Island of _____ ) s.s.</p> <p>I, _____, being (Treasurer)</p> <p>duly sworn on oath, depose and say:</p> <p>That I am the individual named above; that the foregoing Campaign Statement of Account, and the contents thereof, including the contents of all supporting attachments, are a true, full and explicit accounting of all contributions received and expenses incurred in aid of the campaign. I understand that providing false information herein may subject me to civil and criminal penalties as provided by the Northern Mariana Islands Election Reform Act of 2000, 1 CMC §6428.</p> <p>_____ Signature of Treasurer      Date</p> <p>Subscribed and sworn before me this _____ day of _____, 200__.</p> <p align="center">Notary Seal</p>
--	---	--

CFD-001(0/10), Revised June 2001

# **EXHIBIT "B"**

**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS  
CAMPAIGN FINANCIAL DISCLOSURE**

**FUNDRAISING EVENT REPORT**  
**FUNDRAISING DATE(S): \_\_\_\_\_**

**IMPORTANT:** USE A SEPARATE REPORT FOR EACH FUNDRAISING EVENT.

Candidate Name (Last Name, First Name, MI):	Treasurer Full Name (Last Name, First Name, MI):
Name of Fundraising Event:	Date(s) Held:

**SUMMARY OF FUNDRAISING RECEIPTS AND DISBURSEMENTS**  
(Complete Supporting Schedules Before Completing This Section)

<b>RECEIPTS</b>	<b>CASH</b>	<b>IN-KIND</b>
<b>1. GROSS PROCEEDS FROM FUNDRAISING EVENT</b> (Total Cash Proceeds from Line 3 of Result Summary of Supporting Schedule FR-A)		
<b>2. IN-KIND CONTRIBUTIONS RECEIVED</b> (Total In-kind Contributions Received from Schedule FR-B. Bring down this value to Line 6 below.)		
<b>3. CONTRIBUTED PROPERTY RECEIVED</b> (Total Contributed Property Received from Schedule FR-C)		
<b>4. TOTAL RECEIPTS</b> (Transfer to Line 1 of Campaign Statement of Account)		
<b>DISBURSEMENTS</b>		
<b>5. FUNDRAISING EXPENSES</b> (Total Fundraising Expenses from Line 4 of Result Summary of Schedule FR-A)		
<b>6. ADJUSTMENT FOR IN-KIND CONTRIBUTIONS RECEIVED</b> (From Line 2 above)		
<b>7. TOTAL DISBURSEMENTS</b> (Transfer to Line 6 of Campaign Statement of Account)		
<b>NET RECEIPTS AND DISBURSEMENTS</b> (Subtract Line 7 from Line 4)		





**IMPORTANT:** FILE SEPARATE SCHEDULE FOR EACH FUNDRAISING EVENT.

**SUPPORTING SCHEDULE FOR FUNDRAISING EVENT HELD ON DATE(S):** \_\_\_\_\_ **PAGE** \_\_\_\_\_ **OF** \_\_\_\_\_

Candidate Name (In Full) :	Signature of Treasurer:	Date:
----------------------------	-------------------------	-------

## SUPPORTING SCHEDULE FR-B IN-KIND CONTRIBUTIONS RECEIVED

FULL NAME OF CONTRIBUTOR	DESCRIPTION OF CONTRIBUTION	FAIR MARKET VALUE
Example : ABC Retail	Give-away t-shirts (250 pcs @ \$ 5.00)	\$ 1,250
TOTAL OF RECEIPTS THIS PAGE ONLY (Use additional sheets as necessary) .....		➔
TOTAL RECEIPTS (IF LAST PAGE ONLY) (Transfer Total to Line 2 of either the Fundraising Event Report or the General Contribution and Expense Report) .....		➔

## SUPPORTING SCHEDULE FR-C CONTRIBUTED PROPERTY RECEIVED

FULL NAME OF CONTRIBUTOR	DESCRIPTION OF PROPERTY RECEIVED	FAIR MARKET VALUE
Example : Island Computers	Old Computer with printer	\$ 600
SUB-TOTAL OF RECEIPTS THIS PAGE ONLY (Use additional sheets as necessary) .....		➔
TOTAL RECEIPTS (IF LAST PAGE ONLY) (Transfer Total to Line 3 of either the Fundraising Event Report or the General Contribution and Expense Report) .....		➔

**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS  
CAMPAIGN FINANCIAL DISCLOSURE**

**MULTI-CANDIDATE  
CONTRIBUTION AND EXPENSE REPORT**

Candidate Name (Last Name, First Name, MI):	Treasurer Full Name (Last Name, First Name, MI):
---	--

**CONTRIBUTIONS RECEIVED**

RECEIVED FROM	DESCRIPTION	AMOUNT
Example: BEST PARTY IN THE LAND	Cash Allocation of Party General Fundraising Proceeds	\$ 20,000
SUB-TOTAL OF CONTRIBUTIONS RECEIVED THIS PAGE ONLY (Use additional sheets as necessary) .....		➔
TOTAL CONTRIBUTIONS RECEIVED (IF LAST PAGE ONLY) (Transfer Total to Line 2 of Campaign Statement of Account) .....		➔

**EXPENSES**

FULL NAME OF PAYEE	DESCRIPTION OF EXPENDITURE	AMOUNT
Example: BEST PARTY IN THE LAND	Allocation of Party General Expenses	\$ 15,000
SUB-TOTAL OF EXPENSES THIS PAGE ONLY (Use additional sheets as necessary) .....		➔
TOTAL ALLOCATED EXPENDITURES (IF LAST PAGE ONLY) (Transfer Total to Line 7 of Campaign Statement of Account) .....		➔



**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS  
CAMPAIGN FINANCIAL DISCLOSURE**

# GENERAL CONTRIBUTION AND EXPENSE REPORT

Candidate Name (Last Name, First Name, MI):	Treasurer Full Name (Last Name, First Name, MI):
---	--

**SUMMARY OF RECEIPTS AND DISBURSEMENTS**  
(Complete Supporting Schedules Before Completing This Section)

	CASH	IN-KIND
<b>RECEIPTS</b>		
<b>1. MONETARY CONTRIBUTIONS FROM NON-FUNDRAISING EVENTS</b> (Total Contributions from Schedule GC-A)		
<b>2. IN-KIND CONTRIBUTIONS RECEIVED</b> (Total In-kind Contributions Received from Schedule GC-B. Bring down this value to Line 7 below.)		
<b>3. CONTRIBUTED PROPERTY RECEIVED</b> (Total Contributed Property Received from Schedule GC-C)		
<b>4. TOTAL RECEIPTS</b> (Transfer to Line 3 of Campaign Statement of Account)		
<b>DISBURSEMENTS</b>		
<b>5. GENERAL EXPENDITURES</b> (Total General Expenditures from Schedule GC-D)		
<b>6. CONTRIBUTIONS TO OTHER CANDIDATES</b> (Total Contributions To Other Candidates from Schedule F)		
<b>7. ADJUSTMENT FOR IN-KIND CONTRIBUTIONS RECEIVED</b> (From Line 2 above)		
<b>8. TOTAL DISBURSEMENTS</b> (Transfer to Line 8 of Campaign Statement of Account)		
<b>NET RECEIPTS AND DISBURSEMENTS (Subtract Line 8 from Line 4)</b>		



Candidate Name (In Full) :	Signature of Treasurer:	Date:
----------------------------	-------------------------	-------

**SUPPORTING SCHEDULE GC-B  
IN-KIND CONTRIBUTIONS RECEIVED**

FULL NAME OF CONTRIBUTOR	DESCRIPTION OF CONTRIBUTION	FAIR MARKET VALUE
Example: ABC Retail	Give-away t-shirts (250 pcs @ \$ 5.00)	\$ 1,250
SUB-TOTAL OF RECEIPTS THIS PAGE ONLY (additional sheets as necessary) .....		➔
TOTAL RECEIPTS (IF LAST PAGE ONLY) (Transfer Total to Line 2 of either the Fundraising Event Report or the General Contribution and Expense Report) .....		➔

**SUPPORTING SCHEDULE GC-C  
CONTRIBUTED PROPERTY RECEIVED**

FULL NAME OF CONTRIBUTOR	DESCRIPTION OF PROPERTY RECEIVED	FAIR MARKET VALUE
Example: Island Computers	Old Computer with printer	\$ 600
SUB-TOTAL OF RECEIPTS THIS PAGE ONLY (Use additional sheets as necessary) .....		➔
TOTAL RECEIPTS (IF LAST PAGE ONLY) (Transfer Total to Line 3 of either the Fundraising Event Report or the General Contribution and Expense Report) .....		➔





# PUBLIC NOTICE


## PROPOSED AMENDMENTS TO REPEAL AND REVISE BOARD OF EDUCATION POLICIES REGARDING CURRICULUM, INSTRUCTION, ADMISSION, SERVICES AND STUDENT RIGHTS AND CONDUCT


The Board of Education for the Commonwealth of the Northern Mariana Islands, hereby notifies the general public of its intention to repeal Board of Education Policies 400 - 419 and 600 - 624. Further, the Board intends to replace these policies with Board Policies and Regulations 6000 - 6640 and 2000 - 2940. The proposed amendments are promulgated pursuant to the authority provided by article XV of the CNMI Constitution, Public Law 6-10 and the CNMI Administrative Procedures Act.

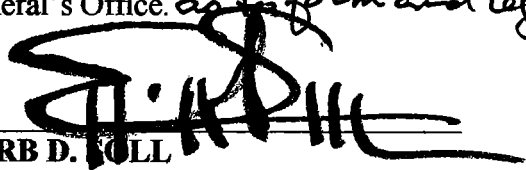
All interested persons may examine the proposed amendments and submit written comments, positions, or statements for or against the proposed amendments to the Chairman, Board of Education, P.O. Box 1370 CK, Saipan, MP 96950 within thirty (30) calendar days following the date of the publication of this Notice in the Commonwealth Register.

Dated this 14<sup>th</sup> day of June, 2001, at Saipan, Northern Mariana Islands.


### BOARD OF EDUCATION

By:   
ANTHONY PELLEGRINO  
Board of Education Chairman

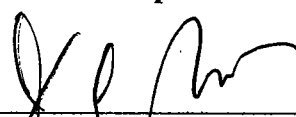
The regulations proposing to amend Board of Education Policies 400 - 419 and 600 - 624 a copy of which is attached hereto, have been reviewed and approved by the Attorney General's Office. *as to form and legal sufficiency pursuant to P.L. 10-50.* 

*for*   
HERB D. TOLL  
Attorney General's Office

Date: 6/15/01

*for* Filed By:   
SOLEDAD B. SASAMOTO  
Registrar of Corporation

Date: 6/18/01

Received By:   
JOSE I. DELEON GUERRERO  
Special Assistant for Administration

Date: 06/15/01

## ARONGORONGOL TOULAP

### POMWOL FFEÉRÚL LLIWEL IGHÁ EBWE LLIWEL AKKÁÁW AUTOL ALLEGHÚL BOARD OF EDUCATION REEL CURRICULUM, ABWUNGUBWUNG, UMWUMWUULONG, ALILLIS ME YAAR WEL ATEL GAKKO ME FFERUUR

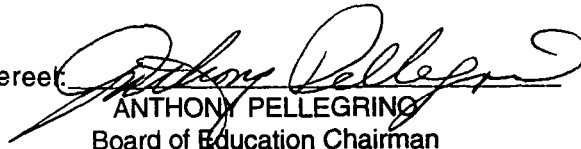
Board of Educationil Commonwealth Metawai Wóól Falúw Kka Marianas, ekke arongaar toulap igha ebwe liwili Alléghúl Board of Education reel allégh kka 400-419 me 600-624. Iwe, Board of Education nge e mángiy bwe ebwe liwili allégh kkaal mellól Alléghúl Board ikka 6000-6640 me 2000-2940. Lliwel kkaal nge re féerú sángi bwángil Táil XV mellól CNMI Constitution, Alléghúl Toulap 6-10 me CNMI Administrative Act.

Aramas ye e tiáli nge emmwel schagh ebwe atotoolong mángemáng me ngare tiip, pusisiyoon me kkepas ngare re tipáli ngare sabw nge ra afa ngali Chairmanil Board of Education, P.O. Box 1370 CK, Seipél, MP 96950 eliigh (30) rál sángi igha e rongowow arongorong yeel llól Commonwealth Register.

E fféer rááilil ye 14<sup>th</sup> maram ye June, 2001, Seipél Northern Mariana Islands.

#### BOARD OF EDUCATION

Mereet:

  
ANTHONY PELLEGRINO  
Board of Education Chairman

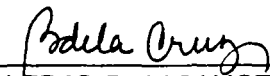
Allégh kka re pomwoli bwe ebwe liwili autol Alléghúl Board kka 400-419 me 600-624 kopiya ye e schu me schéel tiliigh kkaal nga a takkal mwir sángi Bwulasiyool Attorney General.

/S/ ELLIOT SATTLER

HERBERT D. SOLL  
Bwulasiyool Attorney General

Rál: 06/18/01

Isáliiyal:

  
SOLEDAD B. SASAMOTO  
Registrar of Corporation

Rál: 06/18/01

Bwughiiyal:

  
JOSE I. DELEON GUERRERO  
Special Assistant for Administration

Rál: 06/18/01

## NUTISIAN PUBLIKU

### I MAPROPOPONE SIHA NA AMENDASION PARA U DIROGS YAN RIBISA I AREKLAMENTON KUETPON EDUKASION PUT FINANA'GUE', ADMISO, YAN SETBBISIU YAN DIRECHON ESTUDIANTE YAN KONDUKTAN-NIHA

I Kuetpon Edukasion Commonwealth I Sumankattan Siha Na Islas Marianas, ginen este ha nutisia i publiku henerat put iintension-ña para u diroga i Areklamenton Kuetpon Edukasion Numiru 400-419 yan 600-624. Lökkue' i Kuetpo ha intensiona para u tulaika este siha na areklamento gi halom Areklamento yan Regulasion Kuetpon Edukasion Numiru 6000-6640 yan 2000-2940. I mapropopone siha na amendasion manma cho'gue sigun i aturidat ginen Attikulu XV gi Kanstitusion CNMI, Lai Publiku 6-10 yan CNMI Administrative Act.

Hayi interesante siha na petsona siña ha' ma eksamina i mapropopone siha na amendasion yan satmiti halom komento, pusion, sinangan kao ma fabot pat kontra i mapropopone siha na amendasion gi tinige' ya u manahanao guato para i Kabesiyon Kuetpon Edukasion, P.O. Box 1370 CK, Saipan, MP 96950 halom trenta (30) dias despues di mapublika este na Nutisia gi Rehistran Commonwealth.

Ma fecha gi mina' 14<sup>th</sup> na dia guine na mes June, 2001, giya Saipan Islan Notte Marianas.


#### KUETPON EDUKASION

Ginen as:

  
ANTHONY PELLEGRINO  
Kabesiyon Kuetpon Edukasion

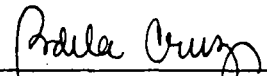
Este i manmapropopone siha na amendasion gi Areklamenton Kuetpon Edukasion, areklamento numiru 400-419 yan 600-624 i kopi ni chechetton guine, esta maribisa yan apreba gine Ofisinan Abugadon Henerat.

/S/ ELLIOT SATTLER

 HERBERT D. SOLL  
Ofisina Abugadon Henerat

Fecha: 06/18/01

Ma file as:

  
SOLEDAD B. SASAMOTO  
Rehistradoran Kotporasion

Fecha: 6/18/01

Rinisibi as:

  
JOSE J. DELON GUERRERO  
Espisat Na Ayudanten Administrasion

Fecha: 06/19/01



## STUDENTS

Regulation 2130  
(Form 2130)

### Nondiscrimination and Student Rights

#### Sexual Harassment of Students

The Board of Education is committed to maintaining a learning environment for its students that is free from sexual harassment. Furthermore, the Board of Education strongly believes that no person in the PSS shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity.

#### (a) DEFINITION OF SEXUAL HARASSMENT

Title IX forbids discrimination on the basis of sex in any educational program or activity that receives federal funds. This includes a prohibition on sexual harassment. The Office for Civil Rights of the U.S. Department of Education defines sexual harassment under Title IX as follows: "Verbal or physical conduct of a sexual nature, imposed on the basis of sex, by an employee or agent of a recipient that denies, limits, provides different, or conditions the provisions of aid, benefits, services or treatment protected under Title IX."

Sexual harassment under Title IX includes, but is not limited to, unwelcome<sup>1</sup> sexual advances, requests for sexual favors, and verbal or physical conduct of a sexual nature when:

1. Submission to such conduct is made either implicitly or explicitly a term or condition of an individual's academic status or progress, or employment.
2. Submission to or rejection of such conduct by an individual is the basis for educational or employment decisions affecting that individual.
3. Such conduct creates an intimidating, hostile, or offensive educational or work environment.
4. Qualified students are denied educational or employment opportunities or benefits because the opportunities or benefits are given to another student or employee who submitted to sexual advances or requests for sexual favors.

---

<sup>1</sup> Sexual harassment of students by adults who otherwise come within this Policy is absolutely prohibited regardless of whether the conduct is "welcome."

**EXAMPLES OF SEXUAL HARASSMENT**

**(b). Unwelcome Sexual Advances**

Whether the advance is "unwelcome" is determined on a case-by-case basis. Unwelcome advances may include, but are not limited to, the following:

1. Any invitation (even subtle) intended to result in a sexual liaison.
2. Invitations to dinner or social events, when refusal results in the loss of academic status or in other adverse educational decisions.
3. Propositioning a student

**(c) Unwelcome Verbal Conduct of a Sexual Nature**

This may include, but is not limited to, the following:

1. Sexually provocative or explicit speech.
2. Publicly expressed sexual fantasies.
3. Jokes of a sexual or crude nature.
4. Derogatory comments directed to males or females as a class (language directed toward a specific student is more likely to be viewed as sexual harassment).
5. Demeaning comments.
6. Threats for not agreeing to submit to sexual advances.
7. Writing sexually explicit memos.

**(d) Unwelcome Physical Conduct of a Sexual Nature**

This may include, but is not limited to, the following:

1. Grabbing or twisting an individual's arm.
2. Any unwarranted touching.
3. Sexually offensive pranks.

4. Drawing sexually explicit cartoons, other drawings, or graffiti.
5. Gestures indicating sexual behavior.
6. Suggestive winks.
7. Kissing.

**(e) Student Specific**

In addition to the foregoing examples, students may experience harassment that is unique to their situation, some of which may not be immediately recognized as sexual harassment. Such harassment may include, but is not limited to, the following:

1. Unwanted<sup>2</sup> sexual behavior, such as touching, oral comments, sexual name calling, spreading sexual rumors, jokes, pictures, leers, overly personal conversation, cornering or blocking a student's movement, pulling at clothes, students "making out" on school premises.
2. A student in a predominantly single-gender class who is subjected to sexual remarks by a teacher or students who regard the comments as joking and part of the usual class environment
3. Interfering with a student's achievement in a predominantly or historically single-gender class by hiding tools or equipment, questioning the student's ability to handle the work, or suggesting that the student is "abnormal" for enrolling in the class.
4. Purposefully limiting or denying students access to educational resources because of their gender.
5. Teasing a student about the student's enrollment in a predominantly or historically single-gender class.

---

<sup>2</sup> Sexual harassment of students by adults who otherwise come within this Policy is absolutely prohibited regardless of whether the conduct is "welcome."

**(f) Nature of Sexual Harassment**

Sexual harassment is not limited to conduct by males toward females. Sexual harassment may occur between any or all of the following:

1. Student to student.
2. Staff to student.
3. Student to staff.
4. Male to male.
5. Female to female.
6. Male to female.
7. Female to male.

**(g) INVESTIGATION OF SEXUAL HARASSMENT COMPLAINTS**

1. If a student believes he/she is being sexually harassed, the student should bring the concern to the attention of the building principal.
2. If the student feels that such contact with the building principal would be inappropriate or if the student simply feels more comfortable speaking to someone other than the building principal, the student may inform any teacher, counselor or the PSS EEO Officer for the PSS. If the situation is not satisfactorily resolved by the building principal, the student should contact the PSS EEO Officer.
3. If neither the student's building principal nor the PSS EEO Officer is of the same sex as the student, or the student for any other reason would prefer to report the student's concern to another administrator within the PSS, the student may do so. However, it is essential that the report be made to someone with the authority and obligation to act upon the concern.
4. Any teacher, counselor, or administrator who receives a report, orally or in writing, from any student regarding sexual harassment of that student or another student by a student or adult in the educational setting must forward that report to the building principal and the PSS EEO Officer within twenty-four (24) hours, or within a reasonable extension of time thereafter, for good cause shown.

5. Oral complaints of sexual harassment will be put in writing by the complainant or by the person who receives the complaint, and should be signed by the complainant. However, the complainant's refusal to sign a complaint does not relieve the PSS of the obligation to investigate the complaint.
6. A student who believes that he/she has been subjected to sexual harassment shall not be required to confront the alleged harasser prior to making the report.
7. Following receipt of the report, PSS personnel will promptly and fully investigate the complaint and will notify the student and the alleged harasser of the results of the investigation. Investigations will be conducted with full recognition of the rights of all parties involved.
8. Upon receipt of the report, the principal and/or the PSS EEO Officer will appoint an investigator to investigate the complaint. Such investigation shall commence within forty-eight (48) hours after such appointment.
9. The PSS will maintain the confidentiality of the complaint and the details of the investigation to the fullest extent possible.
10. The investigator will put his/her findings in writing and will forward a copy to the principal and the PSS EEO Officer within two weeks after concluding the investigation, or within a reasonable extension of time thereafter, for good cause shown.
11. If the investigation substantiates the complaint, the PSS will take appropriate disciplinary action against the offender(s), commensurate to the severity of the harassment (up to and including termination of employment). If the offender is another student, disciplinary action will be taken in accordance with Board policies and regulations. If the offender is not an employee of the PSS, the PSS will take appropriate action within the scope of its authority to eliminate and redress the harassment.
12. If the investigation is indeterminate, the matter will be designated as unresolved, and the investigation file will be maintained by the PSS EEO Officer in a file separate and apart from any student or personnel file.
13. There will be no retaliation against or adverse treatment of any student who uses this procedure to resolve a concern when such complaint has been brought in the good faith belief that the complainant has been subjected to sexual harassment.
14. The responsible administrator shall follow up regularly with the complaining student to ensure that the harassment has stopped and that no retaliation has occurred.

**(h) ENFORCEMENT**

Each building administrator is responsible for maintaining an educational and work environment free from sexual harassment. Principals shall take appropriate action to ensure that the students are aware of and knowledgeable about these policies and that discipline action is taken whenever warranted. In accordance with their responsibilities, each building administrator, or his/her designee, shall take appropriate actions to enforce the PSS's sexual harassment policy, including but not limited to the following:

1. All vulgar or sexually offensive graffiti shall be removed from the premises.
2. The building administrator shall provide an in-service regarding sexual harassment (including sexual harassment involving students) to all staff by the end of the first four calendar weeks of school.
3. Student instruction regarding sexual harassment shall be provided annually by the end of September to all students in grades six through twelve. Age appropriate instruction will also be presented to pre-kindergarten through fifth grade students.
4. Designated teachers shall discuss this policy with their students within one month after its adoption by the Board and during the first week of the school year thereafter. Written copies of the policy shall be given to each student in grades six through twelve (and in lower grades as may be appropriate) as part of these discussions. Discussion shall be conducted in age appropriate manner and should assure students they need not tolerate any form of sexual harassment.
5. All teachers, counselors, and administrators shall instruct students on the procedures for reporting sexual harassment within the educational setting on an as-needed basis.
6. The building administrator shall take prompt action to investigate all complaints of sexual harassment.
7. The building administrator shall take appropriate disciplinary action, as necessary.

**(i) NOTIFICATIONS**

A copy of the PSS sexual harassment policy shall:

1. Be included in the notifications that are sent to parents/guardians at the beginning of each school year.
2. Be displayed in a prominent location near each school principal's office.

3. Be included in any orientation program conducted for new students in grades six through twelve.
4. Appear in any PSS or Board of Education publication that sets forth the PSS or building's comprehensive rules, regulations, procedures, and standards of conduct for students.

**(j) DISCIPLINE/CONSEQUENCES**

1. Any student who engages in sexual harassment while on school property or while participating in school activities will be subject to disciplinary action, up to and including expulsion.
2. Any employee who permits or engages in the sexual harassment of students will be subject to disciplinary action, up to and including dismissal.
3. Any employee who receives a complaint of sexual harassment from a student and who does not act promptly to forward that complaint to the principal and PSS EEO Officer shall be disciplined appropriately.
4. Any student who brings a false charge of sexual harassment shall receive appropriate discipline. The term "false charge" mean charges brought in bad faith, that is, without the good faith belief that one has been subjected to sexual harassment. The term "false charge" does not include a charge that was brought in good faith but which the PSS was unable to substantiate.

The PSS EEO Officer will be available to answer all questions regarding this regulation or its implementation.

**(k) TITLE IX GRIEVANCE PROCEDURE (Sexual Harassment)**

1. **Level 1: Principal or Immediate Supervisor** (Informal and optional—may be bypassed by grievant)

An informal meeting with the parties and the principal or the PSS EEO Officer can solve many problems. A student who believes that he/she has been subjected to sexual harassment is encouraged to first discuss it with the teacher, counselor, or building administrator involved with the objective of resolving the matter promptly and informally. If the individual's teacher/supervisor is the person alleged to have engaged in sexual harassment then the grievant should skip Level 1 and go directly to Level 2.

2. **Level 2: The Investigation**

- A. If the complaint or issue is not resolved at Level 1 or if the grievant chooses to skip Level 1, the grievant may file a signed, written grievance stating: 1) the nature of the grievance; 2) the remedy requested; and 3) the date the grievance was submitted. The Level 2 written grievance should be filed with the PSS EEO Officer within fifteen (15) days of the event or incident, or from the date the grievant could reasonably become aware of such occurrence.
- B. The PSS EEO Officer may appoint an investigator to investigate a written grievance. If possible, the investigator will resolve the grievance. If the parties cannot agree on a resolution, the PSS EEO Office or appointed investigator will prepare a written report of the investigation that shall include:
  1. A clear statement of the allegations of the grievance and remedy sought by the grievant.
  2. A statement of the facts as contended by each of the parties.
  3. A statement of the facts as found by the appointed investigator and identification of evidence to support each fact.
  4. A list of all witnesses interviewed and documents reviewed during the investigation.
  5. A narrative describing attempts to resolve the grievance.
  6. The appointed investigator's conclusion as to whether the allegations in the grievance are meritorious.



- C. The investigator shall consult with the EEO Officer during the investigation and attempted resolution of the grievance.
- D. The appointed investigator will complete the investigation and file the report within thirty (30) days after receipt of the written grievance. The investigator shall file the report with the EEO Officer and the EEO officer will make any necessary recommendations and forward the report to the Commissioner's office.
- E. If the Commissioner/designee agrees with the recommendation of PSS EEO Officer, the recommendations will be implemented. The Commissioner/designee will inform the grievance in writing of his or her decision and any action that will be taken

**3. Level 3: The Board of Education**

If the Commissioner rejects the recommendations of the EEO Officer, and/or either party is not satisfied with the recommendations from Level 2, either party may make a written appeal within ten (10) days of receiving the report of the Commissioner to the Board of Education. On receipt of the written appeal, the matter shall be placed on the agenda of the Board of Education for consideration within thirty (30) days. A decision shall be made and reported in writing to all parties within thirty (30) days of that meeting. The decision of the Board of Education will be final.

**4. Other Options for Grievant**

At any time during this process, a grievant may file a complaint with the U.S. Department of Education, Office for Civil Rights, the Equal Employment Opportunity Commission and/or the Federal Omnibusman to the Commonwealth.

## **STUDENTS**

**Regulation 2150**  
**(Form 2150)**

### **Nondiscrimination and Student Rights**

#### **Searches by School Personnel**

##### **(a) Reasonable Suspicion**

Searches of students shall only be conducted when a school official has reasonable suspicion predicated on one or more of the following:

1. Reliable reports or information from credible sources made known to school officials. If the source is anonymous, the informant must show that the information has a relationship with the school or students so as to give it credibility.
2. Suspicious or evasive behavior suggesting violation of a school policy or law, or concealment of contraband, weapons or stolen property.
3. Observation of a student engaging in prohibited conduct or being in a restricted area.

The more of these factors that are found, the greater the inference of reasonable suspicion. The school official may also take into account the student's history in the development of reasonable suspicion.

##### **(b) Reasonable Scope**

The scope of the search conducted must be reasonably related to the objective sought and the evidence searched for. The search shall be no more intrusive than necessary to serve the school's legitimate objectives. In determining if the search is related to the objectives sought, the school official should consider:

1. The nature and severity of the violation to determine the permissible amount of intrusion into the student's privacy rights.
2. The area to be searched so that it will be no more extensive than required to serve the school's legitimate objectives.
3. The time and place where the search is conducted so that it will be as close as possible to the time and place of the suspected violation.

4. The duration of the search so that it will be no longer than necessary to serve the school's legitimate objectives.

Whenever reasonably possible the search should be conducted by school official who is the same sex as the student to be searched.

**(c) Locker, Automobile and Desk Searches**

Searches of lockers, desks, storage spaces and other property owned jointly by the PSS and the student may be conducted whenever reasonable suspicion exists to believe that contraband, weapons or prohibited items are concealed therein. Notice of the joint ownership of lockers and desks shall be given to the student body at the beginning of each school year or more often as required. (See Form 2150 for an example of such a notice)

**(d) Canine Searches**

Canine searches shall never be conducted on a student's person and if undertaken, shall be restricted to desks, lockers and parking lots.

**(e) Surveillance**

Surveillance shall only be conducted in hallways, school buses and other areas open to public view where the students are permitted.

**(f) Consent Searches**

Whenever possible the student's voluntary informed consent shall be sought before a search is conducted. However, searches normally should not be based solely on consent.

**(g) Police Involvement**

Police involvement shall be sought whenever school officials uncover evidence of a violation of Commonwealth or Federal law or when school officials deem such involvement necessary or helpful in maintaining school discipline or safety.

**(h) Reports**

After a search has been conducted, school officials shall prepare a written report, specifically detailing the objectives of the search, the scope of the search, and the circumstances and information giving rise to reasonable suspicion for the search. Copies of the report shall be immediately filed with the Commissioner of Education and PSS Legal Counsel.

**Nondiscrimination and Student Rights****Releasing and Referring Students to the Department of Public Safety**

The following guidelines are to be used by school administrators when considering referring students to the Department of Public Safety (DPS) for conduct committed on campus:

1. It is the responsibility of all citizens who have direct knowledge of a committed felony to report it to DPS. If a student is suspected of committing a felony, the school administrator must report it to DPS. (See also Policies and Regulations 2670 and 2700 - Reporting Violent Behavior and Student Abuse.)
2. In cases involving a misdemeanor, the principal must exercise his/her professional judgment whether to report the student to DPS. In general, the more serious the misdemeanor, the greater likelihood it should be referred to DPS. Minor infractions (e.g. a minor caught smoking a cigarette) should be dealt with at the school level.
3. All incidents involving the use of dangerous weapons should be reported to DPS. (See Policy and Regulation 2670.)
4. If a principal or school administrator has evidence of a crime in progress, he/she has the authority to make a citizen's arrest and then must report the crime to DPS immediately.
5. Upon arriving on campus, DPS personnel must report first to the principal's office. The only exception to first reporting to principal's office is when there is a crime in progress. DPS then has the right to make an immediate arrest and report afterwards to the principal's office.
6. No student is to be turned over to a non-uniformed policeman without verifying his/her proper identification.
7. Whenever a student is turned over to DPS, it is the responsibility of the school administrator to immediately notify the student's parent/guardian.

**Nondiscrimination and Student Rights****Employees of Department of Public Safety on Campus**

Whenever a student is on campus during school operating hours and is wanted by the Department of Public Safety (DPS) for an alleged offense(s) not reported by the school, the following guidelines shall apply:

1. In all cases, upon arriving on campus, DPS personnel must report first to the principal's office to inform the principal of the student(s) sought by DPS and to explain the purpose of their visit to the school. The only exception to first reporting to principal's office is when there is a crime in progress. DPS then has the right to make an immediate arrest and report afterwards to the principal's office. The principal shall immediately notify the parent/guardian of a student who has been arrested by DPS on campus.
2. In cases involving a felony when DPS personnel wish to question a student during school hours, the parents must be informed before such questioning may begin. The principal may be present during the questioning. A student may be released to DPS if DPS demonstrates to the school that such release is necessary in the interests of law enforcement and public safety, such as a copy of a warrant or indictment. The principal shall immediately notify the parent/guardian of a student who has been released to DPS.
3. In cases involving a misdemeanor, DPS will make every effort to locate and question a student involved in or knowledgeable of a misdemeanor outside of school operating hours and will only resort to questioning a student during school hours when all other methods fail. In the event that questioning a student during school hours is necessary, the parents must be informed before such questioning may begin and DPS may only question a student when a principal is present. A principal does not need to release a student to DPS in cases involving a misdemeanor.

**Nondiscrimination and Student Rights****Distribution of Non-Curricular Publications by Students****(a) Guidelines for Distribution**

Students may distribute, at reasonable times and places, unofficial written materials, petitions, buttons, badges, or other insignia, except expressions which:

1. Are obscene to minors.
2. Are libelous.
3. Are pervasively indecent or vulgar.
4. Advertise any product or service not permitted to minors by law.
5. Constitute insulting, hateful or fighting words, the very expression of which injures or harasses other people (e.g., threats of violence, defamation of character or of a person's race, religion, or ethnic origin).
6. Present a clear and present likelihood that, either because of their content or their manner of distribution, will cause a material and substantial disruption of the proper and orderly operation and discipline of the school or school activities, or will cause the commission of unlawful acts or the violation of lawful school regulations.

Distribution on school premises of material in above categories to any student is prohibited.

**(b) Procedures**

Any student wishing to distribute unofficial written material must first submit for approval a copy of the material to the principal/designee at least three (3) days in advance of desired distribution time, together with the following information:

1. Name and phone number of the person submitting request.
2. Date(s) and times(s) of day of intended display or distribution.
3. Location where material would be displayed or distributed.
4. The grade(s) of students to whom the display or distribution is intended.

Within forty-eight (48) hours of submission, the principal/designee will render a decision whether the material violates the guidelines contained in these regulations or the time, place and manner restrictions of this regulation. In the event that permission to distribute the material is denied, the student submitting the request should be informed of the reasons for the denial.

Permission to distribute material does not imply approval of its contents by the school, the administration, the Board, or the individual reviewing the materials submitted. Accordingly, the publication shall contain a statement "The opinions expressed are not necessarily those of the PSS or its personnel."

If the student is dissatisfied with the decision of the principal/designee, the student may submit a written request for appeal to the Commissioner/designee. If still not satisfied, the student may appeal the request to the Board for its review.

**(c) Time, Place and Manner of Distribution**

The distribution of written material shall be limited to a reasonable time, place and manner as follows:

1. No written material may be distributed during and at the place of a normal school activity (e.g., classroom) if it is reasonably likely to cause a material and substantial disruption of that activity.
2. Distribution of written material is prohibited when it blocks the safe flow of traffic within corridors and entranceways of the school.

**Definitions**

The following definitions apply to the following terms as used in this policy:

**(d) *Obscene to minors* is defined as:**

1. The average person, applying contemporary community standards, would find that the written material, taken as a whole, appeals to the prurient interest of minors of the age to whom distribution is requested; and/or
2. The material depicts and describes, in a manner that is patently offensive to prevailing standards in the adult community concerning how such conduct should be presented to minors of the age to whom distribution is requested, sexual conduct such as intimate sexual acts (normal or perverted), masturbation, excretory functions, and lewd exhibition of the genitals; and/or



3. The material taken as a whole lacks serious literary, artistic, political or scientific value for minors. *Minor* is defined as any person under the age of eighteen (18).

(e) *Material and substantial disruption* of a normal school activity is defined as follows:

1. Any disruption that interferes with or impedes the implementation of any educational or school sponsored program
2. In order for expression to be considered disruptive, there must exist specific facts upon which the likelihood of disruption can be forecast, including past experience in the school and current events influencing student activities and behavior.

(f) *School activities* is defined as any activity of students sponsored by the school and includes – by way of example, and not by way of limitation – classroom work, library activities, physical education classes, official assemblies, and other similar gatherings, school athletic contests, band concerts, school plays, and in-school lunch periods.

(g) *Unofficial* written material is defined as all written material except school publications funded and/or sponsored or authorized by the school. Examples include leaflets, brochures, flyers, petitions, placards and underground newspapers, whether written by students or others.

(h) *Libelous* is defined as a false or unprivileged statement about a specific individual that tends to harm the individual's reputation, or to lower him/her in the esteem of the community.

(i) *Distribution* is defined as circulation or dissemination of written material by means of handing out free copies, selling or offering copies for sale and accepting donations for copies. It includes displaying written material in areas of the school, which are generally frequented by students.

**(j) Disciplinary Action**

Distribution by a student of unofficial written material prohibited in this regulation will be treated as a violation of the student discipline code.

## **STUDENTS**

**Regulation 2205**

### **Admission and Withdrawal**

#### **Entrance Age**

- (a) A child shall be admitted to the first grade of elementary school at the beginning of the school year if the child's sixth birthday occurs on or before August 31<sup>st</sup> of the school year for which entrance application is made.
- (b) Any child may be admitted to kindergarten at the beginning of a school year if the child's fifth birthday occurs on or before August 31<sup>st</sup> of the school year for which application is made. Under no circumstances will a child whose sixth birthday occurs after August 31<sup>st</sup> but before the completion of the school year applied for be denied admission to school based solely upon the child's age.
- (c) Any child who meets the eligibility requirements *of the Head Start Program* may be admitted to Head Start at the beginning of a school year if the child's third, or fourth birthday occurs on or before August 31<sup>st</sup> of the school year for which entrance application is made.
- (d) A birth certificate or other legal document such as a passport will be required as proof of age.
- (e) In the event of extraordinary circumstances surrounding the admission or denial of a child's admission to a school or program, the Commissioner of Education may make exceptions to this regulation if it is in the best interests of the child and the PSS.

**Admission and Withdrawal****Students Beyond Normal Age of Attendance**

- (a) No student who has reached the age of seventeen (17) by September 30 of the school year in which attendance is being requested shall be enrolled in grades 1-9, unless an exemption is granted by the Commissioner due to compelling and justifiable circumstances. No student who has reached the age of twenty (20) by September 30 of the school year in which attendance is being requested shall be enrolled in grades 10-12, unless an exemption is granted by the Commissioner due to compelling and justifiable circumstances.
- (b) Students who are seventeen (17) years or older in grades 8-9 or nineteen (19) years or older in grades 10-12 who fail to earn at least five (5) credits in the school year shall not be reenrolled the following year.
- (c) A student over the compulsory age of attendance may not register for school after the second week of the first quarter of the school year unless he/she is a transferee from another school and has been in attendance during that school year. These restrictions shall not apply to special education students or students who have an excusable reason for late registration, such as illness.
- (d) A student over the compulsory age of attendance who has accumulated a total of thirteen (13) days and/or five consecutive days of unexcused absences shall be dropped from school for the balance of that academic year.
- (e) High school students shall be given six (6) continuous calendar years to complete their graduation requirements, commencing from their first day in the 9<sup>th</sup> grade. Students who do not complete their graduation requirements by the end of this period may be denied entrance to school in subsequent years. Permission to return to school may, therefore, be denied to dropout students if they would be unable to complete their graduation requirements by the end of the six (6) year period.
- (f) Any actions taken pursuant to this policy with respect to the attendance of special education students must be consistent with the Individuals with Disabilities Act (IDEA) and the disciplinary code for special education students.

## **STUDENTS**

**Regulation 2220**  
**(Form 2220)**

### **Admission and Withdrawal**

#### **(a) Proof of Residency**

All students, five to twenty-one (5-21) years of age, who reside within the boundaries of the CNMI, may attend PSS schools tuition free. In order to "reside" within the CNMI, the student must be physically domiciled within CNMI boundaries. The domicile of a minor student is generally the domicile of the student's parent/guardian.

A student may only register in the PSS if the student provides proof of residency or if the student or parent/guardian requests a waiver from the Board of Education on the basis of hardship or good cause. Parents/guardians will be required to sign a "Proof of Residency" form at the time of enrollment. If the Commissioner has reason to suspect that the admission of a student will create an immediate danger to the safety of others, a hearing will be convened within three (3) working days of the request to register. At the hearing, the Commissioner will determine whether the student may enroll.

#### **(b) Waiver**

Students or parents/guardians seeking a waiver of the residency requirement must complete and submit to the Commissioner a "Request for Waiver of Proof of Residency" form stating the reasons for which the waiver is requested. If a waiver is requested, the Board of Education must convene a hearing no later than forty-five (45) days after the request for waiver is filed. If the Board fails to convene a timely hearing, the request for waiver is automatically granted. Following the hearing, the Board will provide written notice of its decision and the reasons for its approval or denial of the waiver request.

In considering whether a waiver of residency should be granted, the presumption that a student's domicile is in the home of the student's parent/guardian is not conclusive. Students residing within the Commonwealth, but not within the domicile of their parent/guardian, will be considered residents of the Commonwealth if they reside within the Commonwealth for reasons other than solely to attend Commonwealth schools.

#### **(c) Records Review**

Within forty-eight (48) hours of enrolling a new student, the Commissioner/designee will request copies of the new student's transfer and discipline records from all schools in which the new student attended at any time within a twelve (12) month period preceding enrollment in the PSS. In addition, parents/guardians of students new to the PSS will be required to complete and sign "Prior Discipline Record" form informing the PSS concerning suspension or expulsions incurred at schools previously attended. The Commissioner/designee is responsible for ensuring that all pre-registration residency, waiver request, and prior discipline forms are completed and maintained as PSS records.

**(d) Denial of Enrollment for Certain Offenses**

However, no student will be enrolled who has been convicted of or charged without final adjudication of the following criminal acts or the corresponding juvenile offenses:

1. First degree murder.
2. Second degree murder.
3. First degree assault.
4. Forcible rape.
5. Forcible sodomy.
6. Robbery in the first degree.
7. Distribution of drugs to a minor.
8. Arson in the first degree.
9. Kidnapping (Class A felony).

This provision does not apply to a disabled student who is convicted or adjudicated guilty as a result of conduct related to the student's disability.

**Attendance****Student Attendance**

The Public School System recognizes two types of absences: excused or unexcused.

- (a) Excused absence is absence necessitated because of illness or death in the family, or absence with the written approval of parent/guardian when such approval is not inconsistent with the academic needs of the student as determined by the principal. After the sixth absence in any course during the semester, a doctor's excuse will be required for any further absences to be considered excused, unless a waiver for that absence is obtained from the school principal.
- (b) Unexcused absences are those which are not excused. They may generally be categorized as being of such a nature that prudence would have avoided or precluded the absence.
- (c) All students who participate in sanctioned school activities that remove the student from regular classroom attendance shall be considered as present. However, students must make up any lesson or assignment missed as a result of such activity.
- (d) School principals/designees have the authority to make determination of whether or not an absence will be considered excused or unexcused.

**Student Absences**

- (e) Secondary school students (grades 7-12) who incur thirteen (13) or more unexcused absences in a course during one semester shall not receive a passing grade for that course for that semester. For the purposes of this regulation, three (3) unexcused tardies within a semester from a course shall equal one (1) unexcused absence from the course for that semester. Students under block scheduling who incur seven (7) or more unexcused absences during a quarter shall not receive a passing grade for that course during that quarter.
- (f) Students who are not able to receive a passing grade for a semester due to an accumulation of thirteen (13) or more unexcused absences during a semester or seven (7) or more unexcused absences during a quarter under block scheduling shall receive a "no credit" (NC or 0.00) on their academic record. The course must be repeated and the no credit may be deleted only upon successful completion of the repeated course.

**Tardiness**

(g) The term tardy is defined as being late to school, class or an activity with or without permission of parent/guardian. A student is considered tardy if he/she arrives after the designated time of the class or activity, regardless of whether the student is late by five minutes or fifteen minutes. A student who misses more than half of the class or activity shall be considered absent for the entire class or activity.

(h) The teacher will counsel those students who are developing a pattern of being tardy. The teacher will refer to a school administrator specifically designated by the school principal to handle such problems, those students who, in the teacher's judgment, are not making progress toward correcting the problem.

1. First Referral - Upon the first referral by a teacher during a semester or quarter under block scheduling, the administrator will attempt to determine the nature of the problem, inform the student and the student's parent/guardian of the tardy policy and place the student on school probation.
2. Second Referral - Upon the second referral by any teacher during a semester or quarter under block scheduling, the administrators will select the appropriate action from one or more of the following options: in-school suspensions/school service, and student/parent conference to explain disciplinary alternatives.
3. Third Referral - Upon the third referral by any teacher during a semester, the administrator will select the appropriate action from one or more of the following options: short-term suspension, in-school suspension or alternative learning program.

**Attendance****Part-time Attendance**

The PSS recognizes the need of some students to attend school on a part-time basis. The Board of Education has established the following regulations regarding part-time attendance.

It is the intent of this regulation to meet the individual needs of each student and at the same time establish rules and regulations that will preserve the discipline, health, and academic standards of the school.

**(a) Eligibility Requirements**

1. To be eligible for part-time attendance, the student must be a resident of the CNMI.
2. The student must be more than sixteen (16) years old and less than twenty (20) years unless the IEP of a student under 16 provides for part-time attendance. Students twenty years and older may apply and it will be at the discretion of the principal whether to approve part-time attendance for such students.
3. The student must have parent/guardian approval if under 18 years of age.
4. The student must demonstrate a definite need to attend school on a part-time basis. Examples are: a) financial needs of student or family, b) health problems of self or family, c) vocational training in school or on the job, d) enrollment in a school of higher education, and e) unique curriculum offerings.

**(b) Application Procedure**

The student must secure an appointment with the guidance counselor and school principal prior to classification as a part-time student. The student must complete a part-time attendance request form at the conference. Before any decision is given concerning the request, a conference must be held with the student's parent/guardian if the student is under 18 years of age. All applications and conferences must be completed during the time preceding the semester in which the student is to be enrolled on a part-time basis.

After an application has been submitted, the principal shall rule on the request and report to the Commissioner the names of all students who are to be enrolled on a part-time basis. This same report shall be transmitted to the Board of Education. In the event the principal denies the request, the student may appeal to the Commissioner who must respond in a reasonable time.

Part-time students are governed by the same rules and regulations that apply to regularly enrolled students.



## STUDENTS

Regulation 2330

### Attendance

#### Student Early Dismissal Procedures

(a) The following procedures apply:

1. Early dismissal of a student may be approved only by the building principal/designee.
2. Requests for early dismissal must be in writing, signed and dated by a parent/guardian unless there is an emergency. In such cases, telephone requests for early dismissal of a student shall be honored only if the caller can be positively identified as the student's parent/guardian.
3. Children of single-parent families will be released only upon the request of the custodial parent; i.e., the parent whom the court holds directly responsible for the child, and who is identified as such on the school record.
4. The parent or guardian removing the student before the end of the school day shall go to the school's office and complete a log entry.

(b) Additional precautions may be taken by the school administration, appropriate to the age of students, and as needs arise.

(c) Parents/guardians have the obligation to advise and provide up-to-date documentation to the building principal regarding any change in the legal and/or physical custody of the student. The building principal, at all times, has the authority to investigate and confirm the custodial status of a parent/guardian if the principal has inadequate information or reason to suspect that false or incomplete information has been provided to the PSS.

(d) Students shall not be permitted to answer any personal phone calls, except those from the parent/guardian or other persons having legal custody of said pupils. Emergency messages will be delivered to the students.

**Attendance****Truancy and Educational Neglect Procedures****(a) Truancy**

1. The principal upon receiving a report from a teacher that a student has accumulated two (2) unexplained absence shall immediately provide counseling to the truant student and promptly issue a truancy report to the student's parent/guardian with a copy provided to the Commissioner of Education. The report shall include recommendation(s) by the school prescribing corrective measures for parent/guardian and student. Any repeated truancy by the student shall be reported to the Division of Youth Services, Community and Cultural Affairs Offices for counseling and other necessary actions, and parent-teacher conferences may also be held.
2. The Division of Youth Services shall have access to student records with or without prior parent/guardian approval as stated in Policy 2420. However, such privilege is limited only to the particular caseworker and/or counselor assigned to the case.
3. All communication with a student's parent/guardian and student contact and reports from referral agencies must be accurately recorded in writing and filed in the student's cumulative folder.

**(b) Educational Neglect**

1. Commonwealth law requires that any parent, guardian or other person responsible for a child between the age of six and sixteen shall send the child to a public or nonpublic unless the Commissioner of Education grants a waiver. 3 CMC Section 1141.
2. Educational neglect may be defined as when a person who is responsible for a child six through sixteen who through willful or negligent act or omission fails to provide the child with adequate supervision to ensure attendance at school. Individuals who commit educational neglect are subject to criminal prosecution in accordance with the law.
3. School employees who suspect that a child is subject to educational neglect shall report this as soon as possible to the principal/designee.
4. The principal/designee shall review the report and confer with the parent/guardian to resolve the situation. When appropriate, a school counselor, social worker, or nurse may be instructed to offer any appropriate social or health services.
5. If appropriate school intervention does not correct the student's truancy, and reasonable cause for educational neglect has been determined, the principal/designee shall call the Division of Youth Services and report the alleged child educational neglect. A report of this call shall be forwarded to the Commissioner and carbon copied to PSS Legal Counsel.

**STUDENTS**

**Regulation 2420**  
**(Form 2420)**

**Student Records**

**Student Educational Records**

**(a) Definitions**

1. *Permanent records* shall include the following information:
  - A. The name and sex of the student as given in a legal document, such as a birth certificate, court order or official record of school previously attended.
  - B. Any other name(s) by which the student may be identified.
  - C. The student's date of birth and the method of verification of the date of birth for the student.
  - D. The name and address of the student's parent/guardian if the student is a minor.
  - E. The student's primary language and ethnic background.
  - F. A record of the entering and leaving dates for all school sessions previously attended by the student.
  - G. A record of the instruction in which the student participated, and of the student's rating or achievement in instruction (student progress report or equivalent).
  - H. Test score records.
  - I. Any specific health problem and verification of immunization.
  - J. Insurance company.
  - K. Disciplinary records related to all suspensions and expulsions.
  - L. Other pertinent educational information, including attendance.

2. *Directory information* means information contained in the education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. Directory information, under this policy and regulation, includes, but is not limited to, the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous school attended.
3. *Educational record* means those records that are directly related to a student and are maintained by the PSS.
4. *Disclosure* means to permit access to or the release, transfer, or other communication of education records, or the personally identifiable information contained in those records, to any party, by any means, including oral, written or electronic means.
5. *Eligible student* means a student who has reached 18 years of age or attends an institution of post-secondary education.
6. *Parent* means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent/guardian in the absence of a parent/guardian.
7. *Personally identifiable information* includes, but is not limited to the student's name, the name of the student's parent/guardian or other family member; the address of the student or student's family; a personal identifier, such as the student's social security number or student number; a list of personal characteristics that would make the student's identity easily traceable, or other information that would make the student's identity easily traceable.
8. *Student* means any individual who is or has been in attendance in the Commonwealth and about whom the PSS maintains education records.

**(b) General Guidelines**

1. The PSS shall give full rights under this regulation to either parent/guardian of a student, unless the PSS is provided with a court order, state law or other legally binding document that specifically revokes the parent/guardian's rights to access under this policy.
2. When a student reaches the age of 18, or attends a post-secondary institution of education the parent/guardian rights under this policy will transfer from the parent/guardian to the student.
3. The PSS will annually disseminate a notice of the rights available under this regulation to parent/guardian and eligible students. The annual notification will include a statement that the parent/guardian or eligible student is entitled:

- a. To inspect and review the student's educational records.
- b. To request changes to the educational records to ensure that the records are not inaccurate, misleading, or otherwise in violation of the student's privacy or other rights.
- c. To consent to disclosures of personally identifiable information contained in the student's educational records, except to the extent that federal and state law authorize disclosure without such consent; and
- d. To obtain a copy of this policy and guidelines.

The annual notification will also inform parent/guardian and eligible students where copies of the policy and guidelines are located.

4. Prior to making directory information public, the PSS will notify the parent/guardian regarding the categories of information that it has designated as directory. In addition, the PSS will allow a reasonable period of time after such notice for the parent/guardian or eligible student to inform the PSS that any or all of the designated directory information should not be released without the parents/guardians' or eligible student's consent.
5. Principal/designee of the school where access to student records is being requested shall provide a space or room for authorized agency or person requesting access to review records.
6. If necessary and requested by the student, parent or guardian, qualified personnel to interpret records will be made available.

