

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



COMMONWEALTH REGISTER
VOLUME 26
NUMBER 09

September 24, 2004



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

SEP 17 2004

Juan N. Babauta
Governor

DECLARATION OF A STATE OF EMERGENCY

Diego T. Benavente
Lieutenant Governor

Volcanic Eruption on Anatahan

I, JUAN N. BABAUTA, pursuant to the authority vested in me as Governor of the Commonwealth of the Northern Mariana Islands by Article III, Section 10 of the Commonwealth Constitution and 3 CMC § 5121 of the Natural Disaster Relief Act of 1979, declare a State of Emergency for the island of Anatahan. This Declaration of a State of Emergency is in accordance with the recommendations and justifications presented by the Emergency Management Office (EMO), Commonwealth of the Northern Mariana Islands and the United States Geological Survey (USGS) such recommendations and justifications being attached and incorporated by reference.

I further declare that the island of Anatahan is unsafe for human habitation and do therefore restrict all travel to the island of Anatahan, except for such travel deemed to be for scientific purposes, provided that such scientific expeditions be permitted only upon prior notification to the Director of the EMO or his designee. In addition to the restriction on travel to the island of Anatahan an off-limits zone shall be maintained from thirty (30) nautical miles to (10) nautical miles around the island of Anatahan.

This Declaration of Emergency shall take immediately and shall remain in effect for thirty (30) days unless I, prior to the end of the thirty (30) day period, notify the Presiding Officers of the Legislature that the state of emergency has been lifted or has been extended for an additional period of thirty (30) days. The underlying justification for any such further extension, as with this Declaration of a State of Emergency, shall be set forth in a detailed communication to the Legislature.


JUAN N. BABAUTA

CC: Lt. Governor
Senate President
House Speaker
Mayor of the Northern Islands
Director, Emergency Management Office
Commissioner, Department of Public Safety
Attorney General
Secretary of Finance
Special Assistant of Management and Budget
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

16 SEP 2004

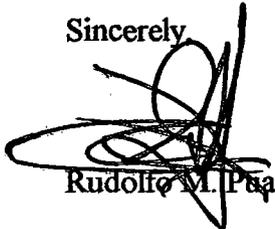
To: Governor
From: Director, Emergency Management Office
Subject: Declaration of Emergency

The EMO seismic staff and USGS, once again with close consultation has informed me that the seismicity level decreased dramatically to a very low level. However, steam and ash are like rising below two thousand feet as recorded by the seismographs at EMO.

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 and that the findings suggest otherwise. The current **Declaration of Emergency** expired on August 18, 2004.

Should you have any question or concern, please call our office at 322-9528/29.

Sincerely,



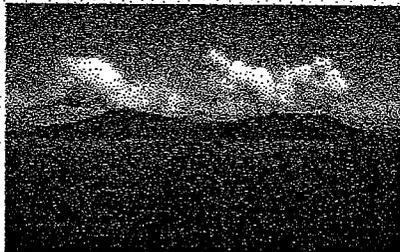
Rudolfo M. Pua

FAXED
 By Lou Time 9/16/04

Xc.LT, GOVERNOR
 SAA
 Mayor, NI



Northern Mariana Islands Volcanic Activity



Anatahan Island, 1994

Summit Elev.: 788 m
Latitude: 16.35°N
Longitude: 145.67°E

The first historical eruption of Anatahan Volcano began suddenly on the evening of May 10, 2003. No one was directly threatened by the initial strong explosive activity, because residents had long before evacuated the small volcanic island.

Anatahan Volcano is located 120 km (75 miles) north of Saipan Island and 320 km (200 miles) north of Guam. The island is about 9 km (5.6 miles) long and 3 km (2 miles) wide. Anatahan is a stratovolcano that contains the largest known caldera in the Northern Mariana Islands.

The Emergency Management Office (EMO) of the Commonwealth of the Northern Mariana Islands invited USGS scientists to provide assistance in tracking the volcano's activity and assessing potential hazards shortly after the eruption began. USGS scientists first arrived in Saipan on May 30, 2003 to work directly with EMO officials to install and maintain monitoring equipment and interpret data from from overflights and a single seismometer operating on Anatahan. This station became operational on June 5.

Anatahan Volcano Update for September 11, 2004.

Submitted Saturday, September 11, 2004 at 1000 local Anatahan time

There was no significant volcano-seismic activity in the Anatahan area this past week. On July 26, the seismicity level decreased dramatically to a very low level, and it remains very low. The seismic signals indicate that the frequent individual explosions have ceased. The ash plume is less than a few kilometers long and below 2000 feet.

Background:

The current eruption began this year after increased seismicity on March 31, 2004. Lava was noted in the crater on April 15 and may have extruded for a few weeks thereafter. The most energetic phase began on April 24, when a light ash cloud rose to a few thousand feet. Seismic activity peaked on April 28, then decreased slowly to about half that peak value during May. That seismicity resulted from strombolian bursts every one to several minutes that threw material a few hundred meters out of the crater and steam and ash upward for a few thousand feet. During June, the seismicity level was higher, as a result of more frequent small explosions every few tens of seconds, and a 100-km-long, light-colored plume of steam and ash was occasionally visible. An active spatter cone has existed since at least June 10, from which continuous strombolian explosions were throwing material as high as 100 m every few tens of seconds to minutes. The inner crater filled with the spatter by about July 10.

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 farther than 30 km downwind from the island and exercise due caution within 30-50 km of Anatahan.



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Juan N. Babauta
Governor

Diego T. Benavente
Lieutenant Governor

EXECUTIVE ORDER DECLARING STATE OF PUBLIC HEALTH EMERGENCY DUE TO SUPER TYPHOON CHABA

WHEREAS, by the authority vested in me as governor, and pursuant to Article III, Section 10 of the Commonwealth Constitution and 1 CMC §5114, a Declaration of Emergency declaring a major disaster in the Commonwealth of the Northern Mariana Islands due to the natural disaster suffered from Super Typhoon Chaba; and

WHEREAS, by the authority vested in me as governor pursuant to Article III, Section 10 of the Commonwealth Constitution and Public Law 13-63, entitled "CNMI Health Powers Act of 2003", the state of public health emergency shall be declared by the governor upon the occurrence of a public health emergency caused by a natural disaster such as a typhoon; and

WHEREAS, after consultation with the Secretary of the Department of Public Health, Resident Director of Public Health for the First Senatorial District, the Resident Director of Public Health for the Second Senatorial District, and the Director of Emergency Management Operation, a state of public health emergency is imminent in the First and Second Senatorial Districts due to the lack of adequate staffing resources.

NOW THEREFORE, pursuant to the authority vested in me as governor of the Commonwealth of the Northern Mariana Islands, it is hereby

ORDERED:

That a **State Of Public Health Emergency** is declared due to the devastation from Super Typhoon Chaba experienced within the Commonwealth of the Northern Mariana Islands including the First and Second Senatorial Districts requiring

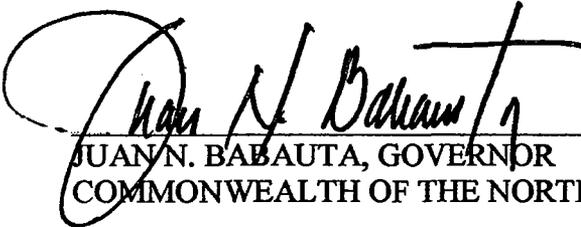
augmentation of the staffing resources for the Tinian Health Center and Rota Health Center to provide medial services to the residents of the First and Second Senatorial Districts respectively. Additional medical resources are needed during this natural disaster and are being offered from the Governor of the Territory of Guam for these purposes of augmenting local medical resources; and

IT IS FURTHER ORDERED:

That pursuant to P.L. 13-63, §8, I am suspending the provisions of any relevant administrative regulation proscribing the method for securing the services of the medical personnel from the Territory of Guam including procurement and supply regulations; Excepted Service Regulations, Personnel Services System Rules and Regulations; and Medical Board of Professional Licensing Regulations as it may effect CNMI medical licensure requirements.

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 public health emergency has been extended for a like term. The Governor shall give reason for extending the emergency.

So Ordered and Done this the 24th day of August, 2004.



JUAN N. BABAUTA, GOVERNOR

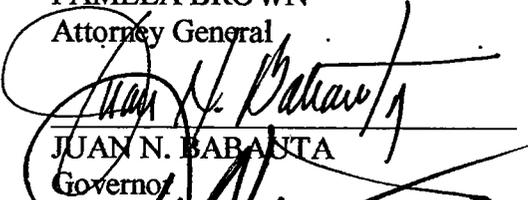
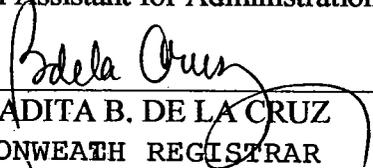
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

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 the addition of Section 706R to the Immigration Rules and Regulations. Whereas the Attorney General has recognized that certain alien children who have an alien parent or parents residing legally in the Commonwealth, and who have the financial resources to attend private educational institutions, may be better served by a special class of student permit as opposed to an Immediate Relative of an Alien Permit. Whereas some of these applicants are already enrolled and are waiting for immigration permits prior to attending class during Fall semester, the Attorney General hereby adopts these regulations upon fewer than thirty (30) days notice. 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.

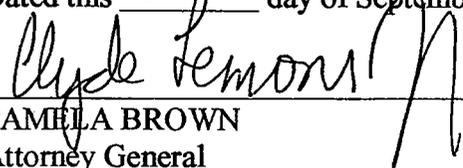
REASONS FOR EMERGENCY: These regulations must be implemented without the usual 30-day advance notice to ensure that applicants are able to enroll and attend class at the earliest possible date.

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 706R 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>9/8/04</u> Date
Concurred by:	 JUAN N. BABANTA Governor	<u>9/8/04</u> Date
Received by:	 THOMAS A. TEBUTEB Special Assistant for Administration	<u>9/9/04</u> Date
Filed and Recorded by:	 BERNADITA B. DE LA CRUZ COMMONWEALTH REGISTRAR	<u>9-9-04</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 15th day of September 2004.


PAMELA BROWN
Attorney General

Acting

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: To provide certain alien minors who have an alien parent or parents residing legally in the Commonwealth, and who have the financial ability to send the child to a private educational institution in the Commonwealth, with a special permit that allows them to attend qualifying educational institutions.

Brief Summary of the Proposed New Section: Creates a specialized permit for alien minors attending private educational institutions provided the alien minor, the minor's alien parent (or parents), and the educational institution meet specified criteria.

For Further Information Contact: Pamela Brown, Attorney General, Office of the Attorney General, telephone (670) 664-2341 or facsimile (670) 664-2349.

Citation of Related and/or Affected Statutes, Rules and Regulations, and Orders: The proposed amendments affect or are related to Immigration Rules and Regulations Section 706 and Public Law 14-6.

Dated this 5th day of September 2004.

Submitted by:



PAMELA BROWN
Attorney General

**NOTISIAN PUPBLIKU POT INSIGIDAS NA REGULASION YAN
NOTISIAN INTENSION PARA HU MA'ADOPTA I AMENDASION SIHA
PARA I AREKLAMENTO YAN REGULASION SIHA GI SEKSIONA 706**

INSIGIDAS: I Commonwealth I Sankattan Siha Na Islas Marianas, gi Ofisinan i Abugâdo Henerât ma'sodda mâs na papa i 1 CMC Seksiona 9104 (b), i enteres pupbliku manisisita mâs gi Seksiona 706 R para i areklamento yan regulasion siha. Tât kumo, i Abugâdo Henerât ha rekognisa na guaha famagu'on estrangheru ni gai'mañainan/sainan estrangheru ni mañâsaga ligât gi Commonwealth, yan man gai' fengkas salâpe' para i famagu'on/pâtgon-niha hu atiende i institusion edukasion private, siña ha la'moalek masetbe ni espisiât na klâsen lisensian estudiânte kini i hihot na parientes na lisensian estrangheru. Tât kumo, guaha siha gi este na aplikânte esta ma enlista ya manananga para i lisensian immigrasion ântes de hu ma'atietende i leksion durânten i Fall Semester, i Abugâdo Henerât este na momento ha'adopta este na regulasion siha gi meños di trenta (30) diha siha na notisia. Este na regulasion siha siempre man efektibu ensigidas despues di mapolu gi Rehistran i Koporasion, suhetu para i inapruedian i Abugâdo Henerât yan i kinonfotman i Gubietno, ya siempre hu efektibu para sientu bente (120) diha siha.

RASON SIHA PARA INSIGIDAS: Este na regulasion siha debi di hu ma'implimenta sin i trenta (30) diha siha na kuntât tiempo na notisia para hu ma'ensura na i aplikânte siha siña ma'enlista ya hu ma'atiende i leksion gi la'taftaf na ha'âne.

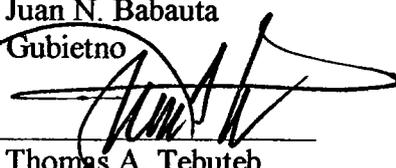
INTENSION PARA HU MA'ADOPTA: Intension i Ofisinan i Abugâdo Henerât para hu adopta i Ensigidas na Amendasion siha para i Areklamento yan Regulasion Immigrasion, gi Seksiona 706 R petmanente, sigun i lai 1 CMC Seksiona 9104 (a) (1) yan (2). Kinonsiste, i man enteresao na petsona siha siña munahalom tinige' opinion siha pot este na 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 facsimile guatto gi (670) 664-2349.

Ninahalom as: _____
Pamela Brown
Abugâdo Henerât

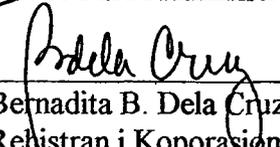
Fecha

Kinonfotme as: _____
Juan N. Babauta
Gubietno

Fecha

Rinisibe' as: _____

Thomas A. Tebuteb
Espesiât na Ayudânte Para i Atministrasion

9/23/04
Fecha

Pine'lo yan Rinikot as: _____

Bernadita B. Dela Cruz
Rehistran i Koporasion

9.23.04
Fecha

Sigun i lai 1 CMC Seksiona 2153 ni inamenda ginen i Lai Pupbliku 10-50, i amendasion ni man che'che'ton este na momento esta man maribisa yan ma'aprueba pot para hu fotma yan ligat suficiente ginen i Ofisinan i Abugado Henerat i CNMI.

Ma fecha diha _____ de Septiembre 2004.

Pamela Brown
Abugado Henerat

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

Este na regulasion siha man ma'establesi ni kinonsisiste ni i Akton Areklamenton i Atministradot, lai 1 CMC Seksiona 9101, et.seq.

**Annok i Aturidât
i Lai:**

I Ofisinan i Abugâdo Henerât ma'aturisa para hu establesi regulasion siha para i entrâda yan dipottasion i estrangheru siha gi Commonwealth I Sankattan Siha Na Islas Marianas sigun i Otden Eksekatibu 03-01 yan 3 CMC Seksiona 4312 (d).

**Kada'da' Na
Finihon Diniseha
yan Minalagu:**

Para hu maprobeniyi i manhoben estrangheru siha ni man gai'mañaina/saina estrangheru ni mañâsaga ligât gi Commonwealth, ya man gai fengkas salâpe'para i famagu'on/pâtgon-niha hu atiende i institusion edukasion private gi Commonwealth, ni espisiât na klâsen lisensian ni para hu sedi siha hu ma'atiende i man kuâlifikao na institusion edukasion.

**Kada'da' Na
Mensâhe Pot I
Man Mapropone
Na Nuebu Na
Seksiona:**

Ha estableble si un espisiât na lisensia para i manhoben estrangheru siha ni ma'atietende institusion edukasion private, maprobeniyi i mañainan i manhoben estrangheru yan i institusion edukasion hu ma ganna i maspesifika na kriteria.

**Para Mâs
Infotmasion Âgan:**

Si Pamela Brown, i Abugâdo Henerât, gi Ofisinan i Abugâdo Henerât, gi tilifon (670) 664-2341 pat facsimile guatto (670) 664-2349.

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

I mapropone na amendasion siha ha afekta pat man achule' gi Areklamento yan Regulasion Immigrasion Seksiona 706 yan Lai Pupbliku 14-6. Mafecha este mina ochu na diha siha gi Septiembre, 2004.

Ninahalom as:

**ARONGOL TOULAP REEL GHITIPWOTCHOL ALLÉGH KKAAL ME ARONGOL
MÁNGEMÁNG IGHA EBWE FILLÓÓY LLIWEL KKAAL NGÁLI ALLÉGHÚL
IMMIGRATION TALIL 706**

GHITIPWOTCHOL: Commonwealth Téel Falúwasch Marianas, Bwulasiyool Sów Bwungúl Allégh e schungi faal allégh ye 1 CMC talil 9140 (b), bwe llól tipeer toulap bwe rebwe yááyá ngáli sóbwólóól Tálil 706R ngáli alléghúl Immigratracion kkaal. Sáangi Sów bwungúl Allégh igha re ghuley bwe akkaschay atel lúghúl kka ileer me sameer raa fasúl lollo llól Commonwealth, me eyoor salaapial rebwe toolong llòl private educational institutions, ye emmwel bwe ebwe ghatch sangi lisensial atel meleitey ye re asefali mereel Immediate Relative of an Alien Permit. Sáangi akkáaw schéél tittingór kka raa fasúl enrolled me weweti lisensial immigration mmwal igha toolong llòl gakko òtol Fall semester, Sów Bwungúl Allégh ebwe fillóóy allégh kkaal igha essóbw luuló eliigh (30) rááilil yaal akkaté. Allégh kkaal ebwe ffataló ngáre schagh aa isisilong llól Register of Corporation, kkapasal igha aa alúghúlúghúló mereel Sów Bwungúl Allégh me Sów Lemelem, ebwe lo schagh bwe ebwe kkaal llól ebwughúw ruweigh (120) rállil.

BWULÚL GHITIPWOTCH: Allégh kkaal nge rebwe ayoora sáangi fasúl eliigh (30) rááilil mesammwal yaal akkaté igha ebwe alúghúlúgh schóól tingór reel rebwe fillong me toolong llól abwungubwung ótol ye e fisch.

MÁNGEMÁNGIL EBWE FILLÓÓY: Mángemaángil Bwulasiyool Sów Bwungúl Allégh Lapalap bwe ebwe fillóóy ghitipwotchol lliwel kkaal ngáli alléghúl Immigration, Tálil 706R bwe ebwe schéeschéél, sáangi 1 CMC talil 9104 (a) me (2). Schéeschéél, schóókka re tipeli nge rebwe ischilong reel Pamela Brown, Sów Bwungúl Allégh Lapalap, Bwulasiyool Sów Bwungúl Allégh Lalapal, Aruwowal pwó, Juan A. Sablan Memorial Bldg, Capitol Hill, Séipel MP 96950 me ngáre fax reel (670) 664-2349.

Isaliyallong:

PAMELA BROWN
Sów Bwungúl Allégh Lapalap

RÁL

Alúghúlúgh sáangi:

JUANN. BABAUTA
Sów Lemelem

RÁL

Mwir sáangi:

THOMAS A. TEBUTEB
Sów Alillisil Sów Lemelem

RÁL

Aisis sáangi:

BERNADITA B. DELA CRUZ
Corporate Register

RÁL

Sáangi allégh ye 1 CMC táilil 2153, iye aa lliwel mereel Alléghúl Toulap 10-50, lliwel kka e appasch nge raa takkal amweri fischiy me alúghúlúghúló mereel CNMI Bwulasiyool Sów Bwungúl Allégh Lapalap.

Rállil ye _____ Ilól Maan 2004.

PAMELA BROWN
Sów Bwungul Allégh Lapalap

ARONGORONGOL TOULAP

GHTIPWOTCHOL LLIWEL KKAAL NGÁLI ALLÉGHÚL IMMIGRATION KKAAL

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

Bwángil akkatéél: Bwulasiyool Sów Bwungúl Allégh nge e mweiti ngáli akkatéél allégh kkaal reel atotoolong me assefálil aramasal lúghúl mellól Commonwealth Téél falúwasch Marianas sáangi akkuleeyal Sów Lemelem 03-01 me 3 CMC talil 43 12 (d).

Aweweel pomwol allégh: ebwe ayoora akkaschay atel lúghúl kka elo ileer me sameer ikka raa fasúl lollo llól Commonwealth , me eyoor salaapial igha ebwe afangaló olighat llól private educational institution mellól Commonwealth, fengál me lisensia ye emmwel rebwe tabweey mille qualifying educational institutions.

Aweweel pomwol lliwel: Ayoora fischil lisensia ngaliir atel lúghúl kka rekke tabweey private institutions ye ebwe ayoora ngáliir atel lúghúl, ileer me sameer atel lúghúl (me ngáre ilisam), me educational institution e tabweey schéeschéél kkapasal.

Reel ammataf faingi: Pamela Brown,Sów Bwungul Allégh Lapalap, tilifoon (670) 664-2341 me ngáre facsimile (670) 664-2349.

Akkatéél bwángil akkáaw allégh: Pomwol lliwel kkaal nge ebwe fis ikka e ghil ngali alleghul Immigration Talil 706 me Alleghul Toulap 14-6.

Rállil ye _____ llól Maan 2004

Isaliyallong:

PAMELA BROWN
Sów Bwungul Allégh Lapalap

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

Immigration Regulation 706 is hereby amended to add the following Section R:

* * *

R. Alien Student Attendance Permit-

1. Enables an alien minor under the age of fourteen, who is the child of an alien parent (or parents) residing legally in the Commonwealth, to remain in the Commonwealth while enrolled in and attending a Commonwealth educational institution provided the following:
 - a. The alien parent or parents are in the Commonwealth pursuant to a Short-Term Business Entry Permit, Regular-Term Business Entry Permit, Immediate Relative of a Nonalien Entry Permit, Immediate Relative of a United States Citizen Permit, Foreign Press Entry Permit, Distinguished Merit Entry Permit, Minister of Religion Permit, Religious Missionary permit, or Retiree Investor Entry Permit;
 - b. The alien parent or parents post twenty-five thousand dollars (\$25,000) as a cash bond with the Commonwealth Treasury or provide a letter of credit in the same amount from a financial institution agreeable to the Attorney General; the Attorney General shall have the right to reimbursement from the aforementioned funds for any expense incurred by the Commonwealth as a result of the presence of the minor alien, and the entire amount shall be forfeited should the Attorney General determine that the alien minor or an alien parent has knowingly violated any term or condition described herein, or has committed a material violation of any Commonwealth immigration law or regulation;
 - c. The alien parent has submitted a sworn affidavit, satisfactory to the Attorney General, detailing the living arrangements for the alien minor and explaining how all costs of living, potential medical costs, as well as tuition and related educational expenses, will be met;
 - d. The alien minor is enrolled full time in an established private educational institution, which has been approved by the Attorney General as being qualified to enroll students holding permits under this section 706R and has been approved as tax exempt by the Commonwealth Division of Revenue Taxation pursuant to 4 CMC §1205(c)(3), and the principal or president of the school has:
 - (1) submitted a sworn affidavit that he or she will: (i) comply with all applicable Commonwealth immigration laws and regulations; (ii) report any violations of applicable Commonwealth immigration laws and regulations by the alien minor or the alien parent (or parents); (iii) fully

cooperate with the Office of the Attorney General in ensuring the alien minor and the alien parent (or parents) are complying with applicable Commonwealth immigration laws and regulations, including providing records of the alien minor which may have bearing on his or her immigration status; (iv) notify the Department of Immigration should the alien minor have three consecutive unexcused absences; (v) acknowledge that a failure to do any of the above will result in an immediate and permanent revocation of any accreditation or qualification of the school under this or any other Commonwealth immigration law or regulation; and

- (2) verified to the Attorney General that all tuition and fees for the upcoming school year have been paid by the alien minor in full, in advance.

2. Term of Permit-

- a. An Alien Student Attendance Permit shall be valid while the student is enrolled in and attending the educational institution, and for a period of fourteen (14) days before the commencement of classes and fourteen (14) days after the conclusion of classes during a normal school term. The Alien Student Attendance Permit must be renewed prior to the beginning of each school term.
- b. Should the attending school have its qualification revoked for a violation of the enumerated requirements under section 706R(1)(d)(1) above, the alien minor shall have a period of fourteen (14) days in which time he or she must transfer to another qualified school or otherwise regularize his or her immigration status.
- c. If the student intends to be in the Commonwealth for a period of shorter than the normal school term, they must submit an affidavit indicating how long they intend to be in the Commonwealth. In the case of student who intends to attend class less than the normal school term, the Alien Student Attendance Permit will be granted for that specific period of time.
- d. Unless forfeited pursuant to these regulations, the cash bond or letter of credit described in section 706R(1)(6) shall expire upon satisfactory departure of the alien minor prior to expiration of the Alien Student Attendance Permit, or upon other regularization of the child's immigration status. Any amounts outstanding shall be returned to the alien parents immediately thereafter.

3. Fees-

There shall be a non-refundable application fee of one hundred dollars (\$100), paid upon submission of the initial application, and a renewal fee of seventy-five dollars (\$75), paid upon renewal before the beginning of each subsequent school term.

4. Revocation-

An Alien Student Attendance Permit shall be revoked, and the alien minor shall be required to immediately depart the Commonwealth upon the occurrence of the following events:

- (1) The alien parent or parents becomes deportable for any reason under Commonwealth law;
- (2) The Attorney General determines that the alien parent or parents, the alien child, or the educational institution that the alien child is attending has knowingly violated any term or condition described herein, or has committed a material violation of any Commonwealth immigration law or regulation;
- (3) The alien minor fails to inform the Division of Immigration in writing that the alien minor has withdrawn or transferred from the attending school; or
- (4) The Attorney General determines that the presence of the alien minor is no longer in the best interest of the Commonwealth.



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 (Addition of Approved Facility and Provision for Partial Transportation in Limited Circumstances)

Emergency: The Secretary of the Department of Pubic 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 proposed amendments to add Section 5.6 and to alter Attachment 1 would do two things: 1) Attachment 1 would add Castle Medical Center in Hawaii as a recognized Medical Referral site; and, 2) new Section 5.6 would allow the Medical Referral Program to pay partial airfare¹ for the patient (and if eligible, the escort) only as far as the closest site listed on Attachment 1 where the procedure/treatment could be done in cases where the patient and/or his or her insurance carrier prefer a facility not listed on Attachment 1, but meets all other eligibility qualifications for Medical Referral Program benefits.

Benefits will not be paid retroactively due to these changes but will be prospective only. No other eligibility standards or benefits are affected by these changes 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.

¹ No other kinds of Medical Referral Program benefits will be available to the patient or escort under these circumstances.

