

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



**COMMONWEALTH REGISTER
VOLUME 26
NUMBER 05**

MAY 24, 2004

COMMONWEALTH REGISTER

**VOLUME 26
NUMBER 05
MAY 24, 2004**

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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Juan N. Babauta
Governor

MAY 07 2004

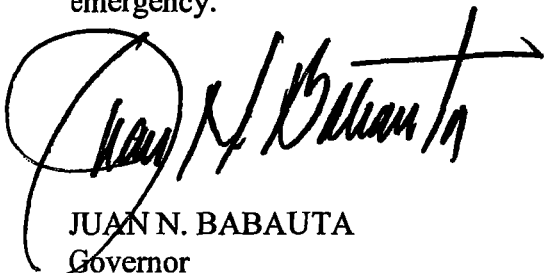
Diego T. Benavente
Lieutenant Governor

DECLARATION OF EMERGENCY

Volcanic Eruption on Anatahan

I, JUAN N. BABAUTA, by the authority vested in me as Governor pursuant to Article III, Section 10 of the Commonwealth Constitution and 3 CMC §5121, and in accordance with the recommendations of the Emergency Management Office, Commonwealth of the Northern Mariana Islands and US Geological Survey (attached hereto and incorporated herein by this reference) hereby declare another 30-day extension of the May 13, 2003 Declaration of Emergency for the island of Anatahan and the declaration that the island of Anatahan as unsafe for human habitation and further do hereby restrict all travel to said island with the exception of scientific expeditions. Therefore, the provisions of the May 13, 2003 Declaration of Emergency remain in effect maintaining the off-limits zone from 30 nautical miles to 10 nautical miles.

This Declaration shall become effective upon signature by the Governor and shall remain in effect for thirty (30) days unless the Governor shall, prior to the end of the 30-day period, notify the Presiding Officers of the Legislature that the state of emergency has been extended for a like term. The Governor shall give reason for extending the emergency.



JUAN N. BABAUTA
Governor

CC: Lt. Governor (F: 664-2311)
Senate President (F: 322-0519)
House Speaker (F: 664-8900)
Mayor of the Northern Islands (F: 233-6466)
Director of Emergency Management (F: 322-7743)
Commissioner of Public Safety (F: 664-9027)
Attorney General (F: 664-2349)
Secretary of Finance (F: 664-1115)
Special Assistant of Management and Budget (F: 664-2272)
Special Assistant for Programs and Legislative Review



Emergency Management Office
OFFICE OF THE GOVERNOR
 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS



Juan N. Babauta, Governor
 Diego T. Benavente, Lt. Governor

Rudolfo M. Pua, Director
 Mark S. Pangelinan Dep., Director

MEMORANDUM

TO : GOVERNOR
FROM : Director
SUBJECT : Declaration of Emergency

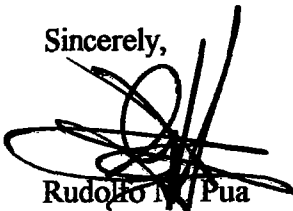
MAY 07 2004

The EMO seismic staff and USGS, once again with close consultation has informed me that the moderate eruption that began on April 24 is continuing. Steam and ash are like rising to a few thousand feet. Seismic activity since April 24 persists at a high level and consists of discrete explosion signals recorded by the seismographs at EMO. Over the last few days, the explosions have become less frequent but more energetic, possibly throwing material some hundred of yards out of the crater.

Therefore, we are once again respectfully soliciting your assistance in extending the **Declaration of Emergency** for the island of Anatahan for another thirty (30) days and to maintain the **off limits zone from 30 nautical miles to 10 nautical miles** around Anatahan until further notice. Under these conditions, restriction of entry to the said island should continue until a thorough scientific study is done ant that the findings suggest otherwise. The current **Declaration of Emergency** will expire on May 09, 2004.

Attach is the latest update for your information and should you have any question or concern, please call me at 322-9528/29.

Sincerely,



Rudolfo M. Pua

Attachment

Xc: Lt. Governor
 SAA
 Mayor, NI



Northern Mariana Islands Volcanic Activity

Anatahan Update

Anatahan Volcano Update

Anatahan Volcano Update for May 7, 2004

Submitted Friday, May 7, 2004 at 1200 local Anatahan time

On April 24, a moderate eruption began at Anatahan, sending steam and ash to ~2,000 ft (600 m). A small dome was observed within the inner crater a day or two later. On April 28, the seismicity peaked at a high for the year, and the dome increased in size. Since then the

average seismicity level first decreased somewhat for a few days, then increased again but has been significantly more variable. Explosion signals have become less frequent, averaging one event every two minutes, but have become larger, commonly reaching M ~3. A few hours ago, there was a remarkable couple of hours of nearly total calm beginning at 2230. Steam and ash are still rising to a few thousand feet. The eruption could become more explosive at any time with little or no warning.

The Emergency Management Office, Office of the Governor, CNMI, has placed Anatahan Island off-limits until further notice and concludes that, although the volcano is not currently dangerous to most aircraft within the CNMI airspace, conditions may change rapidly, and aircraft should pass upwind of Anatahan or >30 km downwind from the island and exercise due caution within 30-50 km of Anatahan.

Contact persons:

Juan Takai Camacho, Geophysical Seismic Technician, EMO Saipan, tel: (670) 322-9528, fax: (670) 322-7743, email: juantcamacho@hotmail.com

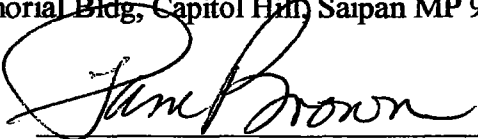
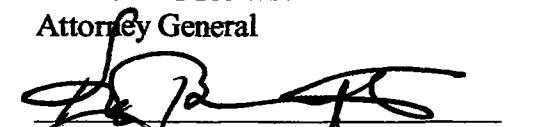
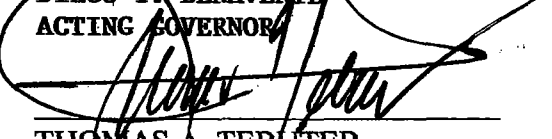
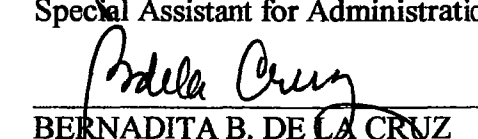
Ramon Chong, Geophysical Instrument Specialist, EMO Saipan, tel: (670) 322-9528,

PUBLIC NOTICE OF EMERGENCY REGULATIONS AND NOTICE OF INTENT TO ADOPT AMENDMENTS TO IMMIGRATION RULES AND REGULATIONS SECTION 706

EMERGENCY: The Commonwealth of the Northern Mariana Islands, Office of the Attorney General finds that under 1 CMC § 9104(b), the public interest requires amendments to Section 706 of the Immigration Rules and Regulations. Whereas the Division of Immigration has issued and is issuing "Retiree Investor Certificates" pursuant to a Memorandum dated November 29, 1999, but whereas the authority to issue said Certificates is not specifically prescribed, these emergency regulations codify the substance and procedures regarding said Certificates. And whereas the Secretary of Labor has proposed regulations governing the issuance of "Special Circumstances Temporary Work Authorizations" in the January 22, 2004 edition of the Commonwealth Register, Volume 26, Number 01, at 21643, these emergency regulations will provide specific immigration status to recipients of such Special Circumstances Temporary Work Authorizations. The public interest, specifically the need to harmonize policies and practices between the Department of Labor and the Division of Immigration, mandates adoption of these regulations upon fewer than thirty (30) days notice, and that these regulations shall become effective immediately after filing with the Register of Corporations, subject to the approval of the Attorney General and the concurrence of the Governor, and shall remain effective for 120 days.

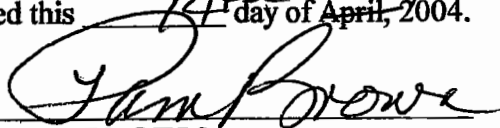
REASONS FOR EMERGENCY: In the current Immigration Regulations there is presently: (1) no codified authority for issuance of "Retiree Investor Certificates"; and (2) no immigration permit to coincide with a Special Circumstances Temporary Work Authorization; as a result, a situation could arise where a person is in the Commonwealth legally for purposes of labor but illegally for purposes of immigration. These permits remedy these incongruities.

INTENT TO ADOPT: It is the intent of the Office of Attorney General to adopt the emergency amendments to the Immigration Rules and Regulations, Section 706 as permanent, pursuant to 1 CMC § 9104(a)(1) and (2). Accordingly, interested parties may submit written comments on these emergency amendments to Pamela Brown, Attorney General, Office of the Attorney General, Second Floor, Juan A. Sablan Memorial Bldg, Capitol Hill, Saipan MP 96950 or by fax to (670) 664-2349.

Submitted by:	 PAMELA BROWN Attorney General	<u>5/14/04</u> Date
Concurred by:	 DIEGO T. BENAVENTE ACTING GOVERNOR	<u>5/14/04</u> Date
Received by:	 THOMAS A. TEBUTEB Special Assistant for Administration	<u>5/17/04</u> Date
Filed and Recorded by:	 BERNADITA B. DE LA CRUZ COMMONWEALTH REGISTRAR	<u>5-18-04</u> Date

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

Dated this ~~14th~~ ^{15th} day of ~~April~~ ^{May}, 2004.



PAMELA BROWN
Attorney General

PUBLIC NOTICE
EMERGENCY AMENDMENTS TO THE IMMIGRATION RULES AND REGULATIONS
SECTION 706

These regulations are promulgated in accordance with the Administrative Procedure Act, 1 CMC § 9101, et seq.

Citation of

Statutory Authority:

The Office of Attorney General is authorized to promulgate regulations for entry and deportation of aliens in the Commonwealth of the Northern Marianas pursuant to Executive Order 03-01 and 3 CMC § 4312(d).

Short Statement of

Goals and Objectives:

The proposed additions ensure that the Immigration Regulations are in accord with Division of Immigration and Department of Labor regulations and practices.

Brief Summary of the

Proposed New Section:

The proposed additions to the Immigration Rules and Regulations are promulgated to codify the existing practice of issuing Retiree Investor Certificates (Entry Permits) and to provide an entry permit and immigration status to recipients of Special Circumstances Temporary Work Authorizations.

For Further

Information Contact:

Eric S. O'Malley, Assistant Attorney General, Office of the Attorney General, telephone (670) 664-2426 or facsimile (670) 234-7016.

Citation of Related

and/or Affected Statutes,

Rules and Regulations,

and Orders:

The proposed amendments affect the Immigration Rules and Regulations Section 706 and the proposed Labor regulations published in the Commonwealth Register, Vol. 26, No. 01, January 22, 2004, at 21643.

Dated this 14th May day of ~~April~~, 2004.

Submitted by:



PAMELA BROWN

Attorney General

**PROPOSED AMENDMENTS TO IMMIGRATION RULES AND
REGULATIONS, SECTION 706**

Immigration Regulation 706 is hereby amended to add the following Sections O and P:

* * *

- O. Retiree Investor Entry Permit – allows the holder and his or her spouse to stay in the Commonwealth for up to five (5) years, during which time the Alien may exit and re-enter the Commonwealth at any time.
1. In order to be eligible, an Alien applicant must:
 - a. be at least fifty-five (55) years old;
 - b. satisfy all CNMI health requirements;
 - c. not have been convicted of a felony in the Commonwealth or convicted of a crime outside the Commonwealth that would be considered a felony within the Commonwealth;
 - d. have invested a minimum of \$150,000 in a single residential property in the Commonwealth.
 2. Alien applicants must provide:
 - a. Proof of property interest and the value of the property underlying the residence;
 - b. Proof of the value of the improvements on the property;
 - c. Any other evidence supporting proof of investment;
 - d. Police clearance from the Alien's and his or her spouse's previous residences in the previous twenty (20) years;
 - e. Proof of health certificate;
 - f. Original birth certificate (or equivalent document) as proof of age;
 - g. Declaration of the Alien sworn under penalty of perjury that the Alien is not employed in the Commonwealth and does not own 10% or more of a business located in the Commonwealth;
 - h. Proof of health insurance with a minimum aggregate coverage of \$100,000; and
 - i. A non-refundable application fee of \$1,000 for a single applicant and \$1,500 for an applicant and his or her spouse.
- P. Temporary Work Authorization Permit – permits an alien who has received a Special Circumstances Temporary Work Authorization from the Department of Labor or been granted refugee protection by the Attorney General pursuant to P.L. 13-61 to legally remain in the Commonwealth while such authorization is in effect and for a period of thirty (30) days following the expiration, revocation, or termination of such Special Circumstances Temporary Work Authorization.

**NOTISIAN PUBLIKU POT ENSIGIDAS NA REGULASION SIHA YAN
NOTISIAN INTENSION PARA U MA'ADOPTA I AMENDASION SIHA PARA
I AREKLAMENTO YAN REGULASION SIHA GI SEKSIONA 706**

Ensigidas: I Commonwealth I Sankattan Siha Na Islas Marianas, gi Ofisinan i Abugâdo Henerât masodda na papa i Lai 1 CMC Seksiona 9104 (b), i enteres publiku a nisisita i amendasion siha para i Seksiona 706 gi Areklamento yan Regulasion Immigrasion. Gi anai i Dibision Immigrasion malaknos yan malalaknos i “Setifikan Riterao ni Gaibisnis”(Retirement Investor Certificates) sigun i Memorandum ni mafecha Nubembre 29,1999, lao gi anai i aturidât ni para u laknos i Setifikasion ti ma’otden spesifikâtmente, este i ensigidas na regulasion siha ni makodigu i impotânte na pätte’ siha yan areklamento ni tineteka i mamensiona na setifikasion siha. Yan gi anai i Sekritâriion i Hotnaleru a propone i regulasion siha ni tineteka i “Espesiât na Manera gi Aturisasion Cho’chu’ Tempurârio” gi Ineru 22, 2004 na pätte’ gi Rehistran i Commonwealth, Baluma 26, Numiru 01, gi pâhina 21643, este na ensigidas na regulasion siha siempre a probeniyi spesifiku na estao siha gi Immigrasion para i murisisibe’ i “Espesiât na Manera gi Aturisasion Cho’chu’ Tempurârio”. I enteres publiku, spesifikâtmente a nisisita para u namaolek i areklamento siha ya u praktika gi entalo’ i Dipâtamenton i Hotnaleru yan i Dibision Immigrasion, a mandâtu i ma’adoptan este na regulasion siha gi menos di trenta (30) diha siha na notisia, ya pot este na regulasion siha debi di u efektibu ensigidas despues an mapolu gi Rehistran i Koporasion, suhetu para i ma’aprueba gi Abugâdo Henerât yan i Kinonfotmen i Gubietno, ya u efektitibu para sientu bente (120) diha siha.

Rason Para

Ensigidas: Gi i eksiste na Regulasion Immigrasion siha : (1) Tâya kodigun aturidât para i linaknos i “Setifikan Riterao ni Gaibisnis”; yan (2) Tai petmisun Immigrasion para u afakcha yan i Espesiât na Manera gi Aturisasion Cho’chu’ Tempurârio; ni rinisuta, siña gumuaha situasion an i petsona gaige gi CNMI ligât pot rason na para u hotnaleru lao tiligât gi rason i Immigrasion. Este na petmisu siha para u korihe’ i ti mankomprendiyun gi regulasion siha.

Intension Para

U Ma’adopta: Intension i Ofisinan i Abugâdo Henerât para u adopta i Ensigidas na amendasion siha para i areklamento yan Regulasion Immigrasion, Seksiona 706 para u petmanente, sigun i Lai 1 CMC Seksiona 9104 (a) (1) yan (2). Kinensiste, i man enteresao na petsona siña munahalom tinige’ opinion pot este ensigidas na amendasion siha para si Pamela Brown, i Abugâdo Henerât, gi Ofisinan i Abugâdo Henerât, gi mina dos na bibienda gi Juan A. Sablan Memorial Bldg., gi Capitol Hill, giya Saipan MP 96950, pat fax gi (670) 664-2349.

Ninahalom: _____

Pamela Brown
Abugâdo Henerât

Fecha

Kinonfotma as: _____

DIEGO T. BENAVENTE
Gubietno

5/17/04

Fecha

Marisibe' as: _____

Thomas A. Tebuteb

Espesiât Na Ayudante Para I Atrministrasion

5/18/04

Fecha

Pinelo' yan
Rinikot as:

Bernadita B. Dela Cruz

COMMONWEALTH REGISTRAR

5-18-04

Fecha

Sigun i Lai 1 CMC Seksiona 2153, ni inamenda ginen i Lai Publiku 10-50, i amendasion siha ni man che'che'ton este na momento esta man maribisa yan aprueba pot para u fotma yan ligât suficiente ginen i Ofisinan i Abugâdo Henerât.

Mafecha este mina _____ na diha gi Abrit, 2004

Pamela Brown
Abugâdo Henerât

NOTISIAN PUPBLIKU
ENSIGIDAS NA AMENDASION SIHA PARA I AREKLAMENTO YAN
REGULASION IMMIGRASION SEKSIONA 706

Este na regulasion siha man ma'establesi ni kinensiste yan i Akton i Areklamenton Atministrasion Lai 1 CMC Seksiona 9101, et.seq.

Sitasion i Aturidat

i Lai:

I Ofisinan i Abugado Henerat ma'aturisa para u establesi regulasion siha para entrada yan dipotasion i taotao hiyong siha gi Commonwealth I Sankattan Siha Na Islas Marianas sigun i Otden Eksekatibu 03-01 yan 3 CMC Seksiona 4312 (d).

Kada'da' Na Mensahe

Pot I Goals yan

Objectives:

I man mapropone ni man ma'omenta para u ensura na i Regulasion Immigrasion man konsiste yan i Dibision i Immigrasion yan i Dipattamenton i Hotnaleru ni Regulasion yan i prinaktika siha.

Kada'da' Na Mensahe

Pot I Maproponen

Nuebu Na Seksiona:

I man mapropone ni man ma'omenta para i Areklamento yan Regulasion Immigrasion siha man ma'establesi para u kodigu i man eksiste na prinaktika i linaknos Setifikun Riterao ni Gaibisnis (Petmisun Entrada) yan para u probeniyi petmisun entrada yan estaon Immigrasion para i murisibe' i Espesiât na Manera gi Aturasion Cho'chu' Tempurario.

Para Mâs Infotmasion

Ågan:

Eric S. O'Malley, Ayudanten i Abugado Henerat, gi Ofisinan i Abugado Henerat, tilifon (670) 664-2426 pat facsimile gi (670) 234-7016.

Sitasion I Man Achule'

yan/pat Inafekta Na

Lai Siha, Areklamento

yan Regulasion Siha,

yan Otden Siha:

I mapropone na amendasion siha a afekta i Areklamento yan Regulasion Immigrasion Seksiona 706 yan i mapropone na Regulasion Hotnaleru siha ni mapupblisa gi Rehistran i Commonwealth, Baluma 26, Numiru 01, gi Ineru 22, 2004 gi pahina 21643.

Mafecha este mina _____ na diha gi Abrit, 2004.

Ninahalom: _____
Pamela Brown
Abugâdo Henerât

MAPROPONE NA AMENDASION SIHA PARA I AREKLAMENTO YAN REGULASION IMMIGRASION SEKSIONA 706

Regulasion Immigrasion 706 este na momento ma'amenda para u omentáye' i sigente na seksiona
O yan P:

* * *

O. Petmisun Entráda Para i Riterao ni Gaibisnis - a sedi i mangugu'ot yan i asagua para
u fañága gi Commonwealth esta singko (5) años na tiempo, duránten este na tiempo i
taotao hiyong siña humuyong yan tumalon humálon gi Commonwealth maseha nai'an

1. An para u ilihible, i taotao hiyong debi di:

A. Debi di u singkuenta i singko (55) na idát;

B. U satisfecho' TODU nisisidát hinemlo' CNMI.

CH. Ti makombikta gi seriusu na kaosa gi Commonwealth pat makombikta
gi kriminát gi sanhiyong i Commonwealth ni makonsidera kumo seriusu
na kaosa gi halom i Commonwealth;

D. U guaha rinikohen salápe' gi tinituhon i \$150,000 gi uniku na
propiadát residente gi Commonwealth.

2. Aplikánten Taotao Hiyong Debi di u Probeniyi:

A. Ebidensian enteres propiadát yan i baliña i propiadát ni gaige i
residente;

B. Ebidensian i baliña i inadulántan i propiadát;

CH. Maseha háfa ottro na ebidensia ni para u supotta i guinahan i bisnis.

D. Police Clearance yan amánu na mañásaga gi bente (20) años ni man
malofan na tiempo ginen i taotao hiyong yan i asagua;

E. Ebidensian Setifikasion Hinemlo';

F. Setifikasion finañágu ni oriyinát (pat dokumento ni parehu) pot para u
setifika i idát;

G. Deklarasion i Taotao Hiyong ni ma na chatmanhula na i taotao hiyong ti ma'emplea gi halom i Commonwealth ya ti dueñu dies pot sientu (10%) pat más na bisnis ni gaige gi halom Commonwealth;

H. Ebidensian Insurance Hinemlo' ni tintuhon i tutât i para u fondo gi \$100,000; yan

I. I Ápas aplikasion ni ti ma nanalu tatte' \$1,000.00 para aplikânten na maisa ya \$1,500.00 para i aplikânte yan i asagua.

P. Petmisun Aturisasion Cho'chu' Tempurârio - Petmisun i Taotao Hiyong ni a risibe' i Espesiât na Manera gi Aturisasion Cho'chu' Tempurârio ginen i Dipâttamenton i Hotnaleru pat ma'entrega proteksion Taotao Hiyong ni man liliheng, ginen i Abugâdo Henerât sigun i Lai Ppubliku 13-61 para u ligât sumâga gi halom Commonwealth mientras i aturisasion muefektibu ya para trenta (30) diha siha na tiempo tinatitiye' i expiration, revocation, pat i termination i Espesiât na Manera gi Aturisasion Cho'chu' Tempurârio.

ARONGOL TOULAP REEL GHITIPWOTCHUL ALLÉGH KKAAL ME ARONGOL IGHA
E MENGI BWE EBWE FILLÓÓY LLIWEL KKAAL NGÁLI ALLÉGHÚL IMMIGRATION
TÁLIL 706

Ghitipwotch: Commonwealth Téél Falúw Kka Falúwasch Efang Marianas, Bwulasiyool Sów Bwungúl Allégh Lapalap re chungí bwe faal 1 CMC Tálil 9104 (b), bwe aghiyághíir Toulap bwe rebwe yaáyá ngáli lliwel kkaal ngáli Tálil 706 alléghúl Immigration. Division of Immigration aa isisiwow me ebwal akkaté A Retiree Investor Certificate@ bwelle reel Memorandum yeel ótol Aremwoy 29, 1999, igha elo bwe bwángíir reel isisiwowul kkapasal Cerificate ye ese ghi ffat ischil,ghitipwotchul allégh kkaal ebwe codify-li akkaáw milikka e welepakk me mwóghutul kkaal bwelle Certificate yeel me igha Samwoolul Labor aa fasúl kke pomwoli allégh kka e lemelem isisiwowul A Special Circumstances Temporary Work Authorizations A ótol Schoow 22, 2004 kkapasal llól Commonwealth Register, Volume 26, Aremwoy 01, reel 21643, ghitipwotchul allégh kkaal iye rebwe ayoorá schééschéél kkapasal immigration ngáliir schóól tittingor bwelle reel Special Circumstances Temporary Work Authorizations.Aghiyághíir Toulap, bwelle welepakkal alúghúlúgh kkaal me mwóghútúl lefileer Depattamentool Labor me Division of Immigration igha re tipeli bwe rebwe fillóóy allégh kkaal igha essóbw luulól eliigh (30) ráálil yaal arongowow, me rebwe ghutchuwulól mwiril schagh yaal isisilong llol Register of Corporations, kkapasal alughulugh mereel Sów Bwungul Allégh Lapalap me Sów Lemelem igha ebwe schééschéél alléghelól llól ebwughuw ruweigh (120) ráálil.

Bwúlúl ghitipwotch: Bwelle igha allégh kka eyoor ighíla: (1) esóór bwángil mille codified reel isisiwowul A Retiree Investor Certificates A; me (2) esóór lisensial immigration ye ebwe ghol ngáli Special Circumstances Temporary Work Authorization; ngáre toowowul, emmwel bwe ebwe yooreta aweewe ngáre aramasal Commonwealthelo faal alléghúl Commonwealth bwelle Labor me ese allégh bwelle immigration.Lisensia kkaal nge emmwel ebwe alisi meeta kka ese fil.

Aghiyághil ebwe fillóóy: Aghiyághil Sów Bwúngúl Allégh Lapalap igha ebwe fillóóy ghitipwotchul lliwel ngáli alléghúl Immigration kkaal, Tálil 706 bwe ebwe schééschéél, sañgi allegh ye 1 CMC tálil 9104 (a)(1) me (2).schééschéél, iyo ye eyoor aghiyághil reel ghitipwotchul lliwel kkaal nge emmwel ebwe ischilong reel Pamela Brown, Sów Bwúngúl Allégh Lapalap, Bwulasiyool Sów Bwúngúl Allégh Lapalap, aruwowal pwo, Juan A. Sablan Memorial Bldg, Capitol Hill, Seipel MP 96950 me ngáre fax reel (670) 664-2349

Isáliyallong:

PAMELA BROWN
Sow Bwúngul Allegh Lapalap

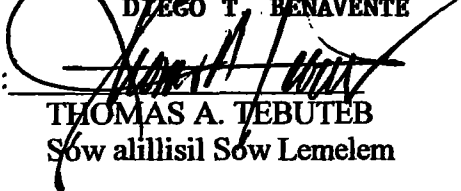
Rái

Alúghúlúgh sáangi:


DIEGO T. BENAVENTE

5/12/04
Rái

Mwir sáangi:


THOMAS A. TEBUTEB
Sow alillisil Sow Lemelem

5/12/04
Rái

Aisis sáangi:


BERNADITA B. DELA CRUZ
Corporate Register

Rái

Sáangi allégh ye 1 CMC iye raa lliweli mereel Alléghúl Toulap 10-50, lliwel kkaal ikka e appasch nge raa takkal amweri fischiy me alúghúlúghúló mereel CMNI Bwulasiyool Sów Bwúngul Allégh Lapalap.

Rállil ye _____ 1161 Seeta, 2004.

PAMELA BROWN
Sow Bwúngul Allégh Lapalap

ARONGOL TOULAP
REEL GHITIPWOTCHUL LLIWEL KKAAL NGÁLI ALLEGHÚL IMMIGRATION
TÁLIL 706

Allégh kkaal ikka e akkateéwow bwelle reel Administrative Procedure Act,
1 CMC talil 9101, et seq.

Akkateél bwángil: Bwulasiyool Sów Bwúngúl Allégh e mweiti nagli akkateél allégh
kkaal reel atotoolong me asséfalil aramasal lughul kka re lo llól
Commnwealth Téél Falúw Kká Falúwasch Marianas sáangi
akkuleéyal Sów Lemelem 03-01 me 3 CMC táilil 4312 (d).

Aweweel kkapasal allégh: Pomwol kka akkáaw ebwe alúghúlúgh bwe alléghúl
Immigration ebwe appelúghúlúgh ngáli Division of
Immigration me alléghúl Depattamentool Labor me
angaangal.

Aweweel pomwol liiwel: Pomwol kka akkáaw ngáli alléghúl Immigrations kkaal
ikka e akkateéwow igha ebwe codify mwóghútúghútúl kka
ighila reel isisiwowul Retiree Investor Certificates (Entry
Permit) me ebwe yoor lisensial atotoolong me kkapasal
Immigration ngaliir schóól tingórol Special Circumstances
Temporary Work Authorizations.

Reel ammataf faingi: Eric S. O'Malley, Sów Alillisil Sów Bwúngúl Allégh
Lapalap, Bwulasiyool Sów Bwúngúl Allégh Lapalap,
tilifoon (670) 664-2426 me ngare facsimile (670) 234-
7016.

Akkateél bwángil akkáaw allégh: Pomwol liiwel kkaal nge ebwe kkamallo
Alléghúl Immigration Tálil 706 me pomwol alléghúl Labor ye e akkateéló llól
Commonwealth Register, Vol. 26, No. 01, Schoow22, 2004, reel 21643.

Rállil ye _____ llól Sééta, 2004

Isaliyallong:

PAMELA BROWN
Sow Bwungul Allegh Lapalap

Pomwol lliwel kkaal ngáli alléghúl Immigration, Tálil 706

Alléghúl Immigration 706 nge aa ssiwel bwelle ebwe aschulong tálil kka faal O me P:

- O. Retiree Investor Entry Permit - emmwel schóól akkamwasch yeel me me ngare schóólimwal rebwe lootiw llól Commonwealth toóri limwoow (5) ráágh, ótol igha aramasal lúghúl rebwe toowow me sefallong llól Commonwealth inaamwo ileeta.
1. Reel ebwe fillong, tingórol aramasal lughul ebwe:
 - a. limeigh me limwoow (55) ráághil;
 - b. fisch alongal aweweel lofischil CNMI reel semwaay
 - c. esaal yoor féfféer nngów mellól Commonwealth me ngare féfféer nngów me lúghúl Commonwealth igha e ghil bwe eew féfféer nngów mellól Commonwealth;
 - d. isisilongol \$150,000 llol single residential property mellbl Commonwealth.
 2. Tingórol aramasal lúghúl nge ebwe ayoora:
 - a. alúghulúghúl faluw me kkapasal méél falúw ye elo llól sóóbw
 - b. alúghulúghúl meel reel mwógutúl falúw
 - c. akkaátw aghikkil kka ekke bwaari reel investment
 - d. affat mereel Polisia reer schóól aramasal lúghúl me schóólimwal reel mmwal igha re lollo iye llól ruweigh (20) ráágh;
 - e. alúghulúghúl health Certificate
 - f. schééschéél tiliighial rállil makkimw
 - g. appelúghulúghúl aramasal lúghúl ye a akkapeló faal penalty of perjury igha aramasal lúghúl yeel ese angaang llól Commonwealth me ese yááyá 10% business kkaal mellól Commonwealth;
 - h. alúghulúghúl health insurance ye eyoor &100.000; me óbwossul
 - i. mille a non-refundable application reel single applicant me \$1,500 reel schóól tingór me ii me ngare schóólimwal.
- P. Temporary Work Authorization Permit-e atiwa aramasal lúghúl kka re bwughil Special Circumstances Temporary Work Authorization mereel Depattamentool Labor me ngare re ngáley refuge protection sangi Sów Bwungúl Allégh bwelle P.L. 13-61 igha ebwe allégh yaal lootiw llól Commonwealth bwelle igha bwángil yeel ebwe fis llól eliigh (30) rállil mwirl schagh yaal akkayúúló, bwelle reel Special Circumstances Temporary Work Authorization.