**(c) Procedures for Inspection and Review of Educational Records**

1. The PSS's regulation permits parent/guardian and eligible students to inspect and review the education records of the student.
2. After a request for access to records, the PSS will allow access within a reasonable period of time, but in no case more than forty-five (45) days after receipt of the request. All requests for access should be directed to the building administrator.
3. After the parent/guardian or eligible student has had an opportunity to inspect and review the student's education records, the parent/guardian may make a request for explanations and interpretations of the records to building administrator. The PSS's designee shall respond to all reasonable requests for explanation or interpretation.
4. The PSS will not destroy any education record if there is an outstanding request to inspect and review that record.

5. The PSS may charge a fee for copies of education records that are made for a parent/guardian or eligible student, unless that fee would prevent a parent/guardian or eligible student from exercising their rights to inspect and review the student's education records. The PSS will not charge a fee to search for or retrieve a student's education records.
6. If a student's education records contain information on more than one student, the parent/guardian or eligible student may inspect, review or be informed of only the specific information about that student.

**(d) Procedures Regarding Disclosure of Personally Identifiable Information Where Consent is Required**

1. Before the PSS discloses personally identifiable information from a student's records (other than directory information), the PSS will obtain a signed and dated written consent from the parent/guardian or eligible student. The written consent will specify the records that may be disclosed; state the purpose of the disclosure; and identify the party or parties to whom disclosure may be made.
2. If the parent/guardian or eligible student so requests, the PSS will provide him/her with a copy of the records disclosed.

**(e) Disclosure of Personally Identifiable Information Where Consent is Not Required**

The PSS may disclose personally identifiable information from a student's education records without the written consent of the parent/guardian or eligible student in the following circumstances:

1. Disclosure may be made to other school officials, including teachers, within the PSS whom the PSS has determined to have legitimate educational interests. The PSS designates the principal to make the determination as to whether a particular school official has a legitimate educational interest in accessing a student's education records. Before making the determination, the principal shall consult with the PSS Legal Counsel. Before obtaining access any student's education records, the school official seeking access must submit a written request to the principal. The request must include the student's name, the reason for the request, the school official's name and the date of the request. The PSS's designee must provide in writing whether the request was granted or denied and the reason for the decision. If the request is granted, the request and the designee's decision must be maintained with the student's education records.
2. Disclosure may be made to officials of another school district or post secondary educational institution where the student seeks or intends to enroll.
3. Disclosure may be made to authorized federal and state agencies and authorities.

4. Disclosure of acts of school violence, as set forth in Policy 2673, to PSS employees who are directly responsible for the student's education or who interact with the student in the performance of the employee's duties.
5. Disclosure to appropriate staff members of portions of any student's individualized education program that is related to past or potentially future violent behavior.
6. Disclosure to law enforcement officials, as soon as is reasonably practicable of the commission of the criminal acts listed in Policy 2673.
7. Disclosure to the appropriate division of the Juvenile Court of the suspension of more than ten (10) days of any student under court jurisdiction.
8. Disclosure of discipline records within five (5) days to any requesting school district where the student seeks to enroll.
9. Disclosure may be made if such disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary to determine eligibility, amount of aid, condition for the aid, or to enforce the terms and conditions of the aid.
10. Disclosure may be made to organizations conducting studies for, or on behalf of, educational agencies or institutions to develop, validate or administer predictive tests; administer student aid programs; or improve instruction, if the study is conducted in a way that does not permit personal identification of parent/guardian and students, and the information is destroyed when no longer needed for the purposes for which the study was conducted.
11. Disclosure may be made to accrediting organizations to carry out their accrediting functions.
12. Disclosure may be made to comply with a judicial order or lawfully issued subpoena and only after the PSS makes a reasonable effort to notify the parent/guardian or eligible student of the order or subpoena in advance of the compliance.
13. Disclosure may be made where the disclosure is in connection with a health or safety emergency and the information is necessary to protect the health or safety of the student or other individuals.
14. Disclosure may be made where the disclosure is of information the PSS has designated to be directory information.
15. Disclosure may be made to the parent/guardian of a non-eligible student or to an eligible student.

16. Disclosure may be made without the written consent of the parent/guardian or eligible student as otherwise may be specified by federal or state law.
17. The PSS may disclose personally identifiable information from an education record only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior consent of the parent/guardian or eligible student. Each party to whom disclosure may be made under this policy must first sign a statement in which he/she agrees to abide by this provision and agrees to use the information disclosed only for the purposes for which the disclosure was made. This does not apply to disclosures of directory information or to any information that the PSS is required to disclose.

**(f) The Division of Youth Services (DYS) Access to Student Records**

Pursuant to 1 CMC Sec. 2378 the Division of Youth Services (DYS) shall have access to student records with or without the consent or authorization of the student's parent/guardian if that student is a minor, or the consent of the student if that student is eighteen (18) years of age or older. Provided however, that the DYS shall, in writing:

1. Demonstrate its interest in the student record.
2. Specify the particular record or information requested.
3. List the name or names of agency personnel authorized to have access to information being sought.

**(g) Procedures to Request Amendment of a Student's Educational Records**

1. If a parent/guardian or eligible student believes the education records for that student contain information that is inaccurate, misleading, or in violation of the student's rights of privacy or other rights, he/she may ask the PSS to amend the record. All such requests should be directed to the building administrator.
2. The PSS's designee, in consultation with the administration or Board of Education as needed, shall decide whether to amend the record as requested within a reasonable time after the request.
3. If the PSS's designee decides not to amend the record, he/she shall inform the parent/guardian or eligible student of that decision and of their right to request a hearing.



4. If a hearing is requested, the PSS will hold the hearing within a reasonable time after it has received the request and will give the parent/guardian or eligible student reasonable advance notice of the date, time and place of the hearing. Any individual, including an employee of the PSS, who does not have a direct interest in the outcome of the hearing, may conduct the hearing. The PSS will give the parent/guardian or eligible student a full and fair opportunity to present evidence relevant to the issue(s) raised by the parent/guardian or eligible student's request. The parent/guardian or eligible student may, at their own expense, be assisted or represented at the hearing by any individual of their choice, including an attorney.
5. The PSS will make its decision in writing within a reasonable period of time after the hearing. The decision will be based solely on the evidence presented at the hearing, and will include a summary of the evidence and the reasons for the decision.
  - a. If the PSS decides, as a result of the hearing, that the information is inaccurate, misleading or violates the student's rights, the PSS shall amend the record and inform the parent/guardian or eligible student of the amendment in writing.
  - b. If the PSS decides, as a result of the hearing, that the information is not inaccurate, misleading, or otherwise in violation of the student's rights, the PSS shall inform the parent/guardian or eligible student of that decision and shall inform the parent/guardian or student of his/her right to place a statement in the record commenting on the contested information or stating why he/she disagrees with the PSS's decision, or both. If the parent/guardian or eligible student submits such a statement, the PSS will maintain that statement with the student's education records as long as the record is maintained and will disclose the statement whenever it discloses the portion of the record to which the statement relates.

**(h) Record Keeping Procedures**

1. The PSS will maintain a record of each request for access to and each disclosure of personally identifiable information from the educational records of each student. The building administrator or designee will be responsible for keeping such records of requests and disclosures.
2. The PSS will maintain the record of each request and disclosure with the educational records of the student as long as the records are maintained by the PSS.
3. For each request or disclosure, the PSS's record will include the parties who have requested or received personally identifiable information from educational records and the legitimate interests the parties had in requesting or obtaining the information.

4. If the PSS discloses personally identifiable information from an educational record under the exceptions enumerated in the earlier sections, the PSS will record the names of those persons to whom that party may disclose the information on behalf of the PSS and the legitimate interests which each of the additional parties has in requesting or obtaining the information.

**Student Educational Records****FERPA Educational Rights Annual Notification**

To All PSS Parents:

The Family Educational Rights and Privacy Act (FERPA) affords parents and students over 18 years of age (eligible students) certain rights with respect to the student's education records.

They are:

1. The right to inspect and review the student's education records within 45 days of the day the PSS receives a request for access. Parents or eligible students should submit to the school principal a written request that identifies the record(s) they wish to inspect. The principal will make arrangement for access and notify the parents or eligible students of the time and place where the records may be inspected.
2. The right to request the amendment of the student's education records that the parents or eligible students believe are inaccurate or misleading. Parents or eligible students may ask the Public School System to amend a record that they believe is inaccurate or misleading. They should write the school principal, clearly identify the part of the record they want changed, and specify why it is inaccurate or misleading.

If the PSS decides not to amend the record as requested by the parent or eligible student, the PSS will notify the parent or eligible student of the decision and advise them of their right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the parent or eligible student when notified of the right to a hearing.

3. The right to consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that FERPA authorizes disclosure without consent.

One exception that permits disclosure without consent is disclosure to school officials with legitimate educational interests. A school official is a person employed by the PSS as an administrator, supervisor, instructor, or support staff member (including health or medical staff and law enforcement unit personnel); a person serving on the School Board; a person or company with whom the PSS has contracted to perform a special task (such as an attorney, auditor, medical consultant, or therapist); or a parent or student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks.

A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

Upon request, the PSS may disclose education records without consent to officials of another school district in which a student seeks or intends to enroll.

4. The right to file a complaint with the U.S. Department of Education concerning alleged failures by the PSS to comply with the requirements of FERPA. The name and address of the Office that administers FERPA is:

Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Avenue S.W.  
Washington, D.C. 20202-4605

\*\*\*\*\*  
\*\*\*\*\*

**RETURN TO BUILDING PRINCIPAL**

**I have received and read the annual notice of my rights and those of my child under the Family Educational Rights and Privacy Act (FERPA). Those rights are the:**

- Right to inspect.
- Right to request amendment.
- Right to prevent disclosures.
- Right to complain to FERPA office.
- Right to obtain a copy of the policy from the PSS.

\_\_\_\_\_  
Parent/Guardian Signature

\_\_\_\_\_  
Date

## **STUDENTS**

**Form 2420.1**

### **Student Educational Records**

#### **FERPA Notice of Designation of Directory Information**

The CNMI Public School System has designated certain information contained in the education records of its students as directory information for purposes of the Family Educational Rights and Privacy Act (FERPA).

The following information regarding students is considered directory information: (1) name, (2) address, (3) telephone number, (4) date and place of birth, (5) major field of study, (6) participation in officially recognized activities and sports, (7) weight and height of members of athletic teams, (8) dates of attendance, (9) degrees and awards received, (10) most recent previous school attended by the student, (11) photograph.

Directory information may be disclosed by the Public School System for any purpose in its discretion without the consent of a parent of a student or an eligible student. Parents of students and eligible students have the right, however, to refuse to permit the designation of any or all of the above information as directory information. In that case, this information will not be disclosed except with the consent of a parent or student, or as otherwise allowed by FERPA.

Any parent or student refusing to have any or all of the designated directory information disclosed must file written notification to this effect with the principal of the school which the student attends.

In the event a notification of refusal is not filed, the Public School System assumes that neither a parent of a student or an eligible student objects to the release of the directory information designated.

**Student Academic Achievement****Grade Placement for Transfer Students**

(a) All students entering the PSS from other educational settings are required to submit evidence of their achievement in the last grade attended, such as a copy of a transcript or report card. Grade placement of a student may be adjusted on the basis of examination of the student's previous record, achievement tests administered, or other factors, which the principal and staff believe are appropriate under the circumstances.

(b) A student shall not be enrolled at any Public School System School without an official transcript or other official school verification of achievement from the previous school. However, a student may be permitted to enroll temporarily until an official record is obtained. A grace period of up to one (1) month may be granted in the case of extenuating circumstances or unusual situations.

**Transfer of Credits**

(c) No religious courses will be accepted for credit. Courses taken outside of the Public School System may be transferred which meet any one of the following criteria:

1. It is an U.S. accredited institution;
2. The institution's primary language of instruction is English;
3. The subject area coverage and time allotment are parallel to PSS; or
4. Credit by examination may be used as appropriate.

**Student Academic Achievement**

**Promotion and Retention**

**(a) Promotion**

A student will be promoted to the next grade level when he/she satisfactorily completes the instructional curriculum in a particular grade. Satisfactorily completion shall mean:

**Elementary School**

An elementary school student shall be promoted when he/she meets the minimum requirements as established by the Commonwealth standards and benchmarks as outlined in the policies and regulations regarding instruction and curriculum.

**Secondary School**

The promotion of a secondary school student will be determined based on the successful completion of the designated number of credits required to advance from grade to grade. The designated number of credits will be established at the start of the school year.

**Special Education Students**

The IEP team shall determine the promotion of special education students.

**(b) Retention**

1. Any student not satisfying the above requirements shall be retained with two exceptions:

- A. The Commissioner may waive the promotion requirements based on extenuating circumstances such as illness or other unavoidable circumstances.
- B. For students who have been retained at any time during their experience in the CNMI public school system, a child study team shall review the performance of the student to determine the appropriate placement.

2. When review the retention of a student for the second time, the Child Study Team shall consider the following factors:

- A. Academic achievement in all subject areas, especially attainment of grade level objectives, as determined by tests, teacher assignment, and work samples.
- B. Chronological age.
- C. Study Habits.
- D. Attendance.
- E. Social and emotional maturity.

During the school year following any retention of a student, a Child Study Team shall meet no less than two times to review the performance and progress of the student.

**(c) Notification**

As soon as possible after it is determined that a student is not going to satisfactorily complete the instructional curriculum for that semester, the teacher and counselor shall notify the principal. The principal shall notify the parent/guardian and a meeting will be scheduled. The parent/guardian will be informed that the student is not meeting grade level expectations and will be referred to the child study team to determine the appropriate interventions.

**(d) Out of Grade Promotion**

The principal in consultation with a teacher and counselor shall consider out of grade promotions only after the completion of the first semester of a school year. Out of grade promotions will be based on the following criteria:

- 1. A student must maintain between a 3.7 to a 4.0 GPA for the first semester of the year;
- 2. A student must take a U.S. standardized aptitude, achievement or subject area test and score in the 90<sup>th</sup> percentile of U.S. Norm or Local Norm whichever is applicable; and
- 3. The teacher(s) from whom the student receives at least fifty percent of direct instruction shall recommend in writing an out of grade level promotion to the Principal. The recommendation shall include a student observation report, periodic student class tests, initial language placement test results, and such other documents as requested by the Principal.



**STUDENTS**

**Regulation 2525**

**Student Academic Achievement**

**Promotion and Graduation Requirements**

**(a) Promotion Requirements for Junior High School or Middle Grade Level**

A minimum of eleven (11) credits will be required for a student to be promoted to high school. Subject areas are as follows:

Language Arts	2
Mathematics	2
Social Studies	2
Science	2
Physical Education	1
Vocational Education	.5
Chamorro and/or Carolinian	.5
Music/Art	.5
Computer Literacy	.5
<b>TOTAL</b>	<b>11</b>

**(b) Graduation Requirements for High School Level**

A minimum of twenty-one (21) credits will be required for graduation from the 12<sup>th</sup> grade. Required subjects constitute sixteen (16) of the minimum credits and are as follows:

English	4
Mathematics	3
Social Studies	3+
Science	3*
Physical Education	2**
Language other than English	1
<b>TOTAL</b>	<b>16</b>

+ 1 credit of CNMI History is required. 1 credit of U.S. History will be required starting with the 2003 graduates.

\* 1 credit of Agriculture may be substituted for 1 credit of Science.

\*\* 1 credit of JROTC may be substituted for 1 credit of Physical Education. 0.5 credit of the Physical Education credits must include a health course.

**(c) Residency Requirement**

A student must have completed at least one semester immediately prior to obtaining a high school diploma. A student must be enrolled as a full-time student.

**STUDENTS**

**Regulation 2540**

**Student Academic Achievement**

**Ceremonies and Awards**

High school graduation ceremonies will be held at the end of each school year.

**(a) Valedictorian and the Salutatorian**

During the graduation ceremony, two students who are school's highest achievers shall deliver the valedictory and salutatory speeches. The Valedictorian shall have earned the highest grade point average at the school. The Salutatorian shall be the student with the second highest grade point average at the school. Both the Valedictorian and the Salutatorian must meet the following criteria:

1. The student must be enrolled for three (3) complete school years in any public high school in the CNMI.
  - A. Students achieved the highest and second highest grade point averages in all the required courses for graduation as computed in percentages;
  - B. The students must not have taken a remedial course or repeated a course during the last three years of high school.
  - C. The students' completed courses must include a minimum of fifty percent (50%) honor or AP courses in the core subject areas of language arts, math, science and social studies offered during the students enrollment with the high school.
  - D. The students must not have had significant disciplinary problems as determined by the principal.

If either of the students with the highest grade point average do not qualify, the award shall go the student with the highest grade point average who meets the criteria.

**(b) High School Graduation Awards \***

The following awards may be distributed during graduation. Any other awards will be distributed during special award ceremonies. The graduation awards may include:

- 1) The Board of Education Award shall go the Valedictorian.
- 2) The Commissioner's Award shall go the Salutatorian.

- 3) The Presidential Academic Fitness Awards (PAFA) shall go to the student who meets the requirements as stipulated in the PAFA.
- 4) The Principal's Award shall go to the student who meets the requirements as established by the Principal.
- 5) The Educational Achievement / Top Ten Award shall go to the Valedictorian, the Salutatorian and the next eight students with the highest grade point averages as computed in percentage. These students must have attended any public high school for three (3) years in the CNMI. Student who are in the top ten must not have taken remedial courses or repeated any course.
- 6) Honorable Mention shall go to the students who would have earned the Educational Achievement / Top Ten Award but have not met the school attendance requirement of three (3) years shall be accorded honorable mention during the graduation ceremony and awards may be presented as appropriate.

**(c) Special Award Ceremonies\***

Special award ceremonies may be held to honor and recognize students who are eligible for any other awards. Special awards may include:

**1. Department Awards**

Department awards shall be presented to the two highest achievers for each academic department and the highest in each vocational education department in terms of grade point average as computed in percentage.

**2. Outstanding Female Graduate (OFEGRA)**

This award shall be presented to a graduating female student based on the criteria established by the Office of Women's Affairs, the school principal, teachers and counselors, and concurred by the Board of Education.

**3. School Leadership/ Governor's Award**

This award shall be given to the graduating student who exhibits the highest leadership qualities as determined by the principal, counselor and teaching staff.

**4. Parents/Teachers Association Award**

This awards shall be presented to graduating students who meet the criteria established by the PTA.

**(d) 8th Grade Special Awards\***

**1. Board of Education's and Commissioner's Awards**

These awards go to the two highest grade point average holders as computed in percentage, respectively. These students must be enrolled in a CNMI public school in the 7th and 8th grade. These students must not have taken any remedial courses or repeated any courses.

**2. President Academic Fitness Awards (PAFA)**

These awards are determined by the PAFA requirements.

**3. Subject Awards**

Students who maintained the highest grade point average in the respective subject areas as computed in percentage for the last two years, 7th and 8th grades.

**4. School Leadership Award**

A leadership award shall be presented to the student who exhibits leadership qualities as determined by the principal, counselor and teaching staff.

**5. Honorable Mention**

This recognition shall be given to those students who would have received the Board of Education or the Commissioner's Award but who did not attend the respective school for both the 7th and 8th grade.

\* Each school may establish additional written criteria for the selection of graduation and special awards recipients. Schools may refuse to offer awards to qualified students for disciplinary reasons.

**STUDENTS**

**Regulation 2601**

**Discipline**

**Jurisdiction**

(a) The student discipline regulations apply in all situations in which students are involved, including, but not limited to:

- (1) school activities on property owned, rented, leased, or otherwise occupied by the CNMI Board of Education, Public School System (PSS), or Commonwealth Government;
- (2) travel on school buses or in school vehicles;
- (3) off-site school sponsored activities;
- (4) on or off-site school-related problems which are the result or cause of disruptive behavior on school grounds; or
- (5) violent acts or behavior that occur off school property, pose a threat to the safety of students and/or faculty, or disrupt the learning environment.

(b) The fact that a student withdraws from PSS or transfers to another school after the alleged commission of a prohibited act shall not be construed to deprive PSS of jurisdiction to suspend or expel the student.

**STUDENTS**

**Regulation 2602**

**Discipline**

**Day to Day Discipline**

Principals and appropriate personnel are specifically authorized by this policy to impose or recommend day to day discipline including, but not limited to, in-house detention, parent conferences, counseling sessions, campus clean up, community service, required apologies, behavioral intervention plans, and any reasonable creative disciplinary measures.

**STUDENTS**

**Regulation 2603**

**Discipline**

**Detention**

(a) The provisions of a detention program for student violations of policies, rules and regulations shall provide principals with an additional alternative for dealing with disciplinary problems that occur in the schools. Detention is an assigned before-school and/or after-school period, during which student activity is closely monitored and severely restricted. Students are expected to be quiet during the entire detention period and to work exclusively on assigned tasks.

(b) School administrators and certified personnel detain students after normal school hours for a reasonable time provided the following conditions are observed:

1. Students must have an opportunity to make arrangements for transportation home. Therefore, the detention may take place on any day after the day of notification to detain.
2. The detention may be for disciplinary or academic reasons.
3. The names of all students detained must be reported to the building principal.
4. A certified staff member must supervise all students detained.

**STUDENTS**

**Regulation 2604**

**Discipline**

**In-School Suspension**

In-school suspension is a structured disciplinary action in which a student is isolated or removed from regular classroom activities, but is not dismissed from the school setting. The principal/designee may assign students to the in-school suspension program for a reasonable and specified period of time.



**Discipline****Offense Categories**

The offense categories set out in this regulation are intended to be illustrative but not an exclusive listing of acts of misconduct and the consequences for each. Misconduct that is not specifically listed in this regulation may be deemed to warrant discipline up to and including expulsion following provision of all due process procedures. In addition, the disciplinary consequence listed for each offense may be increased or decreased by the Administration or the Board due to mitigating or aggravating circumstances.

(a) **Category I - Examples of offenses which may result in suspension:**

- a. academic dishonesty (cheating on tests, copying term papers, forging signature of teacher or parent)
- b. Disrespect to teacher/staff
- c. Failure to report to office when directed to do so
- d. Gambling
- e. Harassment, including, but not limited to, nuisance phone calls to students or staff members; continued comments or passing unofficial notes to another individual who wishes not to hear or receive the notes
- f. Igniting matches (when not part of the instructional program)
- g. Lack of required immunization
- h. Leaving school grounds without prior permission
- i. Personal health reasons (When one's state of health threatens the health of others as in the case of communicable disease)
- j. Refusing to cooperate with school transportation regulations
- k. Refusing to cooperate with school rules and regulations
- l. Refusing to do assigned work

- m. Refusing to serve detention
  - n. Tardiness (class/classes)
  - o. Tardiness (school day)
  - p. Truancy (class/classes)
  - q. Truancy (school day)
  - r. Unauthorized sale or distribution, not otherwise described, including, but not limited to, the sale of football pools and the sale of items in school not related to the school's operation or school fundraising activities.
  - s. Possession and/or use of tobacco or cigarette rolling papers
  - t. Possession and/or use of betel nut (pugua) or betel nut related paraphernalia
  - u. Using foul or abusive language
  - v. Verbal assault on student
  - w. Possession of pornography
- (b) **Category II - Examples of offenses for which the student will normally be suspended and which may result in expulsion and referral to Law Enforcement:**
- (1) Assault on student from another school
  - (2) Assault on a student from same school
  - (3) Chronic disruption of the school program and/or activities
  - (4) Deprivation through intimidation of another individual's right to attend school or classes
  - (5) Destruction and vandalism of school property, personal property of students and/or faculty
  - (6) Receipt, sale, possession, or distribution of property stolen from CNMI Public School System valued less than \$300

- (7) Disruptive behavior which results in the interference with the normal school program
- (8) Distribution, attempt to distribute, or possession with intent to distribute a non-controlled substance upon the representation that the substance is a controlled substance
- (9) Extortion less than \$300
- (10) Failure to assume responsibility for, or to control his/her behavior
- (11) False fire alarm/ false fire report
- (12) Harassment for any reason including, but not limited to, sex, sexual orientation, color, race, religion, national origin and disability
- (13) Indecent exposure (frontal or buttocks)
- (14) Insubordination (constant or continuing intentional refusal to obey a direct or implied order, reasonable in nature, from a school Administrator, teacher, or other school personnel)
- (15) Participating in, or inciting a school disruption
- (16) Possession and/or detonation of an incendiary or explosive material and/or device (firecracker or greater)
- (17) Possession and/or use of a portable pager (beeper) without prior and written approval from school Principal
- (18) Possession and/or use of a portable telephone without prior and written approval from school Principal
- (19) Possession of a pocket knife or possession of objects that may be considered weapons under Category III(j) but are in the student's possession for genuine instructional purposes, (i.e. kitchen knives and exacto knives) without prior approval and under conditions set by the school Principal
- (20) Possession of a look-alike weapon of any kind
- (21) Possession, use or distribution of controlled substance-related paraphernalia (other than betel nut or cigarette rolling papers (see category I)

- (22)Purchase of a non-controlled substance that has been represented to be a controlled substance, excluding betel nut
- (23)Theft and/or knowingly possessing stolen property
- (24)Trespassing on school property
- (25)Possession and/or use of tobacco or cigarette rolling paper, repeated offense
- (26)Possession and/or use of betel nut (pugua) and or betel nut-paraphernalia, repeated offense
- (27)Fighting
- (28)Conspiracy involving two (2) or more persons to commit a Category II offense
- (29)Arson
- (30)Assault on a PSS staff member
- (31)Striking a staff member intervening in a fight or other disruptive activity (intentional or unintentional)
- (32)Bomb Threat
- (33)Conspiracy between two or more persons to commit a Category III offense
- (34)Destruction and/or vandalism of school property, personal property of students and/or faculty valued at more than \$300
- (35)Receiving, selling, possessing or distributing property stolen from the CNMI Public School System valued at \$300 or more
- (36)Distribution and/or sale of alcohol
- (37)Distribution and or sale of controlled substances (illegal drugs), excluding betel nut
- (38)Possession or use of a real weapon of any kind (other than a firearm) including, but not be limited to, a switchblade knife, hunting knife, throwing star, straight razor, nunchaku, spiked glove, spiked wristband, or any mace, tear gas, or pepper-spray derivative. Mace, tear gas, and pepper-spray derivatives may be carried with prior, written approval from the Commissioner of Education

- (39) Extortion of \$300 or more
  - (40) Possession of alcohol
  - (41) Possession of controlled substance (illegal drugs), excluding betel nut
  - (42) Prescription violation (misuse of properly prescribed medicine including, but not limited to, such drugs as amphetamines and barbiturates)
  - (43) Robbery
  - (44) Use of a controlled substance (illegal drugs), excluding betel nut. Being under the influence of a controlled substance, or showing evidence or having used a controlled substance, excluding betel nut
  - (45) Use of a look alike weapon of any kind
  - (46) Use of alcohol, under the influence of alcohol, or showing evidence of having consumed alcohol
  - (47) Use of intoxicants which cause a loss of self-control or inebriation which include, but are not limited to, glue and solvents, excluding betel nut
  - (48) Violent behavior which creates a substantial danger to persons or property
  - (49) Fighting, repeated offense
  - (50) Any crime that is designated a felony by CNMI or federal statutes
- (c) Category III - Offenses which shall result in expulsion and referral to Law Enforcement
- (1) Possession, use, purchase, or sale of a firearm.
    - A. A firearm is defined as:
      - i. any weapon which will, or is designed to or may readily be converted to expel a projectile by the action of an explosive;
      - ii. the frame or receiver of any weapon which will, or is designed to or may be readily converted to expel a projectile by the action of an explosive;

- (e) When a student is suspended, the principal/designee shall attempt to reach the student's parent/guardian to inform them of the school's action and to request that they come to school for the student. If the parent/guardian is unable to come for the student, the principal/designee may ask the parent/guardian for permission to send the student home. If the parent/guardian cannot be reached or if the above request is refused, the student must remain on school property until the close of the school day.
- (f) The student's parent or guardian shall also be notified, in writing, on the day the suspension decision is made of the reason(s) for the suspension and the right of the student or parent or guardian to appeal the suspension to the Commissioner of Education within ten (10) calendar days of the notification. Copies of all notifications shall be sent to the Commissioner of Education and the PSS Legal Counsel.
- (g) The appeal procedures for suspensions of less than ten days are described in section (e) of this regulation (below). The appeal procedures for suspensions of ten days or more are described in Regulation 2608.
- (h) If the parent and/or student wishes to appeal a suspension of ten (10) days or less, the Commissioner of Education or a designee who shall be someone other than a principal, administrator or teacher in the suspended student's school, shall meet with the student and/or the parent or guardian to discuss the suspension. If the Commissioner of Education or designee finds that the student was suspended unfairly or unjustly, or that the suspension was inappropriate given the nature of the alleged offense, or that the student suffered undue consequences or penalties, the suspension may be overturned and any reference to the suspension in school records will be expunged. Such findings shall be made in writing within ten (10) school days of the conference.

## **STUDENTS**

**Regulation 2607**  
**(Form 2663)**

### **Discipline**

### **Expulsion**

- (a) Expulsion is permanent exclusion from public school attendance, school activities and school property. Expulsion shall be used only in severe cases, or where other means of corrective disciplinary action have failed, or where no other reasonable alternatives are available. An expulsion may be recommended if the student persistently engages in conduct that warrants suspension, or if the student by means of a single action evidences behavior that is serious enough to warrant removal to protect the rights or safety of others.
- (b) Only the Commissioner of Education may expel a student. The principal recommending expulsion shall prepare written documentation in justification of such action.
- (c) The Commissioner of Education reserves the right to exclude students for other than disciplinary reasons if the expulsion is deemed in the best interest of the student or the operation of the school (i.e. student with a contagious health problem).
- (d) In the event of criminal conduct or other serious action committed by a student, the Commissioner of Education may expel the student immediately and for an unlimited period with a hearing to be held in accordance with Regulation 2608.
- (e) Prior to any expulsion ordered by the Commissioner of Education, the student shall be advised by the principal or his designee of the specific conduct resulting in the action, the student shall be given the opportunity to explain his or her version of the facts surrounding the alleged misconduct and the student shall be advised of the applicable hearing procedures.

## STUDENTS

## Regulation 2608

### Discipline

#### Hearing Procedures

- (a) A due process hearing will be held if requested by the student parent/guardian for suspensions of more than ten (10) days and expulsions. The hearing will be closed unless the student, parent/guardian or others having custodial care requests an open hearing.
- (b) Upon a determination by the principal or the Commissioner of Education that a suspension of more than ten (10) days or an expulsion is necessary, the student and his/her parents or guardians must be sent on the same day the suspension or expulsion recommendation is made, a copy of PSS's student disciplinary policy and written notice of the following:
  - (1) The Public School System's intent to suspend the student for more than ten (10) days or to expel the student;
  - (2) the charges that necessitate the suspension or expulsion;
  - (3) that a full and fair hearing will be held before an impartial adjudicator if requested, in writing, within ten (10) days of notification; and
  - (4) failure to request a hearing, in writing, within ten (10) school days after being notified of the Public School System's intention *to suspend or expel* the student shall constitute a waiver of the right to a hearing.
- (c) In the event that a hearing is requested, the student may not be suspended for more than ten (10) consecutive school days before the hearing is held and written notice of the following will be sent to the parents or guardian of the student:
  - (1) the place, date and time of the proposed hearing (allowing sufficient time for a defense to be prepared);
  - (2) the student's right to legal counsel at his/her own expense;
  - (3) that the student will be given the opportunity to present evidence at the hearing including the testimony of witnesses;
  - (4) that the student will be given the opportunity to cross-examine opposing witnesses at the hearing; and
  - (5) the availability of a written record of the hearing. This section shall not be construed to prohibit the use of a recording device to record the hearing.



- (d) Within (10) ten school days, if practicable, after a hearing is requested in writing, the hearing shall be held. The hearing shall be an informal proceeding where relaxed evidence rules will apply.
- (e) The Commissioner of Education or his/her designee shall preside and ensure that all of the aforementioned rights are afforded the student.
- (f) If, based on the evidence presented at the hearing, the Commissioner of Education or his/her designee finds that the student has committed an act which warrants disciplinary action, he or she may order any appropriate disciplinary action, including, but not limited to, suspension or expulsion.
- (g) When determining whether the disciplinary action and/or the length of suspension/expulsion is appropriate, the Commissioner of Education or his/her designee may consider the severity of the offense, prior disciplinary actions taken against the student by the Public School System and any other prior bad acts of the student.
- (h) Within ten (10) school days after the conclusion of the hearing, the Commissioner of Education or his/her designee shall inform the student, parent or guardian of his/her decision. The decision must be in the form of a final, written opinion regarding whether or not any disciplinary action, such as expulsion or suspension, is warranted.

**Discipline****Appeal to the Board of Education**

- (a) The student and/or his or her parent or guardian shall have the right to appeal to the Commissioner of Education's or his/her designee's decision regarding a suspension of more than ten (10) days or an expulsion to the Board of Education.
- (b) The Board of Education must be notified, in writing, of the student's and/or parent or guardian's desire to appeal within ten (10) school days from the date the student, parent or guardian was informed of the disciplinary decision.
- (c) Once a disciplinary decision is appealed, the Board shall meet to review the decision within thirty (30) calendar days of when the written notice of the appeal is received by the Board.
- (d) The disciplinary decision of the Commissioner of Education or his/her designee shall remain in effect until the Board issues its own decision.
- (e) The Board's decision on appeal shall be based solely on the record developed at the expulsion or suspension hearing and the Commissioner of Education or designee's written opinion. The Board shall review the suspension or expulsion SOLELY on the record of the hearing and decision of the Commissioner of Education or his/her designee. The Board shall receive no new evidence.
- (f) At the hearing the sole issue for the Board to determine is whether the Commissioner of Education's or his/her designee's decision to suspend or expel the student constitutes an abuse of authority. The Board of Education shall render its decision by a majority vote of those members in attendance.
- (g) The Board does not have the authority to modify the Commissioner of Education's or his/her designee's expulsion decision. In such cases, the Board may either uphold the Commissioner of Education's decision, overturn it completely, or overturn it and order that a new hearing be conducted in compliance with their order.

**Discipline****Discipline of Students with Disabilities**

- (a) To the extent that a student without a disability would be subject to suspension for similar misconduct, a student who is eligible for special education and related services under the Individuals with Disabilities Education Act (IDEA) may be removed from his or her current educational placement for not more than ten (10) consecutive school days for a violation of school rules or policy.
- (b) A student may be also be removed for not more than ten (10) consecutive days in the same school year for separate incidents of misconduct so long as those removals do not constitute a change in placement.
- (c) A change in placement can occur when a student is removed for more than ten (10) consecutive days or when removals in a school year total more than ten (10) days **AND** indicate a pattern of exclusion.
- (d) The Special Education Coordinator shall determine whether a pattern of exclusion constituting a change in placement exists by reviewing the length of each removal, the total amount of time removed and the proximity of the removals to one another.
- (e) **ANY** suspension/expulsion of a disabled student for more than 10 (ten) cumulative days in a school year requires PSS to provide a free appropriate public education (FAPE) **regardless of whether the removal constitutes a change in placement.**
- (f) A student, parent or guardian may request a due process hearing to challenge any change in placement, PSS's provision of FAPE or a manifestation determination (See section (i)(3) of this regulation).
  - (1) Due process hearing procedures and rights are listed in the "CNMI Parental Rights under the IDEA".
  - (2) The student, parent or guardian may request an expedited hearing to challenge a manifestation determination or a change in placement for disciplinary reasons.

- (g) For ALL removals for more than ten (10) cumulative days in a school year regardless of whether the removal constitutes a change in placement, the following requirements shall apply.
- (1) PSS must continue to provide FAPE services that allow the student to make appropriate progress in the general curriculum and to make advancements toward the goals and objectives of the individualized education program (IEP).
  - (2) The principal shall inform the Special Education Coordinator of his/her intent to suspend a student for more than ten (10) cumulative days in a school year before beginning the fifth cumulative day of suspension in a school year.
  - (3) The IEP team shall meet to determine whether a functional behavioral assessment ("FBA") had been performed and whether a behavioral intervention plan ("BIP") had been developed for the student before the alleged misconduct. This meeting shall take place before, if possible, but no later than ten (10) business days of either removing a student for more than ten (10) days in a school year or commencing a change in placement.
  - (4) If an FBA was not conducted and a BIP not in place before the behavior at issue occurred, then the IEP team will prepare a FBA plan within the ten (10) business days. As soon as practicable after developing an FBA plan, the IEP team should complete the assessments in the plan, develop appropriate behavioral interventions and implement those interventions.
  - (5) If a behavioral intervention plan was in place at the time of the student's behavior, then the IEP team will review and modify the plan, if necessary, within the ten (10) business days.
- (h) For removals of more than ten (10) cumulative days in a school year that do not constitute a change in placement, the FAPE services may be determined by the school administrator in consultation with student's special education teacher and if necessary convene an IEP meeting to the student's IEP.

- (i) When a disciplinary action that constitutes a change in placement is contemplated, PSS must do the following:
- (1) Comply with the procedures set forth in Section (g) above.
  - (2) Notify the parents of the decision to remove the student from his or her current placement no later than the date on which the decision to take action is made AND send a copy of "CNMI Parental Rights under the IDEA". The notice should be in the parent or guardian's native language and should include the following:
    - (A) A description of the removal and the conduct that was the basis for such removal.
    - (B) A description of any other options considered and why such options were rejected.
    - (C) A description of every test, evaluation, record or report used as a basis for the removal and any other factors relevant to the school's decision.
    - (D) A statement that the parent/guardian is afforded protection under the procedural safeguards under the IDEA. (Refer to "CNMI Parental Rights under the IDEA" for an explanation of the safeguards)
  - (3) Immediately if possible but not later than ten (10) school days after the decision to take action is made, the IEP team must conduct a review to determine whether the student's misconduct is caused by, or has a direct and substantial relation to, his or her disability ("manifestation determination").
- (j) In conducting a manifestation determination, the IEP team must consider all relevant information, including evaluations and diagnostic results, observations of the student and the student's IEP and placement, to determine:
- (1) whether the student's IEP and educational placement were inappropriate;
  - (2) whether the IEP services provided were inconsistent with the student's IEP and placement;

- (3) whether the student's disability impaired the student's ability to understand the impact and consequences of the behavior subject to the disciplinary action; and
  - (4) whether the student's disability impaired his or her ability to control the behavior subject to disciplinary action.
- (k) If the IEP team determines that any one of the four factors above was present at the time of the misconduct, then the behavior must be considered a manifestation of the disability and a change in placement cannot be made except through the IEP team process.
- (l) In addition, if the IEP team discovers any deficiencies in the IEP plan during its review, the IEP team must take immediate steps to remedy those deficiencies.
- (m) If the IEP team determines that the behavior was not a manifestation of the disability, then PSS may discipline the student pursuant to disciplinary regulations for regular education students with the SPED student continuing to receive FAPE services as determined by the IEP team.
- (1) The IEP team will report the results of the manifestation determination to the school principal who will inform the Commissioner of Education. The Commissioner of Education or his/her designee shall schedule a suspension/expulsion hearing when requested by the parent and/or guardian.
  - (2) The IEP team will also forward the special education and disciplinary records of the student that must be considered by the party making the discipline decision (i.e. the Commissioner of Education or his/her designee).
- (n) In any instances where the student carries a dangerous weapon to school or school functions or knowingly possesses or uses illegal drugs, sells or solicits the sale of a controlled substance at school or school functions, PSS may change the placement of the student to an interim alternative educational setting for the same amount of time that a student without a disability would be subject to discipline but not to exceed forty-five (45) calendar days.
- (1) A dangerous weapon is defined as any instrument capable of causing serious bodily harm but does not include pocket knives of less than two and one-half inches in length.

- (1) The definition of illegal drugs does not include tobacco, alcohol, betel nut or prescription medications. However, the sale or solicitation of controlled substances such as prescription medications is prohibited.
  - (2) The interim alternative educational setting will be determined by the IEP team and must enable the student to progress in the same curriculum as that offered to other students, to move towards the goals in his or her IEP AND to receive services that are designed to prevent the conduct from recurring.
- (o) PSS may also initiate a hearing before an impartial hearing officer to place a student in an alternative educational setting when a student's dangerous behavior creates a substantial likelihood that injury will result to the student or others if the student is allowed to remain in his/her current placement.
- (p) The hearing officer may order the placement of a student in an interim alternative educational setting for a period not more than forty-five (45) calendar days upon:
- (1) Considering the appropriateness of the student's current placement;
  - (2) Considering whether PSS has taken reasonable steps to minimize the risk of harm in the student's current placement;
  - (3) Determining that PSS has shown by substantial evidence that maintaining the student in the current placement is substantially likely to result in injury to the student or others;
  - (4) Determining that the interim alternative educational setting enables the student to meet the requirements set forth in Section (n)(3) of this regulation.

- (q) Upon a request for a due process hearing and during any appeals of a disciplinary removal, the placement of students shall be as follows:
- (1) The student will remain in the interim alternative educational setting until the expiration of the 45 day period if the student was removed and placed in an interim alternative educational setting for possession or use of dangerous weapons or drugs or by order of a hearing officer for dangerous behavior.
  - (2) If the due process hearing involves any other disciplinary action, then the student will remain in the placement that existed prior to the suspension pending the hearing and/or appeal.
  - (3) After the expiration of a 45 day interim alternative educational setting period for drugs, weapons or dangerous behavior, the student will return to the placement that existed prior to the suspension pending the hearing or an appeal.
  - (4) If the student remains dangerous during the pendency of a hearing, appeal or at any other time, PSS may seek repeated alternate placements through expedited hearings upon the expiration of the original 45 days ordered by a hearing officer and any subsequent 45 day period ordered.
  - (5) By mutual agreement between the parties, modifications in the educational placement may be made while any hearing or appeal is pending.
- (r) If PSS believes that it would be dangerous to return the student to the placement that existed prior to the removal then PSS may request an expedited hearing or PSS may seek injunctive relief from the court pursuant to the standard set forth in Honig v. Doe, 108 S.Ct. 592 (1988).
- (s) A Honig injunction may be sought at any time PSS believes that maintaining the student in the current educational setting is substantially likely to result in injury to the student or others and the parents will not agree to an appropriate alternative educational setting.



**Discipline****Enrollment or Return Following Suspension and/or Expulsion**

(a) No student shall be readmitted, or permitted to enroll or otherwise attend school (except as may otherwise be required by law), following a suspension or expulsion from any school until the PSS has conducted a conference to review the conduct that resulted in the expulsion or suspension, and any remedial actions needed to prevent any future occurrences of such or related conduct.

Participants in such pre-admission conferences will include:

1. Any teacher directly involved in the suspension offense.
2. The student.
3. The parent/guardian.
4. The representative of any agency having legal jurisdiction, care, custody, or control of the student.
5. PSS staff members designated by the Commissioner/designee

(b) The PSS shall notify in writing the parent/guardian and all other parties of the time, place, and agenda of any such conference. However, failure of any party to attend this conference shall not preclude holding the conference.

(c) Notwithstanding any provision of this regulation to the contrary, no student shall be readmitted or enrolled in a regular program of instruction if.

1. The student has been convicted of one of the offenses listed below.
2. The student been charged with one of the offenses and there has been no final judgment.
3. A juvenile petition has been filed alleging that the student committed an act, which if committed by an adult, would be one of the offenses listed below, and there has been no final judgment; or
4. The student has been adjudicated to have committed an act, which if committed by an adult, would be one of the offenses listed below.

**(d) Offenses to Which Section (c) Applies**

- 1. First degree murder under the laws of the CNMI**
- 2. Second degree murder under the laws of the CNMI**
- 3. First degree assault under the laws of the CNMI**
- 4. Forcible rape under the laws of the CNMI**
- 5. Forcible sodomy under the laws of the CNMI**
- 6. Robbery in the first degree under the laws of the CNMI**
- 7. Distribution of drugs to a minor under the laws of the CNMI**
- 8. Arson under the laws of the CNMI**
- 9. Kidnapping under the laws of the CNMI**

**(e) Nothing in this regulation shall be construed to prevent the PSS from imposing discipline under its regulations for conduct underlying the above-listed offenses, even if the adult charge or juvenile charge has been dismissed, or the student has been acquitted or adjudicated not to have committed such acts in a criminal or juvenile court --if by a preponderance of the evidence, it can be established that the student engaged in the underlying conduct. The PSS may enroll a student otherwise excluded under this regulation, in an alternative education program if the PSS determines that such enrollment is appropriate.**

**Student denied enrollment because of conviction of one of the acts set out in this policy or due to an existing suspension or expulsion from another school will be advised of the reasons for denial of enrollment and will be given an opportunity to respond to those reasons.**

## STUDENTS

## Regulation 2620

### Discipline

#### Closed Campus

Students may not leave school grounds from the time of their arrival until the time they leave at the end of the day unless they have written permission from a parent/guardian, a signed liability waiver form suitable to the Commissioner and the permission of the principal/designee.

“Parent/guardian” shall mean the person designated as such in the student’s school registration materials.

**STUDENTS**

**Regulation 2621**  
**(Form 2621)**

**Discipline**

**Student Vehicle Use**

Building principals have the authority to regulate student use of automobiles at school. Use of school property for student parking purposes is a privilege that may be denied due to violation of PSS regulations and school policies. Student vehicles parked on PSS property are subject to search by school officials where there is reason to believe a vehicle contains materials prohibited by PSS regulations.

**Discipline****Student Attire and Appearance**

- (a) It is the responsibility of the Board to ensure that every student has a safe environment in which to learn. Attire worn by students that, in the opinion of the school administration, causes distraction or inhibits learning is forbidden.
- (b) Attire which is prohibited by the Board includes but is not limited to the following:
1. Attire and appearance that promotes gang affiliations;
  2. Attire and appearance which promotes the use of drugs, alcohol or weapons;
  3. Attire and appearance that presents a hazard to the student's safety or the safety of other students or staff;
  4. Attire and appearance which advocates prejudice;
  5. Attire and appearance that causes a material and substantial disruption of the learning process.
  6. Provocative clothing which draws undue attention to themselves, thus disrupting the educational process.
- (c) The definition of attire and appearance should be construed liberally to include items such as bookbags, book-covers, sports-related articles, hats, lunch-boxes, and other similar items that students may bring to school.

**Discipline****Student Participation in Secret Organizations and Gangs**

(a) The Board of Education prohibits membership in secret fraternities or sororities, or in other clubs or gangs not sponsored by established agencies or organizations recognized by the PSS. The Board feels that the presence of gangs and gang activities can cause a substantial disruption of or material interference with school and school activities.

(b) A "gang" as defined in this regulation is any group of two or more persons whose purposes include the commission of illegal acts. By this policy, the Board acts to prohibit existence of gangs and gang activities as follows:

(c) No student on or about school property or at any school activity:

1. Shall wear, possess, use, distribute, display, or sell any clothing, jewelry, emblem, badge, symbol, sign, or other things, which are evidence of membership or affiliation in any gang.
2. Shall commit any act or omission or use any speech either verbal or nonverbal (gestures, handshakes, etc.) showing membership or affiliation in a gang.
3. Shall use any speech or commit any act or omission in furtherance of the interests of any gang or gang activity, including but not limited to:
  - A. Soliciting others for membership in any gangs.
  - B. Requesting any person to pay protection or otherwise intimidating or threatening any person
  - C. Committing any other illegal act or other violation of school PSS policies.
  - D. Inciting other students to act with physical violence upon any other person.

(d) The principal will establish procedures and regulations to ensure that any student wearing, carrying or displaying gang paraphernalia; exhibiting behavior or gestures which symbolize gang membership; or causing and/or participating in activities which intimidate or affect the attendance of another student, shall be subject to disciplinary action.

- (e) Consequences for such actions and/or behaviors may result in suspension or expulsion.
- (f) To further discourage the influence of gangs, PSS administrators shall:
  1. Provide in-service for staff in gang recognition and special workshops for counselors in the event that gangs become a problem at the schools.
  2. Ensure that all students have access to counselors.
  3. Work closely with the local law enforcement authorities and county juvenile officers who work with students and parents/guardians involved in gang activity.
  4. Provide classroom or after-school programs designed to enhance individual self-esteem and foster interest in a variety of wholesome activities.

**Discipline**

**Student Use and Care of School Property**

(a) The Board of Education recognizes that acts of destruction, defacing, trespassing, burglary and theft of PSS property are contrary to the interests of students, staff and taxpayers. PSS officials will cooperate fully with all law enforcement agencies in the prevention of crimes against PSS property as well as in the prosecution of persons involved in such conduct.

(b) The PSS will seek restitution from students and other persons who have damaged or destroyed PSS property. As permitted by law, the PSS will also seek restitution from the parent/guardian of children involved in such misconduct.



**Discipline**

**Student Use of Tobacco, Alcohol, Drugs and Betel Nut**

**(a) Drugs and Alcohol**

The possession, use, sale, distribution and/or intent to distribute any illegal or controlled mood-altering chemical, medication or abused chemical or alcohol or other intoxicants on school property, at school-sponsored events, and on school buses is prohibited.

**(b) Smoking**

Smoking on school campuses and on school buses at all times is prohibited. This prohibition applies to all PSS employees, campus visitors and PSS contractors.

**(c) Betel-Nut (PUGUA)**

The use, sale or distribution of betel-nut on Public School System campuses and on school buses is prohibited. This prohibition applies to all PSS employees, campus visitors and PSS contractors.

**Student Welfare****Reporting Student Abuse****(a) Definitions**

1. Commonwealth law, 6 CMC Section 5313 et. seq., mandates certain professionals, including school teachers and school officials, to report to the Division of Public Safety (DPS) when the professional knows or has reasonable cause to suspect that a child is abused, neglected or sexually molested by a parent or a person responsible for the child's welfare. This notification shall be within twenty-four (24) hours.
2. Child abuse is defined as an intentional act causing any physical pain or injury, sexual abuse or mental distress inflicted on a child who is in the person's custody with the result that the child's physical or mental health and well being are harmed or threatened, excluding reasonable and traditional discipline as determined by prevailing community and cultural standards.
3. Neglect is defined as the failure to provide a child who is in the person's custody with adequate supervision, medical care, food, clothing or shelter with the result that the child's physical or mental health and well being are harmed or threatened.

**(b) Procedure for Reporting Abuse and Neglect**

1. When a school employee has reason to believe that a student has been or may be subjected to abuse or neglect, the employee shall immediately notify the building principal or designee.
2. Upon notice of abuse or neglect, the building principal or designee will make an immediate oral report to the Division of Youth Services (DYS) and the Department of Public Safety (DPS). This notification shall be within twenty four (24) hours. The principal will inform the DPS and DYS of the time, date, circumstances and details or information which gave rise to the belief that abuse or neglect has or will occur. The call will be logged with the date, time and nature of the report.
3. When DYS or DPS representatives interview students on school property, a school staff member, such as a counselor, will be present.
4. The school shall prepare and submit a report to the Commissioner containing the time, date, circumstances and details or information which gave rise to the belief that abuse or neglect has or will occur.

## STUDENTS

Regulation 2720

### Student Welfare

#### Student Stipends

Qualification criteria for student stipends include but are not limited to the following.

1. The student must be a resident of the CNMI.
2. The island where the student is attending school does not have the student's grade level required to graduate from high school.
3. The student must not be residing with his/her parent(s) at the time and during his/her attendance at the new school.
4. Students who are relocated from their respective island(s) residency not of their choice (evacuated due to volcano eruption, earthquake, etc.) may be eligible regardless of the grade(s) they are in. In this case, Item #3 above may be waived if neither parent has gained employment yet. Once a parent is employed the stipend shall be terminated.
5. Application for student stipend shall be submitted annually by the student's sponsor where the student will reside and at least thirty (30) days in advance to the Commissioner of Education. The Commissioner will notify the applicant if the application is approved or disapproved ten (10) days after receipt of the application.
6. If the application is submitted as indicated on Item #5 above and approved by the Commissioner, the stipend will commence on the first day of the school year and will cease at the closing of the school year where the student is attending. If the application is submitted after the school opens then the effective date will be the date the Commissioner approved the application.
7. The student stipend check will be issued at the end of every month to the legal sponsor who signed the application.
8. The eligible student will receive a stipend of \$10.00 a day as long as he/she meets the above criteria.

