

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



**COMMONWEALTH REGISTER
VOLUME 26
NUMBER 10**

October 26, 2004

COMMONWEALTH REGISTER

VOLUME 26
NUMBER 10
OCTOBER 26, 2004

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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Juan N. Babauta
Governor

OCT 15 2004

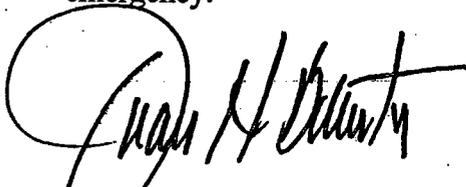
Diego T. Benavente
Lieutenant Governor

DECLARATION OF EMERGENCY

Volcanic Eruption on Anatahan

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

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



JUAN N. BABAUTA
Governor

CC: Lt. Governor (F: 664-2311)
Senate President (F: 322-0519)
House Speaker (F: 664-8900)
Mayor of the Northern Islands (F: 233-6466)
Director of Emergency Management (F: 322-7743)
Commissioner of Public Safety (F: 664-9027)
Attorney General (F: 664-2349)



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. Pangellman Dep., Director

MEMORANDUM

15 OCT 2004

To: Governor
From: Acting 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 October 18, 2004.

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

Sincerely,


 Maria B. Kazuma

Xc: Lt. Governor
 SAA
 Mayor, NI

FAXED
 By 10/15/04 [Signature]
 Time



Northern Mariana Islands Volcanic Activity

[| Anatahan Home](#) | [| Current Update](#) | [| Archive of Updates](#) | [| Photo Gallery](#) |

Activity Update

The first historical eruption of Anatahan Volcano began suddenly on the evening of May 10. An eruption column as high as 10 km resulted in a far-reaching eruption cloud to the west. No one was directly threatened by the initial activity, because residents had long before evacuated the small volcanic island (9 km long and 3 km wide). Thus far, the eruption has consisted of a nearly continuous small eruption column (less than 5 km) punctuated by stronger explosive activity. In early June, a small lava flow erupted in the volcano's east crater, but was mostly destroyed by subsequent explosive activity.

[| Eruption Overview](#) | [| Washington VAAC Volcano Ash Advisories](#) |

Anatahan Volcano Update

Anatahan Volcano Update for October 9, 2004

Submitted Saturday, October 9, 2004 at 0700 local Anatahan time

There was no significant volcano-seismic activity in the Anatahan area during the past week. On July 26, the seismicity level decreased dramatically to a very low level, and it remains very low. The seismic signals and visual reports indicate that the frequent strombolian explosions have ceased and suggest that the eruption is over.

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.

Contact persons:

Juan Takai Camacho, Geophysical Seismic Technician, EMO Saipan; tel: (670) 322-9528, fax: (670) 322-7743, email: jtcamacho@cnmiemo.gov.mp Ramon Chong, Geophysical Instrument Specialist, EMO Saipan; tel: (670) 322-9528, fax: (670) 322-7743, email: rcchongemo@hotmail.com Frank Trusdell, Geologist, USGS; tel: (808) 967-8812, fax: (808) 967-8890, email: trusdell@usgs.gov



Commonwealth of the Northern Mariana Islands Office of the Attorney General

2nd Floor Hon. Juan A. Sablan Memorial Bldg.
Caller Box 10007, Capitol Hill
Saipan, MP 96950

Attorney General/Civil Division
Tel: (670) 664-2341
Fax: (670) 664-2349

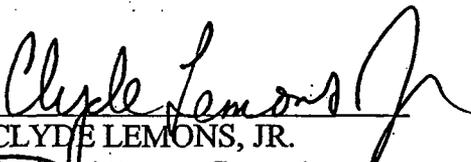
Criminal Division
Tel: (670) 664-2366/2367/2368
Fax: (670) 234-7016

PUBLIC NOTICE OF OFFICE OF THE ATTORNEY GENERAL EMERGENCY REGULATIONS

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 emergency adoption regulations effective immediately. These regulations phase in enforcement of the penalty provisions of Public Law 14-10, § 6. The Office of the Attorney General further finds that the public interest mandates adoption of these regulations upon fewer than thirty (30) days notice, and that these regulations shall become effective immediately, subject to the approval of the Attorney General and the concurrence of the Governor, and shall remain effective for 120 days.

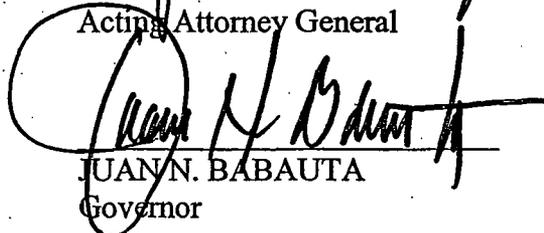
REASON FOR EMERGENCY: As a result of the passage of Public Law 14-10, a number of previously legal cigarette brands became illegal to import, distribute, sell or possess within the CNMI. Public Law 14-10 specified that the Attorney General's Office had 90 days from the date of passage to compile a list of cigarette brands that were not in compliance with Public 13-15 and Public Law 14-10, and to declare such cigarettes contraband. That date has already passed, however, prior to that date, a number of wholesalers in the CNMI had imported large quantities of these non-compliant cigarettes. The Attorney General's Office finds that it would not be in the public interest for these distributors to incur substantial financial loss by requiring them to destroy such cigarettes. Therefore, these emergency regulations provide that the existing stock of non-compliant cigarettes may be disposed of through the normal stream of commerce by providing for phased in enforcement of the applicable penalty provisions in Section 6 of Public Law 14-10.

Submitted by:


CLYDE LEMONS, JR.
Acting Attorney General

10/22/04
Date

Concurred by:


JUAN N. BABAUTA
Governor

10/25/04
Date

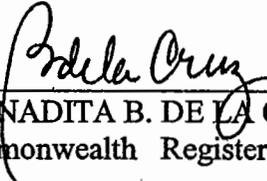
Received by:



THOMAS A. TEBUTEB
Special Assistant for Administration

10/25/04
Date

Filed and
Recorded by:

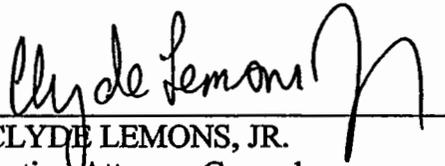


BERNADITA B. DE LA CRUZ
Commonwealth Register

10/25/04
Date

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

Dated the 25th day of October, 2004.



CLYDE LEMONS, JR.
Acting Attorney General

**PUBLIC NOTICE
OFFICE OF THE ATTORNEY GENERAL EMERGENCY
REGULATIONS**

**Citation of
Statutory Authority:**

The Attorney General's Office is authorized to promulgate these regulations implementing phased in enforcement of Public Law 14-10, pursuant to Public Law 14-10, § 7(d).

**Short Statement of
Goals and Objectives:**

These emergency regulations will preserve the financial health of wholesalers who dealt in previously legal cigarettes, and to provide public notice of non-compliant cigarette brands.

**Brief Summary of the
Proposed New Section:**

These emergency regulations call for enforcement of the penalty provisions in Section 6 of P.L. 14-10 in four phases:

- (1) immediate ban on importation of certain cigarette brands;
- (2) deferred enforcement of ban on sale to retailers;
- (3) deferred enforcement of ban on sale by retailers;
- (4) deferred enforcement of possession by consumers.

For Further Information Contact:

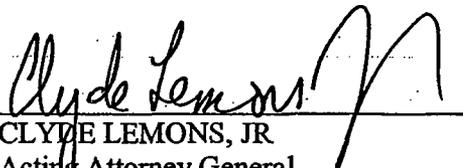
Brian R. Caldwell, Assistant Attorney General, Office of the Attorney General, Civil Division, telephone (670)664-2338, or facsimile (670)664-2349.

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

Public Law 14-10, Sections 3 and 6.

Dated this 22nd day of October, 2004.

Submitted by:


CLYDE LEMONS, JR.
Acting Attorney General

OFFICE OF THE ATTORNEY GENERAL EMERGENCY REGULATIONS

Section 1000.1 Authority

These emergency regulations are being promulgated pursuant to Public Law 14-10, §7(d).

Section 1000.2 Purpose

- (A) The purpose of these emergency regulations is to implement a phase-in process for enforcement of Public Law 14-10. The intent is to allow importers and wholesalers of non-compliant cigarettes the ability to legally dispose, through the stream of commerce, their cigarette stock that was imported into the CNMI before such cigarettes were declared unlawful.
- (B) These emergency regulations shall also serve as public notice of all non-complaint cigarettes, pursuant to Public Law 14-10 § 3(b), and shall remain in effect until such time as the Attorney General's Directory of Approved Brands is published on the Attorney General's website. Any cigarettes not specifically mentioned in Section 1000.3 may be lawfully imported, sold or possessed within the CNMI.

Section 1000.3 Cigarettes & Brands Affected By These Regulations and Subject To the Provisions of Public Law 14-10.

All cigarette brands and cigarettes fabricated by the following manufacturers are immediately banned from importation into the CNMI, unless the Attorney General's Office subsequently finds that such manufacturer has come into compliance with P.L. 13-15 and P.L. 14-10, as indicated on the Attorney General's Directory of Approved Brands:

- (A) **China Hongta Group**, located in China, including, but not limited to the brands: **Ashima**; and **Hong Ta Shan**;
- (B) **Fortune Tobacco Corporation**, located in the Philippines, including, but not limited to the brand: **Hope Luxury**;
- (C) **Heintz Van Landewyck**, located in Luxembourg, including, but not limited to the brands: **Saipan MAP Collection**;; **Saipan Surf**; **Hot Rods**; **Money To Burn**; and **Sunset of Saipan**;
- (D) **Hong Kong Tobacco Company**, located in Hong Kong, China, including but not limited to the brand: **Champion**, but not the Champion brand produced by Vibo Corporation d/b/a General Tobacco; and

- (E) **LaSuerta Cigar & Cigarette Factory**, located in the Philippines, including but not limited to the brands: **Astro** and **Cannon**.

Section 1000.4 Schedule for Implementation of Enforcement

- (A) The enforcement and applicable penalty provisions contained within P.L. 14-10, § 6, shall be immediately enforceable against any wholesale distributor, or other party, who imports any of the cigarettes listed in Section 1000.3.
- (B) There shall be a stay of the enforcement and applicable penalty provisions contained within P.L. 14-10, § 6, against any wholesale distributor, or other party, who distributes to a retailer, transports to a retailer, holds for a retailer, or sells to a retailer, any of the cigarettes listed in Section 1000.3 until December 15, 2004, after which time the applicable penalty provisions shall be fully enforceable.
- (C) There shall be a stay of the enforcement and applicable penalty provisions contained within P.L. 14-10, § 6, against any retailer, or other party, who sells, acquires, holds, owns, or possesses for sale, any of the cigarettes listed in Section 1000.3 until January 15, 2005, after which time the applicable penalty provisions shall be fully enforceable.
- (D) There shall be a stay of the enforcement and applicable penalty provisions contained within P.L. 14-10, § 6, against any person who possesses for personal consumption any of the cigarettes listed in Section 1000.3 until February 15, 2005, after which time the applicable penalty provisions shall be fully enforceable.

Section 1000.5 Severability

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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY

Second Floor Afetna Square Building, San Antonio, P.O. Box 10007, Saipan, MP 96950
Telephone no. (670) 236-0900, Facsimile no. (670) 236-0991



JOAQUIN A. TENORIO
SECRETARY

**PUBLIC NOTICE OF EMERGENCY REGULATIONS AND NOTICE
OF INTENT TO ADOPT AMENDMENTS TO THE DEPARTMENT
OF LABOR REGULATIONS, Section II(A)(b)**

EMERGENCY: The Commonwealth of the Northern Mariana Islands, Department of Labor finds that under 1 CMC § 9104(b), the public interest requires the passage of regulations to modify Section II (A)(b) of the Alien Labor Rules and Regulations, as amended. This amendment would modify the second sentence of this section – which at present says that “An employer must be determined to be financially solvent to be entitled to employ a nonresident worker.” The modification would change this sentence as follows: “An employer must be determined to be financially solvent to be entitled to employ a nonresident worker, except that the Department of Labor may permit an insolvent employer to renew a nonresident worker so long as that employer’s payroll obligations for the previous year have been fully met.” The Department of Labor further finds that the public interest mandates adoption of these regulations upon fewer than thirty (30) days notice, and that these regulations shall become effective on **October 18, 2004**, subject to the approval of the Attorney General and the concurrence of the Governor, and shall remain effective for 120 days.

REASON FOR EMERGENCY: The Department of Labor finds that under the current regulations, employers who have shown that they are able to make their payroll obligations – but who do are not “financially solvent” as defined in the applicable regulations – are unable to retain and renew nonresident workers. Dozens of CNMI employers – and hundreds of nonresident workers – are or will be affected by this inflexible requirement. The Department of Labor is concerned that the CNMI’s businesses – and nonresident workers – will be severely harmed unless the Department of Labor is able to grant renewals to businesses which are able to pay (and are paying) their nonresident workers, even if those businesses are not financially solvent. Thus, it is in the public interest to implement these regulations as emergency regulations effective October 18, 2004.

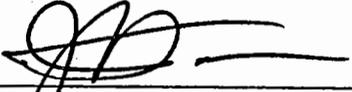
INTENT TO ADOPT: It is the intent of the Department of Labor to adopt this emergency amendment to the Alien Labor Rules and Regulations, Section II(A)(b) as permanent, pursuant to 1 CMC § 9104(a)(1) and (2). Accordingly, interested persons may submit written comments on these emergency amendments to Dr. Joaquin A. Tenorio, Secretary of Labor, Afetnas Square, 2nd Floor, San Antonio, Saipan, MP 96950.

**PROPOSED EMERGENCY REGULATIONS AMENDING THE
DEPARTMENT OF LABOR REGULATIONS, Section II(A)(1)(b)**

Section II(A)(1)(b):

The Division of Employment Services and Training will evaluate whether the employer is financially able to hire a nonresident worker and will certify the result. An employer must be determined to be financially solvent to be entitled to employ a nonresident worker, except that the Department of Labor may permit an insolvent employer to renew a nonresident worker so long as that employer's payroll obligations for the previous year have been fully met. The determination of solvency is based upon the actual annual expenses of the employer in hiring a nonresident worker. Expenses include a guaranteed basic minimum wage and the ability to pay the worker for hours worked, room and board, medical expenses, health insurance when applicable, transportation and other employer expenses.

Submitted by:


Dr. Joaquin A. Tenorio
Secretary of Labor

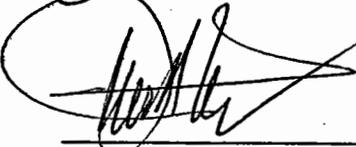
10/18/04
Date

Concurred by:


JUAN N. BABAUTA
Governor

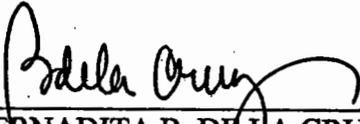
10/19/04
Date

Received by:


THOMAS A. TEBUTEB
Special Assistant for Administration

10/20/04
Date

Filed and
Recorded by:


BERNADITA B. DE LA CRUZ
Commonwealth Register

10-19-04
Date

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

Dated this 17th day of October, 2004.


PAMELA BROWN
Attorney General

10/26



Commonwealth Utilities Corporation



PROPOSED CUC ELECTRIC SERVICE REGULATIONS AMENDMENTS REGARDING FUEL SURCHARGE

*Citation of
Statutory Authority:*

These regulations have been proposed by the Board of Directors of the Commonwealth Utilities Corporation (CUC) pursuant to Public Law 4-47 (4 CMC § 8111 et seq.), as amended.

*Short Statement of Goals
and Objectives:*

These regulations amend CUC's Electric Service Regulations to add a fuel surcharge to be paid in addition to the basic rate for electric service as provided in 1 CMC §8143(b). The surcharge passes only fuel cost increases to the customer and is adjusted to correct for over-recoveries and under-recoveries of fuel costs.

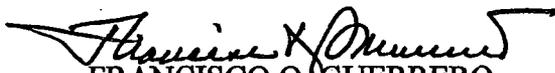
*For Further
Information:*

Lorraine A. Babauta, CUC Executive Director
Telephone: (670) 235-7025-32, Extensions 106 or 180
Facsimile: (670) 235-6152

*Citation of Affected Rules
and Regulations:*

Commonwealth Utilities Corporation Electric Service Regulations, Part 24.5.8, Vol. 21, No. 8, Commonwealth Register, August 23, 1999, page 16904

Submitted by:


FRANCISCO O. GUERRERO
Board Chairman

Date: 10/25/04

Attachment: Proposed Amendments to CUC Electric Service Regulations, Fuel Surcharge Regulations



Commonwealth Utilities Corporation



PUBLIC NOTICE PROPOSED ELECTRIC SERVICE REGULATIONS AMENDMENT

The Board of Directors of the Commonwealth Utilities Corporation ("CUC") hereby propose to promulgate regulations amending the Electric Rate Schedule in its Electric Service Regulations, Part 24.5.8 to include a separate fuel surcharge. The proposed supplements are promulgated under the authority set forth in the CUC Act, Public Law 4-47 (4 CMC § 8111 et seq.), as amended, and the Commonwealth Administrative Procedure Act, 1 CMC § 9101 et seq.

The proposed fuel surcharge to be added to CUC's Electric Service Regulations will allow CUC to pass the increased cost of fuel to CUC to the electric service customers. The surcharge will be based only on fuel costs and will fluctuate with changes in fuel costs. Any over recovery will result in credits to the customer.

The proposed supplement is published in the Commonwealth Register, and copies may be obtained from the CUC Executive Director's Office located at the Joeten Dandan Building, Saipan, or by mail at P. O. Box 501220, Saipan, MP, 96950-1220.

Anyone interested in commenting on the proposed supplements may attend one of the public hearings or submit written comments to CUC's Executive Director within thirty (30) days from the date this notice is published in the Commonwealth Register.

Public hearings are scheduled as follows:

- Rota:** Friday, November 5, 2004, 7:00 PM, Rota Courthouse
- Tinian:** Monday, November 8, 2004, 7:00 PM, Tinian Elementary School Cafeteria
- Saipan:** Wednesday, November 10, 2004, 7:00 PM, Multi-Purpose Center

Issued by: FRANCISCO O. GUERRERO
Board Chairman

Date: 10/25/04

Received by: THOMAS TEBUTEL
Governor's Special Assistant for Administration

Date: 10/26/04

Filed by: BERNADITA B. DELA CRUZ
Registrar of Corporations

Date: 10/26/04

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

Acting
PAMELA BROWN
Attorney General

Date: 10/26/04



Commonwealth Utilities Corporation



MAN MAPROPONE NA REGULASION SIHA POT SETBISIUN ILEKTRISIDÁT CUC NI MAN MA'AMENDA NI TINETEKÀ MÂS ÂPAS PARA GASALINA

Annok I Aturidât I Lai:

Este na regulasion siha esta man mapropone ginen i Kuetpon i Direktot siha gi Commonwealth Utilities Corporation (CUC) sigun i Lai Publiku 4-47 (4 CMC Seksiona 8111 et.seq.) ni inamenda.