**Commonwealth of the Northern Mariana
Islands**

Department of Public Health

Office of the Secretary

PUBLIC NOTICE

**NOTICE OF FINDINGS AND STATEMENT OF REASONS FOR
EMERGENCY ADOPTION OF AMENDMENTS
TO THE RULES AND REGULATIONS GOVERNING THE
ADMINISTRATION OF THE MEDICAL REFERRAL PROGRAM**

Emergency: The Secretary of the Department of Public Health of the Commonwealth of the Northern Mariana Islands, in accordance with the authority vested in him pursuant to 1 CMC section 2605, hereby finds that the public interest requires adoption on an emergency basis of amendments to the Rules and Regulations Governing the Administration of the Medical Referral Program.

The amendment to Section 6.3 would clarify that an otherwise eligible person who is already receiving medical care at an approved Medical Referral facility will not be disqualified from prospective/future medical referral benefits simply because he or she does not return to Saipan first. Instead, the Medical Referral Committee will evaluate the request at the point in time it is made as to prospective benefits only. Benefits will not be paid retroactively, i.e. for periods of time prior to application and Committee approval. No other eligibility standards are affected by this change in the regulations and the medical care to be delivered must meet all other medical referral standards, including but not limited to, that the medical care cannot be provided in the CNMI.

The Secretary of Public Health finds that it is in the best interest of the public that the amendments to the regulation become effective immediately upon concurrence by the Governor and the Office of the Attorney General and filing with the Registrar of Corporations. Once approved, the emergency amendments to the regulations shall remain in effect for a period of 120 days.

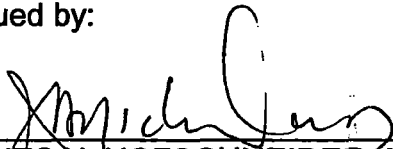
Reason for the Emergency: Since the implementation of the Rules and Regulations, experience has shown that the existing rule is inconsistent with the health related purposes of the Medical Referral Program and results in persons delaying necessary medical care to return to Saipan before getting the medical care they need. The return to Saipan not only delays the medical care but can, in some instances, result in adverse medical affects to a seriously ill patient.

Contents: Attached to this Notice of Emergency is the amended provision.

Intent to Adopt: It is the intention of the Department of Public Health to comply with the requirements of the Administrative Procedures Act, specifically 1 CHC section 9104, in amending the Rules and Regulations. Copies of the proposed Rules and Regulation may be obtained from the Office of the Secretary of Public Health located on the ground floor of the Commonwealth Health Center. Comments on the proposed Rules and Regulations may be sent to the Office of the Secretary of Public Health, Department of Pubic Health, P.O. Box 500409 CK, Saipan, MP 96950. All comments must be received within thirty (30) days from the date this notice is published in the Commonwealth Register.

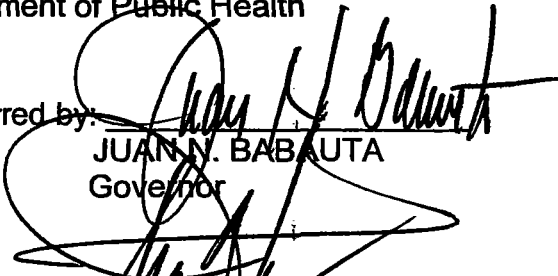
Authority: The Department of Public Health is authorized to implement these amendments to the Rules and Regulations Governing the Establishment and Administration of the Medical Referral Program pursuant to 1 CMC section 2605.

Issued by:



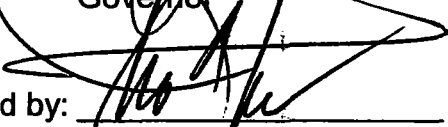
JAMES U. HOFSCHEIDER, MD
Secretary of Public Health
Department of Public Health

Date 4/26/04

Concurred by: 

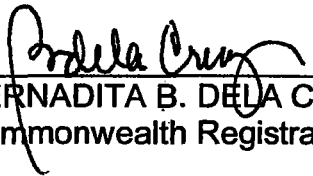
JUAN N. BABAUTA
Governor

Date 4/27/04

Received by: 

THOMAS TEBUTEB
Special Assistant for Administration

Date 4/26/04

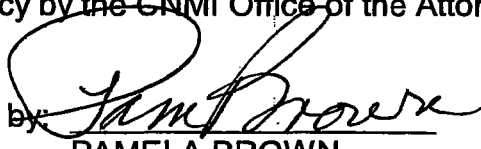
Filed by: 

BERNADITA B. DELA CRUZ
Commonwealth Registrar

Date 4.27.04

Certification by Office of the Attorney General

Pursuant to 1 CMC section 2153, the emergency amendments to the rules and regulation attached hereto have been reviewed and approved as to form and legal sufficiency by the GNMI Office of the Attorney General.

Certified by: 

PAMELA BROWN
Attorney General

Date 4/26/04

**Emergency Amendments to the Rules and Regulations
Governing the Administration of the Medical Referral Program**

Citation of Statutory Authority: 1 CMC Section 2605 authorizes the Department of Public Health to adopt rules and regulations regarding those matters over which it has jurisdiction. 1 CMC section 2603 (f) grants the Department of Public Health the power and duty to administer all government-owned health care facilities. This includes the authority to operate the Medical Referral Program.

Short Statement of Goals & Objectives Section 6.3 currently provides that all referrals must originate from the Commonwealth Health Center. The purpose of the amendment is to allow medical referral benefits in an approved facility on a prospective basis if the person is otherwise eligible and all of the other requirements of the program are met.

Brief Summary of the Proposed Rule: The amendment to Section 6.3 would clarify that an otherwise eligible person who is already receiving medical care at an approved Medical Referral facility will not be disqualified from prospective/future medical referral benefits simply because he or she does not return to Saipan first. Instead, the Medical Referral Committee will evaluate the request at the point in time it is made as to prospective benefits only. Benefits will not be paid retroactively, i.e. for periods of time prior to application and Committee approval. No other eligibility standards are affected by this change in the regulations and the medical care to be delivered must meet all other medical referral standards, including but not limited to, that the medical care cannot be provided in the CNMI.

Contact Person(s): Vicente C. Borja, Administrator of Medical Referral, Department of Public Health.

Citation of Related and/or affected Statutes, Regulations, and Orders: Rules and Regulations Governing the Administration of the Medical Referral Program, Commonwealth Register Volumes and Numbers: 18-04, 18-07, 20-02, 20-06, 22-05, 22-07, 23-09, 24-02, 26-01, 26-02

AMENDMENT TO MEDICAL REFERRAL RULES

The regulation previously stated:

6.3 Origin for All Medical Referrals. All medical referrals to health care facilities outside the CNMI must originate from the Commonwealth Health Center. A patient already on medical referral at a referral health facility may not be transferred to a second referral health care facility without the express authorization of the Medical Referral Committee, except in cases of emergencies.

The amended regulation now reads:

6.3 Approval for All Medical Referrals. All medical referrals to health care facilities outside the CNMI must receive prior approval from the Medical Referral Committee. An otherwise eligible person who is already receiving medical care at a CMI Medical Referral Program approved facility/provider will not be disqualified from prospective or future medical referral benefits simply because he or she does not return to Saipan first. Instead, the Medical Referral Committee will evaluate the request at the point in time it is made as to prospective or future benefits only. Benefits will not be paid retroactively, i.e. for periods of time prior to application and Medical Referral Committee approval. No other eligibility or Medical Referral program requirements are affected by this change in the regulations. The medical care to be delivered must meet all other medical referral standards, including but not limited to, that the medical care cannot be provided in the CNMI. A patient already on medical referral at a referral health facility may not be transferred to a second referral health care facility without the express authorization of the Medical Referral Committee, except in cases of emergencies. In all cases, the attending physician at the approved referral center/provider must communicate directly with the patient's CNMI attending physician.

PUBLIC NOTICE

PROPOSED ADOPTION OF IMMIGRATION RULES AND REGULATIONS IMPLEMENTING PUBLIC LAW 13-61 BY ESTABLISHING A PROCEDURAL MECHANISM FOR PERSONS REQUESTING PROTECTION FROM REFOULEMENT

The following proposed rules and regulations are promulgated in accordance with the Commonwealth Administrative Procedure Act, 1 CMC § 9101, *et seq.* The Office of the Attorney General is adopting these rules and regulations to establish a procedural mechanism for persons requesting protection from *refoulement*, the non-voluntary return of a person to that person's country of origin, where they might face persecution and/or torture, pursuant to (1) Article 33 of the 1951 Refugee Convention relating to the Status of Refugees and the 1967 Protocol thereto ("Refugee Convention");¹ (2) Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT");² and (3) 3 CMC § 4344(d) of the Commonwealth Entry and Deportation Act, as amended by Public Law 13-61.

The implementation of such a procedural mechanism is in conformance with a Memorandum of Agreement ("MOA") entered into between the Commonwealth of the Northern Mariana Islands ("Commonwealth") and the United States Department of Interior, Office of Insular Affairs. The MOA contemplates that the Commonwealth will implement certain *nonrefoulement* protections within its immigration system.

Citation of

Statutory Authority:

The Office of Attorney General is authorized to promulgate these regulations pursuant to 3 CMC § 4344(d) of the Commonwealth Entry and Deportation Act, as amended by Public Law 13-61.

Short Statement of

Goals and Objectives:

These rules and regulations are promulgated to:

1. Implement certain international conventions and treaties to which the United States of America is a signatory as set forth in Section 102 of Covenant to Establish a Commonwealth of the Northern Mariana Island in Political Union with the United States of America (Covenant). Specifically, the United Nations Convention Relating to the Status of Refugees and the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The implementation

¹ Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150. Articles 2 to 34 of the Convention are incorporated by the Protocol Relating to the Status of Refugees, January 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 (signed by U.S. on November 1, 1968).

² United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, December 10, 1984, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85 (signed by U.S. on April 18, 1988).

of such treaties and conventions is necessary because the provisions set forth in the United States Code that implement the aforementioned treaties in the United States do not apply within the Commonwealth.

2. To reaffirm that the Commonwealth retains exclusive jurisdiction over matters related to local immigration pursuant to the Covenant and that the public policy of the Commonwealth, set forth at 3 CMC § 4301(b), is that “[n]o alien may seek or obtain entry into the Commonwealth as a matter of right” and that “[e]ntry to the Commonwealth is a privilege extended to aliens only upon such terms and conditions as may be prescribed by law.”

Brief Summary of the Proposed Regulations:

The proposed regulations establish a procedural mechanism implementing international treaties and conventions related to the status and treatment of persons fearing persecution and torture, cruel, inhumane or degrading treatment or punishment in their country of origin. Accordingly, the proposed regulations define who may seek protection under such treaties and conventions; establish a hearing office to review the request of a person seeking protection from *refoulement* and decide whether such protection will be granted or denied; and establish the manner in which a person who has been denied protection may appeal an adverse decision to the Attorney General. The decision of the Attorney General, as provided by statute and as permitted by the provisions of the applicable treaties and conventions, shall be final and non-reviewable.

Citation of Related and/or Affected Statutes, Rules and Regulations, and Orders:

The proposed amendments affect deportation and exclusion from the Commonwealth; specifically 3 CMC §§ 4341 and 4344.

For Further Information Contact:

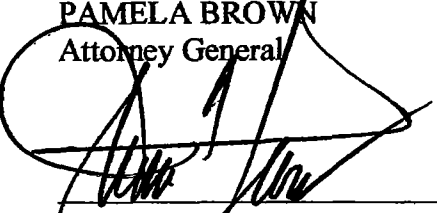
Pamela Brown, Attorney General. Telephone (670) 664-2341 or Facsimile (670) 664-2349.

Dated this 23rd day of May 2004

Submitted by:



PAMELA BROWN
Attorney General

Received by:


THOMAS A. TEBUTEB
Special Assistant for Administration

Date: 5/24/04


Filed and Recorded by:


BERNADITA B. DE LA CRUZ
COMMONWEALTH REGISTRAR

Date: 5.24.04

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

Dated this 23rd day of May 2004.


Pamela Brown
Attorney General

Section Break (Next Page)

PUBLIC NOTICE

**PROPOSED ADOPTION OF IMMIGRATION RULES AND REGULATIONS
IMPLEMENTING PUBLIC LAW 13-61 BY ESTABLISHING A PROCEDURAL
MECHANASIM FOR PERSONS REQUESTING PROTECTION FROM REFOULEMENT**

The Office of the Attorney General notifies the general public of its intention to adopt new regulations establishing a procedural mechanism for persons requesting protection from refolement. The regulations, which follow, are promulgated pursuant to the Attorney General's authority as set forth in 3 CMC §4424(a)(1) and 4344(d).

NOTISIAN PUPBLIKO

MAPROPONI PARA U MA'ADOPTA I AREKLAMENTON IMMIGRASION NI PARA U MA'IMPLIMENTA I LAI PUPBLIKO 13-61 (P.L. 13-61) PARA U MA'ESTBLESI MANERA YAN AREKLO PARA AYO SIHA NA TAOTAO I MUNISISITA PROTEKSION KONTRA I DIPOTTASION

I man maproponi siha na areklo yan regulasion sigun i Commonwealth Administrative Act, i CMC Seksiona 9101, et. seq. I Ofisinan Abugao Henerát (AGO) ha adopta este siha na areklo yan regulasion pot para hu establesi areklo yan manera para ayo siha na taotao i munisisita proteksion ginen i Dipottasion,; ayo siha na taotao i bumira siha tatte' gi oriyinát na tano'-niha gi ti-buluntátmente, ya madiskrimina osino matrátu sigun gi (1) Atikulu 33 1951 na Huntan Sumensága (Refugee Conventions) pot estao Sumensága (Refugee) yan i 1967 na Direksion (Protocol) guihe gi Huntan Sumensága (Refugee Conventions)¹; (2) Atikulu 3 gi Liga De Nasion na Hunta kontra Matrátu yan tinailaye' ni ti-che'chu' taotao osino disgrásia na trátamento yan kastigu ("CAT")² yan (3) 3 CMC Seksiona 4344 (d) gi Commonwealth na Entráda yan Akton Dipottasion, sigun gi tinilaikan i Lai Pupbliko 13-61 (P.L. 13-61).

I ma'implimentan este na areklo yan manera ha konfotma i ma'aksepta na inakonfotman i Memorandum Inakomprende (MOA) ya ma na hálom este gi entalo' i Commonwealth yan i Ofisinan i Insular Affairs gi Dipattamenton Interior gi Estâdos Unidos. I inakonfotman i Memorandum Inakomprende (MOA) ha konsidera na i Commonwealth para hu Implimenta unos kuántos na ti-dipottao na proteksion gi hálom i sistemán Immigrasion.

Annok Na Lai Aturidát: I Ofisinan Abugao Henerát (AGO) ma'aturisa para hu na'guaha este siha na regulasion sigun gi 3 CMC Seksiona 4344 (d) gi Entrádan i Commonwealth yan i Akton Dipottasion sigun gi tinilaikan i Lai Pupbliko 13-61 (P.L. 13-61).

Kada'da' Na Finihu Pot i Diniseha yan Minalago': Este na areklamento yan regulasion ma na'guaha para:

1. U ma'implimenta unos kuántos Huntan Intenasionát yan kontráta ya i Estâdos Unidos guiya i fitmánte sigun i seksiona 102 gi kontráta ni humistablesi i Commonwealth gi Dinafia Pulitiká yan i Estâdos Unidos (Covenant). Espisifikátmente, i Liga De Nasion pot i estao Sumensága (Refugee) yan i Huntan i Liga De Nasion kontra i matrátu, tinailaye' ni ti-che'cho' taotao yan i disgrasia na trátamento yan kastigu. I ma'implimentan este siha na kontráta yan Hunta nisisário sa i prubision ni mana guaha gi Kodikon i Estâdos Unidos ni humimplimenta i man mamensiona na kontráta gi Estâdos Unidos ti-aplikáble gi hálom i Commonwealth.

2. Anai para u ma'asigura na i Commonwealth ha mantieni enteru yan solamente na Aturidat pot asunton Commonwealth Immigration sigun gi Covenant yan i areklon pupbliko gi Commonwealth mana guaha gi 3 CMC Seksiona 4301 (b), na taya taotao hiyong para hu ke'fañule' entrada para hu hálom gi Commonwealth. I entrada para humáalom gi CNMI ti-direcho lao pribileho ha' para i taotao hiyong, ma'ekstiendi este solo yanggen manota gi Lai.

Kada'da' Na Sumaria
Pot I Maproponi Na
Regulasion:

I regulasion ni maproponi ha establesi i areklo yan manera ni para hu implimenta i intensionat na Hunta yan kontrata pot i estao yan tratamenton taotao ni man ma'anao na u fan madiskrimina ya u fan ma matrata gi tinailaye' yan man makastigan ga'ga' gi disgrasia na tratamiento gi tano'- niha oriyinat. Pot esu na este na regulasion ha na'klaru haye' siña mafule' nu este na proteksion gi papa' este siha na hunta yan kontrata; ma'establesi Ofisinan Inekungok ni para hu ina este siha na taotao i man mangagagao nu este na proteksion kontra i dipottasion ya u madisidi kao u fan manai' pat ahe'; u ma'establesi manera kosa ki i taotao ni ti-ma'na'i' ni ha gagagao na proteksion siña ha'lokkue ha apela i disision guatto gi Ofisinan Abugao Henerat (AGO). I uttimo na disision i Ofisinan Abugao Henerat (AGO) uttimo ha' ya makpo' esta ya tisiña madiroga osino ma ina dinuebu.

Annok i Man Achule'
yan/pat Man Inafekta
Na Lai, Areklo,Regulasion,
yan Otden Siha:

I man maproponi ni man ma'adopta ha afekta i dipottasion yan i linaknos kontra i Commonwealth; espisifikatmente i 3 CMC Seksiona 4341 yan 4344.

Para Mas Infotmasion
Agan:

Si Pamela Brown, i Abugado Henerat. Tilifon (670) 664-2341 pat Facsimile (670) 664-2349.

Mafecha este mina _____ na diha gi _____ 2004.

Ninahalom:

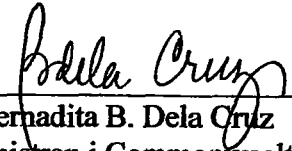
Pamela Brown
Abugádo Henerát

Marisibe' as:



Thomas A. Tebuteb
Espesiát Na Ayudánte
Para I Atministrasion

Pinelo' yan Rinikot as:



Bernadita B. Dela Cruz
Rehistran i Commonwealth

Sigun i Lai CMC Seksiona 2153, ni ma'amenda ginen i Lai Publiko 10-50, i areklamento yan regulasion siha ni man che'che'ton esta man maribisa yan ma'aprueba pot para u fotma sufisiente yan ligátmente ginen i Ofisinan i Abugao Henerát i CNMI.

Mafecha este mina _____ na diha gi _____ 2004.

Pamela Brown
Abugádo Henerát

PUBLIC NOTICE

PROPOSED ADOPTION OF IMMIGRATION RULES AND REGULATIONS IMPLEMENTING PUBLIC LAW 13-61 BY ESTABLISHING A PROCEDURAL MECHANASIM FOR PERSONS REQUESTING PROTECTION FROM REFOULEMENT

The Office of the Attorney General notifies the general public of its intention to adopt new regulations establishing a procedural mechanism for persons requesting protection from refoulement. The regulations, which follow, are promulgated pursuant to the Attorney General's authority as set forth in 3 CMC §4424(a)(1) and 4344(d).

REGULATIONS IMPLEMENTING PUBLIC LAW 13-61 BY ESTABLISHING A PROCEDURAL MECHANISM FOR PERSONS REQUESTING PROTECTION FROM REFOULEMENT

Applicability. The following regulations are intended to implement the protections contemplated in the Memorandum of Agreement entered between the Commonwealth of the Northern Mariana Islands (Commonwealth) and the United States Department of Interior, Office of Insular Affairs, executed on [date], as well as Public Law 13-61. These regulations are intended to conform the removal of aliens from the Commonwealth with applicable international treaties and conventions, by providing limited protection from such removal consistent with (1) Article 33 of the 1951 Refugee Convention relating to the Status of Refugees and the 1967 Protocol thereto ("Refugee Convention");¹ and (2) Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT")². (As used herein, protection from *refoulement* pursuant to the Refugee Convention will be referred to as "Refugee Protection," protection from *refoulement* pursuant to the CAT will be referred to as "CAT Protection." Collectively, both protections will be referred to as "*Nonrefoulement* Protection.")

- A. These procedures shall apply in situations wherein a foreign national (as used herein, the term "foreign national" refers to persons defined as "aliens" elsewhere in Commonwealth law and regulations) has been ordered deported by the Commonwealth Superior Court pursuant to 3 CMC § 4341, or has been denied entry at a Commonwealth port of entry ("POE") or otherwise, pursuant to 3 CMC § 4331 *et seq.*, and prior to removal from the Commonwealth the individual expresses fear of non-voluntary return to his/her country of origin due to fear of persecution or torture.

¹ Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150. Articles 2 to 34 of the Convention are incorporated by the Protocol Relating to the Status of Refugees, January 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 (signed by U.S. on November 1, 1968).

² United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, December 10, 1984, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85 (signed by U.S. on April 18, 1988).

- B.** A foreign national shall not, as a matter of right, be entitled under any circumstances to affirmatively submit an application, claim, civil action or other assertion of entitlement to the protection of the Refugee Convention and/or CAT unless that individual has been ordered deported by a court of competent jurisdiction or has been denied entry from the Commonwealth, at a POE or otherwise.

II. Procedural mechanism / Due Process.

- A. Refugee Protection Office.** Pursuant to the obligations of the Attorney General as set forth in Public Law 13-61, there is hereby created an "Office for Refugee Protection" ("ORP") within the Office of the Attorney General. The ORP shall be staffed by the Attorney General with full-time or part-time personnel as necessary in order to perform the duties set forth in these regulations, and to otherwise implement Public Law 13-61.
- B. Exclusion.** Any foreign national attempting to enter the Commonwealth who is determined to be excludable pursuant to 3 CMC § 4322, and who expresses fear of return to his/her country of origin due to fear of persecution and/or torture, will be placed into proceedings for a Protective Hearing ("PH") conducted by the ORP, unless it is determined by the Attorney General or her designee that the expression of fear on one of the relevant bases is manifestly unfounded.
- C. Deportation.** Foreign nationals against whom a deportation order has been entered by the Superior Court, pursuant to 3 CMC § 4341 may obtain a PH upon request.
- D. Advisement of Protection.** A foreign national facing deportation or exclusion will be advised that he may obtain a PH if he credibly fears return to his/her country of origin due to fear of persecution and/or torture. This advisement will be performed either (1) in connection with a deportation hearing, in open Court by a Superior Court Judge; (2) by the Attorney General or her designee; or (3) by way of a pre-printed form. All reasonable efforts will be made to ensure that the foreign national understands the substance of this advisement, including without limitation translation into an appropriate language, and providing assistance for those with reading difficulties.
- E. Detention.**
- 1. Pre-Hearing Release Preferred:** Applicants seeking *Nonrefoulement* Protection and who await a determination as to their eligibility for such protection shall be detained only in accordance with applicable law and when necessary to ensure that the applicant remains available for further proceedings, and/or in order to ensure the public safety and security of the Commonwealth or of the United States.

2. **Excluded Persons:** Applicants subject to exclusion at a POE or otherwise may initially be detained, but are entitled to a “parole” hearing, conducted by the Attorney General or her designee, within two business days of the applicant’s arrival in the Commonwealth, if reasonable and practicable. If appropriate, and pending a determination on the applicant’s request for *Nonrefoulement* Protection, the Attorney General or her designee may temporarily release the person at her discretion and under such conditions as will ensure the person’s availability for further proceedings. For purposes of Commonwealth immigration laws, such applicants will be treated as temporarily admitted pursuant to 3 CMC § 4337.
 3. **Deported Persons:** Detention of applicants who have been ordered deported but who are awaiting a PH shall be according to applicable Commonwealth immigration laws, and determined by the Superior Court in accordance with the Commonwealth Entry and Deportation Act, 3 CMC § 4301 *et seq.*
- F. Assistance of Individuals:** The Office of the Attorney General will make reasonable efforts to assist foreign nationals in seeking *Nonrefoulement* Protection, in preparing for a PH, and in setting out their case at the PH. Such assistance may include, but is not limited to, support in completing forms or written descriptions of the factual basis for a claim of protection, providing the reasonable use of a telephone when necessary for preparation of their case, and providing a telephone directory, and/or local telephone contact numbers for attorneys or other individuals who have informed the OAG of their willingness to assist foreign nationals in this regard.
- G. Fingerprinting and background security checks.** If not already complete, the Division of Immigration (“DOI”) shall obtain each applicant’s name, fingerprints and other relevant information in order to perform a background security check.
1. In the case of a foreign national excluded from entry, at an official Commonwealth POE or otherwise, such individual shall not be released from the custody of the DOI until this information has been obtained to the satisfaction of the DOI, unless so ordered by a court of competent jurisdiction.
 2. Failure to submit to a fingerprint or other identity test, to cooperate with the DOI in providing identity and other background information, or to comply with all instructions of the DOI or the OAG relating to the collection of this information, shall be grounds for immediate denial of the protections described herein, and immediate arrest and removal from the Commonwealth consistent with Commonwealth immigration law.
 3. In the event that an individual is deemed to qualify for *Nonrefoulement* Protection, however a background check has not yet been completed to the satisfaction of the OAG, the individual may be conditionally granted

protection pending such background check completion. Any such conditional grant of protection shall be temporary and for no specific duration of time. The OAG may re-assess a conditional grant of protection, and/or issue a final determination as to the protection requested, at any time.

- H. Administrative Protection Judge.** The Attorney General shall appoint an attorney to serve as Administrative Protection Judge (“APJ”) who shall conduct the Protective Hearing, review the relevant law and facts, and decide whether *Nonrefoulement* Protection is mandated in a particular case.

Pursuant to the Memorandum of Agreement set forth above, the APJ will work with the “Protection Consultant” in reaching this decision during the first two years that these regulations are effective. During that period, in any case in which a recommendation of the Protection Consultant is not followed by the APJ, the APJ shall issue a written opinion setting forth all reasons why such recommendation was not followed. Any such case shall be automatically appealed to the Attorney General or her designee, pursuant to sub-paragraph M below.

I. Protective Hearing.

1. **Right to Counsel.** The applicant has a right to counsel or other form of representation at his/her own expense. The applicant must bring to the PH any spouse and/or children to whom he/she would like any protection to apply derivatively, unless it can be shown that for good cause they were unable to attend.
2. **Interpreters.** An applicant who does not speak English, Chamorro or Carolinian fluently will be provided with a qualified interpreter. The applicant may provide his or her own interpreter, if the APJ conducting the Protective Hearing finds the interpreter to be qualified.
 - a. ***General qualifications.*** An interpreter must be at least eighteen (18) years of age, and may not be the applicant’s representative or attorney of record, a witness testifying on the applicant’s behalf, a relative of the applicant, a person having a financial or other personal interest in the outcome of the applicant’s case, or an employee or representative of the applicant’s country of origin.
 - b. ***Specific qualifications.*** In addition to the general qualifications, before allowing an interpreter to provide interpreting services to an applicant during a Protective Hearing, the APJ must find the interpreter qualified to render such services by virtue of the interpreter’s education, training and experience. In order to determine whether the interpreter is qualified, the APJ should consider

- i. the interpreter's knowledge of standard grammar, dialectical varieties, regional colloquialisms and slang expressions for English and the source language of the person seeking the interpreter's services;
 - ii. whether the interpreter has formally studied English and the source language, and whether the interpreter has obtained any degrees, certifications or other credentials in either language;
 - iii. the extent of the interpreter's professional or other experience interpreting or translating from the source language to English or vice-versa;
 - iv. the interpreter's knowledge of the legal and procedural concepts likely to be addressed during the Protective Hearing;
 - v. whether the interpreter has completed any specialized training in courtroom interpreting, or interpreting in administrative proceedings;
 - vi. whether the interpreter is a member of any professional organization for interpreters or translators;
 - vii. whether the interpreter has previously been found qualified as an interpreter in the source language in court hearings or administrative proceedings;
 - viii. whether the interpreter is familiar with the Code of Professional Responsibility for court interpreters;
 - ix. whether the interpreter has had an opportunity to speak with the person needing his or her services, and whether there were any communication problems; and
 - x. whether the interpreter is able to interpret consecutively and simultaneously if called upon to do so, without leaving out or changing anything that is said.
- c. *Interpreter's Oath.* Before allowing an interpreter to provide interpreting services in a Protective Hearing, the APJ shall administer an oath to the interpreter substantially in the following form:

Do you solemnly swear or affirm that you will interpret accurately, completely and impartially, using your best skill and judgment in accordance with the standards prescribed by law and the Code of Conduct for Interpreters; follow all official guidelines established by this court for legal interpreting or

translating, and discharge all of the solemn duties and obligations of legal interpretation and translation?

d. *Advisement to Witnesses.* The APJ should advise the applicant and each witness who needs the interpreter's service as follows, prior to taking the applicant's or witness's testimony:

- I want you to understand the role of the interpreter. The interpreter is here only to interpret the questions that you are asked and to interpret your answers. The interpreter will say only what you say and what we say, and will not add, omit or summarize anything.
- The interpreter will say in English everything you say in your language, so do not say anything you do not want everyone to hear.
- If you do not understand a question that was asked, request clarification from the person who asked it. Do not ask the interpreter.
- Remember that you are giving testimony to the court, not to the interpreter. Therefore, please speak directly to the attorney or me, not to the interpreter. Do not ask the interpreter for advice.
- Please speak in a loud, clear voice so that everyone can hear you, not just the interpreter.
- If you do not understand the interpreter, please tell me. If you need the interpreter to repeat something you missed, you may do so, but please make your request to the person speaking, not to the interpreter.
- Finally, please wait until the entire question has been interpreted in your language before you answer.
- Do you have any questions about the role of the interpreter? Do you understand the interpreter?

3. Record. The PH will be recorded or transcribed so that a record of the proceeding will be preserved. In cases involving translators, the APJ will make all reasonable efforts to ensure that both the English version and the version in the applicant's language are preserved as part of that record.

