

TITLE 5: OFFICE OF THE ATTORNEY GENERAL

CHAPTER 5-10 GUIDELINES FOR PUBLICATION IN THE COMMONWEALTH REGISTER

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Chapter Authority: 17 TTC § 2 (1 CMC § 9102); 17 TTC § 15 (1 CMC § 9115).

Chapter History: Proposed 5 Com. Reg. 2145 (May 27, 1983) (vacating all previous regulations);* Adopted 3 Com. Reg. 1123 (Feb. 23, 1981).

*A notice of adoption for the May 1983 regulations was never published.

Commission Comment: Pursuant to 1 CMC § 2153(f), the Attorney General is responsible for the publication of rules, regulations and executive orders of the Commonwealth. The Administrative Procedure Act, 1 CMC §§ 9101, et seq., requires the Registrar of Corporations, an office originally within the Office of the Attorney General, to publish a monthly Commonwealth Register containing all proposed and adopted rules, regulations and orders issued by Commonwealth agencies. 1 CMC § 9102(a). In order for rules, regulations, orders and decisions to be valid and effective against all persons, agencies must file them with the Registrar of Corporations. 1 CMC § 9102(d); see also 1 CMC § 9105(a).

In 2003, the Governor transferred the Registrar of Corporations and the remaining legal functions of that office in regards to corporations of the Commonwealth from the Office of the Attorney General to the Department of Commerce. The Office of the Attorney General continues to accept the filing of rules, regulations, orders and decisions for publication in the Commonwealth Register.

The history of the publication guidelines in this chapter is cause for some confusion. The first publication in 1981 provided that “[t]hese rules will become effective twenty (20) days after publication in the Commonwealth Register as provided in 17 TTC 5(2)(a).” 3 Com. Reg. at 1123 (Feb. 23, 1981). Pursuant to the Administrative Procedure Act, 1 CMC §§ 9101, et seq., (formerly 17 TTC §§ 1-15), “rules” are effective 10 days after adoption and publication in the Commonwealth Register. “Regulations,” a subset of rules defined in 1 CMC § 9101(k), require more detailed procedures for adoption set forth in 1 CMC § 9104.

In the 1983 publication, the Registrar of Corporations gave “notice of the intent to promulgate regulations,” and provided for the 30-day comment period required for regulations under 1 CMC § 9104. 5 Com. Reg. at 2145 (May 27, 1983). The public notice also stated that “[a]ll regulations previously promulgated, dealing [with] the subject of these regulations, are hereby vacated. Specifically those regulations found in the Commonwealth Register Volume 3, No. 1.” 5 Com. Reg. at 2145 (May 27, 1983). However, a notice of adoption for the 1983 “regulations” never appeared in the Commonwealth Register. It is unclear, therefore,

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whether the original 1981 rules remain in effect, or whether the purported “regulations” published in 1983 are valid as rules. The Commission published the 1983 “Guidelines for Publication in the Commonwealth Register” in this chapter because of the lack of other guidance regarding promulgation of rules and regulations by administrative agencies in the Commonwealth, and because of the apparent practice of the Attorney General’s Office.

On October 25, 2004, the Attorney General’s Office promulgated emergency regulations to phase in the enforcement provisions of PL 14-10 § 6. See 26 Com. Reg. 22962 (Oct. 26, 2004). PL 14-10 prohibits the importation, distribution, sale or possession of numerous cigarette brands that were legal in the CMMI prior to the law’s enactment. The emergency regulations phase in the enforcement of PL 14-10 to allow the sale and possession of illegal brands already present in the CNMI. The emergency regulations were not proposed for permanent adoption. They were valid for 120 days from October 25, 2004.

Part 001 - General Provisions

[Reserved.]

Part 100 - Procedures; Promulgation of New Regulations

§ 5-10-101 Notice of Proposed Action

(a) The agency must publish a public notice of its intention to adopt or amend regulations. 17 TTC § 4(1)(a) [1 CMC § 9104(a)(1)] requires that the public notice be published at least 30 days prior to official adoption by the agency. The public notice should be published in the Commonwealth Register and posted in convenient places throughout the Commonwealth such as post office bulletin boards, shopping center bulletin boards, public libraries, with clerk of courts, and in other places where the general public would reasonably be expected to notice it.

