

TITLE 145: DEPARTMENT OF PUBLIC LANDS

SUBCHAPTER 145-20.3

TINIAN AGRICULTURAL HOMESTEAD PROGRAM RULES AND REGULATIONS

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Subchapter Authority: PL 6-15 § 3 (former 2 CMC § 4373 repealed and reenacted by PL 10-2 § 5).

Subchapter History: Adopted 13 Com. Reg. 7650 (Feb. 15, 1991); Proposed 12 Com. Reg. 7404 (Oct. 15, 1990).

Commission Comment: N.M.I. Const. art. XI, codified as amended at 2 CMC §§ 4111-4115, established the Marianas Public Land Corporation (MPLC), responsible for the management and disposition of public lands. See 2 CMC §§ 4113 and 4114. 2 CMC §§ 4301-4314 set forth the general statutory provisions governing homesteads in the CNMI and designate MPLC as the agency responsible for implementing homestead laws.

PL 6-15, the “Tinian Agricultural Homestead Act of 1988,” codified as amended at 2 CMC §§ 4371-4376, is deemed effective on Feb. 21, 1989 pursuant to PL 10-2 (effective Mar. 4, 1996), the “Tinian Agricultural Homestead Corrections Act of 1996.” See PL 10-2 § 3 set forth in the commission comment to 2 CMC § 4372. PL 6-15 § 2 authorized the MPLC to administer an agricultural homestead program on Tinian. PL 6-15 § 3 empowered MPLC to promulgate rules and regulations to carry out the purposes of the act.

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

Section 104. Department of Lands and Natural Resources.

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

....

Section 306. Department of Lands and Natural Resources

(a) Marianas Public Land Corporation. Pursuant to [N.M.I. Const. art. XI, §4(f)], the Marianas Public Land Corporation is dissolved and its functions transferred to a Division of Public Lands in the Department of Lands and Natural Resources, which shall have at its head a Director of Public Lands.

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

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PL 10-2 (effective Mar. 4, 1996), the “Tinian Agricultural Homestead Corrections Act of 1996,” codified at 2 CMC §§ 4372 and 4373, amended PL 6-15 to, among other things, update the law to reflect the changes effected by Executive Order 94-3. PL 10-2 § 5 repealed PL 6-15 § 3. 2 CMC § 4373(a)(2) requires the Secretary of the Department of Lands and Natural Resources to establish standards and requirements for the use, occupation and development of the homestead tracts granted under the act.

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

PL 10-57 § 4 vacated Executive Order 94-3 § 306. PL 10-57 § 3 created a Division of Public Lands within DLNR “headed by a Director serving under the supervision and control of the Secretary and the Board of Public Lands.” 1 CMC § 2671(a). 1 CMC § 2671(b) provided that the Division of Public Lands is the successor to the Marianas Public Lands Corporation pursuant to N.M.I. Const. art. XI §4(f), and assigned all statutory powers and duties of the MPLC to the Division of Public Lands.

PL 12-33 (effective Dec. 5, 2000), the “Board of Public Lands Act of 2000,” and PL 12-71 (effective Nov. 13, 2001) transferred the authority to manage, use, and dispose of surface and submerged public land to a new Marianas Public Lands Authority, under the direction of a Board of Public Lands Management. The Marianas Public Lands Authority became the successor agency to the Marianas Public Lands Corporation.

Public Law 15-2 (effective February 22, 2006), codified at 1 CMC §§ 2801-2809, replaced the Marianas Public Lands Authority with the Department of Public Lands within the executive branch. PL 15-2 repealed all provisions of Public Laws 10-57, 12-33, and 12-71 applicable to public lands.

PL 15-2 changed all references in the Commonwealth Code from the Marianas Public Lands Corporation, Division of Public Lands, Office of Public Lands or the Marianas Public Lands to the “Department of Public Lands.” PL 15-2 § 4 [Commission comment to 1 CMC § 2801]. Public Law 15-64, effective May 30, 2007, changed all references in the Commonwealth Code from Board of Public Lands to “Secretary of Public Lands.” PL 15-64 § 4. For a complete history of the authority over public lands in the Commonwealth see the general comment to chapter 10 of this title.