4. Confidentiality of Proceedings. Unless waived by the applicant and the OAG, the PH shall not be open to the public.

5. Oath. The applicant and any witnesses who present testimony will be required to take an oath promising to tell the truth during the PH.
6. Evidence. The Commonwealth Rules of Evidence do not apply in a PH, but may be cited by either party as persuasive authority with respect to the procedure to be employed by the APJ and/or the weight that the APJ should attach to certain evidence. The APJ may make any procedural decisions necessary for the fair and orderly discharge of these proceedings, including but not limited to the exclusion of irrelevant and/or repetitious testimony or documentary evidence. The APJ may allow telephonic testimony of witnesses not present on the island of Saipan when it appears reasonably likely that such information will assist the APJ in his determination in a specific case.
7. Procedure. The APJ conducting the PH will verify the applicant's identity and ask him/her basic biographical questions, ask the applicant about the reasons he/she is requesting protection, ask the applicant questions to determine whether he/she meets the legal requirements for protection and whether any grounds for mandatory denial exist.
8. Right of Applicant to Present Evidence. The applicant and/or his/her attorney or representative shall have a full and fair opportunity to present the applicant's case, including the right to present documentary evidence in any form, as well as oral testimony of witnesses or the applicant him/her self, including expert evidence concerning country conditions.
9. Right of Government to Present Evidence. An assistant attorney general appearing on behalf of the Commonwealth government (hereinafter, in this context, the "Government") shall have the right to appear and to present supporting or contrary evidence, to call and cross-examine witnesses, and to cross-examine the individual applicant.
10. Reliance on information compiled by other sources.
 - a. In deciding whether an applicant has established eligibility for the *Nonrefoulement* Protections described herein, the APJ may rely on material provided by the United States Citizenship and Immigration Services, Department of State, the Office of International Affairs, or other credible sources, such as international organizations, private voluntary agencies, news organizations, or academic institutions.
 - b. Nothing in this section shall be construed to entitle the applicant to conduct discovery directed toward the records, officers, agents or employees of the OAG or DOI, or the United States Citizenship and Immigration Services, Department of Justice, or the Department of State.

Persons may continue to seek documents available through an Open Government Act request pursuant to 1 CMC § 9901 *et seq.*

J. Confidentiality.

1. The OAG recognizes that in most cases arising under these regulations, an individual's right of privacy as guaranteed by the law and Constitution of the Commonwealth will be clearly invoked. The OAG further recognizes that in many cases, safety and protection of an applicant will require that information obtained in connection with such an application must remain confidential. Accordingly, all information contained in or pertaining to any application for protection under these regulations shall not be disclosed without written consent of the applicant, except as permitted by this section or at the discretion of the Attorney General.
2. This section shall not apply to any disclosure to:
 - a. Any Commonwealth or United States Government official or contractor having a need to examine information in connection with:
 - i. The adjudication of applications for protection under these regulations;
 - ii. The defense of any legal action arising from the adjudication of, or failure to adjudicate, an application for protection under these regulations;
 - iii. The defense of any legal action of which an application for protection under these regulations is a part; or
 - iv. Any Commonwealth or United States Government investigation concerning any criminal or civil matter; or
 - b. Any Commonwealth, or Federal, State, or local court in the United States concerning any legal action:
 - i. Arising from the adjudication of, or failure to adjudicate, an application for protection under these regulations; or
 - ii. Arising from the proceedings of which an application for protection under these regulations is a part.

- K. Decision.** Barring exceptional circumstances, a written decision shall be made not more than ten (10) days after the PH. Prior to concluding the hearing, the APJ shall give written notice to the applicant of the date and time that they are to appear to receive the decision, and if the applicant is not in detention, he/she shall be required to return to ORP to receive the decision. If ORP has decided that the applicant is not eligible for protection, the applicant shall have an opportunity to appeal the decision within fifteen (15) days from the date on which the applicant is served personally or by mail. The Government may likewise appeal the

decision within that fifteen-day period. If there is no appeal, ORP's decision shall become final and unreviewable, not subject to further judicial or administrative review. In the case of a denial, the applicant shall be removed from the Commonwealth according to applicable law.

L. Substantive law. The following substantive law shall be applied at the PH. U.S. law and the law of other jurisdictions applying the treaty protections set forth above may be consulted as persuasive authority, but are not binding on the decision-maker.

1. Refugee Protection: The burden of proof is on the applicant for Refugee Protection under these regulations to establish that his or her life or freedom would be threatened in the proposed country of removal on account of race, religion, nationality, membership in a particular social group, or political opinion. The testimony of the applicant, if credible, may be sufficient to sustain the burden of proof without corroboration. The evidence shall be evaluated as follows:

a. *Past threat to life or freedom.*

i. If the applicant is determined to have suffered past persecution in the proposed country of removal on account of race, religion, nationality, membership in a particular social group, or political opinion, it shall be presumed that the applicant's life or freedom would be threatened in the future in any country of removal on the basis of the original claim. This presumption may be rebutted if the APJ finds by a preponderance of the evidence that:

(1.) There has been a fundamental change in circumstances such that the applicant's life or freedom would not be threatened on account of any of the five grounds mentioned in this paragraph upon the applicant's removal to that country; or

(2.) The applicant could avoid a future threat to his or her life or freedom by relocating to another part of the proposed country of removal and, under all the circumstances, it would be reasonable to expect the applicant to do so.

ii. In cases in which the applicant has established past persecution, the Government shall bear the burden of establishing by a preponderance of the evidence the requirements of paragraphs (a)(i)(1) or (a)(i)(2) of this subsection.

iii. If the applicant's fear of future threat to life or freedom is unrelated to the past persecution, the applicant bears the burden of establishing that it is more likely than not that he or she would suffer such harm.

- b. *Future threat to life or freedom.* An applicant who has not suffered past persecution may demonstrate that his or her life or freedom would be threatened in the future in a country if he or she can establish that it is more likely than not that he or she would be persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion upon removal to that country. Such an applicant cannot demonstrate that his or her life or freedom would be threatened if the APJ finds that the applicant could avoid a future threat to his or her life or freedom by relocating to another part of the proposed country of removal and, under all the circumstances, it would be reasonable to expect the applicant to do so. In evaluating whether it is more likely than not that the applicant's life or freedom would be threatened in a particular country on account of race, religion, nationality, membership in a particular social group, or political opinion, the APJ shall not require the applicant to provide evidence that he or she would be singled out individually for such persecution if:
- i. The applicant establishes that in that country there is a pattern or practice of persecution of a group of persons similarly situated to the applicant on account of race, religion, nationality, membership in a particular social group, or political opinion; and
 - ii. The applicant establishes his or her own inclusion in and identification with such group of persons such that it is more likely than not that his or her life or freedom would be threatened upon return to that country.
- c. *Reasonableness of internal relocation.* For purposes of determinations under paragraphs (1)(a) and (1)(b) of this section, adjudicators should consider, among other things, whether the applicant would face other serious harm in the place of suggested relocation; any ongoing civil strife within the country; administrative, economic, or judicial infrastructure; geographical limitations; and social and cultural constraints, such as age, gender, health, and social and familial ties. These factors may or may not be relevant, depending on all the circumstances of the case, and are not necessarily determinative of whether it would be reasonable for the applicant to relocate.
- i. In cases in which the applicant has not established past persecution, the applicant shall bear the burden of establishing that it would not be reasonable for him or her to relocate, unless the persecutor is a government or is government-sponsored.
 - ii. In cases in which the persecutor is a government or is government-sponsored, or the applicant has established persecution in the past, it

shall be presumed that internal relocation would not be reasonable, unless the Government establishes by a preponderance of the evidence that under all the circumstances it would be reasonable for the applicant to relocate.

2. **CAT Protection:** The burden of proof is on the applicant for CAT Protection to establish that it is more likely than not that he or she would be tortured if removed to the proposed country of removal. The testimony of the applicant, if credible, may be sufficient to sustain the burden of proof without corroboration.

a. "Torture" defined.

- i. Torture is defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or her or a third person information or a confession, punishing him or her for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.
- ii. Torture is an extreme form of cruel and inhuman treatment and does not include lesser forms of cruel, inhuman or degrading treatment or punishment that do not amount to torture.
- iii. Torture does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. Lawful sanctions include judicially imposed sanctions and other enforcement actions authorized by law, including the death penalty, but do not include sanctions that defeat the object and purpose of the Convention Against Torture to prohibit torture.
- iv. In order to constitute torture, mental pain or suffering must be prolonged mental harm caused by or resulting from:
 - (1.) The intentional infliction or threatened infliction of severe physical pain or suffering;
 - (2.) The administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality;
 - (3.) The threat of imminent death; or
 - (4.) The threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration

or application of mind altering substances or other procedures calculated to disrupt profoundly the sense or personality.

- v. In order to constitute torture, an act must be specifically intended to inflict severe physical or mental pain or suffering. An act that results in unanticipated or unintended severity of pain and suffering is not torture.
 - vi. In order to constitute torture an act must be directed against a person in the offender's custody or physical control.
 - vii. Acquiescence of a public official requires that the public official, prior to the activity constituting torture, have awareness of such activity and thereafter breach his or her legal responsibility to intervene to prevent such activity.
 - viii. Noncompliance with applicable legal procedural standards does not *per se* constitute torture.
- b. In assessing whether it is more likely than not that an applicant would be tortured in the proposed country of removal, all evidence relevant to the possibility of future torture shall be considered, including, but not limited to:
- i. Evidence of past torture inflicted upon the applicant.
 - ii. Evidence that the applicant could relocate to a part of the country of removal where he or she is not likely to be tortured;
 - iii. Evidence of gross, flagrant or mass violations of human rights within the country of removal, where applicable; and
 - iv. Other relevant information regarding conditions in the country of removal.
- c. In considering an application for CAT Protection, the APJ shall first determine whether the alien is more likely than not to be tortured in the country of removal. If the APJ determines that the alien is more likely than not to be tortured in the country of removal, the alien is entitled to CAT Protection. An alien entitled to such protection shall be granted all privileges provided for such individuals under Commonwealth law, unless the alien is subject to mandatory denial of protection under section (M)(2) of these regulations. If an alien entitled to CAT Protection is subject to mandatory denial under section (M)(2), the alien's removal shall be deferred under Section (M)(2)(b)(ii).

M. Approval or denial of application.

1. **General.** Subject to paragraph (2) of this section, an application for Refugee Protection or CAT protection shall be granted if the applicant's eligibility is established pursuant to sections (L)(1) or (L)(2) of these regulations.

2. **Mandatory denials.**

a. **Scope:** An application for Refugee Protection or CAT Protection shall be denied if:

- i. The applicant ordered, incited, assisted or participated in the persecution of others on account of race, religion, nationality, membership in a particular social group, or political opinion;
- ii. The applicant has been convicted of a particularly serious crime;
- iii. There are reasonable grounds to believe the applicant has committed a serious nonpolitical crime outside the Commonwealth;
- iv. There are reasonable grounds to believe that the individual is a danger to the safety or security of the Commonwealth or the United States.

If the evidence indicates the applicability of one or more grounds for denial of withholding enumerated in this subsection, the applicant shall have the burden of proving by a preponderance of the evidence that such grounds do not apply.

b. **Effect of Mandatory Denial:**

- i. **Refugee Protection.** An applicant who qualifies for Refugee Protection but is denied such protection as the result of a Mandatory Denial pursuant to paragraph (2) of this section shall be removed forthwith pursuant to Commonwealth exclusion and deportation law, unless the applicant also qualifies for CAT Protection, in which case removal will be pursuant to paragraph (2)(b)(ii) of this section.
- ii. **CAT Protection.** An applicant who qualifies for CAT Protection but is denied such protection as the result of a Mandatory Denial pursuant to paragraph (2) of this section shall be granted deferral of removal to the country where he or she is more likely than not to be tortured.

(1.) **Effect.** Deferral of removal under this subsection:

- (a.) Does not confer upon the alien any lawful immigration status in the Commonwealth;

- (b.) Will not necessarily result in the alien being released from the custody of the OAG;
- (c.) Is effective only until terminated; and
- (d.) Is subject to review and termination if the APJ or the Attorney General determines that it is not likely that the alien would be tortured in the country to which removal has been deferred, or if the alien requests that deferral be terminated.

(2.) *Termination.*

- (a.) At any time during the pendency of deferral of removal under this subsection, the Government may move the APJ to conduct a hearing to determine whether deferral should be terminated. The APJ shall provide notice to the alien and the Government of such hearing, and shall allow both parties an opportunity to submit supplemental evidence for use in the determination of whether it is more likely than not that the alien will be subject to torture in the country of removal.
- (b.) The standards set forth in Section (L)(2), including those relating to burden and standard of proof, shall apply to such a proceeding. The APJ shall make a *de novo* determination based on the record in the initial proceeding and any new evidence provided as to whether it is more likely than not that the alien will be tortured in the country of removal.
- (c.) At any time while removal is deferred, the alien may request in writing that such deferral be terminated. The APJ shall honor such request if it appears, based on the written submission or based on a hearing conducted by the APJ for this purpose, that the request is knowing and voluntary.

N. Removal to third country. Nothing in these regulations shall prevent the OAG from removing an alien to a third country, other than a country to which the alien has established the requisite fear of persecution and/or torture.

O. Appeals. Either the applicant or the Government may appeal ORP's decision to the Attorney General or her designee within fifteen (15) days of service upon the applicant. If no appeal is made to the Attorney General within this time, the ORP's decision shall become final and unreviewable administratively or judicially.

1. *Notice of Appeal.* An appeal pursuant to this section is taken by filing of a written notice with the Office of the Attorney General, which is signed by the appealing party or his/her counsel, and which states the relief requested. The appealing party may also include a concise statement of the grounds for the appeal.
2. *Certification of record.* Upon timely receipt of a notice of appeal, the OPR shall promptly certify and transmit to the Attorney General or her designee a full, true, and correct copy of the entire record, including the transcript or recording of proceedings, if any.
3. *Procedure for Review.* Upon review, the Attorney General may, at her discretion, take any of the following actions: (1) restrict review to the existing record; (2) supplement the record with new evidence; (3) hear oral argument; or (4) hear the matter *de novo*, in which case the hearing shall be conducted pursuant to sections (II.)(I.) through (II.)(M.) of these regulations.
4. *Decision.* Upon completion of review, the Attorney General shall affirm, reverse, or modify the findings, order, or decision of the APJ in writing within ten (10) business days, if reasonably practical. The Attorney General may remand under appropriate instructions all or part of the matter to the APJ for further proceedings, *e.g.*, the taking of additional evidence and the making of new or modified findings by reason of the additional evidence.
5. *Finality.* The decision of the Attorney General shall be final and unreviewable, not subject to further judicial or administrative review.

P. Reconsideration of grant of protection. A grant of protection is for an indefinite period, but does not bestow upon an applicant a right to remain permanently in Commonwealth. ORP can reopen a case, either *sua sponte* or upon motion from the Government, and re-evaluate a grant of *Nonrefoulement* Protection. Such re-evaluation may be performed either on a systematic, periodic basis (*i.e.*, every two years, etc.), or in a specific instance if country conditions have changed in a way that affects the likelihood that the grantee will be persecuted and/or tortured, if another country is identified in which the applicant can reside free from persecution or torture, if the applicant has committed certain crimes or engaged in other activity that triggers a "mandatory denial" set forth in section (M)(2) above, or if the OAG determines that the applicant engaged in fraud in connection with his application.

1. *Procedure.* Except with respect to conditional grants of protection pursuant to section (G)(3) of these regulations, the OAG will not terminate *Nonrefoulement* Protection pursuant to this section unless the individual has been provided notice, in person or by mail to last known address, as well as the opportunity for a hearing, at which an APJ re-examines the claim for

protection and renders a de novo determination as to the individual's qualification for such protection.

2. *Appeals.* A foreign national or the Government may file an appeal to the Attorney General of any decision under this section, pursuant to section O of these regulations, within fifteen (15) days of service of the decision upon the applicant. If no appeal is made to the Attorney General within this time, the ORP's decision shall become final and unreviewable administratively or judicially.
3. *Effect of Termination of Protection.* In the event that an order terminating *Nonrefoulement* Protection is issued by the ORP, and no appeal is taken or the termination order is affirmed on appeal, the individual whose protection is terminated shall be required to depart the Commonwealth forthwith pursuant to Commonwealth immigration laws.

- Q. Employment authorization.** Applicants requesting protection do not have a right to work in Commonwealth and shall not be given the opportunity to apply for employment authorization at the time they request protection. They may, however, request temporary work authorization ("TWA") before a decision is made on their case if ninety (90) days have passed since the initial request for protection and no final decision has been made, or if they have been granted a conditional grant of protection pursuant to section (G)(3) above. The TWA application process shall be governed by the Department of Labor's Special Circumstances Temporary Work Authorizations Regulations.
- R. Right to travel.** Applicants (along with any potential derivative family members; see below) must obtain advance permission before leaving the Commonwealth if they wish to return. Failure to obtain such permission creates a presumption that the applicant has abandoned his/her request with ORP, and he/she may not be permitted to return to Commonwealth. If an applicant obtains permission to depart and returns to his/her country of feared persecution and/or torture, he/she shall be presumed to have abandoned his/her request, unless he/she can show compelling reasons for the return.

III. Implications After Protection Is Granted

- A. Derivative protection for immediate family.** Immediate family members of an applicant whose request for Refugee Protection or CAT Protection is granted ("Grantee"³) will automatically receive protection, provided that the family member is present in Commonwealth and was included in the original request for protection. This includes the Grantee's spouse and unmarried children under twenty-one (21) years of age as of the date of the formal request for protection.

³ "Grantee" shall not refer to individuals granted deferral of removal pursuant to Section (M)(2)(b)(ii) above. In light of the temporary nature of such deferral or removal, implications will be handled on a case-by-case basis.

Common-law marriages shall qualify, provided that such unions are legally recognized in the applicant's country of origin. A Grantee must establish a qualifying relationship to any immediate family member by a preponderance of the evidence. Family members outside the Commonwealth are not entitled to derivative protection.

- B. Work authorization.** A Grantee may be granted a temporary work authorization which shall be renewable on an annual basis upon a finding of continuing refugee status by the Attorney General. For purposes of this paragraph, a Grantee shall not be considered a nonresident worker as defined pursuant to the Nonresident Workers Act but shall be granted an entry permit pursuant to §706(P) of the Immigration Rules and Regulations.
- C. Right to travel.** Grantees (along with any derivative family members) must obtain advance written permission from the DOI before leaving Commonwealth in order to return. Failure to obtain such permission creates a presumption that the Grantee has abandoned his/her protection in Commonwealth, and he/she may not be permitted to return. If a Grantee obtains permission to depart and returns to his/her country of feared persecution and/or torture, he/she shall be presumed to have abandoned his/her protection in Commonwealth, unless he/she can show compelling reasons for the return.



Commonwealth of the Northern Mariana Islands Coastal Resources Management

P.O. Box 10007, 2nd Floor, Morgen Building
San Jose Saipan, MP 96950



Tels.: (670) 6648300/14
Fax : (670) 664-8315

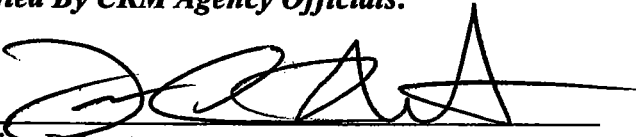
NOTICE and CERTIFICATION OF ADOPTION OF AMENDMENTS TO THE COASTAL RESOURCES MANAGEMENT (CRM) REGULATIONS

We, the undersigned CRM Agency Officials, which are promulgating the Amendments to the Coastal Resources Management Rules and Regulations published in the Commonwealth Register Volume 26 Number 02 on 23 February 2004 at pages 21801 through 21864, by signature below hereby certify that as published, such rules are true, complete and a correct copy of the Amendments to the CRM Rules and Regulations, previously proposed by the Coastal Resources Management Agency Officials, which after the expiration of appropriate time for public comment, have been adopted with minor modification or amendment as set forth below:

- 1) Section 15-10-020 (mm) page 7, capitalize the 'd' in 'Minor development'.
- 2) Section 15-10-020 (nn) page 8, add the underlined word: "Minor Development Permits".
- 3) Section 15-10-110 (d) page 11, add the underlined phrase: "Permit for Minor Developments (as defined in § 15-10-020) Under Expedited Procedures".
- 4) Section 15-10-235 (j) page 19, change "Affirmance" to "Affirmation" in two places in the paragraph.
- 5) Section 15-10-310 (i) (2) (vii) page 29, deletion of parenthesis around 'UBC'.
- 6) Section 15-10-501 (a) page 33, delete the definition of a major siting from this section and reference the definition in § 15-10-020.
- 7) Section 15-20-105 (c) page 48, change from 'Saipan Beach Hotel' to 'Dai Ichi Hotel'.
- 8) Section 15-20-105 (d) page 48, add the underlined word: 'Hafa Adai Beach Hotel'.
- 9) Section 15-20-105 (e) page 48, change from Diamond Hotel to Saipan World Resort Hotel into two places.
- 10) Section 15-20-225 page 49, second sentence, capitalize C, R and M in 'coastal resources management'.

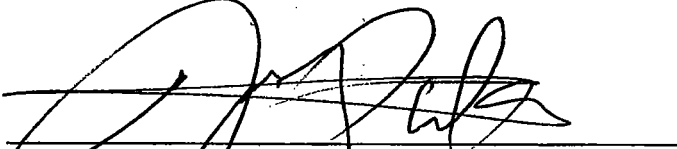
We further request and direct that this Notice of Certification of Adoption be published in the CNMI Commonwealth Register. We declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Saipan, Commonwealth of the Northern Mariana Islands, on the dates indicated below.

Certified By CRM Agency Officials:



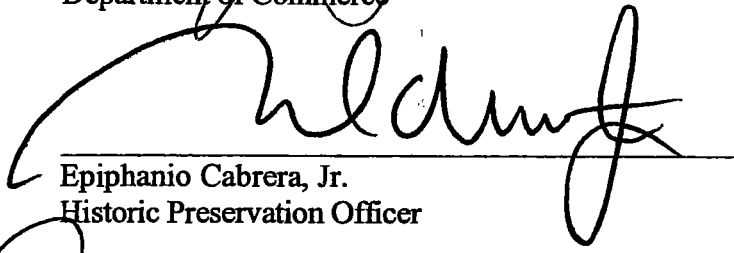
Lorraine Babauta
Executive Director
Commonwealth Utilities Corporation

Date: 4/13/04



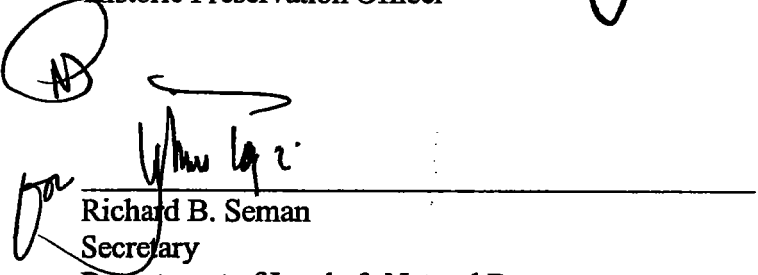
Jesse Palacios
Acting Secretary
Department of Commerce

Date: 4/16/04



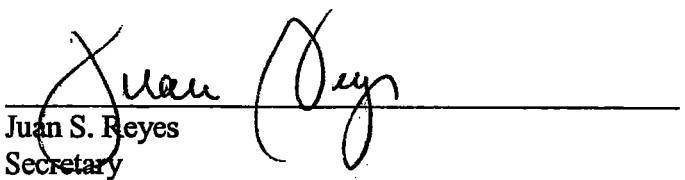
Epiphanio Cabrera, Jr.
Historic Preservation Officer

Date: 4/15/04



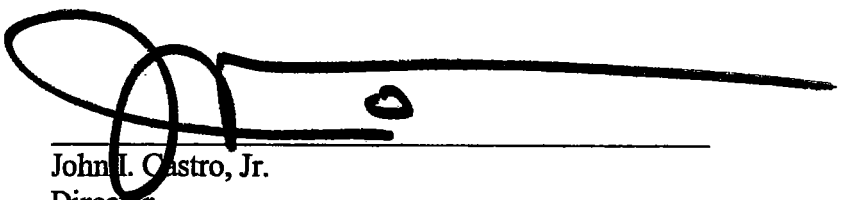
Richard B. Seman
Secretary
Department of Lands & Natural Resources

Date: 4/19/04



Juan S. Reyes
Secretary
Department of Public Works

Date: 4/22/04



John I. Castro, Jr.
Director
Division of Environmental Quality

Date: 4.23.04

Concurred by:



Joaquin B. Salas
CRMO Director

Date: 4/23/04

Attorney General Review:

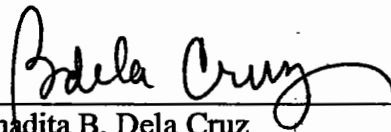
Pursuant to 1 CMC § 2153, as amended by P.L. 10-50, the regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the office of the Attorney General.



Pam Brown
Attorney General

Date: 5/17/04

Filed By:



Bernadita B. Dela Cruz
Commonwealth Register

Date: 5-17-04

TITLE 15
COASTAL RESOURCES MANAGEMENT

CHAPTER 10 – COASTAL RESOURCES MANAGEMENT RULES AND REGULATIONS

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PART 001 – GENERAL PROVISIONS

§ 15-10-001 SHORT TITLE

This CHAPTER shall be cited as the "Coastal Resources Rules and Regulations"

§ 15-10-005 AUTHORITY

Pursuant to the authority of CNMI Public Law 3-47, §§ 8(d) and 9(c) [2 CMC §§ 1531(d) and 1532 (c)], and 1 CMC § 9115, the following rules and regulations are hereby established. They shall apply to all areas designated by CNMI P.L. 3-47, § 7 [1 CMC § 1513], as subject to the jurisdiction of the Coastal Resources Management (CRM) Program.

§ 15-10-010 PURPOSE

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

§ 15-10-015 CONSTRUCTION

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

§ 15-10-020 DEFINITIONS

- (a) "Adjacent Property" means real property that has at least one boundary point in common with the lot or site on which a proposed project will be located, or is separated from such lot or site only by a physical barrier such as a road or a stream.
- (b) "Adjacent Property Owner" means a person, business, corporation, or entity who currently holds valid ownership or lease of an adjacent property.
- (c) "Adverse Impacts" means but is not limited to:
 - (1) alteration of chemical or physical properties of coastal or marine waters that would prevent the existence of the natural biological habitats and communities;
 - (2) accumulation of toxins, carcinogens, or pathogens which could potentially threaten the health or safety of humans or aquatic organisms;
 - (3) disruption of ecological balance in coastal and marine waters that support natural biological communities;
 - (4) addition of man made substances foreign to the coastal or marine environment for which organisms have had no opportunity for adaptation and whose impacts are largely known;
 - (5) disruption or burial of bottom communities; or
 - (6) interference with traditional fishing activities.
- (d) "Affected Person" means a public official, adjacent land owner or member of the general public who can demonstrate to the Administrator the actual or potential bias or conflict of interest of a CRM agency official and can demonstrate that she/he participated in the CRMO hearing process

either by submitting written comments or making oral statements during any hearing held on the project and that these comments were not adequately addressed by the final permit decision.

- (e) **"Aggrieved Person"** means any applicant or person who has been adversely affected by the decision of the coastal resources management agencies officials and can demonstrate that she/he participated in the CRMO hearing process either by submitting written comments or making oral statements during any hearing held on the project and that these comments were not adequately addressed by the final permit decision.
- (f) **"APC"**
 - (1) **"APC"** means an area of particular concern consisting of a delineated geographic area included within coastal resources which are subject to special management within the standards established in § 15-10-310.
 - (2) APCs addressed in this CHAPTER include lagoon and reef, wetland and mangrove, shoreline, and port and industrial, all of which are separately defined herein.
 - (3) APCs shall also include new APCs as may be designated hereinafter.
- (g) **"Aquaculture or Mariculture Facility"** means a facility, either land or water based, for the culture or commercial production of aquatic plants or animals, for research or food production, sales, or distribution.
- (h) **"Beach"** means an accumulation of unconsolidated deposits along the shore with their seaward boundary being at the low tide or reef flat platform level and extending in a landward direction to the strand vegetation or first change in physiographic relief to topographic shoreline.
- (i) **"BMP"** means best management practices; a measure, facility, activity, practice, structural or non-structural device, or combination of practices that are determined to be the most effective and practicable (including technological, economic, and institutional considerations) means of controlling point and nonpoint pollutants at levels compatible with environmental quality goals to achieve stormwater management control objectives.
- (j) **"Coastal Land"** means all lands and the resources thereon, therein, and thereunder located within the territorial jurisdiction of the CRM Program, as specified by section 7 of PL 3-47 [2 CMC § 1513].
- (k) **"Coastal Resources"** means all coastal lands and waters and the resources therein located within the territorial jurisdiction of the CRM Program, as specified by section 7 of PL 3-47 [2 CMC § 1513].
- (l) **"Coastal Resources Management Program Boundaries"** means the edge of the area subject to CRM Program territorial jurisdiction, as specified in Section 7 of P.L. 3-47 [2 CMC § 1513].
- (m) **"Coastal Waters"** all waters and the submerged lands under the marine resources subject to the territorial jurisdiction boundaries of the coastal resources management program as specified in Section 7 of P.L. 3-47 [2 CMC § 1513].
- (n) **"Conclusion of Law"** means statements of the propositions of law that the decision maker arrives at after, and as a result of, finding certain facts in a case.
- (o) **"CRM"** means Coastal Resources Management.
- (p) **"CRM Administrator"** means the CRM Director, appointed by the CNMI Governor to administer the CRM Program, pursuant the CNMI P.L. 3-47, § 2 [1 CMC § 2081 (a)].
- (q) **"CRM Agency Officials"** as defined in 2CMC § 1501, et seq.
- (r) **"CRM Appeals Board"** as defined in 2CMC § 1501, et seq.