(b) Printed public notice must be given in both Chamorro and English. Radio broadcasts and other forms of verbal public notice must be made in both Chamorro and English and, additionally, may be made in other languages.

Modified, 1 CMC § 3806(c), (f), (g).

History: Proposed 5 Com. Reg. 2145 (May 27, 1983) (vacating all previous regulations); Adopted 3 Com. Reg. 1123 (Feb. 23, 1981).

Commission Comment: The original cross-reference in subsection (a) was to “section 4(1)(a).” 5 Com. Reg. at 2146 (May 27, 1983). Because reference to section 4(1)(a) of the guidelines did not make sense, the Commission inserted the full citation to the Trust Territory Code.

In subsection (a), the Commission changed “bulletin boares” to “bulletin boards” to correct a manifest error.

§ 5-10-105 Content of Public Notices

(a) The public notice must contain:

(1) A statement of the statutory or other authority for the proposed regulations;

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(2) Either the entire text or a summary description of the subject matter to be regulated; and

(3) A statement as to where, how, and when interested persons may comment or submit views on the proposed regulations.

(b) As noted in section 5-10-101(a), 17 TTC § 4(1)(a) [1 CMC § 9104(a)(1)], requires at least a 30-day period for review and comment by the public, however, the agency in its discretion may extend the 30-day period. Refer to the attached form “A.” [Exhibit A.]

(c) Translation: For efficiency (since the public notice must also be translated and the translated notice published), the public notice should be limited to a summary description or a listing of the subject areas to be regulated. Upon adoption of the final regulations, the agency must maintain for public inspection at least one complete copy of the final translated Chamorro version of the regulations, in addition to the English version. The agency must make arrangements for translation services. However, all translations of public notices and regulations are subject to review and approval by the Office of the Registrar of Corporations as to legal form and correctness prior to publication in the Commonwealth Register. Reasonable costs for review of translated documents submitted to the Registrar shall be borne by the agency. The Registrar will maintain a list of persons interested in performing translation services which will be made available to agencies upon request.

Modified, 1 CMC § 3806(c), (f), (g).

History: Proposed 5 Com. Reg. 2145 (May 27, 1983) (vacating all previous regulations); Adopted 3 Com. Reg. 1123 (Feb. 23, 1981).

Commission Comment: The final two paragraphs were not designated. The Commission designated them subsections (b) and (c).

With regard to the citation to the Trust Territory Code, see the commission comment to § 5-10-101.

In subsection (c), the Commission corrected the spelling of “efficiency.” In subsection (b), the Commission moved the final period inside of the closing quotation mark to correct a manifest error.

§ 5-10-110 Public Hearings on Proposed Regulations

17 TTC 4(1)(b) [1 CMC § 9104(a)(2)] requires that the agency provide interested persons the opportunity to submit written comments, data and arguments. The agency may, in its discretion, hold a public hearing on proposed regulations, provided that where a request for a public hearing is made by the Commonwealth legislature or one of its committees, a government subdivision or agency, an oral hearing must be granted. Each agency should routinely hold public hearings on all proposed regulations.

Modified, 1 CMC § 3806(f), (g).

History: Proposed 5 Com. Reg. 2145 (May 27, 1983) (vacating all previous regulations); Adopted 3 Com. Reg. 1123 (Feb. 23, 1981).

Commission Comment: The Commission corrected the spelling of the word “subdivision.”

§ 5-10-115 Adoption of Regulations

(a) Upon the expiration of the notice period and the conclusion of the public hearing, if any, the agency should then formally adopt the proposed regulations. Formal adoption is accomplished by:

- (1) Obtaining the signature and approval of the official or officials authorized by law (usually the Director, and sometimes the Governor’s approval is required) to adopt or approve the adoption of the agency’s regulations;
- (2) The regulation must be certified by the signing and approving official(s) as a true copy of the regulations as formally adopted by the agency; and
- (3) The certified original and one copy of the regulations must be filed with the Registrar of Corporations.

