EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

Office of the Governor of Guam

33-15-0435
Office of the Speaker
Judith T. Won Pat, Ed.D

MAY 1 1 2015

Date: 05-12-15
Time: 8:30 AM
Received By:

Honorable Judith T. Won Pat, Ed.D.
Speaker
I Mina'trentai Tres Na Liheslaturan Guåhan
155 Hesler Street
Hagåtña, Guam 96910

Dear Madame Speaker:

Transmitted herewith is Bill No. 45-33 (COR) **"AN ACT TO ADOPT THE RULES AND REGULATIONS GOVERNING THE ISSUANCE OF HEALTH CERTIFICATES, BY AMENDING ARTICLE 4 OF DIVISION 1, TITLE 26, GUAM ADMINISTRATIVE RULES AND REGULATIONS"** which I signed into law on May 7, 2015, as **Public Law 33-20.**

Senseramente,

EDDIE BAZA CALVO

2015 MAY 12 AM 9:59

0435

P.O. Box 2950 • Hagatna, Guam 96932
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Eddie Baza Calvo @eddiebazacalvo @governorcalvo governorofguam

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Senseramente,

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I MINA'TRENTAI TRES NA LIHESLATURAN GUÅHAN
2015 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'LAHEN GUÅHAN*

This is to certify that **Substitute Bill No. 45-33 (COR), "AN ACT TO ADOPT THE RULES AND REGULATIONS GOVERNING THE ISSUANCE OF HEALTH CERTIFICATES, BY AMENDING ARTICLE 4 OF DIVISION 1, TITLE 26, GUAM ADMINISTRATIVE RULES AND REGULATIONS,"** was on the 1st day of May 2015, duly and regularly passed.

Judith T. Won Pat, Ed.D.
Speaker

Attested:

Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahen Guåhan* this _____ day of _____, 2015, at _____ o'clock ____.M.

Assistant Staff Officer
Maga'lahi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'lahen Guåhan

Date: MAY 07 2015

Public Law No. 33-20

I MINA'TRENTAI TRES NA LIHESLATURAN GUÅHAN
2015 (FIRST) Regular Session

Bill No. 45-33 (COR)
As substituted by the Committee on Health, Economic Development, Homeland Security and Senior Citizens; and amended on the Floor.

Introduced by:

Dennis G. Rodriguez, Jr.
T. C. Ada
V. Anthony Ada
Frank F. Blas, Jr.
FRANK B. AGUON, JR.
B. J.F. Cruz
James V. Espaldon
Brant T. McCreadie
Tommy Morrison
T. R. Muña Barnes
R. J. Respicio
Michael F.Q. San Nicolas
Mary Camacho Torres
N. B. Underwood, Ph.D.
Judith T. Won Pat, Ed.D.

AN ACT TO ADOPT THE RULES AND REGULATIONS GOVERNING THE ISSUANCE OF HEALTH CERTIFICATES, BY AMENDING ARTICLE 4 OF DIVISION 1, TITLE 26, GUAM ADMINISTRATIVE RULES AND REGULATIONS.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that the proposed amending of the "Rules and Regulations Governing the Issuance of Health Certificates," as provided pursuant to Article 4 of Division 1, Title 26,

Guam Administrative Rules and Regulations, has gone through the Administrative Adjudication Law process.

It is the intent of *I Liheslaturan Guåhan* to adopt these rules and regulations.

Section 2. Adoption of Rules. Notwithstanding any other provision of law, rule, regulation and executive order, the Rules and Regulations Governing the Issuance of Health Certificates, as provided in this Act, are hereby adopted by *I Mina'Trentai Tres Na Liheslaturan Guåhan*, and *shall* be codified under Article 4 of Division 1, Title 26, Guam Administrative Rules and Regulations.

Section 3. Amendment of Rules. The Director, Department of Public Health and Social Services, Division of Environmental Health *shall*, in keeping with the provisions of §20105 of Chapter 20, and §22104 of Chapter 22, Title 10, Guam Code Annotated, and pursuant to Article 3 – Rule-Making Procedures, of Chapter 9, Title 5, Guam Code Annotated, review and amend, as may be necessary, the Rules and Regulations adopted pursuant to this Act.

Section 4. Severability. If any provision of this Act or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity *shall not* affect other provisions or applications of this Act which can be given effect without the invalid provisions or application, and to this end the provisions of this Act are severable.

Section 5. Effective Date. This Act *shall* become effective upon enactment.

Exhibit A

Title 26, Guam Administrative Rules and Regulations

Article 4 of Chapter 4

[NOTE: Rule-making authority cited for formulation of Health Certificate Regulations by the Director of Public Health and Social Services, 10 GCA §29195 and §22104]

RULES AND REGULATIONS GOVERNING THE ISSUANCE OF HEALTH CERTIFICATES

§4401. Short Title.