- (s) **"CRM Coastal Advisory Council"** as defined in 2CMC § 1501, et seq.
- (t) **"CRM Office"** as defined in 2CMC § 1501, et seq.
- (u) **"CRM Permit"** means a permit that is issued by CRM Agency Officials for a proposed project that is subject to CRM Program jurisdiction
- (v) **"CRM Program"** means the Coastal Resources Management Program established by CNMI P.L. 3-47 [2 CMC §§ 1501, et seq.
- (w) **"Degradation"** means a diminution or reduction of strength, efficacy, value or magnitude.
- (x) **"Development"** means:
 - (1) the placement or erection of any solid material or structure;
 - (2) discharge or disposal of any dredge materials or of any gaseous, liquid, solid, or thermal waste;
 - (3) the grading, removing, dredging, mining, or extraction of any materials;
 - (4) a change in the density or intensity of use of land including, but not limited to, subdivision of land and any other division of land including lot parceling;
 - (5) a change in the intensity of use of water, the ecology related thereto, or the access thereto;
 - (6) a construction or reconstruction, demolition, or alteration of any structure, including any facility of any private or public utility; or
 - (7) the removal of significant vegetation.
- (y) **"Direct and Significant Impact"** means the impact which is causally related to or derives as a consequence of a proposed project, use, development, activity or structure which contributes to a material change or alteration in the natural or social characteristics of any coastal resources.
- (z) **"Endangered or Threatened Wildlife"** means species of plants or animals which are:
 - (1) determined to be of such limited numbers as to be in immediate danger of extinction or reduction to a critically low population level in and around the Commonwealth of the Northern Mariana Islands if subjected to continued taking or reduction, or alteration of habitat; or
 - (2) so designated by the U.S. Department of Interior's Fish and Wildlife Service on the latest list of "Endangered and Threatened Wildlife and Plants."
- (aa) **"Federally Excluded Lands"** means those federally owned lands excluded from the territorial jurisdiction of the CRM program as specified by Section 7 of P.L. 3-47 [2 CMC § 1513].
- (bb) **"Findings of Fact"** means determination of fact by way of reasonable interpretation of evidence.
- (cc) **"Fluid"** means any material or substance which flows or moves, whether in a semisolid, liquid, sludge, gas, or any other form or state.
- (dd) **"Hazardous Material"** means a material or combination of materials which may:
 - (1) cause or contribute to an increase in mortality or an increase in serious illness; or
 - (2) pose a potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.
- (ee) **"Impact"** is any modification in an element of the environment, including modification as to quality, quantity, aesthetics, or human or natural use thereof.
- (ff) **"Infrastructure"** means those structures, support systems and appurtenances necessary to provide the public with such utilities as are required for economic development, including but not limited to systems providing water, sewerage, transportation and energy.

- (gg) **"Infrastructure Corridors"** means a strip, or strips of land, not including highways, forming passageways which carry infrastructure.
- (hh) **"Lagoon and Reef APC"** means that geographic area of particular concern consisting of a partially enclosed body of water formed by sand spits, baymouth bars, barrier beaches or coral reefs, of the Northern Mariana Islands chain.
- (ii) **"Littoral Drift"** means the movement of sedimentary material within the near-shore zone under the influence of tides, waves and currents.
- (jj) **"Major Siting"** means any proposed project which has the potential to directly and significantly impact coastal resources, as provided for in § 15-10-501 of this chapter. The phrase includes, but is not limited to the following:
 - (1) energy related facilities, wastewater treatment facility pipelines, transportation facilities, surface water control project, harbor structures;
 - (2) sanitary landfills, disposal of dredged materials, mining activities, quarries, basalt extraction, incinerator projects;
 - (3) dredging and filling in marine or fresh waters, point source discharge of water or air pollutants, shoreline modification, ocean dumping, artificial reef construction;
 - (4) proposed projects with potential for significant adverse effects on submerged lands, groundwater recharge areas, cultural areas, historic or archeological sites and properties, designated conservation and pristine areas, or uninhabited islands, sparsely populated islands, mangroves, reefs, wetlands, beaches and lakes, areas of scientific interest, recreational areas, limestone, volcanic and cocos forest, and endangered or threatened species or marine mammal habitats;
 - (5) major recreational developments and major urban or government developments;
 - (6) construction and major repair of highways and infrastructure development;
 - (7) aquaculture or mariculture facilities, and silvaculture or timbering operations;
 - (8) any project with the potential for affecting coastal resources which requires a federal license, permit or other authorization from any regulatory agency of the U.S. Government;
 - (9) any project, or proposed project, that may cause underground injection of hazardous wastes, of fluids used for extraction of minerals, oil and energy, and of certain other fluids with potential to contaminate ground water. Any such project, or proposed project, shall be primarily governed by the CNMI Underground Injection Control Regulations and supplemented by this CHAPTER;
 - (10) any other proposed project which by consensus of the CRM Agency Officials, has the potential for causing a direct and significant impact on coastal resources including any project having a peak demand of 500 kilowatts per day and/or 3,500 gallons of water per day as established by CUC demand rates for particular types of projects; or
 - (11) proposed projects that modify areas that are particularly susceptible to erosion and sediment loss; areas that provide important water quality benefits and/or are necessary to maintain riparian and aquatic biota and/or necessary to maintain the natural integrity of water bodies and natural drainage systems.
- (kk) **"Management Measures"** are economically achievable measures to control the addition of pollutants to surface and ground waters, which reflect the greatest degree of pollutant reduction achievable through the application of the best available nonpoint pollution control practices, technologies, processes, siting criteria, operating methods, or other alternatives.
- (ll) **"Marine Resources"** means those resources found in or near the coastal waters of the Commonwealth such as fish, dissolved minerals, aquatic biota and other resources.

(mm) "Minor Development" means:

- (1) normal maintenance and repair activities for existing structures or developments which cause only minimal adverse environmental impact;
- (2) normal maintenance and repair of: existing rights of way; underground utility lines including water, sewer, power, and telephone; minor appurtenant structures to such; pad mounted transformers and sewer pump stations, provided that normal maintenance and repair shall not include the extension or expansion of existing lines, structures or right of way;
- (3) temporary, not to exceed six (6) months, picnic shelter (pala-pala) construction for fundraising, carnival or cultural activities;
- (4) construction of pala-palas, picnic tables and/or barbecue pits;
- (5) construction of non-concrete volleyball or tennis courts;
- (6) temporary photographic activities (such as advertising sets) which are demonstrated by the applicant to have an insignificant impact on coastal resources;
- (7) public landscaping and beautification projects;
- (8) memorial and monument projects covering ten (10) square meters or less;
- (9) security fencing which does not impede public access;
- (10) placement of swimming, navigation or temporary or small boat mooring buoy;
- (11) single family residential construction or expansion including sewer connections within the Shoreline APC;
- (12) archeological and related scientific research approved by the Historical Preservation Office (HPO), evaluated on a case-by-case basis, and found by CRMO to cause no significant adverse environmental impacts;
- (13) agricultural activities;
- (14) debris incineration;
- (15) repair of existing drainage channels and storm drains;
- (16) strip clearing for survey sighting activities, except in Wetland APC;
- (17) construction of bus stop shelters;
- (18) construction of an accessory building incident to an existing acceptable activity in the port and industrial APC; or
- (19) temporary storage of hazardous or nuisance materials including but not limited to construction chemicals, used oil, automotive fluids, batteries, paints, solvents, unregistered or unlicensed vehicles, accumulation of trash, garbage, or other refuse.

(nn) "Minor Development Permits" are those permits specified in § 15-10-110(d) of this CHAPTER.

(oo) "Nonpoint Source" means any source of water pollution that does not meet the legal definition of "point source" as defined in section 502(14) of the Federal Clean Water Act.

(pp) "NPS" means nonpoint source pollution or contamination that comes from many diffuse sources rather than from a specific point, such as an outfall pipe, including pollutants contained in runoff and groundwater that do not meet the legal definition of "point source" in section 502(14) of the Federal Clean Water Act.

(qq) "Party" means a person, legal or natural, or any department of government, organization or other entity that is a CRM Permit applicant or a successor in interest.

(rr) "Permit Holder" means a person or entity that holds the beneficial interest in a CRM permit and may be either a CRM permit applicant, a successor in interest if the project site has been sold, leased, or otherwise transferred, or a real party in interest if the benefit of the CRM permit is for one other than the applicant or a successor in interest.

(ss) "Person" means the government of the United States of America or any agency or department thereof; or the Government of the Commonwealth or any agency or department of any municipality

thereof; any sovereign state or nation; a public or private institution; a public or private corporation, association, partnership, or joint venture, or lessee or other occupant of property, or individual, acting singly or as a group.

- (tt) **"Point Source"** means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture. (Federal Clean Water Act, section 502(14), 33 U.S.C. § 1362(14)).
- (uu) **"Port and Industrial APC"** means the land and water areas of particular concern surrounding the commercial ports of the Northern Mariana Islands chain which consists of projects, industrial uses and all related activities.
- (vv) **"Project"** means any structure, use, development, or other activity subject to CRM Program territorial jurisdiction as specified by section 7 of P.L. 3-47 [2 CMC § 1513].
- (ww) **"Resources"** means natural advantages and products including, but not limited to, marine biota, vegetation, minerals and scenic, aesthetic, cultural and historic resources subject to the territorial jurisdiction of the CRM Program.
- (xx) **"Riparian"** means pertaining to the banks and other adjacent, terrestrial (as opposed to aquatic) environs of freshwater bodies, watercourses, and surface-emergent aquifers (e.g., springs, seeps), whose imported waters provide soil moisture significantly in excess of that otherwise available through local precipitation.
- (yy) **"Shoreline APC"** means the geographic area of particular concern consisting of the area between the mean high water mark or the edge of a shoreline cliff and one hundred fifty (150) feet inland on the islands of the Northern Mariana Islands chain.
- (zz) **"Underground Injection"** means a "well injection"
- (aaa) **"Under Penalty of Perjury"** means any statement, oral or written, certified as true and correct under penalty of perjury, pursuant to CNMI P.L. 3-48, and which precludes the necessity of a notarized affidavit for written statements, as in the following example: I declare under the penalty of perjury that the foregoing is true and correct and that this declaration was executed on (date), at _____, CNMI. _____ (Signature).
- (bbb) **"Water-dependent Use"** means a use that needs a waterfront location for its physical function, such as seaports and other similar facilities.
- (ccc) **"Water-oriented Use"** means a use that faces or overlooks the shoreline or water, but does not require a location on the shoreline or waterfront. Such uses include, but are not limited to restaurants, hotels and residential developments.
- (ddd) **"Water-related Use"** means a use that requires water itself as a resource, but does not require a waterfront location; including most industries requiring cooling water, or industries that receive raw material via navigable waters for manufacture or processing. Such uses must have adequate setbacks, as required by the CRM office.
- (eee) **"Watershed"** means all land and water within the confines of a drainage divide.
- (fff) **"Well"** means a bored, drilled or driven shaft, or a dug hole whose depth is greater than the largest surface dimension.

(ggg) "Well Injection" means the subsurface emplacement of "fluids" through a bored, drilled, or driven "well", or through a dug well, where the depth of the dug well is greater than the largest surface dimension.

(hhh) "Wetland and Mangrove APC" means any geographic area of particular concern which includes areas inundated by surface or ground water with a frequency sufficient to support a prevalence of plant or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands include swamps, marshes, mangroves, lakes, natural ponds, surface springs, streams, estuaries and similar areas in the Northern Mariana Islands chain.

PART 100 - CRM PERMIT REQUIREMENT

§ 15-10-101 WHEN CRM ACTION REQUIRED

Prior to the commencement of a proposed project wholly or partially within an APC, or which constitutes a Major Siting under § 15-10-501 herein, or which has a direct and significant impact on an APC, the party responsible for initiating the proposed project shall obtain a CRM Permit.

§ 15-10-105 MULTIPLE APC PERMIT

If a proposed project is to be located in more than one APC, CRM permit standards and policies for each applicable APC shall be evaluated in a single CRM permit decision.

§ 15-10-110 EXCEPTIONS TO CRM PERMIT REQUIREMENTS

- (a) **Excluded Federal Land.** Notwithstanding the language of § 15-10-101 and § 15-10-105, a CRM Permit shall not be required for proposed projects on federally excluded lands provided that all activities on federally-excluded lands which have a direct and significant impact on areas subject to CRM program, as specified in Section 7 of P.L. 3-47 [2 CMC § 1513], shall be consistent with these rules and regulations and applicable Federal and Commonwealth laws.
- (b) **Emergency Services or Repairs.** During or immediately after an environmentally destructive event such as typhoon, storm, earthquake, shipwreck, or oil or other hazardous substances spill, the CRM Administrator may issue a temporary permit for emergency repair and cleanup subject to the following conditions:
 - (1) the temporary permit shall be valid for up to six (6) months or until a regular CRM permit is processed whichever is less in time;
 - (2) any repair permitted under this section shall be limited in scope to replacement of pre-existing structures;
 - (3) a person granted a temporary permit shall file a CRM permit application within twenty (20) days of the issuance of the temporary permit; and
 - (4) the CRM Administrator must find that the proposed repair or cleanup is necessary to prevent further immediate damage or injury to structures, vessels, the environment or the public welfare.
- (c) **Exceptions from Coastal Permit Requirements.**
 - (1) A Coastal permit may not be required for the following types of projects except as set forth in subsections (2) and (3) of this subsection (c). Any relief from the coastal permit requirements does not remove a project proponent's responsibility to comply with CRM program goals and policies, nor does it exempt a project from any other commonwealth regulatory authority.
 - (i) A proposed project situated completely outside of any APC and which does not require a minor or major siting permit;

- (ii) agricultural activities on lands which have been historically used for such activities;
 - (iii) cutting of trees and branches by hand tools, not driven by power or gas;
 - (iv) hunting, fishing and trapping;
 - (v) the preservation of scenic, historic and scientific areas including wildlife preserves which do not require any development; or
 - (vi) construction of small scale non-intensive projects such as single family dwellings, duplexes, out-buildings and small neighborhood businesses outside of an APC.
- (2) If any proposed project or expansion of a previous project that was exempted by sub-section (c)(1) may have a direct and significant impact on coastal resources, as determined by the CRM Administrator then the project proponent or owner shall be required to apply for a CRM permit.
 - (3) Should it be found that a particular proposed project exempted by subsection (c)(1) above may have a direct and significant impact on coastal resources, the CRM office or its designee may conduct such investigation(s) as may be appropriate to ascertain the facts and may require the person(s) applying for such proposed project(s) to provide all of the necessary information regarding the project in order that a determination may be made as to whether the proposed project requires a coastal permit.
- (d) **Permit for Minor Developments (as defined in § 15-10-020) Under Expedited Procedures.**
- (1) Applications for permits for minor development shall be expeditiously processed so as to enable their promptest feasible disposition.
 - (2) Applications for permits for minor developments on Saipan will be received at the CRM Office and the CRM Administrator will review and make a determination on the application based on P.L. 3-47 [2 CMC §§ 1501, et seq.] and this CHAPTER.
 - (3) Applications for permits for minor developments on Tinian and Rota will be made to the Tinian and Rota Coastal Coordinators, respectively, who will review and make a determination on the application based on P.L. 3-47 [2 CMC §§ 1501, et seq.], and this chapter.
 - (4) Failure to approve or deny an application for a minor permit within ten working days from receipt of application shall be treated as approval of the application, provided that the CRM Program Administrator may extend the deadline by not more than an additional ten days where necessary.
 - (5) CRM minor permit applications will involve a full evaluation of individual and cumulative impacts and include an application review, site inspection and the issuance of a standard permit (with appropriate conditions). The conditions to be attached to the minor permit will be based on a case-by-case evaluation of each particular project.

PART 200 - CRM PERMIT PROCESS

§ 15-10-201 INTRODUCTION

All persons proposing to conduct any activities affecting or which may affect the coastal resources of the Commonwealth must apply for a CRM permit. A pre-application conference shall be conducted with applicant by a CRM staff person at a designated time. At the request of the applicant, a pre-application conference also may be held with CRM agency officials. The pre-application conference shall be held to discuss the proposed activity to provide the applicant with information pertaining to the CRM program goals, policies and requirements and to answer questions the applicant may have regarding the CRM

program and its requirements. The following permit process shall govern all coastal permit applications except as provided in § 15-10-110(d).

§ 15-10-205 APPLICATION

CRM permit application forms shall be maintained at the CRM Office on Saipan. Copies of the application form shall also be maintained at CRM branch Offices on Rota and Tinian. CRM permit applicants shall complete and file an application for each proposed minor permit, proposed project within an APC, or those constituting a major siting as defined in § 15-10-020(jj) herein. The following conditions shall apply to all CRM permit applications:

- (a) **Copies.** The applicant shall file an original CRM Permit application with exhibits and attachments and eight (8) copies thereof.
- (b) **Filing Location.** CRM Permit applications shall be filed at the CRM office in Saipan, though filing may be at the CRM Branch Office on Rota or Tinian, if the proposed project is to be on either of those islands.
- (c) **Certification.** CRM Permit applications shall be certified by the applicant that the information supplied in the application and its exhibits and attachments are true. The certification shall be by affidavit or declaration under the penalty of perjury.
- (d) **Attachments:**
 - (1) CRM Permit applications shall, to the extent necessary, contain attachments and necessary supporting materials including statements, drawings, maps, etc., which are relevant to the CRM Permit application.
 - (2) Except for minor permit applications, CRM shall require the applicant to submit evidence establishing that the project will not have significant adverse impact on the coastal environment or its resources. Adverse impacts are defined in § 15-10-020(c).
- (e) **Management Measures.** CRM Permit applications shall include a description and design of proposed management measures which will avoid, reduce and/or minimize nonpoint source pollution contributed by the proposed project.
- (f) **Fees.** CRM Permit Applications shall be accompanied by a non-refundable CRM permit application fee in accordance with the following fee schedule, by check made payable to CNMI Treasurer.
 - (1) No fee for government projects.
 - (2) \$25.00 fee for emergency permits.
 - (3) \$100.00 fee for minor development permits.
 - (4) \$500.00 initial fee and \$400.00 renewal fee for jet ski operating permits.
 - (5) All other fees for projects shall be based upon appraisal of construction costs for structures affixed to the ground.

FEE AMOUNT	COST OF PROJECT
\$100	less than or equal to \$50,000
\$200	value between \$50,001 and \$100,000
\$750	value between \$100,001 and \$500,000
\$1,500	value between \$500,001 and \$1,000,000
\$1,500	plus an additional amount equal to the fee for the cost increment exceeding \$1,000,000.

- (g) **Performance Bond Requirements.** A performance bond or equivalent surety may be required by the CRM program if failure to comply with terms of the application or permit will result in environmental damage. In the event that the project cannot be completed as permitted, the applicant shall forfeit the bond or surety equivalent or portion thereof needed to mitigate any damage caused by such failure of performance. Any monies obtained from the bond or surety may be used to complete the site preparation and infrastructure requirements, restore the natural appearance and biological character of the project site and its impacts on adjacent properties or correct any adverse impacts to the environment.
- (h) **Information.** CRM permit applications shall include the following for review by the CRM Office:
- (1) Applicant's name.
 - (2) Applicant's representative (if any).
 - (3) Owner of any real property at the project site.
 - (4) Lessee of any real property at the project site.
 - (5) Project name.
 - (6) Owner of the project if different from applicant.
 - (7) The following construction plans:
 - (i) master site plan including; architectural features in conceptual form, major infrastructure and major amenities (in schematic or single line form);
 - (ii) typical floor plans in conceptual format for all structures and major infrastructure;
 - (iii) view corridor plan;
 - (iv) site coverage plan- (displaying lot density including buildings, infrastructure, amenities, parking area, road networking and open space;
 - (v) proposed road improvements; and
 - (vi) existing conditions map.
 - (8) The following erosion control and drainage plans:
 - (i) slope and elevation map;
 - (ii) watershed and drainage map;
 - (iii) preliminary drainage and erosion control map; and
 - (iv) preliminary stormwater nonpoint source management plan.
 - (9) A map showing the distance of all proposed structures from mean high water and wetlands, as shown on APC maps, if applicable.
 - (10) Estimated costs for all improvements to be affixed to the property.
 - (11) Copies of CNMI and Federal permits or permit applications including business license, submerged lands lease, and other necessary permits.
 - (12) Names of adjacent property owners and copies of letters sent to them notifying them of the proposed project.
 - (i) Application may request an exemption of this requirement where notification of every adjacent property owner would not be practical or would create an undue burden. This exemption is intended to be limited to projects such as infrastructure corridors, where the path of the corridor or project may be adjacent to a large number of properties. If the exemption is granted by CRM Agency Officials, the applicant must complete an alternative notification. The applicant would be required to publish public notice of the proposed project in a newspaper of general circulation in the CNMI at least four (4) times prior to the public hearing on the proposed project. The public notice shall

include the permit number, name of project, name of applicant, map of the proposed project area as approved by CRMO, date, time and place of the public hearing, CRMO's contact numbers, and description of the proposed project. The applicant shall obtain approval of the public notice from CRMO prior to publishing. The applicant is responsible for all public notice fees and printing.

- (ii) For purpose of this subsection, and subsection (g)(13), adjacent property is defined in § 15-10-020(a).
- (13) Adjacent property description.
- (14) Estimates of daily peak demand for utilities including water and electricity and projected usage of utilities and other infrastructure.
- (15) Map of the vicinity.
- (16) Topographic survey map with ten (10) foot contour.
- (17) Elevation plans of the project including a side profile of the project.
- (18) Title documents to all real property and submerged lands including leases or lease applications from appropriate parties.
- (19) Affidavit or declaration made under penalty of perjury that the application is a statement of truth by the principal or authorized agent.
- (20) In addition, environmental assessments for all CRM major sitings shall include:
 - (i) project summary, justification and size;
 - (ii) description of existing environment of site including vegetation, wildlife, land uses, and historic and cultural resources, soil, geology, topography, weather, air quality;
 - (iii) description of socio-economic characteristics of the project including income and employment, education, infrastructures, law enforcement, fire protection, hospital, and medical facilities;
 - (iv) discussion of alternatives to the proposed project size/design and how the preferred alternative was selected;
 - (v) description of the direct, indirect and cumulative environmental and socio-economic effects, both positive and negative, which may result from the project, i.e., air and water quality, noise and dust levels, sedimentation and erosion, plant and wildlife habitat and populations, infrastructure capacity (short and long term);
 - (vi) description of how impacts have been avoided or minimized and how any unavoidable impacts will be mitigated; and
 - (vii) evaluation of alternative management measures to control nonpoint source pollution and a description of management measures selected for incorporation in the proposed project.
- (21) The following plans shall be required of all applicants as a condition of the issuance of a CRM major siting permit. The time frames for the submission of the plans shall be specified within their respective conditions of the CRM permit. Additional types, numbers and/or quality of plans may also be required prior to permit issuance or as a condition of the permit at the discretion of the CRM Administrator or the CRM agency officials.
 - (i) Copies of the final construction plans and specifications must be signed and sealed by a CNMI licensed architect and engineer in their respective discipline. Final plans shall include excavation, earthmoving and stormwater control.
 - (ii) Final master site plan.
- (22) All dimensions shall be stated in English units (i.e., inches and feet).

- (i) **Certification of Completion of Application.** Within thirty (30) days of the date on which an application for a CRM Permit is received by the CRM office, the CRM Administrator shall review the application and certify its completion to the applicant or notify the applicant of any defects or omitted necessary information. The time commencing review of an application specified in § 15-10-215 shall begin on the date an application is certified complete.

§ 15-10-210 NOTICE OF APPLICATION

The CRM office shall cause notice of each application for CRM permit to be published in a newspaper of general circulation within the Commonwealth within fifteen (15) days of receipt of the application. The notice shall state the nature, scope, and location of the proposed project, invite comments by the public, provide information on requesting a public hearing and provide information on the procedure for appealing any permit decision.

§ 15-10-215 REVIEW OF APPLICATION

The CRM Administrator and the CRM agency officials shall have sixty (60) days following certification of completion of application to grant or deny a CRM Permit except a permit for a minor development. For purposes of Section 9(a) of the Coastal Resources Management Act of 1983 (P.L. 3-47) [2 CMC § 1532(a)], the term "receipt of any request for review" shall mean "CRM certification of completion of a permit application." Except for a permit for a minor development, the CRM Office shall review the application, publish notice of its contents, schedule a CRM permit hearing if mandatory or requested pursuant to § 15-10-220, or by the public and transmit the application to the CRM agency officials for review. The CRM Office shall provide technical findings on the impacts of proposed project to assist CRM agency officials in reaching a unanimous decision on CRM permit applications and shall ensure compliance of CRM permit decisions with this CHAPTER and CNMI P.L. 3-47 [2 CMC § 1532(d)]. Where an unanimous decision cannot be reached, the matter shall be submitted to the Governor for his determination pursuant to Section 9(d) of P.L. 3-47 [2 CMC § 1532(d)].

§ 15-10-220 CRM PERMIT HEARING

When a hearing on a permit application is required or requested pursuant to this section the CRM Administrator shall schedule the hearing, inform the party or parties involved of the hearing date and publish notices of the hearing two times in a newspaper of general circulation in the Commonwealth at least fourteen (14) days prior to the hearing.

- (a) **When Permit Hearing Appropriate.** The CRM Administrator shall schedule a CRM permit hearing if:
- (1) the proposed project is determined to be a major siting by the CRM agency officials;
 - (2) the proposed project does not constitute a major siting, but falls within one of the coastal APCs and the applicant, CRM agency official, or people pursuant to subsection (a)(4) below, submit a written request for a public hearing;
 - (3) if a CRM agency official requires a hearing on a proposed project; or
 - (4) a petition signed by at least five (5) people requesting a public hearing is received by the CRM Office within fourteen (14) days of the date the application is published in the newspaper as required in § 15-10-210.
- (b) **Review Period.** The sixty (60) day period of review or, in the case of a minor permit, the ten (10) days period of review, shall begin on the day the application is certified to be complete by the CRM Office.
- (c) **Presiding Officer.** The CRM Administrator or his designee shall preside at CRM permit hearings. The presiding officer shall control the taking of testimony and evidence. Evidence offered in a hearing need not conform with any prescribed rules of evidence; further, the presiding officer may

allow and limit evidence and testimony in any manner he reasonably determines to be just and efficient.

- (d) **Public Invited.** CRM permit hearings shall be open to the public.
- (e) **Location.** Public meetings may be held at any location within the Commonwealth. Public hearings pursuant to permit applications shall be conducted on the island where the proposed project is located. Appellate hearings shall be held on the same island as the permit hearings, or if no CRM permit hearing was held, on the island where the proposed project is located. All other public hearings shall be conducted on Saipan.
- (f) **Parties.** Any party to a hearing on a CRM permit application may appear on his/her own behalf. Parties may appear through an authorized representative of a partnership, corporation, trust or association. An authorized employee or officer of a government department or agency may represent the department or agency in any hearings.
- (g) **Record.** The CRM Office shall provide for an audio recording or a stenographic record of CRM permit hearings. Transcription of the record shall not be required unless requested by a CRM permit applicant or the CRM Administrator, and except for the latter any party requesting transcription shall pay the cost incurred in the preparation of the transcript. Public access to the contents of the record and CRM records retention responsibilities are discussed in PART 1200.

§ 15-10-225 FILING OF DOCUMENTS

Documents filed in support of, or in opposition to, CRM permit applications shall conform to the following standards.

- (a) **Form and Size.** Pleading and briefs shall be bound by staple in the upper left hand corner and shall be typewritten upon white paper eight-and-a-half by eleven inches (8 1/2 X 11") in size. Tables, maps, charts, exhibits or appendices, if larger, shall be folded to that size where practicable. Text shall appear on one side of the paper and shall be double-spaced, except that footnotes and quotations in excess of a few lines may be single-spaced.
- (b) **Title and Number.** Petitions, pleadings, briefs, and other documents shall show the title and number of the proceeding and the name and address of the party or its attorney.
- (c) **Signatures.** The original of each application, petition, amendment or other legal document shall be signed in ink by the party or its counsel. If the party is a corporation or a partnership, the document may be signed by a corporate officer or partner. Motions, petitions, notices, pleading, and briefs may be signed by an attorney. Certifications as to truth and correctness of information in the document shall be by affidavit or declaration under penalty of perjury by the person charged with making the statements contained herein.
- (d) **Copies.** Unless otherwise required, there shall be filed with the CRM Office an original and five (5) copies of each document.

§ 15-10-230 DECISION ON CRM APPLICATION

The CRM agency officials shall review the CRM permit application, hearing transcripts, if any, CRMO technical findings, supporting documentation and relevant laws, rules and regulations, and issue a unanimous written decision to grant, deny, or grant with conditions, a CRM permit in accordance with the policies of CNMI P.L. No. 3-47 [2 CMC § 1501, et seq.] and applicable rules and regulations. In reviewing a CRM Permit application, the following procedures shall apply:

- (a) **Voluntary Disqualification.** CRM agency officials participating in decisions regarding CRM Permits shall do so in an impartial manner. They shall not contribute to decisions on CRM Permits

where there exists an appearance of bias, or where actual bias may prevent them from exercising independent judgment. Should a CRM agency official determine, after considering the subject matter of a CRM permit application, that bias, or the appearance of bias, might appear to prevent him from exercising independent judgment, he shall excuse himself from that decision and appoint an alternate with comparable qualifications to act in his stead.

- (b) **Disqualification by challenge.** If a CRM agency official refuses to disqualify himself under subsection (a), an applicant or affected person may petition the CRM Administrator at any time prior to the issuance of a permit decision for disqualification of a CRM agency official because of bias or the appearance of bias. A petition for disqualification shall be accompanied by a declaration under the penalty of perjury containing facts supporting the assertion of bias. The CRM Administrator shall review the petition and determine whether the facts give rise to a significant inference of bias, and if so, he shall inform the challenged CRM agency official that he/she is disqualified. If a CRM agency official is disqualified the CRM Administrator shall appoint a qualified alternate from the same department, to act in the disqualified CRM official's stead. Alternates are also subject to disqualification by challenge of a party or affected person.
- (c) **Unanimous Decision Required.** Decisions regarding issuance or denial of CRM permits by the CRM agency officials shall be by unanimous vote. Disagreements among the CRM agency officials shall be mediated by the CRM Administrator, and he shall assist in the preparation of a joint decision in order to achieve unanimous consent. Further, the CRM Administrator shall certify that each CRM permit decision complies with CNMI P.L. 3-47 [2 CMC § 1501, et seq.] and applicable rules and regulations.
- (d) **Deadlock Resolution by Governor.** In the event that the unanimity required by subsection (c) is not obtained, and/or the CRM Administrator is unable to certify that a unanimous decision of CRM agency officials complies with CNMI P.L. 3-47 [2 CMC § 1501, et seq.] and/or applicable rules and regulations, the CRM Administrator shall forward the CRM permit application to the Governor for resolution of the deadlock.
 - (1) **Referral.** Determination that a deadlock exists regarding a decision over a CRM permit application shall be made by the CRM Administrator within the sixty (60) day period of review by CRM agency officials specified by § 15-10-215. A deadlocked CRM permit application shall be referred to the Governor for resolution within ten (10) days following this determination.
 - (2) **Supporting Documentation.** In addition to the deadlocked CRM permit application, the CRM Administrator shall forward all supporting documentation, including additional briefs, if any, filed by the applicant, and statements of support or opposition by CRM agency officials. If a deadlock results solely from the CRM Administrator's denial of certification of compliance with CRM laws, then he shall supply a statement of his objections. If a deadlock results from dispute among CRM agency officials, then statements reflecting the divergent views on the CRM permit application shall be obtained from the CRM agency officials and forwarded with CRM permit application to the Governor for his review.
 - (3) **Decision.** After receipt of the deadlocked CRM permit application and accompanying documents, briefs and statements referred to above, the Governor shall have thirty (30) days to render his decision. He may grant, deny or conditionally grant a CRM permit, but he must issue written findings of facts and conclusions of law for his decision.
 - (4) **Review.** The decision of the Governor in a deadlock resolution under this section shall be conclusive for purposes of permit issuance or denial. Parties objecting to the Governor's decision may, if they seek review of the Governor's decision, appeal directly to the Appeals Board.
- (e) **Written Findings and Conclusions.** Decisions rendered by the CRM agency officials on granting, denying or conditionally granting CRM permits shall be accompanied by written findings of fact

and conclusions of law. The CRM Office shall assist the agency officials in preparing a consensus draft of finding of fact and conclusions of law for signature by CRM agency officials and the CRM Administrator.