While PL 12-33 vested the authority to implement the homesteading programs in the Board of Public Lands Management and PL 15-2 transferred that authority to the Department of Public Lands, 2 CMC § 4373(a)(2) was not amended. 2 CMC § 4373(a)(2) requires the Department of Lands and Natural Resources to establish standards for homestead tracts in Tinian. PL 15-2 § 3 (§ 108) requires that the Department of Public Lands “assess the demand for homesteads and develop a program for meeting that need, to the extent practicable, within the available land base.” 1 CMC § 2808. Consequently, authority over an agricultural homestead program on Tinian is unclear.

MPLC promulgated the 1991 Tinian Agricultural Homestead Program Rules and Regulations pursuant to the authority of PL 6-15 § 3.

Part 001 - General Provisions

§ 145-20.3-001 Authority

The rules and regulations in this subchapter are hereby promulgated and issued by the Marianas Public Land Corporation (MPLC) pursuant to section 3 of the Tinian Agriculture Homestead Act of 1988 (Public Law 6-15).

Modified, 1 CMC § 3806(d), (f).

History: Adopted 13 Com. Reg. 7650 (Feb. 15, 1991); Proposed 12 Com. Reg. 7404 (Oct. 15, 1990).

§ 145-20.3-005 Purpose

The purpose of the rules and regulations in this subchapter are to set forth the necessary procedures with respect to agricultural homestead applications; to set out in detail the standards of eligibility; to provide for certain requirements necessary to meet the goals and objectives of the agricultural program; to provide for an efficient system of notice and hearing process for applicants whose applications have been denied, and to provide a basic format for applications and other documents and instruments necessary to administer and implement the agricultural homestead program.

Modified, 1 CMC § 3806(d).

History: Adopted 13 Com. Reg. 7650 (Feb. 15, 1991); Proposed 12 Com. Reg. 7404 (Oct. 15, 1990).

§ 145-20.3-010 Definitions

(a) “Domicile”: That place where a person has his true, fixed and permanent home and principal establishment, and to which whenever he is absent he has the intention of returning. The permanent residence of a person or place to which he intends to return even though he may actually reside elsewhere. The established, fixed, permanent, or ordinary dwelling place or place of residence of a person, as distinguished reside elsewhere.*

*So in original.

(b) “Marriage”: The legal union of one man and one woman as husband and wife. It is a legal status and requires the issuance of a marriage license by the Commonwealth with or without a ceremony by a church.

(c) “Common Law Marriage”: One not solemnized in the ordinary way but created by an agreement to marry, followed by cohabitation. Such a marriage requires a positive mutual agreement, permanent and exclusive of all others, to enter into a marriage relationship, combined with cohabitation sufficient to allow the fulfillment of necessary elements to the relationship of man and wife, and an assumption of marital duties and obligations. The burden to prove such relationship lies with the applicant, however, the existence of children whose birth certificates list both parties to such a relationship as parents shall constitute a prima facie showing of the existence of the relationship. For purposes of the regulations in this subchapter only, the definition of spouse shall include either party to a “common law” marriage.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 13 Com. Reg. 7650 (Feb. 15, 1991); Proposed 12 Com. Reg. 7404 (Oct. 15, 1990).

Commission Comment: The Commission inserted quotation marks around terms defined.

Part 100 - Tinian Agricultural Homestead Program Requirements

§ 145-20.3-101 Designation of Homestead Areas

The Marianas Public Land Corporation may from time to time designate areas suitable for farming and agricultural activities, and shall use such designated areas for the distribution of agriculture homestead lots. No applicant may be granted an agriculture homestead lot outside of the designated area without the prior approval of the Board of Directors.

History: Adopted 13 Com. Reg. 7650 (Feb. 15, 1991); Proposed 12 Com. Reg. 7404 (Oct. 15, 1990).