(b) After formal adoption by the agency, the regulations must be published in their final form in the Commonwealth Register. The regulations become effective 10 days after this publication unless a later date is stated in the regulations or required by law (17 TTC § 5 [1 CMC § 9105]). These requirements will be contained in a notice of adoption. This notice shall contain a statement which specified whether the regulations were adopted as originally promulgated or whether substantial substantive changes were made. If the changes were substantive then the final regulations must be reprinted along with this notice. If no substantial changes were made then the final regulations need not be reprinted if they were printed at the time of promulgation.

Modified, 1 CMC § 3806(c), (f), (g).

History: Proposed 5 Com. Reg. 2145 (May 27, 1983) (vacating all previous regulations); Adopted 3 Com. Reg. 1123 (Feb. 23, 1981).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

The original cross-reference in subsection (b) was to “section 5.” 5 Com. Reg. at 2148 (May 27, 1983). Because reference to section 5 of the guidelines did not make sense, the Commission inserted the full citation to the Trust Territory Code.

§ 5-10-120 Interested Persons’ Right to Request Agency Justification for Regulations

The agency, “[u]pon adoption of a regulation...if requested...by an interested person either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption.” 17 TTC § 4(1)(b) [1 CMC § 9104(a)(2)]. A sample copy of an agency’s response statement (justification) is attached as form “B.” [Exhibit B.]

Modified, 1 CMC § 3806(c), (e), (f), (g).

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History: Proposed 5 Com. Reg. 2145 (May 27, 1983) (vacating all previous regulations); Adopted 3 Com. Reg. 1123 (Feb. 23, 1981).

Commission Comment: This section originally cited a non-existent code section, 17 TTC § 4(11)(b), in error. The Commission changed the reference to section 4(1)(b), which contains the quoted language.

The Commission moved the final period inside the closing quotation mark.

§ 5-10-125 Publication

For purposes of 17 TTC §§ 2, 4, and 5 [1 CMC §§ 9102, 9104 and 9105] publication is deemed to be made where a copy of the rule or regulation is filed with the Registrar, and the Registrar and agency maintain and make copies available for public inspection and copying. Thus, where mass publication and dissemination by a printer or otherwise is not possible, for example, due to power failure, typhoon, etc., publication will be deemed to be effected in substantial compliance with 17 TTC §§ 2, 4, and 5 [1 CMC §§ 9102, 9104, and 9105] by one or a combination of posting public notices in places frequently visited by a substantial number of the general public, newspaper notices, radio and other forms of public notice as warranted under the particular circumstances, and then filing a copy of the regulations with the Registrar. Accordingly, the notice period (at least 30 days) under 17 TTC § 4(1)(a) [1 CMC § 9104(a)(1)] of intention to adopt regulations and the effective dates of rules and regulations under 17 TTC § 5(2) [1 CMC § 9105(b)] and other relevant dates and time periods in 17 TTC will be determined by reference to the date that regulations in compliance with these rules are filed with the Registrar.

Modified, 1 CMC § 3806(c), (f).

History: Proposed 5 Com. Reg. 2145 (May 27, 1983) vacating all previous regulations); Adopted 3 Com. Reg. 1123 (Feb. 23, 1981).

Commission Comment: With regard to the references to the Trust Territory Code, see the commission comments to §§ 5-10-101 and 5-10-115.

§ 5-10-130 Emergency Regulations

Emergency regulations are governed by 17 TTC § 4(2) [1 CMC § 9104(b)] entitled “Procedure for Adoption of Regulations” and 17 TTC § 5(2)(b) [1 CMC § 9105(b)(2)] entitled “Filing and Effective Date of Rules and Regulations.” For purposes of those sections, it is our position that emergency regulations become effective and enforceable on the date they are filed with the Registrar. This result is consistent with the language of 17 TTC § 2(3) [1 CMC § 9102(d)] which applies to all regulations except emergency regulations. Otherwise, the emergency nature of this protection to be afforded by these regulations would be nullified.

Modified, 1 CMC § 3806(c), (g).

History: Proposed 5 Com. Reg. 2145 (May 27, 1983) (vacating all previous regulations); Adopted 3 Com. Reg. 1123 (Feb. 23, 1981).

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Commission Comment: With regard to the references to the Trust Territory Code, see the commission comments to §§ 5-10-101 and 5-10-115.