- (f) **Issuance of CRM Permit.** If the CRM agency officials unanimously agree on the issuance or conditioned issuance of a CRM permit and the CRM Administrator certifies that the CRM permit complies with CNMI P.L. 3-47 [2 CMC §1501, et seq.] and applicable rules and regulations, the CRM permit shall be issued. In the case of a deadlocked CRM permit application, if the Governor finds that it is proper to grant or conditionally grant a CRM permit, then the CRM Office shall prepare a written CRM permit stating the terms and conditions of issuance and obtain the signatures of the following on the CRM permit:
 - (1) The CRM agency officials; and
 - (2) The CRM Administrator.
- (g) **"He Who Decides Must Hear".** In those cases where a public hearing is held on a CRM permit application, the CRM agency officials shall review and consider the matters discussed or presented at the hearing. To this end, CRM agency officials shall, whenever practicable, attend CRM permit hearings, and if unable to attend a hearing, they shall listen to the audio recording of the hearing, or obtain and read a stenographic transcript prior to rendering any decision on the affected CRM permit application.
- (h) **Notice.** Within ten (10) days of the issuance of a CRM permit decision, CRM shall publish notice of such issuance in a newspaper of general circulation in the Commonwealth.

§ 15-10-235 APPEAL OF CRM PERMIT DECISION

Any aggrieved person as defined in § 15-10-020(e) may appeal the decision of CRM agency officials or in the case of a minor development, the CRM Administrator's decision to grant, deny or condition a new CRM permit to the CRM Appeals Board by filing a notice of the appeal with the CRM Office within thirty (30) days of the issuance of the CRM permit decision. The CRM Administrator shall then schedule an appellate hearing before the CRM Appeals Board.

- (a) **Disqualification, Voluntary or by Challenge.** In the same manner and for the same reasons specified for CRM agency officials in § 15-10-230, the three members of the CRM Appeals Board shall render decisions on CRM permit applications in an impartial manner. They shall voluntarily disqualify themselves for bias or the appearance of bias, and they are subject to disqualification by challenge in the manner prescribed for CRM agency officials in § 15-10-230.
- (b) **Quorum, Vote.** At least two (2) members of the CRM Appeals Board shall constitute a quorum and must be present to act upon review of a CRM agency official decision and the vote of at least two (2) members is necessary for Board action on the appeal.
- (c) **Briefs, Statements.** Any aggrieved person who requests an appeal before the CRM Appeals Board shall file with the CRM Office within fifteen (15) days following its request for appeal, a written statement of objections to the CRM permit decision. In addition, any existing party may within ten (10) days of receipt of appellant's statement, submit to the CRM Office a statement or brief providing arguments in support of or in opposition to, the permit decision. Statements filed under this subsection shall be filed in accordance with the format and standards listed in § 15-10-225.
- (d) **Notice of Appeal, Contents.** Any notice of appeal filed with the CRM Office shall contain the following:
 - the nature of the petitioner's interest in the CRM permit;
 - the effect of the CRM permit on the petitioner's interest; and
 - the extent that the petitioner's interest is not represented by CRM, the applicant or other aggrieved

persons.

- (e) **Service of Papers.** All parties to an appeal shall serve all other parties with any papers that are required to be filed at the CRM Office and such service shall occur on the same day as filing at the CRM Office.
- (f) **Papers Considered by CRM Appeals Board.** For the purpose of reviewing the CRM permit application decision, the CRM Appeals Board shall receive and review the following:
 - findings of facts and conclusions of law adopted by the CRM agency officials;
 - CRM permit application;
 - CRM permit, if issued;
 - record of the CRM permit hearing, if any;
 - statements filed with the CRM Office in support of, or in opposition to, the appeal; and
 - any other documents, correspondence or testimony considered in the permit decision-making process.
- (g) **Oral Argument.** Upon written request to the CRM Office by the appellant or other party to the appeal, oral argument shall be permitted. The scope of oral argument shall be limited to the written statements in support of, or in opposition to, the appeal. Oral argument shall be scheduled by the CRM Administrator before the full membership of the CRM Appeals Board. Oral argument shall be heard after the submission of written statements by the appellant and opponents, if any, and within twenty-five (25) days after the issuance of the CRM permit by CRM agency officials.
- (h) **Scope of Appeal.** In reviewing the CRM permit decision of CRM agency officials, the CRM Appeals Board shall reverse the decision below, and remand if necessary when:
 - it is clearly erroneous in light of CRM rules and regulations and the policies established in CNMI P.L. 3-47 [2 CMC § 1501, et. seq.];
 - it is in violation of applicable federal or CNMI constitutional or statutory provisions;
 - it is arbitrary or capricious; or
 - it was not issued in accordance with required procedures.
- (i) **Written Decision.** After reviewing the record and considering the arguments, the CRM Appeals Board shall render a written decision detailing the reasons in support of its determination. The decision of the Board shall be the final administrative decision, subject to judicial review. In drafting its decision, the Appeals Board may utilize the resources of the CRM Office.
- (j) **Automatic Affirmation.** If no decision is rendered by the CRM Appeals Board within thirty (30) days of the date of the hearing, the CRM Administrator shall issued notice of summary affirmation of the CRM permit decision. The party or parties aggrieved by the CRM permit decision, as defined at § 15-10-020(e), may then appeal to the Commonwealth Superior Court, pursuant to § 15-10-240.

§ 15-10-240 COMMONWEALTH SUPERIOR COURT

Any person aggrieved by a final decision of the CRM Appeals Board may seek judicial review in accordance with 2 CMC § 1501, et. seq. In the event that the CRM Appeals Board does not have a quorum within sixty (60) days, the decision of the CRM agency officials, CNMI Governor, or the CRM Administrator shall be considered summarily affirmed and the aggrieved party may seek judicial review from the Commonwealth Superior Court in accordance with 2 CMC 1501, et. seq.

PART 300 – STANDARDS FOR CRM PERMIT ISSUANCE

§ 15-10-301 GENERAL STANDARDS FOR ALL CRM PERMITS

In the course of reviewing all CRM permits for proposed projects located wholly, partially or intermittently within an area of particular concern (APC), or which have a direct and significant impact

on an APC or which are designated as a major siting, the CRM agency officials and the CRM Administrator shall require the applicant to demonstrate by a fair preponderance of evidence that the project will not have a significant adverse impact on the coastal environment or its resources. The CRM program agency officials and Administrator shall also base their decision on technical findings and the policy set out in section 3 of Public Law 3-47 [2 CMC § 1511]. Adverse impacts may include but are not limited to those defined in § 15-10-020(c).

§ 15-10-305 GENERAL CRITERIA FOR ALL CRM PERMITS

The CRM agency officials and the CRM Administrator shall consider the following when evaluating all CRM Permit applications:

- (a) **Cumulative Impact.** The CRM Administrator and CRM agency officials shall determine the impact of existing uses and activities on coastal resources and determine whether the added impact of the proposed project seeking a CRM permit will result, when added to the existing use, in a significant degradation of the coastal resources. Consideration shall include potential coastal nonpoint source pollution, watershed setting, and receiving waters of the watershed in which a project is situated.
- (b) **Compatibility.** The CRM Administrator and CRM agency officials shall determine, to the extent practicable, whether the proposed project is compatible with existing adjacent uses and is not contrary to designated land and water uses being followed or approved by the Commonwealth government, its departments or agencies.
- (c) **Alternatives.** The CRM Administrator and CRM agency officials shall determine whether or not a reasonable alternative site exists for the proposed project.
- (d) **Conservation.** The CRM Administrator and CRM agency officials shall determine, to the extent practicable, the extent of the impact of the proposed project, including construction, operation, maintenance and intermittent activities on its watershed and receiving waters, marine, freshwater, wetland, and terrestrial habitat, and preserve, to the extent practicable, the physical and chemical characteristics of the site necessary to support water quality and living resources.
- (e) **Compliance with Local and Federal Laws.** The CRM Administrator and CRM agency officials shall require compliance with Federal and CNMI laws, including, but not limited to, air and water quality standards, land use, Federal and CNMI constitutional standards, and applicable permit processes necessary for completion of the proposed project.
- (f) **Right to a Clean and Healthful Environment.** Projects shall be undertaken and completed so as to maintain and, where appropriate, enhance and protect the Commonwealth's inherent natural beauty and natural resources, so as to ensure the protection of the people's constitutional right to a clean and healthful environment.
- (g) **Effect on Existing Public Services.** Activities and uses which would place excessive pressure on existing facilities and services to the detriment of the Commonwealth's interests, plans and policies, shall be discouraged.
- (h) **Adequate Access.** The CRM Administrator and CRM agency officials shall determine whether the proposed project would provide adequate public access to and along the shoreline.
- (i) **Setbacks.** The CRM Administrator and CRM agency officials shall determine whether the proposed project provides adequate space between the project and identified hazardous lands including floodplains, erosion-prone areas, storm wave inundation areas, air installation crash and sound zones and major fault lines unless it can be demonstrated such development does not pose unreasonable risks to the health, safety, and welfare of the people of the Commonwealth, and complies with applicable laws.

- (j) **Management measures for control of nonpoint source pollution.** The CRM Administrator and CRM agency officials shall determine if the selected management measures are adequate for the control of nonpoint source pollution resulting from project construction, operations and maintenance, including intermittent activities such as repairs, routine maintenance, resurfacing, road or bridge repair, cleaning, and grading, landscape maintenance, chemical mixing, and other nonpoint sources.

§ 15-10-310 SPECIFIC CRITERIA, AREAS OF PARTICULAR CONCERN.

Prior to the issuance of any CRM permit for a proposed project within an APC, the CRM agency officials and the CRM Administrator shall evaluate the proposed project in terms of its compatibility with the standards and relative priorities listed below, and the general standards provided above in § 15-10-305. If more than one project requiring a CRM permit is proposed for a particular location, the project determined by the CRM regulatory officials to be the most compatible with the general and specific standards provided herein shall be given priority over the less compatible project.

- (a) **Lagoon and Reef APC; Management Standards.** Any project proposed for location within the lagoon and reef APC shall be evaluated to determine its compatibility with the following standards:

- (1) subsistence usage of coastal areas and resources shall be ensured;
- (2) living marine resources, particularly fishery resources, shall be managed so as to maintain optimum sustainable yields;
- (3) significant adverse impacts to reefs and corals shall be prevented;
- (4) lagoon and reef areas shall be managed so as to maintain or enhance subsistence, commercial and sport fisheries;
- (5) lagoon and reef areas shall be managed so as to assure the maintenance of natural water flows, natural circulation patterns, natural nutrient and oxygen levels and to avoid the discharge of toxic wastes, sewage, petroleum products, siltation and destruction of productive habitat;
- (6) areas and objects of historic and cultural significance shall be preserved and maintained; and
- (7) under water preservation areas shall be designated.

- (b) **Lagoon and Reef APC; Use Priorities.**

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

(i) **HIGHEST:**

- (A) projects promoting conservation of open space, high water quality, historic and cultural resources;
- (B) projects promoting or enhancing public recreation and access;
- (C) water-dependent projects which are compatible with adjacent uses;
- (D) sport and small-scale taking of edible marine resources within sustainable levels;
- (E) activities related to the prevention of beach erosion; or
- (F) projects preserving fish and wildlife habitat.

(ii) **MODERATE:**

- (A) commercial taking of edible marine resources within sustainable levels;

(B) aquaculture projects which do not adversely affect the productivity of coastal waters or natural beach processes; or

(C) piers and docks which are constructed with floating materials or which, by design, do not impede or alter natural shoreline processes and littoral drift.

(iii) **LOWEST:**

(A) point sources discharge of drainage water which will not result in significant permanent degradation in the water quality of the lagoon; or

(B) dredge and fill activity for the purpose of constructing piers, launching facilities, infrastructure, and boat harbors, if designed to prevent or mitigate adverse environmental impacts.

(iv) **UNACCEPTABLE:**

(A) discharge of untreated sewage, petroleum products or other hazardous materials;

(B) taking of sand and aggregate materials not associated with permitted activities and uses;

(C) destruction of coralline reef matter not associated with permitted activities and uses;

(D) dumping of trash, litter, garbage or other refuse into the lagoon, or at a place on shore where entry into the lagoon is inevitable; or

(E) dredge and fill activities not associated with permitted construction of piers, launching facilities, infrastructure, and boat harbors.

(2) Lagoon and Reef APC; Managaha. Use Priority Categories for Managaha Island (Saipan), in addition to those listed for general Lagoon and Reef APCs, shall be as follows:

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

(ii) **MODERATE.** Improvements for the purposes of sanitation and navigation.

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

(iv) **UNACCEPTABLE.** Development, uses or activities which preclude or deter or are unrelated to the use of the island by residents of the Commonwealth for cultural or passive recreational purposes.

(3) Lagoon and Reef APC; Anjota Island. Use Priority Categories for Anjota Island (Rota) shall be as follows:

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

(ii) **UNACCEPTABLE.** Expansion of the port and industrial Section of Anjota Island which would encroach upon or have significant adverse impact upon the maintenance of a wildlife preserve or upon recreational uses of the island.

(4) Lagoon and Reef APC; Coral Reefs. The use Priority Categories for the Coral Reefs of Saipan, Tinian, and Rota shall be as follows:

- (i) **HIGHEST:**
 - (A) maintenance of highest levels of primary productivity; or
 - (B) creation of underwater preserves in pristine areas.
 - (ii) **MODERATE.** Dredging of moderately productive corals and reefs associated with permitted uses and activities.
 - (iii) **LOWEST.** Taking corals for cultural use (i.e., production of lime).
 - (iv) **UNACCEPTABLE:**
 - (A) destruction of reefs and corals not associated with permitted projects; or
 - (B) taking corals for other than scientific study.
- (c) **Wetland and Mangrove APC; Management Standards.** Any project proposed for location within the wetland and mangrove APC shall be evaluated to determine its compatibility with the following standards:
- (1) significant adverse impact on natural drainage patterns, the destruction of important habitat and the discharge of toxic substances shall be prohibited; adequate water flow, nutrients and oxygen levels shall be ensured;
 - (2) the natural ecological and hydrological processes and mangrove areas shall be preserved;
 - (3) critical wetland habitat shall be maintained and, where possible, enhanced so as to increase the potential for survival of rare and endangered flora and fauna;
 - (4) public landholding in and adjacent to the wetland and mangrove APC shall be maintained and, to the extent possible, increased, for the purpose of access and/or hazard mitigation, through land trades with the Marianas Public Land Corporation, land purchasers, creation of easement or through taking by eminent domain; and
 - (5) wetland resources shall be utilized for appropriate agriculture, recreation, education, public open space and other compatible uses which would not degrade productivity.
- (d) **Wetland and Mangrove APC; Use priorities.** Activities listed within a use priority category are neither priority ranked nor exhaustive. Use priority categories for the wetland and mangrove APC are as follows:
- (1) **HIGHEST:**
 - (i) preservation and enhancement of wetland and mangrove areas; or
 - (ii) preservation of wildlife, primary productivity, conservation areas and historical properties in both wetland and mangrove areas.
 - (2) **MODERATE:**
 - (i) non-intensive agriculture benefited by inundation, low density grazing;
 - (ii) infrastructure corridors designed to avoid significant adverse impacts to natural hydrological processes and values as wildlife habitat; or
 - (iii) non-commercial recreation including light duty, elevated, non-permanent structures such as footbridges, observation decks and similar non- enclosed recreational and access structures.
 - (3) **LOWEST.** Residential development designed to avoid adverse environmental impacts and which is not susceptible to damage by flooding.
 - (4) **UNACCEPTABLE:**
 - (i) land fill and dumping not associated with flood control and infrastructure corridors or other allowable activities and uses; or

- (ii) land clearing, grading or removal of natural vegetation not associated with allowable activities, which would result in extensive sedimentation of wetland, mangrove areas and coastal waters.

(e) Shoreline APC; Management Standards

- (1) Any project proposed for location within the shoreline APC shall be evaluated to determine its compatibility with the following standards:

- (i) the impact of onshore activities upon wildlife, marine or aesthetic resources shall be minimized;
- (ii) the effects of shoreline development on natural beach processes shall be minimized;
- (iii) the taking of sand, gravel, or other aggregates and minerals from the beach and near shore areas shall not be allowed;
- (iv) removal of hazardous debris from beaches and coastal areas shall be strongly encouraged;
- (v) where possible public landholdings along the shore shall be maintained and increased, for the purpose of access and hazard mitigation, through land trades with Marianas Public Land Corporation (MPLC), land purchases, creation of easements, and where no practicable alternative exists, through the constitutional authority of eminent domain; and
- (vi) marina and small boat harbor projects shall be evaluated for consistency with the following performance standards and goals:
 - (A) effective runoff control shall be implemented which includes the use of pollution prevention activities and the proper design of hull maintenance areas;
 - (B) shoreline stabilization shall be implemented where erosion is a nonpoint source pollution problem;
 - (C) effective fuel station design shall be implemented to prevent spills and leaks and allow for efficient and effective cleanup of spills;
 - (D) effective sewage management facilities shall be installed where needed to reduce the release of sewage to surface waters. Facilities shall be design to allow for efficient and effective maintenance and signage shall be posted to facilitate the public's use of the facility;
 - (E) effective fish waste management shall be implanted through restrictions, public education, and/or facilities for proper disposal of fish waste;
 - (F) petroleum control shall be implemented to reduce the amount of fuel and oil from boat bilges and fuel tank air vents and other vessel activities from entering marina and surface waters;
 - (G) boat cleaning operations shall minimize, to the extent practicable, the release of harmful cleaners and solvents as well as paint from in-water hull cleaning;
 - (H) public education management, outreach, and training shall promote marina activities that minimize environmental impact; and
 - (I) boating activities within marina areas shall conform with Department of Public Safety Boating Safety Regulations.

- (2) In addition to deciding whether the proposed project is consistent with the above standards,

CRM agency officials shall consider the following in their review of coastal permit applications:

- (i) whether the proposed project is water-dependent or water-oriented in nature;
- (ii) whether the proposed project is to facilitate or enhance coastal recreational, subsistence, or cultural opportunities (i.e., docking, utt, fishing, swimming, picnicking, navigation devices);
- (iii) whether the existing land use, including the existence of roadways, has irreversibly committed the area to uses compatible with the proposed project, particularly water oriented uses, and provided that the proposed project does not create adverse cumulative impacts;
- (iv) whether the proposed project is a single-family dwelling in an existing residential area and would occur on private property owned by the same owner as of the effective date of the program, of which all or a significant portion is located in the shoreline APC, or no reasonable alternative is open to the property owner to trade land, relocate or sell to the government;
- (v) whether the proposed project would be safely located on a rocky shoreline and would cause significant adverse impacts to wildlife, marine or scenic resources;
- (vi) whether the proposed project is designated to prevent or mitigate shoreline erosion; and
- (vii) whether the proposed project would be more appropriately located in the port and industrial APC.

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

(1) **HIGHEST:**

- (i) public recreational uses of beach area, including the creation of public shoreline parks and construction of structures enhancing access and use, such as barbecue grills, picnic table, docks, shelters or boardwalks;
- (ii) compatible water-dependent development which cannot be reasonably accommodated in other locations;
- (iii) traditional cultural and historic practices;
- (iv) preservation of fish and wildlife habitat;
- (v) preservation of natural open areas of high scenic beauty and scientific value; or
- (vi) activities related to the prevention of beach erosion through non-structural means.

(2) **MODERATE:**

- (i) single-family dwelling in existing residential areas;
- (ii) agriculture/aquaculture, which requires or is enhanced by conditions inherent in this APC; or
- (iii) improvements to or expansion of existing water-oriented structures which are compatible with designated land uses and do not otherwise conflict with or obstruct public recreational use of coastal areas or other water-dependent or water-related uses.

- (3) **LOWEST:**
- (i) projects, which result in growth or improvements to existing commercial, non-recreational public, or multi-unit residential uses; or
 - (ii) water related and new water-oriented development compatible with designated land uses, which cannot be accommodated in other locations and which neither conflicts with recreational uses nor restricts access to or along the shoreline.
- (4) **UNACCEPTABLE:**
- (i) new commercial structures, industrial structures, or non-recreational public structures which are not water dependent, water-oriented or water-related;
 - (ii) disposal of litter and refuse; or
 - (iii) the taking of sand for other than cultural usage, and mining of gravel and extraction of minerals, oil and gas, or other extractive uses.
- (g) **Port and Industrial APC; Management Standards.** Any Project proposed for location within the port and industrial APC shall be evaluated to determine its compatibility with the following standards:
- (1) projects shall be undertaken and completed so as to maintain and, where appropriate, enhance and protect the Commonwealth's inherent natural beauty and natural resources and so as to ensure the protection of the people's constitutional right to a clean and healthful environment;
 - (2) in the siting of port and industrial development, its suitability in terms of meeting the long-term economic and social expectations of the Commonwealth;
 - (3) recognize the limited availability of the port and industrial resources in making allocation decisions;
 - (4) ensure that development is done with respect for the Commonwealth's inherent natural beauty and the people's constitutionally protected right to a clean and healthful environment;
 - (5) develop improvements to infrastructure in the port and industrial APC;
 - (6) prohibit projects, which would result in significant adverse impacts, including cumulative impacts on coastal resources outside the port and industrial APC;
 - (7) conserve shoreline locations for water-dependent projects;
 - (8) consider and assist in resolution of possible conflicts by identifying and planning for the potential exercise of military retention area options affecting port resources;
 - (9) locate, to the maximum extent practicable, petroleum base coastal energy facilities within the port and industrial APC;
 - (10) consider development proposals from the perspective of federal port related opportunities and constraints which are applicable to the Commonwealth; and
 - (11) the amount of shoreline frontage utilized by any project, regardless of the extent to which the project may be water-dependent, shall be minimized to the greatest extent practicable.
- (h) **Port and Industrial APC; Use Priorities.** Activities listed within a use priority category are neither priority ranked nor exhaustive. Use priority categories for the port and industrial APCs in the entire Northern Mariana Islands chain are as follows:
- (1) **HIGHEST:**
- (i) water-dependent port and industrial activities and uses located on the APC shoreline;
 - (ii) industrial uses that are not water-dependent, but would cause adverse impacts if situated outside the port and industrial APC and would not be sited directly on the port and industrial APC shoreline, and would not preclude the opportunity for water-dependent activities and uses; or

- (iii) industries and services that support water-dependent industry and labor, which are not located on the port and industrial APC shoreline and do not interfere with water-dependent uses.
- (2) **MODERATE:**
 - (i) recreational boating facilities; or
 - (ii) clearing, grading or blasting which does not have long-term adverse effects on environmental quality, drainage patterns or adjacent APCs, so long as the activity is related to the permitted project.
- (3) **LOWEST:**
 - (i) indefinite storage or stockpiling of hazardous materials;
 - (ii) indefinite storage of goods, not awaiting water-borne transport, in a shorefront location; or
 - (iii) uses or activities which are acceptable in other APCs and which do not enhance or are not reasonably necessary to support permissible uses, activities and priorities in the port and industrial APC.
- (4) **UNACCEPTABLE:**
 - (i) non-port and industrial related activities and uses which, if permitted, would result in conversion to other uses at the expense of port and industrial related growth, or would induce port and industrial related growth into other APCs or areas; or
 - (ii) uses and activities which would have an adverse impact on other APCs, the American Memorial Park, Anjota Preserve, historic properties and other significant coastal resources.
- (i) **Coastal Hazard APC; Management Standards**
 - (1) Areas identified as a coastal flood hazard zones (V & VE) in the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRM's) shall be considered a coastal hazards APC and any project proposed for location within the coastal hazards APC shall be evaluated to determine its compatibility with the following standards:
 - (i) if the project will have a detrimental impact on existing landforms or coastal processes that provide natural resistance from the forces of coastal hazards such as beaches, wetlands and cliff lines, impacts to these coastal resources shall be avoided to the maximum extent possible;
 - (ii) if the project is located in a geologically unstable zone such as cliff lines, severe slopes, coastal headlands or outcroppings, appropriate mitigation to prevent threat to human life, safety and the environment must be applied;
 - (iii) if the project design, form or use tend to make the structure (or auxiliary structures) more vulnerable to the effects of coastal hazards such as high winds, wave energy, flooding and storm surge, the plans must be certified by a CNMI licensed structural engineer to ensure potential impacts and threats to human life and safety are minimized;
 - (iv) if the project is located within an area which has historically been known to flood or be at a high risk to storm wave inundation or erosion, all design plans must be approved by the DPW Building Control Officer for compliance with the Uniform Building Code (UBC); and

- (v) if construction of the project may endanger human life or safety due to its design or siting, it shall not allowed.
- (2) In addition to deciding whether the proposed project is consistent with the above standards, the CRM agency officials and the CRM Administrator shall consider the following in their review of coastal applications:
- (i) whether the project is shoreline dependent;
 - (ii) whether the project is located in an area where potentially hazardous construction or unsafe structures already exist;
 - (iii) whether the project is receiving funding by any entity of the federal or local government for its design or construction;
 - (iv) whether the project will enhance or facilitate recreational or cultural opportunities;
 - (v) whether access to or from the shoreline is enhanced or the level of safety to or along the shoreline is increased;
 - (vi) whether the project is designed to prevent or mitigate for shoreline erosion; and
 - (vii) whether the project meets the requirements of the UBC for structures in flood or storm hazard zones.
- (j) **Coastal Hazard APC; Use Priorities.** Activities listed within a use priority category are neither priority ranked nor exhaustive. Use priority categories for the coastal hazard APCs of the entire Northern Marianas Island chain are as follows:
- (1) **HIGHEST:**
 - (i) projects which preserve, or enhance the natural defense of the shoreline against storm wave attack and flooding;
 - (ii) public recreational uses of beach area, including the creation of public shoreline parks and the preservation of open space along the shoreline;
 - (iii) traditional cultural and historic practices;
 - (iv) preservation of fish and wildlife habitat; or
 - (v) preservation of natural open areas of high scenic beauty and/or scientific value.
 - (2) **MODERATE:**
 - (i) projects which promote access to and from remote shoreline areas; or
 - (ii) improvement to, or expansion of, existing water oriented-structures, which are located in low risk hazard areas, are compatible with designated land uses and do not pose a risk to the health and safety of the public.
 - (3) **LOWEST:**
 - (i) projects which result in the start, growth or improvement of commercial, public, or multi-unit/single residential uses in areas identified or known to be in high hazard zones;
 - (ii) transportation facilities, public infrastructure or shoreline dependent projects which cannot be reasonably accommodated in other areas; or
 - (iii) projects which require the installation or placement of shore protection structures.

(4) **UNACCEPTABLE:**

- (i) projects which degrade or modify natural shoreline protective features such as beaches, cliffs or rocky shorelines;
- (ii) projects which require hard shore protection to facilitate or accommodate structural entities of the developments unless these developments are associated with boating or marine based facilities; or
- (iii) projects which interfere or disrupt the natural shoreline processes such as littoral transport or coastal dynamics.

§ 15-10-315 HEIGHT, DENSITY, SETBACK, COVERAGE AND PARKING GUIDELINES

(a) **Application.** The following building design and site utilization guidelines will be applied to all projects requiring a CRM permit unless CRM agency officials in writing and with concurrence by CRMO Administrator grant an exception. An exception may only be granted when the applicant can demonstrate that there will be no significant impacts on scenic, historical, coastal, biological, and water resources. However, no exception may be granted for shoreline setbacks unless otherwise provided for in subsection (b). In order to be consistent with the 1990 CNMI Building Code (P.L. 6-45) [2 CMC § 7101, et seq.] building heights will be measured according to the definition section of the Uniform Building Code CHAPTER 4 § 408 (Grade and Section), 409 (Height of Building).

(b) **Shoreline Setbacks.**

(1) **Scope of Regulations.** The Shoreline setback regulations herein prescribed apply to all coasts of the Commonwealth, except for the port and industrial APCs where no shoreline setback regulations shall apply. Shoreline setbacks shall be measured inland from the mean high water level. For purposes of these regulations the front of any lot shall be that side parallel to the coastline and/or ocean.

(2) **Shoreline Setbacks:**

- (i) **Shoreline Setback A, from 0-35 feet.** Beach and shoreline reservation zone for use as public access and recreation. Generally, structures are prohibited.
- (ii) **Shoreline Setback B, from 35-75 feet.** No vertical construction, which will obstruct the visual openness and continuity of the shoreline area, is permitted. Open space, rest and recreation areas, swimming pools, terraces, landscaping and related outdoor improvements are allowed. Parking areas are not permitted.
- (iii) **Shoreline Setback C, from 75-100 feet.** Single-story structures, covered porches, trellises and similar improvements not to exceed 12-feet in height measured from the natural grade line. Parking is permitted if otherwise allowed by law.
- (iv) **Shoreline Setback D, from 100-feet or more.** Building height based on § 15-10-315 (c). If the building is higher than 2 stories, 100 feet from the shoreline shall be considered the property line.

(3) **Setbacks for Small Shoreline lots.** For any lot where thirty percent (30%) or more of the land area of the lot is affected by the mandatory shoreline setback above, such shoreline setback regulations are modified as follows:

- (i) **Shoreline Setback A-1, from 0-20 feet.** Beach recreation zone for use as public access and recreation.
- (ii) **Shoreline Setback B-1, from 20-60 feet.** Shall be open space with no vertical construction or parking permitted.

- (iii) **Shoreline Setback C-1, from 60-100 feet.** Single and two-story structures only, with the total height not to exceed 20 feet.
- (iv) **Shoreline Setback D-1, from 100 feet or more.** Building height based on § 15-10-310 (c).