**Student Services****Student Physical Examination**

- (a) Prior to entering the school for the first time, each child shall provide a certificate of physical examination to the school.
- (b) The Board of Education may require any student to be examined by a physician for the purpose of determining whether the student is afflicted with a contagious or infectious disease or have the liability of transmitting the disease.
- (c) The Board may also require certification from a physician indicating a student's fitness to participate in specific educational programs or extra-curricular activities.
- (d) Refusal on the part of parent/guardian to obtain the required examination and to submit the certification indicating freedom from contagious or infectious disease may result in student exclusion from school.
- (e) Students may be excused from engaging in required educational activities upon proper certification from a physician advising the school of a particular restriction.
- (f) All costs of physical or other examinations shall be at the expense of students unless otherwise specifically mandated by law.

**Student Services**

**Immunizations and Vision and Hearing Tests**

(a) Every parent of a child shall, at the time of first enrollment of the child in any Commonwealth public or non-public school and for each subsequent school year, irrespective of grade level, must provide the school of attendance with proof that the child has received vision and hearing tests and all of the immunizations required by the Department of Public Health. Every parent/guardian of a child whose health records show incomplete tests and immunizations shall be immediately notified of the test or immunization deficiency. Parents are required to initiate all required examinations, tests and immunizations for their child within two weeks after the date of such notice.

(b) Except as provided in 3 CMC Section 1164, failure to comply shall be grounds for suspension of the child from school until the examination, testing or immunization standards have been met.

**Student Services****Students with Communicable Diseases or Contagious Conditions**

(a) A student shall not attend classes or other school-sponsored activities, if the student (1) has, or has been exposed to, an acute (short duration) or chronic (long duration) contagious or infectious disease or condition, and (2) is liable to transmit the contagious or infectious disease or condition, unless the Commissioner/designee has determined, based upon medical evidence and the certification of a physician, that the student:

1. No longer has the disease or condition.
2. Is not in the contagious or infectious stage of an acute disease or condition.
3. Has a chronic infectious disease or condition that poses little risk of transmission in the school environment with reasonable precautions.

(b) School officials may require any child suspected of having a contagious or infectious disease or condition to be examined by a physician and may exclude the child from school, in accordance with the procedures authorized by this regulation, so long as there is a substantial risk of transmission of the disease or condition in the school environment.

(c) A student who has a chronic infectious disease or condition, and who is permitted to attend school, may be required to do so under specified conditions. Failure to adhere to the conditions will result in the student being excluded from school. A student who has a chronic infectious disease or condition and who is not permitted to attend school or participate in school activities will be provided instruction in an alternative educational setting in accordance with Board policy.

(d) Students with acute or chronic contagious or infectious diseases or condition and their families have a right to privacy and confidentiality. Only staff members who have a medical reason to know the identity and condition of such students will be informed. Willful or negligent disclosure of confidential information about a student's medical condition by staff members will be cause for disciplinary action.

(e) All employees will follow the most recent guidelines issued by the Centers for Disease Control, including applicable universal precautions in cleaning up body fluid spills, (a copy of which shall be on file in the PSS department addressing health services and in the principal's office of each school, regardless whether an individual infected with a body fluid or blood-borne pathogen is known to be present in the school environment or related activities. Willful or negligent disregard for these precautions by any staff member will be cause for disciplinary action.

**(f) Acute Infectious Disease or Contagious Condition**

1. A staff member who has reason to believe that a student has been exposed to a contagious or infectious disease or condition, or who observes symptoms of such a disease or condition, shall inform the principal. The principal will consult with a medical professional about the child.
2. If the medical professional determines that the student has an acute contagious or infectious disease or condition, the principal will exclude the student from school for the number of days specified in the latest revision, or until a physician certifies that the student no longer is liable to transmit the disease or condition.
3. If a student has been excluded from school by the principal because the student has or is suspected of having an acute contagious or infectious disease or condition, the student and his/her parent/guardian may appeal such decision in writing to the Commissioner. The Commissioner may require the student to be examined by a physician designated by the PSS, the child's own physician, or both, at the option of the Commissioner. The student shall not attend classes or participate in school activities during the appeal period.

**(g) Chronic Infectious Disease or Condition**

1. If the principal, after consulting with a medical professional, determines that a student may have a chronic infectious disease or condition, the student may be excluded from school and provided an education in an alternative setting until the following procedures have been concluded.
2. The principal shall immediately report any student who has or is suspected of having a chronic infectious disease or condition to the Commissioner or his/her designee and PSS Legal Counsel.
3. Prior to any long-term exclusion of a student, the student's parents/guardians shall receive written notification of the intent to exclude and their procedural safeguards written notice of their procedural safeguards pursuant to Section 504 of the Rehabilitation Act of 1973.
4. The Commissioner or his/her designee shall within ten (10) working days appoint a review committee to assess the student's medical condition. The Committee should include the following:
  - a. The student's parents/guardians
  - b. A physician

- c. The principal who shall serve as chairperson.
  - d. Others mutually agreed upon by the PSS and the parents/guardians.
  - e. The PSS's Legal Counsel may serve on the Committee in an advisory capacity.
5. If the student has been identified as a student with disabilities pursuant to the Individuals with Disabilities Education Act (IDEA), the student may be excluded from school and provided with an education in an alternative setting, so long as such exclusion does not constitute a change in placement pursuant to the IDEA. The student's medical condition and educational placement will be evaluated in accordance with the procedures set forth above, with the following additional provisions:
- a. Prior to excluding the student, the student's parents/guardians shall receive written notification of their procedural safeguards pursuant to the IDEA in addition to written notice of their procedural safeguards pursuant to Section 504 of the Rehabilitation Act of 1973.
  - b. The Review Committee shall include the chairperson of the student's Individual Educational Program Committee or his/her designee.
6. The members of the Review Committee shall determine the fitness of the student to attend school. The Committee will assess the student's condition, the school conditions, and the risks of exposing others to the disease or contagious condition in the school environment, and shall determine whether the student should (1) be permitted to attend school without restrictions; (2) attend school under stated restrictions and conditions; or (3) be excluded from attending school and provided an alternative educational program. The Committee will prepare a written individual school health care plan for the student and establish dates and/or conditions under which the student's status will be reviewed. The Committee will also identify the persons who have a medical need to know the identity of the student because they are responsible for providing proper health care, and will provide the names of those persons to the Commissioner or his/her designee.



7. Within five (5) working days after the Committee is convened, the Committee will make a determination and prepare findings of fact, which the Chairperson shall communicate in writing to the student's parents/guardians, the principal, and the Commissioner. The parents/guardians shall again receive written notification of their procedural safeguards under Section 504 of the Rehabilitation Act of 1973 (and in the PSS's compliance plan for implementing the IDEA, if applicable). The meetings, records, and votes of the Review Committee shall not be open to the public. The determination will be final unless reversed on appeal pursuant to the Complaint Procedures set out in the PSS's compliance plan for Section 504 or the IDEA, if applicable.
8. If a student with a chronic infectious disease or contagious condition is permitted to attend school, the Commissioner will notify those persons who were identified by the Review Committee as having a medical need to know the student's identity and conditions under which the student is attending school. Willful or negligent disclosure of confidential information will be cause for disciplinary action.
  9. Staff members who have a medical need to know the identity of a student with a chronic infectious disease or contagious condition include (1) those who are designated by the PSS to determine the fitness of the student to attend school; (2) those who are responsible for providing health care to the student, such as the school nurse; and (3) those who are most likely to be in a position to render first aid to the student in case of an accident or medical emergency.
  10. A student who has a chronic infectious disease or contagious condition shall be evaluated to determine whether any accommodations or related services are necessary for the student to receive a free appropriate public education. If accommodations or related services are necessary, the PSS shall develop and implement a plan for the delivery of all needed services. This evaluation shall be conducted regardless whether the student is permitted to attend school with or without conditions and restrictions, or is excluded from school.

## **STUDENTS**

**Regulation 2865**  
**(Form 2865)**

### **Student Services**

#### **Human Immunodeficiency Virus (HIV)**

##### **(a) Planning Groups and Panels**

1. There is a statewide planning group, the Community Planning Group (CPG), that addresses awareness and prevention programs, testing guidelines, health care procedures and laws relating to HIV and AIDS for the Commonwealth. Within the school system, there is a PSS HIV Review Panel that coordinates with CPG and develops instruction, curriculum and guidelines relating to HIV.
2. The Commissioner of Education shall designate a coordinator to oversee the PSS's HIV education plans and to work closely with the CPG to develop HIV awareness and prevention programs. The Coordinator shall serve as chairman to the PSS HIV Review Panel and serve as the PSS representative for the CPG. Members of the PSS HIV Review Panel shall include teacher, counselor, administration, parent and student representatives.

##### **(b) School attendance**

1. HIV is not, in itself, a disabling condition, but it may result in conditions that are disabling. To the extent that a student who has HIV is determined to meet the criteria for eligibility for accommodations under state and federal nondiscrimination laws or for special education services, the PSS shall meet all procedural and substantive requirements.
2. School authorities will determine the educational placement of a student known to be infected with HIV on a case-by-case basis by following established policies and procedures for students with chronic health problems or students with disabilities. Decision-makers must consult with the student's physician and parent of guardian; respect the student's and family's privacy rights; and reassess the placement if there is a change in the student's need for accommodations or services.
3. School staff members will always strive to maintain a respectful school climate and not allow physical or verbal harassment of any individual or group by another individual or group. Such harassment may include taunts directed against a person living with HIV infection, a person perceived as having HIV infection, or a person associated with someone with HIV infection.

**(c) Confidentiality, Privacy, Disclosure and Testing**

1. To maintain an atmosphere of trust with staff members, students, families, and the community, a policy that encourages confidentiality is essential. It is important that people who have HIV and their families feel certain that their names will not be released against their wishes to others without a need to know. A policy on confidentiality that is strictly enforced will also provide protection to the PSS from legal action and from potentially adverse reactions that might result.
2. A student or student' parent/guardian or an applicant/employee, may, but is not required to, report HIV status to anyone in the education system. HIV antibody testing is not required for any purpose.
3. Every employee has a duty to treat as highly confidential any knowledge or speculation concerning the HIV status of a student or other staff member. Violation of medical privacy is cause for disciplinary action, criminal prosecution, and/or personal liability in a civil suit.
4. Except as otherwise permitted by law, no school personnel shall disclose any HIV-related information regarding prospective or current school personnel or students to anyone except in accordance with the terms of a written consent. The Commissioner of Education shall develop a written consent form (Form 2865) which details the information the signatory permits to be disclosed, to whom it may be disclosed, its specified time limitation, and the specific purpose for the disclosure. The PSS shall not discriminate against any individual who does not provide written consent.
5. All health records, notes and other documents that reference a person's HIV status will be kept confidential. Access to these confidential records is limited to those named in written permission from the person (or parent or guardian) and to emergency medical personnel. Information regarding HIV status will not be added to a student's permanent education or health record without written consent.

**(d) Procedures for Maintaining Confidentiality**

To promote confidentiality and to avoid the violation of state and federal laws that protect the confidentiality of medical records, the following procedures are suggested:

1. All medical information in any way relating to the HIV status of any member of the school community, including written documentation of discussion, telephone conversations, proceedings, and meetings shall be kept in a locked file. Access to this file shall be granted only to those persons identified in writing by the student or student's parent/guardian, or the employee, as having a direct need to know. Only persons named in the written consent may perform filing and photocopying of related documents.
2. No medical information shall ever be faxed.
3. Medically related documents that are to be mailed shall be marked "Confidential". Names of persons mailing document and those receiving the documents shall be identified on the written consent form by the student or a student's parent/guardian, or the applicant/employee.
4. A written consent form (Form 2865) shall be completed prior to each disclosure and release of HIV-related information.
5. Each disclosure made shall be noted and a list of such disclosures shall be made available to the students, parent/guardian, or employee upon request.

**(e) Infection Control and Universal Precautions<sup>1</sup>.**

1. All PSS employees are required to consistently follow infection control and universal precaution guidelines in all settings and at all times, including playgrounds and school buses. Schools will operate accordingly to standards promulgated by the US Occupational Health and Safety Administration for the prevention of blood-borne infections. Equipment and supplies needed to apply the infection control guidelines will be maintained and kept reasonable accessible. Commissioner of Education shall implement the precautions and investigate, correct and report on instances of lapse.
2. A school staff member is expected to alert a person responsible for health condition or behavior presents a reasonable risk of transmitting any infection.
3. If a situation occurs at school in which a person might have been exposed to an infectious agent, such as an instance of blood-to-blood contact, school authorities shall counsel that person (or, if a minor, alert a parent or guardian) to seek appropriate evaluation.

4. The Commissioner of Education/designee shall provide training to all staff and student about: the hazards of bloodborne pathogens; the recommended operating procedures of universal precautions; the existence of the OSHA required exposure control plan; individuals or job classes to be notified in order to safely handle or clean up a blood or other body fluid spill safely; and the location and use of appropriate protective equipment and first aid devices.

**(f) Education and Instruction for Students**

1. The PSS shall provide systematic and extensive elementary and secondary comprehensive health education, which includes education on HIV infection, other sexually transmitted diseases as well as other communicable diseases, and the prevention of disease, as required by state law.
2. The PSS shall provide age-appropriate, ongoing HIV instruction for the kindergarten through 12<sup>th</sup> grades, in accordance with the PSS HIV Panel guidelines for the development of an HIV/AIDS education program. This instruction shall use methods demonstrated by sound research to be effective, be consistent with community standards and be appropriate to students' developmental levels, behaviors, and cultural backgrounds. The instruction will include current HIV epidemiology, methods of transmission and prevention, universal precautions and psychosocial aspects of HIV as part of a skills-based comprehensive health education program and through its integration into other subject areas.

**(g) Responding to Questions**

When students raise questions or makes comments relating to information not included in the approved curriculum, the teacher should answer the students' questions by first referring the student to their parents, qualified instructors who are currently teaching Sexuality or HIV/AIDS Education, or counselors. Teachers shall respond to questions at the level of each student's maturity within the confines of the guidelines.

**(h) Using Additional Teaching Methods/Library and External Resources**

Only methods, teaching aids, and resources approved by the HIV Panel and stated in the BOE approved curriculum guidelines shall be used in teaching sexuality and HIV/AIDS Education.

Materials located in the school library shall reflect the values of the CNMI community. When guest speakers are used, or students assigned to hear speakers or other media not approved in the curriculum, the teacher shall make a request to the program supervisor for approval. Resource personnel should have an understanding of the scope of the curriculum content and how the presentation will tie in with the overall program. Teachers must be present when guest speakers are in the classroom.

**(i) Public and Parental Concerns Regarding Curriculum**

Parents should be informed of their right to have their children withdrawn from sexuality and HIV/AIDS Education lessons. Whenever a parent questions the curriculum or teaching methods, a written report regarding the nature of the question and subsequent response should be filed with the appropriate personnel including the program coordinator, HIV Chairperson and Review Panel.

When a parent or citizen questions the content of the curriculum or teaching method, appropriate school authorities should be notified. If a teacher is questioned, the teacher should answer the parent's question in a logical and straightforward manner. At the discretion of the teacher and principal, the coordinator of the program may be present. Parents or citizens should also be informed that their concerns may be addressed to the Review Panel.

**(j) Staff Development**

The Commissioner of Education and the PSS HIV Review Panel shall create a plan to ensure that all school employees, including newly hired staff, receive training regarding current HIV policies and procedures. The plan will convey factual and current information; provide guidance on infection control procedures, HIV epidemiology, methods of transmission and prevention, universal precautions; inform about current law and school policies and regulations concerning HIV; discuss the psycho-social aspects of HIV-related school policies and procedures, assist staff to maintain productive parent and community relations; and includes specialized training as appropriate to their positions and responsibilities, including teaching strategies.

**(k) HIV and Athletics**

1. The privilege of participating in physical education classes, athletic programs, competitive sports, and recess is not conditional on person's HIV status. School authorities will make reasonable accommodations to allow students living with HIV infection to participate in school-sponsored physical activities.
2. All employees must consistently adhere to infection control guidelines in locker rooms and all play and athletic settings. Rulebooks will reflect these guidelines. First aid kits must be on hand at every athletic event.

3. All physical education teachers and athletic program staff will complete an approved first aid and injury prevention course that includes implementation of infection control guidelines. Student orientation about safety on the playing field will include guidelines for avoiding HIV infection.

**(l) Related Services**

Students will have access to voluntary, confidential, age and developmentally appropriate counseling about matters related to HIV infection. School administrators will maintain confidential linkage and referral mechanisms to facilitate voluntary student access to appropriate HIV counseling and testing programs, and to other HIV-related services as needed. Public information about resources in the community will be kept available for voluntary student use. However, Public Health is required to routinely offer on a voluntary basis with informed consent, HIV prevention counseling and HIV laboratory testing services to anonymously youth and adolescent programs.

**(m) Enforcement**

A person who violates this regulation may be subject to remedial and/or disciplinary action in accordance with applicable laws, regulations, policies and/or disciplinary code.

**(n) General Provisions**

1. On an annual basis, school administrators will notify students, their family members, and school personnel about current policies concerning HIV infection, and provide convenient opportunities to discuss them. Information will be provided in major primary languages of students' families.
2. The policy is effective immediately upon adoption. In accordance with the established policy review process, or at least every three years. Commissioner of Education shall report on the accuracy, relevance, and effectiveness of this policy and, when appropriate, provide recommendations for improving and/or updating the policy.

**Student Services****Administering Medicines to Students**

PSS shall not be responsible for administering or dispensing medication. However, the Board recognizes that some students may require medication for chronic or short-term illness/injury during the school day to enable them to remain in school and participate in their education. The following requirements must be met before the school will be able to assist students with such needs.

**(a) Prescription Medication and Over-the-Counter Medication**

1. A parent/guardian must request in writing that the PSS comply with an authorized prescriber's request to give medication. The student's authorized prescriber shall provide a written request that the student must receive the medication during school hours. The request shall state the name of the student, name of drug, dosage, frequency of administration, route of administration, and the prescriber's name.
2. The diagnosis/indication for use of the medicine shall be provided. When applicable, the prescriber should state adverse effects and applicable emergency instructions. The PSS will not administer the initial dose of any new medication.

**(b) Emergency Medication**

Written standing orders will be obtained annually for the administration of emergency medication.

**(c) Storage and Administration of Medication**

A parent/guardian or other responsible party designated by the parent/guardian will deliver all medication to be administered at school to the principal or designee. All medication, prescription or over-the-counter, must be in a pharmacy or manufacturer-labeled container. The PSS shall provide secure, locked storage for medication to prevent diversion, misuse, or ingestion by another individual.



**(d) Self-Administration of Medication**

Students with asthma or any potentially life-threatening respiratory illness may carry with them for self-administration metered-dose inhalers containing "rescue" medication. Possession and self-administration of these prescription medications must comply with prescription instructions and applicable law. Notification of the student's possession and use of such medication must be provided to the school principal. The notification shall state the name of the student, name of drug, dosage, frequency of administration, route of administration, the prescriber's name, the diagnosis/indication for use of the medicine, any adverse effects and applicable emergency instructions.

**(e) Parent/Guardian Administration**

In situations where the above requirements are not met, or any time the parent/guardian chooses, the parent/guardian may come to school to administer medicine to his/her student.

## **STUDENTS**

## **Regulation 2940**

### **Activities and Athletics**

#### **Student Group Use of School Facilities**

- (a) An activity is to be considered curricular if the subject matter is or will be taught in a regularly offered class; if the subject matter concerns the body of courses as a whole; if participation in the group is a requirement for a course; or if academic credit is available for participation.
- (b) Extracurricular activities include activities organized and supervised under the auspices of the school. Extracurricular activities primarily involve students in activities occurring outside academic class time, for which no units of credit are awarded.
- (c) Any activity that does not meet the definition of a curricular or extracurricular activity will be considered non-curricular.
- (d) Secondary schools will provide an opportunity for student-initiated non-curricular groups to meet on school premises during non-instructional time when the following criteria have been met:
1. A meeting must be voluntary and student-initiated. No student shall be in any way coerced to participate in religious or other activity. Teachers and school administrators, when acting within the course and scope of their employment, will strictly observe a policy of official neutrality regarding religious activity.
  2. No school employee may sponsor, promote, lead, or participate in any student-initiated, non-curricular meeting. However, a teacher, administrator, or other school employee may be assigned to monitor the group's facility use and student conduct.
  3. Employees and agents of the school may be present at student-initiated religious meetings only in a non-participatory capacity.
  4. The meeting does not materially and substantially interfere with the orderly conduct of educational activities within the school.

**Instructional Time**

**(a) Elementary School**

**1. Kindergarten**

A minimum of 180 minutes of instructional time will be provided to kindergarten students in the thematic approach to instruction.

**2 First through Sixth Grades**

A minimum of 320 minutes daily instructional time shall be provided in CNMI public elementary schools for grades one through six. The following subjects and daily time allotments shall apply. Any departure from the time allotment allocations will require express prior approval from the Commissioner of Education that is subject to Board review upon request.

SUBJECT	GRADES 1 THROUGH 6
Language Arts (Social Studies Content)	120 minutes
Math	40 minutes
Science	40 minutes
Chamorro/Carolinian	40 minutes
Physical Education/Health	40 minutes
Art (1 semester per school year)	40 minutes
Music (1 semester per school year)	40 minutes

**(b) Junior High School**

- A minimum of 300 minutes daily instructional time shall be provided in CNMI public junior high schools. The following subjects shall apply be taught for a minimum of 50 minutes. Any departure from the subject and time allocations will require express prior approval from the Commissioner of Education which is subject to Board review upon request.

REQUIRED COURSES	
Language Arts	2 credits
Math	2 credits
Science	2 credits
Social Studies	2 credits
Physical Education	1 credit
Chamorro/Carolinian	0.5 credits
Vocational	0.5 credits
Computer Literacy	0.5 credits
Art/Music	0.5 credits

- A minimum of eleven (11) credits is required for promotion from the 8<sup>th</sup> grade to the 9<sup>th</sup> grade.

**(c) High School**

1. A minimum of 300 minutes daily instructional time shall be provided in CNMI public high schools. All courses shall be for a minimum of fifty (50) minutes. Any departure from the time allotment allocations will require express prior approval from the Commissioner of Education that is subject to Board review upon request. Honors/Advanced Placement courses are recommended by the Commissioner of Education and approved by the Board.
2. A minimum of twenty-one (21) credits are required for graduation from the 12<sup>th</sup> grade. Required courses constitute sixteen (16) of the minimum credits and are as follows:

REQUIRED COURSES	
English	4 credits
Math	3 credits
Science	3 credits +
Social Studies	3 credits *
Physical Education	2 credit **
Language other than English	1 credits

+ Agriculture may be substituted for one credit of science.

\* One credit of CNMI History is required. One credit of U.S. History is required starting with the 2003 graduates.

\*\* JROTC may be substituted for one credit of Physical Education. 0.5 credit of Physical Education must include a health course.

**Instruction**

**Textbook Usage - Students**

- (a) At the beginning of each term, or semester as applicable, students are to be informed by each teacher of the school's expectations of responsibility for school property and the need for care and return of books. A constructive and educational approach to the students is desirable, including a discussion of reasons for treating books with respect, caring for them, using them wisely, and returning them in good condition. Penalties for lost or damaged books are to be outlined. A monitoring process is to be devised such as textbook receipt cards or other charge-out system that requires the student's signature for use of the book(s).
- (b) Parents/guardians are to be informed by the principal/designee as to the textbook status in the building or department; i.e., in which subject students are provided with individual copies, class sets, consumable materials, etc. Newsletters to the homes, Open House presentations and PTO meetings may be used as means of communication.
- (c) Parents/guardians are to be informed of the penalties for lost or damaged textbooks early in the school year. Penalties may include a reasonable system of fines or repayments. For example, the student or the student's parents/guardians could be required to pay the fair value for replacement of a lost or destroyed book or for repair of a book. The student could choose to do some work for the school instead, if the principal finds that to be the best option.
- (d) The principal may enforce a fine or penalty by withholding the issuance of certified transcripts or diplomas, or other reasonable enforcement methods.
- (e) No student is to be penalized if a book is lost because of factors beyond his/her control. All students will be made aware that if such losses are reported immediately, and if the administration agrees that the loss was beyond the student's control, fines will be canceled. The reporting procedure will be publicized in Student Handbooks and other school publications. Principals will handle cases individually.

## **INSTRUCTIONAL SERVICES**

**Regulation 6241  
(Form 6241)**

### **Instruction**

#### **Challenged Materials**

On occasion, honest differences of opinion may arise about books or materials used in the public schools. In order to handle questions that might arise in an impartial and orderly manner, the following procedures shall be followed:

1. All complaints shall be reported immediately to the building principal involved, whether these come by telephone, letter, or personal conference.
2. The person making the complaint shall receive the form "Review of Instructional Materials." A copy of this form may be picked up in the administrator's office.
3. This form must be completed and returned by the person making the complaint.
4. The Commissioner of Education shall, within fifteen (15) days of receipt of the written request, appoint a review committee of nine people. The committee shall consist of the administrator of the building involved, one teacher, and one member of the PTA or other parent association at the school.
5. The classroom teacher appointed shall be represented by the grade level or subject area where the media is used.
6. The PTA or other parent association at the school shall select the parent member appointed.
7. Within twenty (20) days of the appointment of the committee, the committee shall meet, review the written request for reconsideration, read the questioned materials, evaluate, and prepare a written report of its findings and recommendations to the Commissioner.
8. The committee may recommend that the questioned materials be:
  - a. Retained without restriction;
  - b. Retained with restriction; or
  - c. Not retained.
9. The Commissioner shall make a final decision within 10 days of the Committee report. The decision shall be reported to the principal of the school, to the complainant, to all school principals and to other appropriate professional personnel. The principals shall see that the decision of the Commissioner is carried out.
10. The Principals shall keep on file all pertinent information concerning the questioned materials or any books or materials likely to be questioned.

**Instruction****Home Study**

Home study programs must meet Commonwealth curriculum and performance standards and the following provisions will apply for all approved home study programs.

**(a) Application**

An application for Home Study shall be submitted to the Commissioner no later than sixty (60) days prior to the beginning of a school year. No one will be excused from attending a public or nonpublic school unless the Commissioner has granted a waiver. The following information must accompany the application.

1. Name, address and telephone of parents and student or tutor
2. Justification for the Home Study Program
3. Auspices under which the Home Study will operate and curriculum will be taught
4. Description and qualifications of parent-instructor or tutor and, for any hired tutor, police clearance for the past three (3) years
5. Dates and hours of instruction
6. Negative active tuberculosis records for any hired tutor
7. Any other pertinent and necessary information as requested by the Commissioner of Education.

**(b) Application Processing**

The Commissioner will take action on a timely submitted application before the beginning of the school year. All applicable curricular and other standards of the Board shall be met and any investigation conducted in the review of the application shall be completed before a decision is rendered.

**(c) Limitations**

1. A waiver is granted for Home Study based on meeting the requirements of the Commissioner and this regulation.
2. Parents/guardians must report in writing to the Commissioner any change in the Home Study within five (5) days.
3. The term of a Home Study is for one school year. The Commissioner may, however, suspend or revoke the waiver if the holder violates the terms of the application or this regulation.

**(d) Home Study Records**

A chartered Home Study Program shall keep adequate records for the student containing persons in attendance, goals and such information as required by the Commissioner. Records of courses taken shall be transferred at the end of the school year to a school where the student would otherwise be attending and shall be kept on file there for at least five (5) years.

**(e) Reports**

The parent/guardian shall submit to the Commissioner reports on the progress of the program, monthly, quarterly and annually.

**(f) Other Requirements**

1. A chartered Home Study Program shall provide 300 minutes of secular instruction daily. It shall be in operation for 180 instructional days in a year.
2. Mentors of a Home Study Program shall meet the qualifications stipulated by Board policies.
3. The PSS shall monitor the Home Study Program to ensure compliance with its application and this regulation.

**(g) Revocation of Waiver**

1. Failure to comply and maintain the standards and conditions required by the Commissioner and this regulation shall be considered reason for suspension or revocation of the waiver.
2. Parents/guardians, including mentors of any Home Study students, shall cooperate, provide information and access and assist the Commissioner in any inquiry or investigation conducted regarding application, monitoring and related matters. Failure to cooperate constitutes reason for disapproval of an application or suspension or revocation of a waiver.



**Library, Media, and Technology Services****Student Internet Usage**

The CNMI – Public School System (PSS) is now offering Internet access for student use. This document contains the Acceptable Use Regulations for your use of Public School System Educational Systems Network (PSS-ESN).

**(a) Educational Purpose**

1. PSS-ESN has been established for a limited educational purpose. The term "educational purpose" in this policy and regulations includes classroom activities, career development, and limited high-quality self-discovery activities.
2. PSS-ESN has not been established as a public access service or a public forum. PSS has the right to place reasonable restrictions on the material you access or post through the system. You are also expected to follow the rules set forth in \* (disciplinary code) and the law in your use of PSS-ESN.
3. You may not use PSS-ESN for commercial purposes. This means you may not offer, provide, or purchase products or services through PSS-ESN.
4. You may not use PSS-ESN for political lobbying. But you may use the system to communicate with elected representatives and to express your opinion on political issues.

**(b) Student Internet Access**

1. The PSS Acceptable Use Policy, set forth will govern all use of the PSS-ESN. The Student Code of Conduct will also govern student use of the system. Employee use will also be governed by (PSS policy, collective bargaining agreement).
2. Classroom Accounts. Elementary age students will be granted e-mail access only through a classroom account. Elementary students may be provided with an individual account under special circumstances at the request of their teacher and with the approval of their parent. An agreement will only be required for an individual account, which must be signed by the student and his or her parent. Parents may specifically request that their child(ren) not be provided access through the classroom account by notifying the PSS in writing (or whatever procedure the PSS uses for other permissions).
3. Individual E-mail Accounts for Students. Secondary students may be provided with individual e-mail accounts. Secondary students may have dial-up access to the system. An agreement will be required for an individual e-mail account. The student and his or her parent must sign this agreement.
4. All students will have access to Internet World Wide Web information resources through their classroom, library, or school computer lab.

5. Students will have e-mail access only under their teacher's direct supervision using a classroom account. Students may be provided with individual e-mail accounts under special circumstances, at the request of their teacher and with the approval of the school Principal and the student's parent/guardian.
6. You and your parent/guardian must sign an Account Agreement to be granted an individual e-mail account on PSS-ESN. The Agreement will not exceed a year in duration, but may be renewed on an annual basis. Your parent can withdraw their approval at any time.
7. If approved by your school Principal, you may create a personal Web page on PSS-ESN. All material placed on your Web page must be pre-approved in a manner specified by the school. Material placed on your Web page must relate to your school and career preparation activities.

**(c) Parental Notification and Responsibility**

1. The PSS will notify the parents about the PSS network and the policies governing its use. Parents must sign an agreement to allow their student to have an individual account. Parents may request alternative activities for their child(ren) that do not require Internet access.
2. Parents have the right at any time to investigate the contents of their child(ren)'s e-mail files. Parents have the right to request the termination of their child(ren)'s individual account at any time.
3. The PSS Acceptable Use Policy contains restrictions on accessing inappropriate material. There is a wide range of material available on the Internet, some of which may not be fitting with the particular values of the families of the students. It is not practically possible for the PSS to monitor and enforce a wide range of social values in student use of the Internet. Further, the PSS recognizes that parents bear primary responsibility for transmitting their particular set of family values to their children. The PSS will encourage parents to specify to their child(ren) what material is and is not acceptable for their child(ren) to access through the PSS-ESN.
4. The PSS will provide students and parents with guidelines for student safety while using the Internet.
5. (Optional, if dial-up access is provided) Parents are responsible for monitoring their student's use of the Internet when they are accessing the system from home.

**(d) Unacceptable Uses**

The following uses of PSS-ESN are considered unacceptable:

**1. Personal Safety**

- A. You will not post personal contact information about yourself or other people. Personal contact information includes your address, telephone, school address, work address, etc.

- B. You will not agree to meet with someone you have met online without your parent's approval. Your parent should accompany you to such a meeting.
- C. You will promptly disclose to your teacher or other school employee any message you receive that is inappropriate or makes you feel uncomfortable in any way.

## **2. Illegal Activities**

- A. You will not attempt to gain unauthorized access to PSS-ESN or to any other computer system through PSS-ESN or go beyond your authorized access. This includes attempting to log in through another person's account or access another person's files. These actions are illegal, even if only for the purposes of "browsing".
- B. You will not make deliberate attempts to disrupt the computer system or destroy data by spreading computer viruses or by any other means. These actions are illegal.
- C. You will not use PSS-ESN to engage in any other illegal act, such as arranging for a drug sale or the purchase of alcohol, engaging in criminal gang activity, threatening the safety of person, etc.

## **3. System Security**

- A. You are responsible for your individual account and should take all reasonable precautions to prevent others from being able to use your account. Under no conditions should you provide your password to another person.
- B. You will immediately notify a teacher or the school system administrator if you have identified a possible security problem. Do not go looking for security problems, because this may be construed as an illegal attempt to gain access.
- C. You will avoid the inadvertent spread of computer viruses by following the District virus protection procedures if you download software.

## **4. Inappropriate Language**

- A. Restrictions against Inappropriate Language apply to public messages, private messages, and material posted on Web pages.
- B. You will not use obscene, profane, lewd, vulgar, rude, inflammatory, threatening, or disrespectful language.
- C. You will not post information that could cause damage or a danger of disruption.
- D. You will not engage in personal attacks, including prejudicial or discriminatory attacks.
- E. You will not harass another person. Harassment is persistently acting in a manner that distresses or annoys another person. If you are told by a person to stop sending them messages, you must stop.

- F. You will not knowingly or recklessly post false or defamatory information about a person or organization.

**5. Respect for Privacy**

- A. You will not repost a message that was sent to you privately without permission of the person who sent you the message.
- B. You will not post private information about another person.

**6. Respecting Resource Limits.**

- A. You will use the system only for educational and career development activities and limited, high-quality, self-discovery activities. There is no limit on use for education and career development activities. The limit on self-discovery activities is no more than 5 hours per week.
- B. You will not download large files unless absolutely necessary. If necessary, you will download the file at a time when the system is not being heavily used and immediately remove the file from the system computer to your personal computer.
- C. You will not post chain letters or engage in "spamming". Spamming is sending an annoying or unnecessary message to a large number of people.
- D. You will check your e-mail frequently, delete unwanted messages promptly, and stay within your e-mail quota.
- E. You will subscribe only to high quality discussion group mail lists that are relevant to your education or career development.

**7. Plagiarism and Copyright Infringement**

- A. You will not plagiarize works that you find on the Internet. Plagiarism is taking the ideas or writings of others and presenting them as if they were yours.
- B. You will respect the rights of copyright owners. Copyright infringement occurs when you inappropriately reproduce a work that is protected by a copyright. If a work contains language that specifies appropriate use of that work, you should follow the expressed requirements. If you are unsure whether or not you can use a work, you should request permission from the copyright owner. Copyright law can be very confusing. If you have questions ask a teacher.

## **8. Inappropriate Access to Material**

- A. You will not use PSS-ESN to access material that is profane or obscene (pornography), that advocates illegal acts, or that advocates violence or discrimination towards other people (hate literature). A special exception may be made for hate literature if the purpose of your access is to conduct research and both your teacher and parent have approved.
- B. When you mistakenly access inappropriate information, you should immediately tell your Teacher or School Administrator \* (or disclose this access in the manner specified by your school). This will protect you against a claim that you have intentionally violated this Policy.
- C. Your parents should instruct you if there are additional materials that they think are inappropriate for you to access. You and your parent/guardian should inform your teacher of such materials. PSS fully expects that you will follow your parent's instructions in this matter.

## **9. Consequences or Unacceptable Uses**

- A. Your classroom teacher, your school administrator, or the PSS Technology Coordinator may revoke your privileges under this policy for any unacceptable uses, including uses not specifically listed herein.
- B. Unacceptable uses by a student may result in disciplinary action, including suspension or expulsion.
- C. Any illegal uses may be reported to the Department of Public Safety or the Federal Bureau of Investigations.

### **(d) Your Rights**

#### **1. Free Speech**

Your right to free speech applies to your communication on the Internet. The exercise of your free speech rights may not disrupt the educational process. The PSS-ESN is considered a limited forum, similar to the school newspaper, and therefore PSS may restrict your speech for valid educational reasons. PSS will not restrict your speech on the basis of a disagreement with the opinions you are expressing.

#### **2. Searches and Seizure.**

- A. You should expect only limited privacy in the contents of your personal files on the PSS system. The situation is similar to the rights you have in the privacy of your locker.
- B. Routine maintenance and monitoring of PSS-ESN may lead to discovery that you have violated this Policy, the student disciplinary code, or the law.

- C. An individual search will be conducted if there is reasonable suspicion that you have violated this Policy, the student disciplinary code, or the law. The investigation will be reasonable and related to the suspected violation.
- D. Your parents have the right at any time to request to see the contents of your e-mail files.

### **3. Due Process**

- A. PSS will cooperate fully with local, state, or federal officials in any investigation related to any illegal activities conducted through PSS-ESN.
- B. In the event there is a claim that you have violated this Policy or student disciplinary code in your use of the PSS-ESN, you will be provided the due process and hearing rights set forth in the student disciplinary regulations. Additional restrictions may be placed on your use of your Internet account.

#### **(e) Limitation of Liability**

PSS makes no guarantee that the functions or the services provided by or through the PSS system will be error-free or without defect. PSS will not be responsible for any damage you may suffer, including but not limited to, loss of data or interruptions of service. PSS is not responsible for the accuracy or quality of the information obtained through or stored on the system. PSS will not be responsible for financial obligations arising through the unauthorized use of the system.

#### **(f) Personal Responsibility**

When you are using the PSS-ESN, it may feel like you can more easily break a rule and not get caught. This is not really true because whenever you do something on a network you leave little "electronic footprints," so the odds of getting caught maybe even more likely than they are in the real world.

**But the fact that you can do something or think you can do something without being caught does not make it right to do so. Even if you don't get caught, there is always one person who will know whether you have done wrong -- and that person is you. Your use of the Internet can be a mirror that will show you what kind of a person you are. Please enjoy learning from your Internet access but remember to use this privilege wisely.**

**INSTRUCTIONAL SERVICES**

**Regulation 6450**

**Evaluation Services**

**Grading System**

**(a) Elementary School Grading System**

1. The progress of kindergarten through third grade (K-3<sup>rd</sup>) students will not follow a percent or letter grade system. The skills of progress of K-3 students will be reported on a developmental continuum as evidence by student portfolios, observations and other appropriate assessments.
2. The fourth through sixth (4<sup>th</sup>-6<sup>th</sup>) grades shall use a percent/letter grade system as follows:

Percent	Letter Grade
93-100	A
83-92	B
73-82	C
63-72	D
0-62	F

3. Each teacher is responsible for keeping accurate records in the grade book provided by the school and will submit the grade book to the principal at the end of the school year or upon request of the principal. All factors involved in computing the final grade shall be maintained in the grade book.
4. It is **recommended** to teachers that the measure of grades be based on a variety of factors, none of which should represent over 50% of the grade. The guidelines recommended below are intended to be general and will vary according to the content and activities of each particular course. (For example, there may be no homework assigned for PE, but there may be weekly quizzes in Math.)

Recommended measures and weights may include:

Activities	Weight	Minimum Frequency
Quarter Exam	15-25%	1
Periodic Tests/Quizzes	30-50%	5
Special Projects	10-20%	1
Homework	5-10%	5

5. All teachers are required to explain the grading policy to the students and their parents when they begin, or enter the school year.

**(b) Secondary School Grading System**

1. The secondary schools will use a percent/letter system as follows:

<b>Percent</b>	<b>Letter Grade</b>
93-100	A
83-92	B
73-82	C
63-72	D
0-62	F

2. Grading and Report Procedures 9-12:

**“X” – AB – Absent – This grade is used with high school (9-12) level courses to indicate that the student has not been in attendance a sufficient number of days for grading as per the attendance policy of the Board. (Note: “X” is used in the high school report cards only because the computer cannot make a double letter entry.)**

**“M” – Medical – This symbol is to be used for students who cannot meet course requirements due to medical reasons.**

**“I” – Incomplete – This symbol is to be used in the high school report cards (9-12) to indicate that a grade will be given when certain requirements are met. Incomplete will be changed to “F” if the student did not complete the course of study within a year’s period.**

**“W” – Withdrew – This symbol is used with high school (9-12) level courses when a student withdraws from a class in progress.**

3. Each teacher is responsible for keeping accurate records in the grade book provided by the school and will submit the grade book to the principal / designee at the end of the school year.
4. Students are not permitted to grade tests, record averages, average grades or handle the grade book.
5. A minimum of three (3) tests per quarter (not including quarter exam) is recommended. Other factors, such as class participation, quizzes, projects, reports, papers, demonstrations, or attendance may also be considered in computing grades. All factors involved in computing the final grade should be maintained in the grade book.



6. It is recommended that teachers measure quarter grades based on a variety of factors, none of which should represent over 50% of the grade. The guidelines recommended below are intended to be general and will vary according to the content and activities of each particular course. (for example, there may be no homework assigned for P.E. but there may be weekly quizzes in Math.

Recommended measures and weights may include:

<b>Activities</b>	<b>Weight</b>	<b>Minimum Frequency</b>
Quarter Exam	15-25%	1
Periodic Tests/Quizzes	30-50%	5
Special Projects	10-20%	1
Homework	5-10%	5

**(c) Honor / Advanced Placement Courses**

1. Junior high school shall establish honors classes, at least one course in each of the four main academic core areas of Math, Social Studies, Science and Language Arts. These courses shall be designed to meet the rigorous standards expected of at least senior high courses.
2. High schools may establish honors and/or advanced placement (AP) courses in the four (4) core academic areas of Math, Science, Social Studies and Language Arts. Each department may identify two (2) courses as honors or advanced placement courses. These courses should be designed to meet the rigorous standards expected of at least freshman college courses. Courses shall be weighted as follows:

Grade Point Average (GPA)

A = 5  
B = 4  
C = 3  
D = 1  
F = 0

3. Additional honors or AP courses other than the designated core subjects may be established, but such courses shall not be weighted.

**INSTRUCTIONAL SERVICES**

**Regulation 6610**

**Core Competencies**

**Language Arts Performance Standards**

In order to achieve the Board's objectives the following instructional practices will be implemented.

(a) All students in grades K-4 will:

1. Build upon the language skills that have been developed within the home and the community.
2. Develop skills in more than one language.
3. Listen and respond thoughtfully to a range of messages conveyed by others.
4. Read a variety of texts for a variety of purposes, and employ different strategies for dealing with unfamiliar words.
5. Understand and appreciate what they read.
6. Learn the symbolic conventions of written language.
7. Develop an understanding of formal conventions of writing.
8. Use a variety of sources of knowledge in writing.
9. Use oral and written language for different functions and uses, and as a tool for learning.

(b) All students in grades 5-8 will:

1. Understand and discuss the features of effective communication.
2. Listen and respond thoughtfully to a range of messages conveyed by others.
3. Present ideas clearly adapting language and strategies to situation and audiences.
4. Engage productively in discussions to clarify thoughts; to explore issues, feelings and experiences; and to extend understanding.
5. Understand and appreciate what they read.
6. Critically analyze and evaluate what they read.
7. Use appropriate reading strategies to enhance their overall comprehension.
8. Read a variety of texts for a variety of purposes.

9. Make a strategic use of writing process activities.
10. Understand and use criteria for effective writing.
11. Understand the responsibility writers assume in selecting and portraying information and experiences.

(c) All students in grades 9-12 will:

1. Use and develop the indigenous language as they become competent users of global English.
2. Communicate effectively to a range of audiences for a variety of purposes.
3. Engage in a range of technological forms of communication.
4. Understand and make thoughtful use of the forms and features of language that vary within and across different speakers, cultural communities and contexts.
5. Synthesize and integrate information from different sources.
6. Read and understand a rich variety of texts.
7. Make strategic use of writing process activities.
8. Write in a variety of forms for a variety of audiences.
9. Become active, constructive and critical members of a community of readers and writers.
10. Use oral and written language as a tool to take charge of one's life and to function as a productive citizen.

## **INSTRUCTIONAL SERVICES**

**Regulation 6620**

### **Core Competencies**

#### **Math Performance Standards**

In order to achieve the Board's objectives the following instructional practices will be implemented.

(a) All students in grades K-4 will:

1. Develop and apply strategies to solve a wide variety of problems.
2. Represent, discuss, listen, write and read mathematically.
3. Justify solutions, thinking processes and conjectures in a variety of ways.
4. Recognize relationships among different topics in mathematics, in other curricular areas and in daily life.
5. Recognize and work comfortably with numbers, conceptualize place value, understand the meaning of fractions and decimals and estimate quantities.
6. Make judgements about the reasonableness of computation results and of proposed solutions to numerical problems.
7. Investigate, experiment and explore geometry and measurement with physical materials.
8. Collect and organize statistical data, explore the concept of chance, recognize patterns and describe and use variables to express relationships.

(b) All students in grades 5-8 will:

1. Use a wide variety of strategies to solve multi-step and nonroutine problems.
2. Read, discuss and write about mathematics ideas to reflect on and clarify their own thinking.
3. Construct valid arguments in problem settings and evaluate the arguments of others.
4. View mathematics as an integrated whole and acknowledge its relevance and usefulness both in and out of school.
5. Generalize and describe patterns and functions in many ways to explore the relationships among them.
6. Explore algebraic concepts in an informed way to build a concrete foundation.
7. Use statistical methods to describe, analyze, evaluate and make decisions.

8. Create experimental and theoretical models of situations involving probabilities.
9. Understand and apply geometric properties and relationships.
10. Estimate, make and use measurement to describe and compare.

(c) All students in grades 9-12 will:

1. Solve real world algebra problems.
2. Reflect upon and clarify their thinking about mathematical ideas and relationships orally and in writing.
3. Use inductive and deductive reasoning to reinforce and extend logical reasoning skills.
4. Explore connections among a problem situation, its model as a function in symbolic form, and the graph of that function.
5. Model real world phenomena with a variety of functions.
6. Use skills in visualization, pictorial representation and the application of geometric ideas to describe and answer questions about natural, physical and social phenomena.
7. Use trigonometric functions and circular functions; use calculators and graphing utilities to solve equations and inequalities.
8. Draw and construct statistical inferences from charts, tables and graphs that summarize data from real world situations.
9. Use experimental or theoretical probability to represent and solve problems involving uncertainty.
10. Represent problem situations using discrete structures such as finite graphs, matrices and sequences.
11. Explore calculus concepts from both a graphical and numerical perspective.
12. Develop an understanding and appreciation of mathematics in its underlying structure independent of the technical vocabulary and symbolism.

## **INSTRUCTIONAL SERVICES**

**Regulation 6630**

### **Core Competencies**

#### **Science Performance Standards**

In order to achieve the Board's objectives the following instructional practices will be implemented.

(a) All students in grades K-4 will:

1. Ask for information to answer a question.
2. Communicate clearly about observations, investigations, and experiments and make simple predictions.
3. Understand properties of objects and/or materials; position and motion of objects and forms of energy; heat, light, electricity and magnetism.
4. Understand characteristics of organisms, life cycles, environments of earth, materials and objects in the sky.
5. Understand characteristics and needs of populations, types of resources in the CNMI and change in environments.
6. Use a basic problem solving method to address an environmental/societal issue in the CNMI:
  - A. State a problem;
  - B. Design a solution;
  - C. Evaluate the solution; and
  - D. Communicate problem, design and solution.
7. Understand scientific inquiry, science and technology as a human endeavor (physical and social aspects of growth and teaming).
8. Understand how to manage personal time, money and competing priorities and interests.

(b) All students in grades 5-8 will:

1. Design and conduct investigations using appropriate tools and technologies to gather, analyze and interpret data.
2. Construct explanations and models using evidence, think critically and logically about the relationship between evidence and explanation.
3. Recognize and analyze alternative explanations and procedures and communicate scientific processes and explanations.
4. Understand properties of matter, motions, changes and transformations of energy.

5. Understand structure and function in living systems, reproduction, heredity and variation, diversity and adaptations of organisms, populations and interdependence.
  6. Understand the interactions and cycles in the earth's systems (oceans and land) and its relationship to the solar system.
  7. Illustrate the process of technological design and relate its connections with science and other subject areas.
  8. Evaluate the populations, resources and environments in the CNMI and in the world and discuss its natural hazards, technology, risks and benefits.
- (c) All students in grades 9-12 will:
1. Identify the questions and concepts that guide scientific investigations.
  2. Design and conduct a full scientific investigation, using technology to improve investigations and communication.
  3. Communicate and defend a scientific argument and analyze a historical or contemporary scientific inquiry.
  4. Understand structure of matter, chemical interactions, forces and motion, conservation and transmission of energy.
  5. Understand the diversity of organisms, cell, heredity, matter, energy, organization of living systems, evolution of living systems, populations and interdependence.
  6. Understand matter and energy in the Earth's system and its relation to the universe.
  7. Understand population growth, natural resources, environmental degradation, natural and human-induced hazards, community health, global changes and public policies.
  8. Connect and relate interactions, similarities and differences between science and technology.
  9. Use open inquiry, scientific knowledge and explanations, habits of mind and revolutions in the history of science to understand self, society and the world.
  10. Demonstrate a set of attitudes and values, including honesty, curiosity, humility, respect, determination possessiveness, leadership, open-mindedness and skepticism in evaluating claims and arguments.

## **INSTRUCTIONAL SERVICES**

**Regulation 6640**

### **Core Competencies**

### **Social Studies Performance Standards**

In order to achieve the Board's objectives the following instructional practices will be implemented.

(a) All students in grades K-4 will:

1. Develop respect and take pride in the cultural heritage of Chamorro/Refalawasch and others.
2. Actively participate in the community with responsibility.
3. Understand CNMI as a social, economic and political region.
4. Explore concepts such as change, location, directions, diversity, justice, power and compromise.
5. Apply technology in learning and communicate about and learn how technology and media affect people.

(b) All students in grades 5-8 will:

1. Explore connections between culture, language, and history of the CNMI and the world.
2. Understand the change and continuity of physical/social, historical and political relationships with the global community.
3. Engage in responsible social, cultural and political involvement locally and globally.
4. Understand traditional ownership and modern alienation of lands.
5. Identify local and regional geographic dimension and use maps, charts, graphs, tables and appropriate technology to display data.

(c) All students in grades 9-12 will:

1. Participate in self-initiated, meaningful community service to demonstrate social and global responsibility.
2. Explore and critically analyze the political status of island nations and other former colonies.
3. Be familiar with and understand the impact of the CNMI environment, government and current events and issues.





# COMMONWEALTH PORTS AUTHORITY

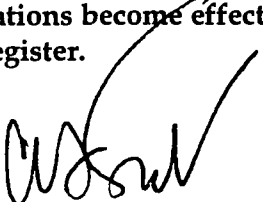
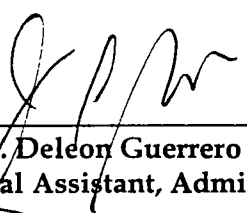
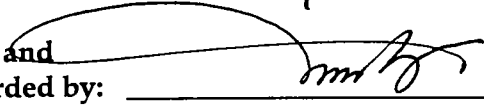
Main Office: SAIPAN INTERNATIONAL AIRPORT  
P.O. BOX 1055 • SAIPAN • MP 96950  
Phone: (1-670) 664-3500/1 FAX: (1-670) 234-5962  
E-Mail Address: cpa.admin@saipan.com

## PUBLIC NOTICE

### ADOPTION OF REGULATIONS FOR THE CONTROL OF PUBLIC FUNDS UNDER THE JURISDICTION OF THE COMMONWEALTH PORTS AUTHORITY

The Commonwealth Ports Authority (CPA), pursuant to a written delegation of authority given by the CNMI Department of Finance (a copy of which is attached hereto) and pursuant to its rule-making authority under 2 CMC § 2122(j) and 1 CMC §§ 9102, 9104(a) and 9105, hereby gives notice that CPA's Proposed Regulations for the Control of Public Funds which provide for regulatory guidelines with respect to the expenditure of public funds under the jurisdiction of CPA, such as official travel, official representation, allowable and non-allowable expenses, the processing of claims for reimbursement, the claim forms to be used, and so forth, as published in the Commonwealth Register, Volume 23, Number 03, on March 22, 2001, at pages 17708 through and including 17723, were adopted by the CPA Board of Directors at its regular Board meeting on May 23, 2001; a quorum being present. No comments were received and the regulations were adopted without any change. Copies of the adopted regulations may be obtained from the Office of the Executive Director, Commonwealth Ports Authority, Saipan International Airport or by mail at P. O. Box 501055, Saipan, MP 96950.

The adopted regulations become effective ten (10) days after publication of this Notice in the Commonwealth Register.