The Commission corrected the spelling of the word “consistent” and moved the period after “Rules and Regulations” inside of the closing quotation mark.

§ 5-10-135 Interested Persons’ Right to Propose Rules

(a) Petition for Adoption of Rules. An interested person may petition an agency requesting the adoption, amendment, or repeal of a rule. Within 30 days after submission of a petition, the agency shall either deny the petition in writing, stating its reasons for the denial, or shall initiate rule-making proceedings in accordance with this chapter.” (17 TTC § 6 [1 CMC § 9106])

(b) A copy of the agency’s written denial and the petition of the interested person shall be filed with the Registrar for publication as a proposed rule or amendment or repeal of a rule pursuant to 17 TTC § 1(8) or (9) and 17 TTC § 2(1) [1 CMC § 9101(h) or (i) and 1 CMC § 9102(a)].

Modified, 1 CMC § 3806(c), (e), (f).

History: Proposed 5 Com. Reg. 2145 (May 27, 1983) (vacating all previous regulations); Adopted 3 Com. Reg. 1123 (Feb. 23, 1981).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

The cross-references in subsection (b) of this section were to “Section 1(8) or (9) and Section 2(1).” 5 Com. Reg. at 2149 (May 27, 1983). The Commission inserted the full citation to the Trust Territory Code. However, citation to 1 CMC § 9101(i), formerly 17 TTC § 1(9), appears to be in error. The Commission removed extraneous quotation marks around subsection (a) pursuant to 1 CMC § 3806(g).

§ 5-10-140 Interested Persons’ Right to Request Declaratory Ruling by Agency

(a) Declaratory Rulings by Agencies. Any person may petition an agency for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency. Rulings disposing of petitions shall be issued promptly and shall have the same status as final agency decisions or orders in contested cases. (17 TTC § 7 [1 CMC § 9107])

(b) A copy of each agency ruling shall be filed with the Registrar for publication as an agency order, rule or decision pursuant to 17 TTC §§ 1(3), (8), and (15) [1 CMC § 9101(c), (h) and (o)], and 17 TTC § 2(1) [1 CMC § 9102(a)].

Modified, 1 CMC § 3806(c), (f), (g).

History: Proposed 5 Com. Reg. 2145 (May 27, 1983) (vacating all previous regulations); Adopted 3 Com. Reg. 1123 (Feb. 23, 1981).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

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In the first paragraph of this section, the Commission changed “declaratory ruling” to “declaratory rulings” in order to reflect the language of the quoted statute. With regard to the references to the Trust Territory Code, see the commission comments to §§ 5-10-101 and 5-10-115. The Commission removed extraneous quotation marks around subsection (a) pursuant to 1 CMC § 3806(g).

§ 5-10-145 Format Required for Publication

Printing concerns for the Commonwealth Register require that all materials submitted to the Registrar of Corporations conform to the following:

- (a) Material must be single spaced, with double spaces between paragraphs. Triple spacing may be used to set out headings.
- (b) White 8½ x 11 paper will be used. Please note that any material submitted for publication on legal size paper will be returned to the agency.
- (c) Ample margins of at least 1” must be allowed on top, left side and bottom of each page.
- (d) The signed original and at least one clear photostatic copy of the material must be submitted to the Registrar for publication.
- (e) Materials submitted should not be stapled or otherwise bound together.

History: Proposed 5 Com. Reg. 2145 (May 27, 1983) vacating all previous regulations); Adopted 3 Com. Reg. 1123 (Feb. 23, 1981).

Exhibit A

FORM "A"
PUBLIC NOTICE
PROPOSED IMMIGRATION REGULATIONS
FOR TITLE 53
NATIONALITY, EMIGRATION AND IMMIGRATION

The Governor of the Commonwealth of the Northern Mariana Islands, in accordance with Title 53, Section 54 of the Trust Territory Code, Article V, Section 505 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands, and the Schedule on Transitional Matters, Section 2 of the Constitution of the Northern Mariana Islands, is proposing to promulgate new regulations to be used in conjunction with Title 53, Trust Territory Code of the Pacific Islands.