§ 145-20.3-105 Establishment of Area

All eligible applicants shall be entitled to a maximum area of one hectare or 10,000 square meters of agricultural land.

History: Adopted 13 Com. Reg. 7650 (Feb. 15, 1991); Proposed 12 Com. Reg. 7404 (Oct. 15, 1990).

§ 145-20.3-110 Persons Eligible to Homestead

All applicants for agriculture homestead lots must meet and satisfy all of the following criteria:

- (a) An applicant must be 18 years of age, or over, and is a citizen of the Commonwealth of the Northern Marianas, and of Northern Marianas descent as provided for in the CNMI Constitution.
- (b) An applicant must have been domiciled on the island of Tinian for not less than five years.
- (c) An applicant or his/her spouse must not own or have an interest in agricultural land within the Commonwealth of the Northern Marianas which equals or exceeds $\frac{1}{2}$ hectare or 5,000 contiguous square meters.
- (d) An applicant or his/her spouse must not have been a recipient of an agriculture homestead lot from a previous agricultural homesteading program.
- (e) An applicant shall not receive more than one agriculture homestead lot.
- (f) A person is not eligible to apply for a homestead within the first six months after ceasing to cohabitate with an applicant or recipient of an agricultural homestead lot. Additionally, if an applicant resumes cohabitating with another applicant or recipient of an agricultural homestead lot within six months after receiving a permit to homestead, the permit shall be considered void for all purposes.
- (g) A person residing with an applicant for, or recipient of an agricultural homestead lot is not eligible to apply for a homestead.
- (h) If two applicants marry within the first year of either's permit, they shall make an election as to which homestead to develop and the other homestead permit shall be deemed void. If an election is not made within two months of the marriage, the most recent permit shall be deemed void.

Modified, 1 CMC § 3806(e), (g).

History: Adopted 13 Com. Reg. 7650 (Feb. 15, 1991); Proposed 12 Com. Reg. 7404 (Oct. 15, 1990).

Commission Comment: In subsection (d), the Commission inserted the word “a” before “previous” to correct a manifest error.

§ 145-20.3-115 Priority of Applicants

The Marianas Public Land Corporation shall prioritize the applications submitted according to the following categories. In order to verify the information provided in the application and in order to accurately determine the actual need and priority for an agricultural homestead lot, MPLC may require the applicant to provide additional documentation as MPLC deems appropriate.

- (a) First Priority
 - (1) Married applicants whose primary source of income is derived from farming.
 - (2) Single applicants whose primary source of income is derived from farming.
- (b) Second Priority
 - (1) Married applicants whose primary income is derived from sources other than farming.
 - (2) Single applicants whose primary income is derived from sources other than farming.

(c) Ineligible Applicants

Those applicants who are determined ineligible to receive agricultural lots due to constitutional and statutory restrictions shall be notified in writing of such determination. The letter notice shall specify the reasons for ineligibility and inform the applicant of a right to appeal the determination within 30 days of the receipt of the notice.

(d) Within each category of eligible applicants, the MPLC shall take into consideration the date of application, so that an earlier applicant shall take precedence over a later applicant, all other factors being equal.

Modified, 1 CMC § 3806(g).

History: Adopted 13 Com. Reg. 7650 (Feb. 15, 1991); Proposed 12 Com. Reg. 7404 (Oct. 15, 1990).

Commission Comment: The final paragraph was not designated. The Commission designated it subsection (d).

In subsection (c), the Commission changed “informing” to “inform” to correct a manifest error.

§ 145-20.3-120 Application Procedure

(a) All applicants for agricultural homestead shall fill out an application form provided by MPLC. Applications may be submitted in the Saipan Office or directly to the Tinian Office. Applications shall be date stamped by the MPLC when received.

(b) All applications shall be signed and declared under penalty of perjury.