Reason for the Emergency: Since the implementation of the Rules and Regulations Governing the establishment and administration of the Medical Referral Program, some of the major CNMI insurers no longer have contracts with some of the listed major Hawaii hospitals, but do have contracts with other Hawaii or more distant facilities. The Medical Referral Program has identified an additional provider (Castle Medical Center) that specializes in performing these medical procedures and services not available in the CNMI. The Secretary would like to expand the Medical Referral Program to allow services at this specialty medical center to further meet the medical needs of CNMI patients in Hawaii where the infrastructure for the Medical Referral Program already exists. Further, although the Secretary cannot add unlimited sites for care outside of the CNMI, he recognizes that the Medical Referral Program can assist residents of the CNMI, consistent with budget limitations, in getting at least part way to their alternative medical destinations. That is the basis for adding the provision to pay at least partial airfare to the closest available destination under the Program.

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 Public 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.

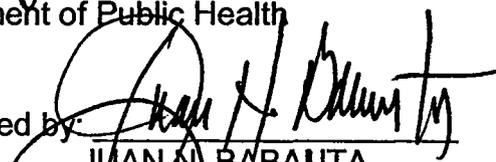
Authority: The Department of Public Health is authorized to implement these amendments to the Rules and Regulations Governing the Establishment and Administration of the Medical Referral Program pursuant to 1 CMC section 2605.

Issued by:



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

Date 9/12/04

Concurred by: 

JUAN N. BABAUTA
Governor

Date 9/20/04

Received by: 

THOMAS TEBUTEB

Date 9/21/04

Special Assistant for Administration

Filed by:


BERNADITA B. DELA CRUZ
Commonwealth Registrar

Date

9.21.04

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 CNMI Office of the Attorney General.

Certified by:


PAMELA BROWN
Attorney General

Date

9/21/04

**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: The purpose of new proposed Section 5.6 is to allow the Medical Referral Program to pay partial airfare for the patient (and if eligible, the escort) only as far as the closest site listed on Attachment 1 where the procedure/treatment could be done in cases where the patient and/or his or her insurance carrier prefer a facility not listed on Attachment 1, but meets all other eligibility qualifications for Medical Referral Program benefits. The purpose for the amendment to Attachment 1 is to recognize Castle Medical Center as an official provider of medical care for authorized medical referral patients.

Brief Summary of the Proposed Rule: The amendment adding new Section 5.6 allow the Medical Referral Program to pay partial airfare² for the patient (and if eligible, the escort) only as far as the closest site listed on Attachment 1 where the procedure/treatment could be done in cases where the patient and/or his or her insurance carrier prefer a facility not listed on Attachment 1, but meets all other eligibility qualifications for Medical Referral Program benefits. Benefits will not be paid retroactively due to these changes but will be prospective only. No other eligibility standards or benefits are affected by these changes 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 amendment to Attachment 1 would establish Castle Medical Center as a recognized "referral health care facility" for medical referral patients from the CNMI.

Contact Person(s): Gloria Cabrera, 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, 26-05, 26-07.

² No other kinds of Medical Referral Program benefits will be available to the patient or escort under these circumstances.

AMENDMENT TO MEDICAL REFERRAL RULES

Proposed Section 5.6 reads:

The Medical Referral Program may but is not required to pay partial airfare for the patient (and if otherwise eligible, the escort) only as far as the closest site listed on Attachment 1 where the procedure/treatment could be done in cases where the patient and/or his or her insurance carrier prefer a facility not listed on Attachment 1, but meets all other eligibility qualifications for Medical Referral Program benefits. No other kinds of Medical Referral Program benefits will be available to the patient or escort under these circumstances.

Partial airfare benefits will not be paid retroactively under this section but will be prospective only from the point of adoption of this amendment. No other eligibility standards or benefits are affected by this provision for partial airfare 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.

ATTACHMENT 1

For purposes of these Rules and Regulations, the following health care facilities, and those health care providers and ancillary care providers associated with these facilities, shall be recognized as "referral health care facilities" for medical referral patients from the CNMI:

Territory of Guam

Dededo Polymedic Clinic
Espaldan Clinic, Inc.
Family Medical Clinic
Good Samaritan Clinic
Guam Memorial Hospital
Guam Pacific Medical Clinic
Guam Seventh Day Adventist Clinic
Specialty Clinic
St. Anthony Clinic
The Doctor's Clinic
Cancer Institute of Guam
Naval Hospital Guam
MR Imaging Group
Guam Eye Clinic
Guam Public Medical Clinic
Simard Cardiology Group
Guam SurgiCenter

State of California

*San Diego Children's Hospital
*California Pacific Medical Center
Good Samaritan Hospital, Los Angeles

State of Texas

* Referral to these referral health care facilities shall be authorized only for infant heart surgery, kidney transplant, or other highly sophisticated surgical procedures as substantiated and approved by the Medical Referral Committee.

The Brown Schools of Central Texas
(San Marcos Treatment Center, Health Care Rehabilitation Center, etc.)

State of Hawaii

Kapiolani Medical Center
Kuakini Medical Center
Queen's Medical Center
Rehabilitation Hospital
Shriner's Hospital For Crippled Children
St. Francis Medical Center
Straub Clinic and Hospital
Cancer Institute of Maui
Renal Treatment Center
Tripler Army Medical Center
Island Cardiology
Kahi Mohala
Castle Medical Center

Republic of the Philippines

Makati Medical Center
Saint Luke's Medical Center
Philippine General Hospital
Asian Hospital and Medical Center

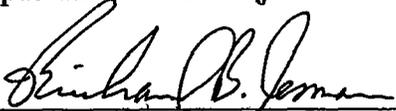
**PUBLIC NOTICE OF INTENT TO ADOPT REGULATIONS
GOVERNING THE USE OF IRRIGATION WATER,
pursuant to 1 CMC §2654 and 2 CMC §§ 3211, et. seq.**

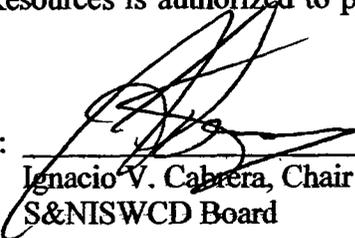
**REGULATIONS GOVERNING THE
USE OF IRRIGATION WATER
(See attached proposed regulations.)**

COPIES OF REGULATIONS: The proposed Regulations Governing the Use of Irrigation Water are hereby published in the Commonwealth Register. Copies of the proposed regulations may be obtained from the Saipan and Northern Islands Soil and Water Conservation District, Caller Box 10007, Saipan, MP 96950.

PUBLIC COMMENTS: All interested persons may submit written data, views, or arguments about the proposed regulations to the Secretary, Department of Lands and Natural Resources, Caller Box 10007, Lower Base, Saipan, MP 96950, not later than thirty (30) days from the date of this publication in the Commonwealth Register.

AUTHORITY: The Department of Lands and Natural Resources is authorized to promulgate regulations pursuant to 1 CMC §2654.

Issued by: 
Richard B. Seman, Secretary of
Lands and Natural Resources

Approved by: 
Ignacio V. Cabrera, Chair of
S&NISWCD Board

09/16/04
Date

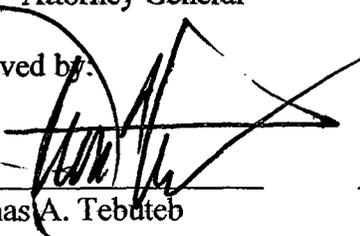
9-17-04
Date

Pursuant to 1 CMC §2153, the rules and regulations attached hereto have been reviewed as to form and legal sufficiency, and approved by the CNMI Office of the Attorney General.

Dated this 21 day of September 2004.



Pamela S. Brown
Attorney General

Received by: 

Thomas A. Tebuteb
SAA

9/21/04
Date

Recorded by:


Bernadita Delacruz
Commonwealth Register

9/21/04
Date

**PROPOSED REGULATIONS GOVERNING THE USE OF IRRIGATION
WATER, pursuant to 1 CMC §2654 and 2 CMC §§3211, et seq.**

Citation of Statutory Authority: 1 CMC §2654, as modified by Exec. Order 94-3 (effective 8/23/94) authorizes the Secretary of the Department of Lands and Natural Resources to promulgate regulations concerning matters over which the Department has jurisdiction.

Statement of Goals and Objectives: The purpose of the proposed new regulations is to provide for the regulation of the use of irrigation water for the Kagman Watershed Project, which is specifically provided for in 2 CMC §§3211, et seq.

Brief Summary of the Regulations: The regulations provide for governance of the distribution of water for the Kagman Commercial Farm Plots, to include, but not necessarily limited to, user fees, connection to the irrigation water system, and sanctions and penalties for violations of the proposed regulations.

Contact Person: Diane Gabaldon, Administrative Assistant and Ignacio V. Cabrera, Chair, S&NISWCD. (670) 234-6170; Fax—(670) 235-9001

Citation of Related and/or Affected Statutes, Regulations and Orders: 1 CMC §2654; 2 CMC §§3211, et seq.

Date: 9/16/04, 2004


Richard B. Seman, Secretary
Department of Lands and Natural Resources

NOTISIAN PUPBLIKU POT INTENSION PARA HU MA'ADOPTA I
REGULASION SIHA NI GINIBEIBETNA I INISAN I MAN REGAN HĀNOM,
sigun i 1 CMC Seksiona 2654 yan 2 CMC Seksiona 3211, et seq.

REGULASION SIHA NI GINIBEIBETNA I INISAN I MAN REGAN HĀNOM
(atan i man che'che'ton na mapropone na regulasion siha)

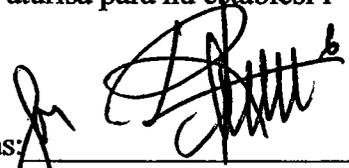
KOPIA SIHA POT I REGULASION: I man mapropone na regulasion ni ginibeibetna i Inisan i man regan hānom este na momento man mapupblisa gi Rehistran i Commonwealth. Kopian i man mapropone na regulasion siha siña man machule' giya Saipan yan Sankattan Siha Na Islas gi Distritun muna utas odda yan hānom (Soil and Water Conservation District), gi Caller Box 1007, Saipan MP 96950.

SINANGAN I PUPBLIKU: Todu i man enteresao na petsona siña munahalom tinige' infotmasion, diniseha, pat inagumento siha pot i man mapropone na regulasion siha para i Sekretario, gi Dipattamenton i Lands and Natural Resources, gi Caller Box 1007, gi Lower Base, Saipan MP 96950, menos di trenta (30) diha siha ginen i fechan este na publikasion gi Rehistran i Commonwealth.

ATURIDĀT: I Dipattamenton i Lands and Natural Resources ma'aturisa para hu establese i regulasion siha sigun i Lai 1 CMC Seksiona 2654.

Linaknos as: 
Richard B. Seman, Sekretario
Lands and Natural Resources

09/16/04
Fecha

Ma'aprueba as: 
Ignacio V. Cabrera, Kabiseyo
S&NISWCD

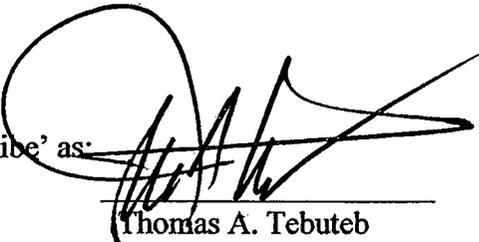
Fecha

Sigun i Lai 1 CMC Seksiona 2153, i areklamento yan regulasion siha ni man che'che'ton este na momento esta man maribisa pot para hu fotma yan ligat sufisiente, ya hu ma'aprueba ginen i Ofisinan i Abugado Henerat i CNMI.

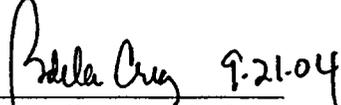
Mafecha este mina _____ na diha gi _____, 2004.

Pamela S. Brown
Abugado Henerat

Marisibe' as:


Thomas A. Tebuteb
Especiât Na Ayudânte Para I Atministrasion

Rinikot as:


Bernadita B. Dela Cruz
Rehistran i Commonwealth

MAPROPONE NA REGULASION SIHA NI TINETEKKA I INISAN I MAN
REGAN HĀNOM, Sigun para i Lai 1 CMC Seksiona 2654 yan 2 CMC Seksiona
3211, et. seq.

Sitasion i Aturidât i Lai: I Lai 1 CMC Seksiona 2654, ni matulaika ginen i Otden i Eksekatibu 94-3 (efektibu 8/23/94) ha aturisa i Sekretâriion i Dipâttamenton i Lands and Natural Resources para hu establesi regulasion siha ni tineteka i asunto siha ni gai aturidât i Dipâttamento.

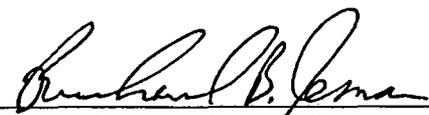
Mensâhe Pot Finiho yan Diniseha Siha: Pot rason i man mapropone na nuebu na regulasion pot para hu probeniyi para i regulasion i inisan i man regan hĀnom para i Kagman Watershed Project, nispesifikâtmente maprobeniyi para gi 2 CMC Seksiona 3211, et.seq.

Kada'da' Na Mensâhe Pot i Regulasion Siha: I regulasion siha ha probeniyi para i ginibetnan i pinatten i hanom para i propiadât Kagman Commercial Farm, para hu enklusu, lao ti nisisârio mamidi para, âpas ma'usa (user fee), i matoche' para i sisteman i rinegan hĀnom, yan i pena siha para i kontradiksion i man mapropone na regulasion siha.

Petsona Ni Para Hu Ma'âgan: Diane Gabaldon, Ayudânten i Atministrasion gi (670) 234-6170; fax (670) 235-9001

Sitasion i Man Achule' yan/pat Inafekta Na Lai, Regulasion yan Otden Siha: 1 CMC Seksiona 2654; 2 CMC Seksiona 3211, et. seq.

Fecha: 09/16/04, 2004


Richard Seman, Sekretârio
Dipâttamenton i Lands and Natural
Resources

ARONGOL TOULAP REEL AGHIYEGHIL FILLÓÓL ALLÉGH KKAAL YE E LEMELI
YÁÁYÁL AFFÁRAGHIL SCHAAL

bwelle reel allégh ye 1 CMC táilil 2654 me 2 CMC táilil 3211, et seq.

ALLÉGHÚL LEMELEMIL YÁÁYÁL AFFÁRAGHIL SCHAAL
(Amwri appaschal pomwol allégh kkaal)

SCHÉÉL ALLÉGH KKAAL; Pomwol allégh kkaal ye e lemelem yááyál affárághil schaal igha ebwe atchúghú pwel/faluw ekke akkatééwow mellól Commonwealth Register. Schéél pomwol allégh kkaal nge emmwel ubwe bweibwogh mewóól Seipél me falúw falúwasch kka efáng me Water Conservation District, Caller Box 1007, Seipél, MP 96950.

AGHIYEGHIIR TOULAP: Ngáliir schóókka eyoor aghiyeghiir nge emmwel rebwe ischilong , aweewe, aingiing reel pomwol allégh kkaal ngáli Samwoolul Bwulasyiool Ngúlúwal welefalúw Caller Box 1007, Lower Base, Seipél, MP 96950, ye essóbw luuló eliigh (30) ráálil sáangi ráálil yaal akkatééwow mellól Commonwealth Register.

BWÁNGIL: Depattamentool Bwulasyiool Ngúlúwal Welefalúw nge eyoor bwángil ebwe akkaté allégh kkaal bwelle reel allégh ye 1 CMC táilil 2654.

Isaliyallewow: Richard B. Seman Alúghúlúgh sáangi.

Richard B. Seman, Samwoolul
Land and Natural Resources

Ignacio V. Cabrera
Mwiischil S&NISWCD

Rál 09/16/04

Rál _____

Sáangi allégh ye 1 CMC táilil 2153, allégh kka e appasch nge raa takkal amweri fischiiy me allégheló mereel CNMI Sów Bwungúl Allégh Lapalap.

Ráálil ye _____ llól _____, 2004

Pamela S. Brown
Sów Bwungúl Allégh Lapalap

Mwii sáangi

Thomas A. Tebuteb
Sów Alililil, Sów Lemelem

Rál 9/21/04

Aiis sáangi

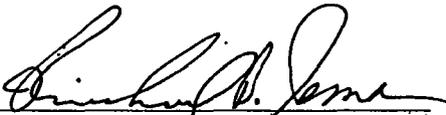
Bernadita Dela Cruz
Commonwealth Register

Rál 9-21-04

POMWOL ALLÉGH KKA E LEMELEM YAÁYÁL AFFÁRÁGHIL SCHAAL,
bwelle reel allégh ye 1 CMC táilil 2654 me 2 CMC táilil 3211, et seq.

- Akkatéel bwángil: 1 CMC talil 2654, iye aa ssiwel mereel Exec. Tingórol 94-3 (schééschéel ótol 8/23/94) ye mweiti ngáli Samwoolul Bwulasiyool Ngúluwal Welefaluw reel ebwe akkaté allégh kkaal bwelle ghatchúil Depattamento.
- Aweweel kkapasal allégh: Bwulul reel pomwol allégh kka e ffé bwelle ebwe yoor alléghúil yaáyál schaal ngali Kagman Watershed Project, ye schééschéel ebwe yaáyá ngáli 2 CMC táilil 3211, et. seq.
- Aweweel pomwol lliwel Allégh kka re ayoora bwelle lemelemil isisiwowul schagh ngáli Kagman Commercial Farm Plots, ebwal toolong, nge ese bwal aighugh reel, óbwos, fillong llól fféer nngow ngali mwóghutul schaal,bwángil, me mwuttal ese tabweey allégh kkaal.
- Aramas ye ubwe faingi: Diana Gabaldon, Adiministrative Assistant (670) 234-6170; Fax-(670) 235-9001
- Akkatéel bwángil akkáaw allégh: 1 CMC talil 2654; 2 CMC talil 3211, et seq.

Rál 9/16, 2004


Richard B. Seman, Samwool
Depattamentool Nguluwal Welefaluw

**REGULATIONS OF THE USE OF IRRIGATION WATER FOR THE KAGMAN
COMMERCIAL FARM PLOTS SUPPLIED BY THE KAGMAN WATERSHED
PROJECT AND MANAGED BY THE SAIPAN AND NORTHERN ISLANDS
SOIL AND WATER CONSERVATION DISTRICT**

**ARTICLE I
AUTHORITY AND PURPOSE**

SECTION 1. These Regulations are being adopted by the Saipan and Northern Islands Soil and Water Conservation District (S&NISWCD), Department of Lands and Natural Resources, pursuant to Public Law 4-44 of the Commonwealth of the Northern Mariana Islands. These Regulations shall be in effect until supplanted; and shall have the force and effect of law and shall be binding on all persons and entities subject to the jurisdiction of the Commonwealth of the Northern Mariana Islands.

SECTION 2. The purpose of these regulations is to establish requirements for Kagman farmers connecting to S&NISWCD Water System, where and when the S&NISWCD Water System is available and to establish fees for the use of and connection to the S&NISWCD Water System.

The Regulations include the following subject areas:

- a.** When a S&NISWCD water system is available for connection by a Kagman farmer customer for agricultural purposes only.
- b.** Ownership and requirements for water service connections to S&NISWCD water lines.
- c.** Establishment of fees for water use and connection to S&NISWCD water lines.
- d.** Sanctions and penalties for failure to pay water charge and for any other violation of these Regulations.

SECTION 3. These Regulations are only applicable where S&NISWCD water systems exist in the Commonwealth of the Northern Mariana Islands.

**ARTICLE II
GENERAL CONDITIONS**

- SECTION 1.** Any prospective Kagman farmer water consumer whose premises are within service limits established by S&NISWCD, and adjacent to a distribution main, may obtain water service where pressure and quantity conditions permit, provided that S&NISWCD has a sufficient water supply developed for that use. All Kagman farmer water consumers shall receive equal service of the S&NISWCD water insofar as possible and appropriate. Although the S&NISWCD will strive to provide equal volume and water pressure to all customers at scheduled times, it does not guarantee such service.
- SECTION 2.** All water supplied by S&NISWCD will be in U.S. gallons. The amounts to be paid for water service shall be in accordance with the rates established by the S&NISWCD Board of Directors ("Board"). Rates shown are current rates and are subject to change by S&NISWCD.
- SECTION 3.** The S&NISWCD Board will determine the location, size and brand of Manufacturer for all meters and service connections to its system. All service connections, including the meter box assembly, are the property of the S&NISWCD. Operation and maintenance after installation and new connections or disconnections may be made by S&NISWCD at any time. The farmer or water consumer is responsible for the daily maintenance of the farm turnout, which includes cleaning the filter and maintaining at least 8-foot diameter around turnouts.
- SECTION 4.** S&NISWCD will exercise reasonable diligence and care to deliver water for agricultural, non-potable irrigation water use only to the customer and to avoid shortage or interruptions in water service, but will not be liable for any interruption, shortage, insufficiency of supply, or any loss or damage occasioned thereby.
- SECTION 5.** Whenever, in the opinion of the Board, special conservation measures are advisable in order to forestall water shortages and a consequent water emergency, the S&NISWCD will restrict the use of water until the water shortage no longer exists.

Water scheduling to individual farm plots may be necessary. Tampering or manipulating the system, at such times, will be considered a violation of these Regulations and may result in the disconnection or denial of water to those responsible.

- SECTION 6.** S&NISWCD reserves the right at any and all times to shut-off water after reasonable notice for the purpose of making repairs, extensions, alterations, or for any other reasons necessary in the judgment of the Board. Customers depending upon a continuous supply of water should provide emergency water storage and any check valves or other devices necessary for the protection of plumbing fixtures. Repairs of improvements will be performed as rapidly as practical at such time as will cause the least inconvenience to the customer.
- SECTION 7.** S&NISWCD will make every effort to maintain proper water pressure and quantity, but will not accept responsibility for unforeseen loss of pressure or lack of quantity in its water mains.
- SECTION 8.** Where property is situated at such an elevation that it cannot be assured a dependable supply or adequate pressure from the S&NISWCD distribution system, the customer must agree to accept such water service as is available. When required by S&NISWCD, the customer shall install an air relief check valve, or other protective devices between the customer's supply pipe and the service connection.
- SECTION 9.** When the pressure of the S&NISWCD water supply is higher than that for which individual fixtures are designated, the district shall protect such fixtures by installing and maintaining pressure regulators for reducing pressure and relief valves. S&NISWCD will not be liable for damage due to pressure conditions caused by or arising from the failure or defective condition of such pressure regulators and relief valves or for damage that may occur through the installation, maintenance, or use of such equipment.
- SECTION 10.** The resale of water by the customer is not permitted. The act of selling water shall be sufficient cause for termination.
- SECTION 11.** No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any part of the S&NISWCD Water System. All S&NISWCD water systems are property of the S&NISWCD, and violators may be recommended for prosecution according to the law; water service shall be discontinued to violators; and violators shall be

CNMI Treasury
P.O. Box 5234 CHRB
Saipan, MP 96950

- SECTION 2.** Any bill, which is not paid within 30 days after the due date, shall be deemed delinquent and the water service shall be subject to discontinuance without further notice.
- SECTION 3.** It is the responsibility of the water user to pay the bill monthly. Failure of a customer to receive a bill does not prevent the account from becoming payable when due.
- SECTION 4.** "Operation, maintenance, and replacement costs will be borne by the water users on a cost per gallon used basis and by the Division of Plant Industry." (Kagman Watershed Plan Environmental Impact Statement, page 84) Water rates shall be \$0.25/1000 gallons used, per lot, paid on the first of each month. At \$0.25/1000 gallons, a user will pay \$25.00 per month using a fair share of the water available. If the user uses more, he/she will pay more. If the user does not get water, then they will not have to pay for what they did not use. Charging water use by the gallon will ensure a more equitable distribution of water and will encourage water conservation. It is expected that about 100,000 gallons/day will be available for 46 farm lots.

**ARTICLE V
DISCONTINUATION OF WATER SERVICE**

Water service may be discontinued for reasons as follows:

- SECTION 1.** Non-payment of bills. Water service may be discontinued for the non-payment of a bill within 30 days after the mailing or presentation thereof to the customer. If a customer is receiving service at more than one location, service at any or all locations may be discontinued if service at any one or more locations are not paid for within the period specified herein.
- SECTION 2.** If the customer fails to comply with any of these regulations, S&NISWCD will have the right to discontinue the service.
- SECTION 3.** Each customer about to vacate any premises supplied with water by S&NISWCD shall give 10 working days notice of the intention to vacate prior to specifying the date service is to be discontinued.

- SECTION 4.** S&NISWCD may refuse or discontinue water service to any premises if necessary, without giving notice, to protect itself against fraud, abuse, illegal tampering, unlawful pumping or unauthorized use of water.
- SECTION 5.** Where negligent or wasteful use of water exists on any premises, S&NISWCD shall discontinue the water service if such conditions are not corrected within five days after giving the consumer written notice of the S&NISWCD intent to do so.
- SECTION 6.** S&NISWCD will refuse to furnish water to any premises where the demands of the customer will result in inadequate service and inequitable distribution of water to the rest of the existing system.
- SECTION 7.** S&NISWCD shall have the right to refuse service or discontinue service if the acts of the customer or the conditions upon the premises are such as to indicate intention to defraud S&NISWCD.
- SECTION 8.** If water service is turned off because of failure to pay the monthly water use bill, or for violation of any of the regulations of S&NISWCD, or for other reasons, all outstanding accounts against the customer must be paid before water service will be restored. In addition, the reconnection charge must be paid before water service will be restored.

ARTICLE VI
CUSTOMER'S PUMPING INSTALLATION

- SECTION 1.** Customers shall not be permitted to install or operate pumps that pump water directly from or into the mains of the S&NISWCD system.
- SECTION 2.** If a customer would like to have a pumping system in his own premises, such pumping should be done from his own storage tanks. Such storage tanks should be constructed after the meter and there should be a 6" air gap between the inlet pipe to the tank and the maximum water level of the tank.
- SECTION 3.** All existing customer pumps, after the effective date of these regulations, shall cease to operate until approval is given by the S&NISWCD. Failure on the part of the customer to comply with these regulations may result in the disconnection of the customer's water services until requirements have been complied with.

**NOTICE AND CERTIFICATION OF ADOPTION OF AMENDMENTS TO THE
IMMIGRATION REGULATIONS IMPLEMENTING PUBLIC LAW 13-61**

I, Pamela Brown, the Attorney General of the Commonwealth of the Northern Mariana Islands, which is promulgating the Immigration Regulations regarding the implementation of Public Law 13-61, first proposed in the Commonwealth Register Vol. 27, No. 5 on May 24, 2004 at pages 22504 to 22526, re-proposed in the Commonwealth Register Vol. 27, No. 6 on June 24, 2004 at pages 22645 to 22670, by signature below hereby certify that as published therein, and with such modifications set forth herein, such Regulations are a true, complete and correct copy of the regulations implementing Public Law 13-61, which establishes a program of protection for international refugees. During the period for comment, the Commonwealth consulted with the United States Citizenship and Immigration Service (referred to hereinafter as "USCIS") in its role as Protection Consultant. Additionally, the Commonwealth received comments from the United Nations High Commissioner for Refugees (referred to hereinafter as "UNHCR") and two private individuals. Attached to this notice of adoption is a summary of the comments received as well as a description of amendments, if any, made in response to such comments. For the sake of clarity, the regulations are republished herein, in their entirety, as amended.