*Kada'da' Na Mensâhe
Pot Diniseha yan
Minalagu:*

Este na regulasion siha ha amenda i Regulasion Setbisiun Ilektridât CUC para hu omentâye' i âpas para gasilina na debi di hu ma'apâsi mâs ki i regulât na âpas para i setbisiun ilektridât ni maprobeniyi gi 1 CMC Seksiona 8143 (b). I âpas tineteka solamente i gâstun gasilina an mahâtsa para i kometsu siha yan an matulaika para i dinanche an guaha over-recoveries pat under-recoveries ginen i gâstun i gasilina siha.

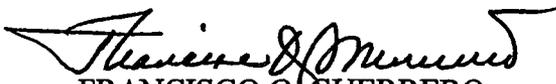
*Para Mâs Infotmasion
Âgan si:*

Lorraine A. Babauta, CUC Executive Director
Tilifon#: (670) 235-7025 - 32 Extension 106 pat 180
Fax #: (670) 235-6152

*Annok i Man Inafekta
Na Areklamento yan
Regulasion Siha:*

Regulasion Setbisiun Ilektridât, gi Commonwealth Utilities Corporation Pâtte' 24, 5.8, Baluma 21, Numiru 8, gi Rehistran i Commonwealth gi Agosto 23, 1999 (pâhina 16904)

Ninhalom:


FRANCISCO O. GUERRERO
Kabiseyun i Kuetpo

Fecha: 10/26/04

Man che'che'ton siha: Man Mapropone Na Regulasion Siha Pot Setbisiun Ilektridât CUC Ni Man Ma'amenda, Mâs Âpas Para Gasilina Na Regulasion



Commonwealth Utilities Corporation



POMWOL LLIWELIL ALLÉGHÛL BWULASIYOOL ÓPWUL ME SCHAAL, REEL CUC ELECTRIC SERVICE, AMMWELIL FUEL SURCHARGE

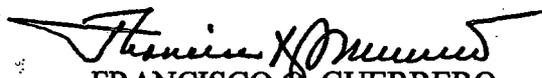
Akkatèèl bwàngil: Allégh kkaal nge raa fasúl pomwoli mereel Board of Directors mellól Commonwealth Utilities Corporation (CUC) sàngi Alléghúl Toulap 4-47 (4CMC talil 8111 et seq.) iye aa lliwel.

Aweweel pomwol allègh: Allégh kkaal nge e liweli allèghúl CUC Electric Service bwelle ebwe aschulong fuel charge ye ebwe óbwossuw basic rate ngáli electric service kka re ayooora llól 1 CMC tàlil 8143 (b). Surcharge e atiwa sásseril fuel cost ngáli customers me ammwel ghatch igha ebwe awela over-recoveries me under-recoveries reel meel fuel.

Reel ammataf faingi: Lorraine A. Babauta, CUC Executive Director
Tilifoon: (670) 235-7025-32; Extensions 106 me 180
Facsimile: (670) 235-6152

Akkatéél akkááw bwàngil allégh: Alléghúl Commonwealth Utilities Corporation Electric Service, Peigh 24.5.8, Commonwealth Register, August 23, 1999, Peigh 16904.

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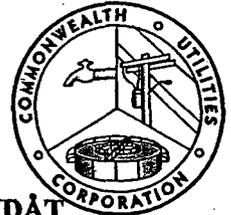

FRANCISCO O. GUERRERO
Samwoolul mwiisch

Rál 10/25/04

appasch: Pomwol lliwel ngáli Alleghúl CUC Electric Service, Alleghúl fuel surcharge Re kke aronggaar toulap bwe rebwe fiti arongorong reel pomwol fuel surcharge llól ótol me bweley kkaal;



Commonwealth Utilities Corporation



NOTISIAN PUPBLIKU

MAN MAPROPONE NA REGULASION SIHA POT SETBISIUN ILEKTRISIDÁT CUC NI MAN MA'AMENDA NI TINETEKÀ MÀS ÀPAS PARA GASILINA

I Kuetpon i Direktot siha gi Commonwealth Utilities Corporation ("CUC") este na momento ha propone para hu establesi regulasion siha ni ha'amemenda i sinnàlan àpas ilektrisidát gi Regulasion Setbisiun Ilektrisidát, Pátte' 24.5.8 para hu enklusu sepe rao na àpas para gasilina. I mapropone ni ma'omenta na regulasion siha man ma'establesi papa i aturidát ni mamensiona gi Akton CUC, Lai Pupbliku 4-47 (4 CMC Seksiona 8111 et.seq.) ni ma'amenda yan i Akton i Areklamenton Atministrasion i Commonwealth, 1 CMC Seksiona 9101 et.seq.

I mapropone na àpas gasilina para hu manahalom gi Regulasion Setbisiun Ilektrisidát CUC para hu sedi i CUC para hu pása i mahàtsa na gástion gasilina gi CUC para i kometsun Setbisiun Ilektrisidát. I àpas siempre sigun solamente gi gástion gasilina ya siempre tumulaika. Maseha háfa na over-recovery siempre risuttan i kreditun i kometsu.

I mapropone ni ma'omenta na regulasion mapupblisa gi Rehistran i Commonwealth, yan siña hu fan machule' i kopia siha gi Ofisinan i Executive Director gi CUC, ni gaige gi Joeten Dandan Building, giya Saipan, pat mail gi P.O. Box 501220, Saipan, MP 96950-1220.

Maseha háye' interesao para hu na guaha sinangan pot i mapropone ni ma'omenta na regulasion siha siña hu manahalom tinige' opinion para i Executive Director gi CUC gi halom trenta (30) diha siha ginen i fechan este na notisia ni mapupblisa gi Rehistran i Commonwealth.

Luta: Bietnes, Numbembre 5, 2004 gi alas siette gi pupuenge (7:00 p.m.) para alas nuebe gi pupuenge (9:00 p.m.), gi Guma Hustisia giya Luta

Tinian: Lunes, Nubembre 8, 2004 gi alas siette gi pupuenge (7:00 p.m.) para alas nuebe gi pupuenge (9:00 p.m.), gi Kafiterian Tinian Elem. School

Saipan: Metkules, Nubembre 10, 2004 gi alas siette gi pupuenge (7:00 p.m.) para alas nuebe gi pupuenge (9:00 p.m.), gi Multi-Purpose Center

Malaknos as: FRANCISCO O. GUERRERO
Kabiseyon i Kuetpon CUC

Fecha: 10/25/04

Marisibe' as: THOMAS TESIMAR
Espisiát Na Adóante Para i Atministrasion

Fecha: 10/26/04

Pinelo' as: BERNADITA B. DELA CRUZ
Rehistran i Koporasion

Fecha: _____

Sigun i Lai 1 CMC Seksiona 2153, ni inamenda ginen i Lai Pupbliku 10-50, i areklamento yan regulasion siha ni man che'che'ton este na momento man maribisa yan ma'apueba pot para hu foima yan ligát sufisiente ginen i Ofisinan i Abugádo Henerát.

PAMELA BROWN
Abugádo Henerát

Fecha: _____



Commonwealth Utilities Corporation



ARONGOL TOULAP POMWOL LIWELIL ALLÉGHÚL ELECTRIC SERVICE

Mwischil Assamwoolul mwischil Ópwul me schaal (CUC) e kke pomwoli ebwe fillóoy liwelil abwósul Electric mellól Alléghúl Electric Service sangi peigh 24.5.8 iye ebwe ayumweiló abwósul fuel (gaas) pomwol supplements kkaal e filló faal bwángil ye llól CUC, Alléghúl Toulap ye 4-47 (4 CMC, 8111 et seq), igha aa liiwel, me sangi Alléghúl Commonwealth Administrative Procedure ye, 1 CMC 9101 et seq.

Pomwol abwósul fuel (gaas) surcharge ebwe akkaschulong ngali Alléghúl CUC Electric Service, bwelle CUC ebwe mmwelil sássár abwósul gaas reel electric service ngaliir customers. Surcharge yeel nge ebwe ngali schagh abwósul gaas me ebwe liwel ngare eyoor liwel reel abwósul gaas, Alongal over recovery ebwe toowow bwe credits ngali customer.

Pomwol supplement yeel e akkatéewow mellól Commonwealth Register me schéél tiliighi kkaal ebwe bweibwogh me Bwulasiyool Samwoolul CUC me Joeten Dandan Building, Seipél, me ngare reel mail, PO Box 501220, Seipél, MP 96950-1220.

Inamwo iyo e mwuschel mwaliili reel liiwel kkaal, emmwel ebwe isch ngali Samwoolul CUC llól eliigh (30) rál, sangi rál ye e akkatéewow mellól Commonwealth Register.

Luuta: Bennis, Nobembre 5, 2004 sáangi 7:00 lefááf mwet ngáli 9:00 lefááf mellól Imwal kotti.

Tchuluyól: Luunis, Nobembre 8, 2004, sáangi 7:00 lefááf mwet ngáli 9:00 lefáf mellól Elementry School Cafeteria, Tchuluyól.

Seipel: Merkkulis, Nobembre 10, 2004, sáangi 7:00 lefááf mwet ngáli 9:00 lefááf mellól Multi Purpose Center.

Isaliyalewow: Francisco O. Guerrero
Samwoolul Mwischil

Rál: 10/25/04

Mwir Sáangi: Thomas A. Tebuteb
Sów Abllisil, Sów Lemelem

Rál: 10/26/04

Aisis Sáangi: Bernadita B. Dela Cruz
Registrar of corporations

Rál: _____

Sáangi 1 CMC 2153, igha aa liiwel reel Alleghul Toulap ye 10-50, allégh kka e appasch aa appúlúghúlúgh me allégh sangi abwungungul Bwulasiyool Sow Bwungul Allégh Lapalap.

Pamela Brown
Sów Bwunghul Allegh Lapalap

Rál: _____

**REGULATIONS REGARDING FUEL SURCHARGE FEE
COMMONWEALTH UTILITIES CORPORATION**

1. CUC fuel costs shall be recovered through the base electric rates and through the methodology provided in this regulation for the initial and subsequent years' annual fuel surcharge fee (FSF) and a monthly fuel surcharge adjustment (MFSA). The FSF shall take effect immediately upon compliance with the Administrative Procedures Act, 1 CMC § 9101 *et. seq.*
2. The purpose of the FSF is to pass through to all consumers of CUC electricity, increases and decreases in fuel costs for the production of electricity, which are above or below the base rate allocation for fuel.
3. The methodology in this regulation allows for discounts or reductions below the annual FSF ceiling.
4. The initial FSF shall take effect for the remainder of the current calendar year in which this regulation becomes effective. The initial FSF is computed as follows (see EXHIBIT, Formula No. 1) and shall not exceed \$0.03500 per kilowatt-hour (kWh):
 - Actual year-to-date and any projected remaining year fuel costs for the current calendar year.
 - Divided by actual year-to-date and any projected remaining year electric sales, in kWh, for the current calendar year,
 - Minus the base rate allocation for fuel costs.
5. The FSF for subsequent years is computed as follows (see EXHIBIT, Formula No. 2) and shall not exceed the previous year's FSF by more than \$0.02000 per kilowatt-hour (kWh) for those consumers using less than 2,001 kWh per month:
 - Projected fuel costs for the target year.
 - Plus an adjustment for the preceding year's under-/over-recovery of fuel costs.
 - Divided by estimated electric sales, in kWh, for the target year,
 - Minus the base rate allocation for fuel costs.
6. The MFSA is computed as follows (see EXHIBIT, Formula No. 3):
 - Projected fuel cost for the target month.
 - Plus an adjustment for any prior months' under-/over-recoveries.
 - Divided by estimated electric sales, in kWh, for the target month.
 - Minus the base rate allocation for fuel costs.
 - Limited by the annual FSF ceiling.

7. Base rate allocation for fuel costs. The rates per kWh for electrical service include a base rate allocation for fuel cost of \$0.05493.
8. The Comptroller shall calculate the initial and subsequent years' annual FSF and each MFSA and prescribe the accounts, the forms, and the details of the calculations required to implement the computations required in this regulation.
9. The fuel costs, which are subject to cost recovery, include only production fuel for the generation of electricity.
10. Any difference between the actual fuel costs and FSF revenues shall be accumulated in a deferred account(s) and shall be subject to an annual reconciliation. Any over- or under-recovery of fuel costs will be included in the next annual FSF.
11. No interest shall be paid on the balance in the deferred account(s).
12. Each customer's monthly bill shall show separately the base electric rate charge and the fuel charge adjustment.
13. Public notice and hearings or workshops. The Comptroller shall provide public notice of the monthly and annual calculations, present the methodology, take comments, and arrange for workshops that may be attended by the customers and other members of the public.

**FORMULA FOR THE COMPUTATION OF
FUEL SURCHARGE FEE (FSF) AND MONTHLY FUEL SURCHARGE ADJUSTMENT (MFSA)**

Formula No. 1:

The initial Fuel Surcharge Fee (FSF) will be computed as follows:

$$\text{Initial FSF}^{1/} = \frac{A}{B} - C$$

A = CUC's actual year-to-date and any projected remaining year fuel costs for the current calendar year.

B = CUC's actual year-to-date and any projected remaining year kWh hour sales for the current calendar year.

C = Base rate allocation for fuel (\$0.05493 per kWh) calculated by DTT, CPAs. See note 2/, below.

Formula No. 2:

The FSF for subsequent calendar years, will be computed as follows:

$$\text{FSF}^{3/} = \frac{D \text{ +/- } E}{F} - C$$

(subsequent years)

D = CUC's projected fuel costs for calendar (target) year.

E = CUC's over/(under) recovery of fuel costs for the preceding FSF period.

F = CUC's projected kwh sales for calendar (target) year.

C = Base rate allocation for fuel (\$0.05493 per kWh) calculated by DTT, CPAs. See note 2/, below.

Formula No. 3:

The Monthly Fuel Surcharge Adjustment (MFSA) will be computed as follows:

$$\text{MFSA}^{4/} = \frac{G \text{ +/- } H}{I} - C$$

(subsequent month)

G = CUC's projected fuel costs for the next succeeding (target) month.

H = CUC's over/(under) recovery of fuel costs for any preceding month(s).

I = CUC's projected kWh sales for the next succeeding (target) month.

C = Base rate allocation for fuel (\$0.05493 per kWh) calculated by DTT, CPAs. See note 2/, below.

NOTES:

- 1/ Initial FSF cannot exceed \$0.03500 per kWh pursuant to 4 CMC § 8143 (b).
- 2/ The base rate allocation for fuel (\$0.05493 per kWh) is based on fuel consumption and kWh sales for the first quarter (Oct - Dec 1992) of fiscal year 1993. The base rate allocation for fuel was estimated to approximate the fuel charge embedded in the current electric rates because the rates did not reflect the ratio between non-fuel and fuel charges.
- 3/ Any subsequent annual FSF cannot exceed the previous year's FSF by more than \$0.02000 per kWh for those consumers using less than 2,001 kwh per month.
- 4/ The MFSA for any month during the current annual FSF period cannot increase by more than the \$0.02000 per kWh limit for those customers using less than 2,001 kWh per month.

10/18



Department of Commerce

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Caller Box 10007 CK., Saipan, MP 96950

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

PROPOSED AMENDMENT TO THE ALCOHOL BEVERAGE CONTROL REGULATIONS, Comm. Reg. Vol. 6, No. 11, at 3230 (11/15/84), amended Comm. Reg. Vol. 17, No. 4, at 13277, 13279 (4/15/95).

Citation of Statutory Authority:

1 CMC § 2454 modified by Exec. Order 94-3 (effective 8/23/94) authorizes the Secretary of the Department of Commerce to promulgate regulations over matters which the Department has jurisdiction.

Statement of Goals/Objectives:

The purpose of the new proposed regulation is to proscribe the personal solicitation for customers by Class 3, retail, on-sale, general license holders. Numerous instances of tourist complaints have occurred arising from the personal solicitation of customers from various business establishments which have Class 3, Retail, on-sale licenses. This regulation provides for the responsibility of the licensee to disallow personal solicitation occurring beyond his premises.

Brief Summary of the Regulation:

The regulation provides for the Class 3, Retail, on-sale, license holder to, as part of the responsibilities of maintaining a Class 3, Retail, on-sale, license to disallow personal solicitation of customers beyond the qualified premises of the licensee.

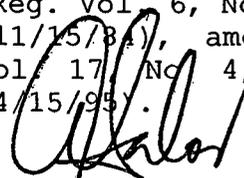
Contact Person(s):

Jesus C. Muna; Director of Alcohol Beverage & Tobacco Control; (670) 664-3026.

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

4 CMC §§ 5511, et seq, Comm. Reg. Vol. 6, No. 11, at 3230 and (11/15/84), amended Comm. Reg. Vol. 17, No. 4, at 13277, 13279 (4/15/95).

Date: 9/29/04, 2004.


Andrew S. Salas
Acting Secretary of Commerce

Received by:



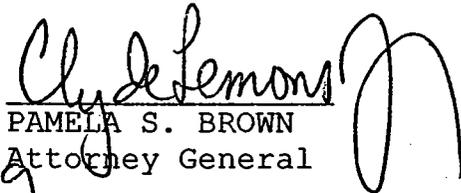
THOMAS A. TEBUTEB
Special Assistant
for Administration

Date:

10/20/04

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

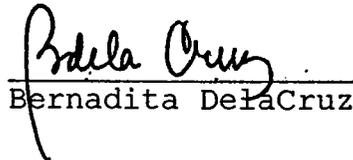
Dated this 20th day of October, 2004.



PAMELA S. BROWN
Attorney General

Acting

Filed and Recorded by:



Bernadita De la Cruz

Date:

10-20-04

**MAN MAPROPONE NA AMENDASION PARA I REGULASION
SUHETAN MANESKA NA GIMEN, GI REHISTRAN I
COMMONWEALTH BALUMA 6, NUMIRU 11, GI PÁHINA 3230 (11/15/84)
MA'AMENDA GI REHISTRAN I COMMONWEALTH GI BALUMA 17,
NUMIRU 4, GI PÁHINA 13277, 13279 (4/15/95)**

Annok i Aturidát i Lai:

1 CMC Seksiona 2454 matulaika ginen i Otden i Eksekatibu 94-3 (mu'efektibu gi 8/23/94) ha aturirisa i Sekretarion i Dipátamenton i Commerce para hu establesi regulasion siha pot asunto siha ni gai' aturidát i Dipátamento.