- (c) All applications must be accompanied by \$100.00 non-refundable application fee.
- (d) After submission of an application, MPLC shall verify the eligibility of the applicant and all essential facts set forth by the applicant and if necessary require the applicant to appear before the MPLC Homestead Administrator or his designee for an interview to clarify or verify the information given in the application. Approval or disapproval of application shall be rendered no later than 90 days after receipt of a completed application.

History: Adopted 13 Com. Reg. 7650 (Feb. 15, 1991); Proposed 12 Com. Reg. 7404 (Oct. 15, 1990).

§ 145-20.3-125 Issuance of Homestead Permit

- (a) Upon approval of the application, the MPLC shall issue a permit to enter upon, use and improve the land once the agricultural tract has been surveyed, monumented, mapped, and is ready for homesteading. The MPLC shall, by drawing of lots, pick up the agriculture lots for eligible applicants.
- (b) After a agricultural lot is picked for an eligible applicant, the Corporation shall prepare a agriculture homestead permit for the applicant, and shall give a copy of the map showing the agriculture homestead tract as surveyed and shall also physically show the tract to the homesteaders.
- (c) A permit fee of \$100.00 shall be paid by the homesteaders due and payable at the time the permit is executed.

Modified, 1 CMC § 3806(g).

History: Adopted 13 Com. Reg. 7650 (Feb. 15, 1991); Proposed 12 Com. Reg. 7404 (Oct. 15, 1990).

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

In subsection (a), the Commission inserted the word “is” before “ready” to correct a manifest error.

§ 145-20.3-130 Conditions of Occupancy

- (a) The homesteader shall enter upon and commence the use and improvement of the agriculture lot consistent with a land utilization and planting program approved by MPLC within 90 days after the receipt of the permit. Homesteader may develop his/her own land utilization planting program, but shall obtain written approval from MPLC prior to actual use and occupancy of the homestead lot. Upon noncompliance with the foregoing, the permit shall expire and be null and void and the homesteader shall be construed to have waived all rights in and to the land. Upon such occupancy, MPLC shall have the right to enter and possess the land.
- (b) The homesteader shall, at all times maintain all boundaries clear of any and all weeds, trash and underbrush.

(c) MPLC shall show the homesteader the actual boundaries of the homestead lot. However, any subsequent request by homesteader for relocation of boundaries by MPLC may be undertaken only after a \$300.00 fee is paid in advance.

(d) During the period of occupancy, the homesteader shall observe and comply with all rules, regulations and requirements concerning the use, occupation and development of the homestead lot.

(e) No permanent structure, e.g. reinforced concrete or hollow concrete blocked construction is allowed during the term of the permit. All temporary construction for housing of people shall provide sanitation facilities approved by the Division of Environmental Qualities (DEQ).

Modified, 1 CMC § 3806(f).

History: Adopted 13 Com. Reg. 7650 (Feb. 15, 1991); Proposed 12 Com. Reg. 7404 (Oct. 15, 1990).

§ 145-20.3-135 Homestead Progress Inspection

(a) The MPLC shall conduct inspections of the homestead at least once a year, or more often as it deems necessary to determine compliance with the homestead requirements. Notice of inspection shall be given the homesteader at least ten days in advance.

(b) After each inspection the homestead inspection team shall issue a brief report on the progress of and the compliance of the homesteader.

(c) In the event that a homesteader is not complying with the homestead requirements, the inspection team shall so note in its report and inform the homesteader of the requirement he/she is not complying with. Appropriate written warnings shall be given the homesteader. Such notice shall contain specific correcting action to be taken by the homesteader to bring himself into compliance with the homestead requirements.

(d) All inspection reports shall be signed by the inspection team chairperson and all participating team members.

Modified, 1 CMC § 3806(f).

History: Adopted 13 Com. Reg. 7650 (Feb. 15, 1991); Proposed 12 Com. Reg. 7404 (Oct. 15, 1990).