§4402. Authority.

§4403. Purpose.

§4404. Definitions.

§4405. Health Certificate Required.

§4406. Exemption of Health Certificate.

§4407. Application for Health Certificate and Temporary Health Certificate.

§4408. General Requirements for Health Certificate.

§4409. Training Course and Examination Requirements for Health Certificate.

§4410. Specific Requirements by Category.

§4411. Requirements for Temporary Health Certificate.

§4412. Single Health Certificate for Multiple Locations per Category.

§4413. Additional Health Certificates.

§4414. Interim Health Certificate.

§4415. Certificate of Management Certification and Health Certificate.

§4416. Fees.

§4417. Effective Date of Health Certificate.

§4418. Presentation of Health Certificate, Temporary Health Certificate, Interim Health Certificate, and Certificate of Management Certification.
§4419. Suspension or Revocation of Health Certificate and Certificate of Management Certification.
§4420. Administrative Penalties.
§4421. Right to Notice, Hearing, and Administrative Process.
§4422. Variances.
§4423. Effective Date.
§4424. Severability.
ANNEX I
ANNEX II
ANNEX III

General Provisions and Definitions

§4401. Short Title. These rules and regulations may also be cited as the "Health Certificate Regulations."

§4402. Authority. §22104, Chapter 22 of Title 10, Guam Code Annotated, authorizes the Director of the Department of Public Health and Social Services to establish, by rules and regulations, the requirements and fees for the issuance of a Health Certificate.

§4403. Purpose. These rules and regulations are established to ensure that the holder of a health certificate is free of communicable diseases that could potentially spread to fellow employees or their clients as a result of the holder's work activities and/or possesses the minimum knowledge in preventing the spread of communicable diseases at the health-regulated establishment where the holder is employed. Upon adoption, these rules and regulations will repeal and replace the

1 previously adopted regulations entitled, Rules and Regulations Governing the
2 Issuance of Health Certificates.

3 **§4404. Definitions.** Wherever in these rules and regulations the
4 following words appear, they *shall* have the following definition:

5 (a) *Category* shall mean the following types of establishments and
6 their activities that are regulated by the Department by these rules and
7 regulations, and other rules and regulations of the Department, which require
8 a Health Certificate:

9 (1) eating and drinking establishment;
10 (2) food establishment;
11 (3) cosmetic establishment;
12 (4) institutional facility;
13 (5) laundry and dry cleaning establishment;
14 (6) swimming pool;
15 (7) hotel; and
16 (8) tattoo shop.

17 (b) *Certificate of Management Certification* shall mean a
18 certification issued by the Department or any authorized institution, as
19 determined by the Director, to a person employed, or designated, as a
20 manager or supervisor within any health-regulated establishment who has
21 demonstrated his or her knowledge of applicable governing rules and
22 regulations, including, but not limited to, sanitation, employee hygiene,
23 cleaning and sanitizing procedures, and rodent and insect control, as
24 determined by the Director.

25 (c) *Cosmetic Establishment.* (1) Cosmetic establishment shall
26 mean any premises or portions thereof, wherein any of the following is
27 practiced for compensation:

(A) singeing, shampooing, arranging, adorning, dressing, curling, waving, permanent waving, tinting, applying tonic to, or dyeing human hair;

(B) shaving, clipping, trimming or cutting human hair;

(C) giving facial, scalp, neck or body massages or treatments with oils, creams, lotions, or other preparations to the hands, scalp, face, or neck by hand or mechanical appliance; and

(D) manicuring or pedicuring.

(2) As used in these rules and regulations, cosmetic establishment shall include:

(A) "shop," which shall mean any establishment or facility where cosmetology is practiced for fee or charge for hire. The term includes, but is not limited to, barber shops, beauty shops, beauty salons, beauty parlors, hair styling salons, nail salons, or other establishments where cosmetology is practiced for reimbursement;

(B) "school of cosmetology," which shall mean any establishment or facility where the practice of cosmetology is taught for a fee. The term includes, but is not limited to, barber colleges or other closely related institutions or establishments teaching cosmetology for reimbursement;

(C) "massage parlor," which shall mean any establishment or facility occupied and used for the purpose of practicing massage for compensation, provided that when any massage parlor is situated in any building for residential or sleeping purposes, the massage parlor shall be set apart and shall not be used for any other purpose; and

(D) "therapeutic massage establishment," which shall mean a business which performs the manipulation of the issues of the human body with the hand, foot, arm, or elbow by a massage therapist licensed by the applicable professional licensing board of Guam whether or not such manipulation is aided by hydrotherapy, including colonic irrigation, or thermal therapy that includes the use of any electrical or mechanical device; or the application to the human body of a chemical or herbal preparation for compensation.

