

TITLE 85: DEPARTMENT OF LANDS AND NATURAL RESOURCES

CHAPTER 85-90

FORESTRY SECTION; FOREST RESOURCES PROTECTION REGULATIONS

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Chapter Authority: PL 1-8, ch. 13 (formerly codified at 1 CMC §§ 2651, et seq.); 1 CMC § 2654.

Chapter History: Amdts Adopted 15 Com. Reg. 11066 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10741 (July 15, 1993); Amdts Adopted 15 Com. Reg. 11054 (Oct. 15, 1993); Amdts Emergency and Proposed 15 Com. Reg. 10586 (May 15, 1993) (effective for 120 days from May 3, 1993); Adopted 10 Com. Reg. 5665 (Sept. 15, 1988); Proposed 10 Com. Reg. 5562 (June 15, 1988).

Commission Comment: PL 1-8, tit. 1, ch. 13 (effective Aug. 10, 1978), formerly codified at 1 CMC §§ 2651, et seq., originally created a Department of Natural Resources within the Commonwealth government.

Executive Order 94-3 (effective August 23, 1994) reorganized the Commonwealth government executive branch, changed agency names and official titles and effected numerous other revisions. According to Executive Order 94-3 § 104 and 306:

Section 104. Department of Lands and Natural Resources.

The Department of Natural Resources is re-designated the Department of Lands and Natural Resources.

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The full text of Executive Order 94-3 is set forth in the commission comment to 1 CMC § 2001.

In 1997, the Legislature passed the “Public Lands and Natural Resources Administration Act of 1997,” PL 10-57 (effective Apr. 18, 1997), codified as amended at 1 CMC §§ 2651-2691. PL 10-57 repealed and reenacted chapter 13, division 2 of title 1 of the Commonwealth Code, 1 CMC §§ 2651, et seq., and statutorily established the Department of Lands and Natural Resources (DLNR) with the structure, duties and responsibilities set forth in the act. See 1 CMC § 2651 and the commission comment thereto. 1 CMC § 2653(h) authorizes DLNR to maintain and provide for the conservation of forests. 1 CMC § 2654 authorizes the DLNR to adopt rules and regulations in furtherance of its duties and responsibilities.

The Department of Natural Resources Forestry Section promulgated the regulations codified in this chapter pursuant to the authority of PL 1-8.

On July 15, 1993, the Department of Natural Resources published a notice of adoption of amendments to the Forestry Resources Protection Regulations published on April 15, 1993. See 15 Com. Reg. 10759 (July 15, 1993). The Commission cannot locate the regulations to which this adoption notice refers.

Part 001 - General Provisions

§ 85-90-001 Authority

(a) The regulations in this chapter have been promulgated by the Department of Natural Resources (DNR) in accordance with Commonwealth of the Northern Mariana Islands (CNMI) Public Law 1-8.

(b) Chapter 13, § 3 of that law provides the powers and duties of the Department, including “(f) To maintain and provide for the conservation of forests.” In addition, § 5 provides for the adoption of rules and regulations pertaining to the DNR’s authority.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 10 Com. Reg. 5665 (Sept. 15, 1988); Proposed 10 Com. Reg. 5562 (June 15, 1988).

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

With respect to the reference to the Department of Natural Resources, see Executive Order 94-3 (effective August 23, 1994) reorganizing the Commonwealth government executive branch, changing agency names and official titles and effecting numerous other revisions. See also PL 10-57 and the general commission comment to this subchapter.

§ 85-90-005 Purpose

The regulations in this chapter establish minimum standards for the protection and use of public forest land within the CNMI for the long term maintenance of forest values, including but not limited to watershed protection, soil and water conservation, maintenance of wildlife habitat and recreation. The regulations in this chapter shall only apply to the islands of Aguiguan, Rota, Saipan and Tinian.

Modified, 1 CMC § 3806(d), (f).

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History: Adopted 10 Com. Reg. 5665 (Sept. 15, 1988); Proposed 10 Com. Reg. 5562 (June 15, 1988).