**Mensáhe' Pot Diniseha
yan Minalagu:**

I rason i nuebu na regulasion ni mapropone para hu prohibi i empleaon i kometsio para hu afuetsas i customer siha para hu fan halom gi kometsio ni mina tres (3) na Class, tat kumo retail on-sale, i gumugu'ot i lisensia. Meggai na biáhi pot i hemplo i kine'han i turista gumuaha pot i empleaon i kometsio ni ha afuefuetsas i customer siha para hu fan halom gi kometsio ni mina tres (3) na Class, tat kumo retail on-sale, i gumugu'ot i lisensia. Este na regulasion ha probeniyi na responsiblidát i gumugu'ot i lisensia na ti para hu sedi i empleao-niha siha para hu afuetsas i customer siha para hu fan halom gi kometsion-niha (personal solicitation) na hu masusedi gi lugát i kometsio ni malisensia.

**Kada'da' Na Mensáhe'
Pot i Regulasion:**

I regulasion ha probeniyi i mina tres (3) na Class, tat kumo retail on-sale, i gumugu'ot i lisensia, na pátte' gi responsiblidát siha pot para hu susteni i mina tres (3) na Class tat kumo retail on-sale, i gumugu'ot i lisensia na ti hu sedi para hu afuetsas i customer siha para hu fan halom gi lugát i kometsio ni malisensia.

**Petsona Ni Para Hu
Ma'ágan:**

Si Siñot Jesus C. Muña; Direktot i Suhetan Maneska na Gimén yan Chupa (Tabacco); (670) 664-3026.

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

4 CMC Seksiona 5511, et.seq. gi Rehistran i Commonwealth Baluma 6, Numiru 11, gi Páhina 3230 yan (11/15/84), ni ma'amenda gi Rehistran i Commonwealth Baluma 17, Numiru 4, gi Páhina 13277, 13279 (4/15/95)

Fecha: 9/29/04, 2004.



Andrew S. Salas
Acting Secretary gi Commerce

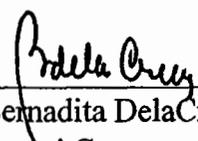
Ma Risibi as: 
THOMAS A. TEBUTEB
Espesiat Na Ayudante Para
i Administration

Fecha: 10/20/04

Sigun I Lai 1 CMC Sek. 2153, ni ma amenda ginen I Lai Publiku 10-50, I regulasion siha ni man checheton man ribisa yan aprueba put para fotma yan ligat sufisiente ginen I Ofisinan I Abugado Henerat.

Fecha: _____ dia gi Oktubre, 2004.

PAMELA S. BROWN
Abugado Henerat

Pine'lo as: 
Bernadita Delacruz
Rehistran i Commonwealth

Fecha: 10/20/04

**MAN MAPROPONE NA AMENDASION PARA I REGULASION I
SUHETAN MANESKA NA GIMEN GI REHISTRAN I
COMMONWEALTH BALUMA 6, NUMIRU 11, GI PÁHINA 3230
(11/15/84), NI MA'AMENDA GI REHISTRAN I COMMONWEALTH
BALUMA 17, NUMIRU 4, GI PÁHINA 13277, 13278 (4/15/95)**

Seksiona 9: Responsibilidát siha para i Gumugo'ot Lisensia:

i. I man malisensia gi mina tres (3) na Class, tat kumo retail on-sale, kometsion henerát na ti debi di na hu sedi i empleaon-niha (personal solicitation) para hu ma'afuetsas i Customer siha para hu fan halom gi i makuálifikao na mina tres (3) na Class, tat kumo retail on-sale, kometsion henerát ya ti debi di hu sedi i empleaon-niha gi sanhiyong i kometsio para hu afuetsas i customer siha para hu fan halom gi kuálifikao na kometsio.

POMWOL LLIWEL NGÁLI ALLÉGHÚL ÁSCHI (ALCOHOL), Comm. Reg. Vol. 6, No. 11, mereel 3230 (11/15/84), ssiwelil Comm. Reg. Vol. 17, No. 4, mereel 13277, 13279 (4/15/95).

Akkatéél bwángil: 1 CMC táilil 2454 ye aa lliwel mereel tingóreyal sów lemelem 94-3 (schééschéél 8/23/94) ye e mweiti ngáli Samwoolul Commerce reel ebwe akkaté allégh kkaal sáangi mwóghut kka Depattamentool Commerce ye e eyoor bwangil.

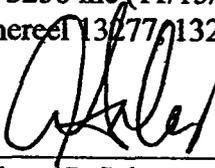
Aweweel pomwol allégh: Bwulúl pomwol allegh yeel nge bwelle ebwe akkayúúló personal solicitation schóóy angaang reel customers sáangi allégh class 3, sibwe ira retail, on-sale, general license holders. Eyoor eghus aingiing mereel tourist kka e bwáátá mereel personal solicitation igha re angimaaw ngaliir customers sáangi akkááw business establishments kkaal ikka eyoor class 3, Retail, on-sale licenses. Allégh yeel e ayoor a bwángil reel licensee igha essóbw atiwa personal solicitation ikka eyooreta mellól licensed establishment.

Aweweel pomwol lliwel: Re ayoor a allégh yeel bwelle class 3, Retail, on-sale, license holder bwelle ebwe lemelem me aisis Class 3, Retail, on-sale, license igha essóbw atiwa personal solicitation reel customers sangi tool kkapasal licensee.

Aramas ye ubwe faingi: Jesus C. Muna; Direkktoodul Alcohol Beverages & Tobacco Control; (670) 664-3026.

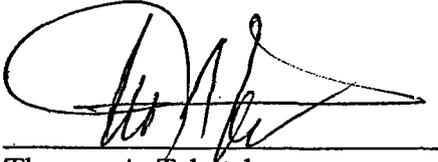
Akkatéél akkááw bwángil allégh: 4 CMC táilil 5511, et seq, Comm. Reg. Reg. Vol. 6, No. 11, reel 3230 me (11/15/84), ssiwelil Comm. Reg. Vol. 17, No. 4, mereel 13277, 13279 (4/15/95).

Rállil: 9/29, 2004.



Andrew S. Salas
Acting ngáli Samwoolul Commerce

Mwir sangi Bwulasiyool Sow Lemelem:



Thomas A. Tebuteb
Sow alillili Sow Lemelem

Ral: 10/20/04

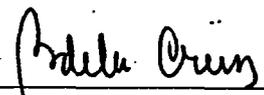
Mwir sangi Sow Bwungil Allegh:

Sangi allegh ye 1 CMC talil 2153, ye a lliwel mereel Alleghul Toulap 10-50, allegh ka e appasch nge raa takkal amweri me alleghelo mereel Bwulasiyool Sow Bwungil Allegh.

PAMELA S. BROWN
Sow Bwungil Allegh

Ral: _____

Aisi Sangi:



Bernadita B. Delacruz
Commonwealth Register

Ral: 10/20/04

POMWOL LLIWEL NGALI ALLEGHUL ASCHI (ALCOHOL) ALCOHOL BEVERAGES CONTROL, Comm. Reg. Vol. 6, No. 11, mereel 3230 (11/15/84), ssiwelil Comm. Reg. Vol. 17, No. 4, mereel 13277, 13278 (4/15/95).

Táilil 9. Bwángil Schóóy kkamwaschul Lisensia::

- i. Schóóy kkamwaschul lisensiya llól class (3) eluuw, sibwe ira reel retail on-sale, general establishment (leliyal akkamééló) nge essóbw mweiti ngaliir schóól angaang rebwe tingórol angimaaw ngaliir schóóy akkamé (customers) llól me ngáre lúghúl bwuley kkaal (personal solicitations).

PROPOSED AMENDMENT TO THE ALCOHOL BEVERAGE CONTROL
REGULATIONS, Comm. Reg. Vol. 6, No. 11, at 3230 (11/15/84),
amended Comm. Reg. Vol. 17, No. 4, at 13277, 13278 (4/15/95).

SECTION 9. Responsibilities of the Licensee:

- i. Licensees of Class 3, retail on-sale, general establishments shall not personally solicit customers beyond the qualified premises of the Class 3, retail on-sale, general establishment and shall not permit the personal solicitation of any customers outside their qualified premises.

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

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

I, Richard Seman, Secretary of the Department of Lands and Natural Resources, that previously promulgated Notice of Intent to Adopt Regulations Governing the Use Of Irrigation Water, as published in the Commonwealth Register, Volume 26, Number 9, September 24, 2004, at pages 22842 through 22854, by signature below, hereby certify that two of the pages of such published proposed regulations were inadvertently omitted from the pages that were intended to be published, pages 6 and 7. I further certify that, since those pages did contain matter that substantively affected the proposed regulations, the entire proposed regulations should be republished, with an additional period of time for public comment.

The complete proposed Regulations Governing the Use of Irrigation Water are attached hereto.

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
Richard B. Seman, Secretary of
Lands and Natural Resources

10/26/04
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.

Clyde Lemons Dated this 26th day of October, 2004.
Clyde Lemons
Acting Attorney General

Received by:
Thomas A. Tebuteb
SAA

10/26/04
Date

Recorded by:
Bernadita Delacruz
Commonwealth Register

10/26/04
Date

**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

denied the right and privilege to farm in the Kagman Commercial Farm Plots.

**ARTICLE III
APPLICATION FOR WATER SERVICE AND SERVICE CONNECTION**

- SECTION 1.** To receive water service, a prospective customer must apply for service from the S&NISWCD, subject to approval by the Board. The S&NISWCD may issue a conditional permit until the application is considered by the Board.
- SECTION 2.** The customer shall be responsible for the payment of all charges for water service at the designated location outside the district water service area. Charges, including construction and connection costs before service, will begin when the water service is established and will continue until due notification from the customer or until discontinued by S&NISWCD for failure of the customer to comply with these water regulations.
- SECTION 3.** When an application for water service is made by a customer who neglected or failed to pay bills previously rendered, regardless of location or time incurred, S&NISWCD shall refuse to furnish water service to such applicant until outstanding S&NISWCD bills are paid.
- SECTION 4.** A person using water without an approved permit to S&NISWCD for water service to such property shall be liable for the water delivered. If proper application for water service is not made upon notification to do so by S&NISWCD, and if accumulated bills for water service are not paid upon presentation, the water service shall be discontinued without further notice.
- SECTION 5.** All new applicants for service shall be required to pay an installation and connection fee upon approval of the application by the Board, in the amount of \$250.00.

**ARTICLE IV
PAYMENT OF BILLS AND RATES**

- SECTION 1.** All bills shall be due and payable upon deposit in the United States Mail by S&NISWCD or upon other presentation from the customer. Payments shall be made to the Commonwealth Treasury; Account No. 6108-44150 with address below:

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.

**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.



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



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

PUBLIC NOTICE

**PROPOSED AMENDMENTS
TO THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
WELL DRILLING AND WELL OPERATIONS
REGULATIONS**

The Director of the Division of Environmental Quality (DEQ), Office of the Governor, Commonwealth of the Northern Mariana Islands (CNMI), hereby notifies the public that DEQ proposes to amend the CNMI Well Drilling and Well Operations Regulations. The revisions included in the proposed amendments are proposed pursuant to the authority of the Commonwealth Groundwater Management and Protection Act (CGMPA), 1988, 2 CMC §§3311 to 3333, Public Law 6-12.

The proposed amendments include the designation of Groundwater Management Zones (GMZs) as required by §3328 of the CGMPA. GMZs are proposed for the island of Saipan only. The proposed amendments include only the designation of GMZs; no new restrictions or other requirements are being proposed at this time.

In accordance with 1 CMC § 9104(a), the public has the opportunity to comment on the proposed amendments. Copies of the proposed revisions are available at the office of the Division of Environmental Quality, located at the third floor of the Morgen Building, San Jose, Saipan. Written comments should be submitted to: Director, Division of Environmental Quality, P.O. Box 1304, Saipan, MP, 95950. Comments must be received by DEQ within thirty (30) days of the date this notice is published in the Commonwealth Register.

Issued by:
OCT 21 2004
Date: _____

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

Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC § 9104(a)(3) (obtain AG approval) the proposed regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published (1 CMC § 2153(f) (publication of rules and regulations)).

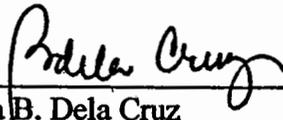
Dated the 25th day of October, 2004.



Acting Attorney General

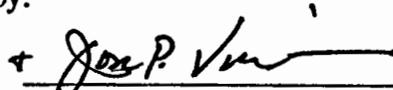
Filed by:

Date: 10/22/04


Bernadita B. Dela Cruz
Commonwealth Registrar

Received at the Governor's Office by:

Date: 10/22/04

+ 
Thomas A. Tebuteb
Special Assistant to the Governor for Administration



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



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

**DIVISION OF ENVIRONMENTAL QUALITY
 PROPOSED AMENDMENT OF THE
 CNMI WELL DRILLING AND WELL OPERATIONS
 REGULATIONS**

**Citation of
 Statutory Authority:**

The Director of the Division of Environmental Quality (DEQ) proposes to amend the CNMI Well Drilling and Well Operations Regulations pursuant to the Commonwealth Groundwater Management and Protection Act (CGMPA), 1988, 2 CMC §§3311 to 3333, Public Law 6-12.

**Short Statement of
 Goals and Objectives:**

Section 12 of the Commonwealth Groundwater Management and Protection Act, Public Law 6-12, (2 CMC §3328) requires DEQ to designate Groundwater Management Zones (GMZs) for selected regions of the Commonwealth. The proposed amendments partially fulfill this requirement by designating GMZs for the island of Saipan.

**Brief Summary of the
 Proposed Regulations:**

The proposed amendments include only the designation of GMZs for the island of Saipan. No new restrictions or requirements are proposed. The proposed amendments include a map, written descriptions and rationale for the designation of the GMZs, and a mechanism for resolving disputes regarding locations which are near a GMZ boundary.

**For Further
 Information Contact:**

John I. Castro, Jr., Director, Division of Environmental Quality
 P.O. Box 501304, Saipan, MP 96950
 Phone: (670) 664-8500/8501, fax (670) 664-8540

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

Authorizing statutes are listed above. This action amends the CNMI Well Drilling and Well Operations Regulations, at 14 Com. Reg. 9704 (Sept. 15, 1992), as amended by 16 Com. Reg. 11704 (Feb. 15, 1994).

Commonwealth i Sankattan Siha Na Islas Marianas

OFISINAN I GUBIETNO

Dibision i Environmental Quality

P.O. Box 501304 C.K. Saipan, MP 96950 - 1304

Tilifon: (670) 664-8500 / 01

Fax: (670) 664-8540

NOTISIAN PUPBLIKU

**MAN MAPROPONE NA AMENDASION SIHA PARA I COMMONWEALTH I
SANKATTAN SIHA NA ISLAS MARIANAS POT REGULASION GUINADOK
HANOM YAN KINALAMTEN I TUPON HANOM**

I Direktot i Dibision i Environmental Quality (DEQ), GI Ofisinan i Gubietno, I Sankattan Siha Na Islas Marianas (CNMI) este na momento ha notifikika i pupbliku na i D.E.Q., ha propopone para hu amenda i regulasion i Guinadok Hanom yan Tupon Hanom. I tinilaika ha enklusu gi man mapropone na amendasion man ma'establesi sigun para i aturidat i Akton Manehante yan Proteksion i hanom tano' i Commonwealth (CGMPA), 1988, gi 2 CMC Seksiona 3311 para 3333, Lai Pupbliku 6-12.

I mapropone na amendasion ha enklusu i masinñala na lugat siha para i Manehanten i Hanom Tano' (GMZ's) ni manisita ginen i Seksiona 3328 gi Akton Manehante yan Proteksion i Hanom Tano' i Commonwealth. I masinñala na lugat siha para i Manehanten i Hanom Tano' ma'establesi para i islan Saipan solamente. I mapropone na amendasion siha ha enklusu solamente i masinñala na lugat siha para Manehanten i Hanom Tano'; taya nuebu na prohibi pot otro na nisisidat siha man mapropone este na momento.

Tinatitiye' ni 1 CMC Seksiona 9104 (a), i pupbliku guaha opotunidat-na para hu gai' sangan pot i man mapropone na amendasion. Kopian i man mapropone na tinilaika man muteru gi ofisinan i Dibision i Environmental Quality, ni gaige gi mina tres (3) na bibienda gi Morgan Building, gi San Jose, giya Saipan. Tinige' opinion debi di hu manahalom gi: Direktot i Dibision i Environmental Quality, P.O. Box 1304, Saipan MP 96950. Debi di hu marisibe' i sinangan ni D.E.Q. gi halom trenta (30) diha siha ginen i fechan este na notisia anai mapupblisa gi Rehistran i Commonwealth.

Malaknos as:

Fecha: OCT 22 2004



John I. Castro, Jr. Direktot
Dibision i Environmental Quality

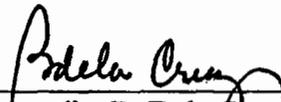
Sigun i Lai 1 CMC Seksiona 2153 (e) (inaprueban i Abugâdo Henerât ni i regulasion siha ni ma'establesi pot para hu fotma) ya i Lai CMC Seksiona 9104 (a)(3)(hentan i inaprueban i Abugâdo Henerât) i mapropone na regulasion siha ni man che'che'ton este na momento man maribisa yan aprueba pot para hu fotma yan ligât suficiente ginen i Abugâdo Henerât i CNMI ya debi di hu mapupblisa (1 CMC Seksiona 2153 (f) (publikasion i areklamento yan regulasion)).

Mafecha este mina _____ na diha gi Oktubre, 2004.