Issued by:		<u>5/30/01</u>
	Carlos H. Salas, Executive Director	Date
Received by:		<u>06/05/01</u>
	Jose I. Deleon Guerrero Special Assistant, Administration	Date
Filed and Recorded by:		<u>6/11/01</u>
	Soledad B. Sasamoto Registrar of Corporations	Date



# COMMONWEALTH PORTS AUTHORITY


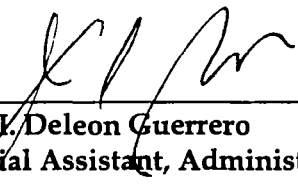

Main Office: SAIPAN INTERNATIONAL AIRPORT  
P.O. BOX 1055 • SAIPAN • MP 96950  
Phone: (1-670) 664-3500/1 FAX: (1-670) 234-5962  
E-Mail Address: cpa.admin@saipan.com

## NUTISIAN PUPBLIKU

### INADAPTAN REGULASION PARA U GOBIETNA I FUNDON PUPBLIKU SIGUN GI ATURIDAT I COMMONWEALTH PORTS AUTHORITY

I Commonwealth Ports Authority (CPA), sigun i matuge' na delegasion aturidat ginen i Dipattamenton Fainansiat (i kopia ni chechetton gine) yan sigun i aturidat-na mamatinas lai gi papa 2 CMC papa Seksiona 2122(j) yan 1 CMC papa i sigiente siha na Seksiona 9102, 9104(a) yan 9105, ginen este ma'nanae nutisia put i Mapropopone na Regulasion CPA para u Gobietna i Fundon Pupbliku ni maprubiniyi dinirihen minanea kon respetu gi magastan fundon pupbliku gi aturidat CPA, tat-komu ofisiat na biahe, ofisiat na representasion, i masedi yan ti masedi siha na gasto, kondision yan maneran dinimandan ma apase tatte, u manasetbe i fotman dinimandan apas, yan hafa siha, ni mapupblika gi Rehistran Commonwealth, baluma 23, numiru 03, gi Matso 22, 2001, pahina 17708 asta yan encklusu 17723, yan ma'adapta ni Kuetpon Direktot i CPA gi regulat na huntan-niha gi Mayu 23, 2001, anai mayoria manggaige'. Taya komento man'marisibi ya i regulasion ma'adpta sin hafa na tinulaika. Copian i ma adapta na regulasion sina man'machule' gi ofisinan i Direktot Eksekatibu, Commonwealth Ports Authority, Saipan International Airport, osino ma mail, ya u matugi'e guato i P. O. Box 501055, Saipan, MP 96950.

I ma'adapta siha na regulasion u fan'effektibu dies (10) dias despues di mapupblika este na nutisia gi Rehistran Commonwealth.

Linaknos as:	 _____ Carlos H. Salas, Direktot Eksekatibu	<u>5/30/01</u> Fecha
Rinisibi as:	 _____ Jose I. Deleon Guerrero Special Assistant, Administration	<u>06/05/01</u> Fecha
Ma file yan Rinekot as:	 _____ Soledad B. Sasamoto Rehistradoran Kotporasion	<u>6/11/01</u> Fecha



# COMMONWEALTH PORTS AUTHORITY

Main Office: SAIPAN INTERNATIONAL AIRPORT  
P.O. BOX 1055 • SAIPAN • MP 96950  
Phone: (1-670) 664-3500/1 FAX: (1-670) 234-5962  
E-Mail Address: cpa.admin@saipan.com

## ARONGORONGOL TOULAP

### ADOPTION REEL ALLÉGH YE EBWE YOOR LEMELEMIL YÁYÁÁL FUNDOOL TOULAP SÁNGI BWÁNGIL COMMONWEALTH PORTS AUTHORITY

Commonwealth Ports Authority (CPA), igha eyoor bwángil iye re ischilitiw sáangi Bwulasiyool Salaapi (Department of Finance) mellól CNMI (eyoor kopiya ye e schuu ngáli milikkaal) me sáangi bwángil igha emmwel ebwe fféér allégh reel ailééwal 2 CMC Subsection 2122(j) bwal 1 CMC Subsections kka 9102, 9104(a) me 9105, nge e arongaawow bwe Pomwol Ffeérúl Alléghúl ye CPA igha Ebwe Yoor Lemelemil YáYáál Fundool Toulap nge ebwe ayoor afaal reel meta kka emmwel rebwe yááli ngáli fundool toulap sáangi bwángil CPA, sibwe ira ngare, official travel, official representatio, abwóssul milikka emmwel me esemmwel rebwe yááli ngáli, mwóghutughutul claim reel abwós, rebewe yáaya formul claim, bwal akkáaw, igha e rongowow llól Commonwealt Register, volume 23, Numuro 03, Máilap 22, 2001, schéel tiliigh kka 17708 fóscheey ngál nge e bwal toolong 17723, igha CPA Board of Directors re adoptli llól yaar yéélagh llól maramal Ghúúw 23, 2001, igha e quorum. Esóór mángemáng me tiip kka e atoolong nge ra adoptli allégh kkaal nge esóór lliiwel mellól autol. Kopiyaal allégh kkaal nge aramas ye e tipáli emmwel schagh ebwe lo bweibwogh mereel Bwulasiyool Executive Director, Commonwealth Ports Authority, Saipan International Airport me ngáre llól post nge rebwe isch ngáli address ye P. O. Box 501055, Seipél, MP 96950.

Allégh kka re adoptli nge ebwe llúgheeyiló llol seigh (10) rál sáangi igha e toowow arongorong yeel llól Commonwealth Register.

Mereel:

Carlos H. Salas, Executive Director

5/30/01

Rál

Bwughiiya:

  
Jose I. Deleon Guerrero  
Special Assistant, Administration

06/07/01

Rál

Isáliyal me  
Rekodliiyal:

  
Soledad B. Sasamoto  
Registrar of Corporations

6/11/01

Rál



Office of the Secretary  
Department of Finance

P.O. Box 5234 CHRBS SAIPAN, MP 96950

TEL (670) 664-1100

FAX: (670) 664-1115

February 5, 2001

Mr. Carlos H. Salas  
Executive Director  
Commonwealth Ports Authority  
P.O. Box 501055  
Saipan, MP 96950  
Facsimile: 234-5962

SFL 2001-120

RE: Delegation of Authority to Regulate Expenditure of Public Funds

Dear Mr. Salas:

We accept the changes in your proposed regulations for the control of public funds as specified in your letter dated January 19, 2000 (2001). Therefore, the Commonwealth Ports Authority is hereby delegated the authority to regulate the expenditure of public funds under its jurisdiction. As agreed upon, the CPA will publish and adopt the proposed regulation on file at this office, with the Commonwealth Register.

Sincerely,

Lucy DLG Nielsen  
Secretary of Finance



Commonwealth of the Northern Mariana Islands  
OFFICE OF THE GOVERNOR  
Division of Environmental Quality



P.O. Box 501304 C.K., Saipan, MP 96950-1304  
Tels.: (670) 664-8500 /01  
Fax: (670) 664-8540

**PUBLIC NOTICE**

**ADOPTION OF COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS  
HARMFUL SUBSTANCE CLEAN UP REGULATIONS**

The Director of the Division of Environmental Quality (DEQ), Office of the Governor, Commonwealth of the Northern Mariana Islands (CNMI), announces the adoption of Harmful Substance Clean Up Regulations. The regulations are adopted pursuant to the authority of the CNMI Environmental Protection Act, P.L. 3-23, 2 CMC §§ 3101 *et seq.* (as amended by P.L. 11-103), 1 CMC §§ 2646 to 2649, and Public Law 11-108.

Initially, DEQ adopted the Harmful Substance Regulations on an emergency basis on March 1, 2001 and gave the public notice of its intent to Adopt Permanent Regulations. See 23 Com. Reg. 17745 (March 22, 2001). The 30-day public comment period ended on April 23, 2001. DEQ received comments from three federal agencies and one local citizens group. Written responses to these comments are available at the office of DEQ, located on the third floor of the Morgen Building in San Jose, Saipan, MP 96950.

In response to these comments and as a result of an internal review of the initial Emergency Harmful Substance Clean Up Regulations, DEQ has adopted the proposed Harmful Substance Clean Up Regulations as permanent regulations with minor modification as set forth below:

1. Section 200.05 - "For implementation... causes a significant increased..." has been changed to "For implementation... causes a statistically significant increased..."
2. Section 200.36 - "Potentially liable person... whom the division finds to have contributed to, or be contributing to, the past or present handling, storage, treatment, transportation or disposal of any harmful substance that may present an imminent and substantial endangerment to health of the environment" has been changed to "Potentially liable person... whom the division finds to have contributed to, or be contributing to, the past or present handling, storage, treatment, transportation or disposal of any harmful substance, where such handling, storage, treatment, transportation or disposal may present an imminent and substantial endangerment to health of the environment."
3. Section 200 - The following new definitions have been added and the numbering of the definitions has been changed to reflect the additions.

Section 200.02 "Acute toxicity means the ability of a harmful substance to cause injury or death to an organism as a result of a short-term exposure to a harmful substance."

Section 200.07 “Chronic toxicity means the ability of a harmful substance to cause injury or death to an organism resulting from repeated or constant exposure to the harmful substance over an extended period of time.”

4. Section 300(3)(a) - “Application of pesticides...” has been changed to “Lawful application of pesticides...”

5. Section 300(3)(f) - “A release to air” has been changed to “A release to air from other impacted media or where there is no impact to other media.”

6. Section 350(6)(d) - The phrase “and allow an adequate margin of safety for protection of human health and the environment” has been deleted.

7. Section 360(6)(c) - The phrase “in Section 707” has been deleted.

8. Section 410(3) - “A compliance monitoring plan shall be prepared for...” has been modified to “A compliance monitoring plan shall be prepared, as DEQ deems necessary, for...”

9. Section 700(3)(c) - “In those situations, method C...” has been changed to “In those situations, or where DEQ determines otherwise appropriate, method C...”

10. Section 700(4)(c) - The following language has been added after “clean up levels for carcinogens and noncarcinogens.”

“When developing clean up standards based upon a risk assessment, Commonwealth risk assessment practices shall be applied. Federal risk assessment guidance may be used when no Commonwealth risk assessment guidance and or procedures exist. However, risk criteria established under methods B and C shall be maintained in applying federal risk assessment guidance.”

11. Section 700(7)(c) - The phrase “... which protect susceptible individuals as well as the general population” has been deleted.

12. Sections 705(2)(c) and 706(2)(c) - The phrases “For harmful substances for which sufficient protective, health-based criteria or standards have not been established under applicable Commonwealth and federal laws,” has been deleted.

13. Section 706(1) - A new sub-section (d) which states, “Where DEQ determines otherwise appropriate” has been added.

14. Section 720(2)(a)(ii) - This section has been deleted.

In accordance with 1 CMC § 9105(b), these regulations are effective 10 days after publication in the Commonwealth Register. Copies of the adopted regulations are available at the Offices of the Division of Environmental Quality, located on the third floor of the Morgen Building, San Jose, Saipan, MP, 96950.



Commonwealth of the Northern Mariana Islands  
OFFICE OF THE GOVERNOR  
Division of Environmental Quality



P.O. Box 501304 C.K., Saipan, MP 96950-1304  
Tels.: (670) 664-8500 /01  
Fax: (670) 664-8540

**CERTIFICATION OF ADOPTION**

I, Gloria Castro, Acting Director of the Division of Environmental Quality, which is promulgating the Harmful Substance Clean Up Regulations adopted as Emergency Regulations on March 1, 2001 and published in the Commonwealth Register Vol. 23, No. 3 on March 22, 2001 at pages 17745 to 17825, by signature below, hereby certify that as published and amended herein such Regulations are a true, complete, and correct copy of the Harmful Substance Clean Up Regulations adopted by the Division which, after the expiration of appropriate time for public comment, have been adopted as permanent regulations with minor modification or amendment as set forth in the Public Notice of Adoption accompanying this certification.

By signature below, I hereby certify that the previously adopted Harmful Substance Clean Up Regulations as herein amended are the true, correct and complete Harmful Substance Clean Up Regulations adopted by the Division of Environmental Quality. I further request and direct that and this Certification of Adoption and the accompanying Public Notice be published in the Commonwealth Register.

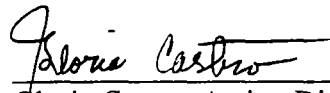
I declare under penalty of perjury that the foregoing is true and correct.

Executed this 14<sup>th</sup> day of June, 2001, Saipan, Commonwealth of the Northern Mariana Islands.

\_\_\_\_\_  
Gloria Castro, Acting Director  
Division of Environmental Quality

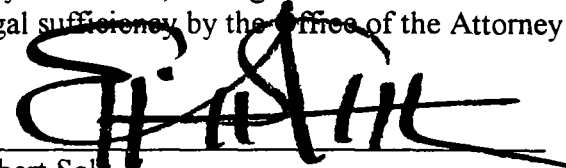
Issued by:

Date: 6/14/01

  
\_\_\_\_\_  
Gloria Castro, Acting Director  
Division of Environmental Quality

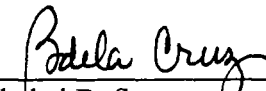
Pursuant to 1 CMC § 2153, as amended by P.L. 10-50, the regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the Office of the Attorney General.

Date: 6/14/01

  
for \_\_\_\_\_  
Herbert Soli  
Attorney General

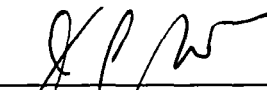
Filed by:

Date: 6/18/01

  
for \_\_\_\_\_  
Soledad B. Sasamote  
Registrar of Corporations

Received at the Governor's Office by:

Date: 06/14/01

  
\_\_\_\_\_  
Jose I. Deleon Guerrero  
Special Assistant for Administration





Commonwealth of the Northern Mariana Islands

Division of Environmental Quality

P.O. Box 1304, Saipan, MP 96950



Tels.: (670) 664-8500/8501  
Fax : (670) 664-8540

PUBLIC NOTICE

**ADOPTION OF COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS  
SOLID WASTE MANAGEMENT REGULATIONS**

The Director of the Division of Environmental Quality (DEQ), Office of the Governor, Commonwealth of the Northern Mariana Islands (CNMI), announces the adoption of Solid Waste Management Regulations. The regulations are adopted pursuant to the authority of the CNMI Environmental Protection Act, P.L. 3-23, 2 CMC §§ 3101 *et seq.* (as amended by P.L. 11-103), 1 CMC §§ 2646 to 2649, Public Law 11-108, and the Commonwealth Solid Waste Management Act, P.L. 6-30, 2 CMC §§ 3511 *et seq.* (as amended by P.L. 11-103).

The adopted Solid Waste Management Regulations authorize the Director to issue permits for solid waste management activities and facilities. The regulations establish the permit application and issuance process, set forth procedures for modification, suspension, revocation, renewal and transfer of solid waste management permits, and outline standards and criteria for permitting specific types of facilities. The regulations also establish inspection authority and enforcement measures in accordance with the relevant statutes.

In July, 2000, DEQ proposed Solid Waste Management Regulations and published them for public comment. See 22 Com. Reg. 17329 (July 20, 2000). In response to comments and as a result of an internal review of the proposed regulations, DEQ removed numerous unnecessary definitions, and added three conditions to Section 10 governing commercial waste hauler registration. These conditions require that haulers submit copies of their vehicle registration and insurance cards with their registration forms, and paint their company name and vehicle number on both side doors of their vehicles. DEQ also clarified that the definition of solid waste management facility includes federally-regulated facilities, and revised and clarified Section 13.1 to more accurately state DEQ's authority to issue orders. DEQ is adopting the regulations with these minor changes and clarifications.

In accordance with 1 CMC § 9105(b), these regulations are effective 10 days after publication in the Commonwealth Register. Copies of the adopted regulations are available at the Offices of the Division of Environmental Quality, located on the third floor of the Morgen Building, San Jose, Saipan, MP, 96950.

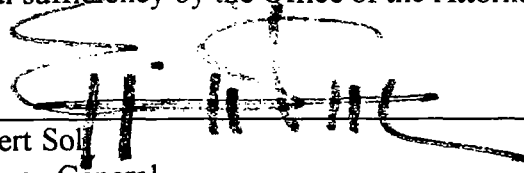
Issued by:

Date: 5/16/01

Antonio I. Deleon Guerrero, Acting Director  
Division of Environmental Quality

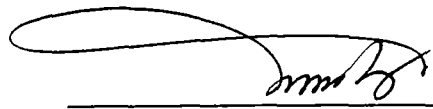
Pursuant to 1 CMC § 2153, as amended by P.L. 10-50, the regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the Office of the Attorney General.

Date: June 4, 2001

  
Herbert Solis  
Attorney General

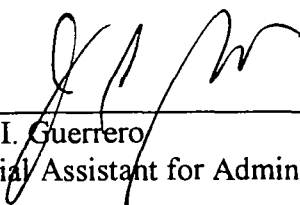
Filed by:

Date: 6/11/01

  
Soledad B. Sasamoto  
Registrar of Corporations

Received at the Governor's Office by:

Date: 06/07/01

  
Jose I. Guerrero  
Special Assistant for Administration



Commonwealth of the Northern Mariana Islands  
OFFICE OF THE GOVERNOR  
Division of Environmental Quality



P.O. Box 501304 C.K., Saipan, MP 96950-1304  
Tels.: (670) 664-8500 /01  
Fax: (670) 664-8540

**NUTISIAN PUPBLIKU**

**MA ADAPTAN REGULASION MINANEHA SOLID WASTE I COMMONWEALTH I  
SUMANGKATTAN SIHA NA ISLAS MARIANAS**

I Direktot Dibision Environmental Quality (DEQ), Ofisinin Gubetno, Commonwealth i Sumangkattan siha na Islas Marianas (CNMI), ha' anunsia i inadaptan Regulasion para i Minanehan Solid Waste. I regulasion siha manma adapta sigun i aturidat ginen CNMI Environmental Protection Act, Lai Pupbliku 3-23, 2 CMC seksiona 3101 et seq. (ni inamenda ni Lai Pupbliku 11-103), 1 CMC seksiona 2646 asta seksiona 2649, Lai Pupbliku 11-108, yan i Commonwealth Solid Waste Management Act, Lai Pupbliku 6-30, 2 CMC seksiona 3511 et seq.

(ni inamenda ni Lai Pupbliku 11-103).

I ma adapta na Regulasion Minanehan Solid Waste ha aturisa i Direktot para u fanna'i huyong lisensia para i minanehan solid waste siha na aktebidat yan fasilidat. I regulasion ha establese aplikasion lisensia yan maneran mana'i, kondision yan manera siha ni gina'ga'gao para modifikasion, masuspende, diniroga, mareneba yan transferin lisensian minanehan solid waste, yan obran standards yan kriteria para i ma petmiti i espisifiku siha na klasen fasilidat. I regulasion lokkue' ha establese ma aturisan rikonosimento yan ma enfuetsa sigun i gina'ga'gao ni lai siha.

Gi Juliu 2000, i DEQ ha propone i Regulasion Minanehan Solid Waste yan ha publika para komento ginen i pupbliku. Atan 22 Com. Reg. 17329 (Julu 20, 2000). Ineppe' para i komento siha, i resutta-na manmaribisa put i manmapropopone siha na regulasion, ya i DEQ hana suha pa'lo ti manisisario siha na definasion, yan mana'halom tres kondison gi Seksiona 10 i para u gobietna i rehistrasion i para u fangatga commercial waste. Este siha na kondision para i manmañuñule' solid waste nisisario ni para u masatmiti halom kopian rehistrasion kareta-niha yan insuranse card, tanto i fotman rehistrasion-niha, ya u mapenta i na'an i kompania gi dos na pottan kareta-niha. I DEQ ha klarifika lokkue' na ideofinasion fasilidat minanehan solid waste engklusu i fasilidat siha ni minaneneha ni federat, yan maribisa yan klarifika gi Seksiona 13.1 para u mas dinanche' para u sangan i aturidat DEQ gi manlaknos otden siha. I DEQ para u adapta i regulasion siha ya guaha didide' siha na tinulaika yan klarifikasion.

Sigun 1 CMC Seksiona 9105(b), este siha na regulasion efektibu 10 dias despues di manmapublika gi Rehistran Commonwealth. Kopian i manma adapta na regulasion guaha gi Ofisinan Dibision Environmental Quality, gi mina' tres bibenda Morgen Building, giya San Jose, Saipan, MP, 96950.

Linaknos as:

Fecha: 5/16/01



\_\_\_\_\_  
Antonio I. DL Guerrero, Acting Director  
Dibision Environmental Quality

Sigun 1 CMC papa Seksiona 2153, ni inamenda ni Lai Pupbliku 10-50, i regulasion ni chechetton guine esta manmaribisa yan apreba komu ligat yan suficiente na fotma ginen Ofisinan Abugadon Henerat.

Fecha: 06/04/01

/s/ ELLIOTT A. SATTLER  
Herbert Soll  
Abugadon Henerat

Ma file as:

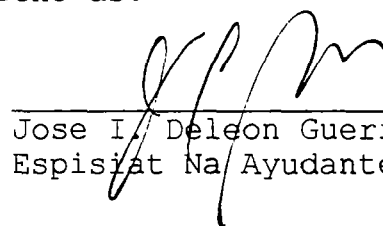
Fecha: 6/11/01



\_\_\_\_\_  
Soledad B. Sasamoto  
Rehistradoran Kotporasion

Marisibi gi Ofisinan Gubetno as:

Fecha: 06/07/01



\_\_\_\_\_  
Jose I. Deleon Guerrero  
Espisiat Na Ayudanten Administrasion



Commonwealth of the Northern Mariana Islands  
 OFFICE OF THE GOVERNOR  
 Division of Environmental Quality



P.O. Box 501304 C.K., Saipan, MP 96950-1304  
 Tels.: (670) 664-8500 /01  
 Fax: (670) 664-8540

**ARONGORONGOL TOULAP**

**MWEIMWEYÚL ALLÉGHÚL SOLID WASTE MELLÓL METAWAL WÓOL FALÚWAL MARIANAS**

Samwoolul Division of Environmental Quality (DEQ), Bwulasiyool Sówlemelem, Metawal Wóol Falúwal Marianas, nge ekke arong igha ebwe mweiti Alléghúl Solid Waste. Allégh kkaal nge re mweiti sáangi bwángil CNMI Environmental Protection Act, Alléghúl Toulap 3-23, "CMC subsection 3101 et seq. (iye e lliwel sáangi Alléghúl Toulap 11-103), 1 CMC subsections 2646 mwet ngáli 2649, Alléghúl Toulap 11.108, me Commonwealth Solid Waste Act, Alléghúl Toulap 6.30, "CMC subsections 3511 et seq. ( iye elliwel sáangi Alléghúl Toulap ye 11-103).

Mweimweyil alleghúl Solid Waste nge eyoor lemelemil Samwoolul bwulasiyo yeel bwe ebwe isiisiwow lisensiyal solid waste me milikka mwóghutúghútúl. Allégh kkaal nge e ayoor tingóral me isiisiwowul lisensiya reel ebwe fféer sefaál, ngáre ebwe uló mwo bwe ese ffat, me ngáre ebwe akkáscheló bwe ese wel, ebwe fféer sefaál me ebwe asúúsuló lisensiyal Solid Waste, ebwe ayoor fféer me lemelem reel ebwe fféer tappal leeliyel.

Llól maram ye Ulliyo, 2000, nge pomwol fféerúl Alléghúl Solid Waste sáangi DEQ nge e arongowow bwe toulap rebwe atotoolong mángemángiir reel autol allégh kkaal. Amwuri 22 reel Alléghúl Commonwealth 17329 (Ulliyo 20, 2000). Reel igha re palawalil mángemáng me tiip kka e atotoolong nge schóol bwulasiyool DEQ reghi amwuri fischiy pomwol fféerúl allégh kkaa nge eyoor milikka ese bwal ghi fil sibwe ira ngáre meta faal tapalal kkepas nge ra ayora eluww fféer mellól Tálil ye 10 reel lemelemil commercial waste hauler registration. Mwóghutughut kkaal nge ebwe fil bwe schóol bweibwoghul solid waste rebwe isáliilong kopiyaal yaar registration-ul ghareeta me insurance card nge ebwe schu me yaar schéel registration forms nge ebwe ischiitá ital kompaniya me numurool ghareeta ulupeighil i meruwoow asamal gharetaal kompaniya. DEQ nge ebwele affataawow bwe faal mille solid waste management facilities nge e bwal schuulong milikka federally-regulated facilities, me mille e lliwel me affataawow llól Tálil ye13.1 iye eghi affata bwángil DEQ bwe ebwe akkúlé. DEQ nge ebwele adopt-li allégh kkaal me lliwel kka llól autol ikka e ffat.

Reel bwángil 1 CMC subsection 9105(b), allégh kkaal nge ebwe alléghéló llól seigh (10) rál igha e toowow mellól Commonwealth Register. Ewal yoor kopiyaal allégh kka re adopt-li mereel Bwulasiyool Division of Environmental Quality, iye elo ailuwal bibenda llól Morgen Building, Oleai, Seipél, MP 96950.

Isáliyalawow:

Rál: 5/16/01

Antonio I. DL. Guerrero, Acting Director  
Division of Environmental Quality


Reel bwángil 1 CMC subsection 2153, igha e lliwel autol sáangi P.L. 10-50, allégh kka e appasch nge a takkal amweri me aléghélégh sa'ngi Buwlasiyool CNMI Attorney General.

Rál: 06/04/01

/s/ ELLIOTT A. SATTLER  
Herbert Soll  
Attorney General

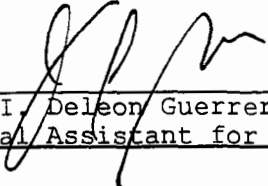
Isáliyal:

Rál: 6/11/01

  
Soledad B. Sasamoto  
Registrar of Corporations

Bwughiyal:

Rál: 06/03/01

  
Jose I. Deleon Guerrero  
Special Assistant for Administration



Commonwealth of the Northern Mariana Islands

Division of Environmental Quality

P.O. Box 1304, Saipan, MP 96950



Tels.: (670) 664-8500/8501  
Fax : (670) 664-8540

**CERTIFICATION OF ADOPTION**

I, Antonio I. Deleon Guerrero, Acting Director of the Division of Environmental Quality, which is promulgating the Solid Waste Management Regulations proposed on July 18, 2000 and published in the Commonwealth Register Vol. 22, No. 7 on July 20, 2000 at pages 17332 to 17348, by signature below, hereby certify that as published such Rules are a true, complete, and correct copy of the Solid Waste Management Regulations previously proposed by the Division which, after the expiration of appropriate time for public comment, have been adopted with some modification. By signature below, I hereby certify that the Solid Waste Management Regulations attached hereto and published herewith, are a true, correct and complete copy of the Solid Waste Management Regulations adopted by the Division of Environmental Quality. I further request and direct that and this Certification of Adoption and the accompanying Public Notice be published in the Commonwealth Register.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 31 day of May, 2001, Saipan, Commonwealth of the Northern Mariana Islands.

Antonio I. Deleon Guerrero, Acting Director  
Division of Environmental Quality

# COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS SOLID WASTE MANAGEMENT REGULATIONS

## SECTION 1: APPLICABILITY

- 1.1 These regulations have been promulgated by the Division of Environmental Quality under the authority of *Commonwealth Solid Waste Management Act*, 1989, 2 CMC §§ 3511 to 3521; the *Commonwealth Environmental Protection Act (CEPA)*, 1982, 2 CMC §§ 3101 to 3134, and the *Commonwealth Environmental Amendments Act (CEAA)*, 1999, PL 11-103. These regulations shall have the force and effect of law and shall be binding on all persons and other legal entities subject to the jurisdiction of the Commonwealth of the Northern Mariana Islands.
- 1.2 These regulations are applicable to all persons involved in the management of solid waste.

## SECTION 2: PURPOSE & PROHIBITIONS

- 2.1 The purpose of these regulations is to establish the requirements and criteria for new and existing solid waste management activities and solid waste management facilities (SWMFs) including, but not limited to, municipal solid waste landfills and other landfilling operations, incineration, solid waste collection and transfer, materials processing, recycling, composting, and salvage. These requirements and criteria ensure the protection of human health and the environment.
- 2.2 All new and existing solid waste management activities and SWMFs failing to comply with these regulations and criteria are prohibited. Facilities for the disposal of solid waste that fail to satisfy the requirements of these regulations are considered open dumps, and the use of open dumps is prohibited.

## SECTION 3: DEFINITIONS

- 3.1 Definitions from federal regulations incorporated by reference are included in the appendices to these regulations.
- 3.2 The following are additional definitions included for clarity as they pertain to these CNMI Solid Waste Management Regulations:
  - (1) "Acts" mean the CEPA, SWMA, and the CEAA unless otherwise stated.
  - (2) "Bioconversion" means the processing of the organic fraction of the waste stream through biological or chemical means to perform composting or to generate products, including, but not limited to, fertilizers, feeds, methane, alcohols, tars, and other products. This term includes, but is not limited to, biogassification, acid hydrolysis, pyrolysis, and fermentation. This term does not include any form of incineration or methane gas extraction from a MSWLF.
  - (3) "CEAA" means Commonwealth Environmental Amendments Act, 1999, PL 11-103.
  - (4) "CEPA" means Commonwealth Environmental Protection Act, 1982, 2 CMC §§ 3101 to 3134.
  - (5) "CESQG wastes" means hazardous wastes from a Conditionally Exempt Small Quantity Generator as defined in 40 CFR 261.5 (1999).
  - (6) "CFR" means the United States Code of Federal Regulations, 1999.
  - (7) "Closure" means those actions taken by the owner or operator of a solid waste management facility to cease disposal operations and to ensure that closure is in conformance with applicable



requirements as described in Section 5.

(8) "CNMI" or "Commonwealth" means the Commonwealth of the Northern Mariana Islands.

(9) "Collection" means the removal of solid waste from a generation or transfer point and the subsequent transport of the solid waste to a site/facility for further processing, additional transfer, or disposal.

(10) "Composting" means a process in which organic solid wastes, such as biosolids (sewage sludge), vegetative waste materials, manures, and non-treated wood chips and shavings, are biologically decomposed and stabilized under controlled conditions to produce a stable humus-like mulch or soil amendment. This term includes the processing of organic and non-treated wood waste materials for the generation of wood chips or other materials that can be used as soil amendment, planting mixes, mulches for horticultural and agricultural applications, landfill cover, and land reclamation.

(11) "Convenience center" means waste handling facilities performing limited transfer station operations and receiving less than five tons per day of exclusively household/residential waste.

(12) "Cover material" means soil or other suitable material that has been approved by the Director of DEQ for use as cover material for solid waste at a MSWLF.

(13) "DEQ" means the CNMI Division of Environmental Quality.

(14) "Director" means the Director of the CNMI Division of Environmental Quality or person designated to act by the Director unless otherwise specified.

(15) "DPW" means the CNMI Department of Public Works unless otherwise specified.

(16) "Hazardous waste" means any waste defined as hazardous under 40 CFR Part 261 (1999).

(17) "Incineration" means the destruction of solid waste by combustion in a furnace designed for such purposes where solid waste essentially is reduced to ash, carbon dioxide and water vapor.

(18) "Nuisance" means an act or an omission of an act which annoys, injures, or endangers the comfort, health, or safety of others, offends decency, or unlawfully interferes with, or obstructs or tends to obstruct, any public park, square, street, or highway, or in any way renders other persons insecure in life, or in the use of property.

(19) "Permit" means any authorization, license, or equivalent control document issued under the authority of DEQ that regulates the management of solid waste including location, design, construction, operation, ground-water monitoring, corrective action, closure, post-closure care, and financial assurance elements applicable to solid waste management activities and SWMFs.

(20) "Permit by rule" means an abbreviated procedure by which those solid waste management facilities considered by the Director of DEQ to have limited impact to the community and the environment may begin operations in accordance with Section 4.5 of these regulations.

(21) "Person" means an individual, firm association, co-partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

(22) "Post-closure" means the requirements placed upon landfill disposal sites after closure to

enable their environmental safety for a thirty-year period.

(23) "Premises" means tract or parcel of land with or without buildings.

(24) "Processing" means an operation to convert solid waste or recyclable materials into a useful product or prepare such materials for disposal.

(25) "Pyrolysis" means the process in which solid waste is heated in an enclosed device in the absence of oxygen to vaporize the waste, producing a hydrocarbon-rich gas capable of being burned for recovery or energy.

(26) "RCRA" means the federal Resource Conservation and Recovery Act, 1976, as amended to 1999, 42 USC §§ 6901 to 6992.

(27) "Refuse" means anything putrescible or non-putrescible that is discarded or rejected as waste.

(28) "Reserved" means a section having no requirements and which is set aside for future possible rulemaking as a note to the regulated community.

(29) "Salvage" means the incidental removal of solid waste for reuse under the control of the facility owner or operator.

(30) "Solid waste management activity" means any activity that provides for the systematic administration of the collection, source separation, storage, transportation, transfer, transformation, processing, treatment, and disposal of solid waste.

(31) "Solid waste management facility" (SWMF) means any site at which solid wastes are aggregated for storage, transfer, transformation, processing, or disposal, including but not limited to municipal solid waste landfills (MSWLFs), (as defined under 40 CFR Part 258 (1999) adopted by reference under Section 5 of these regulations), non-municipal, non-hazardous waste disposal units that receive conditionally exempt small quantity generator (CESQG) waste (as defined under 40 CFR Part 257 (1999) adopted by reference under Section 6 of these regulations), transfer stations, recycling operations, or incinerators, but not including sites where a single person has collected his/her own solid wastes for a brief period prior to removal to a solid waste management facility, unless such person has created thereby a public nuisance or health hazard.

(32) "Solid waste management permit" means a permit issued by DEQ to a public or private entity that is involved in the collection and disposal of solid waste.

(33) "Source separation" means separation of solid waste into some or all of its component parts at the point of generation of the solid waste.

(34) "Storage" means the holding of solid waste materials for any temporary period.

(35) "Stream" means the point at which any confined freshwater body of surface water reaches a mean annual flow rate of twenty feet per cubic second.

(36) "Surface water" means all lakes, rivers, ponds, streams, inland waters, salt waters and water courses within the jurisdiction of the CNMI.

(37) "SWMA" means Solid Waste Management Act, 1986, 2 CMC §§ 3511 to 3521.

(38) "Transfer station" means a site to which solid wastes are brought from their point of generation

or previous transfer and where such wastes are temporarily stored prior to transfer to a site of additional transfer or separation, recycling, storage, processing, or disposal.

(39) "Treatment" means the physical, chemical or biological processing of solid waste to make such solid waste safer for storage or disposal, amenable for energy or material source recovery, or reduced in volume.

(40) "Used oil transporter" means a person licensed or certified under local, state, or federal requirements to transport used oil.

#### **SECTION 4: GENERAL PERMIT REQUIREMENTS - SOLID WASTE MANAGEMENT ACTIVITIES/FACILITIES**

##### **4.1 APPLICABILITY**

(A) It shall be unlawful for any person to perform solid waste management activities or own or operate a SWMF except in accordance with a permit issued under these regulations. All permit applications shall be submitted to DEQ, and all permits will be issued by DEQ. DEQ shall have the authority to impose requirements on all solid waste management activities and SWMFs to ensure compliance with these and all applicable regulations.

(B) Permits issued by DEQ shall be valid for five (5) years following the date of issuance.

##### **4.2 EXEMPTIONS**

(A) The following are exempted from requirements of this section. These exemptions do not apply to facilities regulated under 40 CFR Parts 257 and 258 (1999).

- (1) A single family or multiple residence composting only green or vegetative solid wastes generated on its premises.
- (2) Minor facilities/activities not involving the disposal of municipal solid waste, as determined in writing by DEQ.

##### **4.3 APPLICATION FOR PERMIT**

(A) An application for a permit shall be completed on forms furnished by DEQ and shall include, but not be limited to the following:

- (1) Name, address, and telephone number of the applicant;
- (2) Type of application (new, revision, or renewal);
- (3) A description of how the proposed solid waste management facility/activities complies with applicable regulations; Certification of compliance with local ordinances and zoning requirements;
- (4) A written description of the proposed solid waste management facility/activities, including information such as general plan of operation of the solid waste management facility/activities (e.g., collection, segregation, disposal, etc.); proposed method and length of operation; area/population to be served; characteristics, quantity, and source material to be managed; the use and distribution of processed materials; method of processed residue disposal; type of

equipment to be used; number of solid waste management personnel and the responsibilities of personnel; source and type of cover material (if applicable); emergency operating procedures; frequency and proposed routes of transportation to be used for the solid waste management facility/activities;

- (5) Detailed description of plans and specifications for the solid waste management facility/activities and a detailed map showing the location of the solid waste management facility/activities. Final design specifications shall comply with all applicable regulations and criteria including those found in Section 5 and 6 of these regulations and be submitted to DEQ for approval prior to commencement of operations/activities;
- (6) For MSWLF and Non-Municipal Non-Hazardous Waste Disposal Units receiving CESQG wastes, a description of the plans for ground-water monitoring and corrective action as required in Section 5 and 6 of these regulations;
- (7) For MSWLF, description of the plans for the closure and post-closure as required in Section 5 of these regulations;
- (8) For MSWLF, description of the how the facility will meet the financial assurance requirements as required in Section 5 of these regulations;
- (9) Other specific requirements as stated for each facility/activity.

**4.4 FEES [Reserved]**

**4.5 PERMIT BY RULE [Reserved]**

**4.6 REGULATORY AGENCY REVIEW**

- (A) DEQ may require any additional information necessary to issue permits that are adequate to ensure compliance with the local and federal regulations and to ensure protection of public health and the environment of the CNMI.
- (B) DEQ shall within a reasonable amount of time from the date the application is received and the payment of the application fee, notify the applicant in writing if any additional information or items are required. Within 180 days of the receipt of a complete application DEQ will notify the applicant of approval or disapproval.
- (C) The 180 days time period will be tolled for any requests for additional information and for the public comment period.
- (D) Within one hundred eighty (180) days of receiving a complete application, and after consideration of public comments in accordance with Section 4.7, DEQ shall:
  - (1) Approve an application for a permit if the application and the supporting information clearly show that the issuance thereof does not pose a threat to the environment, public health, or welfare, and that the solid waste management activity or SWMF is designed, built, and equipped to operate without causing a violation of applicable rules and regulations;
  - (2) Deny an application for a permit if the application and supporting information clearly show that the issuance, thereof, poses a threat to the environment, public

health, or welfare, or that solid waste management activity or SWMF is not designed, built, and equipped to operate in compliance with applicable rules and regulations.

- (3) With the exception of all federally-approved and delegated programs, if no determination on a permit application has been made one hundred eighty (180) days after receipt of a complete application, the application shall be considered approved provided that the applicant acts consistently with the application and all plans, specifications, and other information contained therein. The permittee shall be subject to all applicable or relevant and appropriate federal and CNMI laws and regulations.

#### 4.7 PUBLIC NOTICE, PUBLIC COMMENT PERIOD, AND PUBLIC HEARING

- (A) Before issuing a permit for a MSWLF, and before issuing any other permits covered by these regulations which DEQ determines warrant public participation, representatives of DEQ shall conduct a public hearing pursuant to 2 CMC § 3122 (d) regarding DEQ's intention to issue such a permit and give public notice providing for a forty-five (45) day public review and comment period on the permit application documents and on the proposed action. The contents of the public notice shall include at least the following:
  - (1) Name, address, and phone number of DEQ and applicant;
  - (2) Brief description of each applicant's activities or operations;
  - (3) A short description of the location of the MSWLF, or other solid waste management activity or SWMF indicating whether such MSWLF, or solid waste management activity or SWMF is new or existing;
  - (4) Address and phone numbers of premises at which interested persons may obtain further information and inspect a copy of the application and supporting documents.
- (B) A public hearing shall be held no less than twenty-one (21) days from the start of the public comment period. DEQ shall address public comments at the hearing. Comments received at the public hearing and during the public comment period shall be considered in making a decision and DEQ shall prepare written responses to all significant comments. The response to comments shall be made available to the public upon request.

#### 4.8 PUBLIC NOTIFICATION OF PERMIT DETERMINATION

- (A) Pursuant to CEPA, DEQ shall make known to the public through public notice its determinations regarding any MSWLF permit, or other any other solid waste management activity or SWMF permit which DEQ has determined warrants public participation under Section 4.7 of these regulations, within thirty (30) days of such a determination.

#### 4.9 EFFECT OF THE PERMIT

- (A) Written acceptance of any and all permit conditions by the applicant shall be necessary prior to any commencement of facility construction/operation or prior to commencement of any activities for which the permit is required;
- (B) The owner or operator must notify DEQ that construction, operations, or activities have

been completed in accordance with the approved plans and specifications;

- (C) Prior to commencement of the permitted facility, operation, or activity, an inspection will be conducted by DEQ to confirm that the facility, operations, or activities are ready to commence in compliance with applicable requirements.

#### 4.10 MODIFICATION OF EXISTING PERMITS

- (A) DEQ may, on its own motion or the application of any person, modify a permit if, after affording the applicant an opportunity for a hearing, the Director determines that:
  - (1) Any condition of the permit has been violated or due to change in any condition requiring either a temporary or permanent reduction or elimination of the permitted activity or facility.
  - (2) There is a change in the applicable laws or regulations governing solid waste management.
  - (3) Such an action is in the public interest.
- (B) DEQ shall develop a schedule to revisit and reissue all existing permits affected by the change in the law or regulations at the time of the change. Modification of the permit shall become final ten (10) days after service of notice of the final decision to modify the permit.

#### 4.11 SUSPENSION OF PERMIT

- (A) DEQ may, on its own motion or based on the application of any person, suspend a permit if, after affording the applicant an opportunity for a hearing, DEQ determines that:
  - (1) any condition of the permit has been violated;
  - (2) any statute or regulation of the local or federal government has been violated; or
  - (3) or such an action is in the public interest.
- (B) The permit shall be suspended until all conditions of the permit are met or all violations have been properly corrected. Suspension of a permit shall become final ten (10) days after service of notice of the final decision to suspend on the holder of the permit.

#### 4.12 REVOCATION OF PERMIT

- (A) DEQ may on his own motion or the application of any person, revoke any permit if, after affording the applicant an opportunity for a hearing, DEQ determines that:
  - (1) There is a violation of any condition of the permit;
  - (2) The permit was obtained by misrepresentation, or failure to disclose fully all relevant facts;
  - (3) There is change in any condition that requires either a temporary or permanent reduction or elimination of the permitted disposal; or
  - (4) Such an action is in the public interest.

- (B) Revocation of a permit shall become final ten (10) days after service of notice of the final decision to revoke on the holder of the permit.

#### 4.13 PERMIT RENEWAL

- (A) The permittee must apply for renewal of the permit sixty (60) days before the permit expires. At the time of renewal of a solid waste management permit, the facility is reevaluated and the permit conditions updated to reflect changes to the current operational procedures. The criteria for permit renewal determination is the same as for the initial application and shall be in accordance with Sections 4.3 through 4.9 of these regulations.

#### 4.14 TRANSFER OF PERMIT

- (A) A permit shall not be transferable, whether by operation of law or otherwise, either from one location to another, from one SWMF to another or from one person to another, without the written approval of DEQ. A transfer shall not be approved by the Director unless he determines that all applicable laws and regulations have been and will continue to be complied with after the transfer and only if the transferee provides a written assurance that it will so comply.

#### 4.15 REPORTING TERMINATION

- (A) Sixty (60) days prior to closure any person issued a permit shall report the permanent termination of the solid waste management activity or SWMF for which the permit has been issued to DEQ and within the thirty (30) days after the closure shall surrender the permit to DEQ. DEQ may approve immediate closure of any SWMF if the facility poses a major threat to human health and the environment.

#### 4.16 POSTING OF A PERMIT

- (A) Upon granting an approval for a permit, DEQ shall issue to the applicant a permit that shall be posted in a conspicuous place at or near the operation site for which the permit was issued.

#### 4.17 FALSIFYING OR ALTERING A PERMIT

- (A) No person shall knowingly deface, alter, forge, counterfeit, or falsify a permit. If the permit holder, his agents or employees, are found responsible for any such activity it shall bring about immediate revocation of the permit.

#### 4.18 ANNUAL REPORTING

- (A) The permittee shall submit an annual report to DEQ with information including the total volume and types of solid waste collected and the average number of individual residences or households and businesses serviced by the permittee on a weekly basis. The annual reports also shall be submitted with the application for a MSWLF permit renewal.

#### 4.19 CONFORMANCE WITH OTHER CNMI AND FEDERAL REGULATIONS

- (A) The owner or operator of a solid waste management activity or a SWMF must comply with any other applicable Commonwealth or Federal rules, laws, regulations, or other requirements. Compliance with these regulations does not exempt the owner or operator

of a solid waste management activity or a SWMF from complying with such applicable Commonwealth or Federal requirements.

#### 4.20 INSPECTION

- (A) Representatives of DEQ, in accordance with the law, may enter and inspect a facility for the purpose of conducting inspections adequate to determine compliance with the solid waste management regulations including the terms of a permit. The inspections may be made with or without advance notice, with good purpose, and at the discretion of the Director of DEQ. The authority to inspect shall include the ability:
- (1) to obtain any and all information, including records and reports, from an owner/operator of a solid waste management activity or SWMF necessary to determine whether the owner/operator is in compliance with the solid waste management regulations.
  - (2) to inspect any equipment.
  - (3) to collect samples of waste, and conduct monitoring or testing to ensure that the owner/operator is in compliance with these solid waste management regulations.
  - (4) to observe operations involving the use or disposal of waste.

#### (B) RIGHTS TO ENTRY

- (1) In accordance with 2 CMC §3132(a), for purposes of enforcing the provisions of the Commonwealth of the Northern Mariana Islands Solid Waste Management Regulations, the Director of DEQ or his authorized representative is authorized:
  - a) to enter, at reasonable times, any establishment, site, premise subject or other place subject to the permit program or where solid waste is disposed, stored for transfer, or processed; including where records relevant to the operation of regulated facilities or activities are kept.
  - (b) to enter any premises at any time if there is substantial reason to believe that any waste disposed or stored, or otherwise present on such premises is, through accident, carelessness, or other circumstance, producing adverse effects on human health or the environment, for the purpose of taking such action as may be necessary to prevent or mitigate further adverse effects.

#### 4.21 VARIANCES [Reserved]

#### 4.22 EXISTING FACILITIES

- (A) All owners or operators of existing solid waste management activities or SWMF shall file immediately an application for a permit to continue to operate. Permit applications for existing facilities will be reviewed according to Section 4 of these regulations.



**SECTION 5: MUNICIPAL SOLID WASTE LANDFILL CRITERIA**

5.1 40 CFR Part 258 (1999) is hereby adopted by reference in its entirety and is attached as Appendix I of these regulations. All municipal solid waste landfills shall comply with the provisions of 40 CFR Part 258 (1999).

**SECTION 6: CLASSIFICATION OF SOLID WASTE DISPOSAL FACILITIES AND STANDARDS FOR NON-MUNICIPAL NON-HAZARDOUS WASTE DISPOSAL FACILITIES THAT RECEIVE CESQG WASTE**

6.1 40 CFR Part 257 (1999) is hereby adopted by reference in its entirety and is attached as Appendix II of these regulations.

6.2 All non-municipal, non-hazardous waste disposal facilities that receive CESQG waste shall comply with the provisions of 40 CFR Part 257, Subpart B (1999).

**SECTION 7: TRANSFER STATIONS [Reserved]**

**SECTION 8: CONVENIENCE CENTERS [Reserved]**

**SECTION 9: RECYCLING [Reserved]**

**SECTION 10: COLLECTION: Requirements for Commercial Waste Haulers**

10.1 It shall be unlawful for any person to initiate or continue the commercial collection of municipal solid waste without first registering with the DEQ. The annual registration fee shall be \$25 initially, and may be revised, in writing, by the Director of DEQ.

10.2 All applicants shall complete and submit their registration on forms furnished by the DEQ and provide the following information for approval determination:

- (1) A copy of their current business license.
- (2) A list of all trucks and other equipment involved in the operation.
- (3) The location of any vehicle or equipment storage facility.
- (4) A copy of the insurance card for each vehicle.
- (5) A copy of the CNMI Department of Public Safety (DPS) Vehicle Registration.

10.3 Each registration form shall contain the original signature of the owner and applicant and shall constitute acknowledgment that the applicant will assume responsibility for operation of the collection business in accordance with these rules and regulations and any conditions made part of registration.

10.4 Registration applications containing all required information shall be considered approved 30 days following submittal, unless specific action is taken by DEQ. Commercial waste hauler registrations shall be renewed annually. The annual fee shall be \$25 initially, and may be revised in writing, by the Director of DEQ.

10.5 The registration may not be modified or transferred (including change of business address) without approval from the Director of DEQ. The Director, as specified under Section 4.10, 4.11, or 4.12 of

these regulations, may modify, suspend or revoke any commercial waste hauler's registration, if the Director determines any of the standard conditions or any of the provisions of 2 CMC §§ 3511 to 3521 or 2 CMC §§ 3101 to 3135 have been violated, or that such modification, suspension, or revocation is in the public interest. Modifications, suspensions, or revocations shall become final 10 days after service of the notice of final decision on the holder of the registration.

10.6 Standard Conditions:

- (1) All employees shall have received proper safety training as required by OSHA.
- (2) All loads shall be covered or otherwise managed to prevent windblown debris.
- (3) The company name, vehicle identification number, and volumetric capacity shall be printed on both the left and right doors of all vehicles.
- (4) The operator shall have in place management standards to minimize public nuisances such as odors and vectors (i.e. flies and rodents) or leaking loads.
- (5) All refuse shall be managed in such a manner as to prevent any impact on public health and safety.
- (6) All employees shall be made aware of any DEQ or DSWM disposal restrictions.
- (7) All employees shall strictly follow any instructions given by DSWM personnel at the solid waste management facility.

**SECTION 11: MISCELLANEOUS FACILITIES/ACTIVITIES [Reserved]**

**SECTION 12: FINANCIAL ASSURANCE FOR NON-MSWLF FACILITIES/OPERATIONS/ACTIVITIES [Reserved]**

**SECTION 13: ENFORCEMENT AUTHORITY AND PROCEDURES**

**13.1 The Director of DEQ is authorized to impose the following remedies for violation of the CNMI Solid Waste Management Regulations.**

- (A) Pursuant to 2 CMC § 3131(a) and (c), and 2 CMC § 3519(a) and in accordance with Section 13.5, the Director may issue any order necessary to enforce the Acts, these regulations, and any term of any permit issued under these regulations including but not limited to:
  - (1) An order to cease and desist, immediately or within a stated period of time, any violation of the Acts, these regulations or any term of any permit issued under these regulations.
  - (2) An order to cease and desist immediately any activity which may endanger or cause damage to human health or the environment.
  - (3) An order to take such mitigating measures as may be necessary to reverse or reduce any significant adverse effects of a violation of the Acts, these regulations, or any term of any permit issued under these regulations.
  - (4) An order to pay any civil penalties authorized by law for violations of these

regulations, any order issued under these regulations and any term of a permit granted pursuant to these regulations.

(5) An order to pay a penalty for any amount expended by DEQ in taking necessary action to reverse or reduce any significant adverse effect of a violation of these regulations, any order issued under these regulations, any term of a permit granted pursuant to these regulations.

(B) Pursuant to 2 CMC § 3131(b), the Director, through the CNMI Attorney General, may institute a civil action in the Commonwealth Superior Court to take any action authorized by law, including but not limited to the following:

(1) Enjoin any threatened or continuing activity that violates the Acts, these regulations, any order issued under these regulations and any term of a permit granted pursuant to these regulations.

(2) Recover civil penalties for violations of the Acts, these regulations, any order issued under these regulations and any term of a permit granted pursuant to these regulations.

13.2 In accordance with 2 CMC § 3131(i), any citizen having an interest that is or may be adversely affected, shall be allowed to intervene as a right in any civil action to obtain the remedies specified in Section 13.1.

13.3 If appropriate, and consistent with Section 4.10, 4.11, and 4.12 and 13.6 of these regulations, the Director may suspend, revoke, or modify any permit, license, or certification issued by DEQ for violation of the Acts, these regulations and any permit or license issued pursuant to these regulations.

13.4 Any person who knowingly and willfully commits any criminal act in violation of the Acts, these regulations, and any permit, or order issued under these regulations, and who is found guilty by a court of competent jurisdiction may be punished by a fine and/or imprisonment in accordance with the law. Any other penalties or remedies provided by these regulations, the law and/or ordered by the Director shall also remain in effect.