(d) *Department* shall mean the Department of Public Health and Social Services.

(e) *Director* shall mean the Director of the Department of Public Health and Social Services or his designated and authorized representative.

(f) *Eating and drinking establishment* shall mean any mobile food service establishment; vending machine; restaurant; coffee shop; public or private school cafeteria; lunchroom; luncheonette; lunch-stand; lunch-counter; in-plant or employee eating establishment; soda fountain; bar; cafe; tavern; short order cafe; sandwich stand; drink stand; cafeteria or similar facility connected with an institution; any other eating establishment within an organization, club, veteran's club, boarding house, guest house, political subdivision, stall, stand, and booth; and a concession within any public market which gives, sells, or offers for sale, or promotes food to the public, guests, patrons, or employees; and as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering functions.

(g) *Food establishment* shall mean every establishment or place which is used or occupied as a bakery; confectionery; cannery; dairy; creamery; packing house; grocery; supermarket; meat or poultry market;

fruit or vegetable market; delicatessen; beverage plant; slaughter house; poultry processing plant; fish processing plant; frozen food processing plant; bottling plant; food refrigeration locker plant; ice plant; ice cream or frozen dessert plant; public market; food warehouse; or any structure used for the production, processing, manufacture, preparation for sale, canning, bottling, packing, packaging, storage, sale or distribution, of any food.

(h) *Health Certificate* shall mean a certificate issued by the Department to a person employed within any eating and drinking establishment, food establishment, institutional facility, cosmetic establishment, tattoo shop, laundry or dry cleaning establishment, hotel, swimming pool, or any other establishment under the provisions of any other rules and regulations promulgated by the Director to properly carry out the laws of Guam relating to environmental health.

(i) *Health-regulated establishment* shall mean any of the following: eating and drinking establishment, cosmetic establishment, food establishment, institutional facility, laundry and dry cleaning establishment, swimming pool, hotel, therapeutic massage establishment, massage parlor, tattoo shop, temporary food service establishment, and any other facilities governed by the Department pursuant to law.

(j) *Highly susceptible population* shall mean individuals who are more likely than other people in the general population to experience food borne disease because they are immunocompromised, children age nine (9) and below, or older adults.

(k) *Hotel* shall mean any structure or any portion of any structure, including any lodging house, rooming house, dormitory (including a dormitory housing for contract employees), health spa, bachelor hotel, studio hotel, motel, private club, containing four (4) or more guest rooms and

which is occupied or is intended or designed for occupancy, by four (4) or more guests, whether rent is paid in money, goods, labor, or otherwise, and whether with or without meals. It does not include any penal institution, hospital, clinic, nursing home, school, laboratory, or child care facility.

(l) *Institutional facility* as used in these rules and regulations, shall include:

(1) "Adult Group Day Care Center," which shall mean a place maintained and operated by an individual, organization, or agency whether for profit or not for the purpose of providing protective and supportive care for two (2) or more elderly and/or disabled adults, not related to the facility's owner/operator by blood or marriage within the third degree of consanguinity, for a specified time period of ten (10) hours or less in each twenty-four (24) hour day. At the end of the specified time period, the participant is discharged to the custody of his/her family, guardian, or sponsor;

(2) "Child Care Facility," which shall mean any person or place which receives or arranges placement of one or more children who are not related to such person, whether for gain or otherwise, apart from the parents or guardian, with or without the transfer of the right of custody for the purpose of providing regular care or training for such child or children during either the day or night, or both. Except as otherwise provided, the term "Child Care Facility" includes, but is not limited to, all facilities defined by the Department as "family day care homes," "foster family homes," "group day care homes," "residential treatment facilities," "day care center," "day nurseries," "nursery school," "kindergarten school," "day care homes," or similar institutions or units regardless of name;

(3) "Penal Institution," which shall mean any jail, detention center, prison camp, home, juvenile detention home or cottages, or other facility used as a holding facility, jail, or residential custodial facility. This definition does not include hospitals or childcare facilities or adult group day care center;

(4) "School," which shall mean any establishment that provides care and education to students from pre-kindergarten through grade 12; and any college, trade school, university, or any other educational institutional of higher learning;

(5) "Hospital," which shall mean any building, structure, institution or place whether organized for profit or not, devoted primarily to the maintenance and operation of facilities for the diagnosis, evaluation, treatment, and provision of medical or surgical care for three (3) or more non-related individuals admitted for overnight stay or longer in order to obtain medical services; including obstetric, psychiatric, and nursing care of illness, disease, injury, or deformity, whether physical or mental; and regularly making available at least clinical laboratory service, diagnostic radiology services, and treatment facilities, or surgery, obstetrical care or other definitive medical treatment;