I request and direct that this Notice and Certification of Adoption be published in the CNMI Commonwealth Register. I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 24th day of September 2004, in Saipan, Commonwealth of the Northern Mariana Islands.



PAMELA BROWN

Attorney General

Commonwealth of the Northern Mariana Islands

SUMMARY OF COMMENTS AND AMENDMENTS

Minor technical or stylistic changes that do not alter the substance or meaning of the regulations are not addressed herein. Also, to the extent that comments suggested changes inconsistent with Public Law 13-61, they are not incorporated in the regulations or addressed herein.

Affirmative Applications

- Proposed Regulation, Section I(B).

For purposes of clarification, the Commonwealth amends Section I(B) as follows:

- B. No Affirmative Applications.** A foreign national shall not be entitled under any circumstances to submit an application, ~~claim, civil action~~ or other assertion of entitlement to Nonrefoulement Protection ~~the protection of the Refugee Protocol and/or CAT~~ unless that individual is subject to an order of deportation by a court of competent jurisdiction, ~~or~~ is being denied entry to the Commonwealth, at a POE ~~or otherwise~~ or is included as an immediate relative seeking derivative status on an application pursuant to Section III(A) of these regulations.

Determinations of Manifestly Unfounded Claims

- Proposed Regulation, Section II(B)-(D).

Based on the comments received, the Commonwealth reviewed the proposed procedures for making determinations whether an applicant's claim is manifestly unfounded. Among the concerns expressed was the lack of a qualified interpreter in the screening interview and a review procedure after a determination that an applicant's claim is "manifestly unfounded." The Commonwealth agrees that the screening procedures should be refined. The Commonwealth has also determined that that there should be a requirement for specialized training of persons conducting interviews and making "manifestly unfounded" determinations. Finally, the commenter recommends that the regulations clarify that the possibility of internal relocation is not considered when making a "manifestly unfounded" determination. The Commonwealth accordingly amends Section II(D) as follows:

D. Determinations of Manifestly Unfounded Claims.

- a. Interview. Interviews shall be conducted by the Attorney General or her designee, who shall have received specialized training in protection law, relevant country conditions, and in conducting protection-oriented interviews. If requested by either party, an interpreter qualified pursuant to

Section II(J)(3), shall be provided. Interviews to determine whether a claim is manifestly unfounded shall be recorded electronically.

- b. **Decision.** The manifestly unfounded decision shall be made by the Attorney General or her designee who has received specialized training in protection law and relevant country conditions. The basis for finding that a claim is manifestly unfounded shall be detailed in a written report written by the interviewer. For purposes of this section, “manifestly unfounded” shall mean that the claim is clearly fraudulent or not related to the criteria for the granting of *Nonrefoulement* Protection. Neither mandatory bars to protection under Section II(N)(2) nor internal relocation alternatives shall be considered in making the manifestly unfounded determination.
- c. **Review.** The applicant may, upon written request filed prior to departing the Commonwealth, obtain a review of a determination of a manifestly unfounded claim by an APJ. The decisionmaker shall advise the applicant of this right upon delivery of the determination. The APJ may rely solely on the written record or may request additional information or conduct a hearing. The decision of the APJ shall be final and unreviewable, not subject to further judicial or administrative proceedings. The applicant shall have the right to remain in the Commonwealth pending a decision of the APJ, but may be required to remain in detention.

- Proposed Regulation, Section II(E).

In order to clarify that an applicant has a right to assistance or representation in preparation for their manifestly unfounded interview, and to prevent unscrupulous individuals from taking advantage of foreign nationals seeking protection, Section II(E) of the regulations is amended as follows:

E. Advisements.

1. **Right to Protection.** A foreign national who has been ordered deported by the Commonwealth Superior Court or who has been excluded at the POE shall be (i) advised that he or she may obtain a Protection Hearing if he or she has a fear of persecution or torture in the designated country of removal that is not manifestly unfounded; (ii) advised of the right to representation at their own expense; and (iii) provided with contact information for the CNMI Bar Association and other organizations approved by the OAG which have indicated availability to assist foreign nationals with their claims. This advisement will be given (i) in writing by way of a pre-printed form, and/or (ii) verbally, either by the Attorney General or her designee. Verbal advisements shall be duly recorded, electronically or with a written acknowledgement from the foreign national. All reasonable efforts will be made to ensure that the foreign national understands the

substance of this advisement, including without limitation translation of the advisement into an appropriate language, and providing assistance for those with reading difficulties.

2. **Other Rights and Obligations.** Unless the Attorney General or her designee has determined that the claim is manifestly unfounded, the OAG shall (i) provide the foreign national with appropriate application forms and instructions on how to fill out the forms; (ii) advise the foreign national of the right to representation at their own expense; and (iii) provide the foreign national with contact information for the CNMI Bar Association and other organizations which have indicated availability to assist foreign nationals in Protection Hearings.

Initial Application

- Proposed Regulation, Sections II(F)(1) and (2).

One commenter expressed concern that the three-day deadline for filing an initial application was too short. The Commonwealth notes that filing the application formally enters the alien into protection proceedings, ensuring that he or she will be able to apply for temporary work authorization at the earliest possible date. Therefore, it is in the applicant's best interest to file as early as possible. However, the Commonwealth agrees that applicants should be provided with enough time to accurately describe their claim. Additionally, this section is amended to make clear that failure to list all immediate relatives seeking derivative status would not result in denial of the principal applicant's claim. It may, however, affect the decisions regarding the dependent's eligibility for derivative protection, as reflected in Section III(A). Accordingly, the Commonwealth amends Section II(F)(1) as follows:

1. **Initial Application.** Upon receiving the application form and instructions, the foreign national shall have ~~three (3)~~ ten (10) business days to file the completed application and any supporting documents with the ORP, at which time the foreign national shall have formally entered Protection Hearing proceedings. This period may be extended at the discretion of the APJ upon a showing of good cause for failure to apply within the requisite time period. The initial application must: (i) give the applicant's true identity; (ii) list all immediate relatives seeking derivative status under sSection III(A); and (iii) state the basis for seeking *Nonrefoulement* Protection. Failure to include the information in (i) and (iii) meet these requirements may be grounds for denying a claim.

- Proposed Regulation, Section II(F)(2).

The Commonwealth has considered relaxing the restrictions governing filing of an amended application. Similarly, one commenter recommended that applications not be excluded solely for a failure to meet a certain time limit. The Commonwealth notes that under Section

II(F)(4), the Attorney General or her designee may extend the date of the Protection Hearing for good cause. The associated deadline for filing an amended application would likewise be extended. The Commonwealth also notes that the ten-day prior to hearing deadline is needed to adequately investigate the applicant's claim and there is, in any case, the ability to submit additional evidence by leave of the APJ.

Failure to Appear

- Proposed Regulation, Section II(F).

To clarify the consequences for failure to appear for an interview and the standard for excusing a failure to appear, the Commonwealth is including a new provision, Section II(F)(5) to read as follows:

- 5. Failure to Appear.** Failure to appear for a scheduled interview shall be considered abandonment of the application and the application shall be denied, except upon a finding by the APJ of exceptional circumstances or failure to provide proper notice of the scheduled interview.

Protection Consultant

- Proposed Regulation, Section II(I)(2).

The Commonwealth has determined that the role of Protection Consultant should be limited and hereby amends Section II(I)(2) as follows:

- 2. Protection Consultant.** Pursuant to the MOA, the APJ will work with the "Protection Consultant" in conducting Protection Hearings and making protection determinations under 3 CMC § 4344(d) during the first two years that these regulations are effective. ~~During that period, the Attorney General may delegate to one or more representatives of the Protection Consultant the full authority of an APJ to conduct Protection Hearings and make protection eligibility determinations in accordance with these regulations, regardless whether the representative of the Protection Consultant is an attorney.~~

Forms of Representation

- Proposed Regulation, Section II(J)(1).

The Commonwealth has determined that the phrase "other form of representation" is unclear and could lead to unqualified or unscrupulous persons appearing on behalf of applicants. The Commonwealth accordingly amends Section II(J)(1) as follows:

- 1. Right to Counsel.** The applicant has a right to counsel or other form of representation, provided said other form of representation has been previously approved by the Attorney General, at no expense to the government. Any

attorney or representative appearing at any proceeding under these regulations shall file a notice of appearance. Service of process, notice, or any other documents upon the individual filing a notice of appearance herein shall be deemed service upon the applicant provided the applicant has duly acknowledged the notice of appearance.

Hearing Procedure

- Proposed Regulation, Section II(J)(8).

The Commonwealth has determined that the importance of eliciting information at the hearing needs to be emphasized and hereby amends Section II(J)(8) as follows:

8. **Procedure.** The purpose of the hearing shall be to elicit all relevant and useful information bearing on the applicant's eligibility for protection. While the burden of proof rests with the applicant, the APJ should endeavor to ascertain and evaluate all the relevant facts and play an active role in introducing evidence regarding current country conditions. The APJ conducting the Protection Hearing will (i) verify the applicant's identity and ask him or her basic biographical questions; (ii) ask the applicant about the reasons he or she is requesting protection; (iii) ask the applicant questions to determine whether he or she meets the legal requirements for protection and whether any grounds for mandatory denial exist; and (iv) may conduct any other examination of any witness as may be appropriate in the APJ's discretion.

Consequences of Approval

- Proposed Regulation, Section II(L).

The Commonwealth has determined that more specific information should be provided to the applicant regarding the effect of an approved application. The Commonwealth therefore amends Section II(L) as follows:

- L. **Decision.** A written decision shall be made within a reasonable time after the Protection Hearing. 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 or she shall be required to return to ORP to receive the decision. If the ORP has decided that the applicant is not eligible for protection, the applicant shall have an opportunity to appeal the decision to the Attorney General under Section II(P) of these regulations within fifteen (15) business days from the date on which the applicant receives the decision is served personally or by mail. The Government may likewise appeal the decision within that fifteen-day period. If there is no appeal, the ORP's decision shall become final and 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. In the case of a grant of protection, the applicant shall not be removed to the country where the applicant

would more likely than not be persecuted or tortured, subject to Section II(Q) of these regulations.

Burden of Proof for Internal Flight Alternative

- Proposed Regulations, Sections II(M)(1)(a)(i) and II(M)(1)(c)(i).

One commenter asserted that the Commonwealth should bear the burden of proving that an applicant could avoid future threats to his or her life or freedom by relocating to another part of the proposed country of removal, and this burden should apply even when the agent responsible for the persecution is not the government. The proposed regulations are consistent with United States law and regulations governing internal relocation, as set forth in 8 CFR §208.16(b)(3) and no changes are made to the regulations regarding this issue.

Convention Against Torture

- Proposed Regulations, Sections I and II(M)(2).

One commenter noted that Section II(N)(2) of the Proposed Regulations suggest that the existence of a mandatory bar could be grounds for denying a claim under the Convention Against Torture and such provision is inconsistent with Article 3 of the Convention Against Torture. While CAT Protection may be denied based on a mandatory bar under section II(N)(2), removal to a country where such an alien would be tortured must be deferred, pursuant to Section II(N)(2)(b)(ii) of the regulations, consistent with the Nonrefoulement provision of Article 3 of the CAT. However, the Commonwealth recognizes that this should be clarified in the second to last sentence of the first paragraph in Section I and Section II(M)(2)(c) of the regulations and therefore makes the following amendments to those sections, and adds an additional Section II(M)(2)(d). These amendments further include corrections in this section's cross-references.

Section I:

- I. Applicability.** The following regulations are intended to implement the protections contemplated in the Memorandum of Agreement (“MOA”) entered between the Commonwealth of the Northern Mariana Islands (“Commonwealth”) and the United States Department of Interior, Office of Insular Affairs, executed on September 12, 2003, as well as Public Law 13-61. These regulations provide procedures for determining whether an alien subject to removal is eligible for protection under 3 CMC § 4344(d), which implements the nonrefoulement obligations set forth in Article 33 of the 1951 United Nations Convention relating to the Status of Refugees, as incorporated into the 1967 United Nations Protocol relating to the status of Refugees (“Refugee Protocol”),¹ and 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 Protocol will be referred to as “Refugee Protection,” and protection from *refoulement* pursuant to the CAT will be referred to as “CAT Protection.” or, under certain

circumstances, will be referred to as “CAT Deferral.” Collectively, both these protections will be referred to as “Nonrefoulement Protection.”

Section II(M)(2):

2. **CAT Protection and CAT Deferral:** 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.

Section II(M)(2)(c)-(d):

c. *Order of Review.* In considering an application for CAT Protection, the APJ shall first determine whether the applicant foreign-national is more likely than not to be tortured in the country of removal. If the APJ determines that the applicant foreign-national is more likely than not to be tortured in the country of removal, the foreign-national applicant is entitled to CAT Protection. An applicant foreign-national entitled to such protection shall be granted all privileges provided for such individuals under Section III of these regulations Commonwealth law, unless the applicant foreign-national is subject to mandatory denial of protection under sSection (M)II(N)(2) of these regulations. ~~If a foreign-national entitled to CAT Protection is subject to mandatory denial under section (M)(2), the foreign-national’s removal shall be deferred under Section (M)(2)(b)(ii.)~~

d. *Effect of mandatory denial.* If an applicant otherwise entitled to CAT Protection is subject to a mandatory denial under Section II(N)(2), the applicant’s removal shall be deferred under Section II(N)(2)(b)(ii), and will be referred to as a CAT Deferral.

Mandatory Denials

- Proposed Regulations, Section II(N)(2)(a).

One commenter suggested that the exclusion provisions in sections II(N)(2)(a)(i)-(iv) be amended to reflect Article 1(F) of the 1951 Convention. Pursuant to the terms of Public Law 13-61, the Commonwealth may include exclusion grounds consistent with applicable international treaty obligations relating to the protection and status of refugees. The language, as proposed, tracks Section 241(b)(3) of the Immigration and Nationality Act, which implements U.S. obligations under the Protocol, and is therefore consistent with treaty obligations of the United States. The commenter also observed that Article 1(F) of the 1951 Convention requires parties to have “serious reasons for considering” that a person has committed an act that would mandate a denial of a determination of a person as a refugee.

To achieve consistency with the United States' statute and regulations implementing Article I(F), the Commonwealth amends Section II(N)(2)(a)(iii) as follows:

- iii. There are reasonable grounds to believe serious reasons for believing that the applicant has committed a serious nonpolitical crime outside the Commonwealth, prior to arrival of the applicant in the Commonwealth.

- Proposed Regulation, Section II(N)(2)(a)(ii).

One commenter maintained that Article 33(2) of the Convention requires that if it is determined that a person was convicted of a "particularly serious crime," there must also be a separate determination that the person constitutes a danger to the community. The Commonwealth disagrees with this comment. No such separate "dangerousness" determination is required. See, e.g., Matter of H-M-V, 22 I&N Dec. 256 (BIA 1998); Matter of Q-T-M-T, 21 I&N Dec. 639 (BIA 1996).

- Proposed Regulation, Section II(N)(2)(a)(iv).

One commenter expressed concern with the broad definition for those who pose a danger to the Commonwealth or to the United States, noting that a person may be said to "engage in terrorist activity" for acts that would not justify a denial of protection, yet denial would be automatic in such circumstances. Because the proposed definition and standard are consistent with United States law and regulation implementing its treaty obligations, no changes will be made to these regulatory provisions.

- Proposed Regulation, Section II(N)(2)(b)(ii)(2).

To clarify that there are different procedures for termination of a CAT Deferral and for termination of CAT Protection, and to specify those procedures, the Commonwealth amends Section II(N)(2)(b)(ii)(2) as follows:

(2) Termination of CAT Deferral.

- (a) At any time during the pendency of deferral of removal while a CAT Deferral is in effect under this subsection, the Government may move the APJ to conduct a hearing to determine whether CAT dDeferral should be terminated, or the APJ may sua sponte conduct such a hearing. The APJ shall grant the Government's motion to reopen if the motion is accompanied by evidence that is relevant to assessing the likelihood that the foreign national would be tortured in the country to which removal has been deferred and that was not presented at the previous hearing, regardless of the previous availability of the evidence. The APJ shall provide notice to the foreign national 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 foreign national 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 foreign national will be tortured in the country of removal. This determination shall be made under the standards for eligibility set forth in Section II(M)(2). The burden remains with the foreign national to establish that it is more likely than not that he or she will be tortured in the country to which removal has been deferred.
- (c) If the APJ determines that the foreign national is more likely than not to be tortured in the country to which removal has been deferred, the CAT Deferral shall remain in place. If the APJ determines that the foreign national has not established that he or she is more likely than not to be tortured in the country to which removal has been deferred, the CAT Deferral shall be terminated, and the foreign national may be removed to that country. Appeal of the APJ's decision shall lie with the Attorney General in accordance with the procedures set forth in Section II(P).
- (d) (e) At any time while removal is deferred, the foreign national may request to the APJ in writing that such deferral be terminated. The APJ shall honor such request if it appears, based on the written submissions of the foreign national and of the Government or based on a hearing conducted by the APJ for this purpose, that the request is knowing and voluntary.

Removal to Third Countries

- Proposed Regulation, Section II(O).

One commenter recommended, with regard to removal to a third country, that the regulations require the Commonwealth to ensure that the refugee's rights under the Refugee Convention, in particular non-refoulement obligations, as well as basic human rights, would be met in any third country to which the claimant would be removed. Public Law 13-61 does not provide authority to withhold removal based on a determination that an individual's basic human rights will not be met or that a third country does not adhere to the 1951 Convention. However, the law does provide that a Grantee should not be returned to a third country where he or she would more likely than not be persecuted or tortured. In order to clarify the procedures with respect to determinations regarding removal to third countries, the Commonwealth hereby amends Section II(O) as follows:

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

1. **Applicability.** This section applies to any foreign national subject to an order of deportation under 3 CMC § 4341 or to a determination of excludability under 3 CMC 4322 whom the Commonwealth intends to remove to a country not designated during the deportation or exclusion proceedings ("undesigned country").

2. **Notice.** The Commonwealth shall provide the foreign national with written notice that it intends to remove the foreign national to an undesigned country. The notice shall also advise that the alien may request *Nonrefoulement* Protection from removal to the undesigned country pursuant to these regulations.

3. **Referral for Manifestly Unfounded Determination.** If the foreign national requests *Nonrefoulement* Protection from the undesigned country within seven (7) calendar days of receiving the notice described in paragraph (2) of this subsection, the foreign national shall be immediately referred to the OAG for an interview to determine whether the foreign national's asserted fear of removal is manifestly unfounded in accordance with Section II(D) of these regulations.

4. **Decision.** The Commonwealth shall not remove the foreign national to an undesigned country for at least seven (7) days following the Commonwealth's service of the notice upon the foreign national. If the foreign national requests *Nonrefoulement* Protection from removal to the undesigned country during that period, the Commonwealth shall not remove the foreign national to that country until there has been a final determination that the *Nonrefoulement* Protection claim is manifestly unfounded or, if the claim is finally determined not to be manifestly unfounded, that the foreign national is not eligible for *Nonrefoulement* Protection from removal to the undesigned country.

Factors Mitigating Against Removal to a Third Country

One commenter recommended that a number of factors, such as an applicant's language, skills, work experience or ties to the Commonwealth be considered as potential mitigating factors before an alien is sent to a third country. There is no provision under Commonwealth law to consider these factors. Therefore, no amendments to the regulations are made based on this comment.

Stay Pending Appeal to Attorney General

- Proposed Regulation, Section II(P).

One commenter noted that there is no specific provision ensuring that an applicant will receive a stay of removal pending an appeal to a “higher administrative authority or to the courts.” Section II(P)(6) of the Proposed Regulations specifies that the decision of the Attorney General is final and is not subject to further judicial or administrative review. However, the Commonwealth will grant a stay of removal pending an appeal to the Attorney General and accordingly amends Section II(P) as follows:

- P. Appeals.** Either the applicant or the Government may appeal the ORP’s decision to grant, deny or terminate *Nonrefoulement* Protection to the Attorney General or her designee within fifteen (15) business 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. The applicant shall be entitled to remain in the Commonwealth pending the outcome of the appeal but may be required to remain in detention.

Reopening Proceedings

- Proposed Regulation, Section II(P)(6).

One commenter observed that the proposed regulations do not provide a procedure for allowing a failed applicant who has not yet been removed to request reopening of his or her proceedings based on new or previously unavailable evidence demonstrating a fundamental change in circumstances. The Commonwealth agrees that there should be an additional mechanism, beyond a motion by the Government, for reopening a case due to a fundamental change in circumstances and hereby amends Section II(P)(6) as follows:

6. **Finality.** The decision of the Attorney General shall be final and unreviewable, not subject to further judicial or administrative review. A case may only be reopened upon a motion from the Government or sua sponte by an APJ pursuant to Section II(Q) of these regulations, or upon a motion by the applicant establishing *prima facie* eligibility due to a fundamental change of circumstances ~~that substantially alters the nature of the claim.~~

Reconsideration of Grant

- Proposed Regulations, Section II(Q).

One commenter noted that under Article 1C of the 1951 Convention, status may be rescinded if the conditions on which a grant is made cease to exist, but also noted that under Article 34, parties are obliged to “facilitate the assimilation and naturalization of refugees...” and to “to respect a basic degree of stability for individual refugees.” The commenter accordingly recommended that the sentence governing periodic reviews in Section II(Q), be deleted. The Commonwealth agrees that a reasonable degree of stability should be provided to grantees, but disagrees that periodic reviews will prevent such stability.

A commenter observed that while the Convention does not address revocation or denial of a claim due to fraud in connection with an application, the UNHCR Handbook requires that there be a "misrepresentation of a material fact" before refugee status may be cancelled. A commenter also suggested that for termination of protection based on a change in country conditions should result only when those changes are fundamental and durable. One commenter further recommended that the government have the burden of proof for purposes of reconsideration of a claim. The Commonwealth agrees with these comments and amends Section II(Q) accordingly. Additionally, the Commonwealth amends this provision to clarify that it applies to CAT and Refugee Protection, but not to CAT Deferral, which is covered by a separate provision. These amendments further include corrections to this Section's cross-references. Section II(Q) is therefore amended to read as follows:

- Q. 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 the Commonwealth. The ORP may reopen a case, either sua sponte or upon motion from the Government, and re-evaluate a grant of CAT or Refugee Protection ~~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 fundamental and durable way that affects the likelihood that the ~~g~~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 ~~"m~~Mandatory ~~d~~Denial" set forth in ~~s~~Section ~~II(M)~~ ~~(N)~~(2) above, if the ORP determines that the applicant engaged in misrepresentation of a material fact fraud in connection with his or her application, or if the ORP determines that there are serious reasons for believing that the foreign national no longer requires protection under Public Law 13-61 3 CMC 4344(d).
- 1. Procedure.** Except with respect to conditional grants of protection pursuant to ~~s~~Section ~~II(G)~~(3) of these regulations, the OAG will not terminate ~~Nonrefoulement Protection~~ CAT or Refugee Protection pursuant to this section unless the individual has been provided notice, in person or by mail to the last known address, as well as the opportunity for a hearing before an APJ, 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~~ time the OAG must show by a preponderance of the evidence that the individual no longer qualifies 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 ~~s~~Section ~~II(P)~~(P) of these regulations, within fifteen (15) business 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 Refugee or CAT Protection ~~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.

Employment Pending Decisions

- Proposed Regulations, Section II(R).

One commenter noted that while work authorization is available pending a hearing and for grantees, it is unclear whether authorization is available pending an appeal. The Commonwealth agrees with this comment and, in addition to correcting this Section's cross-references, amends Section II(R) to clarify as follows:

- R. **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 final decision, meaning all appeals have been exhausted, is made on their case if ninety (90) calendar 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 ~~s~~Section ~~(H)(G)~~(3) above. The TWA application process shall be governed by the Department of Labor's Special Circumstances Temporary Work Authorizations regulations.

Family Unity

- Proposed Regulations, Section III(A).

One commenter noted that the act adopting the 1951 Convention recommended that governments should attempt to ensure the protection of a refugee's family, and that this principle is recognized by the majority of states. Therefore, the commenter recommended that a petitioner be allowed to petition on behalf of family members residing outside of the Commonwealth and that a "liberal criteria" be applied in identifying eligible family members. Commonwealth law does not authorize implementation of this recommendation and therefore it cannot be adopted in these regulations. Grantees will have the same rights as other aliens residing in the Commonwealth to petition to bring family members to the Commonwealth under existing law.

The Commonwealth notes that the term "formal request for protection" is unclear, and therefore amends Section III(A) to clarify as follows:

- 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 the same status, provided that the family member is present in Commonwealth, was included on the initial application, and is not barred from relief pursuant to Section II(N)(2)(a) of these regulations. This includes the Grantee's spouse and unmarried children under twenty-one (21) years of age as of the date of the submission of the form of application for *Nonrefoulement* Protection formal request for protection. 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.

Clarification as to who is a "Grantee" has been provided by insertion of footnote 3 within the first sentence of Section III(A) as follows:

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

Identification Documents

- Proposed Regulation, Section III(B).

The Commonwealth is amending the regulations to specify that grantees will be given identification documents evidencing status. A new Section III(B) is added to read as follows, and Sections III(B) and III(C) are renumbered accordingly.

B. Identification Documents. A Grantee and immediate family members who are accorded derivative protection shall be issued Commonwealth identification documents evidencing status.

Right to Travel

- Proposed Regulation, Section III(C).

One commenter noted that Article 28 of the 1951 Convention requires that states issue grantees travel documents unless "compelling reasons of national security or public order otherwise require." At this time, the Commonwealth does not issue travel documents. However, grantees will be able to obtain "re-entry" letters that permit them to return to the Commonwealth. The regulations provide that a grantee must obtain prior written authorization from the Division of Immigration if he or she wishes to exit and return to the Commonwealth.

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

Right to Assistance

- Proposed Regulation, Section III(E).

One commenter asserted that grantees have a right to an adequate standard of living, which may include financial assistance pending an application and appeal, particularly if employment is restricted. Currently there is no financial assistance program available under Commonwealth law; all available assistance is now provided under federal mandate. To the extent such assistance may become available in the future, or is available under existing federal programs, the Commonwealth hereby adds the following Section III(D).