### 13.5 PROCEDURES FOR ADMINISTRATIVE ORDERS

(A) Any person who is subject to civil penalties, revocation, or suspension may be served with a Notice of Violation and Administrative Order and may, upon written request, seek a hearing before the Director or designee. Request for a hearing may be served upon the Division within seven (7) calendar days from receipt of the Administrative Order. Failure to request an appeal within seven (7) calendar days shall result in the person's waiving the right to any appeal or hearing.

(B) The written request for a hearing shall serve as the answer to the complaint. The request for hearing or "answer" shall clearly and directly admit, deny, or explain each of the factual allegations contained in the complaint with regard to which the alleged violator (respondent) has any knowledge. Where respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. The answer shall also state (1) the circumstances or arguments which are alleged to constitute the grounds of defense, (2) the facts which respondent intends to place at issue, and (3) whether a hearing is requested. Failure to admit, deny, or explain any material factual allegation contained in the complaint constitutes an admission of the allegations. An oral answer

### 13.6 PROCEDURES FOR ADMINISTRATIVE ORDERS

may also be given at the time of hearing should a hearing be requested.

- (C) The respondent may also request an informal Settlement Conference. An Informal Settlement Conference shall not affect the respondent's obligation to file a timely request for hearing. If a settlement is reached the parties shall forward a proposed consent order for the approval by the Director.
  - (D) If a hearing is conducted the Director or his designee will preside over the hearing. The Director shall control the taking of testimony and evidence and shall cause to be made an audio, audio-video, or stenographic record of the hearing. The type of record made shall be at the discretion of the Director. Evidence presented at such a hearing need not conform with the prescribed rules of evidence, but may be limited by the Director in any manner the Director reasonably determines to be just and efficient and promote the ends of justice. The Director shall issue a final written decision within 15 working days of the close of the enforcement hearing. The decision shall include written findings of fact and conclusions of law. The standard of proof for such a hearing and decisions shall be the preponderance of the evidence.
  - (E) An appeal from the final enforcement decision shall be to the Commonwealth Superior Court within thirty (30) calendar days following service of the final agency decision.
  - (F) For filing deadline purposes counting of the days shall start on the day after issuance or receipt (whichever is specified). If any filing date falls on a Saturday, Sunday, or Commonwealth Holiday, the filing date shall be extended to the next working day.
- 13.6 The Director shall have the responsibility to prepare, issue, modify, revoke and enforce orders for compliance with any of the provisions of these regulations or of any rules and regulations issued pursuant thereto and requiring the taking of such remedial measures as may be necessary or appropriate to implement or effectuate the provisions and purposes of these regulations.
- 13.7 The Director may initiate civil actions through the Commonwealth Courts which shall be transmitted through and with the approval of the Office of the Governor and the Attorney General as necessary to enforce these regulations. The Attorney General will institute legal actions to enjoin a violation, continuing violation, or threatened violation of these regulations.
- 13.8 If the Director has probable cause to believe there has been a violation of these regulations, upon receipt of an order or warrant from the Commonwealth Trial Court or the District Court, DEQ may enter upon and search any property, take necessary samples or readings therefrom, seize evidence found therein and examine or impound any book or record found therein or specified in such order or warrant.
- 13.9 The Director or his authorized representative may enter property for purposes specified in 4.20 of these regulations without a warrant if: a violation has occurred or is imminent; the violation poses a serious, substantial and immediate threat to public health or welfare; or the process of obtaining a warrant or order would prolong or increase the threat, impair discovery of evidence of a violation or impair mitigation of the treat.

#### **SECTION 14: SEVERABILITY**

- 14.1 Should any part, section, paragraph, sentence, clause, phrase, or application of these rules and regulations be declared unconstitutional or invalid for any reason by competent authority, the remainder or any other application of these rules and regulations shall not be affected in any way thereby.

**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS  
SOLID WASTE MANAGEMENT REGULATIONS**

**APPENDIX I**

**40 CFR 258 (1999)**

Adopted by reference, in its entirety  
as Section 5.1 of the CNMI regulations

**PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS**

**Subpart A—General**

- Sec.
- 258.1 Purpose, scope, and applicability.
- 258.2 Definitions.
- 258.3 Consideration of other Federal laws.
- 258.4-258.9 [Reserved]

**Subpart B—Location Restrictions**

- 258.10 Airport safety.
- 258.11 Floodplains.
- 258.12 Wetlands.
- 258.13 Fault areas.
- 258.14 Seismic impact zones.
- 258.15 Unstable areas.
- 258.16 Closure of existing municipal solid waste landfill units.
- 258.17-258.19 [Reserved]

**Subpart C—Operating Criteria**

- 258.20 Procedures for excluding the receipt of hazardous waste.
- 258.21 Cover material requirements.
- 258.22 Disease vector control.
- 258.23 Explosive gases control.
- 258.24 Air criteria.
- 258.25 Access requirements.
- 258.26 Run-on/run-off control systems.
- 258.27 Surface water requirements.
- 258.28 Liquids restrictions.
- 258.29 Recordkeeping requirements.
- 258.30-258.39 [Reserved]

**Subpart D—Design Criteria**

- 258.40 Design criteria.
- 258.41-258.49 [Reserved]

**Subpart E—Ground-Water Monitoring and Corrective Action**

- 258.50 Applicability.
- 258.51 Ground-water monitoring systems.
- 258.52 [Reserved]
- 258.53 Ground-water sampling and analysis requirements.
- 258.54 Detection monitoring program.
- 258.55 Assessment monitoring program.
- 258.56 Assessment of corrective measures.
- 258.57 Selection of remedy.
- 258.58 Implementation of the corrective action program.
- 258.59 [Reserved]

**Subpart F—Closure and Post-Closure Care**

- 258.60 Closure criteria.
- 258.61 Post-closure care requirements.
- 258.62-258.69 [Reserved]

**Subpart G—Financial Assurance Criteria**

- 258.70 Applicability and effective date.

- 258.71 Financial assurance for closure.
- 258.72 Financial assurance for post-closure care.
- 258.73 Financial assurance for corrective action.
- 258.74 Allowable mechanisms.
- 258.75 Discounting.

APPENDIX I TO PART 258—CONSTITUENTS FOR DETECTION MONITORING  
APPENDIX II TO PART 258—LIST OF HAZARDOUS AND ORGANIC CONSTITUENTS

AUTHORITY: 33 U.S.C. 1345(d) and (e); 42 U.S.C. 6902(a), 6907, 6912(a), 6944, 6945(c) and 6949a(c).

SOURCE: 56 FR 51016, Oct. 9, 1991, unless otherwise noted.

**Subpart A—General**

**§258.1 Purpose, scope, and applicability.**

(a) The purpose of this part is to establish minimum national criteria under the Resource Conservation and Recovery Act (RCRA or the Act), as amended, for all municipal solid waste landfill (MSWLF) units and under the Clean Water Act, as amended, for municipal solid waste landfills that are used to dispose of sewage sludge. These minimum national criteria ensure the protection of human health and the environment.

(b) These Criteria apply to owners and operators of new MSWLF units, existing MSWLF units, and lateral expansions, except as otherwise specifically provided in this part; all other solid waste disposal facilities and practices that are not regulated under subtitle C of RCRA are subject to the criteria contained in part 257 of this chapter.

(c) These Criteria do not apply to municipal solid waste landfill units that do not receive waste after October 9, 1991.

(d)(1) MSWLF units that meet the conditions of §258.1(e)(2) and receive waste after October 9, 1991 but stop receiving waste before April 9, 1994, are exempt from all the requirements of this part 258, except the final cover requirement specified in §258.60(a). The final cover must be installed by October 9, 1994. Owners or operators of MSWLF units described in this paragraph that fail to complete cover installation by October 9, 1994 will be

subject to all the requirements of this part 258, unless otherwise specified.

(2) MSWLF units that meet the conditions of § 258.1(e)(3) and receive waste after October 9, 1991 but stop receiving waste before the date designated by the state pursuant to § 258.1(e)(3), are exempt from all the requirements of this part 258, except the final cover requirement specified in § 258.60(a). The final cover must be installed within one year after the date designated by the state pursuant to § 258.1(e)(3). Owners or operators of MSWLF units described in this paragraph that fail to complete cover installation within one year after the date designated by the state pursuant to § 258.1(e)(3) will be subject to all the requirements of this part 258, unless otherwise specified.

(3) MSWLF units that meet the conditions of paragraph (f)(1) of this section and receive waste after October 9, 1991 but stop receiving waste before October 9, 1997, are exempt from all the requirements of this part 258, except the final cover requirement specified in § 258.60(a). The final cover must be installed by October 9, 1998. Owners or operators of MSWLF units described in this paragraph that fail to complete cover installation by October 9, 1998 will be subject to all the requirements of this part 258, unless otherwise specified.

(4) MSWLF units that do not meet the conditions of § 258.1 (e)(2), (e)(3), or (f) and receive waste after October 9, 1991 but stop receiving waste before October 9, 1993, are exempt from all the requirements this part 258, except the final cover requirement specified in § 258.60(a). The final cover must be installed by October 9, 1994. Owners or operators of MSWLF units described in this paragraph that fail to complete cover installation by October 9, 1994 will be subject to all the requirements of this part 258, unless otherwise specified.

(e)(1) The compliance date for all requirements of this part 258, unless otherwise specified, is October 9, 1993 for all MSWLF units that receive waste on or after October 9, 1993, except those units that qualify for an extension under (e)(2), (3), or (4) of this section.

(2) The compliance date for all requirements of this part 258, unless otherwise

specified, is April 9, 1994 for an existing MSWLF unit or a lateral expansion of an existing MSWLF unit that meets the following conditions:

(i) The MSWLF unit disposed of 100 tons per day or less of solid waste during a representative period prior to October 9, 1993;

(ii) The unit does not dispose of more than an average of 100 TPD of solid waste each month between October 9, 1993 and April 9, 1994;

(iii) The MSWLF unit is located in a state that has submitted an application for permit program approval to EPA by October 9, 1993, is located in the state of Iowa, or is located on Indian Lands or Indian Country; and

(iv) The MSWLF unit is not on the National Priorities List (NPL) as found in appendix B to 40 CFR part 300.

(3) The compliance date for all requirements of this part 258, unless otherwise specified, for an existing MSWLF unit or lateral expansion of an existing MSWLF unit receiving flood-related waste from federally-designated areas within the major disasters declared for the states of Iowa, Illinois, Minnesota, Wisconsin, Missouri, Nebraska, Kansas, North Dakota, and South Dakota by the President during the summer of 1993 pursuant to 42 U.S.C. 5121 *et seq.*, shall be designated by the state in which the MSWLF unit is located in accordance with the following:

(i) The MSWLF unit may continue to accept waste up to April 9, 1994 without being subject to part 258, if the state in which the MSWLF unit is located determines that the MSWLF unit is needed to receive flood-related waste from a federally-designated disaster area as specified in (e)(3) of this section.

(ii) The MSWLF unit that receives an extension under paragraph (e)(3)(i) of this section may continue to accept waste up to an additional six months beyond April 9, 1994 without being subject to part 258, if the state in which the MSWLF unit is located determines that the MSWLF unit is needed to receive flood-related waste from a federally-designated disaster area specified in (e)(3) of this section.

(iii) In no case shall a MSWLF unit receiving an extension under paragraph (e)(3) (i) or (ii) of this section accept

waste beyond October 9, 1994 without being subject to part 258.

(4) For a MSWLF unit that meets the conditions for the exemption in paragraph (f)(1) of this section, the compliance date for all applicable requirements of part 258, unless otherwise specified, is October 9, 1997.

(f)(1) Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions that dispose of less than twenty (20) tons of municipal solid waste daily, based on an annual average, are exempt from subparts D and E of this part, so long as there is no evidence of ground-water contamination from the MSWLF unit, and the MSWLF unit serves:

(i) A community that experiences an annual interruption of at least three consecutive months of surface transportation that prevents access to a regional waste management facility, or

(ii) A community that has no practicable waste management alternative and the landfill unit is located in an area that annually receives less than or equal to 25 inches of precipitation.

(2) Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions that meet the criteria in paragraph (f)(1)(i) or (f)(1)(ii) of this section must place in the operating record information demonstrating this.

(3) If the owner or operator of a new MSWLF unit, existing MSWLF unit, or lateral expansion has knowledge of ground-water contamination resulting from the unit that has asserted the exemption in paragraph (f)(1)(i) or (f)(1)(ii) of this section, the owner or operator must notify the state Director of such contamination and, thereafter, comply with subparts D and E of this part.

(g) Municipal solid waste landfill units failing to satisfy these criteria are considered open dumps for purposes of State solid waste management planning under RCRA.

(h) Municipal solid waste landfill units failing to satisfy these criteria constitute open dumps, which are prohibited under section 4005 of RCRA.

(i) Municipal solid waste landfill units containing sewage sludge and failing to satisfy these Criteria violate

sections 309 and 405(e) of the Clean Water Act.

(j) Subpart G of this part is effective April 9, 1995, except for MSWLF units meeting the requirements of paragraph (f)(1) of this section, in which case the effective date of subpart G is October 9, 1995.

[56 FR 51016, Oct. 9, 1991, as amended at 58 FR 51546, Oct. 1, 1993; 60 FR 52342, Oct. 6, 1995; 61 FR 50413, Sept. 25, 1996]

#### § 258.2 Definitions.

Unless otherwise noted, all terms contained in this part are defined by their plain meaning. This section contains definitions for terms that appear throughout this part; additional definitions appear in the specific sections to which they apply.

*Active life* means the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities in accordance with § 258.60 of this part.

*Active portion* means that part of a facility or unit that has received or is receiving wastes and that has not been closed in accordance with § 258.60 of this part.

*Aquifer* means a geological formation, group of formations, or portion of a formation capable of yielding significant quantities of ground water to wells or springs.

*Commercial solid waste* means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding residential and industrial wastes.

*Director of an Approved State* means the chief administrative officer of a state agency responsible for implementing the state permit program that is deemed to be adequate by EPA under regulations published pursuant to sections 2002 and 4005 of RCRA.

*Existing MSWLF unit* means any municipal solid waste landfill unit that is receiving solid waste as of the appropriate dates specified in § 258.1(e). Waste placement in existing units must be consistent with past operating practices or modified practices to ensure good management.

*Facility* means all contiguous land and structures, other appurtenances,



and improvements on the land used for the disposal of solid waste.

*Ground water* means water below the land surface in a zone of saturation.

*Household waste* means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

*Indian lands or Indian country* means:

(1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running throughout the reservation;

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of the State; and

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights of way running through the same.

*Indian Tribe or Tribe* means any Indian tribe, band, nation, or community recognized by the Secretary of the Interior and exercising substantial governmental duties and powers on Indian lands.

*Industrial solid waste* means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under subtitle C of RCRA. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: Electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

*Lateral expansion* means a horizontal expansion of the waste boundaries of an existing MSWLF unit.

*Leachate* means a liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

*Municipal solid waste landfill unit* means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under §257.2. A MSWLF unit also may receive other types of RCRA subtitle D wastes, such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste and industrial solid waste. Such a landfill may be publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion.

*New MSWLF unit* means any municipal solid waste landfill unit that has not received waste prior to October 9, 1993, or prior to October 9, 1997 if the MSWLF unit meets the conditions of §258.1(f)(1).

*Open burning* means the combustion of solid waste without:

(1) Control of combustion air to maintain adequate temperature for efficient combustion.

(2) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and

(3) Control of the emission of the combustion products.

*Operator* means the person(s) responsible for the overall operation of a facility or part of a facility.

*Owner* means the person(s) who owns a facility or part of a facility.

*Run-off* means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

*Run-on* means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

*Saturated zone* means that part of the earth's crust in which all voids are filled with water.

*Sludge* means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

*Solid waste* means any garbage, or refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 U.S.C. 1342, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

*State* means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

*State Director* means the chief administrative officer of the lead state agency responsible for implementing the state permit program for 40 CFR part 257, subpart B and 40 CFR part 258 regulated facilities.

*Uppermost aquifer* means the geologic formation nearest the natural ground surface that is an aquifer, as well as, lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

*Waste management unit boundary* means a vertical surface located at the hydraulically downgradient limit of the unit. This vertical surface extends down into the uppermost aquifer.

[56 FR 51016, Oct. 9, 1991; 57 FR 28627, June 26, 1992, as amended at 58 FR 51547, Oct. 1, 1993; 60 FR 52342, Oct. 6, 1995; 63 FR 57044, Oct. 23, 1998]

### § 258.3 Consideration of other Federal laws.

The owner or operator of a municipal solid waste landfill unit must comply

with any other applicable Federal rules, laws, regulations, or other requirements.

### §§ 258.4-258.9 [Reserved]

## Subpart B—Location Restrictions

### § 258.10 Airport safety.

(a) Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions that are located within 10,000 feet (3,048 meters) of any airport runway end used by turbojet aircraft or within 5,000 feet (1,524 meters) of any airport runway end used by only piston-type aircraft must demonstrate that the units are designed and operated so that the MSWLF unit does not pose a bird hazard to aircraft.

(b) Owners or operators proposing to site new MSWLF units and lateral expansions within a five-mile radius of any airport runway end used by turbojet or piston-type aircraft must notify the affected airport and the Federal Aviation Administration (FAA).

(c) The owner or operator must place the demonstration in paragraph (a) of this section in the operating record and notify the State Director that it has been placed in the operating record.

(d) For purposes of this section:

(1) *Airport* means public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

(2) *Bird hazard* means an increase in the likelihood of bird/aircraft collisions that may cause damage to the aircraft or injury to its occupants.

### § 258.11 Floodplains.

(a) Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions located in 100-year floodplains must demonstrate that the unit will not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human health and the environment. The owner or operator must place the demonstration in the operating record and notify the State Director that it has been placed in the operating record.

(b) For purposes of this section:

§ 258.12

40 CFR Ch. I (7-1-99 Edition)

(1) *Floodplain* means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, that are inundated by the 100-year flood.

(2) *100-year flood* means a flood that has a 1-percent or greater chance of recurring in any given year or a flood of a magnitude equalled or exceeded once in 100 years on the average over a significantly long period.

(3) *Washout* means the carrying away of solid waste by waters of the base flood.

(ii) Erosion, stability, and migration potential of dredged and fill materials used to support the MSWLF unit;

(iii) The volume and chemical nature of the waste managed in the MSWLF unit;

(iv) Impacts on fish, wildlife, and other aquatic resources and their habitat from release of the solid waste;

(v) The potential effects of catastrophic release of waste to the wetland and the resulting impacts on the environment; and

(vi) Any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected.

§ 258.12 Wetlands.

(a) New MSWLF units and lateral expansions shall not be located in wetlands, unless the owner or operator can make the following demonstrations to the Director of an approved State:

(1) Where applicable under section 404 of the Clean Water Act or applicable State wetlands laws, the presumption that practicable alternative to the proposed landfill is available which does not involve wetlands is clearly rebutted;

(2) The construction and operation of the MSWLF unit will not:

(i) Cause or contribute to violations of any applicable State water quality standard.

(ii) Violate any applicable toxic effluent standard or prohibition under Section 307 of the Clean Water Act.

(iii) Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Endangered Species Act of 1973, and

(iv) Violate any requirement under the Marine Protection, Research, and Sanctuaries Act of 1972 for the protection of a marine sanctuary;

(3) The MSWLF unit will not cause or contribute to significant degradation of wetlands. The owner or operator must demonstrate the integrity of the MSWLF unit and its ability to protect ecological resources by addressing the following factors:

(i) Erosion, stability, and migration potential of native wetland soils, muds and deposits used to support the MSWLF unit;

(4) To the extent required under section 404 of the Clean Water Act or applicable State wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands (as defined by acreage and function) by first avoiding impacts to wetlands to the maximum extent practicable as required by paragraph (a)(1) of this section, then minimizing unavoidable impacts to the maximum extent practicable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands); and

(5) Sufficient information is available to make a reasonable determination with respect to these demonstrations.

(b) For purposes of this section, *wetlands* means those areas that are defined in 40 CFR 232.2(r).

(b) For purposes of this section, *wetlands* means those areas that are defined in 40 CFR 232.2(r).

§ 258.13 Fault areas.

(a) New MSWLF units and lateral expansions shall not be located within 200 feet (60 meters) of a fault that has had displacement in Holocene time unless the owner or operator demonstrates to the Director of an approved State that an alternative setback distance of less than 200 feet (60 meters) will prevent damage to the structural integrity of the MSWLF unit and will be protective of human health and the environment.

(b) For the purposes of this section:

(1) *Fault* means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.

(2) *Displacement* means the relative movement of any two sides of a fault measured in any direction.

(3) *Holocene* means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch to the present.

#### § 258.14 Seismic impact zones.

(a) New MSWLF units and lateral expansions shall not be located in seismic impact zones, unless the owner or operator demonstrates to the Director of an approved State/Tribe that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site. The owner or operator must place the demonstration in the operating record and notify the State Director that it has been placed in the operating record.

(b) For the purposes of this section:

(1) *Seismic impact zone* means an area with a ten percent or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10g in 250 years.

(2) *Maximum horizontal acceleration in lithified earth material* means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90 percent or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

(3) *Lithified earth material* means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

[56 FR 51016, Oct. 9, 1991; 57 FR 28627, June 26, 1992]

#### § 258.15 Unstable areas.

(a) Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions located in an unstable area must demonstrate that engineering measures have been incorporated into the MSWLF unit's design to ensure that the integrity of the structural components of the MSWLF unit will not be disrupted. The owner or operator must place the demonstration in the operating record and notify the State Director that it has been placed in the operating record. The owner or operator must consider the following factors, at a minimum, when determining whether an area is unstable:

(1) On-site or local soil conditions that may result in significant differential settling;

(2) On-site or local geologic or geomorphologic features; and

(3) On-site or local human-made features or events (both surface and subsurface).

(b) For purposes of this section:

(1) *Unstable area* means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and Karst terranes.

(2) *Structural components* means liners, leachate collection systems, final covers, run-on/run-off systems, and any other component used in the construction and operation of the MSWLF that is necessary for protection of human health and the environment.

(3) *Poor foundation conditions* means those areas where features exist which indicate that a natural or man-induced event may result in inadequate foundation support for the structural components of an MSWLF unit.

(4) *Areas susceptible to mass movement* means those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the MSWLF unit, because of natural or man-induced events, results in the downslope transport of soil and rock

material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluctuation, block sliding, and rock fall.

(5) *Karst terranes* means areas where karst topography, with its characteristic surface and subterranean features, is developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terranes include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

**§ 258.16 Closure of existing municipal solid waste landfill units.**

(a) Existing MSWLF units that cannot make the demonstration specified in § 258.10(a), pertaining to airports, § 258.11(a), pertaining to floodplains, or § 258.15(a), pertaining to unstable areas, must close by October 9, 1996, in accordance with § 258.60 of this part and conduct post-closure activities in accordance with § 258.61 of this part.

(b) The deadline for closure required by paragraph (a) of this section may be extended up to two years if the owner or operator demonstrates to the Director of an approved State that:

- (1) There is no available alternative disposal capacity;
- (2) There is no immediate threat to human health and the environment.

NOTE TO SUBPART B: Owners or operators of MSWLFs should be aware that a State in which their landfill is located or is to be located, may have adopted a state wellhead protection program in accordance with section 1428 of the Safe Drinking Water Act. Such state wellhead protection programs may impose additional requirements on owners or operators of MSWLFs than those set forth in this part.

§§ 258.17-258.19 [Reserved]

**Subpart C—Operating Criteria**

**§ 258.20 Procedures for excluding the receipt of hazardous waste.**

(a) Owners or operators of all MSWLF units must implement a program at the facility for detecting and preventing the disposal of regulated hazardous wastes as defined in part 261

of this chapter and polychlorinated biphenyls (PCB) wastes as defined in part 761 of this chapter. This program must include, at a minimum:

(1) Random inspections of incoming loads unless the owner or operator takes other steps to ensure that incoming loads do not contain regulated hazardous wastes or PCB wastes;

(2) Records of any inspections;

(3) Training of facility personnel to recognize regulated hazardous waste and PCB wastes; and

(4) Notification of State Director of authorized States under Subtitle C of RCRA or the EPA Regional Administrator if in an unauthorized State if a regulated hazardous waste or PCB waste is discovered at the facility.

(b) For purposes of this section, *regulated hazardous waste* means a solid waste that is a hazardous waste, as defined in 40 CFR 261.3, that is not excluded from regulation as a hazardous waste under 40 CFR 261.4(b) or was not generated by a conditionally exempt small quantity generator as defined in § 261.5 of this chapter.

**§ 258.21 Cover material requirements.**

(a) Except as provided in paragraph (b) of this section, the owners or operators of all MSWLF units must cover disposed solid waste with six inches of earthen material at the end of each operating day, or at more frequent intervals if necessary, to control disease vectors, fires, odors, blowing litter, and scavenging.

(b) Alternative materials of an alternative thickness (other than at least six inches of earthen material) may be approved by the Director of an approved State if the owner or operator demonstrates that the alternative material and thickness control disease vectors, fires, odors, blowing litter, and scavenging without presenting a threat to human health and the environment.

(c) The Director of an approved State may grant a temporary waiver from the requirement of paragraph (a) and (b) of this section if the owner or operator demonstrates that there are extreme seasonal climatic conditions that make meeting such requirements impractical.

(d) The Director of an Approved State may establish alternative frequencies for cover requirements in paragraphs (a) and (b) of this section, after public review and comment, for any owners or operators of MSWLFs that dispose of 20 tons of municipal solid waste per day or less, based on an annual average. Any alternative requirements established under this paragraph must:

- (1) Consider the unique characteristics of small communities;
- (2) Take into account climatic and hydrogeologic conditions; and
- (3) Be protective of human health and the environment.

[56 FR 51016, Oct. 9, 1991, as amended at 62 FR 40713, July 29, 1997]

#### § 258.22 Disease vector control.

(a) Owners or operators of all MSWLF units must prevent or control on-site populations of disease vectors using techniques appropriate for the protection of human health and the environment.

(b) For purposes of this section, *disease vectors* means any rodents, flies, mosquitoes, or other animals, including insects, capable of transmitting disease to humans.

#### § 258.23 Explosive gases control.

(a) Owners or operators of all MSWLF units must ensure that:

(1) The concentration of methane gas generated by the facility does not exceed 25 percent of the lower explosive limit for methane in facility structures (excluding gas control or recovery system components); and

(2) The concentration of methane gas does not exceed the lower explosive limit for methane at the facility property boundary.

(b) Owners or operators of all MSWLF units must implement a routine methane monitoring program to ensure that the standards of paragraph (a) of this section are met.

(1) The type and frequency of monitoring must be determined based on the following factors:

- (i) Soil conditions;
- (ii) The hydrogeologic conditions surrounding the facility;
- (iii) The hydraulic conditions surrounding the facility; and

(iv) The location of facility structures and property boundaries.

(2) The minimum frequency of monitoring shall be quarterly.

(c) If methane gas levels exceeding the limits specified in paragraph (a) of this section are detected, the owner or operator must:

(1) Immediately take all necessary steps to ensure protection of human health and notify the State Director;

(2) Within seven days of detection, place in the operating record the methane gas levels detected and a description of the steps taken to protect human health; and

(3) Within 60 days of detection, implement a remediation plan for the methane gas releases, place a copy of the plan in the operating record, and notify the State Director that the plan has been implemented. The plan shall describe the nature and extent of the problem and the proposed remedy.

(4) The Director of an approved State may establish alternative schedules for demonstrating compliance with paragraphs (c) (2) and (3) of this section.

(d) For purposes of this section, *lower explosive limit* means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 25° C and atmospheric pressure.

(e) The Director of an approved State may establish alternative frequencies for the monitoring requirement of paragraph (b)(2) of this section, after public review and comment, for any owners or operators of MSWLFs that dispose of 20 tons of municipal solid waste per day or less, based on an annual average. Any alternative monitoring frequencies established under this paragraph must:

(1) Consider the unique characteristics of small communities;

(2) Take into account climatic and hydrogeologic conditions; and

(3) Be protective of human health and the environment.

[56 FR 51016, Oct. 9, 1991, as amended at 62 FR 40713, July 29, 1997]

#### § 258.24 Air criteria.

(a) Owners or operators of all MSWLFs must ensure that the units

**§ 258.25**

not violate any applicable requirements developed under a State Implementation Plan (SIP) approved or promulgated by the Administrator pursuant to section 110 of the Clean Air Act, as amended.

(b) Open burning of solid waste, except for the infrequent burning of agricultural wastes, silvicultural wastes, landclearing debris, diseased trees, or debris from emergency cleanup operations, is prohibited at all MSWLF units.

**§ 258.25 Access requirements.**

Owners or operators of all MSWLF units must control public access and prevent unauthorized vehicular traffic and illegal dumping of wastes by using artificial barriers, natural barriers, or both, as appropriate to protect human health and the environment.

**§ 258.26 Run-on/run-off control systems.**

(a) Owners or operators of all MSWLF units must design, construct, and maintain:

(1) A run-on control system to prevent flow onto the active portion of the landfill during the peak discharge from a 25-year storm;

(2) A run-off control system from the active portion of the landfill to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(b) Run-off from the active portion of the landfill unit must be handled in accordance with § 258.27(a) of this part.

[56 FR 51016, Oct. 9, 1991; 57 FR 28627, June 26, 1992]

**§ 258.27 Surface water requirements.**

MSWLF units shall not:

(a) Cause a discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of the Clean Water Act, including, but not limited to, the National Pollutant Discharge Elimination System (NPDES) requirements, pursuant to section 402.

(b) Cause the discharge of a nonpoint source of pollution to waters of the United States, including wetlands, that violates any requirement of an area-wide or State-wide water quality man-

**40 CFR Ch. I (7-1-99 Edition)**

agement plan that has been approved under section 208 or 319 of the Clean Water Act, as amended.

**§ 258.28 Liquids restrictions.**

(a) Bulk or noncontainerized liquid waste may not be placed in MSWLF units unless:

(1) The waste is household waste other than septic waste; or

(2) The waste is leachate or gas condensate derived from the MSWLF unit and the MSWLF unit, whether it is a new or existing MSWLF, or lateral expansion, is designed with a composite liner and leachate collection system as described in § 258.40(a)(2) of this part. The owner or operator must place the demonstration in the operating record and notify the State Director that it has been placed in the operating record.

(b) Containers holding liquid waste may not be placed in a MSWLF unit unless:

(1) The container is a small container similar in size to that normally found in household waste;

(2) The container is designed to hold liquids for use other than storage; or

(3) The waste is household waste.

(c) For purposes of this section:

(1) *Liquid waste* means any waste material that is determined to contain "free liquids" as defined by Method 9095 (Paint Filter Liquids Test), as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Pub. No. SW-846).

(2) *Gas condensate* means the liquid generated as a result of gas recovery process(es) at the MSWLF unit.

**§ 258.29 Recordkeeping requirements.**

(a) The owner or operator of a MSWLF unit must record and retain near the facility in an operating record or in an alternative location approved by the Director of an approved State the following information as it becomes available:

(1) Any location restriction demonstration required under subpart B of this part;

(2) Inspection records, training procedures, and notification procedures required in § 258.20 of this part;

(3) Gas monitoring results from monitoring and any remediation plans required by § 258.23 of this part;

(4) Any MSWLF unit design documentation for placement of leachate or gas condensate in a MSWLF unit as required under § 258.28(a)(2) of this part;

(5) Any demonstration, certification, finding, monitoring, testing, or analytical data required by subpart E of this part;

(6) Closure and post-closure care plans and any monitoring, testing, or analytical data as required by §§ 258.60 and 258.61 of this part; and

(7) Any cost estimates and financial assurance documentation required by subpart G of this part.

(8) Any information demonstrating compliance with small community exemption as required by § 258.1(f)(2).

(b) The owner/operator must notify the State Director when the documents from paragraph (a) of this section have been placed or added to the operating record, and all information contained in the operating record must be furnished upon request to the State Director or be made available at all reasonable times for inspection by the State Director.

(c) The Director of an approved State can set alternative schedules for recordkeeping and notification requirements as specified in paragraphs (a) and (b) of this section, except for the notification requirements in § 258.10(b) and § 258.55(g)(1)(iii).

§§ 258.30-258.39 [Reserved]

#### Subpart D—Design Criteria

##### § 258.40 Design criteria.

(a) New MSWLF units and lateral expansions shall be constructed:

(1) In accordance with a design approved by the Director of an approved State or as specified in § 258.40(e) for unapproved States. The design must ensure that the concentration values listed in Table 1 of this section will not be exceeded in the uppermost aquifer at the relevant point of compliance, as specified by the Director of an approved State under paragraph (d) of this section, or

(2) With a composite liner, as defined in paragraph (b) of this section and a

leachate collection system that is designed and constructed to maintain less than a 30-cm depth of leachate over the liner.

(b) For purposes of this section, *composite liner* means a system consisting of two components; the upper component must consist of a minimum 30-mil flexible membrane liner (FML), and the lower component must consist of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than  $1 \times 10^{-7}$  cm/sec. FML components consisting of high density polyethylene (HDPE) shall be at least 60-mil thick. The FML component must be installed in direct and uniform contact with the compacted soil component.

(c) When approving a design that complies with paragraph (a)(1) of this section, the Director of an approved State shall consider at least the following factors:

(1) The hydrogeologic characteristics of the facility and surrounding land;

(2) The climatic factors of the area; and

(3) The volume and physical and chemical characteristics of the leachate.

(d) The relevant point of compliance specified by the Director of an approved State shall be no more than 150 meters from the waste management unit boundary and shall be located on land owned by the owner of the MSWLF unit. In determining the relevant point of compliance State Director shall consider at least the following factors:

(1) The hydrogeologic characteristics of the facility and surrounding land;

(2) The volume and physical and chemical characteristics of the leachate;

(3) The quantity, quality, and direction, of flow of ground water;

(4) The proximity and withdrawal rate of the ground-water users;

(5) The availability of alternative drinking water supplies;

(6) The existing quality of the ground water, including other sources of contamination and their cumulative impacts on the ground water, and whether the ground water is currently used or reasonably expected to be used for drinking water;



(7) Public health, safety, and welfare effects; and

(8) Practicable capability of the owner or operator.

(e) If EPA does not promulgate a rule establishing the procedures and requirements for State compliance with RCRA section 4005(c)(1)(B) by October 9, 1993, owners and operators in unapproved States may utilize a design meeting the performance standard in § 258.40(a)(1) if the following conditions are met:

(1) The State determines the design meets the performance standard in § 258.40(a)(1);

(2) The State petitions EPA to review its determination; and

(3) EPA approves the State determination or does not disapprove the determination within 30 days.

NOTE TO SUBPART D: 40 CFR part 239 is reserved to establish the procedures and requirements for State compliance with RCRA section 4005(c)(1)(B).

TABLE 1

Chemical	MCL (mg/l)
Arsenic	0.05
Barium	1.0
Benzene	0.005
Cadmium	0.01
Carbon tetrachloride	0.005
Chromium (hexavalent)	0.05
2,4-Dichlorophenoxy acetic acid	0.1
1,4-Dichlorobenzene	0.075
1,2-Dichloroethane	0.005
1,1-Dichloroethylene	0.007
Endrin	0.0002
Fluoride	4
Lindane	0.004
Lead	0.05
Mercury	0.002
Methoxychlor	0.1
Nitrate	10
Selenium	0.01
Silver	0.05
Toxaphene	0.005
1,1,1-Trichloromethane	0.2
Trichloroethylene	0.005
2,4,5-Trichlorophenoxy acetic acid	0.01
Vinyl Chloride	0.002

§§ 258.41-258.49 [Reserved]

**Subpart E—Ground-Water Monitoring and Corrective Action**

**§ 258.50 Applicability.**

(a) The requirements in this part apply to MSWLF units, except as provided in paragraph (b) of this section.

(b) Ground-water monitoring requirements under § 258.51 through § 258.55 of this part may be suspended by the Director of an approved State for a MSWLF unit if the owner or operator can demonstrate that there is no potential for migration of hazardous constituents from that MSWLF unit to the uppermost aquifer (as defined in § 258.2) during the active life of the unit and the post-closure care period. This demonstration must be certified by a qualified ground-water scientist and approved by the Director of an approved State, and must be based upon:

(1) Site-specific field collected measurements, sampling, and analysis of physical, chemical, and biological processes affecting contaminant fate and transport, and

(2) Contaminant fate and transport predictions that maximize contaminant migration and consider impacts on human health and environment.

(c) Owners and operators of MSWLF units, except those meeting the conditions of § 258.1(f), must comply with the ground-water monitoring requirements of this part according to the following schedule unless an alternative schedule is specified under paragraph (d) of this section:

(1) Existing MSWLF units and lateral expansions less than one mile from a drinking water intake (surface or subsurface) must be in compliance with the ground-water monitoring requirements specified in §§ 258.51-258.55 by October 9, 1994;

(2) Existing MSWLF units and lateral expansions greater than one mile but less than two miles from a drinking water intake (surface or subsurface) must be in compliance with the ground-water monitoring requirements specified in §§ 258.51-258.55 by October 9, 1995;

(3) Existing MSWLF units and lateral expansions greater than two miles from a drinking water intake (surface or subsurface) must be in compliance with the ground-water monitoring requirements specified in §§ 258.51-258.55 by October 9, 1996.

(4) New MSWLF units must be in compliance with the ground-water monitoring requirements specified in §§ 258.51-258.55 before waste can be placed in the unit.

(d) The Director of an approved State may specify an alternative schedule for the owners or operators of existing MSWLF units and lateral expansions to comply with the ground-water monitoring requirements specified in §§ 258.51-258.55. This schedule must ensure that 50 percent of all existing MSWLF units are in compliance by October 9, 1994 and all existing MSWLF units are in compliance by October 9, 1996. In setting the compliance schedule, the Director of an approved State must consider potential risks posed by the unit to human health and the environment. The following factors should be considered in determining potential risk:

- (1) Proximity of human and environmental receptors;
  - (2) Design of the MSWLF unit;
  - (3) Age of the MSWLF unit;
  - (4) The size of the MSWLF unit; and
  - (5) Types and quantities of wastes disposed including sewage sludge; and
  - (6) Resource value of the underlying aquifer, including:
    - (i) Current and future uses;
    - (ii) Proximity and withdrawal rate of users; and
    - (iii) Ground-water quality and quantity.
- (e) Owners and operators of all MSWLF units that meet the conditions of § 258.1(f)(1) must comply with all applicable ground-water monitoring requirements of this part by October 9, 1997.

(f) Once established at a MSWLF unit, ground-water monitoring shall be conducted throughout the active life and post-closure care period of that MSWLF unit as specified in § 258.61.

(g) For the purposes of this subpart, a *qualified ground-water scientist* is a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by State registration, professional Certifications, or completion of accredited university programs that enable that individual to make sound professional judgements regarding ground-water monitoring, contaminant fate and transport, and corrective-action.

(h) The Director of an approved State may establish alternative schedules for demonstrating compliance with § 258.51(d)(2), pertaining to notification of placement of certification in operating record; § 258.54(c)(1), pertaining to notification that statistically significant increase (SSI) notice is in operating record; § 258.54(c)(2) and (3), pertaining to an assessment monitoring program; § 258.55(b), pertaining to sampling and analyzing appendix II constituents; § 258.55(d)(1), pertaining to placement of notice (appendix II constituents detected) in record and notification of notice in record; § 258.55(d)(2), pertaining to sampling for appendix I and II to this part; § 258.55(g), pertaining to notification (and placement of notice in record) of SSI above ground-water protection standard; §§ 258.55(g)(1)(iv) and 258.56(a), pertaining to assessment of corrective measures; § 258.57(a), pertaining to selection of remedy and notification of placement in record; § 258.58(c)(4), pertaining to notification of placement in record (alternative corrective action measures); and § 258.58(f), pertaining to notification of placement in record (certification of remedy completed).

[56 FR 51016, Oct. 9, 1991; 57 FR 28628, June 26, 1992, as amended at 58 FR 51547, Oct. 1, 1993; 60 FR 52342, Oct. 6, 1995]

#### § 258.51 Ground-water monitoring systems.

(a) A ground-water monitoring system must be installed that consists of a sufficient number of wells, installed at appropriate locations and depths, to yield ground-water samples from the uppermost aquifer (as defined in § 258.2) that:

(1) Represent the quality of background ground water that has not been affected by leakage from a unit. A determination of background quality may include sampling of wells that are not hydraulically upgradient of the waste management area where:

(i) Hydrogeologic conditions do not allow the owner or operator to determine what wells are hydraulically upgradient; or

(ii) Sampling at other wells will provide an indication of background ground-water quality that is as representative or more representative

than that provided by the upgradient wells; and

(2) Represent the quality of ground water passing the relevant point of compliance specified by Director of an approved State under §258.40(d) or at the waste management unit boundary in unapproved States. The down-gradient monitoring system must be installed at the relevant point of compliance specified by the Director of an approved State under §258.40(d) or at the waste management unit boundary in unapproved States that ensures detection of ground-water contamination in the uppermost aquifer. When physical obstacles preclude installation of ground-water monitoring wells at the relevant point of compliance at existing units, the down-gradient monitoring system may be installed at the closest practicable distance hydraulically down-gradient from the relevant point of compliance specified by the Director of an approved State under §258.40 that ensure detection of groundwater contamination in the uppermost aquifer.

(b) The Director of an approved State may approve a multiunit ground-water monitoring system instead of separate ground-water monitoring systems for each MSWLF unit when the facility has several units, provided the multi-unit ground-water monitoring system meets the requirement of §258.51(a) and will be as protective of human health and the environment as individual monitoring systems for each MSWLF unit, based on the following factors:

- (1) Number, spacing, and orientation of the MSWLF units;
- (2) Hydrogeologic setting;
- (3) Site history;
- (4) Engineering design of the MSWLF units, and
- (5) Type of waste accepted at the MSWLF units.

(c) Monitoring wells must be cased in a manner that maintains the integrity of the monitoring well bore hole. This casing must be screened or perforated and packed with gravel or sand, where necessary, to enable collection of ground-water samples. The annular space (i.e., the space between the bore hole and well casing) above the sampling depth must be sealed to prevent

contamination of samples and the ground water.

(1) The owner or operator must notify the State Director that the design, installation, development, and decommission of any monitoring wells, piezometers and other measurement, sampling, and analytical devices documentation has been placed in the operating record; and

(2) The monitoring wells, piezometers, and other measurement, sampling, and analytical devices must be operated and maintained so that they perform to design specifications throughout the life of the monitoring program.

(d) The number, spacing, and depths of monitoring systems shall be:

(1) Determined based upon site-specific technical information that must include thorough characterization of:

(i) Aquifer thickness, ground-water flow rate, ground-water flow direction including seasonal and temporal fluctuations in ground-water flow; and

(ii) Saturated and unsaturated geologic units and fill materials overlying the uppermost aquifer, materials comprising the uppermost aquifer, and materials comprising the confining unit defining the lower boundary of the uppermost aquifer; including, but not limited to: Thicknesses, stratigraphy, lithology, hydraulic conductivities, porosities and effective porosities.

(2) Certified by a qualified ground-water scientist or approved by the Director of an approved State. Within 14 days of this certification, the owner or operator must notify the State Director that the certification has been placed in the operating record.

§ 258.52 [Reserved]

§ 258.53 Ground-water sampling and analysis requirements.

(a) The ground-water monitoring program must include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of ground-water quality at the background and downgradient wells installed in compliance with §258.51(a) of this part. The owner or operator must

notify the State Director that the sampling and analysis program documentation has been placed in the operating record and the program must include procedures and techniques for:

- (1) Sample collection;
- (2) Sample preservation and shipment;
- (3) Analytical procedures;
- (4) Chain of custody control; and
- (5) Quality assurance and quality control.

(b) The ground-water monitoring program must include sampling and analytical methods that are appropriate for ground-water sampling and that accurately measure hazardous constituents and other monitoring parameters in ground-water samples. Ground-water samples shall not be field-filtered prior to laboratory analysis.

(c) The sampling procedures and frequency must be protective of human health and the environment.

(d) Ground-water elevations must be measured in each well immediately prior to purging, each time ground water is sampled. The owner or operator must determine the rate and direction of ground-water flow each time ground water is sampled. Ground-water elevations in wells which monitor the same waste management area must be measured within a period of time short enough to avoid temporal variations in ground-water flow which could preclude accurate determination of ground-water flow rate and direction.

(e) The owner or operator must establish background ground-water quality in a hydraulically upgradient or background well(s) for each of the monitoring parameters or constituents required in the particular ground-water monitoring program that applies to the MSWLF unit, as determined under § 258.54(a) or § 258.55(a) of this part. Background ground-water quality may be established at wells that are not located hydraulically upgradient from the MSWLF unit if it meets the requirements of § 258.51(a)(1).

(f) The number of samples collected to establish ground-water quality data must be consistent with the appropriate statistical procedures determined pursuant to paragraph (g) of this section. The sampling procedures shall be those specified under § 258.54(b) for

detection monitoring, § 258.55 (b) and (d) for assessment monitoring, and § 258.56(b) of corrective action.

(g) The owner or operator must specify in the operating record one of the following statistical methods to be used in evaluating ground-water monitoring data for each hazardous constituent. The statistical test chosen shall be conducted separately for each hazardous constituent in each well.

(1) A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent.

(2) An analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.

(3) A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.

(4) A control chart approach that gives control limits for each constituent.

(5) Another statistical test method that meets the performance standards of § 258.53(h). The owner or operator must place a justification for this alternative in the operating record and notify the State Director of the use of this alternative test. The justification must demonstrate that the alternative method meets the performance standards of § 258.53(h).

(h) Any statistical method chosen under § 258.53(g) shall comply with the following performance standards, as appropriate:

(1) The statistical method used to evaluate ground-water monitoring data shall be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution

of the chemical parameters or hazardous constituents is shown by the owner or operator to be inappropriate for a normal theory test, then the data should be transformed or a distribution-free theory test should be used. If the distributions for the constituents differ, more than one statistical method may be needed.

(2) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a ground-water protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I experiment wise error rate for each testing period shall be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons must be maintained. This performance standard does not apply to tolerance intervals, prediction intervals, or control charts.

(3) If a control chart approach is used to evaluate ground-water monitoring data, the specific type of control chart and its associated parameter values shall be protective of human health and the environment. The parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(4) If a tolerance interval or a predictional interval is used to evaluate ground-water monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain, shall be protective of human health and the environment. These parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(5) The statistical method shall account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any practical quantitation limit (pql) that is used in the statistical method shall be

the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

(6) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(i) The owner or operator must determine whether or not there is a statistically significant increase over background values for each parameter or constituent required in the particular ground-water monitoring program that applies to the MSWLF unit, as determined under §§ 258.54(a) or 258.55(a) of this part.

(1) In determining whether a statistically significant increase has occurred, the owner or operator must compare the ground-water quality of each parameter or constituent at each monitoring well designated pursuant to § 258.51(a)(2) to the background value of that constituent, according to the statistical procedures and performance standards specified under paragraphs (g) and (h) of this section.

(2) Within a reasonable period of time after completing sampling and analysis, the owner or operator must determine whether there has been a statistically significant increase over background at each monitoring well.

**§ 258.54 Detection monitoring program.**

(a) Detection monitoring is required at MSWLF units at all ground-water monitoring wells defined under §§ 258.51(a)(1) and (a)(2) of this part. At a minimum, a detection monitoring program must include the monitoring for the constituents listed in appendix I to this part.

(1) The Director of an approved State may delete any of the appendix I monitoring parameters for a MSWLF unit if it can be shown that the removed constituents are not reasonably expected to be in or derived from the waste contained in the unit.

(2) The Director of an approved State may establish an alternative list of inorganic indicator parameters for a MSWLF unit, in lieu of some or all of the heavy metals (constituents 1-15 in

appendix I to this part), if the alternative parameters provide a reliable indication of inorganic releases from the MSWLF unit to the ground water. In determining alternative parameters, the Director shall consider the following factors:

(i) The types, quantities, and concentrations of constituents in wastes managed at the MSWLF unit;

(ii) The mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the MSWLF unit;

(iii) The detectability of indicator parameters, waste constituents, and reaction products in the ground water; and

(iv) The concentration or values and coefficients of variation of monitoring parameters or constituents in the groundwater background.

(b) The monitoring frequency for all constituents listed in appendix I to this part, or in the alternative list approved in accordance with paragraph (a)(2) of this section, shall be at least semiannual during the active life of the facility (including closure) and the post-closure period. A minimum of four independent samples from each well (background and downgradient) must be collected and analyzed for the appendix I constituents, or the alternative list approved in accordance with paragraph (a)(2) of this section, during the first semiannual sampling event. At least one sample from each well (background and downgradient) must be collected and analyzed during subsequent semiannual sampling events. The Director of an approved State may specify an appropriate alternative frequency for repeated sampling and analysis for appendix I constituents, or the alternative list approved in accordance with paragraph (a)(2) of this section, during the active life (including closure) and the post-closure care period. The alternative frequency during the active life (including closure) shall be no less than annual. The alternative frequency shall be based on consideration of the following factors:

(1) Lithology of the aquifer and unsaturated zone;

(2) Hydraulic conductivity of the aquifer and unsaturated zone;

(3) Ground-water flow rates;

(4) Minimum distance between upgradient edge of the MSWLF unit and downgradient monitoring well screen (minimum distance of travel); and

(5) Resource value of the aquifer.

(c) If the owner or operator determines, pursuant to § 258.53(g) of this part, that there is a statistically significant increase over background for one or more of the constituents listed in appendix I to this part or in the alternative list approved in accordance with paragraph (a)(2) of this section, at any monitoring well at the boundary specified under § 258.51(a)(2), the owner or operator:

(1) Must, within 14 days of this finding, place a notice in the operating record indicating which constituents have shown statistically significant changes from background levels, and notify the State director that this notice was placed in the operating record; and

(2) Must establish an assessment monitoring program meeting the requirements of § 258.55 of this part within 90 days except as provided for in paragraph (c)(3) of this section.

(3) The owner/operator may demonstrate that a source other than a MSWLF unit caused the contamination or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground-water quality. A report documenting this demonstration must be certified by a qualified ground-water scientist or approved by the Director of an approved State and be placed in the operating record. If a successful demonstration is made and documented, the owner or operator may continue detection monitoring as specified in this section. If, after 90 days, a successful demonstration is not made, the owner or operator must initiate an assessment monitoring program as required in § 258.55.

**§ 258.55 Assessment monitoring program.**

(a) Assessment monitoring is required whenever a statistically significant increase over background has been detected for one or more of the constituents listed in the appendix I to

this part or in the alternative list approved in accordance with §258.54(a)(2).

(b) Within 90 days of triggering an assessment monitoring program, and annually thereafter, the owner or operator must sample and analyze the ground water for all constituents identified in appendix II to this part. A minimum of one sample from each downgradient well must be collected and analyzed during each sampling event. For any constituent detected in the downgradient wells as a result of the complete appendix II analysis, a minimum of four independent samples from each well (background and downgradient) must be collected and analyzed to establish background for the constituents. The Director of an approved State may specify an appropriate subset of wells to be sampled and analyzed for appendix II constituents during assessment monitoring. The Director of an approved State may delete any of the appendix II monitoring parameters for a MSWLF unit if it can be shown that the removed constituents are not reasonably expected to be in or derived from the waste contained in the unit.

(c) The Director of an approved State may specify an appropriate alternate frequency for repeated sampling and analysis for the full set of appendix II constituents required by §258.55(b) of this part, during the active life (including closure) and post-closure care of the unit considering the following factors:

- (1) Lithology of the aquifer and unsaturated zone;
- (2) Hydraulic conductivity of the aquifer and unsaturated zone;
- (3) Ground-water flow rates;
- (4) Minimum distance between upgradient edge of the MSWLF unit and downgradient monitoring well screen (minimum distance of travel);
- (5) Resource value of the aquifer; and
- (6) Nature (fate and transport) of any constituents detected in response to this section.

(d) After obtaining the results from the initial or subsequent sampling events required in paragraph (b) of this section, the owner or operator must:

- (1) Within 14 days, place a notice in the operating record identifying the appendix II constituents that have

been detected and notify the State Director that this notice has been placed in the operating record;

(2) Within 90 days, and on at least a semiannual basis thereafter, resample all wells specified by §258.51(a), conduct analyses for all constituents in appendix I to this part or in the alternative list approved in accordance with §258.54(a)(2), and for those constituents in appendix II to this part that are detected in response to paragraph (b) of this section, and record their concentrations in the facility operating record. At least one sample from each well (background and downgradient) must be collected and analyzed during these sampling events. The Director of an approved State may specify an alternative monitoring frequency during the active life (including closure) and the post-closure period for the constituents referred to in this paragraph. The alternative frequency for appendix I constituents, or the alternative list approved in accordance with §258.54(a)(2), during the active life (including closure) shall be no less than annual. The alternative frequency shall be based on consideration of the factors specified in paragraph (c) of this section;

(3) Establish background concentrations for any constituents detected pursuant to paragraph (b) or (d)(2) of this section; and

(4) Establish ground-water protection standards for all constituents detected pursuant to paragraph (b) or (d) of this section. The ground-water protection standards shall be established in accordance with paragraphs (h) or (i) of this section.