(6) "Clinic," which shall mean any building; structure; institution or place; public or private; whether organized for profit or not, devoted primarily to the maintenance and operation of facilities for the medical or dental evaluation, diagnosis, or treatment of human illness, injury or deformity; or the veterinary medical or veterinary dental evaluation, diagnosis, or treatment of animal illness, injury or deformity;

(7) "Nursing Home," which shall mean any facility established, for profit or non-profit, which provides nursing care and related medical services twenty-four (24) hours per day for two (2) or more individuals because of illness, disease, or mental or physical infirmity. It provides care for these persons not in need of hospital care but requiring nursing care or related medical services, which medical services shall be administered by a professional nurse, a physical therapist, or an occupational therapist; or other licensed medical practitioners, depending upon the service required; and

(8) "Laboratory," which shall mean any building, structure, institution or place, whether organized for profit or not, devoted primarily to the maintenance and operation of facilities for the examination or testing of humans or animals, living or dead, or any parts or physiologic products thereof, for the purpose of detecting or confirming the presence of illness or infirmity.

(m) *Interim Health Certificate* shall mean a provisional certificate issued by the Director to a person employed within any health-regulated establishment or any other establishment under the provisions of any other rules and regulations promulgated by the Director to properly carry out Division 2 of Title 10 GCA relating to environmental health, who is waiting to attend a training course offered by the Department or another entity authorized by the Department.

(n) *Laundry* or *dry cleaning establishment* shall mean any place, building, structure, room, or partition thereof, used in the business of dyeing; washing; starching; ironing; or dry cleaning apparels, household linens, and other fabric articles, including any establishment providing laundering equipment

for use by customers for a fee such as a laundromat, wash-o-mat, launderette, or coin operated laundromat.

(o) *Massage parlor* shall mean premises occupied and used for the purpose of practicing massage, provided that when any massage establishment is situated in any building used for residential or sleeping purposes, the massage establishment premises shall be set apart and shall not be used for any other purpose.

(p) *Person employed* shall mean the following:

(1) in an "eating and drinking establishment," any person employed for compensation or otherwise who transports food or food containers, engages in food preparation or service, or comes in contact with any food and food utensils or equipment;

(2) in a "food establishment," any person employed for compensation or otherwise who transports, stocks, stores, packs, packages, processes, manufactures, cans, bottles, or otherwise handles raw or processed foods;

(3) in an "institutional facility," any person employed for compensation or otherwise at that facility;

(4) in a "cosmetic establishment," any person employed for compensation or otherwise who singes, shampoos, arranges, adorns, dresses, curls, waves, permanent waves, tints, applies tonics, dyes, shaves, clips, trims or cuts human hair, gives facial, scalp, neck or body massages or treatments with oils, creams, lotions, or other preparations to the hands, scalp, face, or neck by hand or mechanical appliance, and manicures and pedicures;

(5) in a "hotel," any person employed for compensation or otherwise who cleans and handles pre-packaged food (i.e., bottled

water, coffee, tea), food contact equipment (i.e., coffee makers, ice buckets, and refrigerator/freezers), soiled or cleaned linens or other laundry items, and who maintains the sanitary condition and operation of the facility during the course of their duties and responsibilities;

(6) in a "laundry or dry cleaning establishment," any person employed for compensation or otherwise who handles soiled or cleaned linens or other laundry items;

(7) in a "swimming pool," any person employed for compensation or otherwise at the facility who is in charge of its operation and/or maintenance; and

(8) in a "tattoo shop," any person employed for compensation or otherwise at that facility who performs or assists in performing tattooing.

(q) *Swimming pool* shall mean any artificial structure, basin, chamber or tank constructed or impervious material used or intended to be used for swimming, diving, wading or recreational bathing. It does not include conventional bathtubs where the primary purpose is the cleaning of the body or individual therapeutic tubs. A "public swimming pool" shall mean any swimming or wading pool that is available for public use, whether for a fee or free of charge; or any swimming or wading pool owned or used by any business, partnership, corporation, or person for the use of their customers, clients, guest or employees including, but not limited to, a commercial pool, a community pool or a pool at a hotel, motel, resort, auto park, trailer park, apartment house or other multiple rental unit, private club, public club, public or private school, gymnasium or health establishment.

(r) *Tattooing* shall mean to mark or color the skin by pricking and introducing subcutaneously, non-toxic dyes, pigments, or by the production of scars to form indelible marks and figures.

(s) *Tattoo shop* shall mean any premises where a tattoo artist does tattooing for a fee or other consideration.

(t) *Temporary food service establishment* shall mean any eating and drinking establishment which operates at a fixed location for a period of time not exceeding six (6) months in conjunction with a carnival, fair, circus, exhibition, or other transitory gathering not of a permanent nature, and shall include catering.