Pamela S. Brown
Abugâdo Henerât

Pinelo' as:

Fecha: 10/22/04



Bernadita B. Dela Cruz
Rehistran i Commonwealth

Marisibe' gi Ofisinan i Gubietno as:

Fecha: 10/22/04



Thomas I. Tebuteb
Espisiât Na Ayudânte Para i
Atministrasion

Commonwealth Tèel falúw kka efàng Marianas
Bwulasiyool Sów Lemelem
Bwulasiyool Ammwelil Fischil Weleór
P.O. Box 501204 CK, Saipèl, MP 96950-1304
Tels:(670) 664-8540

ARONGOL TOULAP

**POMWOL LIWELIL
COMMONWEALTH TÉÉL FALUW KKA EFÁNG MARIANAS
ALLÉGHÚL MWÓGHUTÚL ME KKEKIL
SCHAAL KKEKIL**

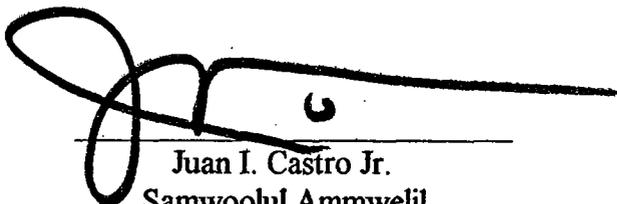
Samwoolul Bwulasiyool Ammwelil fischil weleór (DQE) Bwulasiyool Sów Lemelem mellól Commonwealth Tèel falúw kka efàng Marianas (CNMI) ekke arongaar toulap bwe DEQ ekke pomoli ebwe liwelil Alléghúl Mwóghutul me KKelil Schaal kkel mellól CNMI Siiwel kkal nge e toolong pomol liwel kkaal ngáli bwàngil Lemelemil me Ammwelil Alléghúl schatúl faluw (CGMPA) Commonwealth Groundwater Management and Protection Act. 1988, 2CMC 3311 mwet nágli 3333, Alléghúl Toulap 6-12.

Pomol liwel kkaal e bwal toolong bwuleyúl Lemelemil schalul falúw, Groundwater Managemnet Zone (GMZ's) sáangi tigóreyal 3328 mereel CGMPA. GMZ's nge re pomoli ngáli schagh falúw ye Seipèl. Pomol liwel kkaal nge ngáli schagh bwuleyúl GMZ's, ese yoor akkayulóól me ngáre akkàaw tingór re pomoli, reel ótol yeey.

Sáangi 1 CMC 9104 (a), re mweiti ngáliir toulap bwe rebwe mwálili, reel pomol liwel kkaal. Schéél pomol liwel kkaal eyoor reel bwulasiyool Ammwelil fischil weleór, ye elo ailuwal pwóól Morgan Building, me San Jose, Seipèl. Ischil mwaliili ebwe akkateelong ngáli: samwoolul Ammwelil fischil weleór, P.O. Box 1304, Seipèl MP 96950. Ebwe akkatéelong mwaliili kkaal DEQ (30) rál sáangi rál ye arong yeel e filló mellól Commonwealth Register.

Isáliyalewow:

Rál: OCT 22 2004



Juan I. Castro Jr.
Samwoolul Ammwelil
Fischil weleór (DEQ)

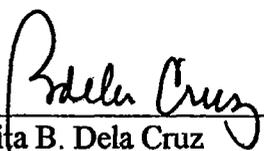
Sáangi 1 CMC 2153 (e) (Sów Bwungul Allégh Lapalap abwungubwung reel allègh kka ebwe filló, igha ebwe ayoora) me 1 CMC 9104 (a)(3) (mwir sáangi abwungubwungul AG) pomol allégh kka e appasch, nge aa bwung sáangi Sów Bwungul Allégh Lapalap mellól CNMI, nge ebwele akkatééwow (1CMC 2153 (f) (akkatéwowul allégh kkaal).

Rál ye _____ Okkotubre 2004.

Pamela S. Brown
Sów Bwungul Allègh Lapalap

Aisis sáangi:

Rál: 10/22/04



Bernadita B. Dela Cruz
Commonwealth Registrar

Mwir sáangi Bwulasiyool Sów Lemelem:

Rál: 10/22/04



Thomas A. Tebuteb
Sów Alillisil Sów Lemelem

SECTION 2. PURPOSE

[amended only to insert 2.7, amendments/deletions shown in underline/strikethrough format]

2.6 Provide that groundwater resources be put to the highest beneficial use for which they are capable; and,

2.7 Designate groundwater management zones; and

~~2.7~~ 2.8 Protect Public health by protecting and enhancing the quality of existing and potential groundwater resources used for human consumptive purposes.

SECTION 25. GROUNDWATER MANAGEMENT ZONES

RESERVED

[This section is entirely new – not shown in underline/strikethrough format]

25.1 Applicability

25.1.1 These amendments establish groundwater management zones (GMZs) for the island of Saipan only. Specific requirements for activities in GMZs are not being promulgated under these amendments at this time. Section 27 of these regulations is reserved for future addition of requirements for certain activities in GMZs. Some existing requirements for activities in designated GMZs are found in other CNMI regulations (e.g., Underground Storage Tank Regulations, Water Quality Standards, Wastewater Treatment and Disposal Regulations) for which the GMZs are applicable.

25.1.2 Requirements for wellhead protection, such as those under Section 6 of these regulations, apply regardless of GMZ classification. Where GMZ requirements are adopted that are more stringent than specific wellhead protection requirements, the more stringent GMZ requirement shall apply.

25.1.3 In the event that the precise location of a GMZ boundary is called into question for any activity, where such activity lies within 300 feet of a delineated GMZ boundary, the Director shall determine, on a case-by-case basis, which GMZ the proposed activity lies within. In making such determination, the overriding principal shall be protection of groundwater resources. Any decision to designate a lower classification of GMZ protection shall only be made on the basis of hydrogeologic evidence clearly demonstrating that the groundwater underlying the activity in question does not

warrant the higher level of GMZ protection. Provision of such evidence shall be the responsibility of the proposing party, in the form of a report prepared and certified by a registered geologist. The burden of proof shall rest with the proposer to demonstrate a basis for delineation of a less stringent GMZ. In the absence of such evidence, the higher GMZ protection classification shall be presumed to apply.

25.2 Designation of Groundwater Management Zones

Groundwater management zone ("GMZ") classifications have been designated on the basis of groundwater quality, availability of recharge, susceptibility to degradation, and present and future land use. For the purposes of these regulations, chloride concentrations (milligrams per liter, or mg/l) shall be used as an indicator of water quality to delineate GMZs.

25.2.1 Class I Groundwater Management Zones

Class I GMZs are established as critical groundwater protection areas capable of supplying high quality fresh water, and shall receive the highest level of environmental protection. Class I GMZs represent the most important groundwater resources and are considered vital for current and future water supplies. Because of the value of the resource and the permeable nature of the overlying geologic formations typical to the CNMI's geology, Class I GMZs are considered particularly vulnerable to degradation and contamination. Class I GMZs have been delineated to include the following:

- (a) All existing and potential areas of high-level (perched) groundwater. Groundwater that is encountered in high-level aquifer systems is of a near-pristine quality because it overlies low-permeability volcanic formations and is therefore not in direct contact with seawater. In the CNMI, such high level aquifers occur primarily beneath permeable limestone formations, and are highly susceptible to degradation and contamination.
- (b) Municipal well fields. Degradation of public water well fields clearly poses a severe threat to CNMI municipal water supplies, and thus these areas, as mapped by the USGS with the cooperation of the Commonwealth Utilities Corporation (CUC), have been included under the Class I GMZ designation.
- (c) Watersheds contributing surface infiltration to springs and fresh surface water systems. Several springs in the CNMI have been developed as important public water supplies, and several other springs and surface water streams (e.g. Talofofu) are planned for future development. Such springs and streams are largely fed

by recharge through shallow soil and weathered rock systems overlying the parent volcanic rock, and are highly susceptible to contamination.

25.2.2 Class II Groundwater Management Zones

Class II GMZs are established as important protection areas considered capable of supplying good quality groundwater, but generally of lower quality (e.g. higher chloride concentration) than Class I GMZs. Class II GMZs include relatively high quality basal groundwater lens resources with chloride concentrations less than roughly 500 mg/l. The 1-ft. contour line for the elevation of basal lens aquifers roughly corresponds to a basal groundwater lens thickness of 40 feet, and is generally considered to be the limit, seaward of which it becomes rapidly more difficult to obtain useable quantities of water with a chlorides concentration of less than 500 mg/l.

25.2.3 Class III Groundwater Management Zones

Class III GMZs are areas providing recharge to primarily brackish aquifers, having some intrinsic value as a resource to supply desalination plants, but primarily of lower value than groundwater found in Class I and II GMZs. Class III GMZs include the groundwater resources with chloride concentrations in excess of 500 mg/l, as delineated by the 1 ft. groundwater surface elevation described above under "Class II GMZs." The Class III GMZs are primarily coastal groundwater that has been significantly impacted by saltwater intrusion or mixing with salty groundwater.

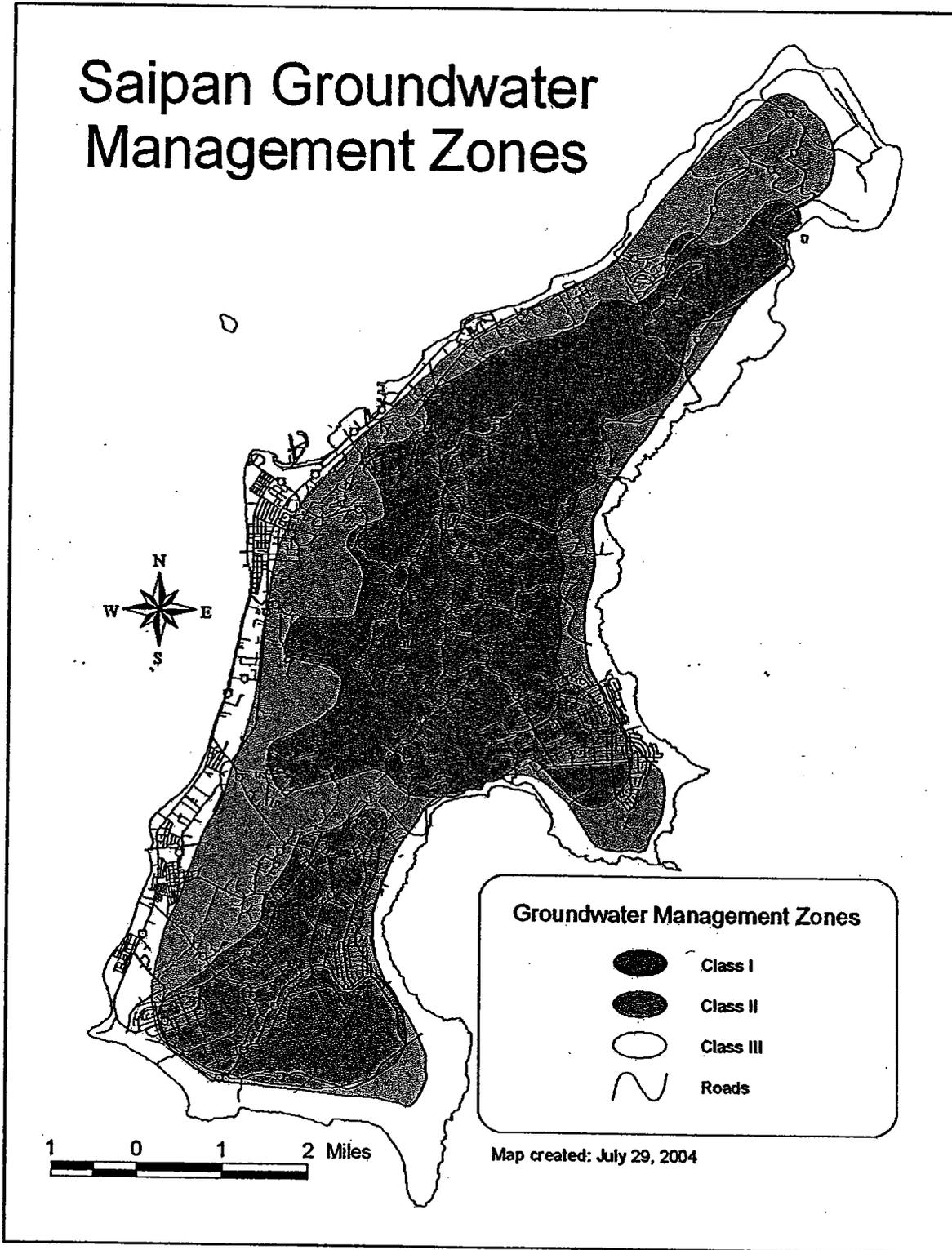
25.3 Saipan Groundwater Management Zones

25.2.1 Basis for GMZ Designation

Groundwater Management Zones for the Island of Saipan are designated as shown in Figure 25.1. GMZs for Saipan are based on: maps published by the United States Geological Survey (USGS) in their report Ground-Water Resources of Saipan, Commonwealth of the Northern Mariana Islands, by Robert L. Carruth, USGS Water-Resources Investigations Report 03-4178, 2003; and topographic information published on the Topographic Map of the Island of Saipan, Commonwealth of the Northern Mariana Islands, USGS, 1999. In the event that there is a discrepancy between the narrative description and the mapped GMZs, the attached regulatory map (Figure 25.1) depicting the GMZs shall govern and shall supercede all narrative descriptions of GMZ boundaries.

- (a) Class I GMZs for the island of Saipan have been delineated using the USGS maps showing municipal well fields, low-permeability volcanic rocks at or above sea level (indicating the potential for high-level aquifers), and topography delineating the watershed boundaries of springs and fresh surface water systems. In some areas, roads have been used for clarity as boundaries where a boundary approaches the coastline.
- (b) Class II GMZs for Saipan have been delineated as lying between the Class I boundaries and the 1 ft. water-table contour as mapped by USGS. In some areas, roads have been used for clarity as boundaries where a boundary approaches the coastline.
- (c) Class III GMZs for Saipan have been delineated as lying between the 1 ft. water-table contour as mapped by USGS, and the coastline. In some areas, roads have been used for clarity as boundaries where a boundary approaches the coastline.

FIGURE 25.1 GROUNDWATER MANAGEMENT ZONES
ISLAND OF SAIPAN



25.4 Tinian Groundwater Management Zones

RESERVED

25.5 Rota Groundwater Management Zones

RESERVED

25.6 GMZ Maps

DEQ shall maintain the GMZ map(s) described in this section in electronic form, as data layers in a Geographic Information System (GIS) format. DEQ shall provide access to the GIS maps and shall provide GMZ determinations upon request. In the event that there is a discrepancy between the narrative description and the mapped GMZs, the attached regulatory map (Figure 25.1) depicting the GMZs shall govern and shall supercede all narrative descriptions of GMZ boundaries.

10/18



Office of the Secretary
Department of Finance

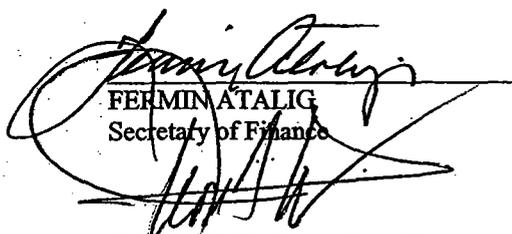
P.O. Box 5234 CHRB SAIPAN, MP 96950

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**NOTICE AND CERTIFICATION OF ADOPTION OF AMENDMENTS TO
CUSTOMS SERVICE REGULATIONS
NO. 4300 *et seq.***

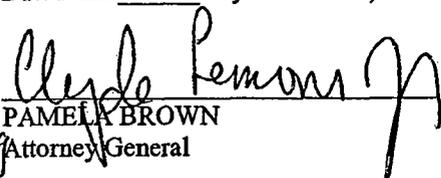
I, Fermin Atalig, the Secretary of the Department of Finance which promulgated the proposed amendments to Customs Service Regulations No., 4300 *et seq.*, as published in the Commonwealth Register, Volume 26, Number 8, August 26, 2004, at pages 023010 through and including 023034, by signature below hereby certify that as published, such proposed amendments to Customs Service Regulations No., 4300 *et seq.* are a true, complete and correct copy of the amendments to Customs Service Regulations No., 4300 *et seq.*, which after expiration of the appropriate time for public comment have been adopted to Customs Service Regulations No., 4300 *et seq.*, as new Sections 4320.1 through and including Section 4331.1 without modification. These new Sections govern the establishment and operation of Customs Bonded Warehouses within the CNMI.

I further request and direct this Notice and Certification to be published in the CNMI Commonwealth Register.

Submitted by:	 FERMIN ATALIG Secretary of Finance	<u>10/15/04</u> Date
Received by:	 THOMAS A. TEBUTEB Special Assistant for Administration	<u>10/20/04</u> Date
Filed and Recorded by:	 BERNADITA B. DE LA CRUZ Corporate Register	<u>10/20/04</u> Date

Pursuant to 1 CMC § 2153, as amended, and 1 CMC § 9104(a)(3), these adopted rules and regulations have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General's Office.

Dated this 20th day of October, 2004.


Acting PAMELA BROWN
Attorney General



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS



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

Roman C. Benavente
Chairman

Dino M. Jones
Vice Chairman

Marja Lee C. Taitano
Secretary/Treasurer

Members
Frances H. Diaz
Herman T. Guerrero

Scott Norman
Non Public School Rep.

Ms. Aubry Manglona Hocog
Student Representative

Ambrose Bennett
Teacher Representative

Commissioner of Education
Rita Hocog Inos, Ed.D

NOTICE AND CERTIFICATION OF ADOPTION BOARD OF EDUCATION REGULATIONS REGARDING DRUG TESTING (Chapters 8 of PSS Regulations For Certified and Non-Certified Personnel)

I, Roman C. Benavente, the Chairman of the Ninth Board of Education for the Commonwealth of the Northern Mariana Islands ("Board") pursuant to the authority provided by Article XV of the CNMI Constitution and Public Law 6-10 hereby adopt PSS Regulations regarding drug testing that were proposed in Volume 26, Number 8 of the Commonwealth Register dated August 26, 2004 (pages 023035-023062) with revisions made to place the administration of the regulations under the Public School System (PSS) and the Commissioner of Education rather than the Office of Personnel Management and the Director of Personnel. Further, I hereby certify that, these regulations have been adopted after the appropriate time for public comment and as published herewith are an accurate and complete copy of PSS regulations regarding drug testing.

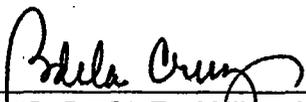
I further request that this Notice and Certification of Adoption be published in the Commonwealth Register. Pursuant to 1 CMC sec. 9105(b), these amended regulations are effective 10 days after publication.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on this 5th day of October 2004, on Saipan, CNMI.

By: 
ROMAN C. BENAVENTE
Board of Education Chairman

Approved By: 
PAMELA BROWN
ATTORNEY GENERAL, CNMI

Date: 10/18/04

Filed By: 
BERNADITA B. DELA CRUZ
COMMONWEALTH REGISTER

Date: 10/18/04

CNMI Public School System

Alcohol and Drug-Free Workplace Regulations

Non-Certified Personnel Regulations

Chapter 8

Certified Personnel Regulations

Chapter 8

ALCOHOL AND DRUG FREE WORKPLACE POLICY AND REGULATIONS

Policy Statement (V. C1)

The Public School System of the Commonwealth of the Northern Mariana Islands (PSS) recognizes its commitment to our employees and the public we serve to take reasonable steps to assure safety in the workplace and in the community. PSS is concerned about the adverse affect alcohol and substance abuse may have on safe and productive job performance. We also recognize that any employee affected in his or her ability to perform safely and productively, due to physical and emotional problems or use or abuse of alcohol and other drug substances, jeopardizes the integrity of the workplace and the achievement of PSS's mission.