(e) If the concentrations of all appendix II constituents are shown to be at or below background values, using the statistical procedures in §258.53(g), for two consecutive sampling events, the owner or operator must notify the State Director of this finding and may return to detection monitoring.

(f) If the concentrations of any appendix II constituents are above background values, but all concentrations are below the ground-water protection standard established under paragraphs (h) or (i) of this section, using the statistical procedures in §258.53(g), the owner or operator must

continue assessment monitoring in accordance with this section.

(g) If one or more appendix II constituents are detected at statistically significant levels above the ground-water protection standard established under paragraphs (h) or (i) of this section in any sampling event, the owner or operator must, within 14 days of this finding, place a notice in the operating record identifying the appendix II constituents that have exceeded the ground-water protection standard and notify the State Director and all appropriate local government officials that the notice has been placed in the operating record. The owner or operator also:

(i) (i) Must characterize the nature and extent of the release by installing additional monitoring wells as necessary;

(ii) Must install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well in accordance with § 258.55(d)(2);

(iii) Must notify all persons who own the land or reside on the land that directly overlies any part of the plume of contamination if contaminants have migrated off-site if indicated by sampling of wells in accordance with § 258.55(g)(1); and

(iv) Must initiate an assessment of corrective measures as required by § 255.56 of this part within 90 days; or

(2) May demonstrate that a source other than a MSWLF unit caused the contamination, or that the SSI increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground-water quality. A report documenting this demonstration must be certified by a qualified ground-water scientist or approved by the Director of an approved State and placed in the operating record. If a successful demonstration is made the owner or operator must continue monitoring in accordance with the assessment monitoring program pursuant to § 258.55, and may return to detection monitoring if the appendix II constituents are at or below background as specified in § 258.55(e). Until a successful demonstration is made, the owner or operator must comply with

§ 258.55(g) including initiating an assessment of corrective measures.

(h) The owner or operator must establish a ground-water protection standard for each appendix II constituent detected in the ground-water. The ground-water protection standard shall be:

(1) For constituents for which a maximum contaminant level (MCL) has been promulgated under section 1412 of the Safe Drinking Water Act (codified) under 40 CFR part 141, the MCL for that constituent;

(2) For constituents for which MCLs have not been promulgated, the background concentration for the constituent established from wells in accordance with § 258.51(a)(1); or

(3) For constituents for which the background level is higher than the MCL identified under paragraph (h)(1) of this section or health based levels identified under § 258.55(i)(1), the background concentration.

(i) The Director of an approved State may establish an alternative ground-water protection standard for constituents for which MCLs have not been established. These ground-water protection standards shall be appropriate health based levels that satisfy the following criteria:

(1) The level is derived in a manner consistent with Agency guidelines for assessing the health risks of environmental pollutants (51 FR 33992, 34006, 34014, 34028, Sept. 24, 1986);

(2) The level is based on scientifically valid studies conducted in accordance with the Toxic Substances Control Act Good Laboratory Practice Standards (40 CFR part 792) or equivalent;

(3) For carcinogens, the level represents a concentration associated with an excess lifetime cancer risk level (due to continuous lifetime exposure) with the  $1 \times 10^{-4}$  to  $1 \times 10^{-6}$  range; and

(4) For systemic toxicants, the level represents a concentration to which the human population (including sensitive subgroups) could be exposed to on a daily basis that is likely to be without appreciable risk of deleterious effects during a lifetime. For purposes of this subpart, systemic toxicants include toxic chemicals that cause effects other than cancer or mutation.



(ii) [Reserved]

(j) In establishing ground-water protection standards under paragraph (i) of this section, the Director of an approved State may consider the following:

- (1) Multiple contaminants in the ground water;
- (2) Exposure threats to sensitive environmental receptors; and
- (3) Other site-specific exposure or potential exposure to ground water.

**§ 258.56 Assessment of corrective measures.**

(a) Within 90 days of finding that any of the constituents listed in appendix II to this part have been detected at a statistically significant level exceeding the ground-water protection standards defined under § 258.55 (h) or (i) of this part, the owner or operator must initiate an assessment of corrective measures. Such an assessment must be completed within a reasonable period of time.

(b) The owner or operator must continue to monitor in accordance with the assessment monitoring program as specified in § 258.55.

(c) The assessment shall include an analysis of the effectiveness of potential corrective measures in meeting all of the requirements and objectives of the remedy as described under § 258.57, addressing at least the following:

- (1) The performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts, and control of exposure to any residual contamination;
- (2) The time required to begin and complete the remedy;
- (3) The costs of remedy implementation; and
- (4) The institutional requirements such as State or local permit requirements or other environmental or public health requirements that may substantially affect implementation of the remedy(s).

(d) The owner or operator must discuss the results of the corrective measures assessment, prior to the selection of remedy, in a public meeting with interested and affected parties.

**§ 258.57 Selection of remedy.**

(a) Based on the results of the corrective measures assessment conducted under § 258.56, the owner or operator must select a remedy that, at a minimum, meets the standards listed in paragraph (b) of this section. The owner or operator must notify the State Director, within 14 days of selecting a remedy, a report describing the selected remedy has been placed in the operating record and how it meets the standards in paragraph (b) of this section.

(b) Remedies must:

- (1) Be protective of human health and the environment;
- (2) Attain the ground-water protection standard as specified pursuant to §§ 258.55 (h) or (i);
- (3) Control the source(s) of releases so as to reduce or eliminate, to the maximum extent practicable, further releases of appendix II constituents into the environment that may pose a threat to human health or the environment; and
- (4) Comply with standards for management of wastes as specified in § 258.58(d).

(c) In selecting a remedy that meets the standards of § 258.57(b), the owner or operator shall consider the following evaluation factors:

- (1) The long- and short-term effectiveness and protectiveness of the potential remedy(s), along with the degree of certainty that the remedy will prove successful based on consideration of the following:
  - (i) Magnitude of reduction of existing risks;
  - (ii) Magnitude of residual risks in terms of likelihood of further releases due to waste remaining following implementation of a remedy;
  - (iii) The type and degree of long-term management required, including monitoring, operation, and maintenance;
  - (iv) Short-term risks that might be posed to the community, workers, or the environment during implementation of such a remedy, including potential threats to human health and the environment associated with excavation, transportation, and redisposal of containment;
  - (v) Time until full protection is achieved;

(vi) Potential for exposure of humans and environmental receptors to remaining wastes, considering the potential threat to human health and the environment associated with excavation, transportation, redisposal, or containment;

(vii) Long-term reliability of the engineering and institutional controls; and

(viii) Potential need for replacement of the remedy.

(2) The effectiveness of the remedy in controlling the source to reduce further releases based on consideration of the following factors:

(i) The extent to which containment practices will reduce further releases;

(ii) The extent to which treatment technologies may be used.

(3) The ease or difficulty of implementing a potential remedy(s) based on consideration of the following types of factors:

(i) Degree of difficulty associated with constructing the technology;

(ii) Expected operational reliability of the technologies;

(iii) Need to coordinate with and obtain necessary approvals and permits from other agencies;

(iv) Availability of necessary equipment and specialists; and

(v) Available capacity and location of needed treatment, storage, and disposal services.

(4) Practicable capability of the owner or operator, including a consideration of the technical and economic capability.

(5) The degree to which community concerns are addressed by a potential remedy(s).

(d) The owner or operator shall specify as part of the selected remedy a schedule(s) for initiating and completing remedial activities. Such a schedule must require the initiation of remedial activities within a reasonable period of time taking into consideration the factors set forth in paragraphs (d) (1)-(8) of this section. The owner or operator must consider the following factors in determining the schedule of remedial activities:

(1) Extent and nature of contamination;

(2) Practical capabilities of remedial technologies in achieving compliance

with ground-water protection standards established under § 258.55 (g) or (h) and other objectives of the remedy;

(3) Availability of treatment or disposal capacity for wastes managed during implementation of the remedy;

(4) Desirability of utilizing technologies that are not currently available, but which may offer significant advantages over already available technologies in terms of effectiveness, reliability, safety, or ability to achieve remedial objectives;

(5) Potential risks to human health and the environment from exposure to contamination prior to completion of the remedy;

(6) Resource value of the aquifer including:

(i) Current and future uses;

(ii) Proximity and withdrawal rate of users;

(iii) Ground-water quantity and quality;

(iv) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituent;

(v) The hydrogeologic characteristic of the facility and surrounding land;

(vi) Ground-water removal and treatment costs; and

(vii) The cost and availability of alternative water supplies.

(7) Practicable capability of the owner or operator.

(8) Other relevant factors.

(e) The Director of an approved State may determine that remediation of a release of an appendix II constituent from a MSWLF unit is not necessary if the owner or operator demonstrates to the satisfaction of the Director of the approved State that:

(1) The ground-water is additionally contaminated by substances that have originated from a source other than a MSWLF unit and those substances are present in concentrations such that cleanup of the release from the MSWLF unit would provide no significant reduction in risk to actual or potential receptors; or

(2) The constituent(s) is present in ground water that:

(i) Is not currently or reasonably expected to be a source of drinking water; and

(ii) Is not hydraulically connected with waters to which the hazardous constituents are migrating or are likely to migrate in a concentration(s) that would exceed the ground-water protection standards established under § 258.55 (h) or (i); or

(3) Remediation of the release(s) is technically impracticable; or

(4) Remediation results in unacceptable cross-media impacts.

(f) A determination by the Director of an approved State pursuant to paragraph (e) of this section shall not affect the authority of the State to require the owner or operator to undertake source control measures or other measures that may be necessary to eliminate or minimize further releases to the ground-water, to prevent exposure to the ground-water, or to remediate the ground-water to concentrations that are technically practicable and significantly reduce threats to human health or the environment.

**§ 258.58 Implementation of the corrective action program.**

(a) Based on the schedule established under § 258.57(d) for initiation and completion of remedial activities the owner/operator must:

(1) Establish and implement a corrective action ground-water monitoring program that:

(i) At a minimum, meet the requirements of an assessment monitoring program under § 258.55;

(ii) Indicate the effectiveness of the corrective action remedy; and

(iii) Demonstrate compliance with ground-water protection standard pursuant to paragraph (e) of this section.

(2) Implement the corrective action remedy selected under § 258.57; and

(3) Take any interim measures necessary to ensure the protection of human health and the environment. Interim measures should, to the greatest extent practicable, be consistent with the objectives of and contribute to the performance of any remedy that may be required pursuant to § 258.57. The following factors must be considered by an owner or operator in determining whether interim measures are necessary:

(i) Time required to develop and implement a final remedy;

(ii) Actual or potential exposure of nearby populations or environmental receptors to hazardous constituents;

(iii) Actual or potential contamination of drinking water supplies or sensitive ecosystems;

(iv) Further degradation of the ground-water that may occur if remedial action is not initiated expeditiously;

(v) Weather conditions that may cause hazardous constituents to migrate or be released;

(vi) Risks of fire or explosion, or potential for exposure to hazardous constituents as a result of an accident or failure of a container or handling system; and

(vii) Other situations that may pose threats to human health and the environment.

(b) An owner or operator may determine, based on information developed after implementation of the remedy has begun or other information, that compliance with requirements of § 258.57(b) are not being achieved through the remedy selected. In such cases, the owner or operator must implement other methods or techniques that could practicably achieve compliance with the requirements, unless the owner or operator makes the determination under § 258.58(c).

(c) If the owner or operator determines that compliance with requirements under § 258.57(b) cannot be practically achieved with any currently available methods, the owner or operator must:

(1) Obtain certification of a qualified ground-water scientist or approval by the Director of an approved State that compliance with requirements under § 258.57(b) cannot be practically achieved with any currently available methods;

(2) Implement alternate measures to control exposure of humans or the environment to residual contamination, as necessary to protect human health and the environment; and

(3) Implement alternate measures for control of the sources of contamination, or for removal or decontamination of equipment, units, devices, or structures that are:

(i) Technically practicable; and

(ii) Consistent with the overall objective of the remedy.

(4) Notify the State Director within 14 days that a report justifying the alternative measures prior to implementing the alternative measures has been placed in the operating record.

(d) All solid wastes that are managed pursuant to a remedy required under § 258.57, or an interim measure required under § 258.58(a)(3), shall be managed in a manner:

(1) That is protective of human health and the environment; and

(2) That complies with applicable RCRA requirements.

(e) Remedies selected pursuant to § 258.57 shall be considered complete when:

(1) The owner or operator complies with the ground-water protection standards established under §§ 258.55(h) or (i) at all points within the plume of contamination that lie beyond the ground-water monitoring well system established under § 258.51(a).

(2) Compliance with the ground-water protection standards established under §§ 258.55(h) or (i) has been achieved by demonstrating that concentrations of appendix II constituents have not exceeded the ground-water protection standard(s) for a period of three consecutive years using the statistical procedures and performance standards in § 258.53(g) and (h). The Director of an approved State may specify an alternative length of time during which the owner or operator must demonstrate that concentrations of appendix II constituents have not exceeded the ground-water protection standard(s) taking into consideration:

(i) Extent and concentration of the release(s);

(ii) Behavior characteristics of the hazardous constituents in the ground-water;

(iii) Accuracy of monitoring or modeling techniques, including any seasonal, meteorological, or other environmental variabilities that may affect the accuracy; and

(iv) Characteristics of the ground-water.

(3) All actions required to complete the remedy have been satisfied.

(f) Upon completion of the remedy, the owner or operator must notify the

State Director within 14 days that a certification that the remedy has been completed in compliance with the requirements of § 258.58(e) has been placed in the operating record. The certification must be signed by the owner or operator and by a qualified ground-water scientist or approved by the Director of an approved State.

(g) When, upon completion of the certification, the owner or operator determines that the corrective action remedy has been completed in accordance with the requirements under paragraph (e) of this section, the owner or operator shall be released from the requirements for financial assurance for corrective action under § 258.73.

§ 258.59 [Reserved]

#### Subpart F—Closure and Post-Closure Care

##### § 258.60 Closure criteria.

(a) Owners or operators of all MSWLF units must install a final cover system that is designed to minimize infiltration and erosion. The final cover system must be designed and constructed to:

(1) Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present, or a permeability no greater than  $1 \times 10^{-5}$  cm/sec, whichever is less, and

(2) Minimize infiltration through the closed MSWLF by the use of an infiltration layer that contains a minimum 18-inches of earthen material, and

(3) Minimize erosion of the final cover by the use of an erosion layer that contains a minimum 6-inches of earthen material that is capable of sustaining native plant growth.

(b) The Director of an approved State may approve an alternative final cover design that includes:

(1) An infiltration layer that achieves an equivalent reduction in infiltration as the infiltration layer specified in paragraphs (a)(1) and (a)(2) of this section, and

(2) An erosion layer that provides equivalent protection from wind and water erosion as the erosion layer specified in paragraph (a)(3) of this section.

(3) The Director of an approved State may establish alternative requirements for the infiltration barrier in a paragraph (b)(1) of this section, after public review and comment, for any owners or operators of MSWLFs that dispose of 20 tons of municipal solid waste per day or less, based on an annual average. Any alternative requirements established under this paragraph must:

- (i) Consider the unique characteristics of small communities;
- (ii) Take into account climatic and hydrogeologic conditions; and
- (iii) Be protective of human health and the environment.

(c) The owner or operator must prepare a written closure plan that describes the steps necessary to close all MSWLF units at any point during their active life in accordance with the cover design requirements in § 258.60(a) or (b), as applicable. The closure plan, at a minimum, must include the following information:

- (1) A description of the final cover, designed in accordance with § 258.60(a) and the methods and procedures to be used to install the cover;
- (2) An estimate of the largest area of the MSWLF unit ever requiring a final cover as required under § 258.60(a) at any time during the active life;
- (3) An estimate of the maximum inventory of wastes ever on-site over the active life of the landfill facility; and
- (4) A schedule for completing all activities necessary to satisfy the closure criteria in § 258.60.

(d) The owner or operator must notify the State Director that a closure plan has been prepared and placed in the operating record no later than the effective date of this part, or by the initial receipt of waste, whichever is later.

(e) Prior to beginning closure of each MSWLF unit as specified in § 258.60(f), an owner or operator must notify the State Director that a notice of the intent to close the unit has been placed in the operating record.

(f) The owner or operator must begin closure activities of each MSWLF unit no later than 30 days after the date on which the MSWLF unit receives the known final receipt of wastes or, if the MSWLF unit has remaining capacity

and there is a reasonable likelihood that the MSWLF unit will receive additional wastes, no later than one year after the most recent receipt of wastes. Extensions beyond the one-year deadline for beginning closure may be granted by the Director of an approved State if the owner or operator demonstrates that the MSWLF unit has the capacity to receive additional wastes and the owner or operator has taken and will continue to take all steps necessary to prevent threats to human health and the environmental from the unclosed MSWLF unit.

(g) The owner or operator of all MSWLF units must complete closure activities of each MSWLF unit in accordance with the closure plan within 180 days following the beginning of closure as specified in paragraph (f) of this section. Extensions of the closure period may be granted by the Director of an approved State if the owner or operator demonstrates that closure will, of necessity, take longer than 180 days and he has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed MSWLF unit.

(h) Following closure of each MSWLF unit, the owner or operator must notify the State Director that a certification, signed by an independent registered professional engineer or approved by Director of an approved State, verifying that closure has been completed in accordance with the closure plan, has been placed in the operating record.

(i)(1) Following closure of all MSWLF units, the owner or operator must record a notation on the deed to the landfill facility property, or some other instrument that is normally examined during title search, and notify the State Director that the notation has been recorded and a copy has been placed in the operating record.

(2) The notation on the deed must in perpetuity notify any potential purchaser of the property that:

- (i) The land has been used as a landfill facility; and
- (ii) Its use is restricted under § 258.61(c)(3).

(j) The owner or operator may request permission from the Director of

Environmental Protection Agency, EPA

§ 258.70

an approved State to remove the notation from the deed if all wastes are removed from the facility.

[56 FR 51016, Oct. 9, 1991; 57 FR 28628, June 26, 1992, as amended at 62 FR 40713, July 29, 1997]

§ 258.61 Post-closure care requirements.

(a) Following closure of each MSWLF unit, the owner or operator must conduct post-closure care. Post-closure care must be conducted for 30 years, except as provided under paragraph (b) of this section, and consist of at least the following:

(1) Maintaining the integrity and effectiveness of any final cover, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cover;

(2) Maintaining and operating the leachate collection system in accordance with the requirements in § 258.40, if applicable. The Director of an approved State may allow the owner or operator to stop managing leachate if the owner or operator demonstrates that leachate no longer poses a threat to human health and the environment;

(3) Monitoring the ground water in accordance with the requirements of subpart E of this part and maintaining the ground-water monitoring system, if applicable; and

(4) Maintaining and operating the gas monitoring system in accordance with the requirements of § 258.23.

(b) The length of the post-closure care period may be:

(1) Decreased by the Director of an approved State if the owner or operator demonstrates that the reduced period is sufficient to protect human health and the environment and this demonstration is approved by the Director of an approved State; or

(2) Increased by the Director of an approved State if the Director of an approved State determines that the lengthened period is necessary to protect human health and the environment.

(c) The owner or operator of all MSWLF units must prepare a written post-closure plan that includes, at a minimum, the following information:

(1) A description of the monitoring and maintenance activities required in § 258.61(a) for each MSWLF unit, and the frequency at which these activities will be performed;

(2) Name, address, and telephone number of the person or office to contact about the facility during the post-closure period; and

(3) A description of the planned uses of the property during the post-closure period. Post-closure use of the property shall not disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements in this part 258. The Director of an approved State may approve any other disturbance if the owner or operator demonstrates that disturbance of the final cover, liner or other component of the containment system, including any removal of waste, will not increase the potential threat to human health or the environment.

(d) The owner or operator must notify the State Director that a post-closure plan has been prepared and placed in the operating record no later than the effective date of this part, October 9, 1993, or by the initial receipt of waste, whichever is later.

(e) Following completion of the post-closure care period for each MSWLF unit, the owner or operator must notify the State Director that a certification, signed by an independent registered professional engineer or approved by the Director of an approved State, verifying that post-closure care has been completed in accordance with the post-closure plan, has been placed in the operating record.

[56 FR 51016, Oct. 9, 1991; 57 FR 28628, June 26, 1992]

§§ 258.62-258.69 [Reserved]

Subpart G—Financial Assurance Criteria

SOURCE: 56 FR 51029, Oct. 9, 1991, unless otherwise noted.

§ 258.70 Applicability and effective date.

(a) The requirements of this section apply to owners and operators of all

§ 258.71

40 CFR Ch. I (7-1-99 Edition)

MSWLF units, except owners or operators who are State or Federal government entities whose debts and liabilities are the debts and liabilities of a State or the United States.

(b) The requirements of this section are effective April 9, 1997 except for MSWLF units meeting the conditions of § 258.1(f)(1), in which case the effective date is October 9, 1997.

(c) The Director of an approved State may waive the requirements of this section for up to one year until April 9, 1998 for good cause if an owner or operator demonstrates to the Director's satisfaction that the April 9, 1997 effective date for the requirements of this section does not provide sufficient time to comply with these requirements and that such a waiver will not adversely affect human health and the environment.

[56 FR 51029, Oct. 9, 1991, as amended at 60 FR 52342, Oct. 6, 1995; 61 FR 60337, Nov. 27, 1996]

§ 258.71 Financial assurance for closure.

(a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of hiring a third party to close the largest area of all MSWLF units ever requiring a final cover as required under § 258.60 at any time during the active life in accordance with the closure plan. The owner or operator must notify the State Director that the estimate has been placed in the operating record.

(1) The cost estimate must equal the cost of closing the largest area of all MSWLF unit ever requiring a final cover at any time during the active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (see § 258.60(c)(2) of this part).

(2) During the active life of the MSWLF unit, the owner or operator must annually adjust the closure cost estimate for inflation.

(3) The owner or operator must increase the closure cost estimate and the amount of financial assurance provided under paragraph (b) of this section if changes to the closure plan or MSWLF unit conditions increase the maximum cost of closure at any time during the remaining active life.

(4) The owner or operator may reduce the closure cost estimate and the amount of financial assurance provided under paragraph (b) of this section if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of the MSWLF unit. The owner or operator must notify the State Director that the justification for the reduction of the closure cost estimate and the amount of financial assurance has been placed in the operating record.

(b) The owner or operator of each MSWLF unit must establish financial assurance for closure of the MSWLF unit in compliance with § 258.74. The owner or operator must provide continuous coverage for closure until released from financial assurance requirements by demonstrating compliance with § 258.60 (h) and (i).

[56 FR 51029, Oct. 9, 1991; 57 FR 28628, June 26, 1992]

§ 258.72 Financial assurance for post-closure care.

(a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care for the MSWLF unit in compliance with the post-closure plan developed under § 258.61 of this part. The post-closure cost estimate used to demonstrate financial assurance in paragraph (b) of this section must account for the total costs of conducting post-closure care, including annual and periodic costs as described in the post-closure plan over the entire post-closure care period. The owner or operator must notify the State Director that the estimate has been placed in the operating record.

(1) The cost estimate for post-closure care must be based on the most expensive costs of post-closure care during the post-closure care period.

(2) During the active life of the MSWLF unit and during the post-closure care period, the owner or operator must annually adjust the post-closure cost estimate for inflation.

(3) The owner or operator must increase the post-closure care cost estimate and the amount of financial assurance provided under paragraph (b) of this section if changes in the post-closure plan or MSWLF unit conditions

increase the maximum costs of post-closure care.

(4) The owner or operator may reduce the post-closure cost estimate and the amount of financial assurance provided under paragraph (b) of this section if the cost estimate exceeds the maximum costs of post-closure care remaining over the post-closure care period. The owner or operator must notify the State Director that the justification for the reduction of the post-closure cost estimate and the amount of financial assurance has been placed in the operating record.

(b) The owner or operator of each MSWLF unit must establish, in a manner in accordance with § 258.74, financial assurance for the costs of post-closure care as required under § 258.61 of this part. The owner or operator must provide continuous coverage for post-closure care until released from financial assurance requirements for post-closure care by demonstrating compliance with § 258.61(e).

**§ 258.73 Financial assurance for corrective action.**

(a) An owner or operator of a MSWLF unit required to undertake a corrective action program under § 258.58 of this part must have a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action in accordance with the program required under § 258.58 of this part. The corrective action cost estimate must account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period. The owner or operator must notify the State Director that the estimate has been placed in the operating record.

(1) The owner or operator must annually adjust the estimate for inflation until the corrective action program is completed in accordance with § 258.58(f) of this part.

(2) The owner or operator must increase the corrective action cost estimate and the amount of financial assurance provided under paragraph (b) of this section if changes in the corrective action program or MSWLF unit conditions increase the maximum costs of corrective action.

(3) The owner or operator may reduce the amount of the corrective action cost estimate and the amount of financial assurance provided under paragraph (b) of this section if the cost estimate exceeds the maximum remaining costs of corrective action. The owner or operator must notify the State Director that the justification for the reduction of the corrective action cost estimate and the amount of financial assurance has been placed in the operating record.

(b) The owner or operator of each MSWLF unit required to undertake a corrective action program under § 258.58 of this part must establish, in a manner in accordance with § 258.74, financial assurance for the most recent corrective action program. The owner or operator must provide continuous coverage for corrective action until released from financial assurance requirements for corrective action by demonstrating compliance with § 258.58 (f) and (g).

**§ 258.74 Allowable mechanisms.**

The mechanisms used to demonstrate financial assurance under this section must ensure that the funds necessary to meet the costs of closure, post-closure care, and corrective action for known releases will be available whenever they are needed. Owners and operators must choose from the options specified in paragraphs (a) through (j) of this section.

(a) *Trust Fund.* (1) An owner or operator may satisfy the requirements of this section by establishing a trust fund which conforms to the requirements of this paragraph. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency. A copy of the trust agreement must be placed in the facility's operating record.

(2) Payments into the trust fund must be made annually by the owner or operator over the term of the initial permit or over the remaining life of the MSWLF unit, whichever is shorter, in the case of a trust fund for closure or post-closure care, or over one-half of the estimated length of the corrective



action program in the case of corrective action for known releases. This period is referred to as the pay-in period.

(3) For a trust fund used to demonstrate financial assurance for closure and post-closure care, the first payment into the fund must be at least equal to the current cost estimate for closure or post-closure care, except as provided in paragraph (k) of this section, divided by the number of years in the pay-in period as defined in paragraph (a)(2) of this section. The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = [\text{CE} - \text{CV}]/\text{Y}$$

where CE is the current cost estimate for closure or post-closure care (updated for inflation or other changes), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(4) For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund must be at least equal to one-half of the current cost estimate for corrective action, except as provided in paragraph (k) of this section, divided by the number of years in the corrective action pay-in period as defined in paragraph (a)(2) of this section. The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = [\text{RB} - \text{CV}]/\text{Y}$$

where RB is the most recent estimate of the required trust fund balance for corrective action (i.e., the total costs that will be incurred during the second half of the corrective action period), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(5) The initial payment into the trust fund must be made before the initial receipt of waste or before the effective date of the requirements of this section (April 9, 1997, or October 9, 1997 for MSWLF units meeting the conditions of § 258.1(f)(1)), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58.

(6) If the owner or operator establishes a trust fund after having used

one or more alternate mechanisms specified in this section, the initial payment into the trust fund must be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of this paragraph and paragraph (a) of this section, as applicable.

(7) The owner or operator, or other person authorized to conduct closure, post-closure care, or corrective action activities may request reimbursement from the trustee for these expenditures. Requests for reimbursement will be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure, post-closure care, or corrective action, and if justification and documentation of the cost is placed in the operating record. The owner or operator must notify the State Director that the documentation of the justification for reimbursement has been placed in the operating record and that reimbursement has been received.

(8) The trust fund may be terminated by the owner or operator only if the owner or operator substitutes alternate financial assurance as specified in this section or if he is no longer required to demonstrate financial responsibility in accordance with the requirements of §§ 258.71(b), 258.72(b), or 258.73(b).

(b) *Surety Bond Guaranteeing Payment or Performance.* (1) An owner or operator may demonstrate financial assurance for closure or post-closure care by obtaining a payment or performance surety bond which conforms to the requirements of this paragraph. An owner or operator may demonstrate financial assurance for corrective action by obtaining a performance bond which conforms to the requirements of this paragraph. The bond must be effective before the initial receipt of waste or before the effective date of the requirements of this section (April 9, 1997, or October 9, 1997 for MSWLF units meeting the conditions of § 258.1(f)(1)), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58. The owner or operator must notify the State Director that a copy of

the bond has been placed in the operating record. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2) The penal sum of the bond must be in an amount at least equal to the current closure, post-closure care or corrective action cost estimate, whichever is applicable, except as provided in § 258.74(k).

(3) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(4) The owner or operator must establish a standby trust fund. The standby trust fund must meet the requirements of § 258.74(a) except the requirements for initial payment and subsequent annual payments specified in § 258.74(a)(2), (3), (4) and (5).

(5) Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund. Payments from the trust fund must be approved by the trustee.

(6) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner and operator and to the State Director 120 days in advance of cancellation. If the surety cancels the bond, the owner or operator must obtain alternate financial assurance as specified in this section.

(7) The owner or operator may cancel the bond only if alternate financial assurance is substituted as specified in this section or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with § 258.71(b), § 258.72(b) or § 258.73(b).

(c) *Letter of credit.* (1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph. The letter of credit must be effective before the initial receipt of waste or before the effective date of the requirements of this section (April 9, 1997, or October 9, 1997 for MSWLF units meeting the conditions of § 258.1(f)(1)), whichever is later, in the case of closure and post-closure care,

or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58. The owner or operator must notify the State Director that a copy of the letter of credit has been placed in the operating record. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or State agency.

(2) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: Name, and address of the facility, and the amount of funds assured, must be included with the letter of credit in the operating record.

(3) The letter of credit must be irrevocable and issued for a period of at least one year in an amount at least equal to the current cost estimate for closure, post-closure care or corrective action, whichever is applicable, except as provided in paragraph (k) of this section. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has cancelled the letter of credit by sending notice of cancellation by certified mail to the owner and operator and to the State Director 120 days in advance of cancellation. If the letter of credit is cancelled by the issuing institution, the owner or operator must obtain alternate financial assurance.

(4) The owner or operator may cancel the letter of credit only if alternate financial assurance is substituted as specified in this section or if the owner or operator is released from the requirements of this section in accordance with § 258.71(b), § 258.72(b) or § 258.73(b).

(d) *Insurance.* (1) An owner or operator may demonstrate financial assurance for closure and post-closure care by obtaining insurance which conforms to the requirements of this paragraph. The insurance must be effective before the initial receipt of waste or before the effective date of the requirements of this section (April 9, 1997, or October 9, 1997 for MSWLF units meeting the conditions of § 258.1(f)(1)), whichever is later, in the case of closure and post-

closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States. The owner or operator must notify the State Director that a copy of the insurance policy has been placed in the operating record.

(2) The closure or post-closure care insurance policy must guarantee that funds will be available to close the MSWLF unit whenever final closure occurs or to provide post-closure care for the MSWLF unit whenever the post-closure care period begins, whichever is applicable. The policy must also guarantee that once closure or post-closure care begins, the insurer will be responsible for the paying out of funds to the owner or operator or other person authorized to conduct closure or post-closure care, up to an amount equal to the face amount of the policy.

(3) The insurance policy must be issued for a face amount at least equal to the current cost estimate for closure or post-closure care, whichever is applicable, except as provided in paragraph (k) of this section. The term *face amount* means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(4) An owner or operator, or any other person authorized to conduct closure or post-closure care, may receive reimbursements for closure or post-closure expenditures, whichever is applicable. Requests for reimbursement will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure or post-closure care, and if justification and documentation of the cost is placed in the operating record. The owner or operator must notify the State Director that the documentation of the justification for reimbursement has been placed in the operating record and that reimbursement has been received.

(5) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused.

(6) The insurance policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner and operator and to the State Director 120 days in advance of cancellation. If the insurer cancels the policy, the owner or operator must obtain alternate financial assurance as specified in this section.

(7) For insurance policies providing coverage for post-closure care, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week Treasury securities.

(8) The owner or operator may cancel the insurance policy only if alternate financial assurance is substituted as specified in this section or if the owner or operator, is no longer required to demonstrate financial responsibility in accordance with the requirements of § 258.71(b), § 258.72(b) or § 258.73(b).

(e) *Corporate financial test.* An owner or operator that satisfies the requirements of this paragraph (e) may demonstrate financial assurance up to the amount specified in this paragraph (e):

(1) *Financial component.* (i) The owner or operator must satisfy one of the following three conditions:

(A) A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; or

(B) A ratio of less than 1.5 comparing total liabilities to net worth; or

(C) A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities.

(ii) The tangible net worth of the owner or operator must be greater than: (A) The sum of the current closure, post-closure care, corrective action cost estimates and any other environmental obligations, including guarantees, covered by a financial test plus \$10 million except as provided in paragraph (e)(1)(ii)(B) of this section.

(B) \$10 million in net worth plus the amount of any guarantees that have not been recognized as liabilities on the financial statements provided all of the current closure, post-closure care, and corrective action costs and any other environmental obligations covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements, and subject to the approval of the State Director.

(iii) The owner or operator must have assets located in the United States amounting to at least the sum of current closure, post-closure care, corrective action cost estimates and any other environmental obligations covered by a financial test as described in paragraph (e)(3) of this section.

(2) *Recordkeeping and reporting requirements.* (i) The owner or operator must place the following items into the facility's operating record:

(A) A letter signed by the owner's or operator's chief financial officer that:

(f) Lists all the current cost estimates covered by a financial test, including, but not limited to, cost estimates required for municipal solid waste management facilities under this part 258, cost estimates required for UIC facilities under 40 CFR part 144, if applicable, cost estimates required for petroleum underground storage tank facilities under 40 CFR part 280, if applicable, cost estimates required for PCB storage facilities under 40 CFR part 761, if applicable, and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR parts 264 and 265, if applicable; and

(2) Provides evidence demonstrating that the firm meets the conditions of either paragraph (e)(1)(i)(A) or (e)(1)(i)(B) or (e)(1)(i)(C) of this section and paragraphs (e)(1)(ii) and (e)(1)(iii) of this section.

(B) A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance, with the potential exception for qualified opinions provided in the next sentence. The Director of an approved State may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Director deems that the matters which form the basis for the qualification are insufficient to warrant disallowance of the test. If the Director of an approved State does not allow use of the test, the owner or operator must provide alternate financial assurance that meets the requirements of this section.

(C) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that owner or operator satisfies paragraph (e)(1)(i)(B) or (e)(1)(i)(C) of this section that are different from data in the audited financial statements referred to in paragraph (e)(2)(i)(B) of this section or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

(D) If the chief financial officer's letter provides a demonstration that the firm has assured for environmental obligations as provided in paragraph (e)(1)(ii)(B) of this section, then the letter shall include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements, how these obligations have been measured and reported, and that the tangible net worth of the firm is at least \$10 million plus the amount of any guarantees provided.

(ii) An owner or operator must place the items specified in paragraph (e)(2)(i) of this section in the operating record and notify the State Director that these items have been placed in the operating record before the initial receipt of waste or before the effective date of the requirements of this section (April 9, 1997 or October 9, 1997 for MSWLF units meeting the conditions of § 258.1(f)(1)), whichever is later in the case of closure, and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58.

(iii) After the initial placement of items specified in paragraph (e)(2)(i) of this section in the operating record, the owner or operator must annually update the information and place updated information in the operating record within 90 days following the close of the owner or operator's fiscal year. The Director of a State may provide up to an additional 45 days for an owner or operator who can demonstrate that 90 days is insufficient time to acquire audited financial statements. The updated information must consist of all items specified in paragraph (e)(2)(i) of this section.

(iv) The owner or operator is no longer required to submit the items specified in this paragraph (e)(2) or comply with the requirements of this paragraph (e) when:

(A) He substitutes alternate financial assurance as specified in this section that is not subject to these record-keeping and reporting requirements; or

(B) He is released from the requirements of this section in accordance with § 258.71(b), § 258.72(b), or § 258.73(b).

(v) If the owner or operator no longer meets the requirements of paragraph (e)(1) of this section, the owner or operator must, within 120 days following the close of the owner or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this section, place the required submissions for that assurance in the operating record, and notify the State Director that the owner or operator no longer meets the criteria of the financial test and that alternate assurance has been obtained.

(vi) The Director of an approved State may, based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraph (e)(1) of this section, require at any time the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in paragraph (e)(2) of this section. If the Director of an approved State finds that the owner or operator no longer meets the requirements of paragraph (e)(1) of this section, the owner or operator must provide alternate financial assurance that meets the requirements of this section.

(3) *Calculation of costs to be assured.* When calculating the current cost estimates for closure, post-closure care, corrective action, or the sum of the combination of such costs to be covered, and any other environmental obligations assured by a financial test referred to in this paragraph (e), the owner or operator must include cost estimates required for municipal solid waste management facilities under this part, as well as cost estimates required for the following environmental obligations, if it assures them through a financial test: obligations associated with UIC facilities under 40 CFR part 144, petroleum underground storage tank facilities under 40 CFR part 280, PCB storage facilities under 40 CFR part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR parts 264 and 265.

(f) *Local government financial test.* An owner or operator that satisfies the requirements of paragraphs (f)(1) through

(3) of this section may demonstrate financial assurance up to the amount specified in paragraph (f)(4) of this section:

(i) *Financial component.* (i) The owner or operator must satisfy paragraph (f)(1)(i)(A) or (B) of this section as applicable:

(A) If the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, it must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard and Poor's on all such general obligation bonds; or

(B) The owner or operator must satisfy each of the following financial ratios based on the owner or operator's most recent audited annual financial statement:

(1) A ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and

(2) A ratio of annual debt service to total expenditures less than or equal to 0.20.

(ii) The owner or operator must prepare its financial statements in conformity with Generally Accepted Accounting Principles for governments and have its financial statements audited by an independent certified public accountant (or appropriate State agency).

(iii) A local government is not eligible to assure its obligations under § 258.74(f) if it:

(A) Is currently in default on any outstanding general obligation bonds; or

(B) Has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's; or

(C) Operated at a deficit equal to five percent or more of total annual revenue in each of the past two fiscal years; or

(D) Receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant (or appropriate State agency) auditing its financial statement as required under paragraph (f)(1)(ii) of this section. However, the Director of an approved State may evaluate qualified opinions on a case-

by-case basis and allow use of the financial test in cases where the Director deems the qualification insufficient to warrant disallowance of use of the test.

(iv) The following terms used in this paragraph are defined as follows:

(A) *Deficit* equals total annual revenues minus total annual expenditures;

(B) *Total revenues* include revenues from all taxes and fees but does not include the proceeds from borrowing or asset sales, excluding revenue from funds managed by local government on behalf of a specific third party;

(C) *Total expenditures* include all expenditures excluding capital outlays and debt repayment;

(D) *Cash plus marketable securities* is all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions; and

(E) *Debt service* is the amount of principal and interest due on a loan in a given time period, typically the current year.

(2) *Public notice component.* The local government owner or operator must place a reference to the closure and post-closure care costs assured through the financial test into its next comprehensive annual financial report (CAFR) after the effective date of this section or prior to the initial receipt of waste at the facility, whichever is later. Disclosure must include the nature and source of closure and post-closure care requirements, the reported liability at the balance sheet date, the estimated total closure and post-closure care cost remaining to be recognized, the percentage of landfill capacity used to date, and the estimated landfill life in years. A reference to corrective action costs must be placed in the CAFR not later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58. For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the operating record until issuance of the next available CAFR if timing does not permit the reference to be incorporated into the most recently issued CAFR or

budget. For closure and post-closure costs, conformance with Government Accounting Standards Board Statement 18 assures compliance with this public notice component.

(3) *Recordkeeping and reporting requirements.* (i) The local government owner or operator must place the following items in the facility's operating record:

(A) A letter signed by the local government's chief financial officer that:

(1) Lists all the current cost estimates covered by a financial test, as described in paragraph (f)(4) of this section;

(2) Provides evidence and certifies that the local government meets the conditions of paragraphs (f)(1)(i), (f)(1)(ii), and (f)(1)(iii) of this section; and

(3) Certifies that the local government meets the conditions of paragraphs (f)(2) and (f)(4) of this section.

(B) The local government's independently audited year-end financial statements for the latest fiscal year (except for local governments where audits are required every two years where unaudited statements may be used in years when audits are not required), including the unqualified opinion of the auditor who must be an independent, certified public accountant or an appropriate State agency that conducts equivalent comprehensive audits;

(C) A report to the local government from the local government's independent certified public accountant (CPA) or the appropriate State agency based on performing an agreed upon procedures engagement relative to the financial ratios required by paragraph (f)(1)(i)(B) of this section, if applicable, and the requirements of paragraphs (f)(1)(ii) and (f)(1)(iii) (C) and (D) of this section. The CPA or State agency's report should state the procedures performed and the CPA or State agency's findings; and

(D) A copy of the comprehensive annual financial report (CAFR) used to comply with paragraph (f)(2) of this section or certification that the requirements of General Accounting Standards Board Statement 18 have been met.

(i) The items required in paragraph (f)(3)(i) of this section must be placed

in the facility operating record as follows:

(A) In the case of closure and post-closure care, either before the effective date of this section, which is April 9, 1997, or prior to the initial receipt of waste at the facility, whichever is later, or

(B) In the case of corrective action, not later than 120 days after the corrective action remedy is selected in accordance with the requirements of § 258.58.

(iii) After the initial placement of the items in the facility's operating record, the local government owner or operator must update the information and place the updated information in the operating record within 180 days following the close of the owner or operator's fiscal year.

(iv) The local government owner or operator is no longer required to meet the requirements of paragraph (f)(3) of this section when:

(A) The owner or operator substitutes alternate financial assurance as specified in this section; or

(B) The owner or operator is released from the requirements of this section in accordance with § 258.71(b), 258.72(b), or 258.73(b).

(v) A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test it must, within 210 days following the close of the owner or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this section, place the required submissions for that assurance in the operating record, and notify the State Director that the owner or operator no longer meets the criteria of the financial test and that alternate assurance has been obtained.

(vi) The Director of an approved State, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the Director of an approved State finds, on

the basis of such reports or other information, that the owner or operator no longer meets the requirements of the local government financial test, the local government must provide alternate financial assurance in accordance with this section.

(4) *Calculation of costs to be assured.* The portion of the closure, post-closure, and corrective action costs for which an owner or operator can assure under this paragraph is determined as follows:

(i) If the local government owner or operator does not assure other environmental obligations through a financial test, it may assure closure, post-closure, and corrective action costs that equal up to 43 percent of the local government's total annual revenue.

(ii) If the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40 CFR 144.62, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, it must add those costs to the closure, post-closure, and corrective action costs it seeks to assure under this paragraph. The total that may be assured must not exceed 43 percent of the local government's total annual revenue.

(iii) The owner or operator must obtain an alternate financial assurance instrument for those costs that exceed the limits set in paragraphs (f)(4) (i) and (ii) of this section.

(g) *Corporate Guarantee.* (1) An owner or operator may meet the requirements of this section by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraph (e) of this section and must comply with the terms of the guarantee. A certified copy of the guarantee must be placed in the facility's operating record along with copies of

the letter from the guarantor's chief financial officer and accountants' opinions. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter from the guarantor's chief financial officer must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee.

(2) The guarantee must be effective and all required submissions placed in the operating record before the initial receipt of waste or before the effective date of the requirements of this section (April 9, 1997 or October 9, 1997 for MSWLF units meeting the conditions of § 258.1(f)(1), whichever is later, in the case of closure and post-closure care, or in the case of corrective action no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58.

(3) The terms of the guarantee must provide that:

(i) If the owner or operator fails to perform closure, post-closure care, and/or corrective action of a facility covered by the guarantee, the guarantor will:

(A) Perform, or pay a third party to perform, closure, post-closure care, and/or corrective action as required (performance guarantee); or

(B) Establish a fully funded trust fund as specified in paragraph (a) of this section in the name of the owner or operator (payment guarantee).

(ii) The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements of this Subpart unless the guarantor sends prior notice of cancellation by certified mail to the owner or operator and to the State Director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the State Director, as evidenced by the return receipts.

(iii) If notice of cancellation is given, the owner or operator must, within 90



days following receipt of the cancellation notice by the owner or operator and the State Director, obtain alternate financial assurance, place evidence of that alternate financial assurance in the facility operating record, and notify the State Director. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within 120 days of the cancellation notice, obtain alternative assurance, place evidence of the alternate assurance in the facility operating record, and notify the State Director.

(4) If a corporate guarantor no longer meets the requirements of paragraph (e)(1) of this section, the owner or operator must, within 90 days, obtain alternate assurance, place evidence of the alternate assurance in the facility operating record, and notify the State Director. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within the next 30 days.

(5) The owner or operator is no longer required to meet the requirements of this paragraph (g) when:

(i) The owner or operator substitutes alternate financial assurance as specified in this section; or

(ii) The owner or operator is released from the requirements of this section in accordance with § 258.71(b), § 258.72(b), or § 258.73(b).

(h) *Local government guarantee.* An owner or operator may demonstrate financial assurance for closure, post-closure, and corrective action, as required by §§ 258.71, 258.72, and 258.73, by obtaining a written guarantee provided by a local government. The guarantor must meet the requirements of the local government financial test in paragraph (f) of this section, and must comply with the terms of a written guarantee.

(i) *Terms of the written guarantee.* The guarantee must be effective before the initial receipt of waste or before the effective date of this section, whichever is later, in the case of closure, post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58. The guarantee must provide that:

(i) If the owner or operator fails to perform closure, post-closure care, and/or corrective action of a facility covered by the guarantee, the guarantor will:

(A) Perform, or pay a third party to perform, closure, post-closure care, and/or corrective action as required; or

(B) Establish a fully funded trust fund as specified in paragraph (a) of this section in the name of the owner or operator.

(ii) The guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the State Director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the State Director, as evidenced by the return receipts.

(iii) If a guarantee is cancelled, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the State Director, obtain alternate financial assurance, place evidence of that alternate financial assurance in the facility operating record, and notify the State Director. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within 120 days following the guarantor's notice of cancellation, place evidence of the alternate assurance in the facility operating record, and notify the State Director.

(2) *Recordkeeping and reporting.* (i) The owner or operator must place a certified copy of the guarantee along with the items required under paragraph (f)(3) of this section into the facility's operating record before the initial receipt of waste or before the effective date of this section, whichever is later, in the case of closure, post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58.

(ii) The owner or operator is no longer required to maintain the items specified in paragraph (h)(2) of this section when:

(A) The owner or operator substitutes alternate financial assurance as specified in this section; or

(B) The owner or operator is released from the requirements of this section in accordance with §258.71(b), 258.72(b), or 258.73(b).

(iii) If a local government guarantor no longer meets the requirements of paragraph (f) of this section, the owner or operator must, within 90 days, obtain alternative assurance, place evidence of the alternate assurance in the facility operating record, and notify the State Director. If the owner or operator fails to obtain alternate financial assurance within that 90-day period, the guarantor must provide that alternate assurance within the next 30 days.

(i) *State-Approved mechanism.* An owner or operator may satisfy the requirements of this section by obtaining any other mechanism that meets the criteria specified in §258.74(1), and that is approved by the Director of an approved State.

(j) *State assumption of responsibility.* If the State Director either assumes legal responsibility for an owner or operator's compliance with the closure, post-closure care and/or corrective action requirements of this part, or assures that the funds will be available from State sources to cover the requirements, the owner or operator will be in compliance with the requirements of this section. Any State assumption of responsibility must meet the criteria specified in §258.74(l).

(k) *Use of multiple mechanisms.* An owner or operator may demonstrate financial assurance for closure, post-closure, and corrective action, as required by §§258.71, 258.72, and 258.73 by establishing more than one mechanism per facility, except that mechanisms guaranteeing performance rather than payment, may not be combined with other instruments. The mechanisms must be as specified in paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), and (j) of this section, except that financial assurance for an amount at least equal to the current cost estimate for closure, post-closure care, and/or corrective action may be provided by a combination of mechanisms rather than a single mechanism.

(l) The language of the mechanisms listed in paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), and (j) of this section

must ensure that the instruments satisfy the following criteria:

(1) The financial assurance mechanisms must ensure that the amount of funds assured is sufficient to cover the costs of closure, post-closure care, and corrective action for known releases when needed;

(2) The financial assurance mechanisms must ensure that funds will be available in a timely fashion when needed;

(3) The financial assurance mechanisms must be obtained by the owner or operator by the effective date of these requirements or prior to the initial receipt of solid waste, whichever is later, in the case of closure and post-closure care, and no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of §258.58, until the owner or operator is released from the financial assurance requirements under §§258.71, 258.72 and 258.73.

(4) The financial assurance mechanisms must be legally valid, binding, and enforceable under State and Federal law.

[56 FR 51029, Oct. 9, 1991, as amended at 58 FR 51547, Oct. 1, 1993; 60 FR 40105, Aug. 7, 1995; 60 FR 52342, Oct. 6, 1995; 61 FR 60337, Nov. 27, 1996; 63 FR 17729, Apr. 10, 1998]

#### §258.75 Discounting.

The Director of an approved State may allow discounting of closure cost estimates in §258.71(a), post-closure cost estimates in §258.72(a), and/or corrective action costs in §258.73(a) up to the rate of return for essentially risk free investments, net of inflation, under the following conditions:

(a) The State Director determines that cost estimates are complete and accurate and the owner or operator has submitted a statement from a Registered Professional Engineer so stating;

(b) The State finds the facility in compliance with applicable and appropriate permit conditions;

(c) The State Director determines that the closure date is certain and the owner or operator certifies that there are no foreseeable factors that will change the estimate of site life; and

(d) Discounted cost estimates must be adjusted annually to reflect inflation and years of remaining life.

[61 FR 60339, Nov. 27, 1996]

APPENDIX I TO PART 258—CONSTITUENTS FOR DETECTION MONITORING<sup>1</sup>

Common name <sup>2</sup>	CAS RN <sup>3</sup>
<b>Inorganic Constituents:</b>	
(1) Antimony	(Total)
(2) Arsenic	(Total)
(3) Barium	(Total)
(4) Beryllium	(Total)
(5) Cadmium	(Total)
(6) Chromium	(Total)
(7) Cobalt	(Total)
(8) Copper	(Total)
(9) Lead	(Total)
(10) Nickel	(Total)
(11) Selenium	(Total)
(12) Silver	(Total)
(13) Thallium	(Total)
(14) Vanadium	(Total)
(15) Zinc	(Total)
<b>Organic Constituents:</b>	
(16) Acetone	67-64-1
(17) Acrylonitrile	107-13-1
(18) Benzene	71-43-2
(19) Bromochloromethane	74-97-5
(20) Bromodichloromethane	75-27-4
(21) Bromoform; Tribromomethane	75-25-2
(22) Carbon disulfide	75-15-0
(23) Carbon tetrachloride	56-23-5
(24) Chlorobenzene	108-90-7
(25) Chloroethane; Ethyl chloride	75-00-3
(26) Chloroform; Trichloromethane	67-68-3
(27) Dibromochloromethane; Chlorodibromomethane	124-48-1
(28) 1,2-Dibromo-3-chloropropane; DBCP	96-12-8
(29) 1,2-Dibromoethane; Ethylene dibromide; EDB	106-93-4
(30) o-Dichlorobenzene; 1,2-Dichlorobenzene	95-50-1
(31) p-Dichlorobenzene; 1,4-Dichlorobenzene	106-46-7
(32) trans-1,4-Dichloro-2-butene	110-57-6
(33) 1,1-Dichloroethane; Ethylidene chloride	75-34-3
(34) 1,2-Dichloroethane; Ethylene dichloride	107-06-2

Common name <sup>2</sup>	CAS RN <sup>3</sup>
(35) 1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride	75-35-4
(36) cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene	156-59-2
(37) trans-1,2-Dichloroethylene; trans-1,2-Dichloroethene	156-60-6
(38) 1,2-Dichloropropane; Propylene dichloride	78-87-5
(39) cis-1,3-Dichloropropene	10061-01-5
(40) trans-1,3-Dichloropropene	10061-02-8
(41) Ethylbenzene	100-11-1
(42) 2-Hexanone; Methyl butyl ketone	591-78-6
(43) Methyl bromide; Bromomethane	74-83-9
(44) Methyl chloride; Chloromethane	74-87-3
(45) Methylene bromide; Dibromomethane	74-95-3
(46) Methylene chloride; Dichloromethane	75-09-2
(47) Methyl ethyl ketone; MEK; 2-Butanone	78-93-3
(48) Methyl iodide; Iodomethane	74-88-4
(49) 4-Methyl-2-pentanone; Methyl isobutyl ketone	108-10-1
(50) Styrene	100-42-5
(51) 1,1,1,2-Tetrachloroethane	630-20-6
(52) 1,1,2,2-Tetrachloroethane	79-34-5
(53) Tetrachloroethylene; Tetrachloroethene; Perchloroethylene	127-18-4
(54) Toluene	108-88-3
(55) 1,1,1-Trichloroethane; Methylchloroform	71-55-6
(56) 1,1,2-Trichloroethane	79-00-5
(57) Trichloroethylene; Trichloroethene	79-01-6
(58) Trichlorofluoromethane; CFC-11	75-69-4
(59) 1,2,3-Trichloropropane	96-18-4
(60) Vinyl acetate	108-05-4
(61) Vinyl chloride	75-01-4
(62) Xylenes	1330-20-7

<sup>1</sup> This list contains 47 volatile organics for which possible analytical procedures provided in EPA Report SW-846 "Test Methods for Evaluating Solid Waste," third edition, November 1986, as revised December 1987, includes Method 8260; and 15 metals for which SW-846 provides either Method 6010 or a method from the 7000 series of methods.