(u) *Temporary Health Certificate* shall mean a certificate issued to a person employed within any temporary food service establishment under the provisions of these rules and regulations.

§4405. Health Certificate Required. Unless otherwise stated within these rules and regulations, or any other rules and regulations promulgated by the Department relating to environmental health, every person employed within an eating and drinking establishment, food establishment, institutional facility, cosmetic establishment, tattoo shop, laundry or dry cleaning establishment, hotel, swimming pool, or any other establishments under the provisions of any other rules and regulations promulgated by the Director to properly carry out Division 2 of Title 10 GCA relating to environmental health, shall be required to obtain a Health Certificate.

§4406. Exemption of Health Certificate. The selling of the following articles shall not require the obtaining of a Health Certificate:

(a) fresh, unprocessed fruits, vegetables, nuts, eggs, live poultry or live pigs;

(b) canned or bottled drinks, including alcoholic beverages, in the original container of their manufacturer; or

(c) candies or other confections in the original container of their manufacturer.

§4407. Application for Health Certificate and Temporary Health Certificate. (a) Any person desiring to engage in employment requiring a Health Certificate or Temporary Health Certificate under these rules and regulations shall submit an application for a Health Certificate or Temporary Health Certificate to the Department. The applicant shall be required to show a current and valid photo identification or other evidence attesting to the applicant's true identity. The applicant shall also be required to show documentation that attests to the applicant's United States citizenship, permanent resident alien, or non-immigrant status, that authorizes the applicant to work in the United States by the U.S. federal government. The following are acceptable forms of photo identification:

(1) Government of Guam Identification Card;

(2) Guam Driver's License;

(3) United States Military Identification Card;

(4) Passport; and

(5) any other photo identification acceptable by the Department.

(b) The following are acceptable forms of identification for permanent resident aliens or non-immigrant applicants who are authorized to work in the United States:

(1) Passport; and

(2) Alien Registration Receipt Card (Green Card).

(c) Whenever an applicant is unable to apply to renew a Health Certificate in person, the applicant may designate an authorized

representative to make an application for the applicant, provided the representative has the following information available:

(1) a signed and dated authorization letter from the applicant, along with an explanation of the applicant's relation to the representative;

(2) a completed, original application; and

(3) a copy of the representative's and the applicant's acceptable photo identification cards.

(d) An applicant applying for a Health Certificate shall complete all application requirements and submit all necessary information at any time, but not more than one (1) month before commencement of employment. An applicant, applying for a Temporary Health Certificate shall complete all application requirements and submit all necessary information, not more than twenty (20) and not less than five (5) working days, before commencement of employment, unless approved by the Director.

(e) A person applying for an additional Health Certificate for another category, or under the conditions stated in Subsections (a) and (b) of §4411 of these rules and regulations, shall submit a separate application and pay the appropriate fee for each additional Health Certificate.

§4408. General Requirements for Health Certificate. (a) Unless stated otherwise in these rules and regulations, all new Health Certificate applicants, including Temporary Health Certificate applicants, shall submit an application approved by the Department, pay all applicable fees, and shall:

(1) be tested, or screened, and be free of infectious tuberculosis, and any other communicable diseases as determined by the Director, within six (6) months prior to its submission, except applicants of Temporary Health Certificate; and

(2) take and pass a training course provided by the Department, or an authorized entity approved by the Department, specific to the category of the Health Certificate the applicant is seeking under the provisions of this and any other rules and regulations promulgated by the Director to properly carry out Division 2 of Title 10 GCA relating to environmental health.

(b) Renewing applicants, when applicable or as determined by the Director, shall be required to be tested or screened for infectious tuberculosis and other communicable diseases, and pass a written examination.

§4409. Training Course and Examination Requirements for Health Certificate.

(a) Unless otherwise stated in these rules or regulations or any other separate rules and regulations promulgated by the Director to properly carry out Division 2 of Title 10 GCA relating to environmental health, the following are further and specific requirements for any person desiring to engage in employment requiring a Health Certificate under these and other rules and regulations of the Department, and must be complied with to qualify for, and hold, a Health Certificate:

(1) Any applicant who has not previously been issued a Health Certificate by the Department, or whose previous Health Certificate has expired for more than thirty (30) calendar days, shall attend and pass a training course conducted by the Department, or any other entity approved by the Department, before a Health Certificate is issued.

(2) Any applicant who fails to pass the training course shall be scheduled to attend another training course at a later date, pay the re-testing fee and the Health Certificate fee, and have the Interim Health Certificate issued with a new expiration date.