Accordingly, the Public School System shall implement a drug screening for all employees occupying safety sensitive positions and all prospective employees for such positions. All employees may be tested pursuant to the reasonable suspicion or post-accident requirements set forth in the accompanying regulations. PSS realizes that alcoholism, problem drinking and drug addiction are treatable illnesses. Therefore, we encourage employees who have problems with drugs or alcohol to utilize all available resources to resolve their problems before those problems affect their job performance.

For information regarding this policy statement and the accompanying regulations and for information regarding drug and alcohol abuse treatment in the Commonwealth, please contact the PSS Human Resources Officer.

DEFINITIONS

For the purposes of this sub-part, the following definitions apply:

- A. **Accident**. An event which causes (1) a fatality, (2) an injury to a person requiring professional medical treatment beyond simple at-scene first aid, or (3) an economic loss, including property damage, greater than \$2,500.00.
- B. **Assessment**. A determination of the severity of an individual's alcohol or drug use problem and an analysis of the possible courses of treatment, made by an expert in the field of substance abuse.
- C. **Breath Alcohol Concentration (B.A.C.)**. The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an Evidential Breath Testing Device (E.B.T.).
- D. **Breath Alcohol Technician (B.A.T.)**. An individual authorized to collect breath specimens under Part V.C7(B) and who operates an E.B.T.
- E. **Consulting Physician**. A licensed physician retained or employed by the government to advise on drug testing.
- F. **Drug**. A substance (1) recognized in the official United States Pharmacopoeia, the official Homeopathic Pharmacopoeia of the United States, or the official National Formulary, or any supplement to any of them; or (2) intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or other animals; or (3) other than food, minerals, or vitamins, intended to affect the structure or any function of the body of a human or other animal; or (4) intended for use as a component of any article specified in clause (1), (2), or (3) above. Devices or their components, parts, or accessories are not considered drugs under this definition.
- G. **Evidential Breath Testing Device (E.B.T.)**. A device which is (1) approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath; and (2) is on the NHTSA's Conforming Products List of E. B.T.s; and (3) conforms with the model specifications available from the NHTSA, Office of Alcohol and State Programs.
- H. **Illegal Drug**. A drug that (1) is not obtained legally; or (2) is knowingly used for other than the prescribed purpose or in other than the prescribed manner; or (3) is a "designer drug" or drug substance not approved for medical or other use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration.
- I. **Invalid Test**. A breath or urine test that has been declared invalid by a Medical Review Officer (M.R.O.), including a specimen that is rejected for testing by a laboratory for any reason. An invalid test shall not be considered either a positive or a negative test result.

- J. Medical File. The file containing an employee's medical examination form, mental health referrals, alcohol and drug test results and other health related documents, maintained by the PSS Human Resources Office separate from an employee's Official PSS Personnel Folder.
- K. Medical Review- Officer (M.R.O.). A licensed physician, appointed by the PSS, with specialized training in substance abuse disorders and in the use and evaluation of drug test results. The M.R.O. shall be the only person authorized to receive laboratory drug test results and shall be the primary contact for technical inquiries to the drug testing laboratory.
- L. Reasonable Suspicion. A perception based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of an individual or on specific facts, circumstances, physical evidence, physical signs and symptoms, or on a pattern of performance or behavior that would cause a trained supervisor to reasonably conclude that the individual may be under the influence of alcohol or illegal drugs while on duty.
- M. Safety-Sensitive. A word describing activities which directly affect the safety of one or more persons, including the operation or maintenance of motor vehicles or heavy machinery or the carrying of firearms. The Commissioner of Education shall identify all positions to be considered safety-sensitive positions due to the amount of time that the employee spends performing safety-sensitive functions.
- N. Statement of Fitness for Duty. A written statement from a Substance Abuse Professional (S.A.P.), certifying that the named employee is not dependent on alcohol or any drug to the extent such dependence will affect safe and productive work.
- O. Substance Abuse Professional (S.A.P.). A physician, psychologist, psychiatrist, or social worker with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders; or a counselor certified by the National Association of Alcoholism and Drug Abuse Counselors.
- P. Under the Influence. A condition where a person's behavior, attention, or ability to perform work in the usual careful fashion has been adversely affected by the use of alcohol or drugs; intoxicated.
- Q. Vehicle. A device in, upon or by which any person or property is or may be propelled or moved on a highway, on a waterway, or through the air.

V.C3 **PROHIBITED CONDUCT**

- A. Sale, Purchase, Possession with Intent to Deliver, or Transfer of Illegal Drugs. No employee shall (1) sell, purchase, or transfer; (2) attempt to sell, purchase, or transfer; or (3) possess with the intent to deliver, any illegal drug while on government property, in any government vehicle or on any government business.
- B. Possession of Illegal Drugs. No employee shall possess any illegal drug on government property, in any government vehicle, or while on government business.

- C. Possession of Open Containers of Alcohol. No employee shall possess an open container of alcohol in any vehicle while on duty or in any government vehicle at any time. No employee shall possess an open container of alcohol while at his or her workplace.
- D. Under the Influence of Alcohol or Illegal Drugs. No employee shall be under the influence of alcohol or any illegal drug when at work, or reporting to work with the intention of working. As used in this subsection, alcohol includes any alcohol found in any prescription or nonprescription drug such as cough syrup. An employee is presumed to be under the influence of alcohol or an illegal drug if:
- (1) The employee has a B.A.C. of 0.02 or more;
 - (2) The employee has a detectable amount of any illegal drug in his or her urine;
 - (3) The employee uses alcohol or any illegal drug while on call when the employee knows he or she may be called upon to perform safety-sensitive functions; or
 - (4) The employee uses alcohol or any illegal drug within four (4) hours prior to reporting to work and expects to perform a safety-sensitive duty.
- E. Refusal to be Tested. No employee required to be tested for drugs or, alcohol under any provision of this sub-part shall refuse to be tested. The following conduct shall be considered a refusal to be tested:
- (1) Refusing in writing to submit to testing after receiving clear and specific written notice of the requirement to be tested;
 - (2) Refusing verbally, in front of at least two witnesses, to submit to testing after receiving clear and specific written notice of the requirement to be tested;
 - (3) Failing to timely provide an adequate specimen for testing, without a valid medical explanation, after receiving clear and specific written notice of the requirement to be tested. An M.R.O. or consulting physician shall determine if there is any medical reason for failure to provide an adequate urine sample (shy bladder) or an adequate breath sample (shy lung);
 - (4) Engaging in conduct that clearly obstructs the specimen collection process;
 - (5) Failing to remain available for post-accident testing, or leaving the scene of an accident before a testing decision is made. An employee may leave the scene of an accident only to obtain necessary medical care or assistance in responding to the accident. If the employee leaves the scene, the employee must notify his or her supervisor as soon as possible of his or her location and reason for leaving the scene;
 - (6) Consuming alcohol or illegal drugs after an accident and before a testing decision is made;
 - (7) Failing to report, during the work shift in which an accident occurred, an accident which could have resulted in a testing decision; or
 - (8) Failing to timely report to the specimen collection site after being informed of the requirement to be tested.

- F. Giving False Information. No employee shall give false information about a urine specimen or attempt to contaminate or alter the specimen.
- G. Refusal to Comply with Treatment Recommendations. No employee shall fail to comply with recommendations for treatment or after-care made by an M.R.O. or S.A.P. as a consequence of a prior positive drug or alcohol test result.
- H. Failure to Notify PSS of Conviction. No employee shall fail to notify the PSS Human Resources Officer of any criminal drug statute conviction, within five (5) days of such conviction, if the violation of the criminal drug statute occurred while the employee was conducting government business, or while on or using government property.
- I. Supervisor's Responsibility for Confidentiality. The Commissioner, the Human Resources Officer and all supervisors shall not knowingly disregard an employee's right to confidentiality in matters relating to alcohol or drug testing or otherwise neglect his or her responsibilities under this sub-part.

V.C4 **PENALTIES AND CONSEQUENCES**

- A. Disciplinary Action. An employee committing any act prohibited by Part V.C3 shall be subject to an appropriate form of discipline, depending on the circumstances.
 - (1) *Generally.* Where an employee commits any act prohibited by V.C3, without valid reason, the employee shall be disciplined up to and including removal. At a minimum, the employee shall receive a formal reprimand. If the prohibited act committed by the employee relates to the use or possession of alcohol or illegal drugs; the employee shall be referred to an S.A.P. for assessment and treatment.
 - (2) *First offense, under the influence.* An employee found to be under the influence of alcohol or illegal drugs in violation of Part V.C3(D), for a first offense, shall not be subject to removal solely for being under the influence of alcohol or illegal drugs. However, if the person is also involved in an accident, depending on the circumstances, PSS may decide to initiate an adverse action for removal, even on a first offense.
 - (3) *Serious offenses.* The following acts, even for a first offense, will result in an immediate adverse action for removal in accordance with PSS disciplinary regulations:
 - (a) The sale, purchase, possession with intent to deliver, or transfer of illegal drugs, or the attempt to sell, purchase or transfer illegal drugs in violation of V.C3(A);
 - (b) Being involved in an accident resulting in a fatality while under the influence of alcohol or illegal drugs, in violation of V.C3(D);
 - (c) While performing and about to perform duties in a safety sensitive position, being under the influence of alcohol or illegal drugs, in violation of V.C3(D);
 - (d) An unexcused refusal to be tested, in violation of V.C3(E);

- (e) Giving false information, contaminating or attempting to contaminate a urine sample, in violation of V.C3(F);
 - (f) Failing to notify the proper authority of conviction for a drug offense in violation of V.C3(H);
 - (g) Testing positive for alcohol or illegal drugs within five years of a prior positive test; and
 - (h) Breaching any term of a Return to Duty Contract executed under the provisions of Part V.C5(B).
- B. Information Concerning Treatment Options. Those employees not removed from PSS service after committing any act prohibited by Part V.C3 shall be informed of resources available for evaluating and resolving problems associated with the use of alcohol and illegal drugs. At a minimum, the PSS Human Resources Officer shall give the names, addresses, and telephone numbers of local S.A.P.s and substance abuse counseling or treatment programs. The employees will then be required to fulfill all the specified steps of treatment before being considered ready for return to duty.
- C. Report to Department of Public Safety. An employee committing any act prohibited by V.C3.A or V.C3.B shall be reported by PSS to the Department of Public Safety for the purpose of possible criminal prosecution.
- D. Duty/Pay Status Pending Adverse Action. Unless the employee was involved in an accident resulting in a fatality, an employee subject to an adverse action for committing any act prohibited by Part V.C3, except for V.C3(g), shall be allowed to remain on the job pending resolution of any proposed adverse action but shall not be allowed to perform a safety-sensitive function, even if that means assigning to the employee duties the employee would not otherwise be performing. An employee subject to, an adverse action for committing any act prohibited by Part V.C3 who was involved in a fatal accident shall be placed on leave without pay pending resolution of the adverse action for removal.

V.C5 RETURN TO WORK PROCEDURES

- A. Prerequisites to Returning to Duty. No employee who has tested positive for the presence of alcohol or illegal drugs shall be allowed to return to work until the employee has:
- (1) Complied with treatment recommendations of an M.R.O. or S.A.P. and been released for work by an S.A.P. in consultation, when appropriate, with the M.R.O. or a consulting physician;
 - (2) Tested negative in a subsequent test paid for by the employee for the presence of alcohol, if the removal from duty was due to alcohol use; or cocaine, marijuana, opiates, amphetamines, and phencyclidine, if the removal from duty was due to drug use; and
 - (3) Agreed to execute a Return to Duty Contract.

B. Return to Duty Contract. The Return to Duty Contract shall include the following provisions:

- (1) *Aftercare.* An agreement to comply with aftercare and follow-up treatment recommendations for one to five (1-5) years, as determined appropriate by the employee's S.A.P.;
- (2) *Follow-up testing.* An agreement to unannounced alcohol or drug testing, depending on the substance which resulted in the removal from duty, paid for by the employee, for one (1) to five (5) years, as determined appropriate by the employee's S.A.P., but there shall be no fewer than six (6) tests in the first year after the employee returns to work;
- (3) *Compliance with rules.* An agreement to comply with PSS regulations, rules, policies, and procedures relating to employment;
- (4) *Term.* An agreement that the terms of the contract are effective for five years after the employee's return to duty; and
- (5) *Breach of contract.* An agreement that violation of the Return to Duty Contract is grounds for termination.

V.C6 TESTING OCCASIONS

A. Pre-Employment Tests. At the time of application, persons applying for any safety sensitive position within PSS will be notified that any offer of employment is contingent upon a negative urine test. After receiving an offer of employment, the candidate shall be tested for the presence of cocaine, marijuana, opiates, amphetamines, and phencyclidine in the urine. The test shall be paid for by the candidate. Testing shall be in compliance with Part V.C8, below. Applicants who were previously employed by the government and applicants who have had an offer for government employment withdrawn due to a previous positive urine test result, must also provide a written release of drug testing history for the two (2) years immediately preceding the application date.

- (1) No candidate for a safety sensitive position within PSS may be assigned to work in any position until he or she presents the results of a urine test, taken after the offer for employment has been made, that shows negative for the presence of cocaine, marijuana, opiates, amphetamines, and phencyclidine.
- (2) If the candidate's test result is positive for the presence of a tested drug, without a legitimate explanation, the offer of employment will be withdrawn.
- (3) If the candidate presents a drug testing history showing a positive drug test within two (2) years prior to the application date, the offer of employment will be withdrawn unless the candidate submits a Statement of Fitness for Duty and agrees to execute an agreement similar to a Return to Duty Contract described in Part V.5(B).

B. **Reasonable Suspicion Testing.** Where there is a reasonable suspicion that any employee is under the influence of alcohol or drugs while at work or about to begin work, he or she shall, submit to a breath or urine test for the presence of alcohol, cocaine, marijuana, opiates, amphetamines, and phencyclidine, upon written notice from the employee's supervisor. Except as otherwise provided, the PSS shall pay for the testing.

- (1) *Properly trained supervisor.* Only a supervisor with PSS approved training in the physical, behavioral and performance indicators of probable drug and alcohol use is permitted to make reasonable suspicion testing decisions.
- (2) *Objective inquiry.* The properly trained supervisor will observe the employee suspected of being under the influence of alcohol or illegal drugs. A decision to request testing shall be based on eye witness reports, facts of the event, and observed physical and behavioral characteristics of the employee. Prior to making the decision to require testing, the supervisor will question the employee in a private area to ascertain whether there are any reasons other than alcohol or drug use for any behavior observed.
- (3) *Verification.* No employee shall be required to submit to a drug or alcohol test based on reasonable suspicion unless the need for the test is verified by a second properly trained PSS employee. The required verification shall be done in person.
- (4) *Transportation assistance.* The employee shall be accompanied to the collection site by a supervisor or manager, and shall be provided transportation home from the collection site. If the individual refuses and demands to drive his/her vehicle, the supervisor or manager shall notify the Department of Public Safety.
- (5) *Duty pending test results.* Until the results of the drug and alcohol test are complete and verified, no employee tested based upon reasonable suspicion shall be allowed to perform or continue to perform a safety-sensitive duty.
- (6) *Report.* The supervisor ordering reasonable suspicion testing shall put in writing, in detail, the facts leading to the decision. This report shall be considered confidential and will be maintained in the employee's medical file, which is confidential, until needed for disciplinary action. Only at that time will the report be filed in the employee's Official PSS Personnel Folder.

C. **Post-Accident Testing.** As soon as practical after an accident any employee whose action or inaction may have contributed to the accident must submit to breath and urine tests for the presence of alcohol, cocaine, marijuana, opiates, amphetamines, phencyclidine, upon written notice from the employee's supervisor. Except as otherwise provided, the PSS shall pay for the testing.

- (1) *Supervisor training.* Only a supervisor with PSS approved training in the physical, behavioral, and performance indicators of probable drug and alcohol use is permitted to make post-accident testing decisions.

- (2) *Objective inquiry.* A supervisor's decision to request testing shall be based on eye witness reports, facts of the event, and observed physical and behavioral characteristics of the employee. The properly trained supervisor shall require the driver of any government vehicle or the operator of any government equipment involved in the accident to be tested.
- (3) *Transportation assistance.* The employee shall be accompanied to the collection site by a supervisor or manager, and shall be provided transportation home from the collection site. If the individual refuses and demands to drive his/her vehicle, the supervisor or manager shall notify the Department of Public Safety.
- (4) *Duty pending test results.* Until the results of the drug and alcohol test are complete and verified, no employee reasonably suspected of having been under the influence of alcohol or drugs at the time of the accident shall be allowed to perform or continue to perform a safety-sensitive duty.
- (5) *Report.* The supervisor ordering post-accident testing shall put in writing, in detail, the facts leading to the decision. This report shall be considered confidential and will be maintained in the employee's medical file, which is confidential, until needed for disciplinary action. Only at that time will the report be filed in the employee's Official PSS Personnel Folder.

D. Random Testing. During each calendar year randomly selected employees performing safety-sensitive functions will be required to submit to breath tests for alcohol and urine tests for cocaine, marijuana, opiates, amphetamines, and phencyclidine. The testing will be done during on-duty time. Except as otherwise provided, the PSS shall pay for the testing.

- (1) *Method of selection.* Employees will be selected by a statistically valid method such as a random number table or computer-based random number generator that is matched with employee Social Security numbers, payroll identification numbers, or other comparable identifying numbers.
- (2) *Number to be tested.* No more than twenty-five percent (25%) of all employees performing safety-sensitive functions in PSS each year shall be required to submit to breath alcohol testing and no more than fifty percent (50%) shall be required to submit to urine testing. The actual percentage will be determined at the beginning of each fiscal year for each department or agency by the PSS Human Resources Officer, in consultation with the Commissioner of Education or designee and the MRO after reviewing PSS's prior positive testing rates, reasonable suspicion and post accident events, and referrals for service.

V.C7

COLLECTING AND TESTING BREATH SPECIMENS

A. Collection Site. Breath specimens shall be collected only at a site approved by the Commissioner of Education or at the scene of an accident if proper equipment and personnel can be made immediately available.