(c) Height and Side Yard Setback

- (1) **High Rise Development.** All high rise developments defined as structures more than six (6) stories or more than sixty (60) feet above grade are encouraged to locate in areas of existing high rise development. High rise construction is only permissible subject to the following conditions:
 - (i) High rise structures proposed seaward of any coastal road must be set back one foot from the front and back property lines for each one foot in the overall height of the building;
 - (ii) In order to create view corridors, the applicant for high-rise development will be required to draw one datum line perpendicular to the shoreline or beach. All high rise structures shall be orientated so that the longest lateral dimension is parallel to the datum line;
 - (iii) The project design shall incorporate substantial landscaping and tree planting to reduce/screen the visual bulk and mass of buildings as seen from public places such as roads, parks, and other public areas; and
 - (iv) The applicant shall prepare a view corridor plan which shall include an inventory of existing views, impacts on existing views and proposed mitigation measures to protect scenic views.
 - (2) **Multi-unit Residential.** Multi-unit residential buildings must be set back one foot from the front and back of property lines for each one foot in the overall height of the building. All multi-unit residential buildings must be set back at least 10 feet from the side property lines.
 - (3) **Commercial.** Commercial buildings must be set back one foot from the front and back property lines for each one-foot in the overall height of the building. All commercial buildings must be set back at least 10 feet from the side property lines. The CRMO Administrator may allow a smaller side set back upon a determination that the adjacent property is being or is substantially likely to be used for commercial or industrial purposes.
 - (4) **Hotel & Resort.** Hotel and Resort buildings must be setback one foot from the front and back property lines for each one foot in the overall height of the building.
 - (5) **Industrial.** Industrial buildings shall set back a minimum of 20 feet from all property lines. The CRMO Administrator may allow less than a 20-foot setback upon a determination that the adjacent property is being or is substantially likely to be used for industrial purposes.
- (d) **Lot Coverage Density and Parking Guidelines.** Lot coverage for structures means the "footprint" of buildings on the site and does not consider the floor area of upper floors or the overall density of the development. Where the first floor is elevated above the ground level, its lot coverage ratio shall be based on the proposed use for the area below the structures. The lot coverage ratio for open space is considered to include plazas, terraces, decks, and other outdoor areas which are not covered or walled, landscaped areas, recreation and open space, improved or unimproved natural areas, covered stormwater disposal areas, and pedestrian walkways, The continuity, conservation, and maintenance of open space must be provided for; any later modification must be first approved.

- (1) One and Two Family Residential:
 - (i) Maximum lot coverage by buildings is 40% for lots on which not all dwellings are connected to a public sewer and 60% for lots on which all dwellings are connected to a public sewer.
 - (ii) In developments consisting of more than four lots, the developer and/or subdivider must provide common use open space at a ratio of one acre of common use open space per every five acres of private lots. Up to 50% of the required common open space may be open space useable by the community included in public schools or similar public facilities.
- (2) Multi Unit Residential. Maximum lot coverage by buildings is 60%. A minimum of 1.25 parking spaces must be provided for each dwelling unit.
- (3) Commercial. Maximum lot coverage by structures is 75%. A minimum of one parking space must be provided for each 200 feet of commercial space; one parking space for each 150 square feet office space; and one parking space for every four restaurant seats.
- (4) Hotel & Resort:
 - (i) For buildings exceeding 35 feet in height. Maximum lot coverage by structures is 20%. Maximum lot coverage by parking, roads, and service entries is 35%. Minimum lot coverage for open space is 45%;
 - (ii) For buildings less than 35 feet in height. Maximum lot coverage by structures is 35%. Maximum lot coverage by parking, roads and service entries is 35%. Minimum log coverage for open space is 30%; and
 - (iii) A minimum of 1 parking space for each 5 guest units must be provided.
- (5) Industrial. An adequate number of parking spaces for employees and customers must be provided.

PART 400 - STANDARDS FOR APC CREATION AND MODIFICATION

§ 15-10-401 AUTHORITY

The CRM Agency Officials or the CRM Administrator may seek designation of any area within the Commonwealth as an APC or propose a change in any APC boundary. Further, the CRM Administrator may review requests from private parties for designation or modification of APCs.

§ 15-10-405 PROCEDURE

Requests for new or modified APCs shall include detailed documentation supporting the APC designation or boundary change. The documentation shall be based on criteria set forth in § 15-10-410 below, but may include other information pertinent to the area nominated or proposed boundary change. Within thirty (30) days of a nomination or proposed boundary change, the CRM Administrator shall circulate it to the CRM agency officials and the CRM Coastal Advisory Council. The CRM Administrator shall, within that same period, publish notice of the nomination or proposed boundary change, describing the area involved, in a newspaper of general circulation within the Commonwealth. The CRM Office shall be available to receive public comment for a period of forty-five (45) days from the date such notice is published. Within the forty-five (45) day comment period, the CRM agency officials and the CRM Coastal Advisory Council shall submit to the CRM Office comments and recommendations, and a public hearing shall be conducted by the CRM Office. Within thirty (30) days after the closure of the comment period, the CRM Coastal Advisory Council shall, after adequate consideration of the comments received, issue a recommendation on the nomination to the CRM agency officials who shall make the final decision regarding the proposed creation or modification.

§ 15-10-410 CRITERIA FOR CREATION AND MODIFICATION

In reviewing a request for designation or modification of an APC, the CRM Administrator and the CRM agency officials shall consider whether the areas require special management because the areas are:

- (a) areas of unique, scarce, fragile, or vulnerable natural habitat; have a unique or fragile physical configuration (e.g. Saipan Lagoon); are of historical significance, cultural value or scenic importance (including resources on or determined to be eligible for the National or CNMI Register of Historic Places);
- (b) areas of high natural productivity or essential habitat for living resources, including fish, wildlife and endangered species and the various trophic levels in the food web critical to their well-being;
- (c) areas of substantial recreational value or potential;
- (d) areas where developments and facilities are dependent either upon the utilization of, or access to coastal waters or of geographic significance for industrial or commercial development or for dredge spoil disposal;
- (e) areas of urban concentration where shoreline utilization and water uses are highly competitive;
- (f) areas which, if development were permitted, might be subject to significant hazard due to storms, slides, floods, erosion, settlement or salt water intrusion;
- (g) areas needed to protect, maintain, or replenish coastal lands or resources, including coastal flood plains, aquifers and their recharge areas, estuaries, sand dunes, coral and other reefs, beaches, and offshore sand deposits; or
- (h) areas needed for the preservation or restoration of coastal resources due to the value of those resources for conservation, recreational, ecological, or aesthetic purposes.

§ 15-10-415 NEW APC STANDARDS AND USE PRIORITIES

Upon a determination to designate a new APC, the CRM Administrator shall draft management standards and use priorities. Designation of the area as an APC and publication of the new Standards and Use Priorities shall be effected by publication of the designated APC and Standards and Use Priorities in the Commonwealth Register pursuant to 1 CMC § 9101, et seq.

PART 500 – STANDARDS FOR DETERMINING OF A MAJOR SITING

§ 15-10-501 DETERMINATION OF MAJOR SITING

- (a) The determination of whether a proposed project, inside or outside a coastal APC, constitutes a major siting shall be issued by the CRM Office based on a documented consensus of CRM program agencies stating the rationale therefore. Major siting is defined in §15-10-020.
- (b) All major sitings shall be in conformity with the policy enumerated in section 3 of P.L. 3-47 [2 CMC § 1511].

§ 15-10-505 SPECIFIC CRITERIA FOR MAJOR SITINGS

The CRM agency officials and the CRM Administrator shall evaluate a proposed project found to constitute a major siting based on the specific criteria listed below, as well as the general criteria for all CRM permits listed in § 15-10-301.

- (a) **Project Site Development.** The proposed project site development shall be planned and managed so as to ensure compatibility with existing and projected uses of the site and surrounding area.

- (b) **Minimum Site Preparation.** Proposed projects shall, to the extent practicable, be located at sites with pre-existing infrastructure, or which require a minimum of site preparation (e.g. excavation, filling, and removal of vegetation, utility connection).
- (c) **Adverse Impact on Fish and Wildlife.** The proposed project shall not adversely impact fragile fish and wildlife habitats, or other environmentally sensitive areas.
- (d) **Cumulative Environmental Impact.** The proposed project site shall be selected in order to minimize adverse primary, secondary, or cumulative environmental impacts.
- (e) **Future Development Options.** The proposed project site shall not unreasonably restrict the range of future development options in the adjacent areas.
- (f) **Mitigation of Adverse Impact.** Wherever practicable, adverse impact of the proposed project on the environment shall be mitigated. Mitigation shall include the incorporation of management measures for control of nonpoint source pollution.
- (g) **Cultural-historic and Scenic Values.** Consider siting alternatives that promote the Commonwealth's goals with respect to cultural-historic and scenic values.
- (h) **Watershed Conservation.** In regard to site development (including roads, highways, and bridges), avoid development, to the extent practicable, of areas that are particularly susceptible to erosion and sediment loss; preserve areas that provide important water quality benefits and/or are necessary to maintain riparian and aquatic biota and/or protect to the extent practicable the natural integrity of water bodies and natural drainage systems.

PART 600 - CRM PERMIT CONDITIONS

§ 15-10-601 USE OF CONDITIONS IN CRM PERMITS

CRM agency officials may delineate the scope of an approved activity, or otherwise limit CRM permits, by issuing conditions to CRM permits. The conditions shall be set out individually in writing, shall be accompanied by a specific reason for each condition and shall be issued contemporaneously with the CRM permit. In permitted projects of ongoing nature, the requirement for satisfaction of or compliance with CRM permit conditions shall continue for the duration of the permitted activity. Violation of a CRM permit condition at any time shall be cause for the CRM Administrator to take enforcement action pursuant to PARTS 800 and 900.

§ 15-10-605 PURPOSE AND SCOPE

The purpose of issuing CRM permits subject to specific conditions is to ensure that a permitted project complies with PART 300 - STANDARDS FOR CRM PERMIT ISSUANCE, and with CRM program policies. Any lawful requirement consistent with the standards and policies referred to above may be the basis of a CRM permit condition.

§ 15-10-610 MANDATORY CONDITIONS

All CRM Permits shall contain at least the following conditions:

- (a) **Inspection.** The CRM Administrator or his designee shall have the right to make reasonable inspections of the out-of-doors portions of a permitted project site at any reasonable time in order to assess compliance with the CRM permit and its conditions.
- (b) **Timing and Duration.**
 - (1) Permitted physical development of the project site subject to a CRM permit shall begin

within the time frame specified for project commencement on the permit. The maximum time allowed for project commencement shall be one (1) year. The project shall be completed within the time frame specified on the permit for project completion. The maximum time allowed for project completion shall be three (3) years unless it can be demonstrated the scope of the project requires additional time for construction purposes (only). Upon project completion, the permittee shall deliver a completion certificate to the CRM Office. If the project is not completed within the time frame specified in the permit, the permit will be reviewed by the CRM Administrator who will do one of the following:

- (i) extend or amend the permit; or
 - (ii) terminate the permit.
- (2) If the CRM Administrator grants an extension of the permit, a fee equaling fifty percent (50%) of the original permit fee shall be assessed. The CRM Administrator shall have the discretion to waive this fee if the project has been substantially completed. Substantial completion means, the project is over seventy-five percent (75%) structurally complete as certified by a CNMI licensed architect or engineer.
 - (3) All conditions attached to the permit shall be of perpetual validity unless action is taken to amend, suspend, revoke, or otherwise modify the CRM permit.
- (c) **Duty to Inform.** The CRM permit holder, whether it be the applicant or a successor in interest, shall be required to notify the CRM Administrator in writing if he/she has knowledge that any information in the CRM permit application was untrue at the time of its submission or if he/she has knowledge of any unforeseen adverse environmental impacts of the permitted project. A CRM permit holder shall further have the duty to inform any successor in interest of the permit granted and the conditions attached thereto, if any; and the successor in interest shall, within five (5) days thereafter, advise the CRM Office of his/her interest in writing.
- (d) **Compliance with other Law.** The CRM permit is valid only if the permitted project is otherwise lawful and in compliance with other necessary governmental permits.
- (e) The following conditions will be included in every permit involving construction of any kind:
- (1) The permittee shall be responsible for preventing discharge of construction site chemicals through the proper use of best management practices as described in the document "Construction Site Chemical and Material Control Handbook" for the following activities: material delivery and storage; material use, spill prevention and control; hazardous waste management; concrete waste management; vehicle and equipment cleaning, maintenance and fueling; and
 - (2) Where appropriate, the project shall preserve, enhance, or establish buffers along surface water bodies and their tributaries.

PART 700 - CRM PERMIT AMENDMENT

§ 15-10-701 CRM PERMIT AMENDMENT

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

§ 15-10-705 TRANSFER OF INTEREST

If a property interest in the project is transferred, the CRM Office shall issue a new permit in the name of the successors in interest within 30 days of receiving notice of the transfer. A permit issued under this section shall be identical in respect to terms and condition to the permit issued to the predecessor in interest.

PART 800 – ENFORCEMENT OF CRM PERMITS

§ 15-10-801 PURPOSE

The provisions of this PART are intended to establish procedures whereby the CRM Administrator may enforce the terms and conditions of CRM permits. Final actions of the CRM Administrator based upon this section are final agency action reviewable directly by the Commonwealth Superior Court pursuant to the Administrative Procedure Act, 1 CMC § 9101, et seq.

§ 15-10-805 GROUNDS FOR ACTION

The CRM Administrator shall take action to enforce compliance with CRM program policies and CRM permit conditions in any of the following cases:

- (a) **Misstatement.** The CRM permit applicant, a party or any participant in a hearing on the CRM permit application made a material misstatement that directly and significantly affected the CRM permit decision.
- (b) **Permit Violation.** The CRM permit applicant or its successor in interest, has violated a material term or condition of the CRM permit.
- (c) **Supervening Illegality.** The permitted project, as constructed or operated, has become unlawful by subsequent case law, statute, regulation, or other illegality.
- (d) **New Environmental Impact.** The permitted project has a newly discovered adverse environmental impact.

§ 15-10-810 WARNING

The CRM Administrator, upon a determination that a permitted project violates one or more provisions of § 15-10-805, may issue a notice of intent to undertake CRM permit enforcement proceedings unless the CRM permit holder accomplishes corrective measures. This warning procedure shall not affect nor limit the CRM Administrator's duties, powers, and responsibilities under § 15-10-815.

§ 15-10-815 PERMIT ENFORCEMENT NOTICE

If after thirty (30) days of the date the CRM Administrator issued a notice of intent under § 15-10-810, the CRM permit holder has failed to take corrective action, or continues to be in violation of its CRM permit in the case of an ongoing violation, the CRM Administrator shall issue a written permit enforcement notice to the CRM permit holder.

- (a) **Content of Notice.** A Permit enforcement notice shall include a statement of facts or conduct constituting the violation and shall indicate the intended action to be taken by the CRM Administrator. If the CRM administrator intends to impose a fine for the violation(s), the permit enforcement notice shall state the proposed amount of the fine. A permit enforcement notice shall provide for permit enforcement hearings, if requested, and inform the CRM permit holder of his or her responsibilities and rights under this part. The notice shall inform the permit holder that unless he requests a permit enforcement hearing within 30 days, the proposed sanction will be imposed.

- (b) **Service.** A permit enforcement notice shall be delivered by the CRM Office staff in person to the CRM permit holder, or served by certified U.S mail addressed to the CRM permit holder, or his designated agent. Proof of service shall be made by affidavit.
- (c) **Response to Notice.** If CRM permit holder believes the statement of facts or conduct constituting violation in the permit enforcement notice is inaccurate, and desires a permit enforcement hearing, he/she shall respond in writing to the CRM Administrator within thirty (30) days of service of the permit enforcement notice. This response shall include a written statement indicating the CRM permit holder's arguments.

§ 15-10-820 EMERGENCY SUSPENSION

If the CRM Administrator determines that a CRM permit holder has willfully violated a provision of § 15-10-805 or the public health, safety, or welfare imperatively requires immediate action, the CRM Administrator may order emergency summary suspension of a CRM permit pending proceedings for revocation or other action, notwithstanding, any notice requirement under § 15-10-815. If a permit enforcement hearing is requested, the proceeding shall be promptly instituted and determined pursuant to § 15-10-825.

§ 15-10-825 PERMIT ENFORCEMENT HEARING

Upon receipt of a request for permit enforcement hearing, the CRM Administrator shall schedule a hearing within fifteen (15) days. The CRM Administrator or his designee shall preside at CRM enforcement hearings, shall control the taking of testimony and evidence and shall cause to be made an audio recording or stenographic record of CRM enforcement hearings. Evidence presented at such hearings need not conform with any prescribed rules of evidence but may be limited by the CRM Administrator in any manner she/he reasonably determines to be just and efficient and promote the ends of justice. Permit enforcement hearings shall conform to the provisions of the Administrative Procedure Act, 1 CMC § 9108, et seq. The CRM Administrator shall issue a decision within ten (10) days of the close of the enforcement hearing and all orders shall be in writing and accompanied by written findings of fact and conclusions of law. The standard of proof for such hearing shall be by the preponderance of the evidence.

§ 15-10-830 REMEDIES

Upon a determination by the CRM Administrator and/or CRM agency officials that a violation did occur, the CRM Administrator may order any or all of the following remedies:

- (a) **Revocation.** The CRM permit may be revoked in its entirety.
- (b) **Suspension.** The CRM permit may be temporarily suspended for a given period, or until the occurrence of a given event or satisfaction of a specific condition.
- (c) **Corrective Measures.** Measures may be ordered of the CRM permit holder so that the project conforms to the CRM permit terms and conditions.
- (d) **Civil Fines.** The CRM Administrator may impose a civil fine in an amount not to exceed \$10,000 per day for each day the violation of the CRM permit occurred pursuant to 2 CMC § 1543(a). For purposes of computing a fine, any day that the CRM Administrator finds that a violation of the CRM permit occurred may be counted. The CRM Administrator shall, in his discretion, set fines in an amount calculated to compel compliance with CRM permit conditions, applicable law, and any order issued by the Administrator, taking into consideration the value of the existing and potential damage to the environment caused by the violation, efforts at compliance, and/or any other factors that the Administrator finds relevant to the calculation.

(a) Content of Enforcement Notice.

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

- (b) Response to Notice.** If the party to whom enforcement notice is sent objects to the finding of violation, or seeks an enforcement hearing on the fine, he shall submit a written response to the enforcement notice within seven (7) days of service of the enforcement notice. Failure to provide written response or to demand an enforcement hearing within the prescribed period shall be deemed a waiver of defense and the right to an enforcement hearing and the fine, as set in the enforcement notice, shall upon expiration of the seven (7) days period, become immediately due and payable to the CNMI Treasurer. All fines shall be paid by check made payable to the Treasurer of the CNMI. A copy of the payment receipt shall be provided to the CRM Office by the violator.

§ 15-10-925 DETERMINATION OF FINES AND PENALTIES

The CRM Administrator shall, in his sound discretion; set fines in an amount calculated to compel compliance with applicable law and administrative orders and shall consider the value of the existing and potential value of the damage to the environment proximately caused by the violation described in PART 800 and PART 900. In no event, however, shall any fine imposed exceed the ceiling imposed by 2 CMC § 1543. In addition the CRM Administrator may order the offending party to cease and desist from the activity that is in violation, take mitigation measures to cure the violation or seek any other remedy available at law or in equity.

§ 15-10-930 ENFORCEMENT HEARING

If a written response to an enforcement notice is filed with the CRM Office requesting an enforcement hearing it shall be conducted by CRM Administrator pursuant to § 15-10-825. The decision of the CRM Administrator shall be final as within the CRM program. Appeal from an enforcement decision shall be to the Commonwealth Superior Court within thirty (30) days following service of the CRM Administrator's written enforcement decision on the offending party.

§ 15-10-935 ENFORCEMENT BY COMMONWEALTH SUPERIOR COURT

Fines and cease and desist orders issued by the CRM Administrator for purposes of enforcement constitute official agency orders and must be complied with, by persons determined in violation of CRM program policies or CRM permit conditions. In the event fines are imposed or cease and desist order issued, and compliance with either is refused, the CRM Administrator may file in Commonwealth Superior Court seeking court enforcement.

§ 15-10-940 ENFORCEMENT BY CRIMINAL PROSECUTIONS

If the CRM Administrator has reason to believe that a person in violation of CRM program policies or CRM permit conditions or administrative orders issued thereunder has committed criminal offense within

PART 900 - ENFORCEMENT OF CRM STANDARDS AND POLICIES

§ 15-10-901 PURPOSE

The provisions of this PART are intended to establish procedures whereby the CRM Administrator and/or CRM agency officials may enforce penalties against persons conducting activities or participating in projects within the jurisdiction of the CRM program without a required CRM permit. The actions of the CRM Administrator and/or CRM agency officials based upon this PART are agency action reviewable by the Commonwealth Superior Court.

§ 15-10-905 INVESTIGATION

- (a) The CRM Administrator shall have the authority to investigate suspected violations of CNMI P.L. 3-47 [2 CMC §§ 1501, et seq.] or this CHAPTER. If practicable, the CRM Administrator shall first request the person or persons having knowledge or custody of the information to voluntarily produce or allow access to it. If voluntary production of or access to the information is not forthcoming, the CRM Administrator may implement the following measures to compel disclosure.
- (b) **Authority to Search.**
- (1) **Consent from Permit Application.** The CRM Administrator or his designee may enter, at any reasonable time, the site of a proposed project for which there exists a signed CRM permit application on file with the CRM Office.
 - (2) **Permit Authorization.** The CRM Administrator or his designee may enter, at any reasonable time, the site of a project for which there has been granted a CRM permit.
 - (3) **Search Warrant.** The CRM Administrator may, if necessary, apply to the Commonwealth Superior Court for a search warrant allowing entry onto a project site on land or water subject to CRM program jurisdiction, pursuant to applicable law of administrative searches, regardless of the existence of a pending CRM permit application or a currently valid CRM permit.

§ 15-10-910 CONDITIONS WARRANTING INVESTIGATION

The CRM Administrator may act pursuant to this section upon a reasonable determination that a violation of CNMI P.L. 3-47 [2 CMC §§ 1501, et seq.] or this CHAPTER, or CRM administrative orders issued under this CHAPTER has occurred. Such violations include, but are not limited to, projects undertaken without a required CRM permit and activities that do not conform to CRM permit terms and conditions under PART 800.

§ 15-10-915 WARNING

Upon a determination that a violation of law subject to CRM program jurisdiction has occurred, the CRM Administrator may issue a cease and desist order to the person(s) responsible for the violation and state notice of intent to undertaken legal proceedings unless corrective measures are undertaken. The letter shall state the corrective measures necessary and shall provide for a period in which compliance shall be effected.

§ 15-10-920 ENFORCEMENT

Upon a determination that a person other than a CRM permit holder is in violation of CNMI P.L. 3-47 [2 CMC §§ 15-10-920], or applicable rules and regulations or administrative orders issued thereunder, the CRM Administrator shall promptly issue an enforcement notice to the offending party. The enforcement notice shall be delivered personally to the offending party or, if such service is not reasonably possible, it may be sent by certified mail to his residence or place of business.

the definition provided in 2 CMC 1543 (b), (d), he shall promptly submit a report of the violation to the Attorney General.

§ 15-10-945 ADMINISTRATIVE ORDER

For purposes of PART 800 and 900 administrative orders shall be any orders issued by the CRM Administrator for enforcement of CRM policies and regulations pursuant to 2 CMC § 1453(a).

PART 1000 - PUBLIC INFORMATION AND EDUCATION

§ 15-10-1001 PUBLIC INFORMATION AND EDUCATION

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

- (a) **Vernacular.** When requested and reasonably necessary, the CRM Office shall provide translation of official business into the appropriate vernacular.
- (b) **Media.** The CRM Office shall, to the extent practicable, develop and maintain a continuing program of public information and education. Information regarding coastal resources management and conservation shall be disseminated through newspapers, television, radio, posters, and brochures supplied by the CRM Office.
- (c) **Public Hearings.** Any hearing or meeting held for purposes of the CRM permit or enforcement process, or the Coastal Advisory Council, shall be open to the public.
- (d) **APC Maps.** The CRM Office shall maintain a current series of island maps clearly showing the areas of particular concern.

PART 1100 - CRM COASTAL ADVISORY COUNCIL

§ 15-10-1101 CREATION

Pursuant to CNMI P.L. 3-47 § 6 [2 CMC § 1521-22], a CRM Coastal Advisory Council (CAC) shall be established, consisting of those members listed in § 15-10-020(s).

§ 15-10-1105 ADOPT INTERNAL PROCEDURES

The CAC shall adopt internal procedures, which shall govern its meetings.

§ 15-10-1110 ADVISE CRM

The CAC shall advise the CRM Office and the CRM Administrator on any proposed change in the CRM program or the CRM permit process or any proposed rules and regulations considered useful for implementing the CRM program.

§ 15-10-1115 CONDUCT MEETINGS

The CAC shall conduct meetings from time to time in public sessions, in order to receive information from the public on the impact or advisability of programs and policies in the CRM program. Meetings shall be scheduled by the Council or as requested by CRM Administrator, as he deems necessary for purposes of obtaining input and advice, and shall be scheduled at least twice each calendar year.

PART 1200 - CRM PUBLIC RECORDS

§ 15-10-1201 RETENTION

The CRM Office shall retain and preserve the following documents for a minimum of five (5) years following their receipt or acquisition, unless the CRM office determines that they shall be retained for a longer period of time. After five (5) years, all pertinent materials shall be safely stored.

- (a) **CRM Permit Application Materials.** All applications, permits, variances pleadings, motions, affidavits, charts, petitions, statements, briefs or other documentation submitted in support of or opposition to applications for CRM permits or variances, or prepared by the CRM Office in the course of the CRM permit process, shall be retained and preserved.
- (b) **CRM Hearing Records.** Stenographic or tape recordings of all CRM permit or enforcement hearings and written minutes of CAC meetings shall be retained and preserved.
- (c) **Coastal Resources Materials.** All studies, guides, plans, policy statements, charts, special reports, educational materials, or other information obtained or prepared by the CRM Office in order provide public information and education shall be retained and preserved.
- (d) **Best Management Practices.** CRM shall provide access to reference documents including, "Guidance Specifying Management Measures for Sources Of Nonpoint Pollution In Coastal Waters" published under the authority of section 6217(G) of the Coastal Zone Management Act reauthorization amendments of 1990, United States Environmental Protection Agency Office of Water, Washington, DC, and relevant BMP documents published by Office of Ocean and Coastal Resources Management, Environmental Protection Agency, Natural Resources Conservation Service and other local and Federal agencies.

§ 15-10-1205 PUBLIC ACCESS TO CRM RECORDS

All CRM program records shall be available for inspection for a period of five (5) years by any person during established business hours at the CRM Office in Saipan except as otherwise provided by law.

- (a) **Minutes and Transcripts.** Minutes of CAC meetings and transcripts or tapes of CRM permit or enforcement hearings shall be made available upon request to the public within thirty (30) days after the meeting or hearing involved, except where the disclosure would be inconsistent with law, or where the public distribution of minutes of meeting held in executive session would defeat the lawful purpose of the executive meeting. All CRM permit or enforcement hearings must be open to the public, and all transcripts of the hearing shall be made available upon request; provided, however, that those persons requesting transcription shall pay the costs of transcription at the time of the request.
- (b) **Copies of Documents.** Copies of CRM public records shall be made available to any member of the public requesting them provided that reasonable fees or costs incurred in reproducing the records shall be paid by check into the CNMI Treasury by the requesting party.
- (c) **Denial of Inspection.** Any person aggrieved by a denial of access to CRM program records, or transcription or copying thereof may apply to the Commonwealth Superior Court for an order directing inspection or copies or extracts of CRM program public records. The court shall grant the order after hearing upon finding that the denial was not for just and proper cause.

PART 1300 - CRM ACCESS TO RECORDS

§ 15-10-1301 ADMINISTRATOR ACCESS

The Administrator, on behalf of himself, the CRM Office, the CRM agency officials, the Governor, the CRM Appeals Board, and the CRM Coastal Advisory Council, shall have access to such records necessary for conducting official CRM business, except as provided by law.

§ 15-10-1305 CNMI GOVERNMENT RECORDS

The CRM Administrator shall have access to relevant CNMI governmental records for the purpose of obtaining information for official CRM business. This access may include government reports, reviews, policy statements and any other data not protected as confidential by law. The CRM Administrator shall keep his requests reasonable in scope and accompany his requests for information with payment for copying or gathering of specific information.

§ 15-10-1310 PRIVATE RECORDS

The CRM Administrator may request from interested parties only such records and documents deemed necessary for the CRM permit process.

PART 1400 - COMPUTATION OF TIME

§ 15-10-1401 COMPUTATION OF TIME

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

PART 1500 - FEDERAL CONSISTENCY

§ 15-10-1501 GENERAL LAW

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

§ 15-10-1505 STANDARD FOR DETERMINING CONSISTENCY

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

- (a) the goals and policies set forth in CNMI Public Law 3-47 [2 CMC §§ 1501, et seq.];
- (b) the standards and priorities set forth in this CHAPTER;

- (c) federal air and water quality standards and regulations, to the extent applicable to the Commonwealth of the Northern Mariana Islands; and
- (d) air and water quality standards and regulations of the CNMI, including, but not limited to, the CNMI Underground Injection Control Regulations and the CNMI Drinking Water Regulations; and
- (e) any additional policies, regulations, standards priorities and plans that are enforceable and incorporated into any amendment of the CRM program in the future.

§ 15-10-1510 FEDERAL ACTIVITIES AND DEVELOPMENT PROJECTS

- (a) A federal development project includes any federal activity involving the planning, construction, modification, or removal of public works, facilities, or other structures, and the acquisition, utilization or disposal of land or water resources.
- (b) "Federal activities" include those federal agency actions, which are either development projects or licenses, permits, or assistance actions as described herein below. Examples include federal agency activities requiring a federal permit and federal assistance to entities other than the local government. Although federal lands in the CNMI are excluded from the CRM program jurisdiction pursuant to Section 7 of P.L. 3-47 [2 CMC § 1513], federal activities occurring on federal lands which result in spillover impacts which directly affect the Commonwealth's coastal zone must be consistent, to the maximum extent practicable, with the CRM program.
- (c) In the event that a federal agency plans to undertake a federal activity, including a development project, which is likely to directly affect the coastal zone, the federal agency must notify the CRMO of the proposal at least ninety (90) days before any final decision on the federal action, unless both the federal agency and CRMO agrees to an alternative notification schedule. Such notification must include a brief statement indicating how the proposed project will be undertaken in a manner consistent, to the maximum extent practicable, with the CRM program. The federal agency's consistency determination must be based upon an evaluation of the relevant provisions of the CRM program. consistency determinations must include:
 - (1) a detailed description of the proposed project;
 - (2) the project's associated facilities;
 - (3) the combined cumulative coastal effect of the project; and
 - (4) data and information sufficient to support the Federal agency's conclusion.
- (d) If CRMO does not issue a written response within forty-five (45) days from the receipt of the federal agency notification, the federal agency may presume CRMO's agreement that the activity is consistent with the CRM program. Requests for an extension of time may be made for a period of not more that fifteen (15) days, unless the federal agency agrees to longer or additional extension requests. CRMO agreement shall not be presumed if CRMO requests an extension of time within the forty-five (45) days review period.
- (e) CRMO's concurrence with or objection to a federal agency's consistency determination must be set forth in writing with reasons and information supporting the agreement or disagreement and sent to the federal agency. In case of disagreement, CRMO will attempt to resolve its differences with the federal agency's consistency determination within the ninety (90) days notification period.
- (f) In the event that the CRMO and the federal agency are unable to come to an agreement on the manner in which a federal activity or development project may be conducted or supported in a manner consistent, to the maximum extent practicable, with the CRM program, the CRMO or Federal Agency may request mediation of the disagreement pursuant to the procedures set forth in Section 307 of the Federal Coastal Zone Management Act of 1972 (P.L. 92-583, as amended) and 15 CFR 930, subpart-H.