(3) Any applicant who fails to pass his second consecutive training course for any category, after failing the first training course, may be provided a Health Certificate at the discretion of the Director. However, prior to the issuance of the Health Certificate by the Director, the applicant's supervisor, who must be certified in accordance with §4415 if for eating and drinking establishment and food establishment categories, shall be required to enter into a written agreement with the Department (Annex I) if the supervisor agrees to do so. The same shall apply for Health Certificate applicants for non-food facilities governed by these rules and regulations (Annex II). A Health Certificate issued under such condition shall have a distinguishing mark or symbol printed on the certificate.

(4) There shall be no limit to the number of times an applicant may take the training course.

(5) At the discretion of the Director, the requirement for taking the training course may be waived if the applicant shows proof of disability, but shall be required to enter into the written agreement in Annex I or Annex II.

(b) The Director shall identify Health Certificate categories which will require the renewing applicant to attend and pass a refresher training course.

(1) Any renewing applicant who attends the training course and does not pass the examination shall be scheduled to attend a training course at a later date, pay the retesting fee and the Health Certificate fee, and be issued an Interim Health Certificate with a new expiration date.

(2) Any renewing applicant who fails to pass his/her second consecutive training course, after failing the first training course, may be provided a Health Certificate at the discretion of the Director in the same manner and condition as §4409(a)(3).

(3) As determined by the Director, a renewing applicant may forgo the training course and take the examination only; however, if such applicant fails the examination, he/she shall be required to take the training course.

(c) [Reserved.]

(d) The Director may revoke any Health Certificate issued in §4409(a)(3) or §4409(b)(2), upon reasonable belief that the written agreement has been breached.

(e) Any person in possession of a valid and current Certificate of Management Certification shall be exempt from its respective training course; however, he/she shall still be required to obtain a Health Certificate.

(f) The Department, if it wishes, may authorize another government of Guam entity to provide or supplement the training courses required pursuant to these rules and regulations, provided a written memorandum of agreement between the Department and the other entity is formally established.

(g) In the event an entity authorized by the Department to provide a training course is unable to provide the minimum standard of training that is acceptable to the Department in the issuance of Health Certificates, or fails to timely provide the required training course, the Department may seek the assistance of another approved entity in carrying out the provisions of this Section.

§4410. Specific Requirements by Category. Any person required to attend and pass a training course as indicated in this Section may be waived from such course if he or she possesses an applicable current and valid certification that is recognized by the Department that attests to the individual's adequate knowledge of disease prevention in the respective establishment category. However, the individual must still submit the application and all supporting documents and obtain a Health Certificate.

(a) Eating and Drinking Establishment and Food Establishment. The following individuals shall obtain a Health Certificate:

(1) An employee of the establishment who regularly enters the food preparation area, regardless of his/her position and duty, whose presence may likely contaminate food directly or indirectly without the training; and

(2) Any employee of the establishment who may come in contact with food during the course of that individual's work, including, but not limited to, a cashier.

(b) Cosmetic Establishment. No Health Certificate shall be issued or renewed unless the applicant has undergone a physical examination performed by a healthcare professional using report forms provided by the Department.

(c) Institutional Facility. No Health Certificate shall be issued or renewed unless the applicant has undergone a physical examination performed by a healthcare professional using report forms provided by the Department.

(d) Hotel Sanitation. All persons employed at a hotel, as defined in these rules and regulations, who are tasked to clean food-contact surfaces, and maintain the sanitary condition and operation of such facility, shall be required to obtain a Health Certificate and attend and pass the training course provided by the Department. However, that person shall not be required to be tested or screened for infectious tuberculosis or other communicable diseases.

(e) Swimming Pool. Every person responsible for the operation of a regulated swimming pool shall be required to obtain a Health Certificate and attend and pass the training course provided by the Department. However, that person shall not be required to be tested or screened for infectious tuberculosis or other communicable diseases. A responsible operator of a regulated swimming pool will not be required to attend and pass the training course provided by the Department if such operator possesses and shows proof of a valid Certified Pool/Spa Operator

1 certification with the National Swimming Pool Foundation, or its successor, or any
2 other nationally recognized certification approved by the Department; however, the
3 responsible operator shall still be required to obtain the required Health Certificate.
4 (f) Tattoo Shop.
5 (1) All persons employed at a tattoo facility that clean, handle,
6 operate, or otherwise touch any tattoo equipment; or prepare, or assist in the
7 preparation of the client; shall be required to possess a Health Certificate and
8 pass the training course provided by the Department.
9 (2) In addition to the test or screening for active tuberculosis, an
10 individual required to obtain a Health Certificate shall also undergo a
11 physical examination performed by a healthcare professional using report
12 forms provided by the Department.
13 (g) Laundry or Dry Cleaning Establishment. A Health Certificate shall
14 not be issued or renewed unless the applicant has undergone a physical
15 examination performed by a healthcare professional using report forms provided
16 by the Department and passes a training course provided by the Department.
17 **§4411. Requirements for Temporary Health Certificate.** (a) All
18 persons applying for a Temporary Health Certificate to work in a carnival, fair, or
19 other temporary food service establishment shall be required to submit to the
20 Department a signed and completed written contract (Annex III) between the
21 Department and the applicant's supervisor who possesses the required Certificate
22 of Management Certification. Prior to the issuance of a Temporary Health
23 Certificate, the employee shall, as determined by the Director, attend and
24 participate in a short briefing provided by the Department, before the start of the
25 event, which discusses the food safety responsibilities and expectations for
26 possessing a Temporary Health Certificate.