The proposed regulations include the following subject areas:

- 1) General Provisions
- 2) Entry permits
- 3) Entry for Vessel and Aircraft
- 4) Port of Entry
- 5) General Rules Pertaining to Immigration Policy

Copies of the proposed regulations may be obtained from the Immigration and Naturalization Office, Susupe, Saipan, CM 96950.

The Office of Immigration and Naturalization is soliciting views, opinions, facts and data for or against, the proposed Immigration Regulations from the general public.

Anyone interested in commenting on the proposed Immigration Regulations may do so by submitting comments in writing to the Immigration and Naturalization Officer, Office of the Governor, Commonwealth of the Northern Mariana Islands, Civic Center, Susupe, Saipan, CM 96950, within thirty (30) days from the date this notice is published in the Common Register.

Date: _____

(DEPARTMENT HEAD)

Modified, 1 CMC § 3806(f), (g).

History: Proposed 5 Com. Reg. 2145 (May 27, 1983) (vacating all previous regulations); Adopted 3 Com. Reg. 1123 (Feb. 23, 1981).

Commission Comment: In the final paragraph, the Commission changed "Office of the Govern" to "Office of the Governor" to correct a manifest error.

Exhibit B

FORM “B”

PUBLIC NOTICE

ADOPTED REGULATIONS

Department of Public Health and Environmental Services

Authority

In accordance with Public Law 1-8, Chapter 12, Section 3, the Department of Public Health and Environmental Services has the responsibility of administering all government-owned health care facilities and of adopting relevant regulations as deemed necessary. The Director of Public Health and Environmental Services has the responsibility of carrying out the duties of the Department. In accordance with those duties, the Director of Public Health and Environmental Services promulgated a schedule of fees for the provision of health services. The fee schedule was adopted after the expiration of a period of time designated for public comment.

Subject Matter

The adopted regulations included the following subjects:

1. Fees for medical services
2. Fees for emergency medical transportation
3. Fees for purchase and rental of medical and surgical supplies
4. Fees for purchase of prescription drugs and medication

Public Comment

During the period of time designated for public comment on the proposed regulations of the Department of Public Health and Environmental Services, the Senate of the Commonwealth of the Northern Marianas received complaints about the amount of the increase in the fees for medical services and about the proposed two-tiered fee schedule for Micronesians and non-Micronesians. In addition, a lawsuit was filed challenging the constitutionality of a two-tiered fee schedule.

In response to these comments, the proposed regulations were changed to their present form. Despite adverse public comment, it was necessary to increase the fees previously charged for medical services. Because of the continuous increase in costs in health delivery systems including the purchase of medicine, equipment and medical supplies in the national and international market, the cost of providing health services has increased substantially since health care fees were originally established in 1963. Even with the increase in fees, recipients of medical care and related services pay only a small percentage of the actual cost of providing such care. The proposed fee schedule was changed to provide for uniform application to all recipients regardless of race or national origin.

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Copies of the adopted regulations may be obtained from the Department of Public Health and Environmental Services.

The Department of Public Health and Environmental Services is soliciting views, opinions, facts and data for and against the adopted regulations from the general public.

Anyone interested in commenting on the adopted regulations may do so by submitting comments in writing to the Department of Public Health and Environmental Services, Commonwealth of the Northern Mariana Islands, Saipan, CM 96950, within 30 days from the date this notice is published in the Commonwealth Register.

Director
Public Health and Environmental Services

FORM "B"
NOTISIAN PUBLIKO
I MA ADAPTA NA AREKLO
Depattamenton Public Health yan Environmental Services
Atoridat

Gi papa i Lai Publiko 1-8, Kapitulu 12, Seksiona 3, DePattamenton Public Health yan environmental Services gaige i responsabilidad na para hu atministra todo fasilidat hinemlo ni gaige gi halom gobeitnon Commonwealth ya sina ha man adapta otro siha na areklo yangen nesesario para hu chogue. I Direktot Public Health yan Environmental Services gai responsobilidat na hu lihe na i che'cho Depattamento ma chochogue. Ginen este na responsobilidat ani sina i Direktot Public Health yan Environmental Services man langos areklon apas pot setbision hinemlo. Este na eskeleran apas (fee schedule) siempre ma adapta yanggen ahupos i tiempo ni manahe publiko para hu nahalom hafa na opinion pot este na suntto.