- B. Collection Protocol. Breath specimens shall be collected only by a B.A.T. trained in the collection of breath specimens at a course approved by the United States Department of Transportation in accordance with standard collection protocols as specified in 49 CFR, Part 40(C) "Procedures for Transportation Workplace Drug Testing Programs - Alcohol Testing," except as otherwise provided in this section. However, the M.R.O. or a consulting physician, when requested, may assist in facilitating the collection for post-accident testing.
- C. Confirming Test. Breath specimens shall first be subjected to a screening test for alcohol. If that test indicates a probable breath alcohol concentration of 0.02 or greater, a second test, confirming the first and providing quantitative data of alcohol concentration, shall be performed.
- An alcohol test shall be considered positive when both the screening test and the confirming test show a B.A.C. of 0.02 or greater.
- D. Results. The breath test results shall be transmitted by the B.A.T., in a manner to assure confidentiality, to the employee, to the Commissioner of Education and the PSS Human Resources Officer.
- E. Confidentiality. Other than as specified above, no person involved in the testing process shall release the results of breath tests to any other individual without a written release from the tested employee.
- F. Invalid Test. If the Commissioner of Education determines that the test is invalid, using the factors found at 49 CFR, Part 40.79, the test result shall be reported as negative.
- G. Statistical Reporting. The B.A.T. shall compile statistical data that is not name-specific, related to testing results. The B.A.T. shall release the statistical data to the Commissioner of Education upon request.

V.C8

COLLECTING AND TESTING URINE SPECIMENS

- A. Collection Site. Urine specimens shall be collected only at a site approved by the Commissioner of Education.
- B. Collection Protocol. Urine specimens shall be collected by persons trained in the collection process developed by the Substance Abuse and Mental Health Service Administration, United States Department of Health and Human Services, in accordance with standard collection protocols as specified in 49 CFR, Part 40(B), "Procedures for Transportation Workplace Drug Testing Programs Drug Testing" except as otherwise provided in this section. However, the M.R.O. or a consulting physician, when requested, may assist in facilitating the collection for post-accident testing.
- C. Splitting Sample.
- (1) After collecting a sample of the employee's urine, the sample will be split into two specimens. Both specimens will be shipped to the laboratory selected for performing tests for PSS.

- (2) One specimen, called the primary specimen, shall be tested for the PSS. The other specimen, called the secondary specimen, shall be the property of the employee, to be tested only upon request of the employee.

- D. Confirming Test. Primary urine specimens shall first be subjected to a screening test. Only if the screening test shows positive for the presence of prohibited drug, will a second test be conducted on the same urine specimen to identify the presence of a specific drug or metabolite, using a gas chromatography/mass spectrometry (GC/MS) test. No drug test shall be considered positive unless both the screening test and the confirming test show the presence of one or more of the drugs tested.
- E. Results. The laboratory conducting the urine test shall give the results only to the M.R.O. The M.R.O. shall discuss the test result with the tested individual.
- F. Invalid test. If the M.R.O. decides that the test is invalid, the candidate or employee shall immediately submit another urine specimen for testing.
- G. Employee Test. If the PSS's test shows positive for the presence of a specific drug or drugs, the employee may request that the M.R.O. have the secondary specimen tested at another laboratory certified by the United States Department of Health and Human Services, for the presence of the drug or drugs found in the primary specimen.
- (1) The employee must make the request, in writing, within 72 hours of receiving notice of the result of the PSS's test.
 - (2) The results of the second test shall be given to the M.R.O. who shall discuss the results with the employee.
 - (3) The employee shall pay for the cost of the second test.
- H. Alternative Explanations for Positive Test Results.
- (1) Upon receiving a report of a positive test result, the M.R.O. shall determine if there is any alternative medical explanation for the result, including the use of prescribed medication by the employee. Such a determination shall be based on information received from the employee such as the tested individual's medical history and records. If the M.R.O. determines it to be necessary, he or she may request pertinent analytical records from the laboratory or require a re-analysis of the specimen.
 - (2) The M.R.O. shall report the urine test result as negative and shall take no further action if he or she determines:
 - (a) There is a legitimate medical explanation for a positive test result, other than the use of the specific drug; or
 - (b) Based on a review of laboratory inspection reports, quality assurance and quality control data, and other drug test results, the positive drug test result is scientifically insufficient for further action.

- I. **Illegal Use of Opium.** If the GC/MS does not confirm the presence of 6 monoacetylmorphine, the M.R.O. shall determine whether there is clinical evidence, in addition to the urine test result, of illegal use of any opium, opiate or opium derivative.
- J. **Report to PSS.** The M.R.O. shall report all positive and negative urine drug test results, in a manner to assure confidentiality, to the PSS Human Resources Officer and the Commissioner of Education.
- K. **M.R.O. and Confidentiality.** Other than as specified above, the M.R.O. shall not release the results of drug tests to any other individual without a written release from the tested employee.
- L. **Statistical Reporting.** The M.R.O. shall compile statistical data, that is not name-specific, related to testing and rehabilitation. The M.R.O. shall release the statistical data to the Commissioner of Education upon request.

V.C9 **EMPLOYEE AWARENESS AND REHABILITATION**

- A. **Employee Awareness Training.** All employees shall receive information concerning the effects and consequences of drug and alcohol use on personal health, safety, and the work environment; the manifestations and behavioral clues indicative of drug and alcohol use; and the resources available to the employee in evaluating and resolving problems associated with the use of illegal and legal drugs and alcohol.
- B. **Employees Seeking Voluntary Assistance.** All employees shall be allowed to voluntarily seek assistance for alcohol or drug use at any time prior to being required to be tested under the reasonable suspicion, post-accident or random testing procedures.
 - (1) ***Referrals.*** Employees may request referral to an S.A.P. for treatment, may refer themselves, or may be referred by a supervisor as part of a performance counseling. Such referrals shall only be made a part of the employee's medical file and shall not be a part of the employee's Official PSS Personnel Folder. Referrals shall be kept confidential.
 - (2) ***Voluntary referrals.*** Employees who voluntarily seek assistance in dealing with drug and alcohol problems or accept referrals, before job performance is compromised, shall be provided the same leave benefits for recommended treatment as provided for any other health problem.
 - (3) ***Accountability for job performance.*** Regardless of participation in or requests for referrals, employees shall be held accountable for acceptable job performance. In no case where job performance has been compromised will disciplinary action be waived for employees asking for assistance and referral. However, such requests may be considered a mitigating factor in determining the appropriate form of discipline.
- C. **Job Security Maintained.** Employees shall not have job security or promotional opportunities jeopardized solely because of a request for a drug or alcohol treatment referral.

- D. Required Documentation. Although voluntary referrals or referrals made prior to testing are kept strictly confidential, documentation of poor performance or disciplinary actions taken due to drug or alcohol abuse shall be included in the employee's Official PSS Personnel Folder.

V.C10 DISSEMINATING INFORMATION ON REGULATION

- A. Distribution to Employees. All current employees shall receive a copy of these Regulations at least thirty (30) days before the implementation date. New employees hired after the effective date of these regulations will be given a copy of this policy at the time of hire. Each employee shall sign a form prescribed by the PSS Human Resources Officer which acknowledges the receipt of these regulations and the employee's understanding that he or she is bound by the regulations. This acknowledgment shall be kept in the employee's Official PSS Personnel Folder.
- B. Posting. These regulations will be posted in all workplaces for at least sixty (60) days following their implementation.

V.C11 RECORD RETENTION AND REPORTING REQUIREMENTS

- A. Administrative Records. Records relating to the administration of these regulations , including policy and program development, employee awareness training, supervisory training, collection site training, program administration, and calibration documentation, shall be kept by the PSS Human Resources Office and the M.R.O. for five years.
- B. Records Relating to Collection Process. Records relating to the breath and urine collection process shall be kept by PSS, the M.R.O., and the specimen collector at the collection site for two years.
- C. Refusals, Referrals and Test Results. PSS shall keep a copy of all records of refusals to be tested, breath and urine test results, and referrals to an S.A.P. in the employee's medical file, not the employee's Official PSS Personnel Folder, at least until such time as disciplinary action is taken. The M.R.O. shall keep a copy of all urine test results and the B.A.T. shall keep a copy of all breath test results in a manner to assure confidentiality.
No test results shall be available for use in a criminal prosecution of the employee unless the employee consents or the court orders the release of the results.
- (1) Positive test result records, records of refusals to be tested and referrals to an S.A.P. shall be kept for five (5) years.
 - (2) Negative test result records shall be kept for a period of one (1) year.
- D. Report to Federal Contract Agency. To comply with the Drug Free Workplace Act of 1988, 41 U.S.C. §702(a)(1)(E), the Commissioner of Education shall notify the federal contracting agency of the conviction of any employee for selling, manufacturing or dispensing any illegal drug on government business property or government time, within 10 days of the conviction.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
STATE BOARD OF EDUCATION
PUBLIC SCHOOL SYSTEM

P.O. Box 501370 , SAIPAN, MP 96950
TEL. NOS.: (670) 664-3727 / 3700
FAX NO.: (670) 664-3711/3798

ACKNOWLEDGEMENT FORM
FOR THE ALCOHOL AND DRUG FREE WORKPLACE POLICY

I _____ do hereby acknowledge the (Applicant or Employee)
receipt of the Public School System's Alcohol and Drug Free Workplace Regulations. I understand that I am required to
comply with the requirements of these regulations.

Print Name & Sign

Date

Social Security Number: _____

Signature of Witness: _____

Date

Original to be filed in Employee's PSS Personnel File. Copy to Employee.



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS



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

Roman C. Benavente
Chairman

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Commissioner of Education
Rita Hocog Inos, Ed.D

NOTICE AND CERTIFICATION OF ADOPTION OF AMENDMENTS TO BOARD OF EDUCATION REGULATIONS REGARDING TEACHER CERTIFICATION AND QUALIFICATION (PRAXIS TESTING), ANNUAL LEAVE FOR CERTIFIED PERSONNEL, SICK LEAVE AND ANNUAL LEAVE FOR HEAD START PERSONNEL, HEAD START FINANCIAL REGULATIONS REGARDING LEASES, PAY DIFFERENTIALS FOR PROFESSIONAL DEVELOPMENT ACTIVITIES AND CHILD CARE ADMINISTRATIVE REGULATIONS

I, Roman C. Benavente, the Chairman of the Ninth Board of Education for the Commonwealth of the Northern Mariana Islands ("Board") pursuant to the authority provided by Article XV of the CNMI Constitution and Public Law 6-10 hereby adopt as permanent the proposed amendments to PSS Regulations as published in Volume 26, Number 8 of the Commonwealth Register dated August 26, 2004 (pages 023063-023117) with minor modifications made to the PRAXIS testing requirements as noted in the attached. Further, I hereby certify that, as published, such regulations are an accurate and complete copy of the regulations, which in response to public comment have been modified as noted in strike through and italics on the attached.

Pursuant to 1 CMC sec. 9104(a)(2), the Board has fully considered all written and oral submissions respecting the proposed amendments. In addition to the publication notice in the Commonwealth Register, the Board circulated the proposed amendments regarding PRAXIS testing to all schools and presented the testing requirements to employees during professional development and staff meetings.

I further request that this Notice and Certification of Adoption be published in the Commonwealth Register. Pursuant to 1 CMC sec. 9105(b), these amended regulations are effective 10 days after publication.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on this 5th day of October 2004, on Saipan, CNMI.

By: Roman C. Benavente
ROMAN C. BENAVENTE
Board of Education Chairman

gr

Approved By: Clyde Lemons Jr
PAMELA BROWN
Acting ATTORNEY GENERAL, CNMI

Date: 10/25/04

Filed By: Bernadita Cruz
BERNADITA B. DELA CRUZ
COMMONWEALTH REGISTER

Date: 10/22/04

REGULATIONS FOR THE PUBLIC SCHOOL SYSTEM EMPLOYMENT OF CERTIFIED PERSONNEL

Chapter 1

F. Core Knowledge Testing Requirement

§1601 PRAXIS. All teacher applicants and current teachers, upon contract renewal, shall submit proof to PSS that he or she has received a passing grade on the PRAXIS core knowledge examinations. The PRAXIS requirement shall apply to *all K-12th grade level* teacher applicants and all current teachers *for these grades, except related services providers*. Passing scores will be determined by the Commissioner of Education and announced to teachers and applicants.

§1602 Procedure.

- a) PRAXIS shall be administered to all teacher applicants prior to placing their names on the list of eligible applicants for teaching positions.
- b) All current PSS teachers shall be required to complete ~~this examination~~ *PRAXIS I and, if a secondary school teacher, PRAXIS II* prior to the expiration date of their current employment contracts.
- c) The result of the *PRAXIS I and, if a secondary school teacher, PRAXIS II* examinations will determine a current teacher's eligibility for contract renewal and applicant's eligibility for employment.
- d) A current teacher's failure to take the test or to obtain a passing score shall result in his or her employment contract not being renewed.
- e) A teacher applicant's failure to take the test or to obtain a passing score shall result in ineligibility for employment.

§1603 Timeline.

- a) PRAXIS testing will be offered to teachers and teacher applicants beginning in school year (SY) 2004/2005.
- b) All newly recruited PSS teachers for SY 05/06 shall be required to have taken and passed the *PRAXIS I and, if a secondary school teacher, PRAXIS II* entrance examinations in order to qualify for employment with PSS.
- c) All current PSS teachers whose contracts expire after August 31, 2005 shall be required to take and pass the *PRAXIS I and, if a secondary school teacher, PRAXIS II* entrance examinations prior to contract renewal.
- d) Beginning August 31, 2006, all teachers employed by PSS will have taken and passed the *PRAXIS I and, if a secondary school teacher, PRAXIS II* exams.

**REGULATIONS FOR THE PUBLIC SCHOOL SYSTEM
EMPLOYMENT OF CERTIFIED PERSONNEL
CHAPTER 2 - CERTIFICATION**

(a) Purpose

The Board of Education (BOE) and Public School System (PSS) recognizes that the delivery of high-quality and equitable educational services to all students in the Public School System, is necessary, therefore, it is imperative to recruit, hire, and retain highly trained and fully certified professional employees. To ensure that its professional employees are well prepared to provide the opportunity to the students to develop into happy, self-respecting, understanding and contributing members of the society, BOE requires that all professional employee meet the certification requirements as set forth in the regulations. This certification is designed to promote excellence and maintain a high standard of professionalism of all full-time professional employees within the school system.

(b) Definitions

1. "School" means any public educational institution, Head Start, kindergarten to grade twelve (12) that functions as part of the Commonwealth of the Northern Mariana Islands (CNMI) Public School System in providing educational services as established by the CNMI State Board of Education.
2. "Librarian" means any person who is employed by the Public School System and has the primary responsibility to operate the school-library services to one or more students, but excludes library aides.
3. "Teacher" means any person who is employed by the Public School System and has the primary responsibility for the education, instruction or the provision of related services for one or more students. This definition specifically includes regular classroom teachers, vocational education teachers, special education teachers, related services providers, but excludes specialized instructors, volunteer assistants, guest lecturers, teacher aides, teaching assistants and student teachers as defined herein.
4. "Guest Lecturer" means any person who delivers lectures/presentations to students with or without compensation, but who does so in the presence of the assigned teacher for that class of students.
5. "Student Teacher" means any person who is engaged in a course of study at a college or university in the field of education and as a part of that

course of study, teaches a class of students under the supervision of a certified teacher.

6. "Teacher Aide/Teacher Assistant" means any person who is employed by the Public School System to assist the teacher and shares the responsibility for the care of the students' education under the direct supervision of a teacher, librarian or administrator.
7. "Volunteer Assistant" means any person who does not have an employment contract with the Public School System and without compensation assists the teacher and shares the responsibility for the care of the students' education under the direct supervision of a teacher, librarian or administrator.
8. "Instructor" means any person who is employed by the Public School System and who does not have a bachelor's degree but has specialized training/experience in a particular field or has met the minimum requirements established by PSS. This individual has the primary responsibility for the education or instruction of one or more students in a specialized area such as the bilingual program, the vocational education program or the Head Start program.
9. "Special Education Related Services Provider" means any person who is employed by the Public School System in a position from the following specialized areas: Deaf Education, Assistive Technology, Blind Education, Physical Therapy, Occupational Therapy, Educational Psychology, Audiology, Social Work, Recreational Therapy, Speech /Language Pathology, Behavior Specialist and any other area needed to comply with the Individual with Disabilities Education Act (IDEA).
10. "School Counselor" means any person who is employed by the Public School System and provides guidance and counseling and/or any other related services for one or more students.
11. "School Administrator" means school principal or school vice principal employed by the Public School System and has the primary responsibility as an administrator and educational leader, ensuring equitable educational services to all students by implementing policies, procedures, and regulations as set forth by the Board of Education.
12. "Non-Education Degree" means any B.A., B.S., Master, or Doctoral Degree that is in any field area other than Education.
13. "States" means the 50 states of the United States, Commonwealth of Puerto Rico, Commonwealth of the Northern Mariana Islands, Territory of U.S Virgin Islands; Territory of Guam; Territory of American Samoa; and

Freely Associated States (Federated States of Micronesia; Republic of the Marshall Islands; Republic of Palau).

14. "Equivalent Courses" means courses, workshops, Institutes or Seminars that meet the requirement minimum of 45 contact hours sanctioned by PSS Staff Development/Human Resources Office.

(c) Effect on Employment Contract

1. **Possession of Valid Certificate:** The failure of any instructor, teacher, librarian, school counselor, or school administrator to qualify to hold a valid certificate or to continue to qualify to hold a certificate during that person's contract term shall immediately render the contract of employment null and void.
2. **Tenure Not Created by Certification:** The granting of the Provisional, Specialized, Basic, Standard Certificate of Endorsement, or Professional Certificate does not entitle any employee to tenure, nor does it imply, promise, or suggest continued employment with the CNMI Public School System.

(d) Certification shall be aligned with PSS classification and salary schedules as follows:

1. Employees with Provisional Certificate shall be classified as Instructor I, Classroom Teacher I, School Librarian I, School Guidance Counselor I, School Vice Principal I and II, or School Principal I to III.
2. Employees with Specialized Certificate shall be classified as Instructor II.
3. Employees with Basic Certificate shall be classified as Classroom Teacher II, School Librarian II, or School Guidance Counselor II.
4. Employees with Standard Certificate shall be classified as Classroom Teacher III, School Librarian III, or School Guidance Counselor III.
5. Employees with Professional Certificate shall be classified as Classroom Teacher IV, School Librarian IV, School Guidance Counselor IV, School Vice Principal II, School Principal I, II, or III.