§ 85-90-010 Definitions

- (a) “Basal area” means the cross-sectional area in square feet of all trees counted using a wedge prism or relaskop in variable plot timber cruising. The stem count per variable plot times the basal area factor of the prism or relaskop determines the total basal area in square feet occupied by tree stems on a per acre basis.
- (b) “Commonwealth forest” means an area so designated by the Marianas Public Land Corporation (MPLC), or its successor, or so designated by CNMI law. Private lands within Commonwealth forest boundaries are excluded from this definition.
- (c) “Commonwealth Forester” means the head of the CNMI DNR Forestry Section, typically a professional forester, or any person officially designated to serve as the acting Commonwealth Forester during his or her absence or when this position is vacant.
- (d) “Director” means the Director of the Department of Natural Resources.
- (e) “Forest land” means any land of any size area whose surface is covered more than 25 percent by trees.
- (f) “Forest resources” means all vegetative materials and animals located on forest land, the water flowing in, on or from forest land, the minerals beneath such land and the recreational value and recreational development upon it.
- (g) “Forestry Section” means, the CNMI government departmental division or subdivision with primary responsibility for the management of the Commonwealth forests and all public forest land, or any governmental agency on any island designated in writing by the Director to assume this responsibility.
- (h) “Diverse forest” means forest land in the CNMI with less than fifty percent of the trees by basal area being tangantangan (*Leucaena leucocephala*). This also includes any trees planted on rural public land for any public purpose.
- (i) “Person” means any individual, corporation, society, organization, government official, or other entity.
- (j) “Special use” means the permitting of land occupancy on a Commonwealth forest for a purpose not primarily connected with the purposes of such forest, but which is or can be made compatible with overall forestry goals. Special uses include, but are not limited to, agriculture, grazing, recreational development and the sale or disposal of forest resources.

Modified, 1 CMC § 3806(f).

History: Adopted 10 Com. Reg. 5665 (Sept. 15, 1988); Proposed 10 Com. Reg. 5562 (June 15, 1988).

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Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) through (j).

With respect to the reference to the Department of Natural Resources, see Executive Order 94-3 (effective August 23, 1994) reorganizing the Commonwealth government executive branch, changing agency names and official titles and effecting numerous other revisions. See also PL 10-57 and the general commission comment to this subchapter.

Part 100 - Forestry Permit Requirements

§ 85-90-101 Commonwealth Forests

No clearing or burning of vegetation, removal of plants or plant products, or the destruction of the same on any Commonwealth forest lands shall be undertaken by any person without first obtaining a forestry permit from the Director. The special use of Commonwealth forest land shall also require the issuance of a forestry permit before undertaking any special use activity.

Modified, 1 CMC § 3806(f).

History: Adopted 10 Com. Reg. 5665 (Sept. 15, 1988); Proposed 10 Com. Reg. 5562 (June 15, 1988).

§ 85-90-105 Diverse Forest on Public Lands

No clearing or burning of vegetation, removal of plants or plant products, “removal of soil,” or the destruction of the same in an area defined as diverse forest on public lands on the islands of Aguiguan, Rota, Saipan, and Tinian shall be undertaken by any person without first obtaining a forestry permit from the Director.

Modified, 1 CMC § 3806(f), (g).

History: Amdts Adopted 15 Com. Reg. 11054 (Oct. 15, 1993); Amdts Emergency and Proposed 15 Com. Reg. 10586 (May 15, 1993) (effective for 120 days from May 3, 1993); Adopted 10 Com. Reg. 5665 (Sept. 15, 1988); Proposed 10 Com. Reg. 5562 (June 15, 1988).

Commission Comment: The Commission moved the comma after “soil” inside of the closing quotation marks. The Commission inserted a comma after the word “Saipan” pursuant to 1 CMC § 3806(g).

Part 200 - Forestry Permit Process

§ 85-90-201 Introduction

Forestry permits are issued under the authority of the Director, and are hereby delegated to the Commonwealth Forester and other appropriate DNR officials.

Modified, 1 CMC § 3806(f).

History: Adopted 10 Com. Reg. 5665 (Sept. 15, 1988); Proposed 10 Com. Reg. 5562 (June 15, 1988).

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Commission Comment: This section was originally the introduction to § 5, codified at part 200. See 10 Com. Reg. at 5568 (June 15, 1988). The Commission created the section title.

§ 85-90-205 Forestry Permit Application

(a) Application for a forestry permit shall be made in writing to the Forestry Section at the office responsible for the island upon which the proposed activity will take place.

(b) Information Required

Forestry permit applications shall contain information in sufficient detail to clearly describe the purposes and effects of all activities requiring a permit. At a minimum, all forestry permit applications shall include the following information:

- (1) Applicant's name;
- (2) Applicant's organizational affiliation;
- (3) Applicant's mailing address and telephone no.;
- (4) Description of proposed activity(ies);
- (5) Description of environmental effects of proposed activities;
- (6) Map in sufficient detail so that all proposed activities can be located on the ground.