§ 15-10-1515 FEDERAL LICENSES AND PERMITS

- (a) Federal licenses and permits include any authorization, certification, approval or other form of permission which any federal agency is empowered to issue to an applicant.
- (b) An applicant includes any individual or organization, except a federal agency, which, following management program approval, files an application for a federal license or permit to conduct an activity affecting the coastal zone.
- (c) An applicant for a federal license or permit for an activity affecting the coastal zone must file, along with the application, a certification that the activity will be conducted in a manner consistent with the CRM program. A copy of the application and certification, along with the necessary data and information, should also be sent to the CRMO. The federal agency shall not issue the license or permit unless CRMO concurs in the consistency certification or its concurrence is presumed because CRMO has failed to respond in six (6) months. The applicant's consistency certification statement, which will then be reviewed along with the application by the CRMO, must be accompanied by sufficient information to support the applicant's consistency determination.
- (d) **Federal Agency Licenses and Permits**
 - (1) The federal agency licenses and permits that the CRM Office will review for consistency with the CRM program are those listed in the Procedures Guide for Achieving Federal Consistency with the CNMI CRM program (available from CRMO), incorporated and made a part hereof. If, in the future, it is found that the issuance of other types of federal permits and licenses cause direct and significant impact on coastal land and water resources, the said listing will be expanded as necessary.
 - (2) CRMO shall be responsible for providing the above list to the relevant federal agencies who in turn shall make the information available to applicants.
- (e) If any project which requires a federal license or permit also requires a coastal permit, applications for both should be filed simultaneously. A certification of consistency with the CRM program shall be filed with both applications. The issuance or denial of a CRM permit will indicate consistency or the lack of consistency with the CRM program and the CRMO shall notify the federal agency of the CRM permitting decision for its use in its federal permitting decision.
- (f) **Certification of Consistency:**
 - (1) A certification of consistency shall include the following clause "The proposed activity complies with the CNMI CRM program and will be conducted in a manner consistent with such program."
 - (2) Supporting information must be attached to the certification. This information will include a detailed description of the proposal, a brief assessment of the probable coastal zone effects and a brief set of findings indicating that the proposed activity, its associated facilities and their effects, are all consistent with the provisions of the CRM program, including the application standards listed in § 15-10-1505 above.
- (g) Interested parties may assist the applicant in providing information to the CRMO. In addition, the CRMO will, upon the request of the applicant, provide assistance to the applicant in developing the assessment and findings required.
- (h) CRMO review begins at the time the office receives both the applicant's consistency certification and the supporting information and determines that the information is complete. Timely public notice of the proposed activity will be made by CRMO. The public notice will include a summary of the proposal, an announcement that information submitted by the applicant is available for public inspection and a statement that public comments are invited.

(i) Certification of Consistency Decisions

- (1) At the earliest practicable time and within six (6) months after the date of receipt, the CRMO will notify the issuing federal agency of its concurrence or objection. If CRMO has not issued a decision within three (3) months after the date of receipt, it must notify the applicant and the federal agency of the status of the matter and the basis for further delay, if any.
- (2) In the event that CRMO objects to the applicant's consistency determination, the Office must set out its objection, in writing, with reasons and supporting information and alternative measures if they exist, which, if adopted, would permit the activity to be conducted in a manner consistent with the CRM program. A CRMO objection will include a statement informing the applicant of a right to appeal to the Secretary of Commerce as provided in Section 307 of the Federal Coastal Zone Management Act, as amended.

§ 15-10-1520 FEDERAL ASSISTANCE

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

PART 1600 - MISCELLANEOUS PROVISIONS

§ 15-10-1601 SEVERABILITY PROVISION

If any provision of this CHAPTER or the application of any provision of this CHAPTER to any person or any other instrumentality or circumstances shall be held invalid by a court of competent jurisdiction the

remainder of this CHAPTER and the application of the affected provision to other persons, instrumentalities and circumstances, shall not be affected thereby.

§ 15-10-1605 SAVINGS

The repeal of the CRM Rules and Regulations which notice of adoption was published in Commonwealth Register 7, Number 7 at 3883, does not release or extinguish any penalty, forfeiture or liability incurred or right accrued or accruing under such law. The regulation shall be treated as remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of the right, penalty, or forfeiture.

CHAPTER 20 – JET SKI RULES AND REGULATIONS

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PART 001 – GENERAL PROVISIONS

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PART 100 – JET SKI OPERATIONS

§15-20-101 APPLICATION

All jet skis are subject to this PART and all other applicable PARTS of these regulations and the Boating Safety Act of 1982 as amended from time to time.

§ 15-20-105 EXCLUSION AREAS

No jet ski may be landed, launched or operated within the following areas:

- (a) **North Lagoon.** All of the water extending from the mean high water line seaward to the outer shelf of the barrier reef north of a line beginning at the tip of Punta Flores and extending due north.
- (b) **South Lagoon.** All of the water extending from the mean high water line seaward to the outer shelf of the barrier reef south of a line beginning at a point on the shoreline thirty (30) feet south of Sugar Dock and extending due west.
- (c) **Micro Beach.** An area extending two hundred (200) yards seaward from the mean low water line from the northern end of the Dai Ichi Hotel tennis courts north to the tip of Point Muchot.
- (d) **Hafa Adai Beach.** An area extending two hundred yards seaward from the mean low water line from the drainage channel north of the Carolinian Utt to the southern edge of the Hafa Adai Beach Hotel.
- (e) **Grand/Saipan World Resort Hotel.** An area extending two hundred (200) yards seaward from the mean low water line from the southern edge of the Saipan Grand Hotel north to the northern edge of the Saipan World Resort Hotel.
- (f) **Tachungnya/Kammer.** An area extending seventy-five (75) yards seaward from the mean low water line from the southern edge of Tachungnya Beach to the northern edge of Kammer Beach adjacent to the Tinian harbor dock.
- (g) **Marina/Harbor/Shipping Channel.** An area extending from the mean low water line seaward at the Tinian Marian including the entire area within the Tinian harbor breakwater and the Tinian shipping channel.
- (h) **Managaha.** An area surrounding Managaha Island bounded by lines running at latitude 15° 14' 0" N; latitude 15° 14' 45" N; longitude 145° 41' 30" E; longitude 145° 42' 50" E.
- (i) **Lake Susupe.** The entire area of Lake Susupe.

PART 200 – JET SKI RENTAL OPERATIONS

§ 15-20-201 DEFINITIONS

- (a) "Jet ski rental operation" means the rental of a jet ski to others on a regular basis for the purpose of operating the jet ski.

§ 15-20-205 LAUNCHING AND LANDING

Jet ski rental operations shall only stage their operation and allow the launching and landing of their jet skis at the following locations:

- (a) The Chalan Kanoa – Susupe Regional Park;
- (b) The southern end of Civic Center Beach;
- (c) The public beach at the Samoan Housing in Garapan north of the Hafa Adai Hotel;
- (d) The public beach adjacent to Martin's Bar and Grill;
- (e) The South Sea Plane Ramp;
- (f) Off Taga Beach as designated by the Coastal Resources Management Office with jet-skis to be launched from a floating dock; and
- (g) The public beach adjacent to the Carolinian Utu in Garapan.

§ 15-20-210 OPERATION

Jet ski rental operations shall only allow their patrons to operate jet skis on marked courses in the areas of the lagoon adjacent to the launching and landing areas set forth in § 15-20-205 as specified in the operator's coastal permit issued by the coastal resources management program. The jet ski rental operators shall be responsible for installing and maintaining all buoys and other lagoon markings required for their operations by permit or law.

§ 15-20-215 HOURS OF OPERATION

Jet ski rental operation shall only operate between eight o'clock a.m. and six o'clock p.m.

§ 15-20-220 INSURANCE

All jet ski rental operators must carry liability insurance in such amount as required by the Coastal Resources Management Office.

§ 15-20-225 CRM PERMIT

No person may conduct a jet ski rental operation without a coastal permit issued by the Coastal Resources Management program which may include requirements in addition to this chapter. The CRM Administrator may determine the number of permits and number of jet skis which will be allowed to operate at each area specified in § 15-20-205 of this chapter and how to best allocate such permits between existing and future operators.

PART 300 – WATER SKI OPERATIONS

§ 15-20-301 WATER SKI OPERATIONS

No one may water ski in the Managaha exclusion area described in § 15-20-105(h).

PART 400 – MISCELLANEOUS

§ 15-20-401 SEVERABILITY

Should any section, paragraph, sentence, clause, phrase or application of the chapter be declared unconstitutional or invalid for any reason by competent authority, the remainder or any other application of this chapter shall not be affected in any way thereby.

§ 15-20-405 ENFORCEMENT

This chapter shall be enforceable by the Coastal Resources Management Office and Department of Public Safety, Division of Boating Safety.



Department of Commerce

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Caller Box 10007 CK., Saipan, MP 96950

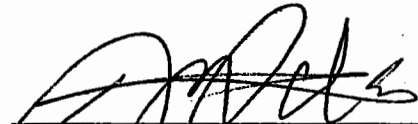
Tel. (670) 664-3000/1 • Fax: (670) 664-3067

NOTICE OF CERTIFICATION AND ADOPTION OF PROPOSED FOREIGN INVESTMENT REGULATIONS PURSUANT TO 1 CMC §§ 2454, 9104, BY THE DEPARTMENT OF COMMERCE

I, Jesse S. Palacios, Acting Secretary of the Department of Commerce which promulgated as a Notice of Intent to Adopt Foreign Investment Regulations published in the Commonwealth Register, vol. 26, no. 4, at 22230-36 (April 23, 2004), by signature below hereby certify that as published such Proposed Regulations are true and correct copies of the Proposed Foreign Investment Regulations previously proposed by the Department of Commerce which, after the expiration of appropriate time for comment, have been adopted with no changes.

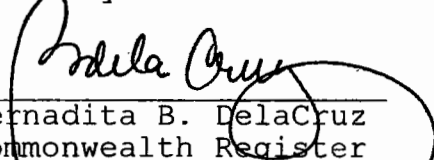
By signature below, I hereby certify that the Proposed Foreign Investment Regulations are the true, correct and complete Proposed Foreign Investment Regulations proposed by the Department of Commerce. I further request and direct that this Notice and Certification of Adoption be published in the Commonwealth Register.

I declare under penalty of perjury that the foregoing is true and correct and this declaration was executed on this 14th day of May, 2004, at Saipan, Commonwealth of the Northern Mariana Islands.



Jesse S. Palacios
Acting Secretary of Commerce

Filed by:

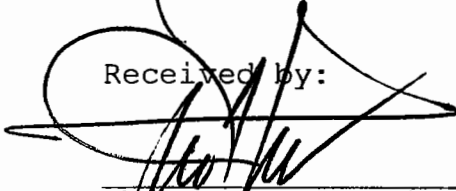


Bernadita B. Delacruz
Commonwealth Register

5.17.04
Date

Time

Received by:



Thomas A. Tebuteb
SAA

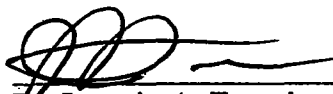
5.18.04
Date

Time


**NOTICE AND CERTIFICATION OF ADOPTION OF THE
REGULATIONS REGARDING THE ISSUANCE OF SPECIAL
CIRCUMSTANCE TEMPORARY WORK AUTHORIZATIONS**

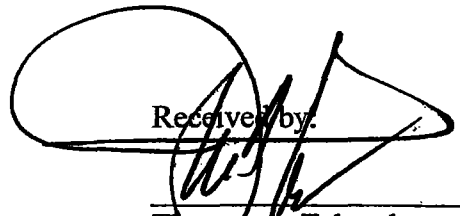
I, Dr. Joaquin A. Tenorio, Secretary of the Department of Labor, promulgated Regulations Regarding the Issuance of Special Circumstance Temporary Work Authorizations published in the Commonwealth Register, Volume 26, Number 01, January 22, 2004, at pages 21643 to 21647. By signing below I hereby certify that as published such Regulations are a true, complete and correct copy of the Regulations previously proposed which, after the expiration of the time for public comment, have been finally adopted without modification. I further request and direct that this Notice and Certification be published in the CNMI Commonwealth Register.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on this 17th day of May 2004 in Saipan, Commonwealth of the Northern Mariana Islands.


Dr. Joaquin A. Tenorio
Secretary of Labor

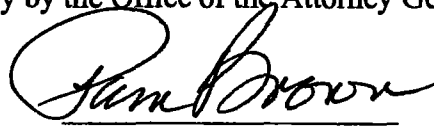
Filed By:


Bernadita B. Dela Cruz
Commonwealth Registrar
Date: 5-19-04

Received by:

Thomas A. Tebuteb
Special Assistant for Administration
Date: 5-19-04

Pursuant to 1 CMC § 2153, as amended, the above certification has been reviewed and approved as to form and legal sufficiency by the Office of the Attorney General.

Dated: 5/20/04


Pamela Brown
Attorney General



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

STATE BOARD OF EDUCATION
PUBLIC SCHOOL SYSTEM
P.O. BOX 501370
SAIPAN, MP 96950



Romari C. Benavente
Chairman

Dino M. Jones
Vice Chairman

Marja Lee C. Tailano
Secretary/Treasurer

Members
Frances H. Diaz
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Scott Norman
Non Public School Rep.

Ms. Aubry Manglona Hocog
Student Representative

Ambrose Bennett
Teacher Representative

Commissioner of Education
Rita Hocog Inos, Ed.D

NOTICE AND CERTIFICATION OF ADOPTION OF AMENDMENTS TO BOARD OF EDUCATION REGULATIONS REGARDING ANNUAL AND SICK LEAVE FOR NON-CERTIFIED AND CERTIFIED PUBLIC SCHOOL SYSTEM PERSONNEL (§6302-6303 and §7302-7303)

I, Roman C. Benavente, the Chairman of the Ninth Board of Education for the Commonwealth of the Northern Mariana Islands ("Board") pursuant to the authority provided by Article XV of the CNMI Constitution and Public Law 6-10 hereby adopt as permanent the proposed amendment to PSS Regulations regarding sick and annual leave as published in Volume 26, January 22, 2004 Commonwealth Register (pages 021694-02697) with the minor modification noted below. Further, I hereby certify that, as published, such regulations are an accurate and complete copy of the regulations regarding employee sick and annual leave, which in response to public comment have been modified as noted in strike through and italics below.

Certified Employee Regulation Section 7302(4) (published on page 021694 in Volume 26, January 22, 2004 Commonwealth Register) now reads:

The maximum accumulation of annual leave shall be forty (40) hours per school year. Annual leave shall be cashed out at the end of each school year ~~with the employee's written request. Any annual leave not used or cashed out in the school year shall be lost. Any leave accrued before August 1, 2004 shall not be lost and may be used or cashed out upon availability of funds or upon separation from PSS. Separation shall mean that the employee will not work for the PSS for at least six (6) consecutive months, unless waived by the Commissioner of Education subject to approval of the Board of Education.~~ The cash value of one hour of annual leave shall equal 1/2080th of the employee's annual salary at the time of separation.

Pursuant to 1 CMC sec. 9104(a)(2), the Board has fully considered all written and oral submissions respecting the proposed regulations. In addition to the publication notice in the Commonwealth Register, the Board circulated the proposed amendment to all schools and presented the changes to employees during professional development and staff meetings as well as receiving comments during Board meetings. Upon the adoption of this amendment, the Board, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption.

**NOTICE AND CERTIFICATION OF
AMENDMENTS TO BOARD OF EDUCATION
REGULATIONS §6302-6303 and §7302-7303
(page 2)**

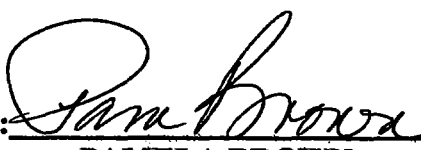
By my signature below, I certify that the proposed amendments to Public School System Regulations for Certified and Non-Certified Personnel (§6302-6303 and §7302-7303) as published in Volume 26 January 22, 2004 Commonwealth Register and as modified herein are the accurate and complete regulations regarding the Board of Education regulations regarding sick and annual leave. I further request that this Notice and Certification of Adoption be published in the Commonwealth Register.

The adopted amendment to the regulations were approved for promulgation by the Attorney General on page 021670 in Volume 26, January 22, 2004 Commonwealth Register, pursuant to 1 CMC sec. 2153(e).

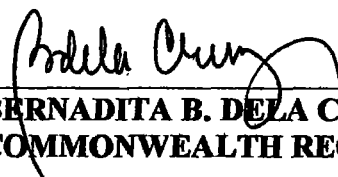
Pursuant to 1 CMC sec. 9105(b), these amended regulations are effective 10 days after compliance with 1 CMC §§ 9102 and 9104(a) or (b), which, in this instance, is 10 days after this publication in the Commonwealth Register.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on this 14th day of May 2004, on Saipan, CNMI

By: 
ROMAN C. BENAVENTE
Board of Education Chairman

Approved By: 
PAMELA BROWN
ATTORNEY GENERAL, CNMI

Date: 5/17/04

Filed By: 
BERNADITA B. DELA CRUZ
COMMONWEALTH REGISTRAR

Date: 5-17-04

MEMORANDUM Attorney General Legal Opinion # 04-09

To: Director, Office of Public Auditor
From: Angela Bennett, Assistant Attorney General
Thru: Pam Brown, Attorney General
CC:
Date: April 27, 2004
Re: Application of Excepted Service Rules and Regulations, Procurement Regulations, and the Compensation Adjustment Act, 1 CMC § 8241 et seq., to the Washington Representative's Office

Introduction and Issues Presented

This memorandum is in response to your request for a legal opinion on the issues numbered below.

1. Do the Excepted Service Rules and Regulations (ESR&R) apply to the Washington Representative's Office (WRO)?

Short Answer: No, because, even though the WRO staff are exempted from the civil service by the CNMI Constitution, the ESR&R, as promulgated by the Civil Service Commission, are invalid. Please see Attorney General's Opinion #04-05 attached. The ESR&R promulgated by the Office of Personnel Management in January, 2004 apply only to the Executive Branch.

2. Do the Department of Finance (DOF) Procurement Rules and Regulations (PR&R) apply to the WRO?

Short Answer: No, because of the DOF interpretation, by its actions, that the PR&R do not apply to the WRO.

3. Does the Compensation Adjustment Act¹(CAA) apply to the WRO?

¹ Pertinent sections 1 CMC 8243 (a), and 8248 (a) were first enacted in 1984 as P.L. 4-32. Section 8248(a) remains unchanged through subsequent amendments of the Act; Section 8243(a) remained the same until 2002.

Short Answer: Yes, prospectively, for those employees hired under an employment contract or a contract that is an independent services contract, a consultant contract or a professional services contract that is in reality an employment contract. See Attorney General's Opinion 04-03 for an analysis of valid employment contracts. All other contracts exceeding the CAA prior to 2002 were approved by the legislature. All other contracts executed after September, 2002 were exempted from the CAA by the legislature.

4. Did the Department of Finance Procurement Rules and Regulations (PRR) apply to the WRO in 1998 and 1999?

Short Answer: No

5. Did the CAA apply to employment contracts issued by the WRO in 1998 and 1999?

Short Answer: No, because the DOF/OMB and OPM, by their actions, determined that the CAA did not apply to the WRO. See answer to Question 3.

Questions 2, and 3 will be addressed in this opinion.

I. Question 2: Do the Department of Finance Procurement and Supply Rules and Regulations apply to the WRO?

BACKGROUND INFORMATION

The Department of Finance has administered the funding relevant to this question for the WRO, the Honolulu Liaison Office, and the Judiciary² by depositing their quarterly allotments in checking accounts established by these entities.³ These entities write checks from those accounts without DOF control or regulation of these expenditures, or review to determine that they are used for a public purpose. The WRO has submitted supporting documentation of expenditures to the Office of the Public Auditor (OPA) pursuant to OPA audits. The Legislature submits expenditures to the DOF for reimbursement and at that time the DOF reviews these expenditures for use for a public purpose. It does not regulate or control them through any specific set of rules and regulations.

² The Judiciary does submit independent services contracts for review to the DOF.

³ This allotment does not include payroll funds.

The DOF Division of Procurement and Supply has not applied its procurement rules and regulations to WRO procurement.

Applicable Constitutional and Legal Authority

A. CNMI Constitution

(1) The WRO

Since 1978 the CNMI constitution has allowed the resident representative an allowance for expenses provided by law. In 1976 this section stated, in pertinent part:

The representative shall receive an annual salary and reasonable allowance for expenses provided by law.

N.M.I. Const. art. V § 5 (emphasis added).⁴ In 1985, Amendment 24 changed this section but this particular part remained the same.⁵ Also since 1978, the CNMI constitution has required the resident representative to submit an annual report. N.M.I. Const. art. V § 4.

(2) The DOF

In 1985, amendment 31 added the following section to article X of the CNMI constitution:

The Department of Finance or its successor department shall control and regulate the expenditure of public funds. The department shall promulgate regulations including accounting procedures that require public officials to provide full and reasonable documentation that public funds are expended for public purposes.

N.M.I. Const. art. X § 8.⁶

⁴ The word allowance is found in only one other place in the CNMI Constitution: Article VI, Section 4, giving the Mayors an allowance.

⁵ It is important to note that, in 1985, when the CNMI constitution was amended to allow the Department of Finance to regulate the expenditure of public funds for a public purpose, this section remained unchanged in the CNMI Constitution.

⁶ Attorney General's Opinion 03-13 addresses the broad authority this section gives to the Department of Finance to control procurement and supply functions of the CNMI government through its power to control and regulate the expenditure of public funds.

B. CNMI statutes

(1) The WRO

In March, 1978, the First Marianas Legislature passed the first CNMI law, P.L. 1-1. This law established the Office of the Representative to the United States (WRO). This law was codified at 1 CMC § 4101 et seq. Since 1978, the statute has stated, in pertinent part, that the Resident Representative:

“...shall receive an allowance each fiscal year for secretarial, clerical, technical, and professional assistance, and for all office expenses, including office rental and equipment, and such other and further expenses as may be necessary to carry out the duties and functions of his office.”

P.L. 1-1 § 4. This section is currently codified as 1 CMC §4103 (a) and was re-enacted verbatim in P.L. 3-92 § 3(a).

P.L. 1-1 allotted an appropriation to the Representative and made the Representative “responsible for its expenditure.” P.L. 1-1 § 5. In January, 1984, P.L. 3-92 deleted that language from the act.

Also, since March, 1978, the Resident Representative has been responsible for providing a written report of his activities to the Governor and the legislature. P.L. 1-1 § 5. In 1984, the legislature required the Resident Representative to document the expenditure of office funds for the previous year. P.L. 3-92 § 7. This requirement is codified at 1 CMC § 4207.

1 CMC § 4207 states in pertinent part:

Annual Report.

The Resident Representative shall submit... a written report to the Governor and the legislature...The annual report shall also document the expenditure of funds of the previous fiscal year and disclose any outstanding obligations incurred against those funds, including the status of those funds as of the end of the fiscal year. 1 CMC § 4207 (emphasis added).

(2) The DOF

In August, 1978, the CNMI legislature passed P.L. 1-8, which, in pertinent part, established the DOF, and delineated its duties and responsibilities. P.L. 1-8, ch. 11 §3. These duties have been codified at 1 CMC § 2553. This statute states in pertinent part:

The Department of Finance shall have control of and be responsible for procurement and supply in the Commonwealth.

1 CMC § 2553(j) (emphasis added).⁷ Under that authority, the DOF Division of Procurement and Supply promulgated procurement rules and regulations.⁸ P.L. 1-8 also gave the DOF the power to adopt rules and regulations for all matters within its jurisdiction. P.L. 1-8, ch 11, § 8. This statute, which also remains unchanged to date, states:

The Department of Finance may adopt rules and regulations not inconsistent with law regarding those matters within its jurisdiction and to provide penalties both civil and criminal for violation thereof.

1 CMC § 2557(emphasis added). The DOF did not cite 1 CMC 2557 as its authority to promulgate CNMI Procurement Regulations in the text of its procurement regulations.⁹

C. CNMI Case Law

There is no case law that specifically addresses this issue.

ANALYSIS

As cited in the sections above, the CNMI legislature has delegated the DOF as the agency responsible for administering the procurement statute within the CNMI government. It has done this

⁷ This section has remained the same since 1978

⁸ In both 1990, and in 2000, the DOF cited this section as the authority under which the CNMI Procurement Regulations were promulgated. CNMI Procurement Regulations, Section 1-102.

⁹ However, the DOF did use this authority in its public notice when promulgating these regulations.

by granting the DOF the power to promulgate rules and regulations and enforcing them. As such, the DOF appears, by its actions, to have interpreted the DOF Procurement Rules and Regulations as not applying to the WRO. The DOF has not required that the WRO comply with the Procurement Rules and Regulations in order to receive its funding allowance.

Courts give deference to agency interpretations of the statutes it is charged to administer, when those interpretations are expressed through the quasi-legislative delegation such as the issuance of formal regulations. *Commonwealth v. Dado*, Crim. No. 98-0261(citing *Chevron, U.S.A., Inc. v. N.R.D.C, Inc.*, 467 U.S. 837, 844 (1984)). Specific to this opinion, the DOF has determined that the PR&R do not apply to the WRO. The DOF has done this through its actions of non-application, rather than through the issuance of formal regulations.

The CNMI Superior Court has set out the factors that a court would consider in determining what weight to give an agency interpretation of its regulations. *Island Apparel, Inc. v. Secretary of Finance*, Civ. Action No. 01-0110B (2001). One factor under *Island Apparel's* is an analysis of whether the agency is likely to be intimately familiar with regulations it authored and sensitive to the practical implications of one interpretation over another. *Id* ¶ 17(citations omitted). Another factor cited in *Island Apparel* is a determination of "evidence that the agency has consistently maintained the interpretation in question, especially if it is long-standing." *Id.* (citations omitted).

Using the analysis in *Island Apparel*, it is arguable that the DOF would be intimately familiar with its regulations and sensitive to the practical implications of requiring the WRO to comply with the DOF PR&R, since it deals with financial management of all branches of the CNMI government. It would be especially sensitive to the difficulties of financially managing the WRO since it is located in Washington D.C.

Using another method of analysis, the courts may presume that the DOF's interpretation is an accurate interpretation of statutory meaning and legislative intent, and therefore entitled to judicial deference. *Id.* ¶ 16 (omitting citations). This presumption is based on "the agency's special familiarity with the satellite legal and regulatory issues involved." *Id.*

The DOF's decision that the PR&R do not apply to the WRO may be based on the following analysis:

(1) When two statutes are capable of co-existence, it is the duty of the courts to regard each as effective, rather than repeal one by implication. Singer, 1A *Sutherland Statutory Construction*, § 23.10, at 480-493 (6th Edition, 2002). (citing *Morton v. Mancari*, 414 U.S. 1142 (1974)). The DOF's decision,¹⁰ by its actions, not to apply the PR&R makes two statutes effective, rather than repeal one by implication. In 1978, the CNMI legislature, pursuant to constitutional mandate to grant a reasonable allowance¹¹ for expenses to the Resident Representative, set up two methods of procurement within the CNMI government. The first method was instituted in March, 1978, when the legislature granted the resident representative an allowance for procurement of services and supplies for its Washington Office and expenditure authority over it. The second method was instituted in August, 1978, when the legislature established the DOF and gave it authority and control over procurement and supply in the Commonwealth.

¹⁰ The DOF has not issued a formal ruling on this question.

¹¹ Black's law dictionary states that the word "allow:"

"has no rigid or precise meaning, its import varying according to circumstances or context in connection with which it is used. It may mean to bestow or assign to any one as his right or due." Black's Law dictionary, 6th Edition, 1990 p. 76.

"Allowance" is defined as a portion assigned or allowed. *Id.* A "family allowance" is defined as a certain amount of decedent's property allocated for the support of the widow and children during the period of estate administration. *Id.* at 605. A review of how the word allowance is used in CNMI statutes reveals that it most often refers to a grant, of a specific amount, such as a homestead allowance of \$5,000 (8 CMC § 2602), or a family allowance of a reasonable amount out of the estate (8 CMC § 2603).

(2) The DOF clearly has authority to develop rules and regulations for WRO expenditures pursuant to its broad constitutional mandate in Article X § 8 to “control and regulate the expenditure of public funds” and “to promulgate regulations that require public officials to provide full and reasonable documentation that public funds are expended for public purposes.” N.M.I. Const. art. X § 8. However, the legislature has not amended the DOF or WRO organic statutes to expressly grant the DOF this authority over the WRO. As was stated above, the DOF has not exercised its broad constitutional authority independent of express legislative action. DOF may argue that the constitutional mandate is not self-executing.

(3) The legislature, rather than give the DOF express authority to control and regulate the WRO expenditures, instead amended the annual reporting requirements of the Washington Representative to include WRO expenditures. Since 1984, the Representative must, in his annual report, document to the legislature and the Governor “the expenditure of funds of the previous fiscal year and disclose any outstanding obligations incurred against those funds, including the status of those funds as of the end of the fiscal year.” 1 CMC § 4207.

Application of the current PR&R prospectively to the WRO:

If, at some time in the future, the DOF should decide to apply the current PR&R to the WRO, the DOF would have to cogently explain why it has decided to exercise its discretion to do so, after never having done it in the past. *Island Apparel*, ¶ 18. (omitting citations). To do otherwise” may qualify as arbitrary or capricious agency action or constitute an abuse of discretion.” *Id.* The DOF would have to show that “its new policy is reasonable, and that its departure from prior practice is equally reasonable.” *Id.* (omitting citations). Any change in DOF practice regarding the current PR&R would have to take into account the WRO’s legitimate reliance upon the agency’s prior interpretation,

through its actions, that these regulations did not apply to the WRO. *Id.* Therefore, the DOF would at minimum have to give the WRO notice and an opportunity to comment on any prospective application to that office.

Recommendation: Rather than applying the current PR&R to the WRO, the DOF should promulgate rules and regulations for the WRO under the broad authority contained in N.M.I. Const. art. X § 8 and 1 CMC § 2557, taking into special account any procurement issues unique to the location of the WRO in Washington, D.C.