(b) A recipient of a Temporary Health Certificate who fails to attend the short briefing provided by the Department in this Section shall cause that certificate to become invalid.

(c) Temporary Health Certificates shall not be issued for any event where many of the consumers are members of a highly susceptible population.

§4412. Single Health Certificate for Multiple Locations Per Category.

(a) Each person may possess only one Health Certificate per category, regardless of the number of different employed locations or businesses within that same category. The Health Certificate shall state the category the holder is authorized to work in, and shall be valid at all locations within that category.

(b) The Department may issue a single Health Certificate for categories of both eating and drinking establishment and food establishment if the Department determines that the application, training, fee, and other applicable requirements are the same and issuing a single certificate will not compromise the spirit and intent of these rules and regulations.

§4413. Additional Health Certificate. Any person employed within an eating and drinking establishment, food establishment, hotel, institutional facility, cosmetic establishment, swimming pool, laundry and dry cleaning establishment, or tattoo shop, or any other health-regulated establishments, who holds a Health Certificate within such category shall not be issued, upon submission of a separate application with appropriate fee, a Health Certificate for other categories without meeting the qualifications enumerated under each category. An exception to this requirement could occur for eating and drinking establishment and food establishment, which may be a single Health Certificate in accordance to §4412(b).

1 **§4414. Interim Health Certificate.** (a) After submitting the
2 application, payment, and meeting all other requirements, an applicant who is
3 required to attend and pass a training course shall be issued an Interim Health
4 Certificate for employment until the applicant's completion and passage of the
5 training course, whereupon he or she shall receive a Health Certificate.
6 (b) An Interim Health Certificate shall indicate the name of the applicant;
7 the category of the Health-Regulated Establishment the certificate is for; the date,
8 time, and location of the training course; the expiration date; and any other
9 information as determined by the Director. The expiration date shall not exceed
10 more than three (3) working days after the date of the training course.
11 (c) An applicant in possession of an Interim Health Certificate who fails
12 to attend the training course shall be scheduled for another training course and
13 granted an extension of the expiration date, provided that no more than ten (10)
14 working days have elapsed from the date of the original training course. The
15 extension of the new expiration date shall not exceed beyond more than three (3)
16 working days after the date of the rescheduled training course date.
17 (d) An applicant who fails to attend the rescheduled training course or
18 whose Interim Health Certificate has expired more than fourteen (14) working days
19 from the date of the original training course shall be considered a new applicant
20 and shall be required to apply as a new applicant. Such applicant may submit
21 his/her initial physical test and/or tuberculosis test results with the application,
22 provided the testing or screening was within the six (6) months of submission of
23 the new application.
24 (e) An Interim Health Certificate does not exempt the applicant from all
25 other requirements of these rules and regulations or any other rules and regulations
26 promulgated by the Director relevant to Health Certificates.

§4415. Certificate of Management Certification and Health Certificate. (a) Unless otherwise stated within these rules and regulations, or any other rules and regulations promulgated by the Department relating to environmental health, every eating and drinking establishment and food establishment, excluding those facilities that do not provide food directly to consumers, such as manufacturers, wholesalers, and distributors, and any other food facilities specifically exempted through separate rules and regulations promulgated by the Director, shall have a designated manager or supervisor who shall be certified under the provisions of these rules and regulations.

(b) Any person employed or designated as a manager or supervisor within an eating and drinking establishment and food establishment, excluding manufacturers, wholesalers, and distributors, and any other food facilities specifically exempted, shall be required to take and pass a prescribed course provided by the Department, or any other course approved by the Department, before a Certificate of Management Certification, or an equivalent certification as approved by the Director, is issued by the institution administering the course. The course shall require the candidate for managerial certification to show evidence by examination of satisfactory knowledge (scoring seventy percent (70%) or higher) of rules and regulations governing food facilities, including, but not limited to, microbiology, food-borne diseases, food storage, food preparation and service, equipment design and construction, employee hygiene, cleaning and sanitary procedures, and rodent and insect control. Those candidates who fail to show evidence by examination of satisfactory knowledge (scoring sixty-nine percent (69%) or lower) shall repeat the course until the required minimum passing score of seventy percent (70%) or higher is met. No restrictions are placed on the number of times a designated manager or supervisor may take the course to obtain a passing score.