- E. Right to Assistance.** Nothing in these regulations shall prevent a person from applying for or receiving public benefits, including but not limited to health care, public education, or living assistance, for which they may be eligible under law to the same extent as other foreign nationals lawfully residing in the Commonwealth.

One commenter asserted that grantees should be accorded treatment equal to that “accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment...” and recommends that the regulations governing work authorization be drafted consistent with this principle. The Commonwealth agrees with this comment and will draft labor regulations accordingly.

Technical Amendments

The Commonwealth noted several typographical and technical errors, which are hereby amended as follows:

- Proposed Regulation, Section I(A).
- A. Eligible Applicants.** These procedures shall apply only 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”), pursuant to 3 CMC § 4331 *et seq.*, and prior to removal from the Commonwealth the individual expresses fear of persecution or torture in the designated country of removal.
- Proposed Regulation, Section II(F)(4).
- 4. Scheduling of Protection Hearing.** On the same day that the foreign national submits his or her initial application, or as soon as possible thereafter, ~~the Attorney General or her designee~~ the ORP shall set a date for the Protection Hearing, allowing a reasonable amount of time for the foreign

national to amend the application as needed to fully and fairly present his or her case. The ~~OAG~~ ORP shall immediately notify the applicant of the date of the Protection Hearing. The date of the Protection Hearing may be extended for good cause, in the discretion of the ~~Attorney General or her designee~~ ORP.

- Proposed Regulation, Section II(J)(9)(c).

c. *Reliance on information compiled by other sources.* 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 Homeland Security, Department of State, or other credible sources, such as international organizations, private voluntary agencies, news organizations, or academic institutions.

- Proposed Regulation, Section II(J)(9)(d).

d. *Limitations.* 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, Department of State, or the Department of Homeland Security. Persons may seek documents available through an Open Government Act request pursuant to 1 CMC § 9901 *et seq.*

- Proposed Regulation, Section II(N)(1).

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 ~~s~~Sections ~~(L)(1)~~ (M)(1) or ~~(L)(2)~~ (M)(2) of these regulations.

- Proposed Regulation, Section II(N)(2)(b)(i).

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)(a) 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 subsection.

- Proposed Regulation, Section II(N)(2)(b)(ii).

ii. *CAT Deferral Protection.* An applicant who qualifies for CAT Protection but is denied such protection as the result of a

Mandatory Denial pursuant to paragraph (2)(a) of this subsection shall be granted deferral of removal to the country where he or she is more likely than not to be tortured.

- Proposed Regulation, Section II(P)(2).
 2. **Certification of record.** Upon timely receipt of a notice of appeal, the OAG shall request that the ORP ~~the OPR~~ shall promptly certify and transmit to the Attorney General the entire record, including the original recording of proceedings, if any.
- Proposed Regulation, Section II(P)(4).
 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) permit or request legal briefs or 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 section II.I(J) through section II.M(L) of these regulations.
- Proposed Regulation, Section II(Q)(1).
 1. **Procedure.** Except with respect to conditional grants of protection pursuant to Section II(H)(G)(3) of these regulations, the OAG will not terminate CAT or Refugee Protection pursuant to this section unless the individual has been provided notice, in person or by mail to the last known address, as well as the opportunity for a hearing before an APJ, at which time the OAG must show by a preponderance of the evidence that the individual no longer qualifies for such protection.
- Proposed Regulation, Section II(R).

R. 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 final decision, meaning all appeals have been exhausted, is made on their case if ninety (90) calendar 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 II(H)(G)(3) above. The TWA application process shall be governed by the Department of Labor’s Special Circumstances Temporary Work Authorizations regulations.

- Proposed Regulation, Section III.

III. Implications After Refugee or CAT Protection Is Granted.

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

XIV. Protection from Refoulement

Section 1401. Protection from Refoulement

- I. Applicability.** The following regulations are intended to implement the protections contemplated in the Memorandum of Agreement (“MOA”) entered between the Commonwealth of the Northern Mariana Islands (“Commonwealth”) and the United States Department of Interior, Office of Insular Affairs, executed on September 12, 2003, as well as Public Law 13-61. These regulations provide procedures for determining whether an alien subject to removal is eligible for protection under 3 CMC § 4344(d), which implements the nonrefoulement obligations set forth in Article 33 of the 1951 United Nations Convention relating to the Status of Refugees, as incorporated into the 1967 United Nations Protocol relating to the status of Refugees (“Refugee Protocol”),¹ and 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 Protocol will be referred to as “Refugee Protection,” and protection from *refoulement* pursuant to the CAT will be referred to as “CAT Protection” or, under certain circumstances, will be referred to as “CAT Deferral.” Collectively, these protections will be referred to as “*Nonrefoulement* Protection.”
- A. Eligible Applicants.** These procedures shall apply only 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”), pursuant to 3 CMC § 4331 *et seq.*, and prior to removal from the Commonwealth the individual expresses fear of persecution or torture in the designated country of removal.
- B. No Affirmative Applications.** A foreign national shall not be entitled under any circumstances to submit an application or other assertion of entitlement to *Nonrefoulement* Protection unless that individual is subject to an order of deportation by a court of competent jurisdiction, is being denied entry to the Commonwealth at a POE or is included as an immediate relative seeking derivative status on an application pursuant to Section III(A) of these regulations.

¹ United Nations 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).

II. Procedural Mechanism.

- 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 (“OAG”). The Attorney General shall staff the ORP 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 persecution or torture in the designated country of removal, will be afforded a Protection Hearing conducted by the ORP, unless it is determined by the Attorney General or her designee that the expression of fear is manifestly unfounded in view of the applicable nonrefoulement standards set forth herein.
- C. **Deportation.** Any foreign nationals against whom a deportation order has been entered by the Superior Court pursuant to 3 CMC § 4341, and who expresses fear of persecution or torture in the designated country of removal, will be afforded a Protection Hearing conducted by the ORP, unless it is determined by the Attorney General or her designee that the expression of fear is manifestly unfounded in view of the applicable nonrefoulement standards set forth herein.
- D. **Determinations of Manifestly Unfounded Claims.**
1. **Interview.** Interviews shall be conducted by the Attorney General or her designee, who shall have received specialized training in protection law, relevant country conditions, and in conducting protection-oriented interviews. If requested by either party, an interpreter qualified pursuant to Section II(J)(3), shall be provided. Interviews to determine whether a claim is manifestly unfounded shall be recorded electronically.
 2. **Decision.** The manifestly unfounded decision shall be made by the Attorney General or her designee who has received specialized training in protection law and relevant country conditions. The basis for finding that a claim is manifestly unfounded shall be detailed in a written report. For purposes of this section, “manifestly unfounded” shall mean that the claim is clearly fraudulent or not related to the criteria for the granting of *Nonrefoulement* Protection. Neither mandatory bars to protection under Section II(N)(2) nor internal relocation alternatives shall be considered in making the manifestly unfounded determination.
 3. **Review.** The applicant may, upon written request filed prior to departing the Commonwealth, obtain a review of a determination of a manifestly unfounded claim by an APJ. The decisionmaker shall advise the applicant of this right upon delivery of the determination. The APJ may rely solely

**ARTICLE VII
WATER RESOURCES CONSERVATION AND WATER POLLUTION**

All decisions regarding water resources conservation and water pollution are to be made in accordance with applicable laws.

**ARTICLE VIII
SEVERABILITY**

If any article, section, sentence, clause, or phrase of these Regulations or their application to any person or circumstance or property is held to be unconstitutional or invalid, the remaining portion of these Regulations or the application of these Regulations to other persons or circumstances or property shall not be affected and shall therefore remain in force and effect.

**ARTICLE IX
EFFECTIVE DATE**

These Regulations shall be effective immediately upon their adoption pursuant to law.

on the written record or may request additional information or conduct a hearing. The decision of the APJ shall be final and unreviewable, not subject to further judicial or administrative proceedings. The applicant shall have the right to remain in the Commonwealth pending a decision of the APJ, but may be required to remain in detention.

E. Advisements.

1. **Right to Protection.** A foreign national who has been ordered deported by the Commonwealth Superior Court or who has been excluded at the POE shall be (i) advised that he or she may obtain a Protection Hearing if he or she has a fear of persecution or torture in the designated country of removal that is not manifestly unfounded; (ii) advised of the right to representation at their own expense; and (iii) provided with contact information for the CNMI Bar Association and other organizations approved by the OAG which have indicated availability to assist foreign nationals with their claims. This advisement will be given in writing by way of a pre-printed form, and/or verbally, either by the Attorney General or her designee. Verbal advisements shall be duly recorded, electronically or with a written acknowledgement from the foreign national. All reasonable efforts will be made to ensure that the foreign national understands the substance of this advisement, including without limitation translation of the advisement into an appropriate language, and providing assistance for those with reading difficulties.
2. **Other Rights and Obligations.** Unless the Attorney General or her designee has determined that the claim is manifestly unfounded, the OAG shall provide the foreign national with appropriate application forms and instructions on how to fill out the forms.

F. Application.

1. **Initial Application.** Upon receiving the application form and instructions, the foreign national shall have ten (10) business days to file the completed application and any supporting documents with the ORP, at which time the foreign national shall have formally entered Protection Hearing proceedings. This period may be extended at the discretion of the APJ upon a showing of good cause for failure to apply within the requisite time period. The initial application must: (i) give the applicant's true identity; (ii) list all immediate relatives seeking derivative status under Section III(A); and (iii) state the basis for seeking *Nonrefoulement* Protection. Failure to include the information in (i) and (iii) may be grounds for denying a claim.
2. **Amended Application.** The application may be amended once, provided it is submitted with any supporting documents to the ORP not less than ten

(10) business days prior to the scheduled date of the Protection Hearing. Failure to submit the initial or amended application by the date due may be grounds for denying a claim. Supporting evidence submitted less than ten (10) business days prior to the Protection Hearing may only be admitted by leave of the APJ.

3. **Government.** Any documents or other evidence submitted by the OAG shall be submitted not less five (5) business days prior to the scheduled date of the Protection Hearing. Evidence submitted less than five (5) business days prior to the Protection Hearing may only be admitted by leave of the APJ.
4. **Scheduling of Protection Hearing.** On the same day that the foreign national submits his or her initial application, or as soon as possible thereafter, the ORP shall set a date for the Protection Hearing, allowing a reasonable amount of time for the foreign national to amend the application as needed to fully and fairly present his or her case. The ORP shall immediately notify the applicant of the date of the Protection Hearing. The date of the Protection Hearing may be extended for good cause, in the discretion of the ORP.
5. **Failure to Appear.** Failure to appear for a scheduled hearing shall be considered abandonment of the application and the application shall be denied, except upon a finding by the APJ of exceptional circumstances or failure to provide proper notice of the scheduled interview.

G. Detention.

1. **Excluded Persons.** If appropriate, and pending a determination on the applicant's request for *Nonrefoulement* Protection, the Attorney General or her designee may decide to detain the foreign national or may allow their temporary admission, in her discretion and under such conditions as will ensure the person's availability for further proceedings. For purposes of Commonwealth immigration laws, applicants granted parole under this provision shall be considered to be temporarily admitted to the Commonwealth consistent with 3 CMC § 4337.
2. **Deported Persons.** The decision to detain applicants who have been ordered deported but who are awaiting a determination on the applicant's request for *Nonrefoulement* Protection shall be in the discretion of the Attorney General or her designee, under such conditions as will ensure the person's appearance for further proceedings, or as determined by the Superior Court in accordance with the Commonwealth Entry and Deportation Act, 3 CMC § 4301 *et seq.*

H. Fingerprinting and background security checks. The Division of Immigration (“DOI”) shall obtain each applicant’s name, photograph, date of birth, fingerprints and other information that DOI deems relevant in order to perform a background security check or to otherwise adjudicate the application for protection and administer the immigration laws.

1. **Excluded Persons.** In the case of a foreign national excluded at a POE, 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. **Cooperation Required.** Failure 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 denial of the protections described herein, and for arrest and removal from the Commonwealth consistent with Commonwealth immigration law. The Attorney General or her designee may waive any of these requirements under exceptional circumstances, for humanitarian reasons.
3. **Conditional Grants.** In the event that an individual is deemed to qualify for *Nonrefoulement* Protection but a background check has not yet been completed to the satisfaction of the OAG, the APJ may conditionally grant protection pending completion of the background check. 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.

I. Administrative Protection Judge.

1. **Appointment.** The term “Administrative Protection Judge” (“APJ”) means an attorney who has received specialized training in conducting Protection Hearings, and who the Attorney General appoints as an administrative judge under the authority of the Office of the Attorney General. An APJ shall be subject to such supervision and shall perform such duties as the Attorney General shall prescribe. The Attorney General delegates to the APJ the authority under 3 CMC § 4344(d) and these regulations to conduct Protection Hearings and to decide whether *Nonrefoulement* Protection is mandated in a particular case.
2. **Protection Consultant.** Pursuant to the MOA, the APJ will work with the “Protection Consultant” in conducting Protection Hearings and making protection determinations under 3 CMC § 4344(d) during the first two years that these regulations are effective.

3. **Certification.** The APJ shall have the right to certify a case to the Attorney General for her review and disposition.

J. Protection Hearing.

1. **Right to Counsel.** The applicant has a right to counsel or other form of representation, provided said other form of representation has been previously approved by the Attorney General, at no expense to the government. Any attorney or representative appearing at any proceeding under these regulations shall file a notice of appearance. Service of process, notice, or any other documents upon the individual filing a notice of appearance herein shall be deemed service upon the applicant provided the applicant has duly acknowledged the notice of appearance.
2. **Appearance.** The applicant must bring to the Protection Hearing any immediate relative then present in the Commonwealth to whom he or she would like any protection to apply derivatively under Section III(A) of these regulations, unless the applicant demonstrates good cause for the failure to appear. The APJ may question immediate relatives seeking derivative status. Such questioning may take place outside the presence of the applicant.
3. **Interpreters.** An applicant who is unable to proceed with the hearing in English, Chamorro or Carolinian will be provided a qualified interpreter. The applicant may also provide his or her own interpreter, however, the decision to allow the applicant to proceed with his or her own interpreter, as opposed to the appointed interpreter, shall be in the exclusive control of the APJ.
 - 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 country or countries concerning which the applicant has expressed a fear of return.
 - b. *Specific qualifications.* In addition to the general qualifications, before allowing an interpreter to provide interpreting services to an applicant during a Protection Hearing, the APJ must find the interpreter qualified pursuant to the requirements set forth by the ORP.
 - c. *Interpreter's Oath.* Before allowing an interpreter to provide interpreting services in a Protection Hearing, the APJ shall administer an oath to the interpreter establishing that the interpreter

(i) will translate fully and accurately to the best of their ability; (ii) will keep confidential all information (including the identity of the applicant) obtained during the Protection Hearing; and (iii) meets the qualifications set forth for interpreters as set forth by the ORP.

4. **Record.** The Protection Hearing will be recorded so that a record of the proceeding will be preserved. The only recording equipment permitted in the proceeding will be the equipment used by the APJ to create the official record. No other photographic, video, electronic, or similar recording device will be permitted to record any part of the proceeding. The ORP shall, in the event of an appeal, make a copy of the recording available to the applicant.
5. **Confidentiality of Proceedings.** The Protection Hearing shall not be open to the public, unless (i) the applicant states for the record that he or she wishes to waive a closed hearing or submits a written statement indicating the same; and (ii) the OAG does not oppose the waiver.
6. **Oath.** Testimony of witnesses appearing at the hearing shall be under oath or affirmation, declaring, under penalty of perjury under 6 CMC § 3306, that he or she will testify truthfully.
7. **Evidence.** The Commonwealth Rules of Evidence do not apply in a Protection Hearing, 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, at her discretion, may allow telephonic or video testimony of witnesses who cannot reasonably attend, provided the requesting party bears the expense of providing such testimony. If the APJ denies the admission of such testimony, or any other evidence, she shall give the reason for the disallowance on the record. Nothing in this section is intended to limit the authority of the APJ to properly control the scope of evidence admissible in the Protection Hearing.
8. **Procedure.** The purpose of the hearing shall be to elicit all relevant and useful information bearing on the applicant's eligibility for protection. While the burden of proof rests with the applicant, the APJ should endeavor to ascertain and evaluate all the relevant facts and play an active role in introducing evidence regarding current country conditions. The APJ conducting the Protection Hearing will (i) verify the applicant's identity and ask him or her basic biographical questions; (ii) ask the applicant about the reasons he or she is requesting protection; (iii) ask the applicant questions to determine whether he or she meets the legal

requirements for protection and whether any grounds for mandatory denial exist; and (iv) may conduct any other examination of any witness as may be appropriate in the APJ's discretion.

9. **Opportunity to Present Evidence.**

- a. *Applicant.* The applicant shall have the fair opportunity to present the applicant's full case, including the right to present all relevant documentary evidence timely submitted, in any form, as well as oral testimony of witnesses or of the applicant, including expert evidence concerning country conditions. Any foreign language document offered by a party in a proceeding shall be accompanied by an English language translation, printed legibly or typed, and a certification signed by the translator. Such certification must include a statement that the translator is competent to translate the document, and that the translation is true and accurate to the best of the translator's abilities.
- b. *Government.* 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 evidence, to call and cross-examine witnesses, and to cross-examine the individual applicant.
- c. *Reliance on information compiled by other sources.* In deciding whether an applicant has established eligibility for the *Nonrefoulement* Protections described herein, the APJ may rely on material provided by the Department of Homeland Security, Department of State, or other credible sources, such as international organizations, private voluntary agencies, news organizations, or academic institutions.
- d. *Limitations.* 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 Department of Justice, Department of State, or the Department of Homeland Security. Persons may seek documents available through an Open Government Act request pursuant to 1 CMC § 9901 *et seq.*

K. **Confidentiality.**

1. **Right of Privacy.** 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. Further, 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 that reasonably indicates or infers that the particular individual has requested protection 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. **Limitations.** This Section shall not apply to any disclosure to:
 - a. Any Commonwealth or United States government (federal or state) 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 or prosecution of any legal action arising from or relating to the adjudication of, or failure to adjudicate, an application for protection under these regulations;
 - iii. The defense or prosecution of any legal action of which an application for protection under these regulations is a part; or
 - iv. Any Commonwealth or United States government (federal or state) law enforcement activity 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.

- L. **Decision.** A written decision shall be made within a reasonable time after the Protection Hearing. 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 or she shall be required to return to the ORP to receive the decision. If the ORP has decided that the applicant is not eligible for protection, the applicant shall have an opportunity to appeal the decision to the Attorney General under Section II(P) of these regulations within fifteen (15) business days from the date on which the applicant receives the decision. The Government may likewise appeal the decision within

that fifteen-day period. If there is no appeal, the ORP's decision shall become final and 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. In the case of a grant of protection, the applicant shall not be removed to the country where the applicant would more likely than not be persecuted or tortured, subject to Section II(Q) of these regulations.

M. Substantive law. The following substantive law shall be applied at the Protection Hearing. 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 that country 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)(i)(2) and (1)(b) of this subsection, 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; the quality of the administrative, economic, or judicial infrastructure in the place of proposed relocation; geographical limitations on the applicant's ability to relocate; 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 and CAT Deferral:** 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. *Consideration of Evidence.* 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. *Order of Review.* In considering an application for CAT Protection, the APJ shall first determine whether the applicant is more likely than not to be tortured in the country of removal. If the APJ determines that the applicant is more likely than not to be tortured in the country of removal, the applicant is entitled to CAT Protection. An applicant entitled to such protection shall be granted all privileges provided for such individuals under Section III of these regulations, unless the applicant is subject to mandatory denial of protection under Section II(N)(2) of these regulations.
- d. *Effect of mandatory denial.* If an applicant otherwise entitled to CAT Protection is subject to a mandatory denial under Section II(N)(2), the applicant's removal shall be deferred under Section II(N)(2)(b)(ii), and will be referred to as a CAT Deferral.

N. 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 II(M)(1) or (M)(2) of these regulations.
2. **Mandatory denials.**
 - a. *Scope.* An application for Refugee 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 and the APJ determines that the applicant constitutes a danger to the community;
- iii. There are serious reasons for believing that the applicant has committed a serious nonpolitical crime outside the Commonwealth, prior to arrival of the alien in 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. Such grounds shall include but not be limited to persons who have engaged in terrorist activity, as that term is defined by 8 USC 1182(a)(3)(B)(iii).

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)(a) of this subsection 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 subsection.
- ii. *CAT Deferral.* An applicant who qualifies for CAT Protection but is denied such protection as the result of a Mandatory Denial pursuant to paragraph (2)(a) of this subsection 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 foreign national any lawful immigration status in the Commonwealth;

- (b.) Will not necessarily result in the foreign national 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 foreign national would be tortured in the country to which removal has been deferred, or if the foreign national requests that deferral be terminated.

(2.) *Termination of CAT Deferral.*

- (a.) At any time while a CAT Deferral is in effect under this subsection, the Government may move the APJ to conduct a hearing to determine whether the CAT Deferral should be terminated, or the APJ may sua sponte conduct such a hearing. The APJ shall grant the Government's motion to reopen if the motion is accompanied by evidence that is relevant to assessing the likelihood that the foreign national would be tortured in the country to which removal has been deferred and that such evidence was not presented at the previous hearing, regardless of the previous availability of the evidence. The APJ shall provide notice to the foreign national and the Government of such hearing and shall allow both parties the opportunity to submit supplemental evidence for use in the determination of whether it is more likely than not that the foreign national will be subject to torture in the country of removal.
- (b.) 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 foreign national will be tortured in the country of removal. This determination shall be made under the standards for eligibility set forth in Section II(M)(2). The burden remains with the foreign national to establish

that it is more likely than not that he or she will be tortured in the country to which removal has been deferred.

- (c.) If the APJ determines that the foreign national is more likely than not to be tortured in the country to which removal has been deferred, the CAT Deferral shall remain in place. If the APJ determines that the foreign national has not established that he or she is more likely than not to be tortured in the country to which removal has been deferred, the CAT Deferral shall be terminated, and the foreign national may be removed to that country. Appeal of the APJ's decision shall lie with the Attorney General in accordance with the procedures set forth in Section II(P).
- (d.) At any time while removal is deferred, the foreign national may request to the APJ in writing that such deferral be terminated. The APJ shall honor such request if it appears, based on the written submissions of the foreign national and of the Government, or based on a hearing conducted by the APJ for this purpose, that the request is knowing and voluntary.

O. Removal to third country.

1. **Applicability.** This section applies to any foreign national subject to an order of deportation under 3 CMC § 4341 or to a determination of excludability under 3 CMC 4322 whom the Commonwealth intends to remove to a country not designated during the deportation or exclusion proceedings ("undesignated country").
2. **Notice.** The Commonwealth shall provide the foreign national with written notice that it intends to remove the foreign national to an undesignated country. The notice shall also advise that the alien may request *Nonrefoulement* Protection from removal to the undesignated country pursuant to these regulations.
3. **Referral for Manifestly Unfounded Determination.** If the foreign national requests *Nonrefoulement* Protection from the undesignated country within seven (7) calendar days of receiving the notice described in paragraph (2) of this subsection, the foreign national shall be immediately referred to the OAG for an interview to determine whether the foreign

national's asserted fear of removal is manifestly unfounded in accordance with Section II(D) of these regulations.

4. **Decision.** The Commonwealth shall not remove the foreign national to an undesignated country for at least seven (7) days following the Commonwealth's service of the notice upon the foreign national. If the foreign national requests *Nonrefoulement* Protection from removal to the undesignated country during that period, the Commonwealth shall not remove the foreign national to that country until there has been a final determination that the *Nonrefoulement* Protection claim is manifestly unfounded or, if the claim is finally determined not to be manifestly unfounded, that the foreign national is not eligible for *Nonrefoulement* Protection from removal to the undesignated country.

P. Appeals. Either the applicant or the Government may appeal the ORP's decision to grant, deny or terminate *Nonrefoulement* Protection to the Attorney General or her designee within fifteen (15) business 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. The applicant shall be entitled to remain in the Commonwealth pending the outcome of the appeal but may be required to remain in detention.

1. **Notice of Appeal.** An appeal pursuant to this section is taken by filing a written notice with the OAG, which is signed by the appealing party or his or her counsel, and which states the relief requested. The appealing party, or his or her counsel or representative, 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 OAG shall request that the ORP promptly certify and transmit to the Attorney General the entire record, including the original recording of proceedings, if any.
3. **Form of Appeal.** The appeal and all attachments must be in English, Carolinian or Chamorro, or accompanied by a certified English translation.
4. **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) permit or request legal briefs or 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 Section II(J) through Section II(L) of these regulations.
5. **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, or as soon thereafter as 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.

6. **Finality.** The decision of the Attorney General shall be final and unreviewable, not subject to further judicial or administrative review. A case may only be reopened upon a motion from the Government or *sua sponte* by an APJ pursuant to Section II(Q) of these regulations, or upon a motion by the applicant establishing *prima facie* eligibility due to a fundamental change of circumstances.

Q. 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 the Commonwealth. The ORP may reopen a case, either *sua sponte* or upon motion from the Government, and re-evaluate a grant of CAT or Refugee 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 fundamental and durable 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 II(N)(2) above, if the ORP determines that the applicant engaged in misrepresentation of a material fact in connection with his or her application, or if the ORP determines that there are serious reasons for believing that the foreign national no longer requires protection under Public Law 13-61.

1. **Procedure.** Except with respect to conditional grants of protection pursuant to Section II(H)(3) of these regulations, the OAG will not terminate CAT or Refugee Protection pursuant to this section unless the individual has been provided notice, in person or by mail to the last known address, as well as the opportunity for a hearing before an APJ, at which time the OAG must show by a preponderance of the evidence that the individual no longer qualifies 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 II(P) of these regulations, within fifteen (15) business 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 Refugee or CAT Protection.** In the event that an order terminating Refugee or CAT 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.

- R. 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 final decision, meaning all appeals have been exhausted, is made on their case if ninety (90) calendar 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 II(H)(3) above. The TWA application process shall be governed by the Department of Labor’s Special Circumstances Temporary Work Authorizations regulations.
- S. Right to Travel.** Applicants (along with any potential derivative family members) must obtain advance permission from the DOI and the ORP before leaving the Commonwealth if they wish to return. Failure to obtain such permission creates a presumption that the applicant has abandoned his or her request with the ORP, and he or she may not be permitted to return to Commonwealth. If an applicant obtains permission to depart and returns to his or her country of feared persecution and/or torture, he or she shall be presumed to have abandoned his or her request, unless he or she can show compelling reasons for the return.

III. Implications After Refugee or CAT 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 the same status, provided that the family member is present in Commonwealth, was included on the initial application, and is not barred from relief pursuant to Section II(N)(2)(a) of these regulations. This includes the Grantee’s spouse and unmarried children under twenty-one (21) years of age as of the date of submission of the form of application for *Nonrefoulement* Protection. 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. Identification Documents.** A Grantee and immediate family members who are accorded derivative protection shall be issued Commonwealth identification

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

documents evidencing status.