Hafa Para Uma Deskuti

I ma dapata na areklo umahalom lokue este siha:

1. Apa para setbision hinemlo
2. Apas para transpotasion, manmalango yanggen guaha emergency
3. Apas yanggen para.un fahan pat hatkila trastis hinemlo kon todo trastis operasion.
4. Apas para umafahan amot hi ginen i dokto yan lokkue hafa na setbision hinemlo ni manahe manmalango.

Opinon Publiko

Durantin i tiempo ni manannahe publiko para hu nahalom opinion nish para i ma propoponi na areklon Depattamenton Public Health yan Environmental Services, i Commonwealth Senate manmaresibi kinentra ginen i publiko pot asunton apas setbision

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hinemlo ni ma kahat hulo yan guaha dos klasin preson setbisio, para Micronesian yan Non-Micronesian. Lökkue guaha keha gi halom koti na ma kokontra este na dos klasin preson setbision hinemlo.

I inepin este siha na kinentra, pot i ma propoponi na areklo para apas setbision hinemlo esta matulaika. Masaha guaha kinentra ginen publiko nesesario na uma kahat hulo i apas setbision hinemlo. Pot motibo na sisighiha hulo i preson hamot, matiriat ya trastis hinemlo gi metkao (market) eteramenti gi tano, i preso ni para umana guaha setbision hinemlo esta maulek kumahulona disti anai ma establesi gi 1963 na sakkan. Esta pago ha parareho ha i presion i setbision hinemlo. Maseha ma kahat hulo i apas setbision hinemlo, i mannapapasi pot este siha na setbisio tarabiha dididiha i pusemento yanggen para uma kompara i deputsi presion hayo na setbisio pat.amot. Ma tulaika i finenena na proposito para apas setbision hinemlo pot rasion na para umana pareho ha i apas setbisio para todo rasan taotao.

Kopian este na adaptan areklo sina machule ginen Depattamenton Public Health yan Environmental Services.

I Depattamenton Public Health yan Environmental Services man espipia opinionon parehoha fabot yan tifabot pot este siha na areklo ni esta ma adapta ginen i publiko.

Haye interesao para hu nahalom opiniononna pot este siha na areklo pat lai ni ma adapta esta, hu tugi ya una halom gi Depattamenton Public Health yan Environmental Services, Commonwealth of the Northern Marianas, Saipan, CM 96950, gi halom trenta dias anai ma langos este ha notisia ginen Commonwealth Register.

Direktot
Public Health yan Environmental Services

History: Proposed 5 Com. Reg. 2145 (May 27, 1983) (vacating all previous regulations); Adopted 3 Com. Reg. 1123 (Feb. 23, 1981).

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Exhibit C

FORM "C"

PUBLIC NOTICE

ADOPTION OF EMERGENCY REVENUE REGULATIONS

The Director of Finance, in accordance with Public Law No. 1-8, Public Law No. 1-30, and Title 17, TTC, Section 4(2), wishes to advise the public that new rules and regulations, identifies as Revenue Regulations Chapter No. 5901 of the Division of Revenue and Taxation, have been adopted.

The adopted regulations include the following subjects:

1. General Provisions
2. Definitions
3. Tax on Wages and Salaries
4. Deposit of Withheld Wage and Salary Taxes
5. Individual to File Return and Earned Income
6. Tax on Business Gross Revenues
7. Apportionment
8. Territorial Income Tax - Effective January 1, 1979

These regulations will be published in the Commonwealth Register and copies may be obtained from the Registrar of Corporations, Office of the Attorney General, 5th Floor Nauru Building, Susupe, Saipan, or from the Department of Finance, Susupe, Saipan, CM 96950.

The public interest in avoiding confusion in filing and paying taxes and avoiding a loss of Revenue to the Commonwealth, requires that these regulations be adopted immediately and prior to April 15, 1980, which is the deadline for filing Commonwealth Tax Returns.

Certified by:

(DIRECTOR)

DATE _____

Concurred by:

(GOVERNOR)

DATE _____

Modified, 1 CMC § 3806(f).

History: Proposed 5 Com. Reg. 2145 (May 27, 1983) (vacating all previous regulations); Adopted 3 Com. Reg. 1123 (Feb. 23, 1981).