§ 145-20.3-140 Deeds of Conveyance

Deeds of conveyance shall be issued by the Marianas Public Land Corporation for homestead lots entered pursuant to the Tinian Agriculture Homestead Act of 1988 upon maturity of the permit, and only upon execution of a certification by the Marianas Public Land Corporation certifying that the homesteader has resided on the island of Tinian for three years from the date of entry upon the homestead lot and has complied with all laws, rules and regulations appertaining to the homestead. MPLC shall issue the deed of conveyance within six months of the time the homesteader becomes eligible to receive the deed of conveyance.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 13 Com. Reg. 7650 (Feb. 15, 1991); Proposed 12 Com. Reg. 7404 (Oct. 15, 1990).

§ 145-20.3-145 Transfer of Homestead Permit

No rights in or to a homestead permit shall be sold, assigned, leased, transferred or encumbered; except that in the event of the death of the homesteader prior to the issuance of a deed of conveyance, all rights under the permit shall inure to the benefit of such person or persons, if any, as the homesteaders shall designate in the permit or letter filed with the Marianas Public Land Corporation. In the event no designation is made by the homesteader, then the permit shall be revoked, and the land, together with all appurtenances thereto entered thereunder, shall revert to MPLC or its successor.

Modified, 1 CMC § 3806(f).

History: Adopted 13 Com. Reg. 7650 (Feb. 15, 1991); Proposed 12 Com. Reg. 7404 (Oct. 15, 1990).

§ 145-20.3-150 Penalties

(a) Grounds for Revocation of Permit

If at any time after the issuance of the homestead permit, and before the expiration of the permit period, the homesteader abandoned the land or fail to comply with the laws, then the permit shall be revoked and the land shall revert to MPLC or its successor. The Marianas Public Land Corporation may at its discretion allow the homesteader an extension of the permit period.

(b) Grounds for Disqualification

(1) If an applicant knowingly and willfully submits false information to MPLC under penalty of perjury, the matter shall be referred to the Attorney General for prosecution and the applicant's permit shall be revoked and disqualified from participation in the agriculture homesteading program.

(2) If an applicant negligently or recklessly submits false information to MPLC or otherwise misleads MPLC, the applicant may be disqualified from participation in the agriculture homestead program permanently or for a period of time to be determined by the Board.

Modified, 1 CMC § 3806(f).

History: Adopted 13 Com. Reg. 7650 (Feb. 15, 1991); Proposed 12 Com. Reg. 7404 (Oct. 15, 1990).

§ 145-20.3-155 Notice and Hearing

An applicant whose application for an agricultural homestead has been received, verified, and found not eligible, shall be informed in writing of such decision, the reason therefore, and a right to appeal the decision within 30 days of the date of the letter. Such hearing shall be held no later than 90 days after receipt of such notice by the applicant. The applicant has the right to be represented by a counsel of his/her choosing and to bring witnesses to the said hearing. No later than 30 days after the hearing, the committee, on behalf of the Corporation, shall issue its decision.

If the committee finds that it should deny the application, a written, decision to that effect shall be prepared and given to the applicant. Such a decision shall be deemed final.

Modified, 1 CMC § 3806(f).

History: Adopted 13 Com. Reg. 7650 (Feb. 15, 1991); Proposed 12 Com. Reg. 7404 (Oct. 15, 1990).

§ 145-20.3-160 Waiver

The Marianas Public Land Corporation upon recommendation of the inspection team and the Homestead Administrator and upon showing of good cause, may waive a homestead requirement in the regulations in this subchapter and the conditions, imposed on the permit; provided that, no restrictive provisions of the Constitution or statute shall be waived.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 13 Com. Reg. 7650 (Feb. 15, 1991); Proposed 12 Com. Reg. 7404 (Oct. 15, 1990).

Part 200 - Miscellaneous Provisions

§ 145-20.3-201 Effective Date

The rules and regulations promulgated in this subchapter shall be effective and have full force and effect of law thirty days after publication of these rules and regulations in the Commonwealth Register.

Modified, 1 CMC § 3806(d), (e).

History: Adopted 13 Com. Reg. 7650 (Feb. 15, 1991); Proposed 12 Com. Reg. 7404 (Oct. 15, 1990).