REGULATIONS FOR THE PUBLIC SCHOOL SYSTEM EMPLOYMENT OF CERTIFIED PERSONNEL

Chapter 2

(e) Eligibility for all five certifications:

1. **Criminal History:** The applicant must be free from any felony conviction or any crime involving moral turpitude, or indicating an unfitness to teach whether a felony or a misdemeanor. A "felony" shall mean any criminal offense punishable by one or more years of imprisonment. A "misdemeanor" shall mean any criminal offense punishable by less than one year of imprisonment.
2. **No Disciplinary Sanctions:** The applicant must not have had a suspension or revocation of his/ her certificate or license by any other state or national agency.
3. **No Physical or Mental Disability Preventing Service:** The Applicant must not possess a physical or mental disability that would prevent the applicant from safely and effectively performing job-related functions or that poses a significant risk of substantial harm to the health or safety of students, co-workers, or others and such risk that cannot be eliminated or reduced by reasonable accommodation.
4. **Core Knowledge Examination:** *All teacher certification applicants for grades K-12, excluding related services providers, must take and pass PRAXIS exams. Provisional and Specialized certification applicants must take and pass PRAXIS I. Basic and Standard certification applications must take and pass PRAXIS I and II, if a secondary school teacher. Standard certification applicants must take and pass PRAXIS I, II and III.*

(f) Types of Certification and Requirements

The Commonwealth shall have five general levels of certification for professionals in the field of education: Provisional, Specialized, Basic, Standard, and Professional.

1. **Provisional Certificate** is a two-year certificate for teachers, librarians, school counselors, related service providers, instructors, and school administrators.

A. Eligibility Requirements:

- i. The Provisional Certificate requires that teachers, school librarians, school counselors, school administrators and other professional applicants to possess either a baccalaureate, masters, or doctoral

degree resulting from a course of instruction of at least three and one-half years length at a college or university recognized by U.S. accreditation commissions approved by PSS. An applicant who possesses a baccalaureate, masters or doctoral degree resulting from a course of instruction of at least three and one-half years length at a college or university not accredited from an approved commission shall have his/her transcript of courses evaluated and certified to be equivalent to a degree conferred by accredited schools. The certification and evaluation of program equivalency shall only be conducted by the agencies identified and approved by PSS. The applicant is responsible for the cost of the program equivalency certification. Failure to obtain such certification shall render an applicant disqualified for failure to meet the education requirement(s) of the position.

- ii. **Provisional Certificate for Instructor applicants in specialized areas must meet the minimum requirements as set forth in the PSS classification guidelines.**
- iii. **Submittal of documentation requirements prior to effective date of employment. Requirements include:**
 - a. Complete and signed application form,
 - b. Two passport size photos,
 - c. Official college transcripts,
 - d. Teaching certificate (if any),
 - e. Receipt of payment from PSS Treasurer for certification processing fee, and
 - f. FBI fingerprint submission.
 - g. *Test Result showing that an applicant has taken and passed PRAXIS I exam for K-12 grade teachers, excluding related services providers.*

B. Education: Certification Course Requirements

Prior to the two-year expiration date of the Provisional Certificate, the applicant must provide an official transcript or certificate of completion of the Basic Certificate courses or applicable certification courses.

- C. Term:** The Provisional Certificate is invalid after its expiration date and shall not be reissued. Requirements must be satisfied to upgrade to the next certification level.

2. **Specialized Certificate:** A Specialized Certificate is a two-year certificate specifically for instructors who do not have a bachelors degree but have specialized training/experience in a particular field or has met the minimum requirements established by PSS.

A. Eligibility Requirements:

- i.. *Possess-a Meet eligibility requirements for Provisional Certificate.*
- ii. All instructors must submit a completed and signed application form in the CNMI under the penalty of jury for a Specialized Certificate within the first quarter of employment.
- iii. Submit receipt of payment from PSS Treasurer for certification processing fee within the first quarter of employment.

B. Education: Certification Course Requirements

Prior to the two-year expiration date of the Provisional Certificate, the applicant must provide an official transcript or certificate of completion of specific specialized courses. Education courses for the Specialized Certificate are as follows:

- i. **Specialized Certification in Bilingual Program:** Instructors assigned to teach in a Bilingual program must complete the following courses or equivalent:
 - a. Computer Technology
 - b. Instruction in Teaching Linguistically Diverse Students
 - c. Instruction in Chamorro/Carolinian Language Arts
 - d. Instruction in Planning and Assessment for Diverse Classroom
 - e. Instruction for Students with Disabilities
 - f. Instruction in Lesson Planning and Classroom Management
 - g. Chamorro or Carolinian Orthography
- ii. **Specialized Certificate in Early Childhood (Head Start):** Instructors teaching in the Head start program must complete the following courses or equivalent:
 - a. Computer Technology

- b. Curriculum in Early Childhood Education
- c. Education for Parenthood
- d. Guiding and Nurturing
- e. Safety and First Aid for Young Children
- f. Administration in Early Childhood Education
- g. Introduction to Exceptional Individuals

iii. Specialized Certificate in Vocational Education:
Instructors for Vocational Education classes must complete the following courses or equivalent:

- a. Computer Technology
- b. Instructional Strategies and Classroom Management
- c. Instructional in Teaching Linguistically Diverse Students
- d. Instruction in Planning and Assessment
- e. Occupational Competency as approved by PSS

C. **Term:** Instructors may renew the Specialized Certificate an unlimited number of times repeating the eligibility requirements every two years with proof of completion of 60 hours of seminars, workshops, or in-service training as sanctioned by PSS and/or equivalent university/college courses.

3. **Basic Certificate** is a three-year certificate for teachers, librarians, school counselors, and related service providers. Basic Certificate will be issued upon submission of completed requirements. If the applicant has met all the requirements for both the Basic Certificate and Standard Certificate with Endorsement, then the Standard Certificate will be issued.

A. **Eligibility Requirements:**

- i. Applicant must possess a *meet eligibility requirements for* Provisional Certificate.
- ii. The applicant must submit a recommendation from his/her principal or supervisor, which shall be based on the performance evaluation of the employee. Should the employee's performance evaluation meet a rating of satisfactory or above, he/she shall be issued a letter of recommendation for the Basic Teaching Certificate.
- iii. The applicant must submit a copy of receipt from the CNMI PSS Treasurer in the amount required by the CNMI Board of Education Certification.

- iv. *Test Result showing that a teacher applicant for grades 7-12, excluding related services providers, has taken and passed PRAXIS II exam.*

B. Education: Certification Course Requirements

1. Any teacher or librarian applying for the Basic Certificate must have satisfactorily completed and submitted an official transcript of the following course requirements or any identified equivalent courses as accepted by PSS, prior to the expiration date of the Provisional Certificate and before issuance of the Basic Certificate.
- a. Multicultural Education/Teaching Linguistically Diverse Students
 - b. Teaching Reading
 - c. Inclusive Practice for Students with Learning Disability
 - d. Instructional Strategies/Classroom Management
 - e. Internship or Mentoring Program
 - f. Computer Technology
- ii. Any school counselor applying for the Basic Certificate must have satisfactorily completed and submitted an official transcript of the following course requirements or identified equivalent as accepted by PSS, before the expiration date of the Provisional Certificate and before the issuance of the Basic Certificate.
- a. Computer Technology
 - b. Test and Measurement
 - c. Introduction to Counseling
 - d. Issues and Philosophies of Culturally Diverse Schools
 - e. Multicultural Counseling
 - f. Counseling Process: Theory
 - g. Counseling Process: Practice

C. **Term:** The Basic Certificate shall be issued and valid for a period of three (3) years. The Basic Certificate is invalid after its expiration date and shall not be reissued.

4. **Standard Certificate with Endorsement** is a five-year certificate for teachers, librarians, school counselors, and related service providers.

A. **Eligibility Requirements:**

- i. The applicant must possess ~~a meet eligibility requirements for the Provisional Certificate and has met the requirements of~~ the Basic Certificate.
- ii. Three recommendations including performance evaluations: one (1) from an immediate supervisor or school principal, one (1) from a colleague, and one (1) from a parent, or former student describing the candidate's proficiency, skills, and competency. The performance evaluations must be based on cumulative performance over a contract term.
- iii. A signed application form in the CNMI under the penalty of perjury.
- iv. An official transcript showing satisfactory completion of the required courses or equivalent or a certificate of completion.
- v. A copy of receipt from the CNMI PSS Treasurer in the amount required by the CNMI Board of Education.
- vi. ~~Test Result showing that an applicant has taken and passed PRAXIS-III exam.~~

B. Education: Certification Course Requirements

- i. Standard Certificate with Elementary Education Endorsement: Teacher teaching in elementary schools must complete the following courses or equivalent.
 - a. Instructional Technology
 - b. NMI History/Pacific Institute (NMI)
 - c. Reading Diagnostic
 - d. Tests and Measurements
 - e. Language Arts Method
 - f. Math Methods
 - g. Science Methods
 - h. Social Studies Methods
 - i. Curriculum in Early Childhood Education
- ii. Standard Certificate with Special Education Endorsement: Special Education teachers teaching in the Special Education Program must complete the following courses or equivalent.

- a. Instructional Technology
- b. NMI History/Pacific Institute (NMI)
- c. Reading Diagnostic
- d. Tests and Measurements
- e. Student Evaluation for Special Education
- f. Behavioral Modification in the Classroom
- g. Modification and Adaptation of Curriculum for Special Education Students
- h. Medical Implication of Special Education Students in the Classroom
- i. Current Issues in Special Education

ii. Standard Certification with Early Childhood Special Education Endorsement: Teachers providing education services to students in the Early Childhood Intervention Program must complete the following courses or equivalent.

- a. Instructional Technology
- b. NMI History/Pacific Institute (NMI)
- c. Reading Diagnostic
- d. Tests and Measurements
- e. Philosophical, Historical and Legal foundations of Early
- f. Intervention and Special Education.
- g. Health, Safety and Medical Aspects of children with special needs.
- h. Fundamentals Child Growth and Development
- i. Partnerships and Families
- j. Evaluation & Assessment
- k. Program Implementation in Natural Environments.

iii. Standard Certificate with Early Childhood Education (Head Start) Endorsement: Teachers providing educational services to students in the Head Start Program must complete the following courses or equivalent.

- a. Instructional Technology
- b. NMI History/Pacific Institute (NMI)
- c. Reading Diagnostic
- d. Curriculum in Early Childhood Education
- e. Guiding and Nurturing Young Children
- f. Education for Parenthood
- g. Safety, Health and First Aid for Young Children
- h. Administration in Early Childhood Education
- i. Introduction to Exceptional Individual

- iv. Standard Certificate with Secondary Education
Endorsement: Teacher teaching in the junior and senior high schools must complete the following courses or equivalent.
 - a. Instructional Technology
 - b. NMI History/Pacific Institute (NMI)
 - c. Reading Diagnostic
 - d. Tests and Measurement
 - e. Methods in Content Area
 - f. 3 Courses in the Content Area (9 credits)

- v. Standard Certificate with Library Science Endorsement:
 Librarians providing library services in elementary or secondary schools must complete the following courses or equivalent.
 - a. Instructional Technology
 - b. NMI History/Pacific Institute (NMI)
 - c. School Library Administration
 - d. Selection, Evaluation and Access of School Lib. Material
 - e. Children Literature or Young Adult Literature
 - f. School Library Material and the Curriculum
 - g. Technology and the School Library.

- vi. 1. Standard Certificate with Bilingual Education
Endorsement: Teachers teaching bilingual program in the elementary or secondary schools must complete the following courses or equivalent.
 - a. Instructional Technology
 - b. NMI History/Pacific Institute (NMI)
 - c. Reading Diagnostic
 - d. Evaluation and Assessment in Bilingual
 - e. Historical and Philosophical Foundation of Bilingual
 - f. First and Second Language Acquisition
 - g. Chamorro or Carolinian Orthography

2. Any teacher who has obtained or completed the course requirements of the Specialized Certificate in Bilingual would only need to take the following courses:

 - a. Instructional Technology
 - b. NMI History/Pacific Institute (NMI)

c. Reading Diagnostic

vii. Standard Certificate for Special Education Related Service Provider Endorsement: Related services providers must obtain professional licensure and/or certification within the area of discipline or service and fulfill continuing education credits to maintain and renew their respective licenses. A copy of the professional licensure must be submitted to the Human Resources Office. The provider must complete the following courses or equivalent before the expiration date of the Provisional Certificate.

- a. Instructional Technology
- b. NMI History/Pacific Institute (NMI)
- c. Teaching Linguistically Diverse Students

viii. Standard Certificate with School Counseling Endorsement: School Counselors providing guidance and counseling services in the elementary and secondary schools must complete the following course requirements or equivalent.

- a. NMI History/Pacific Institute
- b. Dynamics of Individual Behavior
- c. Individual and Group Assessment
- d. Group Counseling
- e. Prevention and Outreach
- f. Career Counseling and Placement
- g. Instructional Technology

C. **Term:** Teachers, librarians, school counselors, and related service providers may renew the Standard Certificate with Endorsement every five years with submittal of the eligibility requirements. In addition, there must be proof of completion of 60 hours of seminars, workshops, or in-service training as sanctioned by PSS and/or equivalent university/college courses.

5. Professional Certificate is a ten-year certificate for qualified teachers, school counselors, and librarians and related service providers. Upon completion of the Standard Certificate with Endorsement, an applicant may pursue the Professional Certificate. For school administrators, the Professional Certificate is a four-year certificate.

A. **Eligibility Requirements:**

- i. *Meet the eligibility requirements of a Standard Certificate with Endorsement.*

- ii. A signed application form.
- iii. Three recommendations including performance evaluations: one (1) from an immediate supervisor or school principal, one (1) from a colleague, and one (1) from a parent, or former student describing the candidate's proficiency, skills, and competency. The performance evaluations must be based on cumulative performance over a contract term.
- iv. Proof of current membership of professional education association and specialized endorsement.
- v. A copy of receipt from the CNMI PSS Treasurer in the amount required by the CNMI Board of Education Certification.

B. Education: Certification Course Requirements

- i. The applicant must provide a certified copy of the transcript of courses showing satisfactory completion of a master or doctorate degree in the field of education; or a masters or doctorate degree in a specialized field area. The specialized fields area shall include any of the following for classroom teachers, librarians, school counselors, and school administrators:
 - a. Secondary Education Masters in Specialized Content Area
 - b. Special Education
 - c. Early Childhood Education
 - d. Counseling
 - e. Education: Administration and Supervision
 - f. Other specialized area in education
- ii. The applicant must provide a certified copy of the transcript of courses showing satisfactory completion of a master or doctorate degree in the field of Special Education; or a masters or doctorate degree in a specialized field area. The specialized fields area shall include any of the following for related service providers:
 - a. Audiology
 - b. Speech Language Pathology
 - c. Physical Therapy

- d. Occupational Therapy
- e. Deaf and Hard of Hearing
- f. Education Psychologist

iii. Any school principal or school vice principal applying for the Administrators' Professional Certificate must satisfactorily complete and submit official transcripts of the following course requirements or identified equivalent as accepted by PSS, before the expiration date of the Provisional Certificate and before the issuance of the Professional Certificate.

- a. Introduction to School Administration
- b. Instructional Supervision and Evaluation (Clinical Supervision)
- c. School Law/Education Law
- d. School Personnel
- e. School Finance
- f. Instructional Leadership & Supervision Seminar
- g. Facilitative Leadership Seminar

C. **Term:** Teachers, librarians, school counselors, and related service providers may renew the Professional Certificate every ten years with submittal of the eligibility requirements. School administrators may renew the Professional Certificate every four years with submittal of the eligibility requirements. In addition, all qualified applicants must provide proof of completion of 60 hours (120 hours for administrators) of seminars, workshops, or in-service training as sanctioned by PSS and/or equivalent university/college courses.

(g) Burden of Proof

The Commissioner of Education or Certification Officer may request additional proof of eligibility before making any certification determination. The burden of providing requested documentation is on the applicant.

(h) Renewal or Reapplication

An applicant applying for a new certificate or the renewal of a prior certificate must comply with the procedures set out in this Regulation as though applying for the first time, except that the Commissioner or Designee may waive the submission of documents, which are already on file and which do not need to be updated (e.g. college transcripts).

(i) Certification Decision

1. The Commissioner of Education shall appoint a Certification Officer. The Certification Officer shall act on behalf of the Commissioner of Education for certification decisions.
2. The Certification Officer shall render a decision on an application for a Specialized, Basic, Standard with Endorsement or Professional Certificate within thirty (30) calendar days of receiving a completed application. The employee/applicant will be notified and the decision shall take effect immediately.
3. In the case of the denial of a certificate, the decision shall be placed in writing. It shall give written notice of the reasons for denial by citing the requirement(s) not met and explaining the evidence against the applicant.
4. The denial of any application may be appealed to the Commissioner of Education pursuant to the hearing procedures set forth herein.

(j) Revocation and Suspension of Certificates

1. Grounds for Revocation and Suspension

The Commissioner of Education shall have the authority to suspend or revoke any certificate, whether provisional, specialized, basic, standard with endorsement or professional upon receipt of evidence that suspension or revocation is necessary.

2. Mandatory Revocation or Suspension

The Commissioner or Designee must revoke any certificate when the holder has committed a material deception or fraud on his/her application for employment with the Public School System or on his/her application for certification, or has been convicted of any felony indicating an unfitness to teach or a crime of moral turpitude. These offenses include but are not limited to:

- A. violent felonies in which an individual threatens to cause, attempts to cause or causes serious bodily injury;
- B. sexually violent offenses as defined by CNMI law;
- C. criminal sex offense against a minor as defined by CNMI law;
- D. child abuse or neglect as defined by CNMI law or similar offenses in other jurisdictions;
- E. violations of the CNMI Minor Children Firearms Control Act or similar offenses in other jurisdictions;
- F. distribution to persons under 18 as defined by CNMI law or similar offenses in other jurisdictions;

- G. criminal histories may be evaluated based on the nature and severity of the incident; the identity of the victim; the length of time since the incident; whether any specific pattern of criminal behavior exists; and specific efforts the individual has made towards rehabilitation.

3. **Grounds for Discretionary Action**

The Commissioner of Education may suspend or revoke a certificate, if appropriate, upon the following grounds:

- A. Immoral conduct;
- B. Unprofessional conduct;
- C. Incompetence;
- D. Defiance of and refusal to obey the policies, rules, regulations and laws governing the duties of PSS certified personnel; and
- E. Substantial evidence of the commission (evidence of conviction not necessary) of a crime of moral turpitude or a felony indicating an unfitness to teach.

4. **Complaints**

- A. An action to suspend or revoke a certificate must be initiated by a written complaint filed by the Commissioner or Designee and served upon the employee. The complaint shall give written notice of the charges by: i) citing any regulation violated, or any misconduct of the employee; ii) explaining the evidence against the employee; iii) stating the proposed sanction; and iv) informing the employee of the opportunity for a formal hearing. The employee shall receive the complaint twenty (20) days prior to any suspension or revocation action pursuant to 3 CMC § 1183(e). The notice and opportunity for a hearing regarding a suspension or revocation must comply with 1 CMC § 9111.
- B. In the case of a denial of a certificate by the Certification Officer under §2305 hereof, the decision shall be placed in writing. It shall give written notice of the reasons for denial by citing the requirement(s) not met and explaining the evidence against the applicant.