<sup>2</sup> Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

<sup>3</sup> Chemical Abstracts Service registry number. Where "Total" is entered, all species in the ground water that contain this element are included.

APPENDIX II TO PART 258—LIST OF HAZARDOUS INORGANIC AND ORGANIC CONSTITUENTS<sup>1</sup>

Common Name <sup>2</sup>	CAS RN <sup>3</sup>	Chemical abstracts service index name <sup>4</sup>	Suggested methods <sup>5</sup>	PQL (µ g/L) <sup>6</sup>
Acenaphthene	83-32-9	Acenaphthylene, 1,2-dihydro	8100	200
Acenaphthylene	208-98-8	Acenaphthylene	8270	10
Acetone	67-64-1	2-Propanone	8100	200
Acetonitrile; Methyl cyanide	75-05-8	Acetonitrile	8270	10
Acetophenone	98-86-2	Ethanone, 1-phenyl	8260	100
2-Acetylaminofluorene; 2-AAF	53-96-3	Acetamide, N-9H-fluoren-2-yl-	8270	10
Acrolein	107-02-8	2-Propenal	8030	5
Acrylonitrile	107-13-1	2-Propenenitrile	8260	100
Aldrin	309-00-2	1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-(1α,4α,4aβ,5α,8α,8aβ)-	8080	0.05
Allyl chloride	107-05-1	1-Propene, 3-chloro-	8270	10
4-Aminobiphenyl	92-67-1	[1,1'-Biphenyl]-4-amine	8010	5
			8260	10
			8270	20

Environmental Protection Agency, EPA

Pt. 258, App. II

Common Name <sup>2</sup>	CAS RN <sup>3</sup>	Chemical abstracts service index name <sup>4</sup>	Sug- gested methods <sup>5</sup>	PQL (µ g/L) <sup>6</sup>
Anthracene .....	120-12-7	Anthracene .....	8100 8270	200 10
Antimony .....	(Total)	Antimony .....	6010 7040 7041	300 2000 30
Arsenic .....	(Total)	Arsenic .....	6010 7060 7061	500 10 20
Barium .....	(Total)	Barium .....	6010 7080	20 1000
Benzene .....	71-43-2	Benzene .....	8020 8021 8260	2 0.1 5
Benzo[a]anthracene; Benzanthracene ..	56-55-3	Benzo[a]anthracene .....	8100 8270	200 10
Benzo[b]fluoranthene .....	205-99-2	Benzo[b]acephenanthrylene .....	8100 8270	200 10
Benzo[k]fluoranthene .....	207-08-9	Benzo[k]fluoranthene .....	8100 8270	200 10
Benzo[ghi]perylene .....	191-24-2	Benzo[ghi]perylene .....	8100 8270	200 10
Benzo[a]pyrene .....	50-32-8	Benzo[a]pyrene .....	8100 8270	200 10
Benzyl alcohol .....	100-51-6	Benzenemethanol .....	8270	20
Beryllium .....	(Total)	Beryllium .....	6010 7090 7091	3 50 2
alpha-BHC .....	319-84-6	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α,2α,3β,4α,5β,6β)- .....	8080 8270	0.05 10
beta-BHC .....	319-85-7	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α,2β,3α,4β,5α,6β)- .....	8080 8270	0.05 20
delta-BHC .....	319-86-8	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α,2α,3α,4β,5α,6β)- .....	8080 8270	0.1 20
gamma-BHC; Lindane .....	58-89-9	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α,2α,3β,4α,5α,6β)- .....	8080 8270	0.05 20
Bis(2-chloroethoxy)methane .....	111-91-1	Ethane, 1,1'-[methylenebis(oxy)]bis[2- chloro- .....	8110 8270	5 10
Bis(2-chloroethyl) ether; Dichloroethyl ether .....	111-44-4	Ethane, 1,1'-oxybis[2-chloro- .....	8110 8270	3 10
Bis-(2-chloro-1-methylethyl) ether; 2,2'- Dichlorodisopropyl ether; DCIP; See note 7 .....	108-60-1	Propane, 2,2'-oxybis[1-chloro- .....	8110 8270	10 10
Bis(2-ethylhexyl) phthalate .....	117-81-7	1,2-Benzenedicarboxylic acid, bis(2- ethylhexyl) ester .....	8060	20
Bromochloromethane; Chlorobromomethane .....	74-97-5	Methane, bromochloro- .....	8021 8260	0.1 5
Bromodichloromethane; Dibromochloromethane .....	75-27-4	Methane, bromodichloro- .....	8010 8021 8260	1 0.2 5
Bromoform; Tribromomethane .....	75-25-2	Methane, tribromo- .....	8010 8021 8260	2 15 5
4-Bromophenyl phenyl ether .....	101-55-3	Benzene, 1-bromo-4-phenoxy- .....	8110 8270	25 10
Butyl benzyl phthalate; Benzyl butyl phthalate .....	85-68-7	1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester .....	8060 8270	5 10
Cadmium .....	(Total)	Cadmium .....	6010 7130 7131	40 50 1
Carbon disulfide .....	75-15-0	Carbon disulfide .....	8260	100
Carbon tetrachloride .....	56-23-5	Methane, tetrachloro- .....	8010 8021 8260	1 0.1 10
Chlordane .....	See Note 8	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro- 2,3,3a,4,7,7a-hexahydro- .....	8080 8270	0.1 50
p-Chloroaniline .....	106-47-8	Benzenamine, 4-chloro- .....	8270	20
Chlorobenzene .....	108-90-7	Benzene, chloro- .....	8010 8020 8021 8260	2 2 0.1 5

Common Name <sup>2</sup>	CAS RN <sup>3</sup>	Chemical abstracts service index name <sup>4</sup>	Sug- gested methods <sup>5</sup>	PQL (µ g/L) <sup>6</sup>
Chlorobenzilate .....	510-15-6	Benzeneacetic acid, 4-chloro-α-(4-chlorophenyl)-α-hydroxy-, ethyl ester.	8270	10
p-Chloro-m-cresol; 4-Chloro-3-methylphenol.	59-50-7	Phenol, 4-chloro-3-methyl- .....	8040 8270	5 20
Chloroethane; Ethyl chloride .....	75-00-3	Ethane, chloro- .....	8010 8021 8260	5 1 10
Chloroform; Trichloromethane .....	67-66-3	Methane, trichloro- .....	8010 8021 8260	0.5 0.2 .. 5 .....
2-Chloronaphthalene .....	91-58-7	Naphthalene, 2-chloro- .....	8120 8270	10 10
2-Chlorophenol .....	95-57-8	Phenol, 2-chloro- .....	8040 8270	5 10
4-Chlorophenyl phenyl ether .....	7005-72-3	Benzene, 1-chloro-4-phenoxy- .....	8110 8270	40 10
Chloroprene .....	126-99-8	1,3-Butadiene, 2-chloro- .....	8010 8260	50 20
Chromium .....	(Total)	Chromium .....	6010 7190 7191	70 500 10
Chrysene .....	218-01-9	Chrysene .....	8100 8270	200 10
Cobalt .....	(Total)	Cobalt .....	6010 7200 7201	70 500 10
Copper .....	(Total)	Copper .....	6010 7210 7211	60 200 10
m-Cresol; 3-methylphenol .....	108-39-4	Phenol, 3-methyl- .....	8270	10
o-Cresol; 2-methylphenol .....	95-48-7	Phenol, 2-methyl- .....	8270	10
p-Cresol; 4-methylphenol .....	106-44-5	Phenol, 4-methyl- .....	8270	10
Cyanide .....	57-12-5	Cyanide .....	9010	200
2,4-D; 2,4-Dichlorophenoxyacetic acid ..	94-75-7	Acetic acid, (2,4-dichlorophenoxy)- .....	8150	10
4,4'-DDD .....	72-54-8	Benzene 1,1'-(2,2-dichloroethyldene)bis[4-chloro- ..	8080 8270	0.1 10 ..
4,4'-DDE .....	72-55-9	Benzene, 1,1'-(dichloroethenyldene)bis[4-chloro- ..	8080 8270	0.05 10 ..
4,4'-DDT .....	50-29-3	Benzene, 1,1'-(2,2,2-trichloroethyldene)bis[4-chloro- ..	8080 8270	0.1 10 ..
Diallate .....	2303-16-4	Carbamothioic acid, bis(1-methylethyl)-S-(2,3-dichloro-2-propenyl) ester.	8270	10
Dibenz[a,h]anthracene .....	53-70-3	Dibenz[a,h]anthracene .....	8100 8270	200 10
Dibenzofuran .....	132-64-9	Dibenzofuran .....	8270	10
Dibromochloromethane; Chlorodibromomethane.	124-48-1	Methane, dibromochloro- .....	8010 8021 8260	1 0.3 5 .....
1,2-Dibromo-3-chloropropane; DBCP ....	96-12-8	Propane, 1,2-dibromo-3-chloro- .....	8011 8021 8260	0.1 30 .. 25 ..
1,2-Dibromoethane; dibromide; EDB.	Ethylene 106-93-4	Ethane, 1,2-dibromo- .....	8011 8021 8260	0.1 10 .. 5 .....
Di-n-butyl phthalate .....	84-74-2	1,2-Benzenedicarboxylic acid, dibutyl ester.	8060 8270	5 10
o-Dichlorobenzene; Dichlorobenzene.	1,2- 95-50-1	Benzene, 1,2-dichloro- .....	8010 8020 8021 8120 8260 8270	2 5 0.5 10 .. 5 .....
m-Dichlorobenzene; Dichlorobenzene.	1,3- 541-73-1	Benzene, 1,3-Dichloro- .....	8010 8020 8021 8120 8260 8270	5 5 0.2 10 .. 5 .....

Common Name <sup>2</sup>	CAS RN <sup>3</sup>	Chemical abstracts service index name <sup>4</sup>	Sug- gested methods <sup>5</sup>	PQL (µ g/L) <sup>6</sup>
p-Dichlorobenzene; 1,4-Dichlorobenzene.	106-46-7	Benzene, 1,4-dichloro- .....	8010 8020 8021 8120 8260 8270	2 5 0.1 15 ... 5 .... 10 ...
3,3'-Dichlorobenzidine .....	91-94-1	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dichloro- .....	8270	20
trans-1,4-Dichloro-2-butene .....	110-57-6	2-Butene, 1,4-dichloro-, (E)- .....	8260	100
Dichlorodifluoromethane; CFC 12; .....	75-71-8	Methane, dichlorodifluoro- .....	8021 8260	0.5 5 ....
1,1-Dichloroethane; Ethylidene chloride.	75-34-3	Ethane, 1,1-dichloro- .....	8010 8021 8260	1 0.5 5 ....
1,2-Dichloroethane; Ethylene dichloride	107-06-2	Ethane, 1,1-dichloro- .....	8010 8021 8260	0.5 0.3 .. 5 ....
1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride.	75-35-4	Ethene, 1,1-dichloro- .....	8010 8021 8260	1 0.5 5 ....
cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene.	156-59-2	Ethene, 1,2-dichloro-, (Z)- .....	8021 8260	0.2 5 ....
trans-1,2-Dichloroethylene trans-1,2-Dichloroethene.	156-60-5	Ethene, 1,2-dichloro-, (E)- .....	8010 8021 8260	1 0.5 5 ....
2,4-Dichlorophenol .....	120-83-2	Phenol, 2,4-dichloro- .....	8040 8270	5 10
2,6-Dichlorophenol .....	87-65-0	Phenol, 2,6-dichloro- .....	8270	10
1,2-Dichloropropane; Propylene dichloride.	78-87-5	Propane, 1,2-dichloro- .....	8010 8021 8260	0.5 0.05 5 ....
1,3-Dichloropropane; Trimethylene dichloride.	142-28-9	Propane, 1,3-dichloro- .....	8021 8260	0.3 5 ....
2,2-Dichloropropane; Isopropylidene chloride.	594-20-7	Propane, 2,2-dichloro- .....	8021 8260	0.5 15 ...
1,1-Dichloropropene .....	563-58-6	1-Propene, 1,1-dichloro- .....	8021 8260	0.2 5 ....
cis-1,3-Dichloropropene .....	10061-01-5	1-Propene, 1,3-dichloro-, (Z)- .....	8010 8260	20 10
trans-1,3-Dichloropropene .....	10061-02-6	1-Propene, 1,3-dichloro-, (E)- .....	8010 8260	5 10
Dieldrin .....	60-57-1	2,7,3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexa-chloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aα,2β,2α,3β,6β,6α,7β,7aα)- .....	8080 8270	0.05 10 ...
Diethyl phthalate .....	84-66-2	1,2-Benzenedicarboxylic acid, diethyl ester.	8060 8270	5 10
0,0-Diethyl phosphorothioate; Thionazin.	297-97-2	Phosphorothioic acid, 0,0-diethyl 0-pyrazinyl ester.	8141 8270	5 20
Dimethoate .....	60-51-5	Phosphorodithioic acid, 0,0-dimethyl S-[2-(methylamino)-2-oxoethyl] ester.	8141 8270	3 20
p-(Dimethylamino)azobenzene .....	60-11-7	Benzenamine, N,N-dimethyl-4-(phenylazo)- .....	8270	10
7,12-Dimethylbenz[ <i>a</i> ]anthracene .....	57-97-6	Benzo[ <i>a</i> ]anthracene, 7,12-dimethyl- .....	8270	10
3,3'-Dimethylbenzidine .....	119-93-7	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethyl- .....	8270	10
2,4-Dimethylphenol; m-Xylenol .....	105-67-9	Phenol, 2,4-dimethyl- .....	8040 8270	5 10
Dimethyl phthalate .....	131-11-3	1,2-Benzenedicarboxylic acid, dimethyl ester.	8060 8270	5 10
m-Dinitrobenzene .....	99-65-0	Benzene, 1,3-dinitro- .....	8270	20
4,6-Dinitro-o-cresol 4,6-Dinitro-2-methylphenol.	534-52-1	Phenol, 2-methyl-4,6-dinitro .....	8040 8270	150 50
2,4-Dinitrophenol; .....	51-28-5	Phenol, 2,4-dinitro- .....	8040 8270	150 50
2,4-Dinitrotoluene .....	121-14-2	Benzene, 1-methyl-2,4-dinitro- .....	8090 8270	0.2 10 ...
2,6-Dinitrotoluene .....	606-20-2	Benzene, 2-methyl-1,3-dinitro- .....	8090 8270	0.1 10 ...
Dinoseb; DNB; 2-sec-Butyl-4,6-dinitrophenol.	88-85-7	Phenol, 2-(1-methylpropyl)-4,6-dinitro- .....	8150 8270	1 20

Common Name <sup>2</sup>	CAS RN <sup>3</sup>	Chemical abstracts service index name <sup>4</sup>	Sug- gested methods <sup>5</sup>	PQL (µ g/L) <sup>6</sup>
Di-n-octyl phthalate .....	117-84-0	1,2-Benzenedicarboxylic acid, dioctyl ester.	8060 8270	30 10
Diphenylamine .....	122-39-4	Benzenamine, N-phenyl- .....	8270	10
Disulfoton .....	298-04-4	Phosphorodithioic acid, 0,0-diethyl S-[2-(ethylthio)ethyl] ester.	8140 8141	2 0.5
Endosulfan I .....	959-98-8	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexa- chloro- 1,5,5a,6,9,9a-hexahydro-, 3-oxide, (3α,5α,6β,9β,9α)-.	8270 8080 8270	10 ... 0.1 20 ...
Endosulfan II .....	33213-65-9	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexa- chloro- 1,5,5a,6,9,9a-hexahydro-, 3-oxide, (3α,5α,6β,9β,9α)-.	8080 8270	0.05 20 ...
Endosulfan sulfate .....	1031-07-8	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexa- chloro- 1,5,5a,6,9,9a-hexahydro-, 3,3-dioxide.	8080 8270	0.5 10 ...
Endrin .....	72-20-8	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro- 1a,2,2a,3,6,6a,7,7a-octahydro-, (1α, 2β,2aβ,3α,6α,6aβ,7β,7aα)-.	8080 8270	0.1 20 ...
Endrin aldehyde .....	7421-93-4	1,2,4-Methenocyclopenta[cd]pentalene-5-carboxaldehyde, 2,2a,3,4,7-hexachlorodecahydro-, (1α,2β,2aβ,4β,4aβ,5β,6aβ,6bβ,7R <sup>+</sup> )-.	8080 8270	0.2 10 ...
Ethylbenzene .....	100-41-4	Benzene, ethyl- .....	8020 8221 8260	2 0.05 5 ...
Ethyl methacrylate .....	97-63-2	2-Propenoic acid, 2-methyl-, ethyl ester	8015 8260 8270	5 10 10
Ethyl methanesulfonate .....	62-50-0	Methanesulfonic acid, ethyl ester .....	8270	20
Famphur .....	52-85-7	Phosphorothioic acid, 0-[4-[(dimethylamino)sulfonyl]phenyl] 0,0-dimethyl ester.	8270	20
Fluoranthene .....	206-44-0	Fluoranthene .....	8100 8270	200 10
Fluorene .....	86-73-7	9H-Fluorene .....	8100 8270	200 10
Heptachlor .....	76-44-8	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-	8080 8270	0.05 10 ...
Heptachlor epoxide .....	1024-57-3	2,5-Methano-2H-indeno[1,2-b]oxirene, 2,3,4,5,6,7,7-heptachloro- 1a,1b,5,5a,6,6a-hexahydro-, (1α, 1bβ, 2α, 5α, 5aβ, 6β, 6aα)-.	8080 8270	1 10
Hexachlorobenzene .....	118-74-1	Benzene, hexachloro- .....	8120 8270	0.5 10 ...
Hexachlorobutadiene .....	87-68-3	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	8021 8120 8260 8270	0.5 5 ... 10 ... 10 ...
Hexachlorocyclopentadiene .....	77-47-4	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	8120 8270	5 10
Hexachloroethane .....	67-72-1	Ethane, hexachloro- .....	8120 8260 8270	0.5 10 ... 10 ...
Hexachloropropene .....	1888-71-7	1-Propene, 1,1,2,3,3,3-hexachloro- .....	8270	10
2-Hexanone; Methyl butyl ketone .....	591-78-6	2-Hexanone .....	8260	50
Indeno(1,2,3-cd)pyrene .....	193-39-5	Indeno(1,2,3-cd)pyrene .....	8100 8270	200 10
Isobutyl alcohol .....	78-83-1	1-Propanol, 2-methyl- .....	8015 8240	50 100
Isodrin .....	465-73-6	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro- 1,4,4a,5,8,8a-hexahydro- (1α,4α,4aβ,5β,8β,8aβ)-.	8270 8260	20 10
Isophorone .....	78-59-1	2-Cyclohexen-1-one, 3,5,5-trimethyl- ....	8090 8270	60 10
Isosafrole .....	120-58-1	1,3-Benzodioxole, 5-(1-propenyl)- .....	8270	10
Kepon .....	143-50-0	1,3,4-Metheno-2H-cyclobuta[cd]pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-	8270	20

Common Name <sup>2</sup>	CAS RN <sup>3</sup>	Chemical abstracts service index name <sup>4</sup>	Suggested methods <sup>5</sup>	PQL (µ g/L) <sup>6</sup>
Lead	(Total)	Lead	6010 7420 7421	400 1000 10
Mercury	(Total)	Mercury	7470	2
Methacrylonitrile	126-98-7	2-Propenenitrile, 2-methyl-	8015	5
Methapyriene	91-80-5	1,2-Ethanediamine, N,N-dimethyl-N <sup>1</sup> -2-pyridinyl-N <sup>1</sup> (2-thienylmethyl)-	8260 8270	100 100
Methoxychlor	72-43-5	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-methoxy-	8080 8270	2 10
Methyl bromide; Bromomethane	74-83-9	Methane, bromo-	8010 8021	20 10
Methyl chloride; Chloromethane	74-87-3	Methane, chloro-	8010 8021	1 0.3
3-Methylcholanthrene	56-49-5	Benz[ <i>a</i> ]aceanthrylene, 1,2-dihydro-3-methyl-	8270	10
Methyl ethyl ketone; MEK; 2-Butanone	78-93-3	2-Butanone	8015 8260	10 100
Methyl iodide; Iodomethane	74-88-4	Methane, iodo-	8010 8260	40 10
Methyl methacrylate	80-62-6	2-Propenoic acid, 2-methyl-, methyl ester.	8015 8260	2 30
Methyl methanesulfonate	66-27-3	Methanesulfonic acid, methyl ester	8270	10
2-Methylnaphthalene	91-57-6	Naphthalene, 2-methyl-	8270	10
Methyl parathion; Parathion methyl	298-00-0	Phosphorothioic acid, 0,0-dimethyl	8140 8141 8270	0.5 1 10
4-Methyl-2-pentanone; Methyl isobutyl ketone.	108-10-1	2-Pentanone, 4-methyl-	8015 8260	5 100
Methylene bromide; Dibromomethane	74-95-3	Methane, dibromo-	8010 8021 8260	15 20 10
Methylene chloride; Dichloromethane	75-09-2	Methane, dichloro-	8010 8021 8260	5 0.2 10
Naphthalene	91-20-3	Naphthalene	8021 8100 8260 8270	0.5 200 5 10
1,4-Naphthoquinone	130-15-4	1,4-Naphthalenedione	8270	10
1-Naphthylamine	134-32-7	1-Naphthalenamine	8270	10
2-Naphthylamine	91-59-8	2-Naphthalenamine	8270	10
Nickel	(Total)	Nickel	6010 7520	150 400
o-Nitroaniline; 2-Nitroaniline	88-74-4	Benzenamine, 2-nitro-	8270	50
m-Nitroaniline; 3-Nitroaniline	99-09-2	Benzenamine, 3-nitro-	8270	50
p-Nitroaniline; 4-Nitroaniline	100-01-6	Benzenamine, 4-nitro-	8270	20
Nitrobenzene	98-95-3	Benzene, nitro-	8090 8270	40 10
o-Nitrophenol; 2-Nitrophenol	88-75-5	Phenol, 2-nitro-	8040 8270	5 10
p-Nitrophenol; 4-Nitrophenol	100-02-7	Phenol, 4-nitro-	8040 8270	10 50
N-Nitrosodi-n-butylamine	924-16-3	1-Butanamine, N-butyl-N-nitroso-	8270	10
N-Nitrosodimethylamine	55-18-5	Ethanamine, N-ethyl-N-nitroso-	8270	20
N-Nitrosodimethylamine	62-75-9	Methanamine, N-methyl-N-nitroso-	8070	2
N-Nitrosodiphenylamine	86-30-6	Benzenamine, N-nitroso-N-phenyl-	8070	5
N-Nitrosodipropylamine; N-Nitroso-N-dipropylamine; Di-n-propylnitrosamine.	621-64-7	1-Propanamine, N-nitroso-N-propyl-	8070	10
N-Nitrosomethylethylamine	10595-95-6	Ethanamine, N-methyl-N-nitroso-	8270	10
N-Nitrosopiperidine	100-75-4	Piperidine, 1-nitroso-	8270	20
N-Nitrosopyrrolidine	930-55-2	Pyrrolidine, 1-nitroso-	8270	40
5-Nitro-o-toluidine	99-55-8	Benzenamine, 2-methyl-5-nitro-	8270	10
Parathion	56-38-2	Phosphorothioic acid, 0,0-diethyl 0-(4-nitrophenyl) ester.	8141 8270	0.5 10
Pentachlorobenzene	608-93-5	Benzene, pentachloro-	8270	10
Pentachloronitrobenzene	82-68-8	Benzene, pentachloronitro-	8270	20
Pentachlorophenol	87-86-5	Phenol, pentachloro-	8040	5
Phenacetin	62-44-2	Acetamide, N-(4-ethoxyphenyl)	8270	50
Phenanthrene	85-01-8	Phenanthrene	8270 8100	20 200
			8270	10



Common Name <sup>2</sup>	CAS RN <sup>3</sup>	Chemical abstracts service index name <sup>4</sup>	Sug- gested methods <sup>5</sup>	PQL (µ g/L) <sup>6</sup>
Phenol .....	108-95-2	Phenol .....	8040	1
p-Phenylenediamine .....	106-50-3	1,4-Benzenediamine .....	8270	10
Phorate .....	298-02-2	Phosphorodithioic acid, 0,0-diethyl S- [(ethylthio)methyl] ester. ....	8140 8141 8270	2 0.5 10 ...
Polychlorinated biphenyls; PCBs; Aroclors. ....	See Note 9	1,1'-Biphenyl, chloro derivatives .....	8080 8270	50 200
Pronamide .....	23950-58-5	Benzamide, 3,5-dichloro-N-(1,1-di- methyl-2-propynyl)-. ....	8270	10
Propionitrile; Ethyl cyanide .....	107-12-0	Propanenitrile .....	8015 8260	60 150
Pyrene .....	129-00-0	Pyrene .....	8100 8270	200 10
Safrrole .....	94-59-7	1,3-Benzodioxole, 5-(2-propenyl)- .....	8270	10
Selenium .....	(Total)	Selenium .....	6010 7740 7741	750 20 20
Silver .....	(Total)	Silver .....	6010 7760 7761	70 100 10
Silvex; 2,4,5-TP .....	93-72-1	Propanoic acid, 2-(2,4,5- trichlorophenoxy)-. ....	8150	2
Styrene .....	100-42-5	Benzene, ethenyl- .....	8020 8021 8260	1 0.1 10 ...
Sulfide .....	18496-25-8	Sulfide .....	9030	4000
2,4,5-T; 2,4,5-Trichlorophenoxyacetic acid. ....	93-76-5	Acetic acid, (2,4,5-trichlorophenoxy)- ...	8150	2
1,2,4,5-Tetrachlorobenzene .....	95-94-3	Benzene, 1,2,4,5-tetrachloro- .....	8270	10
1,1,1,2-Tetrachloroethane .....	630-20-6	Ethane, 1,1,1,2-tetrachloro- .....	8010 8021 8260	5 0.05 5 ...
1,1,2,2-Tetrachloroethane .....	79-34-5	Ethane, 1,1,2,2-tetrachloro- .....	8010 8021 8260	0.5 0.1 .. 5 ...
Tetrachloroethylene; Tetrachloroethene; Perchloroethylene. ....	127-18-4	Ethene, tetrachloro- .....	8010 8021 8260	0.5 0.5 .. 5 ...
2,3,4,6-Tetrachlorophenol .....	58-90-2	Phenol, 2,3,4,6-tetrachloro- .....	8270	10
Thallium .....	(Total)	Thallium .....	6010 7840 7841	400 1000 10
Tin .....	(Total)	Tin .....	6010	40
Toluene .....	108-88-3	Benzene, methyl- .....	8020 8021 8260	2 0.1 5 ...
o-Toluidine .....	95-53-4	Benzenamine, 2-methyl- .....	8270	10
Toxaphene .....	See Note 10	Toxaphene .....	8080	2
1,2,4-Trichlorobenzene .....	120-82-1	Benzene, 1,2,4-trichloro- .....	8021 8120 8260 8270	0.3 0.5 .. 10 ... 10 ...
1,1,1-Trichloroethane; Methylchloroform .....	71-55-6	Ethane, 1,1,1-trichloro- .....	8010 8021 8260	0.3 0.3 .. 5 ...
1,1,2-Trichloroethane .....	79-00-5	Ethane, 1,1,2-trichloro- .....	8010 8260	0.2 5 ...
Trichloroethylene; Trichloroethene .....	79-01-6	Ethene, trichloro- .....	8010 8021 8260	1 0.2 5 ...
Trichlorofluoromethane; CFC-11 .....	75-69-4	Methane, trichlorofluoro- .....	8010 8021 8260	10 0.3 5 ...
2,4,5-Trichlorophenol .....	95-95-4	Phenol, 2,4,5-trichloro- .....	8270	10
2,4,6-Trichlorophenol .....	88-06-2	Phenol, 2,4,6-trichloro- .....	8040 8270	5 10
1,2,3-Trichloropropane .....	98-18-4	Propane, 1,2,3-trichloro- .....	8010 8021 8260	10 5 15
0,0,0-Triethyl phosphorothioate .....	128-68-1	Phosphorothioic acid, 0,0,0-triethyl ester	8270	10
sym-Trinitrobenzene .....	99-35-4	Benzene, 1,3,5-trinitro- .....	8270	10

Common Name <sup>2</sup>	CAS RN <sup>3</sup>	Chemical abstracts service index name <sup>4</sup>	Sug- gested methods <sup>5</sup>	PQL (µ g/L) <sup>6</sup>
Vanadium .....	(Total)	Vanadium .....	8010 7910 7911	80 2000 40
Vinyl acetate .....	108-05-4	Acetic acid, ethenyl ester .....	8260	50
Vinyl chloride; Chloroethene .....	75-01-4	Ethene, chloro- .....	8010 8021	2 0.4
Xylene (total) .....	See Note 11	Benzene, dimethyl- .....	8260 8020 8021 8260	10 ... 5 0.2 5 ...
Zinc .....	(Total)	Zinc .....	6010 7950 7951	20 50 0.5

**Notes**  
<sup>1</sup> The regulatory requirements pertain only to the list of substances; the right hand columns (Methods and PQL) are given for informational purposes only. See also footnotes 5 and 6.  
<sup>2</sup> Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.  
<sup>3</sup> Chemical Abstracts Service registry number. Where "Total" is entered, all species in the ground water that contain this element are included.  
<sup>4</sup> CAS index are those used in the 9th Collective Index.  
<sup>5</sup> Suggested Methods refer to analytical procedure numbers used in EPA Report SW-846 "Test Methods for Evaluating Solid Waste", third edition, November 1986, as revised, December 1987. Analytical details can be found in SW-846 and in documentation on file at the agency. CAUTION: The methods listed are representative SW-846 procedures and may not always be the most suitable method(s) for monitoring an analyte under the regulations.  
<sup>6</sup> Practical Quantitation Limits (PQLs) are the lowest concentrations of analytes in ground waters that can be reliably determined within specified limits of precision and accuracy by the indicated methods under routine laboratory operating conditions. The PQLs listed are generally stated to one significant figure. PQLs are based on 5 mL samples for volatile organics and 1 L samples for semivolatile organics. CAUTION: The PQL values in many cases are based only on a general estimate for the method and not on a determination for individual compounds; PQLs are not a part of the regulation.  
<sup>7</sup> This substance is often called Bis(2-chloroisopropyl) ether, the name Chemical Abstracts Service applies to its noncommercial isomer, Propane, 2,2'-oxybis[2-chloro- (CAS RN 38538-32-9).  
<sup>8</sup> Chlordane: This entry includes alpha-chlordane (CAS RN 5103-71-9), beta-chlordane (CAS RN 5103-74-2), gamma-chlordane (CAS RN 5566-34-7), and constituents of chlordane (CAS RN 57-74-9 and CAS RN 12789-03-6). PQL shown is for technical chlordane. PQLs of specific isomers are about 20 µg/L by method 8270.  
<sup>9</sup> Polychlorinated biphenyls (CAS RN 1336-36-3); this category contains congener chemicals, including constituents of Aroclor 1016 (CAS RN 12674-11-2), Aroclor 1221 (CAS RN 11104-28-2), Aroclor 1232 (CAS RN 11141-16-5), Aroclor 1242 (CAS RN 53469-21-9), Aroclor 1248 (CAS RN 12672-29-6), Aroclor 1254 (CAS RN 11097-69-1), and Aroclor 1260 (CAS RN 11096-82-5). The PQL shown is an average value for PCB congeners.  
<sup>10</sup> Toxaphene: This entry includes congener chemicals contained in technical toxaphene (CAS RN 8001-35-2), i.e., chlorinated camphene.  
<sup>11</sup> Xylene (total): This entry includes o-xylene (CAS RN 96-47-6), m-xylene (CAS RN 106-38-3), p-xylene (CAS RN 106-42-3), and unspecified xylenes (dimethylbenzenes) (CAS RN 1330-20-7). PQLs for method 8021 are 0.2 for o-xylene and 0.1 for m- or p-xylene. The PQL for m-xylene is 2.0 µg/L by method 8020 or 8260.

**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS  
SOLID WASTE MANAGEMENT REGULATIONS**

**APPENDIX II**

**40 CFR 257 (1999)**

Adopted by reference, in its entirety,  
as Section 6.1 of the CNMI regulations

**PART 257—CRITERIA FOR CLASSIFICATION OF SOLID WASTE DISPOSAL FACILITIES AND PRACTICES**

**Subpart A—Classification of Solid Waste Disposal Facilities and Practices**

**Sec.**

- 257.1 Scope and purpose.
- 257.2 Definitions.
- 257.3 Criteria for classification of solid waste disposal facilities and practices.
  - 257.3-1 Floodplains.
  - 257.3-2 Endangered species.
  - 257.3-3 Surface water.
  - 257.3-4 Ground water.
  - 257.3-5 Application to land used for the production of food-chain crops (interim final).
  - 257.3-6 Disease.
  - 257.3-7 Air.
  - 257.3-8 Safety.
  - 257.4 Effective date.

**Subpart B—Disposal Standards for the Receipt of Conditionally Exempt Small Quantity Generator (CESQG) Wastes at Non-Municipal Non-Hazardous Waste Disposal Units**

- 257.5 Disposal standards for owners/operators of non-municipal non-hazardous waste disposal units that receive Conditionally Exempt Small Quantity Generator (CESQG) waste.

**LOCATION RESTRICTIONS**

- 257.7 [Reserved]
- 257.8 Floodplains.
- 257.9 Wetlands.
- 257.10-257.12 [Reserved]
- 257.13 Deadline for making demonstrations.

**GROUND-WATER MONITORING AND CORRECTIVE ACTION**

- 257.21 Applicability.
- 257.22 Ground-water monitoring systems.
- 257.23 Ground-water sampling and analysis requirements.
- 257.24 Detection monitoring program.
- 257.25 Assessment monitoring program.
- 257.26 Assessment of corrective measures.
- 257.27 Selection of remedy.
- 257.28 Implementation of the corrective action program.
- 257.29 [Reserved]

**RECORDKEEPING REQUIREMENTS**

- 257.30 Recordkeeping requirements.

**APPENDIX I TO PART 257—MAXIMUM CONTAMINANT LEVELS (MCLs)**

**APPENDIX II TO PART 257**

AUTHORITY: 42 U.S.C. 6907(a)(3), 6912(a)(1), 6944(a) and 6949(c), 33 U.S.C. 1345 (d) and (e).

SOURCE: 44 FR 53460, Sept. 13, 1979, unless otherwise noted.

**Subpart A—Classification of Solid Waste Disposal Facilities and Practices**

**§ 257.1 Scope and purpose.**

(a) Unless otherwise provided, the criteria in §§257.1 through 257.4 are adopted for determining which solid waste disposal facilities and practices pose a reasonable probability of adverse effects on health or the environment under sections 1008(a)(3) and 4004(a) of the Resource Conservation and Recovery Act (The Act). Unless otherwise provided, the criteria in §§257.5 through 257.30 are adopted for purposes of ensuring that non-municipal non-hazardous waste disposal units that receive conditionally exempt small quantity generator (CESQG) waste do not present risks to human health and the environment taking into account the practicable capability of such units in accordance with section 4010(c) of the Act.

(1) Facilities failing to satisfy either the criteria in §§257.1 through 257.4 or §§257.5 through 257.30 are considered open dumps, which are prohibited under section 4005 of the Act.

(2) Practices failing to satisfy either the criteria in §§257.1 through 257.4 or §§257.5 through 257.30 constitute open dumping, which is prohibited under section 4005 of the Act.

(b) These criteria also provide guidelines for the disposal of sewage sludge on the land when the sewage sludge is not used or disposed through a practice regulated in 40 CFR part 503.

(c) These criteria apply to all solid waste disposal facilities and practices with the following exceptions:

(1) The criteria do not apply to agricultural wastes, including manures and crop residues, returned to the soil as fertilizers or soil conditioners.

(2) The criteria do not apply to overburden resulting from mining operations intended for return to the mine site.

(3) The criteria do not apply to the land application of domestic sewage or treated domestic sewage.

(4) The criteria do not apply to the location and operation of septic tanks. The criteria do, however, apply to the disposal of septic tank pumpings.

(5) The criteria do not apply to solid or dissolved materials in irrigation return flows.

(6) The criteria do not apply to industrial discharges which are point sources subject to permits under section 402 of the Clean Water Act, as amended.

(7) The criteria do not apply to source, special nuclear or byproduct material as defined by the Atomic Energy Act, as amended (68 Stat. 923).

(8) The criteria do not apply to hazardous waste disposal facilities which are subject to regulation under subtitle C of the Act.

(9) The criteria do not apply to disposal of solid waste by underground well injection subject to the regulations (40 CFR part 146) for the Underground Injection Control Program (UICP) under the Safe Drinking Water Act, as amended, 42 U.S.C. 3007 *et seq.*

(10) The criteria of this part do not apply to municipal solid waste landfill units, which are subject to the revised criteria contained in part 258 of this chapter.

(11) The criteria do not apply to the use or disposal sewage sludge on the land when the sewage sludge is used or disposed in accordance with 40 CFR part 503.

[44 FR 53460, Sept. 13, 1979, as amended at 46 FR 47052, Sept. 23, 1981; 56 FR 51016, Oct. 9, 1991; 58 FR 9385, Feb. 19, 1993; 61 FR 34269, July 1, 1996]

#### § 257.2 Definitions.

The definitions set forth in section 1004 of the Act apply to this part. Special definitions of general concern to this part are provided below, and definitions especially pertinent to particular sections of this part are provided in those sections.

*Disposal* means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged

into any waters, including ground waters.

*Domestic septage* is either liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works that receives either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap at a restaurant.

*Facility* means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of solid waste.

*Land application unit* means an area where wastes are applied onto or incorporated into the soil surface (excluding manure spreading operations) for agricultural purposes or for treatment and disposal.

*Landfill* means an area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile.

*Leachate* means liquid that has passed through or emerged from solid waste and contains soluble, suspended or miscible materials removed from such wastes.

*Municipal solid waste landfill (MSWLF) unit* means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined in this section. A MSWLF unit also may receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, and industrial solid waste. Such a landfill may be publicly or privately owned. An MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion.

*Open dump* means a facility for the disposal of solid waste which does not comply with this part.

*Practice* means the act of disposal of solid waste.

*Sanitary landfill* means a facility for the disposal of solid waste which complies with this part.

*Sewage sludge* means solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

*Sludge* means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility or any other such waste having similar characteristics and effect.

*Solid waste* means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

*State* means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

*Surface impoundment* or *impoundment* means a facility or part of a facility that is a natural topographic depression, human-made excavation, or diked area formed primarily of earthen materials (although it may be lined with human-made materials), that is designed to hold an accumulation of liquid wastes or wastes containing free liquids and that is not an injection

well. Examples of surface impoundments are holding storage, settling, and aeration pits, ponds, and lagoons.

*Waste pile* or *pile* means any non-containerized accumulation of solid, nonflowing waste that is used for treatment or storage.

[44 FR 53460, Sept. 13, 1979; 44 FR 58910, Oct. 12, 1979; 56 FR 51016, Oct. 9, 1991; 58 FR 9385, Feb. 19, 1993]

#### § 257.3 Criteria for classification of solid waste disposal facilities and practices.

Solid waste disposal facilities or practices which violate any of the following criteria pose a reasonable probability of adverse effects on health or the environment:

##### § 257.3-1 Floodplains.

(a) Facilities or practices in floodplains shall not restrict the flow of the base flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste, so as to pose a hazard to human life, wildlife, or land or water resources.

(b) As used in this section:

(1) *Based flood* means a flood that has a 1 percent or greater chance of recurring in any year or a flood of a magnitude equalled or exceeded once in 100 years on the average over a significantly long period.

(2) *Floodplain* means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, which are inundated by the base flood.

(3) *Washout* means the carrying away of solid waste by waters of the base flood.

[44 FR 53460, Sept. 13, 1979; 44 FR 54708, Sept. 21, 1979]

##### § 257.3-2 Endangered species.

(a) Facilities or practices shall not cause or contribute to the taking of any endangered or threatened species of plants, fish, or wildlife.

(b) The facility or practice shall not result in the destruction or adverse modification of the critical habitat of endangered or threatened species as identified in 50 CFR part 17.

(c) As used in this section:

(1) *Endangered or threatened species* means any species listed as such pursuant to section 4 of the Endangered Species Act.

(2) *Destruction or adverse modification* means a direct or indirect alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

(3) *Taking* means harassing, harming, pursuing, hunting, wounding, killing, trapping, capturing, or collecting or attempting to engage in such conduct.

§ 257.3-3 Surface water.

(a) For purposes of section 4004(a) of the Act, a facility shall not cause a discharge of pollutants into waters of the United States that is in violation of the requirements of the National Pollutant Discharge Elimination System (NPDES) under section 402 of the Clean Water Act, as amended.

(b) For purposes of section 4004(a) of the Act, a facility shall not cause a discharge of dredged material or fill material to waters of the United States that is in violation of the requirements under section 404 of the Clean Water Act, as amended.

(c) A facility or practice shall not cause non-point source pollution of waters of the United States that violates applicable legal requirements implementing an areawide or Statewide water quality management plan that has been approved by the Administrator under section 208 of the Clean Water Act, as amended.

(d) Definitions of the terms *Discharge of dredged material*, *Point source*, *Pollutant*, *Waters of the United States*, and *Wetlands* can be found in the Clean Water Act, as amended, 33 U.S.C. 1251 *et seq.*, and implementing regulations, specifically 33 CFR part 323 (42 FR 37122, July 19, 1977).

[44 FR 53460, Sept. 13, 1979, as amended at 46 FR 47052, Sept. 23, 1981]

§ 257.3-4 Ground water.

(a) A facility or practice shall not contaminate an underground drinking water source beyond the solid waste boundary or beyond an alternative boundary specified in accordance with paragraph (b) of this section.

(b)(1) For purposes of section 1008(a)(3) of the Act or section 405(d) of the CWA, a party charged with open dumping or a violation of section 405(e) with respect to sewage sludge that is not used or disposed through a practice regulated in 40 CFR part 503 may demonstrate that compliance should be determined at an alternative boundary in lieu of the solid waste boundary. The court shall establish an alternative boundary only if it finds that such a change would not result in contamination of ground water which may be needed or used for human consumption. This finding shall be based on analysis and consideration of all of the following factors that are relevant:

(i) The hydrogeological characteristics of the facility and surrounding land, including any natural attenuation and dilution characteristics of the aquifer;

(ii) The volume and physical and chemical characteristics of the leachate;

(iii) The quantity, quality, and direction of flow of ground water underlying the facility;

(iv) The proximity and withdrawal rates of ground-water users;

(v) The availability of alternative drinking water supplies;

(vi) The existing quality of the ground water, including other sources of contamination and their cumulative impacts on the ground water;

(vii) Public health, safety, and welfare effects.

(2) For purposes of sections 4004(a) and 1008(a)(3), the State may establish an alternative boundary for a facility to be used in lieu of the solid waste boundary only if it finds that such a change would not result in the contamination of ground water which may be needed or used for human consumption. Such a finding shall be based on an analysis and consideration of all of the factors identified in paragraph (b)(1) of this section that are relevant.

(c) As used in this section:

(1) *Aquifer* means a geologic formation, group of formations, or portion of a formation capable of yielding usable quantities of ground water to wells or springs.

(2) *Contaminate* means introduce a substance that would cause:

Environmental Protection Agency, EPA

§ 257.3-5

(i) The concentration of that substance in the ground water to exceed the maximum contaminant level specified in appendix I, or

(ii) An increase in the concentration of that substance in the ground water where the existing concentration of that substance exceeds the maximum contaminant level specified in appendix I.

(3) *Ground water* means water below the land surface in the zone of saturation.

(4) *Underground drinking water source* means:

(i) An aquifer supplying drinking water for human consumption, or

(ii) An aquifer in which the ground water contains less than 10,000 mg/l total dissolved solids.

(5) *Solid waste boundary* means the outermost perimeter of the solid waste (projected in the horizontal plane) as it would exist at completion of the disposal activity.

[44 FR 53460, Sept. 13, 1979, as amended at 46 FR 47052, Sept. 23, 1981; 58 FR 9386, Feb. 19, 1993]

§ 257.3-5 Application to land used for the production of food-chain crops (interim final).

(a) *Cadmium*. A facility or practice concerning application of solid waste to within one meter (three feet) of the surface of land used for the production of food-chain crops shall not exist or occur, unless in compliance with all requirements of paragraphs (a)(1) (i) through (iii) of this section or all requirements of paragraphs (a)(2) (i) through (iv) of this section.

(1)(i) The pH of the solid waste and soil mixture is 6.5 or greater at the time of each solid waste application, except for solid waste containing cadmium at concentrations of 2 mg/kg (dry weight) or less.

(ii) The annual application of cadmium from solid waste does not exceed 0.5 kilograms per hectare (kg/ha) on land used for production of tobacco, leafy vegetables or root crops grown for human consumption. For other food-chain crops, the annual cadmium application rate does not exceed:

Time period	Annual Cd application rate (kg/ha)
Present to June 30, 1984 .....	2.0
July 1, 1984 to December 31, 1986 .....	1.25
Beginning January 1, 1987 .....	0.5

(iii) The cumulative application of cadmium from solid waste does not exceed the levels in either paragraph (a)(1)(iii)(A) or (B) of this section.

Soil cation exchange capacity (meq/100g)	Maximum cumulative application (kg/ha)	
	Background soil pH less than 6.5	Background soil pH more than 6.5
Less than 5 .....	5	5
5 to 15 .....	5	10
More than 15 .....	5	20

(B) For soils with a background pH of less than 6.5, the cumulative cadmium application rate does not exceed the levels below: *Provided*, That the pH of the solid waste and soil mixture is adjusted to and maintained at 6.5 or greater whenever food-chain crops are grown.

Soil cation exchange capacity (meq/100g)	Maximum cumulative application (kg/ha)
Less than 5 .....	5
5 to 15 .....	10
More than 15 .....	20

(2)(i) The only food-chain crop produced is animal feed.

(ii) The pH of the solid waste and soil mixture is 6.5 or greater at the time of solid waste application or at the time the crop is planted, whichever occurs later, and this pH level is maintained whenever food-chain crops are grown.

(iii) There is a facility operating plan which demonstrates how the animal feed will be distributed to preclude ingestion by humans. The facility operating plan describes the measures to be taken to safeguard against possible health hazards from cadmium entering the food chain, which may result from alternative land uses.

(iv) Future property owners are notified by a stipulation in the land record or property deed which states that the property has received solid waste at high cadmium application rates and



that food-chain crops should not be grown, due to a possible health hazard.

(b) *Polychlorinated Biphenyls (PCBs)*. Solid waste containing concentrations of PCBs equal to or greater than 10 mg/kg (dry weight) is incorporated into the soil when applied to land used for producing animal feed, including pasture crops for animals raised for milk. Incorporation of the solid waste into the soil is not required if it is assured that the PCB content is less than 0.2 mg/kg (actual weight) in animal feed or less than 1.5 mg/kg (fat basis) in milk.

(c) As used in this section:

(1) *Animal feed* means any crop grown for consumption by animals, such as pasture crops, forage, and grain.

(2) *Background soil pH* means the pH of the soil prior to the addition of substances that alter the hydrogen ion concentration.

(3) *Cation exchange capacity* means the sum of exchangeable cations a soil can absorb expressed in milli-equivalents per 100 grams of soil as determined by sampling the soil to the depth of cultivation or solid waste placement, whichever is greater, and analyzing by the summation method for distinctly acid soils or the sodium acetate method for neutral, calcareous or saline soils ("Methods of Soil Analysis, Agronomy Monograph No. 9." C. A. Black, ed., American Society of Agronomy, Madison, Wisconsin, pp 891-901, 1965).

(4) *Food-chain crops* means tobacco, crops grown for human consumption, and animal feed for animals whose products are consumed by humans.

(5) *Incorporated into the soil* means the injection of solid waste beneath the surface of the soil or the mixing of solid waste with the surface soil.

(6) *Pasture crops* means crops such as legumes, grasses, grain stubble and stover which are consumed by animals while grazing.

(7) *pH* means the logarithm of the reciprocal of hydrogen ion concentration.

(8) *Root crops* means plants whose edible parts are grown below the surface of the soil.

(9) *Soil pH* is the value obtained by sampling the soil to the depth of cultivation or solid waste placement, whichever is greater, and analyzing by the electrometric method. ("Methods

of Soil Analysis, Agronomy Monograph No. 9," C.A. Black, ed., American Society of Agronomy, Madison, Wisconsin, pp. 914-926, 1965.)

[44 FR 53460, Sept. 13, 1979; 44 FR 54708, Sept. 21, 1979]

#### § 257.3-6 Disease.

(a) *Disease Vectors*. The facility or practice shall not exist or occur unless the on-site population of disease vectors is minimized through the periodic application of cover material or other techniques as appropriate so as to protect public health.

(b) *Sewage sludge and septic tank pumpings (Interim Final)*. A facility or practice involving disposal of sewage sludge or septic tank pumpings shall not exist or occur unless in compliance with paragraphs (b) (1), (2) or (3) of this section.

(1) Sewage sludge that is applied to the land surface or is incorporated into the soil is treated by a Process to Significantly Reduce Pathogens prior to application or incorporation. Public access to the facility is controlled for at least 12 months, and grazing by animals whose products are consumed by humans is prevented for at least one month. Processes to Significantly Reduce Pathogens are listed in appendix II, section A. (These provisions do not apply to sewage sludge disposed of by a trenching or burial operation.)

(2) Septic tank pumpings that are applied to the land surface or incorporated into the soil are treated by a Process to Significantly Reduce Pathogens (as listed in appendix II, section A), prior to application or incorporation, unless public access to the facility is controlled for at least 12 months and unless grazing by animals whose products are consumed by humans is prevented for at least one month. (These provisions do not apply to septic tank pumpings disposed of by a trenching or burial operation.)

(3) Sewage sludge or septic tank pumpings that are applied to the land surface or are incorporated into the soil are treated by a Process to Further Reduce Pathogens, prior to application or incorporation, if crops for direct human consumption are grown within 18 months subsequent to application or

incorporation. Such treatment is not required if there is no contact between the solid waste and the edible portion of the crop; however, in this case the solid waste is treated by a Process to Significantly Reduce Pathogens, prior to application; public access to the facility is controlled for at least 12 months; and grazing by animals whose products are consumed by humans is prevented for at least one month. If crops for direct human consumption are not grown within 18 months of application or incorporation, the requirements of paragraphs (b) (1) and (2) of this section apply. Processes to Further Reduce Pathogens are listed in appendix II, section B.

(c) As used in this section:

(1) *Crops for direct human consumption* means crops that are consumed by humans without processing to minimize pathogens prior to distribution to the consumer.

(2) *Disease vector* means rodents, flies, and mosquitoes capable of transmitting disease to humans.

(3) *Incorporated into the soil* means the injection of solid waste beneath the surface of the soil or the mixing of solid waste with the surface soil.