- C. 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.
- D. 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 or her protection in Commonwealth, and he or she may not be permitted to return. If a Grantee obtains permission to depart and returns to his or her country of feared persecution and/or torture, he or she shall be presumed to have abandoned his or her protection in Commonwealth, unless he or she can show compelling reasons for the return.
- E. Right to Assistance.** Nothing in these regulations shall prevent a person from applying for or receiving public benefits, including but not limited to health care, public education, or living assistance, for which they may be eligible under law to the same extent as other foreign nationals lawfully residing in the Commonwealth.

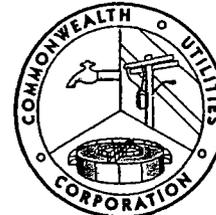


Commonwealth Utilities Corporation

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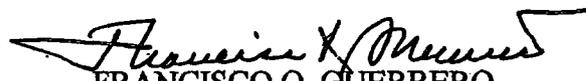


NOTICE OF ADOPTION OF ELECTRIC SERVICE REGULATIONS AMENDMENTS REGARDING LINE EXTENSION AND EXTENSIONS OF SERVICE AND NON-PAYMENT OF BILLS

We, Francisco Q. Guerrero, Chairman of the Board of Directors, and Lorraine A. Babauta, Executive Director, of the Commonwealth Utilities Corporation, which is promulgating amendments to the Electric Service Regulations, published as Proposed CUC Electric Service Regulations Amendments Regarding Line Extension and Extensions of Service and Non-Payment of Bills in the Commonwealth Register, Volume 26, Number 07, Pages 22851 through 22864, on July 26, 2004, hereby certify that no comments regarding the aforementioned proposed amendments were received during the required publication period and that the CUC Board of Directors, during its September 9, 2004 regular meeting, ratified/adopted the aforementioned proposed amendments without modification or amendment.

We declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 22nd day of September, 2004, in Saipan, Commonwealth of the Northern Mariana Islands.


LORRAINE A. BABAUTA
Executive Director


FRANCISCO Q. GUERRERO
Chairman, Board of Directors



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

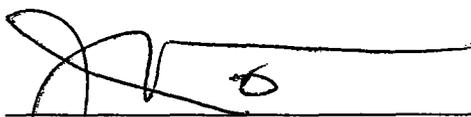


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NOTICE AND CERTIFICATION OF ADOPTION
OF
AMENDED WATER QUALITY STANDARDS

I, John I. Castro, Jr., Director of the Division of Environmental Quality (DEQ), Office of the Governor, Commonwealth of the Northern Mariana Islands (CNMI), which is promulgating the Amended Water Quality Standards published in the Commonwealth Register, Volume 26, Number 04, April 23, 2004, at pages 22237 through and including 22292, by signature below hereby certify that as published such rules are a true, complete, and correct copy of the Amended Water Quality Standards previously proposed by DEQ which, after the expiration of appropriate time for public comment, have been adopted with extensive modifications or amendment. By signature below, I hereby certify that the Amended Water Quality Standards attached hereto and published herewith, are a true, correct, and complete copy of the Amended Water Quality Standards adopted by DEQ. I further request and direct that this Notice and Certification of Adoption be published in the CNMI Commonwealth Register.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 20th day of September, 2004 at Saipan, Commonwealth of the Northern Mariana Islands.



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



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



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PUBLIC NOTICE

ADOPTION OF THE AMENDED WATER QUALITY STANDARDS

The Division of Environmental Quality (DEQ), Office of the Governor, Commonwealth of the Northern Mariana Islands (CNMI), pursuant to the *Commonwealth Environmental Protection Act, (CEPA)*, 1982, 2 CMC §§3101 to 3134, Public Law 3-23; the *Commonwealth Environmental Amendments Act, (CEAA)*, 1999, Public Law 11-103; and the *Commonwealth Groundwater Management and Protection Act (CGMPA)*, 1988, 2 CMC §§3311 to 3333, Public Law 6-12, of the Commonwealth of the Northern Mariana Islands, and under the provisions of the Clean Water Act, P.L. 92-500 (33 U.S.C. 1251 et. seq.), and in accordance with the Administrative Procedures Act (1 CMC §9101, et seq.) hereby notify the general public that the proposed Amendments to the CNMI Water Quality Standards as published in the Commonwealth Register, Volume 26, Number 04, April 23, at pages 22237 through and including 22292, and after expiration of appropriate time for public comment, have been adopted with the modifications set forth below:

PART 1 AUTHORITY

These regulations have been promulgated by the Division of Environmental Quality in accordance with the *Commonwealth Environmental Protection Act, (CEPA)*, 1982, 2 CMC §§3101 to 3134, Public Law 3-23; the *Commonwealth Environmental Amendments Act, (CEAA)*, 1999, Public Law 11-103; and the *Commonwealth Groundwater Management and Protection Act (CGMPA)*, 1988, 2 CMC §§3311 to 3333, Public Law 6-12, of the Commonwealth of the Northern Mariana Islands, and under the provisions of the Clean Water Act, P.L. 92-500 and ~~CMC Section 248~~(33 U.S.C. 1251 et. seq.) as force and effect of law and shall be binding on all persons and other legal entities subject to the jurisdiction of the Commonwealth of the Northern Mariana Islands. The Division of Environmental Quality shall apply these regulations and standards to all marine, fresh water bodies, and ground water in the Commonwealth.

PART 3 ANTIDegradation POLICY

3.1 Antidegradation Policy

- (2) Tier 2: Waters where the quality exceeds the levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water shall be maintained and protected, unless the Commonwealth determines that the lower water quality is necessary to accommodate important economic or social

development in the area in which the waters are located. In allowing such degradation to occur the Commonwealth shall assure the following: 1) the lower water quality be fully protective of existing and designated uses, (2) that significant impacts on water quality and economic and social development be subject to detailed water quality and economic analyses, (3) the cumulative impacts of all previous and reasonably foreseeable future actions be considered, (34)that inter governmental coordination and public participation be included in any determination, (45) the highest statutory and regulatory requirements be achieved for all new and existing point sources, and (56) that all cost effective and reasonable ~~best~~ Best management Management practices Practices for non-point source control be employed.

3.2 Requirements for Antidegradation Review

(a) Any action which may lower water quality is subject to review for consistency with the antidegradation policy. ~~Existing permit programs requiring antidegradation review. Such actions are meant to include,~~ at a minimum: Section 401 Water Quality Certifications issued under Section 10 of these standards; and actions requiring a CNMI Coastal Resources Management (CRM) Major Siting Permit. The antidegradation policy does not create a separate permitting program. The Director of DEQ may also require antidegradation review for any other actions which have the potential to lower water quality, such as (e.g. adoption or revision of regulations, land use plans, highway and drainage master plans, etc.) and draft/proposed legislation. However, the results of such review shall be in the form of a notification letter only, unless the action is required to obtain a permit, license, or approval from DEQ. The provision of detailed water quality and economic data and analysis, if determined to be necessary by the Director under the requirements above for Tier 2, shall be the responsibility of the party proposing the action.

3.2(c)(1)

(b) ~~“Sufficient evidence” to support a determination that Tier 3 applies may consist only of an area’s inclusion within the designated boundaries of a National Park, wildlife refuge, or marine sanctuary/marine protected area.~~

(ed) In determining whether a discharge of dredged or fill material is consistent with the antidegradation policy, DEQ shall evaluate whether the proposed discharge constitutes the least environmentally damaging practicable alternative for achieving the project purpose, applying the regulatory criteria set forth at 40 CFR 230.10(a) and its subparts, and DEQ shall evaluate whether the proposed discharge will cause or contribute to significant degradation of Commonwealth waters, applying the criteria set forth in 40 CFR 230.10(c). ~~actions proposed in wetland shall consist of review with respect to the provisions of th CWA Section 404(b)(1), as described in 40 CFR Part 230~~

PART 4 DEFINITIONS

"Commonwealth Waters" means all waters, fresh, brackish, or marine, including wetlands, around surrounding and or within the Commonwealth, and as further delineated and defined under the Marine Sovereignty Act of 1980 (P.L. 2-7) as provided for by Federal and Commonwealth law.

"Receiving Water(s)" means Commonwealth water(s) of the Commonwealth into which pollutants, wastes, or wastewaters are, or may be, discharged.

"Toxic pollutant" means those pollutants, or combinations of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available to the Administrator, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring.

"Wetlands" means an area which is inundated or saturated by surface or groundwater at a frequency and duration that is sufficient to support, and under normal circumstances does support, vegetation typically adapted for life in saturated soil conditions. Wetlands do not include those artificial wetlands intentionally created to provide treatment of wastewater or stormwater runoff.

PART 5 CLASSIFICATION OF WATER USES

5.1 Marine Waters

(a) CLASS AA - It is the objective of this class that these waters remain in their natural pristine state as nearly as possible with an absolute minimum of pollution or alteration of water quality from any human-related source or actions. To the extent practicable, the wilderness character of such areas shall be protected. Mixing zones for dredging and the discharge of dredged or fill material may be permitted as allowed under Part 9.6 these standards. ~~No~~ Mixing zones for any other discharge shall not be permitted.

5.2 Fresh Surface Waters

(b) Class 2 - It is the objective of this class of waters that their use for recreational purposes, propagation of fish and other aquatic life, and agricultural and industrial water supply not be limited in any way. The uses to be protected in this class of waters are all uses compatible with the protection and propagation of fish and other aquatic life, groundwater recharge, and with recreation in and on these waters. Compatible recreation may shall include limited body contact activities. Such waters shall not act as receiving waters for any discharge which has not received the best degree of treatment or control practical under technological and economic conditions and

compatible with the standards established for this class. A zone of mixing is permissible in these waters.

PART 7 BASIC WATER QUALITY CRITERIA APPLICABLE TO ALL WATERS

(a) All surface waters shall be free of ...

- (3) Substances in amounts sufficient to produce taste, ~~or odor, in the water~~ or detectable off flavor in the flesh of fish, ~~or in amounts sufficient to produce objectionable odor or, turbidity in the water,~~ or other conditions ~~in the receiving waters~~ that alter the naturally occurring characteristics of the water.

PART 8 SPECIFIC WATER QUALITY CRITERIA

8.1 Microbiological Requirements...

...

Fecal coliform and enterococci may originate from environmental sources as well as from human and animal fecal contamination. Where these microbiological standards are exceeded, a determination of the impact on public health and the environment may be based upon additional sampling, a sanitary survey of the drainage area contributing runoff to the contaminated water, ~~and or~~ special studies of the environmental sources of fecal coliform and enterococci in the waters of the CNMI. Procedures for beach closures and public advisories can be found in the CNMI's annual Implementation Plan of the USEPA Beach Grant, published yearly.

8.6 Salinity

Marine Waters: No alterations of the marine environment shall occur that would alter the salinity of marine or estuarine waters more than 10% ~~of the~~ from ambient conditions or which would otherwise adversely affect the indigenous biota and sedimentary patterns, except when due to natural causes.

A,AA

8.10 Oil and Petroleum Products

The concentration of oil or petroleum products shall not: ...

- (a) Be detectable as a visible film, sheen, or discoloration of the surface, or cause an objectionable odor.

(b) Cause tainting of fish or other aquatic life, be injurious to the indigenous biota, or cause objectionable taste in drinking water.

(c) Form an oil deposit on beaches or shoreline, or on the bottom of a body of water.

8.11 Toxic Pollutants

In order that the designated uses of Commonwealth waters be protected, all waters shall be free from toxic pollutants in concentrations that are lethal to, or that produce detrimental physiological responses in human, plant, or animal life. Detrimental responses include, but are not limited to, decreased growth rate and decreased reproductive success of resident or indicator species; and/or significant alterations in population, or community ecology, or receiving water biota.

A "toxic pollutant" is as defined by the CWA, Section 502(13). Criteria for toxic pollutants are given as either a numeric criteria or for mixtures of pollutants with no recommended criteria, are determined by multiplying an appropriate application factor by the concentration determined to be lethal to 50% of the most sensitive indigenous organism after 96 hours of exposure (96 LC 50). The 96 LC 50 values shall be determined by using bioassay procedures consistent with those described in the latest edition of Standard Methods for the Examination of Water and Wastewater (for ordering information, contact the American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005-2605, or go to <http://www.apha.org> to order on-line).

...

In order to determine compliance with this section, the Director may require additional studies of indicator organisms which include, but are not limited to, analyses of species diversity, species abundance, reproductive success, population density, and or growth anomalies. Additionally, effects on human health due to bio-concentration of toxins-toxic pollutants shall be considered.

Aquatic life and human health numeric criteria for the toxic pollutants included in the CWA, Section 307(a), list of priority pollutants, or any subsequent revision are incorporated by reference into the CNMI, Water Quality Standards, as Appendix I (National Recommended Water Quality Criteria: 2002, EPA-822-R-02-047, November 2002 (EPA 2002)). Revised criteria are published in the National Recommended Water Quality Criteria: 2002, EPA-822-R-02-047, November 2002 (EPA 2002), and listed in Appendix 1.

Part 8.12 General Considerations

(a) Effects of high temperature, biocides, pathogenic organisms or other deleterious substances at levels or combinations sufficient to interfere with aquatic life or

human health, or in amounts sufficient to interfere with the beneficial use of the water shall be evaluated, as at a minimum, by use of a 96-hour bioassay as described in the most recent editions of Standard Methods for the Examination of Water and Wastewater (for ordering information, contact the American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005-2605, or go to <http://www.apha.org> to order on-line). Survival of test organisms shall not be less than that in controls which utilize appropriate water. Failure to determine presence of toxic substances-pollutants by this method shall not preclude determinations of excessive levels of toxic substances pollutants on the basis of other criteria or methods.

...

(c) Part ~~6(e)7(a)(5)~~ shall be met upon showing that the land upon which the erosion occurred or is occurring is being managed in accordance with the CNMI Earthmoving and Erosion Control Regulations, ~~Commonwealth Register Vol. 15 No. 10, October 15, 1993 as amended~~, and that the discharge has received the best degree of treatment or control through the implementation of Best Management Practices (BMPs), or that a comprehensive conservation program is being actively pursued, and that the severity of impact of the residual soil reaching the receiving body of water is deemed by the Director to be acceptable.

(d) The health and life history characteristics of aquatic organisms in waters affected by controllable water quality factors shall not differ significantly from those for the same waters in areas unaffected by controllable water quality factors. Also, controllable water quality factors shall not cause a detrimental increase in concentrations of toxic substances pollutants found in bottom sediments or aquatic life.

PART 9 MIXING ZONE IN RECEIVING WATERS

9.5 Criteria for Mixing Zone

The following criteria shall be met in determining the location, size, shape, out-fall design and in-zone quality of mixing zones...

(b) Mixing zones shall be as small as practicable; no greater than 300 feet in all directions from the point of discharge, or a distance equal to the zone of initial dilution as calculated using a DEQ-approved plume model.

...

(f) ~~For discharges into freshwater streams and rivers the mixing zone will be limited to not more than 1/4 of the cross-sectional area and/or volume of flow of the stream, leaving at least 3/4 free as a Zone of Passage. The mixing zone shall not extend more than 5 stream widths downstream from the point of discharge. Mixing zones will not be allowed in standing bodies of water with no currents available for dispersion of pollutants.~~

9.6 Dredging and Discharge of Dredged or Fill Material

(a) Dredging and dredged spoil discharges generally result in short-term disruption and do not represent continuous discharge that will affect beneficial uses over a long term. Other in-water, construction-related activities, such as discharge from the dewatering of excavations and shoreline stabilization projects, can also cause short-term suspension of sediments similar to that caused by dredge and fill discharges. Mixing zones may therefore be granted for dredging activities, other in-water construction-related activities, and the discharge of dredged or fill material provided that: (1) all other requirements of this Part are met; (2) ~~the proposed activity meets all of the provisions of the CWA Section 404(b)(1) as described in 40 CFR Part 230;~~ and (3) the proposed activity meets/satisfies the antidegradation requirements described in Part 3 of these standards.

(b) Dredging and the discharge of dredged or fill material can adversely affect colonies of reef building organisms by burying them, by releasing contaminants such as hydrocarbons into the water column, by reducing light penetration through the water, and by increasing the level of suspended particulates. Coral organisms are extremely sensitive to even slight reductions in light penetration or increases in suspended particulates (i.e., turbidity). These adverse effects will cause a loss of productive colonies which in turn provide habitat for many species of highly specialized aquatic organisms.

....

In granting mixing zones for dredging activities, ~~or the discharge of dredged or fill material, or other in-water, construction-related activities that cause the suspension of sediments~~ in or near coral reef resources and sea grass beds, the Director shall assure that any disruption to beneficial uses is kept to an absolute minimum, and that all practicable measures are taken to prevent adverse impacts to resources of concern, taking into consideration the magnitude and duration of the proposed activity, and the proximity to resources of concern. This shall be satisfied by including placing conditions within the applicable permit or water quality certification conditions requiring the following:

- (1) The use and maintenance of best Best management Management practices Practices (BMPs) including such measures as "silt curtains", closed ("environmental") buckets, hydraulic dredges, or other methods as appropriate to control the drift and extent of suspended sediment plumes beyond the location of the dredge or fill activity;
- (2) Water quality monitoring requirements for turbidity and other pollutants of concern that may be identified or expected in the dredge spoil or fill material. Periodic aquatic ecosystem monitoring may also be required for

the purpose of assessing the effects of the activity on resources of concern and determining the necessity of additional mitigative measures;

- (3) The cessation of in-water activities during a period not to exceed 3 weeks around the annual coral spawning event (typically in June or July); For activities which have the potential to adversely affect coral reproduction, a stoppage period of 21 days, starting 5 days after the late May or early June full moon (to be determined by DEO), is required. The stoppage period, if determined to be applicable, shall be no less than twenty one (21) calendar days. In determining whether an activity has the potential to affect coral spawning, DEO shall consider all of the following: 1) the magnitude of the sediment plume generated by the proposed activity; 2) the most likely extent and direction(s) of drift of the sediment plume; 3) the type of sediment and its composition; and 4) the proximity of broadcast spawning coral species to the proposed activity and expected sediment plume.
- (4) A specified distance up-current and down-current from the permitted activity at which applicable water quality criteria must be met (i.e., a mixing zone). Mixing zones for dredge and fill activities shall be kept as small as practicable, and shall not exceed 300 feet down-current and 150 feet up-current. Down-current distance may be increased to up to 600 feet where typical currents can be shown to make the use of BMPs ineffective;
- ~~(5) Limitations or conditions under which permitted activities will be required to cease, including severe and/or frequent violations of water quality criteria outside the designated mixing zone, burial of resources located outside permitted dredge or fill boundaries, or conditions which, in the judgment of the Director, constitute an immediate threat of destruction or loss to resources of concern located outside of the permitted dredge or fill boundaries.~~
- ~~(6)~~(5) Any additional protective measures, limitations, monitoring or mixing zone requirements that the Director identifies as being necessary to protect resources of concern.

(c) The Director may require an applicant for a water quality certification or permit for dredging, ~~or the discharge of dredged or fill material, or similar in-water, construction-related activities,~~ to provide information necessary to support the development of monitoring plans, mitigation measures, or mixing zone requirements, such as surveys of existing currents, water quality data, and baseline aquatic ecosystem and indicator species surveys.

PART 10 WATER QUALITY CERTIFICATION

A water quality certification is required by the CWA, Section 401 of any applicant for a federal license or permit to conduct any activity including, but not limited

to, the construction or operation of facilities, ~~which that~~ may result in any discharge into waters of the United States. The Division of Environmental Quality shall issue a water quality certification for any proposed activity which: (1) complies with the applicable provisions of the CWA Sections 301, 302, 303, 306, and 307; ~~;~~ (2) complies with applicable provisions of the CNMI Water Quality Standards; ~~;~~ (3) will not interfere with the attainment or maintenance of the existing or designated use of the Commonwealth waters; ~~;~~ and (4) ~~all~~ appropriate and practicable steps have been taken to minimize potential adverse impacts of the discharge on aquatic life and human health, ~~as determined by the Director.~~

10.1 Application For Water Quality Certification

~~(a) An applicant~~ Applicants for water quality certification shall submit a completed, signed application, which shall for the CNMI Water Quality Certification. ~~The application shall include a description of the discharge involved in the activity for which certification is sought, with a request for certification signed by the applicant. The application shall include the following:~~

(a1) The name and address of the applicant(s);

(b2) A description of the facility or activity, and of any proposed discharge into Commonwealth waters which may result from the conduct of any activity including, but not limited to, the construction or operation of the facility. This description shall include the characteristic of the discharge, and the location or locations at which such discharge may enter Commonwealth waters;

(e3) If applicable, a description of the function and operation of equipment or facilities to control discharges, including specification of the methods of control to be used;

(d4) The estimated date or dates on which the activity will begin and end and the date or dates on which the discharge(s) will take place;

(e5) If applicable, a description of the methods and means being used or proposed to monitor the quality and characteristics of the discharge and the operation of equipment or facilities employed in the control of the proposed discharge;

(fb) The Director may require the submission of additional information after a certification application has been filed. If a certification application is incomplete or otherwise deficient, processing of the application shall not be completed until such time as the applicant has supplied the missing information or other-wise corrected the deficiency. The Director shall notify the applicant, in writing, within ~~fifteen~~ thirty (15/30) calendar days of the submission of an application, if an application is incomplete or otherwise deficient. For applications which are eligible for waiver of certification under part 10.3(g), the Director shall notify the applicant within fourteen (14) calendar days if an application is incomplete or otherwise deficient. A description of the type of

additional information necessary to complete the application or correct the deficiency will be included with such a written notice. Failure to provide additional information or to correct a deficiency shall be sufficient grounds for denial of certification;

(gc) The applicant is required to notify DEQ, in writing, of changes which may affect the application and certification process;

(hd) The applicant will be informed, in writing, by the Director when a certification application is considered complete. The Director shall act on a completed request for certification within a period which shall not exceed six months; and

(ie) ~~Every applicant~~ Applicants for water quality certifications shall may be required to pay a filing fee. Filing fees for water quality certification are dependent on the type of federal permit, the scale of the proposed activity, and its potential to affect water quality:

...

(4) If the permit for which certification is sought is a "nationwide permit" issued under Section 404 of the Clean Water Act (for which certification may be waived as allowed under Part 10.3(g)), a filing fee is not required.

...

This filing fee shall be submitted prior to the issuance of a public notification with the water quality certification application letter and shall not be refunded nor applied to any subsequent water quality certification following final action or denial of a water quality certification. Any Federal or CNMI government agency shall be exempt from paying filing fees.

10.2 Public Notification and Public Hearing

(a) Within five (5) calendar days after determining an application to be complete, and after the appropriate filing fee has been received, DEQ shall prepare transmit a draft public notification upon receipt of an application for a water quality certification to the applicant for review. The notice shall include the name and address of the applicant, and a brief description of the activity and of the discharge involved in the activity for which certification is being sought.

(ab) The notice will include the name and address of the applicant, and a brief description of the activity and of the discharge involved in the activity for which certification is being sought. The applicant shall review the draft notice upon receipt, and within five (5) calendar days, provide comments to DEQ in writing regarding any changes the applicant believes to be necessary. If DEQ does not receive any written comments from the applicant after five (5) calendar days, the public notice shall be deemed final, and DEQ shall notify the applicant to publish the notice as specified below under Part 10.2(c). Otherwise, DEQ shall prepare the final public notice, taking into

consideration comments received from the applicant, and transmit the final public notice to the applicant within five (5) calendar days for publication.

(bc) Publication of the notice shall be the responsibility of the applicant. The notice shall be published once in a minimum of two newspapers, one of which has a daily circulation, and a second time in at least one newspaper prior to the completion of the public comment period.

(ed) The public comment period shall be for at least 30 days from the date of the first publication of the notice. The Director may, upon request, provide the opportunity for public hearing(s) to consider issuance of a water quality certification. The Director shall inform the applicant, in writing, that such action has been taken.

~~(d) Publication of the notice shall be the responsibility of the applicant. All publication costs related to public notification(s) and hearing(s) shall be paid by the applicant to the necessary and appropriate newspaper agency(ies) prior to publication date.~~

10.3 Determination of Water Quality Certification

~~(b) DEQ shall not grant a water quality certification for any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the waters of the United States unless the activity meets all of the provisions of the CWA 404(b)(1) as described in 40 CFR Part 230.~~

(eb) DEQ shall not grant a water quality certification for any activity unless the activity meets all of the applicable has been determined to be consistent with antidegradation policy through the satisfaction of all applicable provisions contained in Part 3 of these standards.

(c) The contents of the Water Quality Certification issued by DEQ shall include:

...

(5) a statement of any conditions which the Director deems necessary ~~or desirable~~ with respect to the discharge or the activity, including the conditions specified under Part 9.6 of these standards for dredge and fill activities, and

(6) ~~any such other information as the Director may determine~~ to be appropriate.

(d) If the Director, after considering the information submitted pursuant to 10.3(a), ~~the Director determines~~ that there is reasonable assurance that applicable water quality standards will not be violated, and the proposed methods of control will be applied to a discharge which is the result of any activity including, but not limited to, the construction and operation of facilities, then the Director shall so certify.

...

(f) If the Director fails or refuses to act on a completed request application for certification within six months a reasonable period of time (which shall not exceed six months) after receipt of a complete application, then the certification requirements of this section shall be waived with respect to federal applications.

...

(h) Storm water discharges associated with industrial and construction site activities, as described in 40 CFR Part 122.26, covered under a United States Environmental Protection Agency, National Pollutant Discharge Elimination System (NPDES) General Permit, may be allowed provided the following conditions are met:

...

(3) A storm water pollution prevention plan for storm water discharges associated with industrial activities or from construction sites is approved by the Director of DEQ prior to submission of the Notice of Intent (NOI), ~~which is EPA Form 3510-6~~. For facilities with current storm water discharges associated with industrial activities, a storm water plan is submitted within thirty (30) calendar days of adoption of this regulation;

(4) A NOI to be covered by the general permit for ~~discharges associated with the industrial activities or for discharges associated with industrial activities~~ or for discharges from construction activities is submitted to DEQ and USEPA, Region IX, accompanied by a pollution prevention plan approval letter from DEQ;

10.5-4 Water Quality Certification-General Provisions

(b) If the Director, after the initial inspection pursuant to section 10.4 (a), determines that operation of the proposed facility or activity will violate applicable water quality standards, the Director shall so notify the applicant and the licensing or permitting agency.

(c) Where a licensing or permitting agency, ~~following a public hearing~~, suspends a license or permit after receiving the Director's notice and recommendation pursuant to section 10.3, the applicant may submit evidence to the Director, showing that the facility or activity has been modified so as not to violate applicable water quality standards. If the Director determines that the applicable water quality standards have will not been be violated, the Director shall so notify the licensing or permitting agency.