Modified, 1 CMC § 3806(f).

History: Adopted 10 Com. Reg. 5665 (Sept. 15, 1988); Proposed 10 Com. Reg. 5562 (June 15, 1988).

Commission Comment: The first paragraph was not designated. The Commission designated it subsection (a).

§ 85-90-210 Certification of Completion of Forestry Permit Application

Within fifteen days after the date upon which an application for a forestry permit is received by the Forestry Section, the information shall be reviewed by that office and either certified in writing that the permit application contains complete information, as specified in § 85-90-205(b), upon which a final permit decision can be made, or shall notify the applicant in writing that further information is required. The time period specified for the consideration of a complete forestry permit application shall only begin on the date an application is certified complete.

Modified, 1 CMC § 3806(c), (e), (f).

History: Adopted 10 Com. Reg. 5665 (Sept. 15, 1988); Proposed 10 Com. Reg. 5562 (June 15, 1988).

§ 85-90-215 Review of Forestry Permit Applications

Beginning no later than the date a forestry permit application is certified complete, each application shall be promptly reviewed by the responsible Forestry Section office and a written recommendation either to approve or deny the application and the reasons for such approval or denial shall be forwarded with the certified application to the Director. The Director shall then have a maximum of sixty days following receipt of the Forestry

Section's recommendation along with the certified forestry permit application to approve or deny that application. The Director reserves the right to modify any or all portions of any application in the course of approving that application. The Director also reserves the right to reject the Forestry Section office's certification of a complete application if he or she believes that more information must be provided by the applicant before a final decision can be made. In this latter instance the Director shall immediately notify the applicant in writing, specifying what additional information is required before consideration of the application can be continued.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 10 Com. Reg. 5665 (Sept. 15, 1988); Proposed 10 Com. Reg. 5562 (June 15, 1988).

§ 85-90-220 Site Evaluation for Fungal Infestation

A minimum of two days shall be given to the Forestry Section staff to conduct an on-site evaluation of the proposed activity area for the fungal disease presence. Upon certifying a negative finding, the application shall be certified complete.

Modified, 1 CMC § 3806(e).

History: Amdts Adopted 15 Com. Reg. 11054 (Oct. 15, 1993); Amdts Emergency and Proposed 15 Com. Reg. 10586 (May 15, 1993) (effective for 120 days from May 3, 1993).

Commission Comment: The 1993 amendments added this section and re-designated the remaining sections in this part accordingly.

§ 85-90-225 Reclamation Bond Requirement

A reclamation bond may be required to be deposited by the applicant prior to issuance of any forestry permit. The bond amount shall be determined by the Director, and shall not be less than the total amount estimated to insure complete reclamation of all vegetation and lands disturbed by the activities covered under the forestry permit, plus the removal of all equipment and materials.

Modified, 1 CMC § 3806(f).

History: Adopted 10 Com. Reg. 5665 (Sept. 15, 1988); Proposed 10 Com. Reg. 5562 (June 15, 1988).

§ 85-90-230 Forestry Permit Application Approval

(a) All forestry permits shall be approved by the Director. All permits issued pursuant to the regulations in this chapter shall clearly state the activity(ies) being approved, shall include the time period under which the permit is valid, and shall also specify any restrictions or conditions on the permitted activity(ies). Any forestry permit that does not include all of these items is not a valid permit.

(b) Signatures - All forestry permits shall carry the signatures of the Director and the applicant. An original permit plus one copy, both containing the Director's signature shall

be sent to the applicant. Both the original and the copy must then be signed and dated by the applicant, with the original returned to the Director for verification of the permit. The forestry permit takes effect on the date it is signed by the applicant. A forestry permit issued under any other circumstances is not a valid permit.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 10 Com. Reg. 5665 (Sept. 15, 1988); Proposed 10 Com. Reg. 5562 (June 15, 1988).

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

§ 85-90-235 Forestry Permit Application Denial

Any applicant denied a forestry permit shall be informed in writing by the Director of the reasons for such denial.

Modified, 1 CMC § 3806(f).

History: Adopted 10 Com. Reg. 5665 (Sept. 15, 1988); Proposed 10 Com. Reg. 5562 (June 15, 1988).