Note: Based on the corrected codification of 1 CMC § 4206 contained in Question 3, the DOF should promulgate rules and regulations for WRO independent services contracts only through the broad constitutional authority of NMI Const. art X § 8. The WRO professional and personal services contracts are only subject to terms and conditions of the WRO act and the annual appropriations act. 1 CMC § 4206.

CONCLUSION

The current DOF PR&R do not apply to the WRO pursuant to the DOF's interpretation, by its actions of non-enforcement, of the regulations themselves.

II. Question 3: Does the Compensation Adjustment Act apply to the WRO?

BACKGROUND INFORMATION

According to the Office of Personnel Management (OPM), OPM does not currently monitor WRO or the mayors' offices employment contracts for compliance with the Compensation Adjustment Act. OPM simply inputs the employment contract information into a data management

system.¹² The OPM Director certifies all other employment contracts, however. After P.L. 13-1, the OPM Director's signature certified that the person was qualified to be in the excepted service and that the contract was complete. OPM, by informal agreement, monitors judicial, legislative and other semi-autonomous agencies' employment contracts for, among other things, compliance with the CAA.

According to the Office of Management and Budget (OMB), the OMB currently monitors all government employment contracts, including employees of the judiciary and the legislature, except for the WRO, for compliance with the CAA.¹³

Applicable Constitutional and Legal Authority

A. CNMI Constitution

CNMI Constitution, as amended in 1985 states, in pertinent part:

“...The staff of the office of the resident representative shall be exempted from the civil service.”

N.M.I Const. art. V, § 5.

B. CNMI statutes

1 CMC § 4201 et seq. establishes the Office of the Representative to the United States for the Commonwealth of the Northern Mariana Islands and delineates the powers and duties of the Resident Representative. Since 1978, CNMI law has allowed the Resident Representative to enter into

¹² Pursuant to Executive Order 94-3, § 214 (c), OPM can, by agreement, perform personnel management functions for the judiciary, the legislature Marianas Public Land Trust, the Board of Education/Public School System, and the Northern Marianas College. There is no provision in the EO for OPM to perform personnel management functions for the WRO.

¹³ Pursuant to 1 CMC § 7405. The OMB does not review WRO employment contracts for compliance with the CAA because they are already “approved” before they come to the OMB office. The OMB did not receive a copy of WRO employment contracts until two years ago; the copies of contracts are now used by OMB to track funding levels and FTE positions filled.

personal services or other professional services contracts, subject to the appropriations law enacted for such purposes. P.L. 1-1 §3. The statute currently is wrongly codified, in pertinent part, to state that:

The Representative may enter into personal services and other professional services contracts as required to assist in performing the duties of the Representative, subject to budgetary appropriations.

1 CMC § 4206; P.L. 3-92 § 2 modified. P.L. 3-92 repealed P. L. 1-1. P.L. 3-92 § 2 actually states the following:

The Representative shall maintain the Office headquarters in Washington, D.C., and shall have the power to enter into personal services and other professional contracts necessary to fulfill his duties and responsibilities, subject to any terms and conditions of this act and the annual appropriations act.

P.L. 3-92 § 2 (emphasis added). This section has remained unchanged since January, 1984.

As cited in Question 2 above, the Resident Representative

“...shall receive an allowance each fiscal year for secretarial, clerical, technical, and professional assistance, and for all office expenses, including office rental and equipment, and such other and further expenses as may be necessary to carry out the duties and functions of his office.”

P.L. 1-1 § 4. (emphasis added). This section is currently codified as 1 CMC §4103 (a) and was re-enacted verbatim in P.L. 3-92 § 3(a).

The CAA¹⁴ has contained, since 1985, three provisions pertinent to this discussion:

(1) a definition of “employee.” P.L. 4-32 § 2(a). This statute defines employees, including independent contractors, for the purposes of coverage by the CAA, in the following manner:

“Employee” includes independent services contractors, consultants, and professional services contractors. “Employee” also includes full-time and part-time personnel. “Employee”

¹⁴ The CAA sets the salary cap for the Representative to the United States (Washington Representative). 1 CMC § 8244.

includes employees of federal programs who receive their paychecks from the Commonwealth government.

This provision was codified as 1 CMC § 8243 (a) and remained unchanged through several amendments of the CAA until 2002. In 2002, pursuant to P.L. 13-24 § 602(a), the legislature amended 1 CMC 8243(a).

The statute now reads, in pertinent part:

“Employee” does not include an independent services contractor, a consultant, or a professional services contractor.

1 CMC § 8243(a) (emphasis added)

- (1) a default provision that applies to all other government positions not specifically listed in the CAA, but exempted from the civil service. This provision states:

Except as provided by this law, no employee of the Commonwealth government shall receive an annual salary of more than \$50,000.

1 CMC § 8248(a).

(a) Statutory exemptions from the CAA:

- (1) Two provisions, pertinent to this opinion, currently exist in the codification of CNMI law that allow employees to receive a salary higher than that established by the CAA. Since 1984, the following provision has limited application of the CAA to specific nonelected employees by stating the following:

The salary provisions of this chapter shall not apply to a nonelected employee holding a position on April 1, 1985, where the employee receives a salary higher than the salary established by this chapter for his position. In all cases the salary of the nonelected employee shall be frozen at its level on April 1, 1985, until the nonelected employee leaves his position. The successor of the nonelected employee shall be subject to this chapter and shall receive the salary established by this chapter for the position.

1 CMC § 8250(a) (P.L. 4-32) (emphasis added).

The following provision affected an incumbent in any position in the CNMI government:

In the event that the incumbent of any position within the government, agency or corporation is receiving an annual compensation in excess of that authorized by this chapter on June 19, 1991, that incumbent shall continue to receive that amount as long as such salary is authorized under applicable Commonwealth law prior to June 19, 1991. The compensation shall be frozen at that level.

1 CMC § 8248(c) (P.L. 7-31) (emphasis added). This statute has been in place since 1991.

(2) The CAA contains procedures which, if followed, allow the executive, judicial, and legislative branches to fill positions at salaries above any statutorily imposed salary cap, including the default provision. 1 CMC § 8250.

(b) Appropriations bill exclusions from the CAA:

The CNMI legislature has allowed exclusions from the CAA as part of temporary appropriations bills. In 1992, the CNMI appropriations bill excluded the WRO staff¹⁵ from the CAA, for that year only, with the following language:

The Resident Representative... may establish a compensation schedule for salaries of staff hired pursuant to 1 CMC § 4206. The salary schedule may be comparable to salaries established in the District of Columbia for similar positions which may be higher than the salary for the Resident Representative to the United States.”

P.L. 8-2 § 404.¹⁶

The CNMI legislature passed an appropriations bill, effective for September, 1998, which required hiring authorities to strictly adhere to salaries of graded and ungraded positions as required by P.L. 7-31, 8-15, 8-6, 9-25 10-35 and 10-85. P.L. 11-41 § 526. This statute required that “all salary classification and compensation outside of the...(cited laws) shall be first sanctioned by the

¹⁵ Staff means those hired pursuant to personal services and other professional services contracts. 1 CMC § 4206.

Legislature before its implementation.” Id. (emphasis added). This budget was on a continuing resolution through September, 2002. In 2002, the legislature granted a general retroactive approval to contracts exceeding salary caps, again, in an appropriations bill, with the following language:

Any independent contract, involving consulting or any professional or nonprofessional services, in excess of any applicable salary ceiling and executed prior to the effective date of this Act is hereby approved for purposes of compliance with section 526 of Public Law 11-41.

P.L. 13-24 § 602(b).

Based on the above discussion, any analysis of whether or not a particular contract has violated the salary cap involves an examination of the appropriations statute applicable to the year of hire under the contract, as well as the type of contract at issue.

C. Attorney General Opinions

The CNMI Attorney General, when asked about the application of the CAA to civil service employees of the Public School System, stated that the status of the employee, and not the employing entity, determines how to apply the CAA. AGO Opinion 89-05.

ANALYSIS

It is a basic canon of statutory construction that statutory language must be given its plain meaning. *Nansay Micronesia Corp. v. Govendo*, 3 N.M.I. 12 (1992). Giving the language of the CAA its plain meaning, it is applicable to the WRO because the CAA applies to civil service employees and those exempted from civil service. The CNMI constitution exempts WRO staff from the civil service.¹⁷

¹⁶ Appropriations bills are temporary bills and expire at the end of the fiscal year . P.L. 3-90 § 10. If the legislature had wanted to make this exemption from the CAA a permanent exemption, it could have amended the CAA to that effect. Instead, the legislature made it part of a temporary appropriations bill, without using amendment language. See AG Opinion of June 26, 1998.

¹⁷ Additionally, the Resident Representative’s salary is specifically set in the CAA. 1 CMC § 8244(b). If the legislature wished to exclude the staff of the WRO, it could have when the Resident Representative’s salary was set.

Those individuals specifically employed by the WRO through professional services contracts, or other employment contracts fit within the CAA statutory definition of employee. 1 CMC § 8243. The default section of the CAA allows for no exclusions from the application of this statute to all government employees. 1 CMC § 8243(a).

The salary for the Resident Representative was included in the CAA, indicating that the legislature intended to reach this office of the CNMI government. Some WRO staff were excluded from the CAA in 1992, for one year only. That exclusion lapsed when the appropriations bill did. P.L. 8-2. Since that time, the legislature has chosen not to exclude the WRO from the CAA.¹⁸ Therefore, the CAA applies to the WRO and the WRO must only hire within the salary caps imposed by the CAA, excluding the hiring in 1992.

It is a principle of statutory construction that *expressio unius est exclusio alterius*. Singer, 2A *Sutherland Statutory Construction*, § 47:23 at p. 304-318 (6th Edition, 2000). Under this principle, exceptions in a statute strengthen the force of the law for those not excepted. *Id.* Employees of the judiciary, the legislature and the executive branches may be exempted from the salary caps by following statutorily prescribed procedures. 1 CMC § 8250. The WRO does not fit neatly into any of these branches. *Tenorio v. Commonwealth*, 2 CR 725 (1986). The CAA does not contain any procedures that specifically allow the WRO to hire above any statutorily imposed salary cap. Thus, the principle *expressio unius est exclusio alterius* strengthens the analysis that the CAA applies to the WRO.

¹⁸ See footnote 16 for the 1992 temporary exclusion in P.L. 8-2.

There is only one exemption prior to 2002 in the CAA that applies to all WRO staff. If any WRO staff received a salary in excess of the CAA in June 19, 1991, the legislature authorized that employee to continue to receive that salary throughout their employment. 1 CMC § 8248(c). The employee's salary is frozen at that level, by statute. *Id.* After 2002, the CAA only applied to the Resident Representative and the WRO staff on employment contracts. 1 CMC 8243(a).

In addition to determining when a particular employment contract came into effect, any analysis of whether that contract¹⁹ is limited by the CAA must include research into the appropriations bill in effect at the time of hire. The research should determine if the legislature exempted the WRO, or a position within the WRO, from the application of the CAA. For example, any personal services and other professional services contracts in the fiscal year beginning in September, 1992 were exempt from the CAA, for that year only. P.L. 8-2 § 404. Any independent contract, involving consulting or any professional or nonprofessional services that was in excess of the cap provided in the CAA, executed prior to September, 2002, was approved by the legislature for any position within the CNMI government, including the WRO. P.L. 13-24 § 602(b).

Prospective Application of the CAA to the WRO:

A complicating factor in this analysis is that the DOF/OMB and OPM interpret the CAA, by their actions, as not applying to the employment contracts of the WRO.

The CNMI legislature has not delegated the responsibility for monitoring compliance with the CAA to any specific government agency. However, the legislature has given the DOF and OPM authority to certify that CNMI government employment contracts comply with CNMI law generally. As such, these agencies must interpret the applicability of these laws to many types of government

¹⁹ As defined in 1 CMC § 8243(a) prior to 2002.

employment contracts. “An administrative agency’s construction or interpretation of a statute, which the agency is charged with enforcing, is entitled to serious consideration by a reviewing court, provided that the agency’s construction is reasonable and does not contradict the statute’s plain language.” *Island Apparel, supra* at ¶13 (citations omitted). Citing *Marquis v. City of Spokane* 130 Wash.2d 97, 111(1996), the CNMI Superior Court stated that a court “must give great weight to the statute’s interpretation by the agency which is charged with its administration, absent a compelling indication that such interpretation conflicts with the legislative intent.” *Id.* However, if the agency has not issued formal regulations regarding its interpretation of a statute, the courts do not give this interpretation the same weight as if formal regulations had been issued. *Id.* at ¶ 15.

The CNMI legislature has delegated the to DOF the authority to dispense funds pursuant to law. 1 CMC 2553(g). The legislature charged the DOF/OMB with the task of certifying the employment contracts are within applicable FTE ceilings and budgetary allocations. 1 CMC § 7505. According to agency representatives, the DOF/OMB does not certify that the WRO employment contract funds are dispensed pursuant to the authority of law, in this case the CAA. 1 CMC 2553(g). WRO employment contracts do not receive prior certification from the DOF/OMB that funds and a vacant FTE are available²⁰ for that position, as required by 1 CMC § 7505. Even though a position is exempt from the civil service system, these positions must be hired “within the FTE ceilings and the annual budget for the exempted position.” *Manglona v. Civil Service Commission*, 3 N.M.I. 243 at 251 (1992).²¹

²⁰ Funds in excess of the CAA would not be available for an employment contract, regardless of the budgetary allocation.

²¹ Please see AG Opinion No. 03-02 for an analysis of the application of this and other statutes to the personnel actions of the Mayors.

According to a DOF/OMB representative, the department monitors all other employment contracts for compliance with the CAA. The DOF/OMB by its action of dispensing funds for WRO employment contracts in excess of the salary caps mandated in the CAA and not monitoring WRO employment contracts for compliance with the CAA, interprets the CAA as not applying to the WRO. See the analysis under Question 2 applying *Island Apparel, supra*.

The CNMI legislature has granted broad powers to OPM²² under 1 CMC § 8143(a); PL 1-9, § 9 (August, 1978).²³ OPM could refuse to certify payroll for any employment contract that is above the salary cap for that position. However, like the DOF/OMB, OPM, by its actions, interprets the CAA as not applying to the WRO. The OPM monitors all employment contracts, except mayors' office contracts and the WRO, for compliance with the CAA, and inputs into the payroll system only those in compliance with it. However, the OPM does not monitor the WRO employment contracts for compliance with the CAA. OPM allows WRO employment contracts into the payroll system that are in excess of the salary caps mandated by the CAA. By this action, the OPM is interpreting the CAA as not applying to the WRO. See analysis under Question 2 applying *Island Apparel, supra*.

A court is much less likely to defer to an agency's interpretation of a statute than its interpretation of its own regulations. *Id at* ¶ 17. Any change in DOF/OMB and OPM practice regarding the CAA would have to take into account the WRO's legitimate reliance upon the agency's prior interpretation,

²² Transferred from the Civil Service Personnel Officer, pursuant to E.O. 94-3 § 214(b).

²³ This statute states: "No disbursing or certifying officer shall make or approve or take any part in making or approving any payment for personal service to any person holding a position in the civil service or otherwise employed under the provisions of this part unless payroll certification has been made by the Personnel Officer or his authorized agent that the person named therein has been appointed and employed in accordance with the provisions of this part and the rules and regulations adopted thereunder. The Personnel Officer may, for proper cause, withhold payroll certification for any position or positions in the civil service or for any other positions where the Personnel Officer's certification is required under the provisions of this part." 1 CMC § 8143(a) (emphasis added).

through its actions, that this act did not apply to the WRO. *Id* at ¶ 18 (omitting citations).²⁴


Therefore, the DOF/OMB and OPM should, at minimum, give the WRO notice and an opportunity to comment on any prospective application of the CAA to that office.

CONCLUSION Question 3

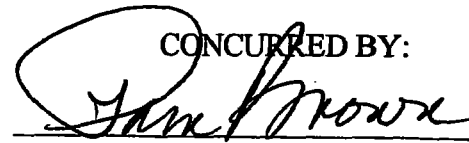
The CAA applies to the WRO because there is no statutory exclusion of the WRO from its effect. There are no statutory procedures that, if followed, allow the WRO to hire above the salary cap. The only codified exceptions are for incumbents in any position within the CNMI government receiving annual compensation in excess of what was authorized by the CAA on June 19, 1991. However, the applicable appropriations statute for the year of hire should be examined to determine if any exemptions or retroactive approvals specific to that year apply to the contract in question.

The DOF/OMB and OPM have, by their actions, interpreted the CAA as not applying to the WRO. Because of this interpretation, and WRO's likely reliance on it, the CAA should be applied prospectively to the WRO, after notice and an opportunity to comment. *Island Apparel, supra*.

BY:


Angela L. Bennett
Assistant Attorney General

CONCURRED BY:


Pam Brown
Attorney General

²⁴ *But see Island Apparel* ¶ 19: "The court will not defer the agency's construction of a statute when it is inconsistent and at odds with the clear intent of the statute."

MEMORANDUM

Attorney General Legal Opinion # 04-05

To: Office of the Public Auditor

Thru: Attorney General Pam Brown

CC: Law Revision Commission
Civil Service Commission

From: Angela Bennett, AAG

Date: March 3, 2004

Re: Legal Authority of the CNMI Civil Service Commission to promulgate "Excepted Service" Personnel Regulations for excepted service employees of the CNMI government.

ISSUE

Does the CNMI Civil Service Commission ("CSC") have the legal authority to promulgate Excepted Service Personnel Rules and Regulations ("ESPR") for government employment positions exempted by law from the civil service system?

Short Answer: No.

FACTS

This opinion is based on the following facts:

- (1) Since 1986, the CSC has promulgated regulations for excepted service personnel pursuant to various authorities (see below). These regulations are currently called ESPR. The introduction to these regulations states:

These parts and sub-parts provide the regulations to appoint, reassign or transfer, promote or demote, or otherwise change status of, and to remove from the government service employees who are excepted from the Commonwealth Personnel Service system pursuant to 1 CMC 8131 and Amendment 41 of the Constitution of the Northern Mariana Islands.

See Comm. Reg. Vol. 8, No. 6, September 15, 1986 Page 4647; Comm. Reg., Vol. 16, No. 03, March 15, 1994, Page 11771.

The CSC has used Amendment 41, or N.M.I. Const. art. XX as the constitutional authority to issue proposed regulations and adopt final regulations for excepted service personnel from 1988 through 1997.

B. Statutory Law

1. CSC's authority to promulgate rules and regulations for the Personnel Service System

(a) Public Law 1-9:

In 1978, the CNMI legislature passed the Northern Marianas Civil Service Act ("Act"). P.L. 1-9. The Act stated in pertinent part:

Statement of Policy: (T)he purpose of this Act is to establish a system of personnel administration ... the personnel system hereby established be applied and administered in accordance with the following merit principles...

P.L. 1-9 § 2. (emphasis added)

The Civil Service Commission has had the statutory authority to promulgate rules and regulations for the Personnel Service System in order to "carry out the provisions of the Act" since 1978. P.L. 1-9 § 8.

(b) P.L. 3-65 § 2 incorrectly codified at 1 CMC 8116(a):

The following statute is applicable to this analysis because the CSC has used it as the authority to promulgate ESPR since 1994:

1 CMC § 8116(a), not as codified but as expressly stated in P.L. 1-9 §3 (f) (1) and P.L. 3-65 § 2,¹ gives the CSC the power to:

Prepare a comprehensive personnel management plan and proposed personnel policies of the Commonwealth, which shall be hereinafter referred to as the "Personnel Service System," and submit copies thereof to the Governor and the Legislature.

1 CMC § 8116(a) (corrected according to P.L. 3-65 § 2 in underlined section)²

¹ Copy attached

² This correction is based on the following analysis: P.L. 1-9 originally stated that: The commission shall represent the public interest in assuring compliance with basic policy concerning personnel administration and in insuring that the integrity of the system is preserved. To this end, the commission shall have the following powers and duties: (1) To prepare a comprehensive personnel management plan and proposed personnel policies of the Commonwealth, which shall be hereinafter referred to as the "Personnel Service System," and submit copies thereof to the Governor and the Legislature; The plan and policies shall be deemed approved, if not disapproved by the Legislature within thirty (30) days following submission exclusive of the date of

Based on the corrected codification, 1 CMC § 8116(a) cannot be interpreted to give the Civil Service Commission any additional authority to promulgate rules and regulations. The Legislature clearly intended that the CSC's authority to promulgate rules and regulations come from 1 CMC § 8117 alone. This authority is specifically limited to promulgation of rules and regulations for the Personnel Service System, not for those exempted by law from it.

(d) The Role of the Personnel Officer in promulgating excepted service regulations:

The Act established a Personnel Office⁴ within the Civil Service Commission. 1 CMC § 8121. (P.L. 1-9, §3(g)) A Personnel Officer heads this Office.⁵ *Id.*

P.L. 3-65 § 1 (emphasis added).

The section of P.L. 3-65 concerning rules and regulations states as follows:

The Civil Service Commission shall prepare reasonable rules and regulations to carry out the provisions of this Act pursuant to Title 17 of the Trust Territory Code and Section 3(f), Chapter 3, Title I, of Public Law 1-8, as amended.

P.L. 3-65, § 3. (emphasis added)

This statute now has been erroneously codified as 1 CMC § 8117 to read in pertinent part:

Civil Service Commission: Rules and Regulations. Pursuant to the Administrative Procedure Act (1 CMC § 9101 et seq.) and 1 CMC § 8116(a), the Civil Service Commission shall prepare reasonable rules and regulations to carry out the provisions of this act.

1 CMC § 8117 (emphasis added).

There is no reference to P.L. 1-9 § 3(f)(1) [later codified as 1 CMC § 8116(a)] in P.L. 3-65. Rather, P.L. 3-65 refers to P.L. 1-8, Title I, Chapter 3, Section 3(f). P.L. 1-8, Title I, Chapter 3(f) states as follows:

The Attorney General ... shall have the following powers and duties:

... (f) To be responsible for the publication, compilation, and codification of laws, rules, regulations and executive orders, PROVIDED, however, that no rules or regulations shall take effect until they have been published for at least thirty(30) days in the Commonwealth Register.

P.L. 1-8, Title I, Chapter 3, Section 3(f). A more accurate codification of P.L. 3-65 as 1 CMC § 8117 would be based on Title 17 of the Trust Territory Code, known as the Administrative Procedure Act, and later amendments to it, and the codification of the Administrative Procedures Act specifically at 1 CMC § 9102, § 9103, and § 9104.

⁴ In 1994, this office was abolished and its functions transferred to the Office of Personnel Management (OPM). E.O. 94-3 § 214 (a).

⁵ The position and most of the duties and powers of Personnel Officer were not affected by E.O. 94-3 § 214. E.O. 94-3 § 214 established a new position, called the Director of Personnel, that is appointed by the Governor, with the advice and consent of the Senate. E.O. 94-3 § 214 (a). The position of Personnel Officer continues to exist in CNMI law, with the person filling it to be nominated by the Civil Service Commission, with the advice and consent of the Senate. 1 CMC § 8121. Even though the Personnel Office was abolished by E.O. 94-3, the following functions of the Personnel Office are "retained by the Civil Service Commission (which may establish an appropriate administrative structure for such purpose) and may be delegated in whole or in part to any or all of the appointing authorities: (1) Exemption of positions from Civil Service classifications. (2) Development, evaluation, and improvement of the Personnel Service Performance Standards and Appraisal System. (3) Recommendation and promulgation of regulations relating to personnel matters. E.O. 94-3 § 214 (d).

Exemptions: (a) The System shall apply to all employees of and positions in the Commonwealth Government now existing or hereafter established, except the following, unless this Act is specifically made applicable to them.⁷

Id. (emphasis added)

⁷ Prior to February, 2002, 1 CMC 8131(a) exempted the following persons or positions from the Personnel Service System:

1. Employees and positions covered by the United States civil service system, until and unless exempted by the United States Civil Service Commission or by United States law.
2. Persons or organizations retained by contract where the Personnel Officer has certified that the service to be performed is special or unique, and is essential to the public interest, and that, because of the degree of expertise or special knowledge required and the nature of the services to be performed, it would not be practical to obtain personnel to perform such service through normal public service recruitment procedures.
3. Positions of a temporary nature needed in the public interest where certified by the Personnel Officer and when the need for the same does not exceed 90 days. If a major disaster is declared by the President of the United States or if a disaster is declared by the Governor, the Personnel Officer may extend the 90-day period for a maximum of an additional 180 days for positions engaged in relief, repair, or rehabilitation as a result of such disaster.
4. Household and domestic employees at the official residence of the Governor.
5. Election inspectors, election clerks, and other election employees.
6. Persons appointed by the Governor to fill the executive positions.
7. Positions specifically exempted by any other law of the Commonwealth.
8. Personnel presently under contract of employment not included in subsection (a)(2) of this section during the life of the contract. No contract of employment shall be entered into, renewed, or amended after August 11, 1978, except subject to the provisions hereof.
9. Any position involving intermittent performance which does not require more than 40 hours in any one month.
10. Positions of a part-time nature requiring the services of four hours or less a day but not exceeding one year in duration.
11. Positions of a temporary nature which involve special projects having specific completion dates which shall not exceed one year.
12. Personnel and staff of the mayor's offices of Rota, Tinian, Saipan and the Northern Islands as defined by the FTE (full-time employee) ceilings and established by annual appropriation for those offices.
13. Personnel, staff and other employees of the Commonwealth Utilities Corporation. Source: PL 1-9, § 4, modified; amended by PL 7-17, § 1, modified; PL 8-18, § 17; PL 10-27, § 3.

The *Manglona* Court held that CSC had administrative authority only over the first category. *Id.* at 251. The CSC is allowed to administer every aspect of the contract with the government, "including the decision to exempt, the processing of the contract, the assurance that the contract complies with the Excepted Service Personnel Regulations, and the enforcement of all other applicable provisions of the Personnel Service System Rules and Regulations." *Id.* Thus, this case implies that the ESPR applies to Manglona One employees.

The Court held that the CSC had no administrative authority over positions in the second category. *Id.* Taking language from 1 CMC 8131(a)(13) and applying it to Manglona Two positions in general, the Court stated that "the employing agency hires within the FTE ceilings and the annual budget for the exempted position." *Id.* (emphasis added). It is significant to note that *Manglona* did not address the Commissions' authority to promulgate rules and regulations for either category of excepted service personnel. However, the Court was clear. The CSC, to the extent that it seeks to regulate Manglona Two categories of employees through the ESPR, has no authority to do so. Additionally, the *Manglona* Court implied that the ESPR does not apply to Manglona Two category of employees.

In July, 2001, the 9th Circuit stated that, under CNMI law, the ESPR govern the termination of CNMI employees exempted from the Personnel Service System under 1 CMC 8131(a)(2). *Sonoda v. Cabrera*, 255 F.3d 1035, (9th Cir. 2001). The court stated that "non-civil service employees may be terminated without cause and are not entitled to any sort of grievance procedure" citing ESPR Part I, subpart 9. *Id.* at 1040. However, the issue in *Sonoda* was whether the ESPR or the Personnel Service System Rules and Regulations ("PSSR&R") applied to the Plaintiff. As in *Manglona*, *Sonoda* did not address the authority of the CSC to promulgate the ESPR. Contrary to *Manglona*, *Sonoda* did imply that the ESPR applied to employees exempted from the Personnel Service System.

In January, 2003, the 9th Circuit addressed the issue of the non-civil service status of a CNMI government employee and what due process rights attached to that status. *Dyack v. CNMI*, 317 F.3d 1030 (9th Cir. 2003). The *Dyack* court determined that the employee was an excepted service employee, under 1 CMC § 8131(a)(2), whose due process rights were limited to those under the ESPR. *Id.* at 1032, 1033, 1037. It is important for this analysis to note that *Dyack* was an employee within the Manglona Two category. Therefore, the implication spelled out in *Manglona* is not supported in *Dyack*. Again, the *Dyack* court did not analyze the CSC's authority to promulgate the ESPR.

The Effect of the NMI Constitution and Statutes on the ESPR

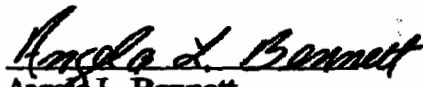
In order for an administrative regulation to have the force and effect of law, the statute, which created the administrative agency, must authorize specifically the issuance of rules and regulations by that agency. 1A N. Singer, *Statutes and Statutory Construction* §31.2 (6th Edition, 2002 Revision). As was stated above, the CSC has determined that it has the statutory authority to promulgate ESPR for excepted service employees. The CSC has cited several sources of that authority to include: The CNMI Constitution, Amendment 41, 1 CMC 8116, 1 CMC 8117, 1 CMC 8124(a) and 1 CMC § 8275. Courts must give deference to the CSC's interpretation of those authorities, unless that

concurr. This statute effectively removed the employees who are exempted under 1 CMC 8131(a)(2) from any authority of CSC, including that of promulgating rules and regulations. As was stated in *Manglona*, Amendment 41 granted the legislature the authority to exempt positions from the personnel service system and they did so with this law. *Manglona, supra* at 249, 250.


SUMMARY

According to *Manglona*, the CSC has constitutional authority over those positions exempted from the Personnel Service System classifications by the CSC. The CSC has statutory authority to promulgate ESPR as applied to those positions only. However, the CSC has no statutory authority to promulgate ESPR for government employment positions that are exempted from the personnel service system by law, except for the SLB. Therefore, the ESPR promulgated by the Civil Service Commission, as applied to those positions are null and void.


BY:

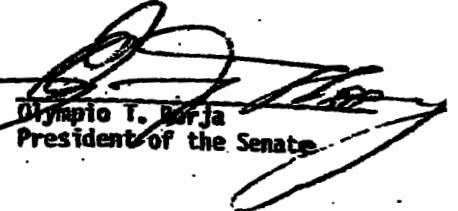

Angela L. Bennett
Assistant Attorney General

CONCURRED BY:


Pam Brown
Attorney General

1 Section 3. Effective Date. This Act shall take effect upon
2 its approval by the Governor, or upon its becoming law without
3 such approval.

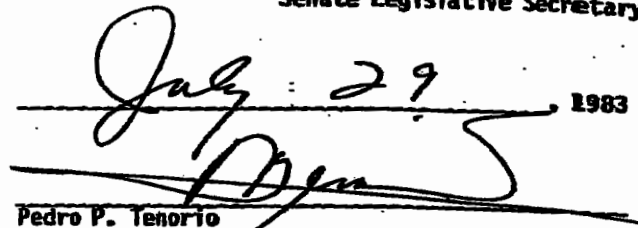

Benigno B. Fitial
Speaker of the House


Olympio T. Borja
President of the Senate

ATTEST:


Herbert S. Del Rosario
Chief Clerk


Ignacio K. Quichocho
Senate Legislative Secretary


July 29 1983
Pedro P. Tenorio
Governor
Commonwealth of the Northern Mariana Islands