~~—(d) The Director may, and upon request shall, provide licensing and permitting agencies with determinations, definitions, and interpretations to the meaning and content of the CNMI water quality standards. The Director may, and upon request shall, also advise licensing and permitting agencies as to the status of compliance by dischargers with the conditions and requirements of applicable water quality standards.~~

10.65 Water Quality Certification-Adoption of New or Revised Water Quality Standards

To the extent permitted by applicable law, all water quality certifications to be issued by DEQ shall require the licensing or permitting authority to include a clause in the license or permit advising the licensee or permittee that the license or permit shall be subject to amendment or modification ~~if and to the extent that existing water quality standards are made more stringent, or new water quality standards are adopted, by DEQ upon adoption or revision of water quality standards.~~

PART 11 LAND DISPOSAL OF WASTEWATER

11.1 General Applicability

Any action or activity that results in the disposal of wastewater on land in excess of fifty-five (55) gallons per day requires the approval of the Director of DEQ approval. Types of wastewater and pollutants discharges that need approval prior to land disposal include but are not limited to reverse osmosis brine and oil/water separator discharges.

(a) The disposal of human or animal wastewater is excluded under these requirements as ~~this~~ these activities is ~~are~~ regulated under the CNMI Individual Wastewater Disposal System Wastewater Treatment and Disposal regulations Rules and Regulations.

11.2 Submission of Land Disposal Plans

...

(a) The plan for the land disposal shall include the following items:

...

(5) In the event that a land disposal plan requires seepage as a mechanism for the removal of fluids, the applicant must perform a percolation test on the proposed site and submit the results to the Director of DEQ.

(b) The applicant must pay a \$500 filing fee for all land disposal plans that are submitted to the Division of Environmental Quality for review.

...

(2) All government agencies shall be exempt from paying a this fee.

...

11.4 Land Disposal in Groundwater Recharge Areas

Land areas other than coastal lands are defined as groundwater recharge areas. The applicant must ~~make~~provide a determination of the underlying geology, aquifer characteristics, groundwater quality, location and proximity of all nearby wells, and current and potential future use of the underlying groundwater for public water supply based on a review of available information including United States Geological Survey (USGS) maps and reports, Commonwealth Utilities Corporation (CUC) well field maps, and the nearby well drilling records. DEQ may assist the applicant in making such determinations where sufficient information exists. The applicant may provide a determination on the basis of a report from a professional hydrogeologist. Groundwater recharge areas are divided into three subcategories:

- (a) Primary groundwater recharge zones are defined as:
- (1) Areas designated as Class I Groundwater Management Zones in the CNMI Well Drilling and Well Operations Regulations; ~~or~~
 - (2) Areas contributing surface infiltration to a geologic formation that is saturated with fresh ground water that is not in contact with seawater (i.e. "perched" groundwater) and is capable of transmitting quantities of fresh water in sufficient quantity to sustain a public water supply well; ~~or~~
 - (3) Areas that can reasonably be considered, on the basis of maps provided by USGS or CUC, to be within active or future public water supply well fields ~~operated as public water supplies; or~~
 - (4) Areas contributing surface infiltration to a geologic formation that discharges to a known spring or stream that currently is or is capable of transmitting quantities of fresh water in sufficient quantity to be used as a public water supply; ~~or~~

...

(inserted between parts "(a)" and "(b)");

Areas which do not meet any of the criteria for definition as a primary groundwater recharge zone as described in 11.4(a) shall be classified as either a secondary groundwater recharge zone, or a brackish groundwater recharge zone:

- (b) Secondary groundwater recharge zones are defined as areas designated as Class II Groundwater Management Zones by the CNMI Well Drilling and Well Operations Regulations; ~~or~~ areas contributing surface infiltration to a geologic formation that is saturated with ground water with less than 500 parts per million total dissolved solids, and currently or is capable of transmitting quantities of water in sufficient quantities to sustain a public water supply well; ~~;~~ or areas with groundwater surface elevations equal to or greater than 1 foot as mapped by USGS.

- (c) Brackish groundwater recharge zones are defined as areas designated as Class III Groundwater Management Zones by the CNMI Well Drilling and Well Operations Regulations; ~~or~~ areas contributing surface infiltration to a geologic formation that is saturated with brackish ground water with greater than 500 parts per million total dissolved solids; ~~;~~ or areas with groundwater surface elevations less than 1 foot as mapped by USGS.

11.5 Discharge Limitations for Land Disposal of Wastewater

Discharge limitations for wastewater ~~that is~~intended to be land disposed in groundwater recharge areas ~~is~~ are dependent on the subcategory of groundwater recharge area and volume of wastewater to be disposed.

PART 13 NOTICES OF VIOLATIONS, ADMINISTRATIVE ORDERS, AND PENALTIES

13.1 Power to Uphold Water Quality Standards

The Division is responsible for enforcement of these regulations in accordance with the applicable laws of the CNMI and the Clean Water Act and its amendments. Where Commonwealth waters designated for recreational use fall below the CNMI water quality standards as set forth in these regulations, the Director ~~in consultation with the Director,~~ shall have the authority to suspend public use of ~~commonwealth~~ Commonwealth waters or take other action which in the Director's discretion is necessary to protect the public health, safety and welfare.

13.2 Enforcement Actions

In accordance with 2 CMC § 3131(a), if the Director has reason to believe a violation of the provisions of the Act, these standards, and/or the terms of any water quality certification, waiver of water quality certification, or land disposal approval issued pursuant to the Act and these standards, has occurred or is occurring, the Director

may issue any necessary order to enforce the aforementioned provisions and conditions. Such order shall be in the form of a written warning, Notice of Violation, Cease and Desist Order, or Administrative Order signed by the Director or his authorized representative and shall provide notice of the facts constituting the violation, penalties that may be imposed, and, where appropriate, provide a reasonable timeframe in which to take corrective action.

13.4 Hearings

...

(b) Procedures for hearings shall be conducted in accordance with the Administrative Procedures Act (APA), 1 CMC § 9101, et seq., and as follows:

~~(1) — The Director shall serve notice of the hearing in accordance with APA § 9109(a) at least ten (10) calendar days before the scheduled hearing date.~~

~~(2) — The alleged violator or "respondent" shall submit a written response to the Order at least five (5) calendar days before the hearing. The written request for a hearing may serve as the response to the Order. The request for hearing or "response" shall clearly and directly admit, deny, or explain all the factual allegations contained in the Order with regard to which the respondent has knowledge. Where respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. The response shall also state (1) the circumstances or arguments which are alleged to constitute the grounds of defense, and (2) the facts which respondent intends to place at issue. Failure to admit, deny, or explain any material factual allegation contained in the Order may be deemed an admission of the allegation.~~

~~(3) — The respondent may also request an informal Settlement Conference. An Informal Settlement Conference shall not affect the respondent's obligation to file a timely request for hearing. If a settlement is reached the parties shall forward a proposed consent order for the approval of the Director.~~

~~(4) — The Director or designee will preside over the hearing. The Presiding Officer shall control the taking of testimony and evidence and shall cause to be made an audio, audio-video, or stenographic record of the hearing. The type of record made shall be at the discretion of the Presiding Officer. Evidence presented at the hearing need not conform with the prescribed rules of evidence, but may be limited by the Presiding Officer in any manner she/he reasonably determines to be just and efficient and promote the ends of justice. The Presiding Officer shall issue a written decision within twenty one (21) calendar days of the close of the enforcement hearing. The decision shall include written findings of fact and conclusions of law. The standard of proof for such a hearing and decisions shall be the preponderance of the evidence.~~

~~(5) — The decision of the Director or Presiding Officer shall be final. An appeal from the final enforcement decision shall be to the Commonwealth Superior Court within thirty (30) calendar days following issuance of the final agency decision.~~

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
WATER QUALITY STANDARDS

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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS WATER QUALITY STANDARDS

PART 1 AUTHORITY

These regulations have been promulgated by the Division of Environmental Quality in accordance with the *Commonwealth Environmental Protection Act, (CEPA)*, 1982, 2 CMC §§3101 to 3134, Public Law 3-23; the *Commonwealth Environmental Amendments Act, (CEAA)*, 1999, Public Law 11-103; and the *Commonwealth Groundwater Management and Protection Act (CGMPA)*, 1988, 2 CMC §§3311 to 3333, Public Law 6-12, of the Commonwealth of the Northern Mariana Islands, and under the provisions of the Clean Water Act, P.L. 92-500 (33 U.S.C. 1251 et. seq.) as force and effect of law and shall be binding on all persons and other legal entities subject to the jurisdiction of the Commonwealth of the Northern Mariana Islands. The Division of Environmental Quality shall apply these regulations and standards to all marine, fresh water bodies, and ground water in the Commonwealth.

PART 2 PURPOSE

The purpose of these regulations is to establish standards for water quality for all Commonwealth waters and ground water in order to protect their use and value for propagation of fish and wildlife, recreational purpose, public water supply use, and taking into consideration their use and value for commerce.

PART 3 ANTIDegradation POLICY

3.1 Antidegradation Policy

It shall be the public policy of the Commonwealth of the Northern Mariana Islands that:

(a) The protection, maintenance, conservation, and improvement of the quality of the waters for the growth and propagation of aquatic life, for marine research and for the conservation of coral reefs and wilderness areas, and for domestic (including drinking water), agricultural, commercial, industrial, recreational and other uses are an historic and legal right of the people of the Northern Mariana Islands.

(b) The achievement of the water quality standards of the Commonwealth of the Northern Mariana Islands is in the best interest of the protection of public health and the environment.

(c) The following three tiers of protection for water quality are hereby established:

(1) Tier 1: In all waters, the existing uses and the minimum level of water quality necessary to protect the existing uses shall be maintained and protected. In

no case shall any action be allowed which would lower water quality below that necessary to maintain and protect designated and existing uses. The minimum level of water quality necessary to protect a designated or existing use shall be the water quality criteria for the corresponding designated use classification. In water bodies or segments of water bodies where the existing level of water quality routinely falls below or just above the applicable water quality criteria for designated uses, actions that would further lower water quality are prohibited.

(2) Tier 2: Waters where the quality exceeds the levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water shall be maintained and protected, unless the Commonwealth determines that the lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation to occur the Commonwealth shall assure the following: 1) the lower water quality be fully protective of existing and designated uses, (2) that significant impacts on water quality and economic and social development be subject to detailed water quality and economic analyses, (3) the cumulative impacts of all previous and reasonably foreseeable future actions be considered, (4) that inter governmental coordination and public participation be included in any determination, (5) the highest statutory and regulatory requirements be achieved for all new and existing point sources, and (6) that all cost effective and reasonable Best Management Practices for non-point source control be employed.

(3) Tier 3: High quality waters which constitute an outstanding Commonwealth resource, such as waters of National Parks, marine sanctuaries, wildlife refuges and waters of exceptional recreational or ecological significance shall be maintained and protected. Actions which would lower water quality in such waters are prohibited, with the exception of temporary degradation deemed necessary for the construction of important Park infrastructure, pollution control devices, and best management practices designed to improve water quality.

(d) There shall be no point or non-point discharge of untreated sewage or other wastewater into any potential or existing ground or surface source of drinking water.

(e) All sewage, wastewater, and any other matter shall receive a degree of treatment necessary to protect the beneficial uses of the Commonwealth waters before discharging.

(f) The existing uses in wetlands and the level of water quality necessary to protect those uses shall be protected.

3.2 Requirements for Antidegradation Review

(a) Any action which may lower water quality is subject to review for consistency with the antidegradation policy. Existing permit programs requiring antidegradation review include, at a minimum: Section 401 Water Quality Certifications issued under Section 10

of these standards; and actions requiring a CNMI Coastal Resources Management (CRM) Major Siting Permit. The antidegradation policy does not create a separate permitting program. The Director of DEQ may also require antidegradation review for any other actions which have the potential to lower water quality, such as adoption or revision of regulations, land use plans, highway and drainage master plans, and draft/proposed legislation. However, the results of such review shall be in the form of a notification letter only, unless the action is required to obtain a permit, license, or approval from DEQ. The provision of detailed water quality and economic data and analysis, if determined to be necessary by the Director under the requirements above for Tier 2, shall be the responsibility of the party proposing the action.

(b) Reviews of all applicable actions shall consider all aspects of the proposed action that may affect water quality, including temporary, long term, and cumulative impacts.

(c) Reviews of all applicable actions shall be documented in writing, and shall include a determination by the Director of the following:

(1) The existing level of water quality, and the appropriate tier of protection for the area affected by the proposed action;

(a) In areas of the Commonwealth where insufficient data exists to reasonably determine existing water quality, Tier 2 will be presumed to apply, unless sufficient evidence exists that could reasonably support a determination of Tier 1 or Tier 3.

(2) The extent to which the proposed action is reasonably expected to lower water quality;

(3) Statements detailing whether the proposed activity meets the requirements of the antidegradation policy appropriate to the applicable tier of protection. For actions which would lower water quality in a Tier 2 water, the statement must include a detailed determination addressing compliance with each of the Tier 2 requirements listed in Part 3(c)(2).

(d) In determining whether a discharge of dredged or fill material is consistent with the antidegradation policy, DEQ shall evaluate whether the proposed discharge constitutes the least environmentally damaging practicable alternative for achieving the project purpose, applying the regulatory criteria set forth at 40 CFR 230.10(a) and its subparts, and DEQ shall evaluate whether the proposed discharge will cause or contribute to significant degradation of Commonwealth waters, applying the criteria set forth in 40 CFR 230.10(c).

PART 4 DEFINITIONS

"Acute exposure value" - The threshold value at or below which there should be no unacceptable effects to aquatic organisms and their uses if the one-hour concentration does

not exceed that value more than once every three years on the average.

"Acute Toxicity" means the degree to which a pollutant, discharge, or water sample causes a rapid adverse impact to aquatic organisms.

"Ambient Conditions" means the existing water quality conditions at a specific location not influenced by anthropogenic sources.

"Brackish Waters" means waters with dissolved inorganic ions (salinity) greater than 500 ppm (parts per million), but less than 30,000 ppm.

"Chronic exposure value" - The threshold value at or below which there should be no unacceptable effects to aquatic organisms and their uses if the four-day concentration does not exceed that value more than once every three years on the average.

"Chronic Toxicity" means the degree to which a pollutant, discharge, or water sample causes a long-term adverse impact to aquatic organisms, such as an alteration in growth rate or reproduction.

"Coastal Waters" means all waters of a depth less than twenty (20) fathoms, or waters up to distance of 1,000 feet off-shore from the mean high water mark, whichever is the greater distance from the shoreline.

"Commonwealth" means Commonwealth of the Northern Mariana Islands.

"Commonwealth Waters" means all waters, fresh, brackish, or marine, including wetlands, surrounding or within the Commonwealth, as provided for by Federal and Commonwealth law.

"CWA" means the Clean Water Act, P.L. 92-500 as amended: 33 U.S.C. 1251 et seq.

"DEQ" means the Commonwealth Division of Environmental Quality.

"Director" means the Director of the Commonwealth Division of Environmental Quality.

"Discharger" means any person who emits any wastewater, substance, or material into the waters of the Commonwealth whether or not such substance causes pollution.

"Existing Use(s)" means those uses actually attained in a waterbody on or after November 28, 1975, whether or not they are included in the water quality standards (40 CFR 131.3.)

"Fresh Waters" means all waters with dissolved inorganic ions of less than 500 ppm.

"Mixing Zone" means the area or volume of a water body within which effluent(s) shall become physically mixed with the receiving waters through initial dilution. Initial dilution is the process through which the wastewater immediately mixes with the receiving water due to the momentum of the waste discharge and the difference in density between the discharge and the receiving water.

"Oceanic Waters" means all other marine waters outside of the twenty (20) fathom depth contour or greater than 1,000 feet off-shore from the mean high water mark, whichever is the greater distance from the shoreline.

"Pollutant" means any substance that causes pollution.

"Pollution" means the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.

"Receiving Water(s)" means Commonwealth water(s) into which pollutants, wastes, or wastewaters are, or may be, discharged.

"Toxic" means lethal, oncogenic, teratogenic or mutagenic, or otherwise damaging to man or other living organisms.

"Toxic pollutant" means those pollutants, or combinations of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available to the Administrator, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring.

"Wastewater" means sewage, industrial waste, or other waste, or any combination of these, whether treated or untreated, plus any admixed land runoff.

"Wetlands" means an area which is inundated or saturated by surface or groundwater at a frequency and duration that is sufficient to support, and under normal circumstances does support, vegetation typically adapted for life in saturated soil conditions. Wetlands do not include those artificial wetlands intentionally created to provide treatment of wastewater or stormwater runoff.

"Zone of Passage" means a continuous water route of the volume, area, and quality necessary to allow passage of free-swimming and drifting organisms with no significant effects produced on their populations.

PART 5 CLASSIFICATION OF WATER USES

5.1 Marine Waters

(a) CLASS AA - It is the objective of this class that these waters remain in their natural pristine state as nearly as possible with an absolute minimum of pollution or alteration of water quality from any human-related source or actions. To the extent practicable, the wilderness character of such areas shall be protected. Mixing zones for dredging and the discharge of dredged or fill material may be permitted as allowed under Part 9.6 these standards. Mixing zones for any other discharge shall not be permitted.

The uses to be protected in this class of waters are the support and propagation of shellfish and other marine life, conservation of coral reefs and wilderness areas, oceanographic research, and aesthetic enjoyment and compatible recreation with risk of water ingestion by either children or adults.

The classification of any water area as Class AA shall not preclude other uses of such waters compatible with these objectives and in conformance with the criteria applicable to them.

(b) CLASS A - It is the objective of this class of waters that their use for recreational purposes and aesthetic enjoyment be protected.

Any other use shall be allowed as long as it is compatible with the protection and propagation of fish, shellfish, and wildlife, and with compatible recreation with risk of water ingestion by either children or adults.. Such waters shall be kept clean of solid waste, oil and grease, and shall not act as receiving waters for any effluent which has not received the best degree of treatment of control practicable under existing technology and economic conditions and compatible with standards established for this class. A mixing zone is approvable in such waters.

5.2 Fresh Surface Waters

(a) Class 1 - It is the objective of this class that these waters remain in their natural state as nearly as possible with an absolute minimum of pollution from any human-caused source. To the extent possible, the wilderness character of such areas shall be protected. Wastewater discharges and zone of mixing into these waters are prohibited.

The uses to be protected in this class of water are for domestic water supplies, food processing, the support and propagation of aquatic life, groundwater recharge, compatible recreation and aesthetic enjoyment including water contact recreation with risk of water ingestion by either children or adults.

(b) Class 2 - It is the objective of this class of waters that their use for recreational purposes, propagation of fish and other aquatic life, and agricultural and industrial water

supply not be limited in any way. The uses to be protected in this class of waters are all uses compatible with the protection and propagation of fish and other aquatic life, groundwater recharge, and with recreation in and on these waters. Compatible recreation shall include limited body contact activities. Such waters shall not act as receiving waters for any discharge which has not received the best degree of treatment or control practical under technological and economic conditions and compatible with the standards established for this class. A zone of mixing is permissible in these waters.

5.3 Protection of Wetlands

Wetlands are waters of the Commonwealth and are subject to the provisions of this rule. Point or non-point sources of pollution shall not cause destruction or impairment of wetlands. All wetlands are to remain in as near their natural state as possible and shall be protected to support to propagation of aquatic and terrestrial life. All provisions of these regulations apply to all wetlands unless replaced by site specific standards adopted by the Commonwealth and approved by EPA.

5.4 Protection of Ground Water

Whereas the Commonwealth is almost entirely dependent on ground water for its drinking water supplies, these regulations set water quality standards for surface waters and land disposal activities to ensure the protection of this natural resource. Requirements for land disposal activities will be determined according to groundwater management zones promulgated under the CNMI Well Drilling and Well Operation Regulations for Saipan; for Tinian and Rota these requirements will be dependent on known geological and aquifer characteristics, lateral distances to nearby water wells, and general quality and vulnerability of existing ground water until specific groundwater quality management zones are developed.

PART 6 CLASSIFICATION AND ESTABLISHMENT OF WATER USE AREAS

6.1 Rota

(a) CLASS AA

All coastal and oceanic waters surrounding Rota except for those waters delineated in CLASS A.

(b) CLASS A

The coastal waters known as East Harbor and West Harbor.

(c) CLASS 1

All natural (not man-made) fresh surface waters on Rota.

6.2 Tinian and Agiguan

(a) CLASS AA

All coastal and oceanic waters surrounding Tinian and Agiguan except for those waters delineated in CLASS A.

(b) CLASS A

The coastal waters known as San Jose Harbor.

(c) CLASS 1

All fresh surface waters on Tinian and Agiguan.

6.3 Saipan

(a) CLASS AA

All coastal and oceanic waters surrounding Saipan except for those waters delineated in CLASS A.

(b) CLASS A

The waters up to 3,000 feet from the mean high water mark on the shoreline from the entrance to Smiling Cove marina to Saddok As Agatan, inclusive of the waters within Smiling Cove marina and its entrance channel.

The waters surrounding the Agingan Wastewater Treatment Plant, within a 1,000 foot radius of the outfall.

(c) CLASS 1

All fresh surface waters on Saipan.

6.4 Northern Islands (Farallon de Medinilla, Anatahan, Sariguan, Guguan, Alamagan, Pagan, Agrihan, Asuncion, Maug, Farallon de Pajaros)

(a) CLASS AA

All coastal and oceanic waters surrounding the Northern Islands except for those delineated in CLASS A.

(b) CLASS A

The coastal and oceanic waters surrounding Farallon de Medinilla.

(c) CLASS 1

All fresh surface waters in the Northern Islands.

PART 7 BASIC WATER QUALITY CRITERIA APPLICABLE TO ALL WATERS

(a) All surface waters shall be free of substances attributable to domestic, industrial, or other controllable sources of pollutants and shall be capable of supporting desirable aquatic life and be suitable for recreation in and on the water.

This part will be subject to verification by monitoring as may be prescribed by the Director to assure freedom from any of the following conditions:

- (1) Materials that will settle to form objectionable sludge or bottom deposits.
- (2) Floating debris, oil, grease, scum, or other floating materials.
- (3) Substances in amounts sufficient to produce taste, odor, or detectable off flavor in the flesh of fish; or in amounts sufficient to produce odor or turbidity in the water, or other conditions that alter the naturally occurring characteristics of the water.
- (4) High temperatures; biocides; pathogenic organisms; toxic, corrosive, or other deleterious substances at levels or in combinations sufficient to be toxic or harmful to human health or aquatic life, or in amounts sufficient to interfere with any beneficial use of the water.
- (5) Soil particles resulting from erosion on land involved in earth work, such as construction of public works; highways; subdivisions; recreational; commercial, or industrial development; or the cultivation and management of agricultural lands that adversely affect beneficial use.
- (6) Substances or conditions or combinations thereof in concentration which produce undesirable aquatic life.

PART 8 SPECIFIC WATER QUALITY CRITERIA

8.1 Microbiological Requirements
(a) Fecal Coliform

Applicable to:

The fecal coliform concentration shall not exceed a geometric mean of 200 CFU's per one hundred milliliter based on samples taken over a thirty-day period nor shall any single sample exceed 400 CFU's per one hundred milliliter at any time.

All Waters

(b) Enterococci

The Enterococci concentration shall not exceed a geometric mean of 35 per one hundred milliliters based on samples taken over a period of 30 days. No instantaneous reading shall exceed 104 enterococci / 100 ml.

AA

The Enterococci concentration shall not exceed a geometric mean of 33 per one hundred milliliters based on samples taken over a period of 30 days. No instantaneous reading shall exceed 61 enterococci / 100 ml.

1

The Enterococci concentration shall not exceed a geometric mean of 35 per one hundred milliliters based on samples taken over a period of 30 days. No instantaneous reading shall exceed 276 enterococci / 100 ml.

A

The Enterococci concentration shall not exceed a geometric mean of 33 per one hundred milliliters based on samples taken over a period of 30 days. No instantaneous reading shall exceed 108 enterococci / 100 ml.

2

(c) E.coli

The E. Coli concentration shall not exceed a geometric mean of 126 per one hundred milliliters based on samples taken over a period of 30 days. No instantaneous reading

1

shall exceed 235 CFU / 100 ml.

The E. Coli concentration shall not exceed a geometric mean of 126 per one hundred milliliters based on samples taken over a period of 30 days. No instantaneous reading shall exceed 406 CFU / 100 ml.

2

Fecal coliform and enterococci may originate from environmental sources as well as from human and animal fecal contamination. Where these microbiological standards are exceeded, a determination of the impact on public health and the environment may be based upon additional sampling, a sanitary survey of the drainage area contributing run-off to the contaminated water, or special studies of the environmental sources of fecal coliform and enterococci in the waters of the CNMI. Procedures for beach closures and public advisories can be found in the CNMI's annual Implementation Plan of the USEPA Beach Grant.

8.2 pH

Applicable
To

pH shall not deviate more than 0.5 units from a value of 8.1.

A,AA

pH shall not deviate more than 0.5 from ambient conditions and shall not be lower than 6.5 nor higher than 8.5.

1,2

8.3 Nutrients

Parameter	Concentration Shall Not Exceed (mg/l)	Applicable To
Nitrate-Nitrogen	0.20	AA
	0.50	A
Total Nitrogen	0.4	AA
	0.75	A,1
	1.50	2
Orthophosphate	0.025	AA
	0.05	A
	0.10	1,2

Parameter	Concentration Shall Not Exceed (mg/l)	Applicable To
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Total Phosphorus	0.025	AA
	0.05	A
	0.10	1,2
Ammonia (un-ionized)	0.02	AA,A,1,2

8.4 Dissolved Oxygen

Concentration of dissolved oxygen in all waters shall not be less than 75% saturation. Where natural conditions cause lower dissolved oxygen levels, controllable water quality factors shall not cause further reductions.

8.5 Total Filterable Suspended Solids

Applicable
To

Concentrations of suspended matter at any point shall not be increased from ambient conditions at any time, and should not exceed 5 mg/l except when due to natural conditions.

AA,1

Concentrations of suspended matter at any point shall not be increased from ambient conditions at any time, and should not exceed 40 mg/l except when due to natural conditions.

A,2

8.6 Salinity

Marine Waters: No alterations of the marine environment shall occur that would alter the salinity of marine or estuarine waters more than 10% from ambient conditions or which would otherwise adversely affect the indigenous biota and sedimentary patterns, except when due to natural causes.

A,AA

Fresh water: The maximum allowable amount of chlorides and sulfates shall be 250 mg/l, and the Total Dissolved Solids shall not exceed 500 mg/l or 133% of the ambient condition. The salinity of fresh water sources and wetlands shall not be

1,2

increased more than 20% above ambient conditions.