5. **Interim Suspension**

- A. No suspension or revocation shall take effect until a hearing, if requested, has reached a final judgment, pursuant to 1 CMC § 9111(a).
- B. If the Commissioner finds that public health, safety, or welfare imperatively requires it, the emergency summary suspension of a certificate may be ordered pending proceedings for revocation or other action pursuant to 1 CMC §9111(b).

6. Opportunity for Formal Hearing

The employee/applicant shall be provided with an opportunity to have a formal hearing regarding any denial, suspension or revocation of a certificate. The hearing will be held before the Board of Education and the majority of Board Members at the hearing will make any suspension decision. The employee/applicant must request a formal hearing in writing within ten (10) days of the receipt of his/her complaint or notice of the denial of certificate. The request shall be addressed to the Chairperson of the Board of Education.

7. Scheduling the Hearing

- A. The PSS Legal Counsel shall represent the Commissioner/Designee in presenting a complaint for revocation or suspension and in presenting the evidence supporting the denial of a certificate.
- B. The employee/applicant is entitled to retain counsel at his or her own expense or to represent him or herself in the proceeding.
- C. The Chairperson of the Board of Education shall schedule a hearing date within forty-five (45) days of the employee's request for a hearing. The date shall be set with due regard for the need of PSS to take action on the suspension or revocation and for the need of the employee to have sufficient time to adequately prepare a defense. The hearing shall not be scheduled for a date earlier than (20) twenty days after providing notice of the proposed action, as required by 3 CMC § 1183(e).
- D. The Chairperson shall provide a date for the exchange of witness lists and documents intended to be introduced at the hearing. The Chairperson may also hold a pre-hearing conference to accomplish one or more of the following tasks:
 - i. Decide the issues for the hearing;
 - ii. Stipulate as to uncontested facts;

- iii. Estimate the length of the hearing;
- iv. Mark exhibits; or
- v. Determine the admissibility of contested evidence.

8. Burden of Proof

The Commissioner/Designee, or the Certification Officer shall have the burden of proving the charge or decision by a preponderance of the evidence.

9. Conduct of Hearing

- A. The hearing shall commence with a reading of the complaint or the decision of the Commissioner/Designee or Certification Officer.
- B. Each side shall be permitted to make an opening statement. The PSS Legal Counsel shall present evidence to support the findings of the Commissioner/Designee subject to cross-examination.
- C. The employee/applicant may present evidence to rebut the charges, or findings, subject to cross-examination. Each side may present rebuttal evidence.
- D. After all the evidence has been presented, a closing argument may be offered on behalf of the Commissioner/Designee or Certification Officer. The employee/applicant may then present a closing argument, followed by the final summation on behalf of the Commissioner of Education/Designee or Certification Officer.
- E. Proceedings hereunder shall be conducted consistent with the requirements of 1 CMC § 9109.
- F. A recording shall be made of the proceeding to serve as the official record.

10. Evidence

- A. The formal rules of evidence do not apply. Any relevant evidence of probative value is admissible with only the weight assigned to it affected by its nature.
- B. A notary shall administer oaths to witnesses.
- C. Hearsay evidence shall be admissible and may constitute sufficient evidence if relevant and probative, of a kind that responsible persons are accustomed to relying upon in serious affairs, and such that a reasonable

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mind would accept the evidence as adequate to support a conclusion of ultimate fact.

- D. Where suspension, revocation or the denial of a certificate depends upon the proof of the commission of a crime, proof need only be by substantial evidence and not proof beyond a reasonable doubt. An acquittal on criminal charges is not a bar to a certificate's denial, suspension or revocation. A certified copy of conviction shall constitute prima facie evidence of the commission of the crime, which may be rebutted by a substantial showing of circumstances tending to disprove its commission.

11. Decision

- A. The decision-making process must comply with 1 CMC § 9110.
- B. The attorney for the Commissioner/Designee shall not participate in the private deliberations of the Board of Education.
- C. The Commissioner or Certification Officer shall issue a written decision with findings of fact and conclusions of law, and the reasons or bases for them, on all the material issues of fact and law presented on the record and an appropriate order invoking or denying a sanction, or in the case of a review, affirming or reversing a certification decision.
- D. The written decision and order shall be served on the employee/applicant within forty-five (45) days of the completion of the hearing process.

12. Appeal

The employee/applicant may appeal the Board of Education's decision pursuant to the procedures and time restrictions set forth in 3 CMC § 1183(e).



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ATTORNEY GENERAL OPINION NO. 04-12

Date: 10-7-04

To: Fermin M. Atalig, Secretary of Finance
Estrellita Ada, Director of Revenue and Taxation

From: Pamela Brown, Attorney General
James Stump, Assistant Attorney General

Re: Legal Opinion

Per your request, our office has considered two issues that impact implementation of P.L. No. 14-28, ("Act"). In the sections that follow the position of the Attorney General concerning these two issues is provided.

I. ISSUES

The two issues concern:

1. Whether PL-14-28 can be applied to individuals who are parties in a pending civil or criminal tax action?
2. Can PL-14-28 be applied to individuals who have existing agreements for payments of delinquent tax liabilities?

II. SHORT ANSWER

1. No. PL-14-28 clearly prohibits application of the tax amnesty provisions of the law to individuals who are parties in a civil or criminal proceeding that has been filed in court. However, the Attorney General has the discretion for the waiving of these tax liability in settlement negotiations.
2. Yes. PL-14-28 clearly states that the amnesty provisions can be applied “notwithstanding any previous or existing agreement by the taxpayer.” PL 14-28 § 2(f)(1). However, participation by these individuals will require a determination of the remaining tax liability by the Department of Revenue and Taxation.

III. BACKGROUND

On September 21, 2004, Governor Juan N. Babauta signed Public Law No. 14-28 which provided a broad 120 day tax amnesty program for any one who failed to report, pay, or improperly filed a return required under the tax requirements of: 4 CMC §§ 1201-1207 (Wage and Salary and Earnings Tax); 4 CMC §§ 1301-1308 (Gross Revenue Tax); 4 CMC §§ 1401-1411 (Excise Tax); 4 CMC §§ 1501-1510 (Miscellaneous Taxes and License Fees); 4 CMC §§ 1701 – 1715; shall have the option of filing a special return and agrees to a payment plan for addressing tax liability shall have the associated interest and penalties waived upon successful completion of the payment plan (interest related to income tax cannot be waived and associated penalties only upon showing of reasonable cause). P.L. 14-28§ 2(f). An additional requirement of this act is that the taxpayer must remain current on all tax liabilities for a period of three years after date of submission of a special return, P.L. 14-28§ 3(i), (ii), and the failure to comply with the terms of the payment plan requires re-instatement of all waived penalties and interest. P.L. 14-28§ 3(iii). This amnesty does not provide for any refund of previously paid interest or penalties and does not prohibit the CNMI from instituting proceedings against anyone for any undisclosed tax liability. P.L. 14-28 § 4(a)-(c).

IV. ANALYSIS

The two issues raised by the Director of the Department of Revenue and Taxation (“Director”) concern interpretation of P.L. 14-28. Specifically, the Director has requested legal opinion concerning 1) How should Section 2(f)(5) be applied?; and 2) How should the Act be applied to individuals with existing payment plans? These issues are addressed in the paragraphs that follow.

a) Section 2(f)(5)

Section 2(f)(5) limits application of this Act by excluding “any person who is a party to in a civil or criminal tax action.” P.L. 14-28 § 2(f)(5)(i). The question of the Director concerns whether individuals who are involved in legal actions involving the collection or enforcement of tax liabilities may participate in P.L. 14-28?

When interpreting statutes, the controlling method in interpretation that should first be used is the plain and unambiguous meaning of the language. Helvering v. New York, 292 U.S. 455, 464 (1934). Here, the language of the statute clearly states that PL-28 shall not apply to any "party to in a civil or criminal tax action" P.L. 14-28(2)(f)(5)(i). The phrase party in a civil or criminal action is interpreted to mean a party in a filed court action related to the collection, enforcement or extinguishment of tax liabilities. Under the plain meaning interpretation of this section of the statute, these individuals are excluded from participation in PL-28.

Although individuals who are parties to civil or criminal actions involving tax liabilities are barred from participating in PL-28 this does not preclude the Attorney General from waiver of these liabilities in settlement negotiations. A common element of settlement discussions is the waiver of asserted claims. Thus, although parties in civil and criminal proceedings cannot participate in PL-28, the Attorney general has discretion to offer many of these elements in settlement negotiations.

b) Application to Individuals with Existing Payment Plans

The second issue raised by the Director concerned application of the Act to individuals with previous or current payment plans. The specific issue is whether the waiver of penalty and interest should apply to these individuals, and if the Act should be applied how is it to be interpreted?

The purpose of the Act is to provide an opportunity to encourage taxpayers to willingly comply with payment of delinquent tax liability. P.L. 14-28 § 1. In order to encourage this activity the CNMI has agreed to a limited waiver of all interest and penalties on delinquent taxes. P.L. 14-28(f)(1). The Act provides that these penalties and interest shall be waived "notwithstanding any previous or existing agreement by the taxpayer for the payment thereof." P.L. 14-28 § 2(f)(1). The plain and simple meaning of this language would allow the Act to supersede any previous agreement between the Department of revenue and Taxation for payment of tax liability and allow participation within provisions of the Act.

The related issue how the Act is to be applied to participants who have existing or previous payment agreements with the CNMI? Normally, all tax payment plans address three elements of tax liability (tax, penalty, interest). When an individual makes a payment on a tax liability the payment is spread among the three elements. If an individual who previously participated in a tax payment plan requests participation in the programs offered by PL-28 a determination of the remaining tax liability balance will be required to be performed by the Department of Revenue and Taxation. The amount of the remaining tax balance will be required to be paid through the PL-28 payment plan, and the remaining balances associated with interest and penalties will be disregarded as long as the participant completes his payment plan.

Thus, in summary, individuals who have current or previous tax payment plans can participate in the programs offered by P.L. 14-28. However, participation by these individuals will require a determination of the remaining tax liability by the Department of Revenue and Taxation.



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ATTORNEY GENERAL OPINION No. 04-13

Date: 10-20-04

To: **Juan S. Reyes, Secretary of Public Works**
James U. Hofschneider, M.D., Secretary of Public Health
Fermin M. Atalig, Secretary of Finance
Edward S. Tenorio, Director of Management and Budget
Herman Sablan, Director of Procurement & Supply

From: **Clyde Lemons, Jr., Acting Attorney General**
James Stump, Assistant Attorney General

Re: **Medical Supply Warehouse Roofing, Contract No. 424519-OC**

We have reviewed the issues raised concerning the contract for repair to the medical supply building, Contract No 424519-OC to determine whether this contract may proceed. In the sections below, our analysis is presented.

I. ISSUES

Two issues were presented for examination:

1. Did the contractor fulfill the financial security requirements of the CNMI procurement regulations?
2. Is contract No. 424519-OC a proper use of procurement regulations associated with "expedited purchasing in special circumstances" procedures?

II. SHORT ANSWER

1. Yes. The bond provided by the Contractor provides necessary financial responsibility as required under the Procurement regulations.
2. No. However, the nature of this project qualifies it for use of emergency procurement procedures and justification should be submitted to the Director of Procurement & Supply by the Department of Public Health.

III. BACKGROUND

The Commonwealth of the Northern Mariana Islands ("CNMI") Department of Public Health ("DPH") received three grants for Hospital Bio-terrorism Preparedness federal program (Ex. A). The grants provided funds for improvements to a storage facility for bio-terrorism medical supplies. The specific project was for repair of a storage building that is used to house emergency medical supplies. This structure is in a deteriorated condition that allows rain and other elements to contaminate medical supplies. These medical supplies are critical for hospital operation and protection of the public in times of emergency.

In addition to the harm caused by exposure of medical supplies to elements, this project is grant-funded and in danger of losing its award. All funds must be expended by November 30, 2004. (Ex. B)

The nature of this project, to facilitate protection against bio-terrorism and in furtherance of public health, the Department of Public Health chose to procure this project under "expedited purchasing in special circumstances" procedures. Proc. Reg. § 3-108. These regulations reduce the amount of procurement procedures applicable to projects that are associated with enhancing protection against bio-terrorism. Proc. Reg. § 3-108.1.

On August 13, 2004, the Secretary of Public Health requested the use of these procedures, which was subsequently approved. (Ex. C). In spite of having a waiver of bid requirements, the Department of Public Works, solicited bids and received four proposals. Upon review of the proposals, the lowest responsive bidder, Solid Builders, ("Contractor") was selected and recommended for award of the contract pending submittal of additional documents (Ex. D). The contractor submitted these documents, and the Department of Procurement & Supply approved the completed processing of Contract No 424519-OC and authorized the Contractor to proceed with construction, (Ex. E).

Subsequent to the notice to proceed with Construction, the Division of Procurement & Supply determined that the provided performance bonds were unacceptable. (Ex. F). The specific problem related to conditions placed on the performance bonds such that the issuer could cancel them. (Ex. G). These conditions were subsequently removed. (Ex. H). However, as part of removal of these conditions, the Secretary of Public Works agreed to notify the Surety should there "of any and all change orders to the contract." (Ex. H). The Office of the Attorney General issued an opinion stating that the agreement of the Secretary of

Public Works to notify the Surety of changes in the contract constituted a condition of the surety performance and payment bonds and was unacceptable. (Ex. I). On 10-19-04, the Secretary of Public Works issued a letter to the bonding company rescinding any connection of his agreement to notify the surety of changes in the contract to bond requirements, although he stated that he would keep them informed as a courtesy. (Ex. J). In this communication, the Secretary stated that if the unconditional provision of bonds was not acceptable to the surety, they should notify him accordingly.

In a October 12 communication, the Office of the Public Auditor (“OPA”) requested clarification on from the Director of Procurement & Supply as to financial responsibility of the Contractor and whether the proper procurement regulations were used. (Ex. K). The question of whether the contractor fulfills responsibility requirements is addressed to the Division of Procurement & Supply and is not addressed in this opinion.

IV. ISSUES

The Director of Procurement and Supply raises two issues:

1. Do the bonds presented by the Contractor meet the requirements of the CNMI procurement regulations?
2. Is contract No 424519-OC a proper use of procurement regulations associated with “expedited purchasing in special circumstances” procedures?

V. ANALYSIS

A. Bond Requirements

The question initially raised by the Division of Procurement & Supply was whether the bonding provided by the Contractor met bid requirements. Procurement Regulation require that when the CNMI enters into construction projects in excess of \$25,000 the contractor must provide performance and payment bonds that are “satisfactory” to the government by a surety authorized to do business in the CNMI equal to 100% of the of the price specified in the contract. CNMI Proc Reg. § 4-101(3)(a)(i)-(ii). Bonds are determined to be satisfactory if the pledged assets of the surety are sufficient to cover bond obligations. CNMI Proc Reg. § 4-101(3)(b).

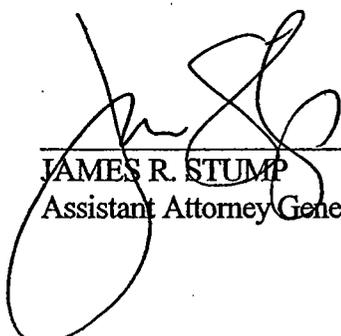
In this case, on October 6, 2004 the surety Marianas Insurance Company provided the Director of Procurement and Supply with performance and payment bonds. These bonds conformed to all requirements of CNMI procurement division as they are unconditional in the security provided and have fulfilled financial standards of the Division of Procurement & Supply. The October 20, 2004 memo from Secretary Reyes stating that he would provide information on changes to the contract was not a condition of the surety guarantee, and therefore does not affect the validity of this bond. The provision of acceptable bonding by a contractor fulfills the bonding requirements of the procurement regulations.

B. Compliance with Procurement Procedures

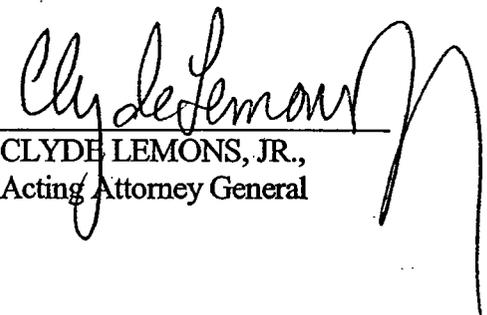
The second issue raised by the Public Auditor in his communication of 10-18-04 concerned whether Procurement Regulations § 3-108(6) were appropriate for this project. The specific question of the Public Auditor was whether permissible activity under this statute included "construction." (Ex.). Section 3-108 of the Procurement regulations state allows CNMI agencies to expedite "procurement of goods or services." Proc. Reg. § 3-108(1). The procurement regulations define "construction" as "the process of building, altering, repairing, improving, or demolishing of a public structure or building . . . but does not include routine maintenance of existing structures." Proc. Reg. § 1-201.1. The term "goods" is defined as "all property, including but not limited to equipment materials, supplies, and other tangible personal property of any kind." Proc. Reg. § 1-201.9. Services means the furnishing of time, labor or effort by a person other than an employee, and not involving the delivery of a specific end product other than reports or incidental documents. Proc Reg. § 1-201.22.

In this case, the contract is for the repairing of a CNMI building roof. This type of activity is clearly included under the Procurement Regulation definition of "construction, Proc. Reg. § 1-201.1, an activity which is not included authority granted under "expedited purchasing in special circumstances." Proc. Reg. § 3-108.1. The more appropriate procurement process that should have been used is 3-107, "Emergency Procurement." The emergency procurement procedures allow the government to waive procurement procedures when there is a "threat to public health, safety or welfare." Proc. Reg. 3-107.

Here, this construction involves repair and replacement of sheet metal of a building that is used for storage of critical medical supplies. These supplies are used for operation of the Commonwealth Health center and for protection in case of a bio-terrorism attack. The current condition of this facility is such that these supplies are being destroyed due to leaks in the roof. Delay in this project has resulted in loss and/or damage to some of these supplies and should be corrected immediately. This project qualifies for "emergency procurement" procedures and should have been used for this specific activity. The Department of Public Health should submit a written justification of the basis of this emergency. Proc. Reg. 3-107. This justification should be submitted immediately so as not to further threaten the loss of these funds which must be spent by the end of November and to remove this threat to medical supplies from further storm damage.



JAMES R. STUMP
Assistant Attorney General



CLYDE LEMONS, JR.,
Acting Attorney General