(4) *Periodic application of cover material* means the application and compaction of soil or other suitable material over disposed solid waste at the end of each operating day or at such frequencies and in such a manner as to reduce the risk of fire and to impede vectors access to the waste.

(5) *Trenching or burial operation* means the placement of sewage sludge or septic tank pumpings in a trench or other natural or man-made depression and the covering with soil or other suitable material at the end of each operating day such that the wastes do not migrate to the surface.

[44 FR 53460, Sept. 13, 1979; 44 FR 54708, Sept. 21, 1979]

#### § 257.3-7 Air.

(a) The facility or practice shall not engage in open burning of residential, commercial, institutional or industrial solid waste. This requirement does not apply to infrequent burning of agricultural wastes in the field, silvicultural wastes for forest management pur-

poses, land-clearing debris, diseased trees, debris from emergency clean-up operations, and ordnance.

(b) For purposes of section 4004(a) of the Act, the facility shall not violate applicable requirements developed under a State Implementation Plan (SIP) approved or promulgated by the Administrator pursuant to section 110 of the Clean Air Act, as amended.

(c) As used in this section "open burning" means the combustion of solid waste without (1) control of combustion air to maintain adequate temperature for efficient combustion, (2) containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and (3) control of the emission of the combustion products.

[44 FR 53460, Sept. 13, 1979; 44 FR 54708, Sept. 21, 1979, as amended at 46 FR 47052, Sept. 23, 1981]

#### § 257.3-8 Safety.

(a) *Explosive gases.* The concentration of explosive gases generated by the facility or practice shall not exceed:

(1) Twenty-five percent (25%) of the lower explosive limit for the gases in facility structures (excluding gas control or recovery system components); and

(2) The lower explosive limit for the gases at the property boundary.

(b) *Fires.* A facility or practice shall not pose a hazard to the safety of persons or property from fires. This may be accomplished through compliance with § 257.3-7 and through the periodic application of cover material or other techniques as appropriate.

(c) *Bird hazards to aircraft.* A facility or practice disposing of putrescible wastes that may attract birds and which occurs within 10,000 feet (3,048 meters) of any airport runway used by turbojet aircraft or within 5,000 feet (1,524 meters) of any airport runway used by only piston-type aircraft shall not pose a bird hazard to aircraft.

(d) *Access.* A facility or practice shall not allow uncontrolled public access so as to expose the public to potential health and safety hazards at the disposal site.

(e) As used in this section:

(1) *Airport* means public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

(2) *Bird hazard* means an increase in the likelihood of bird/aircraft collisions that may cause damage to the aircraft or injury to its occupants.

(3) *Explosive gas* means methane (CH<sub>4</sub>).

(4) *Facility structures* means any buildings and sheds or utility or drainage lines on the facility.

(5) *Lower explosive limit* means the lowest percent by volume of a mixture of explosive gases which will propagate a flame in air at 25 °C and atmospheric pressure.

(6) *Periodic application of cover material* means the application and compaction of soil or other suitable material over disposed solid waste at the end of each operating day or at such frequencies and in such a manner as to reduce the risk of fire and to impede disease vectors' access to the waste.

(7) *Putrescible wastes* means solid waste which contains organic matter capable of being decomposed by microorganisms and of such a character and proportion as to be capable of attracting or providing food for birds.

#### § 257.4 Effective date.

These criteria become effective October 15, 1979.

### Subpart B—Disposal Standards for the Receipt of Conditionally Exempt Small Quantity Generator (CESQG) Wastes at Non-Municipal Non-Hazardous Waste Disposal Units

SOURCE: 61 FR 34269, July 1, 1996, unless otherwise noted.

#### § 257.5 Disposal standards for owners/operators of non-municipal non-hazardous waste disposal units that receive Conditionally Exempt Small Quantity Generator (CESQG) waste.

(a) *Applicability.* (1) The requirements in this section apply to owners/operators of any non-municipal non-hazardous waste disposal unit that receives CESQG hazardous waste, as defined in 40 CFR 261.5. Non-municipal

non-hazardous waste disposal units that meet the requirements of this section may receive CESQG wastes. Any owner/operator of a non-municipal non-hazardous waste disposal unit that receives CESQG hazardous waste continues to be subject to the requirements in §§ 257.3-2, 257.3-3, 257.3-5, 257.3-6, 257.3-7, and 257.3-8 (a), (b), and (d).

(2) Any non-municipal non-hazardous waste disposal unit that is receiving CESQG hazardous waste as of January 1, 1998, must be in compliance with the requirements in §§ 257.7 through 257.13 and § 257.30 by January 1, 1998, and the requirements in §§ 257.21 through 257.28 by July 1, 1998.

(3) Any non-municipal non-hazardous waste disposal unit that does not meet the requirements in this section may not receive CESQG wastes.

(4) Any non-municipal non-hazardous waste disposal unit that is not receiving CESQG Hazardous waste as of January 1, 1998, continues to be subject to the requirements in §§ 257.1 through 257.4.

(5) Any non-municipal non-hazardous waste disposal unit that first receives CESQG hazardous waste after January 1, 1998, must be in compliance with §§ 257.7 through 257.30 prior to the receipt of CESQG hazardous waste.

#### (b) Definitions.

*Active life* means the period of operation beginning with the initial receipt of solid waste and ending at the final receipt of solid waste.

*Existing unit* means any non-municipal non-hazardous waste disposal unit that is receiving CESQG hazardous waste as of January 1, 1998.

*Facility* means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of non-municipal non-hazardous waste.

*Lateral expansion* means a horizontal expansion of the waste boundaries of an existing non-municipal non-hazardous waste disposal unit.

*New unit* means any non-municipal non-hazardous waste disposal unit that has not received CESQG hazardous waste prior to January 1, 1998.

*State* means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American

Samoa, and the Commonwealth of the Northern Mariana Islands.

*State Director* means the chief administrative officer of the lead state agency responsible for implementing the state permit program for 40 CFR part 257, subpart B and 40 CFR part 258 regulated facilities.

*Waste management unit boundary* means a vertical surface located at the hydraulically downgradient limit of the unit. This vertical surface extends down into the uppermost aquifer.

[61 FR 34269, July 1, 1996, as amended at 63 FR 57044, Oct. 23, 1998]

#### LOCATION RESTRICTIONS

#### § 257.7 [Reserved]

#### § 257.8 Floodplains.

(a) Owners or operators of new units, existing units, and lateral expansions located in 100-year floodplains must demonstrate that the unit will not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human health and the environment. The owner or operator must place the demonstration in the operating record and notify the State Director that it has been placed in the operating record.

(b) For purposes of this section:

(1) *Floodplain* means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, that are inundated by the 100-year flood.

(2) *100-year flood* means a flood that has a 1-percent or greater chance of recurring in any given year or a flood of a magnitude equalled or exceeded once in 100 years on the average over a significantly long period.

(3) *Washout* means the carrying away of solid waste by waters of the base flood.

#### § 257.9 Wetlands.

(a) Owners or operators of new units and lateral expansions shall not locate such units in wetlands, unless the owner or operator can make the following demonstrations to the Director of an approved State:

(1) Where applicable under section 404 of the Clean Water Act or applicable State wetlands laws, the presumption that a practicable alternative to the proposed landfill is available which does not involve wetlands is clearly rebutted:

(2) The construction and operation of the unit will not:

(i) Cause or contribute to violations of any applicable State water quality standard;

(ii) Violate any applicable toxic effluent standard or prohibition under Section 307 of the Clean Water Act;

(iii) Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Endangered Species Act of 1973; and

(iv) Violate any requirement under the Marine Protection, Research, and Sanctuaries Act of 1972 for the protection of a marine sanctuary;

(3) The unit will not cause or contribute to significant degradation of wetlands. The owner/operator must demonstrate the integrity of the unit and its ability to protect ecological resources by addressing the following factors:

(i) Erosion, stability, and migration potential of native wetland soils, muds and deposits used to support the unit;

(ii) Erosion, stability, and migration potential of dredged and fill materials used to support the unit;

(iii) The volume and chemical nature of the waste managed in the unit;

(iv) Impacts on fish, wildlife, and other aquatic resources and their habitat from release of the waste;

(v) The potential effects of catastrophic release of waste to the wetland and the resulting impacts on the environment; and

(vi) Any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected.

(4) To the extent required under section 404 of the Clean Water Act or applicable State wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands (as defined by acreage and function) by first avoiding impacts to wetlands to the maximum

extent practicable as required by paragraph (a)(1) of this section, then minimizing unavoidable impacts to the maximum extent practicable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands); and

(5) Sufficient information is available to make a reasonable determination with respect to these demonstrations.

(b) For purposes of this section, wetlands means those areas that are defined in 40 CFR 232.2(r).

§§ 257.10-257.12 [Reserved]

§ 257.13 Deadline for making demonstrations.

Existing units that cannot make the demonstration specified in §257.8(a) pertaining to floodplains by January 1, 1998, must not accept CESQG hazardous waste for disposal.

GROUND-WATER MONITORING AND CORRECTIVE ACTION

§ 257.21 Applicability.

(a) The requirements in this section apply to units identified in §257.5(a), except as provided in paragraph (b) of this section.

(b) Ground-water monitoring requirements under §§257.22 through 257.25 may be suspended by the Director of an approved State for a unit identified in §257.5(a) if the owner or operator can demonstrate that there is no potential for migration of hazardous constituents from that unit to the uppermost aquifer during the active life of the unit plus 30 years. This demonstration must be certified by a qualified ground-water scientist and approved by the Director of an approved State, and must be based upon:

(1) Site-specific field collected measurements, sampling, and analysis of physical, chemical, and biological processes affecting contaminant fate and transport; and

(2) Contaminant fate and transport predictions that maximize contaminant migration and consider impacts on human health and environment.

(c) Owners and operators of facilities identified in §257.5(a) must comply

with the ground-water monitoring requirements of this section according to the following schedule unless an alternative schedule is specified under paragraph (d) of this section:

(1) Existing units and lateral expansions must be in compliance with the ground-water monitoring requirements specified in §§257.22 through 257.25 by July 1, 1998.

(2) New units identified in §257.5(a) must be in compliance with the ground-water monitoring requirements specified in §§257.22 through 257.25 before waste can be placed in the unit.

(d) The Director of an approved State may specify an alternative schedule for the owners or operators of existing units and lateral expansions to comply with the ground-water monitoring requirements specified in §§257.22 through 257.25. This schedule must ensure that 50 percent of all existing units are in compliance by July 1, 1998, and all existing units are in compliance by July 1, 1999. In setting the compliance schedule, the Director of an approved State must consider potential risks posed by the unit to human health and the environment. The following factors should be considered in determining potential risk:

(1) Proximity of human and environmental receptors;

(2) Design of the unit;

(3) Age of the unit;

(4) The size of the unit; and

(5) Resource value of the underlying aquifer, including:

(i) Current and future uses;

(ii) Proximity and withdrawal rate of users; and

(iii) Ground-water quality and quantity.

(e) Once established at a unit, ground-water monitoring shall be conducted throughout the active life plus 30 years. The Director of an approved State may decrease the 30 year period if the owner/operator demonstrates that a shorter period of time is adequate to protect human health and the environment and the Director approves the demonstration.

(f) For the purposes of this section, a qualified ground-water scientist is a scientist or engineer who has received

a baccalaureate or post-graduate degree in the natural sciences or engineering and has sufficient training and experience in ground-water hydrology and related fields as may be demonstrated by State registration, professional Certifications, or completion of accredited university programs that enable that individual to make sound professional judgments regarding ground-water monitoring, contaminant fate and transport, and corrective-action.

(g) The Director of an approved State may establish alternative schedules for demonstrating compliance with § 257.22(d)(2), pertaining to notification of placement of certification in operating record; § 257.24(c)(1), pertaining to notification that statistically significant increase (SSI) notice is in operating record; § 257.24(c) (2) and (3), pertaining to an assessment monitoring program; § 257.25(b), pertaining to sampling and analyzing appendix II of part 258 constituents; § 257.25(d)(1), pertaining to placement of notice (appendix II of 40 CFR part 258 constituents detected) in record and notification of notice in record; § 257.25(d)(2), pertaining to sampling for appendix I and II of 40 CFR part 258; § 257.25(g), pertaining to notification (and placement of notice in record) of SSI above ground-water protection standard; §§ 257.25(g)(1)(iv) and 257.26(a), pertaining to assessment of corrective measures; § 257.27(a), pertaining to selection of remedy and notification of placement in record; § 257.28(c)(4), pertaining to notification of placement in record (alternative corrective action measures); and § 257.28(f), pertaining to notification of placement in record (certification of remedy completed).

(h) Directors of approved States can use the flexibility in paragraph (i) of this section for any non-municipal non-hazardous waste disposal unit that receives CESQG waste, if the non-municipal non-hazardous waste disposal unit:

(1) Disposes of less than 20 tons of non-municipal waste daily, based on an annual average; and

(2) Has no evidence of ground-water contamination; and either

(3) Serves a community that experiences an annual interruption of at least three consecutive months of sur-

face transportation that prevents access to a regional waste management facility; or

(4) Serves a community that has no practicable waste management alternative and the non-municipal solid waste disposal facility is located in an area that annually receives less than or equal to 25 inches of precipitation.

(5) Owners/operators of any non-municipal non-hazardous waste disposal unit that meets the criteria in paragraph (h) of this section must place in the operating record information demonstrating this.

(i) Directors of approved States may allow any non-municipal non-hazardous waste disposal unit meeting the criteria in paragraph (h) of this section to:

(1) Use alternatives to the ground-water monitoring system prescribed in §§ 257.22 through 257.25 so long as the alternatives will detect and, if necessary, assess the nature or extent of contamination from the non-municipal non-hazardous waste disposal unit on a site-specific basis; or establish and use, on a site-specific basis, an alternative list of indicator parameters for some or all of the constituents listed in appendix I (Appendix I of 40 CFR part 258). Alternative indicator parameters approved by the Director of an approved State under this section must ensure detection of contamination from the non-municipal non-hazardous waste disposal unit.

(2) If contamination is detected through the use of any alternative to the ground-water monitoring system prescribed in §§ 257.22 through 257.25, the non-municipal non-hazardous waste disposal unit owner or operator must perform expanded monitoring to determine whether the detected contamination is an actual release from the non-municipal solid waste disposal unit and, if so, to determine the nature and extent of the contamination. The Director of the approved State shall establish a schedule for the non-municipal non-hazardous waste disposal unit owner or operator to submit results from expanded monitoring in a manner that ensures protection of human health and the environment.

(i) If expanded monitoring indicates that contamination from the non-municipal non-hazardous waste disposal unit has reached the saturated zone, the owner or operator must install ground-water monitoring wells and sample these wells in accordance with §§ 257.22 through 257.25.

(ii) If expanded monitoring indicates that contamination from the non-municipal non-hazardous waste disposal unit is present in the unsaturated zone or on the surface, the Director of an approved State shall establish a schedule for the owner or operator to submit a description of any necessary corrective measures. The schedule shall ensure corrective measures, where necessary, are undertaken in a timely manner that protects human health and the environment. The proposed corrective measures are subject to revision and approval by the Director of the approved State. The owner or operator must implement the corrective measures according to a schedule established by the Director of the approved State.

(3) When considering whether to allow alternatives to a ground-water monitoring system prescribed in §§ 257.22 through 257.25, including alternative indicator parameters, the Director of an approved State shall consider at least the following factors:

(i) The geological and hydrogeological characteristics of the site;

(ii) The impact of manmade and natural features on the effectiveness of an alternative technology;

(iii) Climatic factors that may influence the selection, use, and reliability of alternative ground-water monitoring procedures; and

(iv) The effectiveness of indicator parameters in detecting a release.

(4) The Director of an approved State can require an owner or operator to comply with the requirements of §§ 257.22 through 257.25, where it is determined by the Director that using alternatives to ground-water monitoring approved under this paragraph are inadequate to detect contamination and, if necessary, to assess the nature and extent of contamination.

**§ 257.22 Ground-water monitoring systems.**

(a) A ground-water monitoring system must be installed that consists of a sufficient number of wells, installed at appropriate locations and depths, to yield ground-water samples from the uppermost aquifer (as defined in § 257.5(b)) that:

(1) Represent the quality of background ground water that has not been affected by leakage from a unit. A determination of background quality may include sampling of wells that are not hydraulically upgradient of the waste management area where:

(i) Hydrogeologic conditions do not allow the owner or operator to determine what wells are hydraulically upgradient; or

(ii) Sampling at other wells will provide an indication of background ground-water quality that is as representative or more representative than that provided by the upgradient wells; and

(2) Represent the quality of ground water passing the relevant point of compliance specified by the Director of an approved State or at the waste management unit boundary in an unapproved State. The downgradient monitoring system must be installed at the relevant point of compliance specified by the Director of an approved State or at the waste management unit boundary in an unapproved State that ensures detection of ground-water contamination in the uppermost aquifer. The relevant point of compliance specified by the Director of an approved State shall be no more than 150 meters from the waste management unit boundary and shall be located on land owned by the owner of the facility. In determining the relevant point of compliance the State Director shall consider at least the following factors: the hydrogeologic characteristics of the unit and surrounding land, the volume and physical and chemical characteristics of the leachate, the quantity, quality and direction of flow of ground water, the proximity and withdrawal rate of the ground-water users, the availability of alternative drinking water supplies, the existing quality of the ground water, including other

sources of contamination and their cumulative impacts on the ground water, and whether the ground water is currently used or reasonably expected to be used for drinking water, public health, safety, and welfare effects, and practicable capability of the owner or operator. When physical obstacles preclude installation of ground-water monitoring wells at the relevant point of compliance at existing units, the down-gradient monitoring system may be installed at the closest practicable distance hydraulically down-gradient from the relevant point of compliance specified by the Director of an approved State that ensures detection of groundwater contamination in the uppermost aquifer.

(b) The Director of an approved State may approve a multi-unit ground-water monitoring system instead of separate ground-water monitoring systems for each unit when the facility has several units, provided the multi-unit ground-water monitoring system meets the requirement of § 257.22(a) and will be as protective of human health and the environment as individual monitoring systems for each unit, based on the following factors:

- (1) Number, spacing, and orientation of the units;
- (2) Hydrogeologic setting;
- (3) Site history;
- (4) Engineering design of the units; and
- (5) Type of waste accepted at the units.

(c) Monitoring wells must be cased in a manner that maintains the integrity of the monitoring well bore hole. This casing must be screened or perforated and packed with gravel or sand, where necessary, to enable collection of ground-water samples. The annular space (i.e., the space between the bore hole and well casing) above the sampling depth must be sealed to prevent contamination of samples and the ground water.

(1) The owner or operator must notify the State Director that the design, installation, development, and decommission of any monitoring wells, piezometers and other measurement, sampling, and analytical devices documentation has been placed in the operating record; and

(2) The monitoring wells, piezometers, and other measurement, sampling, and analytical devices must be operated and maintained so that they perform to design specifications throughout the life of the monitoring program.

(d) The number, spacing, and depths of monitoring systems shall be:

(1) Determined based upon site-specific technical information that must include thorough characterization of:

(i) Aquifer thickness, ground-water flow rate, ground-water flow direction including seasonal and temporal fluctuations in ground-water flow; and

(ii) Saturated and unsaturated geologic units and fill materials overlying the uppermost aquifer, materials comprising the uppermost aquifer, and materials comprising the confining unit defining the lower boundary of the uppermost aquifer; including, but not limited to: thicknesses, stratigraphy, lithology, hydraulic conductivities, porosities and effective porosities.

(2) Certified by a qualified ground-water scientist or approved by the Director of an approved State. Within 14 days of this certification, the owner or operator must notify the State Director that the certification has been placed in the operating record.

#### § 257.23 Ground-water sampling and analysis requirements.

(a) The ground-water monitoring program must include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of ground-water quality at the background and downgradient wells installed in compliance with § 257.22(a). The owner or operator must notify the State Director that the sampling and analysis program documentation has been placed in the operating record and the program must include procedures and techniques for:

- (1) Sample collection;
- (2) Sample preservation and shipment;
- (3) Analytical procedures;
- (4) Chain of custody control; and
- (5) Quality assurance and quality control.



(b) The ground-water monitoring program must include sampling and analytical methods that are appropriate for ground-water sampling and that accurately measure hazardous constituents and other monitoring parameters in ground-water samples. Ground-water samples shall not be field-filtered prior to laboratory analysis.

(c) The sampling procedures and frequency must be protective of human health and the environment.

(d) Ground-water elevations must be measured in each well immediately prior to purging, each time ground water is sampled. The owner or operator must determine the rate and direction of ground-water flow each time ground water is sampled. Ground-water elevations in wells which monitor the same waste management area must be measured within a period of time short enough to avoid temporal variations in ground-water flow which could preclude accurate determination of ground-water flow rate and direction.

(e) The owner or operator must establish background ground-water quality in a hydraulically upgradient or background well(s) for each of the monitoring parameters or constituents required in the particular ground-water monitoring program that applies to the unit, as determined under § 257.24(a), or § 257.25(a). Background ground-water quality may be established at wells that are not located hydraulically upgradient from the unit if it meets the requirements of § 257.22(a)(1).

(f) The number of samples collected to establish ground-water quality data must be consistent with the appropriate statistical procedures determined pursuant to paragraph (g) of this section. The sampling procedures shall be those specified under § 257.24(b) for detection monitoring, § 257.25 (b) and (d) for assessment monitoring, and § 257.26(b) for corrective action.

(g) The owner or operator must specify in the operating record one of the following statistical methods to be used in evaluating ground-water monitoring data for each hazardous constituent. The statistical test chosen shall be conducted separately for each hazardous constituent in each well.

(1) A parametric analysis of variance (ANOVA) followed by multiple com-

parisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent.

(2) An analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.

(3) A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.

(4) A control chart approach that gives control limits for each constituent.

(5) Another statistical test method that meets the performance standards of paragraph (h) of this section. The owner or operator must place a justification for this alternative in the operating record and notify the State Director of the use of this alternative test. The justification must demonstrate that the alternative method meets the performance standards of paragraph (h) of this section.

(h) Any statistical method chosen under paragraph (g) of this section shall comply with the following performance standards, as appropriate:

(1) The statistical method used to evaluate ground-water monitoring data shall be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution of the chemical parameters or hazardous constituents is shown by the owner or operator to be inappropriate for a normal theory test, then the data should be transformed or a distribution-free theory test should be used. If the distributions for the constituents differ, more than one statistical method may be needed.

(2) If an individual well comparison procedure is used to compare an individual compliance well constituent

concentration with background constituent concentrations or a ground-water protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I experiment wise error rate for each testing period shall be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons must be maintained. This performance standard does not apply to tolerance intervals, prediction intervals, or control charts.

(3) If a control chart approach is used to evaluate ground-water monitoring data, the specific type of control chart and its associated parameter values shall be protective of human health and the environment. The parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(4) If a tolerance interval or a prediction interval is used to evaluate ground-water monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain, shall be protective of human health and the environment. These parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(5) The statistical method shall account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any practical quantitation limit (pql) that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

(6) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(i) The owner or operator must determine whether or not there is a statis-

tically significant increase over background values for each parameter or constituent required in the particular ground-water monitoring program that applies to the unit, as determined under §§ 257.24(a) or 257.25(a).

(1) In determining whether a statistically significant increase has occurred, the owner or operator must compare the ground-water quality of each parameter or constituent at each monitoring well designated pursuant to § 257.22(a)(2) to the background value of that constituent, according to the statistical procedures and performance standards specified under paragraphs (g) and (h) of this section.

(2) Within a reasonable period of time after completing sampling and analysis, the owner or operator must determine whether there has been a statistically significant increase over background at each monitoring well.

#### § 257.24 Detection monitoring program.

(a) Detection monitoring is required at facilities identified in § 257.5(a) at all ground-water monitoring wells defined under §§ 257.22 (a)(1) and (a)(2). At a minimum, a detection monitoring program must include the monitoring for the constituents listed in appendix I of 40 CFR part 258.

(1) The Director of an approved State may delete any of the appendix I (Appendix I of 40 CFR part 258) monitoring parameters for a unit if it can be shown that the removed constituents are not reasonably expected to be contained in or derived from the waste contained in the unit.

(2) The Director of an approved State may establish an alternative list of indicator parameters for a unit, in lieu of some or all of the constituents in appendix I to 40 CFR part 258, if the alternative parameters provide a reliable indication of releases from the unit to the ground water. In determining alternative parameters, the Director shall consider the following factors:

(i) The types, quantities, and concentrations of constituents in waste managed at the unit;

(ii) The mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the unit;

§ 257.25

40 CFR Ch. I (7-1-99 Edition)

(iii) The detectability of indicator parameters, waste constituents, and reaction products in the ground water; and

(iv) The concentration or values and coefficients of variation of monitoring parameters or constituents in the groundwater background.

(b) The monitoring frequency for all constituents listed in appendix I to 40 CFR part 258, or in the alternative list approved in accordance with paragraph (a)(2) of this section, shall be at least semiannual during the active life of the unit plus 30 years. A minimum of four independent samples from each well (background and downgradient) must be collected and analyzed for the appendix I (Appendix I of 40 CFR part 258) constituents, or the alternative list approved in accordance with paragraph (a)(2) of this section, during the first semiannual sampling event. At least one sample from each well (background and downgradient) must be collected and analyzed during subsequent semiannual sampling events. The Director of an approved State may specify an appropriate alternative frequency for repeated sampling and analysis for appendix I (Appendix I of 40 CFR part 258) constituents, or the alternative list approved in accordance with paragraph (a)(2) of this section, during the active life plus 30 years. The alternative frequency during the active life shall be no less than annual. The alternative frequency shall be based on consideration of the following factors:

(1) Lithology of the aquifer and unsaturated zone;

(2) Hydraulic conductivity of the aquifer and unsaturated zone;

(3) Ground-water flow rates;

(4) Minimum distance between upgradient edge of the unit and downgradient monitoring well screen (minimum distance of travel); and

(5) Resource value of the aquifer.

(c) If the owner or operator determines, pursuant to § 257.23(g), that there is a statistically significant increase over background for one or more of the constituents listed in appendix I to 40 CFR part 258, or in the alternative list approved in accordance with paragraph (a)(2) of this section, at any monitoring well at the boundary specified

under § 257.22(a)(2), the owner or operator:

(1) Must, within 14 days of this finding, place a notice in the operating record indicating which constituents have shown statistically significant changes from background levels, and notify the State Director that this notice was placed in the operating record; and

(2) Must establish an assessment monitoring program meeting the requirements of § 257.25 within 90 days except as provided for in paragraph (c)(3) of this section.

(3) The owner/operator may demonstrate that a source other than the unit caused the contamination or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground-water quality. A report documenting this demonstration must be certified by a qualified ground-water scientist or approved by the Director of an approved State and be placed in the operating record. If a successful demonstration is made and documented, the owner or operator may continue detection monitoring as specified in this section. If, after 90 days, a successful demonstration is not made, the owner or operator must initiate an assessment monitoring program as required in § 257.25.

EFFECTIVE DATE NOTE: At 61 FR 34274, July 1, 1996, § 257.24 was added. This section contains information collection and record-keeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 257.25 Assessment monitoring program.

(a) Assessment monitoring is required whenever a statistically significant increase over background has been detected for one or more of the constituents listed in appendix I of 40 CFR part 258 or in the alternative list approved in accordance with § 257.24(a)(2).

(b) Within 90 days of triggering an assessment monitoring program, and annually thereafter, the owner or operator must sample and analyze the ground water for all constituents identified in appendix II of 40 CFR part 258. A minimum of one sample from each

downgradient well must be collected and analyzed during each sampling event. For any constituent detected in the downgradient wells as the result of the complete appendix II (Appendix II of 40 CFR part 258) analysis, a minimum of four independent samples from each well (background and downgradient) must be collected and analyzed to establish background for the new constituents. The Director of an approved State may specify an appropriate subset of wells to be sampled and analyzed for appendix II (Appendix II of 40 CFR part 258) constituents during assessment monitoring. The Director of an approved State may delete any of the appendix II (Appendix II of 40 CFR part 258) monitoring parameters for a unit if it can be shown that the removed constituents are not reasonably expected to be in or derived from the waste contained in the unit.

(c) The Director of an approved State may specify an appropriate alternate frequency for repeated sampling and analysis for the full set of appendix II (Appendix II of 40 CFR part 258) constituents, or the alternative list approved in accordance with paragraph (b) of this section, during the active life plus 30 years considering the following factors:

- (1) Lithology of the aquifer and unsaturated zone;
- (2) Hydraulic conductivity of the aquifer and unsaturated zone;
- (3) Ground-water flow rates;
- (4) Minimum distance between upgradient edge of the unit and downgradient monitoring well screen (minimum distance of travel);
- (5) Resource value of the aquifer; and
- (6) Nature (fate and transport) of any constituents detected in response to this section.

(d) After obtaining the results from the initial or subsequent sampling events required in paragraph (b) of this section, the owner or operator must:

- (1) Within 14 days, place a notice in the operating record identifying the appendix II (appendix II of 40 CFR part 258) constituents that have been detected and notify the State Director that this notice has been placed in the operating record;
- (2) Within 90 days, and on at least a semiannual basis thereafter, resample

all wells specified by § 257.22(a) to this section, conduct analyses for all constituents in appendix I (Appendix I of 40 CFR part 258) to this part or in the alternative list approved in accordance with § 257.24(a)(2), and for those constituents in appendix II to 40 CFR part 258 that are detected in response to paragraph (b) of this section, and record their concentrations in the facility operating record. At least one sample from each well (background and downgradient) must be collected and analyzed during these sampling events. The Director of an approved State may specify an alternative monitoring frequency during the active life plus 30 years for the constituents referred to in this paragraph. The alternative frequency for appendix I (appendix I of 40 CFR part 258) constituents, or the alternative list approved in accordance with § 257.24(a)(2), during the active life shall be no less than annual. The alternative frequency shall be based on consideration of the factors specified in paragraph (c) of this section:

(3) Establish background concentrations for any constituents detected pursuant to paragraphs (b) or (d)(2) of this section; and

(4) Establish ground-water protection standards for all constituents detected pursuant to paragraph (b) or (d) of this section. The ground-water protection standards shall be established in accordance with paragraphs (h) or (i) of this section.

(e) If the concentrations of all appendix II (appendix II of 40 CFR part 258) constituents are shown to be at or below background values, using the statistical procedures in § 257.23(g), for two consecutive sampling events, the owner or operator must notify the State Director of this finding and may return to detection monitoring.

(f) If the concentrations of any appendix II (appendix II of part 258) constituents are above background values, but all concentrations are below the ground-water protection standard established under paragraphs (h) or (i) of this section, using the statistical procedures in § 257.23(g), the owner or operator must continue assessment monitoring in accordance with this section.

(g) If one or more appendix II (appendix II of CFR part 258) constituents are

detected at statistically significant levels above the ground-water protection standard established under paragraphs (h) or (i) of this section in any sampling event, the owner or operator must, within 14 days of this finding, place a notice in the operating record identifying the appendix II (appendix II of 40 CFR part 258) constituents that have exceeded the ground-water protection standard and notify the State Director and all appropriate local government officials that the notice has been placed in the operating record. The owner or operator also:

(1)(i) Must characterize the nature and extent of the release by installing additional monitoring wells as necessary;

(ii) Must install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well in accordance with paragraph (d)(2) of this section;

(iii) Must notify all persons who own the land or reside on the land that directly overlies any part of the plume of contamination if contaminants have migrated off-site if indicated by sampling of wells in accordance paragraph (g)(1) of this section; and

(iv) Must initiate an assessment of corrective measures as required by § 257.26 within 90 days; or

(2) May demonstrate that a source other than the non-municipal non-hazardous waste disposal unit caused the contamination, or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground-water quality. A report documenting this demonstration must be certified by a qualified ground-water scientist or approved by the Director of an approved State and placed in the operating record. If a successful demonstration is made the owner or operator must continue monitoring in accordance with the assessment monitoring program pursuant to this § 257.25, and may return to detection monitoring if the appendix II (appendix II of 40 CFR part 258) constituents are at or below background as specified in paragraph (e) of this section. Until a successful demonstration is made, the owner or operator must comply with

§ 257.25(g) including initiating an assessment of corrective measures.

(h) The owner or operator must establish a ground-water protection standard for each appendix II (appendix II of 40 CFR part 258) constituent detected in the ground-water. The ground-water protection standard shall be:

(1) For constituents for which a maximum contaminant level (MCL) has been promulgated under section 1412 of the Safe Drinking Water Act (codified under 40 CFR part 141, the MCL for that constituent;

(2) For constituents for which MCLs have not been promulgated, the background concentration for the constituent established from wells in accordance with § 257.22(a)(1); or

(3) For constituents for which the background level is higher than the MCL identified under subparagraph (h)(1) of this section or health based levels identified under paragraph (i)(1) of this section, the background concentration.

(i) The Director of an approved State may establish an alternative ground-water protection standard for constituents for which MCLs have not been established. These ground-water protection standards shall be appropriate health based levels that satisfy the following criteria:

(1) The level is derived in a manner consistent with Agency guidelines for assessing the health risks of environmental pollutants (51 FR 33992, 34006, 34014, 34028, September 24, 1986);

(2) The level is based on scientifically valid studies conducted in accordance with the Toxic Substances Control Act Good Laboratory Practice Standards (40 CFR part 792) or equivalent;

(3) For carcinogens, the level represents a concentration associated with an excess lifetime cancer risk level (due to continuous lifetime exposure) within the  $1 \times 10^{-4}$  to  $1 \times 10^{-6}$  range; and

(4) For systemic toxicants, the level represents a concentration to which the human population (including sensitive subgroups) could be exposed to on a daily basis that is likely to be without appreciable risk of deleterious effects during a lifetime. For purposes

of this subpart, systemic toxicants include toxic chemicals that cause effects other than cancer or mutation.

(j) In establishing ground-water protection standards under paragraph (i) of this section, the Director of an approved State may consider the following:

- (1) Multiple contaminants in the ground water;
- (2) Exposure threats to sensitive environmental receptors; and
- (3) Other site-specific exposure or potential exposure to ground water.

EFFECTIVE DATE NOTE: At 61 FR 34274, July 1, 1996, §257.25 was added. This section contains information collection and record-keeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

**§ 257.26 Assessment of corrective measures.**

(a) Within 90 days of finding that any of the constituents listed in appendix II (appendix II of 40 CFR Part 258) have been detected at a statistically significant level exceeding the ground-water protection standards defined under §257.25 (h) or (i), the owner or operator must initiate an assessment of corrective measures. Such an assessment must be completed within a reasonable period of time.

(b) The owner or operator must continue to monitor in accordance with the assessment monitoring program as specified in §257.25.

(c) The assessment shall include an analysis of the effectiveness of potential corrective measures in meeting all of the requirements and objectives of the remedy as described under §257.27, addressing at least the following:

- (1) The performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts, and control of exposure to any residual contamination;
- (2) The time required to begin and complete the remedy;
- (3) The costs of remedy implementation; and
- (4) The institutional requirements such as State or local permit requirements or other environmental or public health requirements that may substan-

tially affect implementation of the remedy(s).

(d) The owner or operator must discuss the results of the corrective measures assessment, prior to the selection of remedy, in a public meeting with interested and affected parties.

**§ 257.27 Selection of remedy.**

(a) Based on the results of the corrective measures assessment conducted under §257.26, the owner or operator must select a remedy that, at a minimum, meets the standards listed in paragraph (b) of this section. The owner or operator must notify the State Director, within 14 days of selecting a remedy, that a report describing the selected remedy has been placed in the operating record and how it meets the standards in paragraph (b) of this section.

(b) Remedies must:

- (1) Be protective of human health and the environment;
- (2) Attain the ground-water protection standard as specified pursuant to §§257.25 (h) or (i);
- (3) Control the source(s) of releases so as to reduce or eliminate, to the maximum extent practicable, further releases of appendix II (appendix II of 40 CFR part 258) constituents into the environment that may pose a threat to human health or the environment; and
- (4) Comply with standards for management of wastes as specified in §257.28(d).

(c) In selecting a remedy that meets the standards of §257.27(b), the owner or operator shall consider the following evaluation factors:

- (1) The long- and short-term effectiveness and protectiveness of the potential remedy(s), along with the degree of certainty that the remedy will prove successful based on consideration of the following:
  - (i) Magnitude of reduction of existing risks;
  - (ii) Magnitude of residual risks in terms of likelihood of further releases due to waste remaining following implementation of a remedy;
  - (iii) The type and degree of long-term management required, including monitoring, operation, and maintenance;
  - (iv) Short-term risks that might be posed to the community, workers, or

the environment during implementation of such a remedy, including potential threats to human health and the environment associated with excavation, transportation, and re-disposal or containment:

- (v) Time until full protection is achieved;
- (vi) Potential for exposure of humans and environmental receptors to remaining wastes, considering the potential threat to human health and the environment associated with excavation, transportation, re-disposal, or containment;
- (vii) Long-term reliability of the engineering and institutional controls; and
- (viii) Potential need for replacement of the remedy.

(2) The effectiveness of the remedy in controlling the source to reduce further releases based on consideration of the following factors:

- (i) The extent to which containment practices will reduce further releases;
- (ii) The extent to which treatment technologies may be used.
- (3) The ease or difficulty of implementing a potential remedy(s) based on consideration of the following types of factors:
  - (i) Degree of difficulty associated with constructing the technology;
  - (ii) Expected operational reliability of the technologies;
  - (iii) Need to coordinate with and obtain necessary approvals and permits from other agencies;
  - (iv) Availability of necessary equipment and specialists; and
  - (v) Available capacity and location of needed treatment, storage, and disposal services.

(4) Practicable capability of the owner or operator, including a consideration of the technical and economic capability.

(5) The degree to which community concerns are addressed by a potential remedy(s).

(d) The owner or operator shall specify as part of the selected remedy a schedule(s) for initiating and completing remedial activities. Such a schedule must require the initiation of remedial activities within a reasonable period of time taking into consideration the factors set forth in para-

graphs (d)(1) through (d)(8) of this section. The owner or operator must consider the following factors in determining the schedule of remedial activities:

- (1) Extent and nature of contamination;
- (2) Practical capabilities of remedial technologies in achieving compliance with ground-water protection standards established under §§257.25 (g) or (h) and other objectives of the remedy;
- (3) Availability of treatment or disposal capacity for wastes managed during implementation of the remedy;
- (4) Desirability of utilizing technologies that are not currently available, but which may offer significant advantages over already available technologies in terms of effectiveness, reliability, safety, or ability to achieve remedial objectives;
- (5) Potential risks to human health and the environment from exposure to contamination prior to completion of the remedy;
- (6) Resource value of the aquifer including:
  - (i) Current and future uses;
  - (ii) Proximity and withdrawal rate of users;
  - (iii) Ground-water quantity and quality;
  - (iv) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituent;
  - (v) The hydrogeologic characteristic of the unit and surrounding land;
  - (vi) Ground-water removal and treatment costs; and
  - (vii) The cost and availability of alternative water supplies.
- (7) Practicable capability of the owner or operator.
- (8) Other relevant factors.

(e) The Director of an approved State may determine that remediation of a release of an appendix II (appendix II of 40 CFR part 258) constituent from the unit is not necessary if the owner or operator demonstrates to the Director of the approved state that:

- (1) The ground-water is additionally contaminated by substances that have originated from a source other than the unit and those substances are present in concentrations such that cleanup of the release from the unit

would provide no significant reduction in risk to actual or potential receptors; or

(2) The constituent(s) is present in ground water that:

(i) Is not currently or reasonably expected to be a source of drinking water; and

(ii) Is not hydraulically connected with waters to which the hazardous constituents are migrating or are likely to migrate in a concentration(s) that would exceed the ground-water protection standards established under § 257.25 (h) or (i); or

(3) Remediation of the release(s) is technically impracticable; or

(4) Remediation results in unacceptable cross-media impacts.

(f) A determination by the Director of an approved State pursuant to paragraph (e) of this section shall not affect the authority of the State to require the owner or operator to undertake source control measures or other measures that may be necessary to eliminate or minimize further releases to the ground-water, to prevent exposure to the ground-water, or to remediate the ground-water to concentrations that are technically practicable and significantly reduce threats to human health or the environment.

EFFECTIVE DATE NOTE: At 61 FR 34276, July 1, 1996, § 257.27 was added. This section contains information collection and record-keeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

**§ 257.28 Implementation of the corrective action program.**

(a) Based on the schedule established under § 257.27(d) for initiation and completion of remedial activities the owner/operator must:

(1) Establish and implement a corrective action ground-water monitoring program that:

(i) At a minimum, meets the requirements of an assessment monitoring program under § 257.25;

(ii) Indicates the effectiveness of the corrective action remedy; and

(iii) Demonstrates compliance with ground-water protection standard pursuant to paragraph (e) of this section.

(2) Implement the corrective action remedy selected under § 257.27; and

(3) Take any interim measures necessary to ensure the protection of human health and the environment. Interim measures should, to the greatest extent practicable, be consistent with the objectives of and contribute to the performance of any remedy that may be required pursuant to § 257.27. The following factors must be considered by an owner or operator in determining whether interim measures are necessary:

(i) Time required to develop and implement a final remedy;

(ii) Actual or potential exposure of nearby populations or environmental receptors to hazardous constituents;

(iii) Actual or potential contamination of drinking water supplies or sensitive ecosystems;

(iv) Further degradation of the ground-water that may occur if remedial action is not initiated expeditiously;

(v) Weather conditions that may cause hazardous constituents to migrate or be released;

(vi) Risks of fire or explosion, or potential for exposure to hazardous constituents as a result of an accident or failure of a container or handling system; and

(vii) Other situations that may pose threats to human health and the environment.

(b) An owner or operator may determine, based on information developed after implementation of the remedy has begun or other information, that compliance with requirements of § 257.27(b) are not being achieved through the remedy selected. In such cases, the owner or operator must implement other methods or techniques that could practicably achieve compliance with the requirements, unless the owner or operator makes the determination under § 257.28(c).

(c) If the owner or operator determines that compliance with requirements under § 257.27(b) cannot be practically achieved with any currently available methods, the owner or operator must:

(1) Obtain certification of a qualified ground-water scientist or approval by the Director of an approved State that compliance with requirements under § 257.27(b) cannot be practically



achieved with any currently available methods;

(2) Implement alternate measures to control exposure of humans or the environment to residual contamination, as necessary to protect human health and the environment; and

(3) Implement alternate measures for control of the sources of contamination, or for removal or decontamination of equipment, units, devices, or structures that are:

- (i) Technically practicable; and
- (ii) Consistent with the overall objective of the remedy.

(4) Notify the State Director within 14 days that a report justifying the alternative measures prior to implementing the alternative measures has been placed in the operating record.

(d) All solid wastes that are managed pursuant to a remedy required under § 257.27, or an interim measure required under § 257.28(a)(3), shall be managed in a manner:

- (1) That is protective of human health and the environment; and
- (2) That complies with applicable RCRA requirements.

(e) Remedies selected pursuant to § 257.27 shall be considered complete when:

(1) The owner or operator complies with the ground-water protection standards established under §§ 257.25 (h) or (i) at all points within the plume of contamination that lie beyond the ground-water monitoring well system established under § 257.22(a).

(2) Compliance with the ground-water protection standards established under §§ 257.25 (h) or (i) has been achieved by demonstrating that concentrations of appendix II (appendix II of Part 258) constituents have not exceeded the ground-water protection standard(s) for a period of three consecutive years using the statistical procedures and performance standards in § 257.23 (g) and (h). The Director of an approved State may specify an alternative length of time during which the owner or operator must demonstrate that concentrations of appendix II (appendix II of 40 CFR part 258) constituents have not exceeded the ground-water protection standard(s) taking into consideration:

(i) Extent and concentration of the release(s);

(ii) Behavior characteristics of the hazardous constituents in the ground-water;

(iii) Accuracy of monitoring or modeling techniques, including any seasonal, meteorological, or other environmental variabilities that may affect the accuracy; and

(iv) Characteristics of the ground-water.

(3) All actions required to complete the remedy have been satisfied.

(f) Upon completion of the remedy, the owner or operator must notify the State Director within 14 days that a certification that the remedy has been completed in compliance with the requirements of § 257.28(e) has been placed in the operating record. The certification must be signed by the owner or operator and by a qualified ground-water scientist or approved by the Director of an approved State.

§ 257.29 [Reserved]

RECORDKEEPING REQUIREMENTS

§ 257.30 Recordkeeping requirements.

(a) The owner/operator of a non-municipal non-hazardous waste disposal unit must record and retain near the facility in an operating record or in an alternative location approved by the Director of an approved State the following information as it becomes available:

(1) Any location restriction demonstration required under §§ 257.7 through 257.12; and

(2) Any demonstration, certification, finding, monitoring, testing, or analytical data required in §§ 257.21 through 257.28.

(b) The owner/operator must notify the State Director when the documents from paragraph (a) of this section have been placed or added to the operating record, and all information contained in the operating record must be furnished upon request to the State Director or be made available at all reasonable times for inspection by the State Director.

(c) The Director of an approved State can set alternative schedules for recordkeeping and notification requirements as specified in paragraphs (a)

and (b) of this section, except for the notification requirements in §257.25(g)(1)(iii).

APPENDIX I TO PART 257—MAXIMUM CONTAMINANT LEVELS (MCLs)

MAXIMUM CONTAMINANT LEVELS (MCLs) PROMULGATED UNDER THE SAFE DRINKING WATER ACT

Chemical	CAS No.	MCL (mg/l)
Arsenic	7440-38-2	0.05
Barium	7440-39-3	1.0
Benzene	71-343-2	0.005
Cadmium	7440-43-9	0.01
Carbon tetrachloride	56-23-5	0.005
Chromium (hexavalent)	7440-47-3	0.05
2,4-Dichlorophenoxy acetic acid	94-75-7	0.1
1,4-Dichlorobenzene	106-46-7	0.075
1,2-Dichloroethane	107-06-2	0.005
1,1-Dichloroethylene	75-35-4	0.007
Endrin	75-20-8	0.0002
Fluoride	7	4.0
Lindane	58-89-9	0.004
Lead	7439-92-1	0.05
Mercury	7439-97-6	0.002
Methoxychlor	72-43-5	0.1
Nitrate		10.0
Selenium	7782-49-2	0.01
Silver	7440-22-4	0.05
Toxaphene	8001-35-2	0.005
1,1,1-Trichloroethane	71-55-6	0.2
Trichloroethylene	79-01-6	0.005
2,4,5-Trichlorophenoxy acetic acid	93-76-5	0.01
Vinyl chloride	75-01-4	0.002

[56 FR 51016, Oct. 9, 1991]

APPENDIX II TO PART 257

A. Processes to Significantly Reduce Pathogens

**Aerobic digestion:** The process is conducted by agitating sludge with air or oxygen to maintain aerobic conditions at residence times ranging from 60 days at 15 °C to 40 days at 20 °C, with a volatile solids reduction of at least 38 percent.

**Air Drying:** Liquid sludge is allowed to drain and/or dry on under-drained sand beds, or paved or unpaved basins in which the sludge is at a depth of nine inches. A minimum of three months is needed, two months of which temperatures average on a daily basis above 0 °C.

**Anaerobic digestion:** The process is conducted in the absence of air at residence times ranging from 60 days at 20 °C to 15 days at 35 to 55 °C, with a volatile solids reduction of at least 38 percent.

**Composting:** Using the within-vessel, static aerated pile or windrow composting methods, the solid waste is maintained at minimum operating conditions of 40 °C for 5 days. For four hours during this period the temperature exceeds 55 °C.

**Lime Stabilization:** Sufficient lime is added to produce a pH of 12 after 2 hours of contact.

**Other methods:** Other methods or operating conditions may be acceptable if pathogens and vector attraction of the waste (volatile solids) are reduced to an extent equivalent to the reduction achieved by any of the above methods.

B. Processes to Further Reduce Pathogens

**Composting:** Using the within-vessel composting method, the solid waste is maintained at operating conditions of 55 °C or greater for three days. Using the static aerated pile composting method, the solid waste is maintained at operating conditions of 55 °C or greater for three days. Using the windrow composting method, the solid waste attains a temperature of 55 °C or greater for at least 15 days during the composting period. Also, during the high temperature period, there will be a minimum of five turnings of the windrow.

**Heat drying:** Dewatered sludge cake is dried by direct or indirect contact with hot gases, and moisture content is reduced to 10 percent or lower. Sludge particles reach temperatures well in excess of 80 °C, or the wet bulb temperature of the gas stream in contact with the sludge at the point where it leaves the dryer is in excess of 80 °C.

**Heat treatment:** Liquid sludge is heated to temperatures of 180 °C for 30 minutes.

**Thermophilic Aerobic Digestion:** Liquid sludge is agitated with air or oxygen to maintain aerobic conditions at residence times of 10 days at 55-60 °C, with a volatile solids reduction of at least 38 percent.

**Other methods:** Other methods or operating conditions may be acceptable if pathogens and vector attraction of the waste (volatile solids) are reduced to an extent equivalent to the reduction achieved by any of the above methods.

Any of the processes listed below, if added to the processes described in Section A above, further reduce pathogens. Because the processes listed below, on their own, do not reduce the attraction of disease vectors, they are only add-on in nature.

**Beta ray irradiation:** Sludge is irradiated with beta rays from an accelerator at dosages of at least 1.0 megarad at room temperature (ca. 20 °C).

**Gamma ray irradiation:** Sludge is irradiated with gamma rays from certain isotopes, such as <sup>60</sup>Cobalt and <sup>137</sup>Cesium, at dosages of at least 1.0 megarad at room temperature (ca. 20 °C).

**Pasteurization:** Sludge is maintained for at least 30 minutes at a minimum temperature of 70 °C.

**Other methods:** Other methods or operating conditions may be acceptable if pathogens are reduced to an extent equivalent to the reduction achieved by any of the above add-on methods.

# MEMORANDUM

TO : All Department and Activity Heads

DATE: 13 JUN 2001

FROM : Governor

SUBJECT: Appointment of Acting Registrar of Corporations

The Registrar of Corporations, Ms. Soledad B. Sasamoto will be off-island from June 13, 2001 through July 15, 2001, therefore, pursuant to Chapter 2 Subsection 4201 of the Commonwealth Code, I hereby appoint Ms. Bernadita B. dela Cruz to be the Acting Registrar of Corporations until the return of Ms. Sasamoto.

Please extend your full cooperation to Ms. dela Cruz in the Office of the Attorney General, Office of the Registrar of Corporations.



PEDRO P. TENORIO



**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

Pedro P. Tenorio  
Governor  
Jesus R. Sablan  
Lt. Governor

**APPOINTMENT**

Caller Box 10007  
Saipan, MP 96950  
Telephone: (670) 664-2200  
Fax: (670) 664-2211

**ACTING REGISTRAR OF CORPORATIONS  
4 CMC § 4201**

WHEREAS, Soledad B. Sasamoto is the Registrar of Corporations and she will be out of the Commonwealth from June 13, 2001 through July 15, 2001;

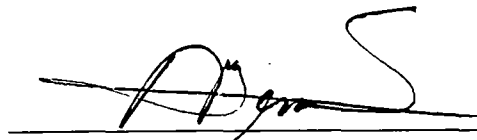
WHEREAS, the Registrar of Corporations is needed to execute certain duties every working day for the benefit of the Commonwealth; and

WHEREAS, Bernadita B. dela Cruz has been working under Ms. Sasamoto as an Assistant Registrar of Corporations, in addition to her regular duties;

NOW, THEREFORE, under the authority vested in me as Governor of the Commonwealth of the Northern Mariana Islands under 4 CMC § 4201;

I hereby appoint Bernadita B. dela Cruz as Acting Registrar of Corporations solely for the dates specified above.

DATED this 13<sup>th</sup> day of June, 2001

  
PEDRO P. TENORIO  
Governor



**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

Pedro P. Tenorio  
Governor  
Jesus R. Sablan  
Lt. Governor

**APPOINTMENT**

Caller Box 10007  
Saipan, MP 96950  
Telephone: (670) 664-2200  
Fax: (670) 664-2211

**ASSISTANT REGISTRAR OF CORPORATIONS  
4 CMC § 4201**

WHEREAS, the volume of work for the Registrar of Corporations continues to increase;

WHEREAS, it is necessary to appoint a person to assist the Registrar of Corporations in the daily duties of this position for the benefit of the Commonwealth;

NOW, THEREFORE, under the authority vested in me as Governor of the Northern Mariana Islands under 4 CMC § 4201; I hereby appoint Bernadita B. dela Cruz as Assistant Registrar of Corporations in the Office of the Attorney General.

DATED this 13<sup>th</sup> day of June, 2001.

  
\_\_\_\_\_  
PEDRO P. TENORIO  
GOVERNOR