8.7 Temperature

Water temperature shall not vary by more than 1.0°C from the ambient conditions.

AA,A,1,2

8.8 Turbidity

Turbidity at any point, as measured by nephelometric turbidity units (NTU), shall not exceed 0.5 NTU over ambient conditions.

AA,1

Turbidity values (NTU) at any point shall not exceed 1.0 NTU over ambient conditions.

A,2

8.9 Radioactive Materials

Discharge of radioactive materials at any level into any waters of the Commonwealth is strictly prohibited.

8.10 Oil and Petroleum Products

The concentration of oil or petroleum products shall not:

- (a) Be detectable as a visible film, sheen, or discoloration of the surface, or cause an objectionable odor.
- (b) Cause tainting of fish or other aquatic life, be injurious to the indigenous biota, or cause objectionable taste in drinking water.
- (c) Form an oil deposit on beaches or shoreline, or on the bottom of a body of water.

8.11 Toxic Pollutants

In order that the designated uses of Commonwealth waters be protected, all waters shall be free from toxic pollutants in concentrations that are lethal to, or produce detrimental physiological responses in human, plant, or animal life. Detrimental responses include, but are not limited to: decreased growth rate and decreased reproductive success of resident or indicator species; or significant alterations in population, community ecology, or receiving water biota.

Criteria for toxic pollutants are given as either a numeric criteria or for mixtures of pollutants with no recommended criteria, are determined by multiplying an appropriate

application factor by the concentration determined to be lethal to 50% of the most sensitive indigenous organism after 96 hours of exposure (96 LC 50). The 96 LC 50 values shall be determined by using bioassay procedures consistent with those described in the latest edition of Standard Methods for the Examination of Water and Wastewater (for ordering information, contact the American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005-2605, or go to <http://www.apha.org> to order on-line).

In order to determine compliance with this section, the Director may require additional studies of indicator organisms which include, but are not limited to, analyses of species diversity, species abundance, reproductive success, population density, or growth anomalies. Additionally, effects on human health due to bio-concentration of toxic pollutants shall be considered.

Aquatic life and human health numeric criteria for the toxic pollutants included in the CWA Section 307(a) list of priority pollutants, or any subsequent revision are incorporated by reference into the CNMI Water Quality Standards, as Appendix I (National Recommended Water Quality Criteria: 2002, EPA-822-R-02-047, November 2002 (EPA 2002)).

- (1) **Acute Toxicity Standards:** All commonwealth waters shall be free from pollutants in concentrations which exceed the acute standards listed respectively for fresh and marine waters (EPA 2002), Appendix 1.
- (2) **Chronic Toxicity Standards:** All commonwealth waters shall be free from pollutants in concentrations which on average during any 24-hour period exceed the chronic standards listed respectively for fresh and marine waters (EPA 2002), Appendix 1.

Criteria are listed below for maximum levels of total residual chlorine allowable in Commonwealth Waters.

Pollutant	FRESH WATER		MARINE WATER	
	Acute	Chronic	Acute	Chronic
Chlorine (mg/L)	19	11	13	7.5

In waters designated for use as a source of public water supply, the human health numeric criteria shall be those listed in the EPA 2002 publication, Appendix 1, for water plus organism consumption and shall be at least as stringent as the maximum contaminant levels (MCL's) for drinking water established in the CNMI Drinking Water Regulations. In waters not designated as a source of public water supply, the human health numeric criteria shall be those listed in the EPA 2002 publication, Appendix 1, for organism consumption only. The human health numeric criteria for arsenic in the EPA 2002 publication are an

exception. These arsenic criteria are excluded from the CNMI standards, and instead, the CNMI human health criterion for arsenic is 5 ug/L.

Site specific criteria shall be developed for toxic pollutants for which: numeric water quality criteria have not been established; a species inhabiting a given site may be more or less sensitive than those used in developing the established criteria; the water chemistry (e.g. ,pH, hardness, temperature, suspended solids, etc) appears to differ significantly from the laboratory water used in developing the criteria; or the residual toxicity or synergistic (combined) effect of pollutants requires analyses and development of site specific criteria.

Site specific criteria for aquatic life and human health shall be derived from the CWA, Section 304(a)(1) water quality criteria or by methods published by the U.S. Environmental Protection Agency as described in (45 Federal Register 79318), November 28, 1980.

In areas where site specific criteria are developed, DEQ shall regulate point source discharges by establishing effluent limits which are protective of the designated uses of the waters in the area.

8.12 General Considerations

(a) Effects of high temperature, biocides, pathogenic organisms or other deleterious substances at levels or combinations sufficient to interfere with aquatic life or human health, or in amounts sufficient to interfere with the beneficial use of the water shall be evaluated, at a minimum, by use of a 96-hour bioassay as described in the most recent edition of Standard Methods for the Examination of Water and Wastewater (for ordering information, contact the American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005-2605, or go to <http://www.apha.org> to order on-line). Survival of test organisms shall not be less than that in controls which utilize appropriate water. Failure to determine presence of toxic pollutants by this method shall not preclude determinations of excessive levels of toxic pollutants on the basis of other criteria or methods.

References for approved methods are: EPA 600/4-91/002 Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms, Second Edition, 1994; or EPA 600/4-90/027F Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms, Cincinnati, Ohio, EMSL, Fourth Edition, 1993; or EPA 600/4-600 R-95/136 Short Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to West Coast Marine Estuarine Organisms, Cincinnati, Ohio, EMSL, May, 1995.

(b) Pollutant discharges shall be regulated so as to protect not only the receiving waters but also the surrounding Commonwealth waters and marine life which are affected indirectly through pollutant discharges.

(c) Part 7(a)(5) shall be met upon showing that the land upon which the erosion occurred or is occurring is being managed in accordance with the CNMI Earthmoving and Erosion Control Regulations, as amended, and that the discharge has received the best degree of treatment or control through the implementation of Best Management Practices (BMPs), or that a comprehensive conservation program is being actively pursued, and that the severity of impact of the residual soil reaching the receiving body of water is deemed by the Director to be acceptable.

(d) The health and life history characteristics of aquatic organisms in waters affected by controllable water quality factors shall not differ significantly from those for the same waters in areas unaffected by controllable water quality factors. Also, controllable water quality factors shall not cause a detrimental increase in concentrations of toxic pollutants found in bottom sediments or aquatic life.

PART 9 MIXING ZONE IN RECEIVING WATERS

The water quality criteria in these regulations shall apply within a mixing zone unless specific alternative criteria have been approved by the Division of Environmental Quality. Mixing Zones will not be granted in lieu of reasonable control measures to reduce point source pollutant discharges but will be granted to complement the applicable controls. A limited mixing zone in the immediate area of a point source of pollution, may be allowed if the conditions set out in this part are met.

9.1 Establishment of Mixing Zone

No mixing zone shall be established unless the continuation of the function or operation involved in the discharge by the granting of the mixing zone is in the public interest, and the discharge occurring or proposed to occur does not substantially endanger public health and safety.

9.2 Prevention, Control, and Abatement

If the mixing zone is established on the grounds that there is no reasonable means known or available for the adequate prevention, control, or abatement of the discharge involved, it may be allowed until the necessary means for prevention, control or abatement become practicable, and subject to the taking of any substitute or alternative measures that the Director may prescribe. No renewal of a mixing zone shall be allowed without a thorough review of known and available means of preventing, controlling, or abating the discharge involved.

9.3 Time Limit for Mixing Zone

The Director may issue an approval for the establishment of a mixing zone for a period not to exceed five years.

9.4 Mixing Zone Characteristics

An allowable mixing zone shall be defined by all or some of the following characteristics: receiving water; discharge location; volume of discharge; specific linear distance; area or volume; mixing velocities and other pertinent hydrologic, biological, chemical, and physical characteristics.

9.5 Criteria for Mixing Zone

The following criteria shall be met in determining the location, size, shape, out-fall design and in-zone quality of mixing zones.

(a) Mixing zones shall not impact any area of the waters in such a manner that the maintenance of aquatic life in the body of water as a whole would be adversely affected.

(b) Mixing zones shall be as small as practicable: no greater than 300 feet in all directions from the point of discharge, or a distance equal to the zone of initial dilution as calculated using a DEQ-approved plume model.

(c) Where two or more mixing zones are in close proximity, they shall be so defined that a continuous zone of passage for aquatic life is available.

(d) Mixing zones shall be free from substances in concentrations or combinations that will cause acute lethality to aquatic life.

(e) The prohibition on acute lethality established in Part 9.5(g) shall be implemented by requiring that the concentrations of toxic pollutants in the pipe at the point of discharge shall not exceed the acute, aquatic life water quality criteria of Part 7.11 of these regulations.

(f) Mixing zones will not be allowed in standing bodies of water with no currents available for dispersion of pollutants.

(g) All discharges to marine waters will comply with the Ocean Discharge Criteria promulgated under Section 403 (c) of the CWA.

9.6 Dredging and Discharge of Dredged or Fill Material

(a) Dredging and dredged spoil discharges generally result in short-term disruption and do not represent continuous discharge that will affect beneficial uses over a long term. Other in-water, construction-related activities, such as discharge from the dewatering of excavations and shoreline stabilization projects, can also cause short-term suspension of sediments similar to that caused by dredge and fill discharges. Mixing zones may therefore be granted for dredging activities, other in-water construction-related activities, and the

discharge of dredged or fill material provided that: (1) all other requirements of this Part are met; and (2) the proposed activity satisfies the antidegradation requirements described in Part 3 of these standards.

(b) Dredging and the discharge of dredged or fill material can adversely affect colonies of reef building organisms by burying them, by releasing contaminants such as hydrocarbons into the water column, by reducing light penetration through the water, and by increasing the level of suspended particulates. Coral organisms are extremely sensitive to even slight reductions in light penetration or increases in suspended particulates (i.e., turbidity). These adverse effects will cause a loss of productive colonies which in turn provide habitat for many species of highly specialized aquatic organisms.

Dredging and the discharge of dredged or fill material can also adversely affect sea grass beds, by smothering vegetation and benthic organisms, and may also create unsuitable conditions for their continued vigor by: (1) changing water circulation patterns; (2) releasing nutrients that increase undesirable algal populations; (3) releasing chemicals that adversely affect plants and animals; (4) increasing turbidity levels, thereby reducing light penetration and hence photosynthesis; and (5) changing the capacity of a vegetated shallow to stabilize bottom materials and decrease channel shoaling. Dredging and the discharge of dredged or fill material may reduce the value of vegetated shallows as nesting, spawning, nursery, cover, and forage areas, as well as their value in protecting shorelines from erosion and wave actions. It may also encourage the growth of nuisance vegetation.

In granting mixing zones for dredging activities, the discharge of dredged or fill material, or other in-water, construction-related activities that cause the suspension of sediments in or near coral reef resources and sea grass beds; the Director shall assure that any disruption to beneficial uses is kept to an absolute minimum, and that all practicable measures are taken to prevent adverse impacts to resources of concern, taking into consideration the magnitude and duration of the proposed activity, and the proximity to resources of concern. This shall be satisfied by placing conditions within the applicable permit or water quality certification requiring the following.:

- (1) The use and maintenance of Best Management Practices (BMPs) including such measures as "silt curtains", closed ("environmental") buckets, hydraulic dredges, or other methods as appropriate to control the drift and extent of suspended sediment plumes beyond the location of the dredge or fill activity;
- (2) Water quality monitoring requirements for turbidity and other pollutants of concern that may be identified or expected in the dredge spoil or fill material. Periodic aquatic ecosystem monitoring may also be required for the purpose of assessing the effects of the activity on resources of concern and determining the necessity of additional mitigative measures;
- (3) For activities which have the potential to adversely affect coral

reproduction, a stoppage period of 21 days, starting 5 days after the late May or early June full moon (to be determined by DEQ), is required. The stoppage period, if determined to be applicable, shall be no less than twenty one (21) calendar days. In determining whether an activity has the potential to affect coral spawning, DEQ shall consider all of the following: 1) the magnitude of the sediment plume generated by the proposed activity; 2) the most likely extent and direction(s) of drift of the sediment plume; 3) the type of sediment and its composition; and 4) the proximity of broadcast spawning coral species to the proposed activity and expected sediment plume.

- (4) A specified distance up-current and down-current from the permitted activity at which applicable water quality criteria must be met (i.e., a mixing zone). Mixing zones for dredge and fill activities shall be kept as small as practicable, and shall not exceed 300 feet down-current and 150 feet up-current. Down-current distance may be increased to up to 600 feet where typical currents can be shown to make the use of BMPs ineffective;
- (5) Any additional protective measures, limitations, monitoring or mixing zone requirements that the Director identifies as being necessary to protect resources of concern.

(c) The Director may require an applicant for a water quality certification or permit for dredging, the discharge of dredged or fill material, or similar in-water, construction-related activities, to provide information necessary to support the development of monitoring plans, mitigation measures, or mixing zone requirements, such as surveys of existing currents, water quality data, and baseline aquatic ecosystem and indicator species surveys.

PART 10 WATER QUALITY CERTIFICATION

A water quality certification is required by the CWA, Section 401 of any applicant for a federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, that may result in any discharge into waters of the United States. The Division of Environmental Quality shall issue a water quality certification for any proposed activity which: (1) complies with the applicable provisions of the CWA Sections 301, 302, 303, 306, and 307; (2) complies with applicable provisions of the CNMI Water Quality Standards; (3) will not interfere with the attainment or maintenance of the existing or designated use of the Commonwealth waters; and all appropriate and practicable steps have been taken to minimize potential adverse impacts of the discharge on aquatic life and human health.

10.1 Application For Water Quality Certification

- (a) Applicants for water quality certification shall submit a completed, signed

application, which shall include the following:

- (1) The name and address of the applicant(s);
- (2) A description of the proposed facility or activity, and of any discharge into Commonwealth waters which may result from the conduct of any activity including, but not limited to, the construction or operation of the facility. This description shall include the characteristic of the discharge, and the location or locations at which such discharge may enter Commonwealth waters;
- (3) If applicable, a description of the function and operation of equipment or facilities to control discharges, including specification of the methods of control to be used;
- (4) The estimated date or dates on which the activity will begin and end and the date or dates on which the discharge(s) will take place;
- (5) If applicable, a description of the methods and means being used or proposed to monitor the quality and characteristics of the discharge and the operation of equipment or facilities employed in the control of the proposed discharge;

(b) The Director may require the submission of additional information after a certification application has been filed. If a certification application is incomplete or otherwise deficient, processing of the application shall not be completed until such time as the applicant has supplied the missing information or otherwise corrected the deficiency. The Director shall notify the applicant, in writing, within thirty (30) calendar days of the submission of an application, if an application is incomplete or otherwise deficient. For applications which are eligible for waiver of certification under part 10.3(g), the Director shall notify the applicant within fourteen (14) calendar days if an application is incomplete or otherwise deficient. A description of the type of additional information necessary to complete the application or correct the deficiency will be included with such a written notice. Failure to provide additional information or to correct a deficiency shall be sufficient grounds for denial of certification;

(c) The applicant is required to notify DEQ, in writing, of changes which may affect the application and certification process;

(d) The applicant will be informed, in writing, by the Director when a certification application is considered complete. The Director shall act on a request for certification within a period which shall not exceed six months; and

(e) Applicants for water quality certifications may be required to pay a filing fee. Filing fees for water quality certification are dependent on the type of federal permit, the scale of the proposed activity, and its potential to affect water quality:

- (1) Any commercial activity that will result in either the generation of an excess of 5000 gallons of wastewater per day, any clearing of 1000 square meters or filling exceeding 1000 cubic meters in waters of CNMI, or any other large scale development as determined by the Director shall pay a fee of \$5000.
- (2) Any commercial activity requiring a 401 Water Quality Certification that will result in either the generation of less than 5000 gallons of wastewater per day or any clearing less than 1000 square meters or filling in waters of the CNMI that is less than 1000 cubic meters shall pay a fee of \$1000.
- (3) Any small family residential activity requiring a 401 Water Quality Certification resulting in a clearing that does not exceed 1000 square meters is required to obtain a water quality certification and shall pay a fee of \$100. Any residential activity exceeding 1000 square meters must pay an additional fee of \$5 per 100 square meter or fraction thereof.
- (4) If the permit for which certification is sought is a "nationwide permit" issued under Section 404 of the Clean Water Act (for which certification may be waived as allowed under Part 10.3(g)), a filing fee is not required.

This filing fee shall be submitted prior to the issuance of a public notification and shall not be refunded nor applied to any subsequent water quality certification following final action or denial of a water quality certification. Any Federal or CNMI government agency shall be exempt from paying filing fees.

10.2 Public Notification and Public Hearing

(a) Within five (5) calendar days after determining an application to be complete, and after the appropriate filing fee has been received, DEQ shall transmit a draft public notification to the applicant for review. The notice shall include the name and address of the applicant, and a brief description of the activity and of the discharge involved in the activity for which certification is being sought.

(b) The applicant shall review the draft notice upon receipt, and within five (5) calendar days, provide comments to DEQ in writing regarding any changes the applicant believes to be necessary. If DEQ does not receive any written comments from the applicant after five (5) calendar days, the public notice shall be deemed final, and DEQ shall notify the applicant to publish the notice as specified below under Part 10.2(c). Otherwise, DEQ shall prepare the final public notice, taking into consideration comments received from the applicant, and transmit the final public notice to the applicant within five (5) calendar days for publication.

(c) Publication of the notice shall be the responsibility of the applicant. The notice shall be published once in a minimum of two newspapers, one of which has a daily circulation, and a second time in at least one newspaper prior to the completion of the public comment period.

(d) The public comment period shall be for at least 30 days from the date of the first publication of the notice. The Director may, upon request, provide the opportunity for public hearing(s) to consider issuance of a water quality certification. The Director shall inform the applicant, in writing, that such action has been taken.

10.3 Determination of Water Quality Certification

(a) The Director shall make a determination on a Water Quality Certification based upon evaluation of:

- (1) the application made by the applicant to the licensing or permitting agency and the information contained in such application which is relevant to water quality considerations,
- (2) the application materials submitted pursuant to part 10.1,
- (3) comments received during the public comment period,
- (4) the record of a public hearing held pursuant to part 10.2, and
- (5) any other information and data that the Director deems relevant.

(b) DEQ shall not grant a water quality certification for any activity unless the activity has been determined to be consistent with antidegradation policy through the satisfaction of all applicable provisions contained in Part 3 of these standards.

(c) The contents of the Water Quality Certification issued by DEQ shall include:

- (1) the name and address of the applicant
- (2) reference to the application materials which were evaluated in making the certification, identified by date received, and federal license and permit application number or code where applicable,

- (3) a statement that there is reasonable assurance that the activity will be conducted in a manner which will not violate applicable water quality standards,
- (4) a statement (or statements) detailing how the activity has been determined to be consistent with the antidegradation policy in accordance with Part 3.2 of these standards.
- (5) a statement of any conditions which the Director deems necessary with respect to the discharge or the activity, including the conditions specified under Part 9.6 of these standards for dredge and fill activities, and
- (6) any such other information as the Director may determine to be appropriate.

(d) If the Director, after considering the information submitted pursuant to 10.3(a), determines that there is reasonable assurance that applicable water quality standards will not be violated, and the proposed methods of control will be applied to a discharge which is the result of any activity including, but not limited to, the construction and operation of facilities, then the Director shall so certify.

(e) The Director may modify the certification prior to the issuance of the federal license or permit, after consideration of information presented by the applicant licensing or permitting agency or other government agencies or interested parties.

(f) If the Director fails to act on a completed application for certification within six months, then the certification requirements of this section shall be waived with respect to federal applications.

(g) If the discharge in question is the result of one of the activities which receives a nationwide permit for the discharge of dredge and fill materials, thereby fulfilling specific conditions of that permit pursuant to 33 CFR 330.5 and 330.6, then the Director will determine, on a case-by-case basis, which projects are considered to be minor and non-controversial. Certification requirements of this section shall be waived for minor and non-controversial activities within six months of the receipt of a completed application. The Director may elect to specify conditions under which any such waiver is valid.

(h) Storm water discharges associated with industrial and construction site activities, as described in 40 CFR Part 122.26, covered under a United States Environmental Protection Agency, National Pollutant Discharge Elimination System (NPDES) General Permit, may be allowed provided the following conditions are met:

- (1) A DEQ Section 401 Water Quality Certification has been issued to the United States Environmental Protection Agency for the particular NPDES General Permit associated with the

discharge;

- (2) All conditions and requirements set forth in the applicable United States Environmental Protection Agency, Final National Pollutant Discharge Elimination System (NPDES) General Permit are complied with;
- (3) A storm water pollution prevention plan for storm water discharges associated with industrial activities or from construction sites is approved by the Director of DEQ prior to submission of the Notice of Intent (NOI), EPA Form 3510-6. For facilities with current storm water discharges associated with industrial activities, a storm water plan is submitted within thirty (30) calendar days of adoption of this regulation;
- (4) A NOI to be covered by the general permit for discharges associated with industrial activities or for discharges from construction activities is submitted to DEQ and USEPA, Region IX, accompanied by a pollution prevention plan approval letter from DEQ;
- (5) The NOI is postmarked seven (7) calendar days prior to any storm water discharges and a copy is submitted to the Director of DEQ no later than seven (7) calendar days prior to any storm water discharges; and
- (6) All monitoring reports required by the respective general storm water permits are submitted to DEQ.

Based on a review of the NOI and/or other information made available to the Director, the Director may deny coverage under the general permit and require submittal of an application for an individual NPDES permit to EPA. An individual water quality certification from DEQ will be required for this individual permit.

10.4 Water Quality Certification-General Provisions

(a) Where any facility or activity has received certification pursuant to section 10.3 in connection with the issuance of a license or permit for construction, and where such facility or activity is not required to obtain an operating license or permit, the Director, prior to the operation of such facility or activity, shall be afforded the opportunity to perform an initial inspection of such facility or activity for the purpose of determining if the manner in which such facility or activity will be operated or conducted will violate applicable water quality standards.

(b) If the Director, after the initial inspection pursuant to section 10.4 (a), determines that operation of the proposed facility or activity will violate applicable water

quality standards, the Director shall so notify the applicant and the licensing or permitting agency.

(c) Where a licensing or permitting agency suspends a license or permit after receiving the Director's notice and recommendation pursuant to section 10.3, the applicant may submit evidence to the Director, showing that the facility or activity has been modified so as not to violate applicable water quality standards. If the Director determines that the applicable water quality standards will not be violated, the Director shall so notify the licensing or permitting agency.

10.5 Water Quality Certification-Adoption of New or Revised Water Quality Standards

To the extent permitted by applicable law, all water quality certifications issued by DEQ shall require the licensing or permitting authority to include a clause in the license or permit advising the licensee or permittee that the license or permit shall be subject to amendment or modification upon adoption or revision of water quality standards.

Upon adoption or revision of water quality standards, DEQ shall notify the licensing or permitting authority and the licensee or permittee of the revised or newly-enacted water quality standards and shall request the licensing or permitting authority to amend or modify the license or permit, if and to the extent permitted by applicable law, to reflect the applicable water quality standards.

PART 11 LAND DISPOSAL OF WASTEWATER

11.1 General Applicability

Any action or activity that results in the disposal of wastewater on land in excess of fifty-five (55) gallons per day requires the approval of the Director of DEQ. Types of wastewater and pollutants discharges that need approval prior to land disposal include but are not limited to reverse osmosis brine and oil/water separator discharges.

(a) The disposal of human or animal wastewater is excluded under these requirements as these activities are regulated under the CNMI Wastewater Treatment and Disposal Rules and Regulations.

(b) The disposal of wastewater through an injection well is excluded as this activity is regulated under the CNMI Underground Injection Control (UIC) regulations.

(c) Nothing in these requirements shall be construed as to supercede the wellhead protection area requirements under the CNMI Well Drilling and Well Operations Regulations, or to allow the construction of any facility or any activity within the setback distances contained therein.

11.2 Submission of Land Disposal Plans

Prior to the land disposal of any wastewater or other pollutants in excess of fifty-five (55) gallons per day, the Director of DEQ will review the plan for disposal and make a determination that coastal waters or ground water will not be adversely affected by such disposal.

(a) The plan for the land disposal shall include the following items:

- (1) Name, address, and phone number of applicant;
- (2) Description of the physical process that produces the wastewater, chemical make-up of wastewater, and average volume produced on a daily and annual basis;
- (3) Map of disposal site which identifies elevation, nearby landmarks, and proposed point of discharge;
- (4) Schematic of proposed land disposal method (e.g. percolation trench, ponding basin, leachfield, infiltrator) to be used;
- (5) In the event that a land disposal plan require seepage as a mechanism for the removal of fluids, the applicant must perform a percolation test on the proposed site and submit the results to the Director of DEQ.

(b) The applicant must pay a \$500 filing fee for all land disposal plans that are submitted to the Division of Environmental Quality for review.

- (1) This fee will be waived for projects that have applied for a Clean Water Act 401 Water Quality Certification.
- (2) All government agencies shall be exempt from paying this fee.

11.3 Land Disposal in Coastal Lands

Land disposal in coastal lands is defined as disposal of wastewaters within one hundred fifty (150) feet of the mean high water mark of the shoreline. Any wastewater to be land disposed on coastal lands must meet CNMI Water Quality Standards.

11.4 Land Disposal in Groundwater Recharge Areas

Land areas other than coastal lands are defined as groundwater recharge areas. The

applicant must provide a determination of the underlying geology, aquifer characteristics, groundwater quality, location and proximity of all nearby wells, and current and potential future use of the underlying groundwater for public water supply based on a review of available information including United States Geological Survey (USGS) maps and reports, Commonwealth Utilities Corporation (CUC) well field maps, and the nearby well drilling records. DEQ may assist the applicant in making such determinations where sufficient information exists. The applicant may provide a determination on the basis of a report from a professional hydrogeologist. Groundwater recharge areas are divided into three subcategories:

(a) Primary groundwater recharge zones are defined as:

- (1) Areas designated as Class I Groundwater Management Zones in the CNMI Well Drilling and Well Operations Regulations;
- (2) Areas contributing surface infiltration to a geologic formation that is saturated with fresh ground water that is not in contact with seawater (i.e. "perched" groundwater) and is capable of transmitting quantities of fresh water in sufficient quantity to sustain a public water supply well;
- (3) Areas that can reasonably be considered, on the basis of maps provided by USGS or CUC, to be within active or future public water supply well fields;
- (4) Areas contributing surface infiltration to a geologic formation that discharges to a known spring or stream that currently is or is capable of transmitting quantities of fresh water in sufficient quantity to be used as a public water supply;
- (5) Within four hundred (400) feet laterally upgradient from a public water supply well; or
- (6) Within Two hundred (200) feet laterally downgradient from a public water supply well;

Areas which do not meet any of the criteria for definition as a primary groundwater recharge zone as described in 11.4(a) shall be classified as either a secondary groundwater recharge zone, or a brackish groundwater recharge zone:

- (b) Secondary groundwater recharge zones are defined as areas designated as Class II Groundwater Management Zones by the CNMI Well Drilling and Well Operations Regulations; areas contributing surface infiltration to a geologic formation that is saturated with ground water with less than 500 parts per million total dissolved solids, and currently or are capable of transmitting quantities of water in sufficient quantities to sustain a public

water supply well; or areas with groundwater surface elevations equal to or greater than 1 foot as mapped by USGS.