Part 300 - Exemptions

§ 85-90-301 Department Staff

Department of Natural Resources staff, when acting in the course of their official duties with the understanding and approval of the Forestry Section in conformance with a completed forest resource or management plan, shall be exempt from the requirements of part 100.

Modified, 1 CMC § 3806(c).

History: Adopted 10 Com. Reg. 5665 (Sept. 15, 1988); Proposed 10 Com. Reg. 5562 (June 15, 1988).

Commission Comment: The Commission created the section title.

Part 400 - Standards for Forestry Permit Issuance

§ 85-90-401 Standards for Forestry Permit Issuance

The Director and Forestry Section shall consider the following when evaluating all forestry permit applications:

- (a) Alternatives - Whether or not an alternative site exists outside of the Commonwealth forests and outside of diverse forest on public lands where the proposed activity(ies) might be conducted;

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(b) Compatibility - Whether or not all proposed activities are compatible with existing land uses and conform to all law(s) mandating the maintenance and conservation of forests;

(c) Cumulative Impact - Whether or not the added impact of all proposed activities, when added to existing uses, will result in a significant degradation of a Commonwealth forest and/or diverse forest on public lands;

(d) Mitigation Measures - Whether or not the applicant has considered, or whether there can be applied to the proposed activities, suitable environmental mitigation measures to insure that the anticipated impacts on all natural resources are minimized to the greatest extent practicable.

Modified, 1 CMC § 3806(f).

History: Adopted 10 Com. Reg. 5665 (Sept. 15, 1988); Proposed 10 Com. Reg. 5562 (June 15, 1988).

Part 500 - Permit Administration and Enforcement; Penalties

§ 85-90-501 Permit Administration

Administration - All forestry permits shall be administered by the Forestry Section. Administration includes the daily or periodic inspection of permit activities to insure compliance with the regulations in this chapter and the terms and conditions of any permits issued pursuant to these regulations.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 10 Com. Reg. 5665 (Sept. 15, 1988); Proposed 10 Com. Reg. 5562 (June 15, 1988).

§ 85-90-505 Permit Enforcement

The Director shall have the power to issue any necessary order to enforce the regulations in this chapter and any terms and conditions of any forestry permit issued pursuant to these regulations. Such order may require that any person violating such regulations, terms or conditions cease and desist from such violation immediately or within a stated period of time, and may require that such person take such mitigating measures as may be necessary to reverse or reduce any significant adverse effects of such violation. Such order may also apply to any other person in addition to the violator when necessary to protect Commonwealth forest or diverse forest on public lands. Any permit may be revoked, suspended or modified for violation of the regulations in this chapter or the terms and conditions of such permit.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 10 Com. Reg. 5665 (Sept. 15, 1988); Proposed 10 Com. Reg. 5562 (June 15, 1988).

§ 85-90-510 Injunctive Relief

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At the request of the Director, the CNMI Attorney General may institute a civil action in the Commonwealth Trial Court for a temporary restraining order, injunction, or other appropriate remedy to enforce any provision of the regulations in this chapter, or any term or condition of any forestry permit issued pursuant to this chapter.

Modified, 1 CMC § 3806(d).

History: Adopted 10 Com. Reg. 5665 (Sept. 15, 1988); Proposed 10 Com. Reg. 5562 (June 15, 1988).

Commission Comment: Amendments adopted in October 1993 deleted former § 9, entitled “Penalties.” See 15 Com. Reg. 11066 (Oct. 15, 1993); 15 Com. Reg. 10741 (July 15, 1993).

The “Commonwealth Judicial Reorganization Act,” PL 6-25 (effective May 2, 1989), renamed the Commonwealth Trial Court and directed that references to the Commonwealth Trial Court in the Commonwealth Code be interpreted to refer to the new Commonwealth Superior Court. See 1 CMC § 3201 and the commission comment thereto.

Part 600 - Miscellaneous Provisions

§ 85-90-601 Severability

If any section, subsection, clause, or part of the regulations in this chapter is judged to be unconstitutional or invalid by a court of competent jurisdiction, the remainder of these regulations shall not be affected thereby.

Modified, 1 CMC § 3806(d).

History: Adopted 10 Com. Reg. 5665 (Sept. 15, 1988); Proposed 10 Com. Reg. 5562 (June 15, 1988).

Commission Comment: The Commission inserted a comma after the word “clause” pursuant to 1 CMC § 3806(g).