- (c) Brackish groundwater recharge zones are defined as areas designated as Class III Groundwater Management Zones by the CNMI Well Drilling and Well Operations Regulations; areas contributing surface infiltration to a geologic formation that is saturated with brackish ground water with greater than 500 parts per million total dissolved solids; or areas with groundwater surface elevations less than 1 foot as mapped by USGS.

11.5 Discharge Limitations for Land Disposal of Wastewater

Discharge limitations for wastewater intended to be land disposed in groundwater recharge areas are dependent on the subcategory of groundwater recharge area and volume of wastewater to be disposed.

- (a) Wastewater that is to be land disposed in primary groundwater recharge zones must meet drinking water standards as set in CNMI Drinking Water Regulations.

- (b) Discharge limitations for water quality to be land disposed in secondary groundwater recharge zones and brackish groundwater recharge zones are dependent on volume of wastewater. Specific criteria for discharge limitations will be determined on a case-by-case basis and authorized in the permit.

PART 12 INSPECTIONS AND RIGHT OF ENTRY

12.1 Inspections and Right of Entry

In accordance with 2 CMC § 3132, the Director or his authorized representative may inspect any facility or records subject to the provisions of the Act and these regulations. The inspection may be conducted with or without advance notice, as authorized by § 3132.

PART 13 NOTICES OF VIOLATIONS, ADMINISTRATIVE ORDERS, AND PENALTIES

13.1 Power to Uphold Water Quality Standards

The Division is responsible for enforcement of these regulations in accordance with the applicable laws of the CNMI and the Clean Water Act and its amendments. Where Commonwealth waters designated for recreational use fall below the CNMI water quality standards as set forth in these regulations, the Director shall have the authority to suspend public use of Commonwealth waters or take other action which in the Director's discretion is necessary to protect the public health, safety and welfare.

13.2 Enforcement Actions

In accordance with 2 CMC § 3131, if the Director has reason to believe a violation of the provisions of the Act, these standards, and/or the terms of any water quality certification, waiver of water quality certification, or land disposal approval issued pursuant to the Act and these standards, has occurred or is occurring, the Director may issue any necessary order to enforce the aforementioned provisions and conditions. Such order shall be in the form of a written warning, Notice of Violation, Cease and Desist Order, or Administrative Order signed by the Director or his authorized representative and shall provide notice of the facts constituting the violation, penalties that may be imposed, and, where appropriate, provide a reasonable timeframe in which to take corrective action.

13.3 Administrative Orders

(a) If any person subject to an order issued pursuant to 13.2 fails to comply with the order, the Director may issue an Administrative Order or other such Order imposing penalties as provided by 2 CMC § 3131(c). The Order shall state the facts constituting the violation, the particular sections of the Act, standards, water quality certification, waiver of water quality certification, or land disposal approval involved, the proposed penalty including any proposed suspension, revocation, or modification of any water quality certification, waiver of water quality certification, or land disposal approval, and monetary penalties including any penalty for cost of corrective action taken by the Division, and the opportunity to request a hearing. Such Order shall be personally served or served by certified mail, return receipt, on persons subject to the penalties in the Order.

13.4 Hearings

(a) Any person subject to an Order imposing penalties pursuant to 13.3, may request, in writing, a hearing before the Director or his/her designee. Request for a hearing shall be served upon the Division within seven (7) calendar days from receipt of the Order. Failure to request a hearing within seven (7) calendar days shall constitute a waiver of the right to a

hearing and the Division may take the necessary action to enforce the Order.

(b) Procedures for hearings shall be conducted in accordance with the Administrative Procedures Act (APA), 1 CMC § 9101, et seq.

13.5 Emergency Suspension Provisions

If the Director determines that a violation of a water quality certification, waiver of water quality certification, or land disposal approval issued pursuant to the Act and these standards has resulted in an imminent threat to public health, safety or welfare, the Director may summarily suspend a water quality certification, waiver of water quality certification, or land disposal approval. A hearing for revocation or other action shall be promptly instituted and determined pursuant to the procedures in 13.4.

13.6 Criminal Penalties

Any person who knowingly and willfully commits any act in violation of the Act, these standards, or any water quality certification, waiver of certification, or land disposal approval, may be subject to criminal penalties as set forth in 2 CMC § 3131(d).

PART 14 SEVERABILITY

If any provision of these Regulations or their application is held to be invalid, such invalidity shall not affect any other provision or application that can be used without the invalid section, and to this end the provisions of these Regulations and their various applications are declared to be severable.

APPENDIX 1 WATER QUALITY CRITERIA FOR PRIORITY TOXIC POLLUTANTS

**Source: National Recommended Water Quality Criteria: 2002, EPA-822-R-02-047,
November 2002 (EPA 2002)**

NATIONAL RECOMMENDED WATER QUALITY CRITERIA FOR PRIORITY TOXIC POLLUTANTS

Priority Pollutant	CAS Number	Freshwater		Saltwater		Human Health For Consumption of:		FR Cite/Source	
		CMC (µg/L)	CCG (µg/L)	CMC (µg/L)	CCG (µg/L)	Water + Organism (µg/L)	Organism Only (µg/L)		
1	Antimony	7440360				5.6 B	640 B	65FR66443	
2	Arsenic	7440382	34 D, A, K	150 A, D, K	69 A, D, B	36 A, D, B	0.018 C, M, S	0.14 C, M, S	65FR31682 57FR60848
3	Beryllium	7440417					Z		65FR31682
4	Cadmium	7440439	2.0 D, E, K, bb	0.25 D, E, K, bb	40 D, bb	8.8 D, bb	Z		EPA 422-R-01-001 65FR31682
5a	Chromium (III)	16065831	570 D, E, K	74 D, E, K			Z Total		EPA 820/B-96-001 65FR31682
5b	Chromium (VI)	18540299	16 D, K	11 D, K	1,100 D, bb	50 D, bb	Z Total		65FR31682
6	Copper	7440508	13 D, E, K, oo	9.0 D, E, K, oo	4.8 D, oo, ff	3.1 D, oo, ff	1,300 U		65FR31682
7	Lead	7439921	65 D, E, bb, zz	2.5 D, E, bb, zz	210 D, bb	8.1 D, bb			65FR31682
8a	Mercury	7439976	1.4 D, K, hh	0.77 D, K, hh	1.8 D, oo, hh	0.94 D, oo, hh			62FR42160
8b	Methylmercury	22967926						0.3 mg/kg J	EPA 823-R-01-001
9	Nickel	7440020	470 D, E, K	52 D, E, K	74 D, bb	8.2 D, bb	610 B	4,600 B	65FR31682
10	Selenium	7782492	L, R, T	5.0 T	290 D, bb, dd	71 D, bb, dd	170 z	4200	62FR42160 65FR31682 65FR66443
11	Silver	7440224	3.2 D, E, B		1.9 D, G				65FR31682
12	Thallium	7440280					1.7 B	6.3 B	65FR31682

Priority Pollutant	CAS Number	Freshwater		Saltwater		Human Health For Consumption of Water + Organism Only		FR Cite Source	
		CMC (µg/L)	CGC (µg/L)	CMC (µg/L)	CGC (µg/L)	Organism (µg/L)	Organism (µg/L)		
13	Zinc	7440666	120 DEK	120 DEK	90 DBB	81 DBB	7,400 v	26,000 v	65FR31682 65FR66443
14	Cyanide	57125	22 MG	52 MG	1.0M	1.0M	700B	240000 BH	65FR60848 65FR60848
15	Asbestos	1332214					7 million fibers/L		57FR60848
16	2,4,7,8-TCDD (Dioxin)	1746016					50E-9 C	5.1E-9 C	65FR66443
17	Acrolein	107028					190	290	65FR66443
18	Acrylonitrile	10161					0.051 B.C	0.25 B.C	65FR66443
19	Benzene	71432					2.2 B.C	51 B.C	IRIS 01/19/00 &65FR66443
20	Bromoform	75252					4.7 B.C	140 B.C	65FR66443
21	Carbon Tetrachloride	56235					0.23 B.C	1.6 B.C	65FR66443
22	Chlorobenzene	108907					680B-40	21,000 BH	65FR31682
23	Chlorodibromomethane	124481					0.40 B.C	13 B.C	65FR66443
24	Chloroethane	75068							
25	2-Chloroethylvinyl Ether	110758							
26	Chloroform	67663					57 C.F	470 C.F	62FR42160
27	Dichlorobromomethane	75274					0.55 B.C	17 B.C	65FR66443

Priority Pollutant	CAS Number	Freshwater		Saltwater		Human Health For Consumption of		FR Cite/Source
		CMC (µg/L)	CCG (µg/L)	CMC (µg/L)	CCG (µg/L)	Water + Organism (µg/L)	Organism Only (µg/L)	
28	1,1-Dichloroethane	75343						
29	1,2-Dichloroethane	107062				0.33 B,C	37 B,C	65FR66443
30	1,1-Dichloroethylene	75354				0.057 c	3.2 c	65FR66443
31	1,2-Dichloropropane	78875				0.50 B,C	15 B,C	65FR66443
32	1,3-Dichloropropene	542756				10	1,700	57FR60848
33	Ethylbenzene	100414				3,100 B	29,000 B	65FR31682
34	Methyl Bromide	74839				47 B	1,500 B	65FR66443
35	Methyl Chloride	74873						65FR31682
36	Methylene Chloride	75092				4.6 B,C	590 B,C	65FR66443
37	1,1,2,2-Tetrachloroethane	79345				0.17 B,C	4.0 B,C	65FR66443
38	Tetrachloroethylene	127184				0.69 c	3.3 c	65FR66443
39	Toluene	108883				6,800 B,Z	200,000 B	65FR31682
40	1,2-Trans-Dichloroethylene	156605				700 B,Z	140,000 B	65FR31682
41	1,1,1-Trichloroethane	71556				2		65FR31682
42	1,1,2-Trichloroethane	79005				0.59 B,C	16 B,C	65FR66443
43	Trichloroethylene	79016				2.5 c	30 c	65FR66443
44	Vinyl Chloride	75014				2.0 c	530 c	57FR60848

Priority Pollutant	CAS Number	Freshwater			Saltwater			Human Health For Consumption of Water Organism Only		FIR Cite/Source
		CMC (PPM)	CCG (PPM)	CMC (PPM)	CCG (PPM)	Organism (PPM)	Organism Only (PPM)			
45 2-Chlorophenol	95578					81 BU	150 BU	65FR66443		
46 2,4-Dichlorophenol	120832					77 BU	290 BU	65FR66443		
47 2,4-Dimethylphenol	105679					380 B	850 BU	65FR66443		
48 2-Methyl-4,6-Dinitrophenol	534521					3	280	65FR66443		
49 2,4-Dinitrophenol	51285					69 B	5,300 B	65FR66443		
50 2-Nitrophenol	88155									
51 4-Nitrophenol	100027									
52 3-Methyl-4-Chlorophenol	59507									
53 Pentachlorophenol	87865	19 PK	15 PK	13 lb	7.9 lb	0.27 B.C	3.0 B.C.H	65FR31682 65FR66443		
54 Dibenol	188852					2,100 BU	700,000 BU	65FR66443		
55 2,4,6-Trichlorophenol	88062					1.4 B.C	2.4 B.C.U	65FR66443		
56 Acenaphthene	83329					670 BU	990 BU	65FR66443		
57 Acenaphthylene	208968									
58 Anthracene	120121					3,300 B	40,000 B	65FR66443		
59 Benzidine	92875					0.000086 B.C	0.00020 B.C	65FR66443		
60 Benzo (a) Anthracene	56552					0.0038 B.C	0.018 B.C	65FR66443		
61 Benzo (a) Pyrene	50328					0.0038 B.C	0.018 B.C	65FR66443		

Priority Pollutant	CAS Number	Freshwater		Saltwater		Human Health For Consumption of:		FR Cite/Source	
		CMC (ug/L)	CCC (ug/L)	CMC (ug/L)	CCC (ug/L)	Water + Organism (ug/L)	Organism Only (ug/L)		
62	Benzo(b)Fluoranthene	205992					0.0038 B,C	0.018 B,C	65FR66443
63	Benzo(ghi)Perylene	191242							
64	Benzo(k)Fluoranthene	207089					0.0038 B,C	0.018 B,C	65FR66443
65	Bis(2-Chloroethoxy)Methane	111911							
66	Bis(2-Chloroethyl)Ether	111444					0.030 B,C	0.53 B,C	65FR66443
67	Bis(2-Chloroisopropyl)Ether	108601					1,400 B	65,000 B	65FR66443
68	Bis(2-Ethylhexyl)Phthalate ^x	117817					1.2 B,C	2.2 B,C	65FR66443
69	4-Bromophenyl Phenyl Ether	101553							
70	Butylbenzyl Phthalate ^w	85687					1,500 B	1,900 B	65FR66443
71	2-Chloronaphthalene	91587					1,000 B	1,500 B	65FR66443
72	4-Chlorophenyl Phenyl Ether	7005723							
73	Chrysene	218019					0.0038 B,C	0.018 B,C	65FR66443
74	Dibenzo(a,h)Anthracene	53703					0.0038 B,C	0.018 B,C	65FR66443
75	1,2-Dichlorobenzene	95501					2,700 B	17,000 B	65FR31682
76	1,3-Dichlorobenzene	541731					320	960	65FR66443
77	1,4-Dichlorobenzene	106457					400 B	2,600	65FR31682
78	3,3'-Dichlorobenzidine	91941					0.021 B,C	0.028 B,C	65FR66443

Priority Pollutant	CAS Number	Freshwater		Saltwater		Human Health For Consumption of Water + Organism Only		ER Cite/Source
		CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	Water + Organism (µg/L)	Organism Only (µg/L)	
79	Diethyl Phthalate ^W	84662				17,000 B	44,000 B	65FR66443
80	Dimethyl Phthalate ^W	131143				270,000	1,100,000	65FR66443
81	Di-n-Butyl Phthalate ^W	84742				2,000 B	4,500 B	65FR66443
82	2,4-Dinitrotoluene	121142				0.11 C	3.4 C	65FR66443
83	2,6-Dinitrotoluene	606202						
84	Di-n-Octyl Phthalate	117840						
85	1,2-Diphenylhydrazine	122667				0.036 B,C	0.20 B,C	65FR66443
86	Fluoranthene	206440				130 B	140 B	65FR66443
87	Fluorene	86737				1,100 B	5,300 B	65FR66443
88	Hexachlorobenzene	118741				0.00028 B,C	0.00029 B,C	65FR66443
89	Hexachlorobutadiene	87683				0.44 B,C	18 B,C	65FR66443
90	Hexachlorocyclopentadiene	77474				240 B,Z	17,000 H,U	57FR60848
91	Hexachloroethane	67721				1.4 B,C	3.3 B,C	65FR66443
92	Idene(1,2,3-cd)Pyrene	193835				0.0038 B,C	0.015 B,C	65FR66443
93	Isophorone	78591				35 B,C	960 B,C	65FR66443
94	Naphthalene	91203						
95	Nitrobenzene	98953				17 B	690 B,H,U	65FR66443

Priority Pollutant Number	CAS Number	Freshwater (µg/L)			Saline Water (µg/L)			Human Health For Consumption of Water Organism		RR Clive/Source
		CMC (µg/L)	CC (µg/L)	CMC (µg/L)	CC (µg/L)	Organism (µg/L)	Ornith (µg/L)			
96	N-Nitrosodimethylamine	62759						0.00069 B.C.	3.0 B.C.	65FR66443
97	N-Nitrosodipropylamine	62767						0.0050 B.C.	0.51 B.C.	65FR66443
98	N-Nitrosodiphenylamine	86306						3.3 B.C.	6.0 B.C.	65FR66443
99	Pyrene	85038						830 B	4,000 B	65FR66443
100	Pyrene	129000						260	240	FRS11/01/96
101	1,2,4-Trichlorobenzene	120821								65FR31682
102	Aldrin	309002	3.0 g			1.3 g		0.00049 B.C.	0.00050 B.C.	65FR66443
103	Alpha-BHC	319845						0.0026 B.C.	0.0049 B.C.	65FR66443
104	Beta-BHC	319857						0.0091 B.C.	0.017 B.C.	65FR66443
105	Gamma-BHC (Lindane)	58889	0.95 g			0.16 g		0.019 g	0.063 g	65FR31682 65FR66443
106	delta-BHC	319858								
107	Chlordane	67769	2.4 g			0.109 g		0.00080 B.C.	0.00081 B.C.	65FR31682 65FR66443
108	4,4'-DDT	50293	1.1 g/l			0.13 g/l		0.00022 B.C.	0.00022 B.C.	65FR31682 65FR66443
109	4,4'-DDE	72559						0.00022 B.C.	0.00022 B.C.	65FR66443
110	4,4'-DDD	72548						0.00031 B.C.	0.00031 B.C.	65FR66443

Priority Pollutant	CAS Number	Freshwater		Saltwater		Human Health For Consumption of Water - Organism Only		FR Cite/Source	
		CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	Organism (µg/L)	Organism Only (µg/L)		
111	Dieldrin	60571	0.24 κ	0.056 κ,ο	0.71 σ	0.0019 σ,αα	0.000032 B,C	0.000034 B,C	65FR31682 65FR66443
112	alpha-Endosulfan	959989	0.22 σ,γ	0.056 σ,γ	0.034 σ,γ	0.0087 σ,γ	62 B	89 B	65FR31682 65FR66443
113	beta-Endosulfan	33213659	0.22 σ,γ	0.056 σ,γ	0.034 σ,γ	0.0087 σ,γ	62 B	89 B	65FR31682 65FR66443
114	Endosulfan Sulfate	1091078					62 B	89 B	65FR66443
115	Endrin	72208	0.086 κ	0.036 κ,ο	0.037 σ	0.0023 σ,αα	0.76 B	0.81 B,H	65FR31682
116	Endrin Aldehyde	7421934					0.29 B	0.30 B,H	65FR66443
117	Heptachlor	76448	0.52 σ	0.0038 σ,αα	0.053 σ	0.0036 σ,αα	0.000079 B,C	0.000079 B,C	65FR31682 65FR66443
118	Heptachlor Epoxide	1074573	0.52 σ,γ	0.0038 σ,γ,α	0.053 σ,γ	0.0036 σ,γ,α	0.000039 B,C	0.000039 B,C	65FR31682 65FR66443
119	Polychlorinated Biphenyls PCBs:			0.014 N,αα		0.03 N,αα	0.000064 B,C,N	0.000064 B,C,N	65FR31682 65FR66443
120	Toxaphene	8001352	0.73	0.0002 α	0.52	0.0002 α	0.00023 B,C	0.00023 B,C	65FR31682 65FR66443

Footnotes:

A This recommended water quality criterion was derived from data for arsenic (III), but is applied here to total arsenic, which might imply that arsenic (III) and arsenic (V) are equally toxic to aquatic life and that their toxicities are additive. In the arsenic criteria document (EPA 440/5-84-033, January 1985), Species Mean Acute Values are given for both arsenic (III) and arsenic (V) for five species and the ratios of the SMAVs for each species range from 0.6 to 1.7.

- Chronic values are available for both arsenic (III) and arsenic (V) for one species; for the fathead minnow, the chronic value for arsenic (V) is 0.29 times the chronic value for arsenic (III). No data are known to be available concerning whether the toxicities of the forms of arsenic to aquatic organisms are additive.
- B This criterion has been revised to reflect The Environmental Protection Agency's q1* or RfD, as contained in the Integrated Risk Information System (IRIS) as of May 17, 2002. The fish tissue bioconcentration factor (BCF) from the 1980 Ambient Water Quality Criteria document was retained in each case.
- C This criterion is based on carcinogenicity of 10^{-6} risk. Alternate risk levels may be obtained by moving the decimal point (e.g., for a risk level of 10^{-5} , move the decimal point in the recommended criterion one place to the right).
- D Freshwater and saltwater criteria for metals are expressed in terms of the dissolved metal in the water column. The recommended water quality criteria value was calculated by using the previous 304(a) aquatic life criteria expressed in terms of total recoverable metal, and multiplying it by a conversion factor (CF). The term "Conversion Factor" (CF) represents the recommended conversion factor for converting a metal criterion expressed as the total recoverable fraction in the water column to a criterion expressed as the dissolved fraction in the water column. (Conversion Factors for saltwater CCCs are not currently available. Conversion factors derived for saltwater CMCs have been used for both saltwater CMCs and CCCs). See "Office of Water Policy and Technical Guidance on Interpretation and Implementation of Aquatic Life Metals Criteria," October 1, 1993, by Martha G. Prothro, Acting Assistant Administrator for Water, available from the Water Resource center, USEPA, 401 M St., SW, mail code RC4100, Washington, DC 20460; and 40CFR§131.36(b)(1). Conversion Factors applied in the table can be found in Appendix A to the Preamble- Conversion Factors for Dissolved Metals.
- E The freshwater criterion for this metal is expressed as a function of hardness (mg/L) in the water column. The value given here corresponds to a hardness of 100 mg/L. Criteria values for other hardness may be calculated from the following: $CMC (dissolved) = \exp\{m_A [\ln(hardness)] + b_A\}$ (CF), or $CCC (dissolved) = \exp\{m_C [\ln (hardness)] + b_C\}$ (CF) and the parameters specified in Appendix B- Parameters for Calculating Freshwater Dissolved Metals Criteria That Are Hardness-Dependent.
- F Freshwater aquatic life values for pentachlorophenol are expressed as a function of pH, and are calculated as follows: $CMC = \exp(1.005(pH)-4.869)$; $CCC = \exp(1.005(pH)-5.134)$. Values displayed in table correspond to a pH of 7.8.
- G This Criterion is based on 304(a) aquatic life criterion issued in 1980, and was issued in one of the following documents: Aldrin/Dieldrin (EPA 440/5-80-019), Chlordane (EPA 440/5-80-027), DDT (EPA 440/5-80-038), Endosulfan (EPA 440/5-80-046), Endrin (EPA 440/5-80-047), Heptachlor (EPA 440/5-80-052), Hexachlorocyclohexane (EPA 440/5-80-054), Silver (EPA 440/5-80-071). The Minimum Data Requirements and derivation procedures were different in the 1980 Guidelines than in the 1985 Guidelines. For example, a "CMC" derived using the 1980 Guidelines was derived to be used as an instantaneous maximum. If assessment is to be done using an averaging period, the values given should be divided by 2 to obtain a value that is more comparable to a CMC derived using the 1985 Guidelines.
- H No criterion for protection of human health from consumption of aquatic organisms excluding water was presented in the 1980 criteria document or in the 1986 *Quality Criteria for Water*. Nevertheless, sufficient information was presented in the 1980 document to allow the calculation of a criterion, even though the results of such a calculation were not shown in the document.
- I This criterion for asbestos is the Maximum Contaminant Level (MCL) developed under the Safe Drinking Water Act (SDWA).
- J This fish tissue residue criterion for methylmercury is based on a total fish consumption rate of 0.0175 kg/day.
- K This recommended criterion is based on a 304(a) aquatic life criterion that was issued in the 1995 *Updates: Water Quality Criteria Documents for the Protection of Aquatic Life in Ambient Water*, (EPA-820-B-96-001, September 1996). This value was derived using the GLI Guidelines (60FR15393-15399, March 23, 1995; 40CFR132 Appendix A); the difference between the 1985 Guidelines and the GLI Guidelines are explained on page iv of the 1995 Updates. None of the decisions concerning the derivation of this criterion were affected by any considerations that are specific to the Great Lakes.

- cc When the concentration of dissolved organic carbon is elevated, copper is substantially less toxic and use of Water-Effect Ratios might be appropriate.
- dd The selenium criteria document (EPA 440/5-87-006, September 1987) provides that if selenium is as toxic to saltwater fishes in the field as it is to freshwater fishes in the field, the status of the fish community should be monitored whenever the concentration of selenium exceeds 5.0 µg/L in salt water because the saltwater CCC does not take into account uptake via the food chain.
- ee This recommended water quality criterion was derived on page 43 of the mercury criteria document (EPA 440/5-84-026, January 1985). The saltwater CCC of 0.025 ug/L given on page 23 of the criteria document is based on the Final Residue Value procedure in the 1985 Guidelines. Since the publication of the Great Lakes Aquatic Life Criteria Guidelines in 1995 (60FR15393-15399, March 23, 1995), the Agency no longer uses the Final Residue Value procedure for deriving CCCs for new or revised 304(a) aquatic life criteria.
- ff This recommended water quality criterion was derived in *Ambient Water Quality Criteria Saltwater Copper Addendum* (Draft, April 14, 1995) and was promulgated in the Interim final National Toxics Rule (60FR22228-222237, May 4, 1995).
- gg EPA is actively working on this criterion and so this recommended water quality criterion may change substantially in the near future.
- hh This recommended water quality criterion was derived from data for inorganic mercury (II), but is applied here to total mercury. If a substantial portion of the mercury in the water column is methylmercury, this criterion will probably be under protective. In addition, even though inorganic mercury is converted to methylmercury and methylmercury bioaccumulates to a great extent, this criterion does not account for uptake via the food chain because sufficient data were not available when the criterion was derived.
- ii This criterion applies to DDT and its metabolites (i.e., the total concentration of DDT and its metabolites should not exceed this value).



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

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JOAQUIN A. TENORIO
SECRETARY

PUBLIC NOTICE

REGARDING MEMORANDUMS TO SEEK TEMPORARY EMPLOYMENT

If an alien worker files a complaint with the U.S. Department of Labor, the Equal Employment Opportunity Commission, or any other agency, and is requesting a Memorandum to seek Temporary Employment (memo) from the CNMI Department of Labor, the alien worker must present the letter from the requesting agency in the following form:

An original letter on official letterhead of the agency or a letter from the agency that has been stamped "Certified true copy". The letter should indicate the complaint has been made or that the agency requests issuance of a memo on behalf of the alien worker.

The CNMI Department of Labor will verify the authenticity of the letter presented by the alien worker by matching it with the original letter or authenticated document submitted directly by the federal or other requesting agency to the CNMI Department of Labor.

The CNMI Department of Labor will not honor or accept photocopies, fax copies or any other substitute for an original.

Dated this 23rd day of September, 2004.


GIL M. SAN NICOLAS
Acting Secretary of Labor