(c) The acquisition of the Certificate of Management Certification, or its equivalent as approved by the Director, by a designated manager or supervisor is a requirement in addition to, and not in lieu of, a Health Certificate.

(d) The Certificate of Management Certification shall be renewed every five (5) years.

(e) Any person renewing the Certificate of Management Certification may waive the prescribed course in Subsection (b) of this Section, and promptly take the examination to obtain the certification. However, any person who waives the course and fails to show evidence by examination of satisfactory knowledge (scoring sixty-nine percent (69%) or lower) shall be required to attend the course, and not permitted to waive the course again, and shall meet the required minimum passing score of seventy percent (70%) or higher, before certification is granted.

(f) Any person waiting to take the course in Subsection (b) of this Section to renew his or her Certificate of Management Certification shall not be penalized if his or her Certificate of Management Certification expires prior to the date of the scheduled course, provided:

(1) that the course the person is waiting to attend is the most immediate course available after the expiration of his Certificate of Management Certification, and

(2) he or she has taken the necessary steps to properly register for the course.

Any person with an expired Certificate of Management Certification in a situation described in this Section shall be considered to have a current and valid certification up until the date of the scheduled course.

(g) The Department, if it wishes, may authorize another government of Guam entity to provide or supplement the Certificate of Management Certification

course, provided a written memorandum of agreement between the Department and the other entity is formally established.

(h) At the discretion of the Department, and in the manner determined by the Director, a nationally recognized food safety certification may be recognized and accepted in lieu of the Certificate of Management Certification, provided its curriculum meets or exceeds the Department's requirements.

§4416. Fees. A non-refundable fee shall be required of applicants at the time of application for Health Certificates. In the event of a failure to qualify for a Health Certificate, non-fulfillment, or termination of employment, the fee shall not be refunded to the applicant.

(a) The annual fee for a Health Certificate for a person employed within an eating and drinking establishment, food establishment, institutional facility, cosmetic establishment, hotel, swimming pool, tattoo shop, laundry and dry cleaning, or any other establishment where an employee is required to obtain a Health Certificate, shall be Ten Dollars ($10.00).

(b) The fee for the training workshop for a person employed within an eating and drinking establishment, food establishment, institutional facility, cosmetic establishment, hotel, laundry and dry cleaning, swimming pool, tattoo shop, or any other establishment where an employee is required to obtain a Health Certificate, shall be Fifteen Dollars ($15.00).

(c) The fee for the re-issuance of a Health Certificate for any amendments made to the Health Certificate shall be Five Dollars ($5.00).

(d) The fee for any re-issuance (i.e., duplicate) of a Health Certificate and Temporary Health Certificate due to loss or damage shall be Two Dollars ($2.00).

(e) An applicant who has failed to pass the training course and is required to attend another training course for re-testing shall pay a fee of Ten Dollars ($10.00) for such re-testing, and a fee of Five Dollars ($5.00) for a new Interim

Health Certificate, provided he/she returns within ten (10) working days of the expiration date; otherwise, the fee for a new Interim Health Certificate reverts back to Ten Dollars ($10.00).

(f) An establishment desiring and requesting for a training course and testing for its employees at its own facility or another location during regular government hours (8:00 a.m. – 5:00 p.m.) shall obtain the approval of the Director, comply with the criteria established by the Department, and pay the onsite training workshop fee of Three Hundred Dollars ($300.00) in addition to the Ten Dollar ($10.00) fee for the Health Certificate per employee attending the onsite workshop.

(g) An establishment desiring and requesting for a training course and testing for its employees at its own facility or another location outside regular government hours (8:00 a.m. – 5:00 p.m.) during the weekend shall obtain the approval of the Director, comply with the criteria established by the Department, and pay the special onsite training workshop fee of Five Hundred Dollars ($500.00) in addition to the Ten Dollar ($10.00) fee for the Health Certificate per employee attending the special onsite workshop.

(h) The fee for a Temporary Health Certificate for a person employed within a Temporary Food Service Establishment shall be Fifteen Dollars ($15.00). An expedited processing fee of Ten Dollars ($10.00) shall be assessed for every applicant of a Temporary Health Certificate when such application is received less than three (3) days before the start of the event.

§4417. Effective Date of Health Certificate. Unless indicated elsewhere in these rules and regulations, or any other rules and regulations promulgated by the Director under Guam law relevant to environmental health, all Health Certificates shall expire one (1) year after the date of application and for the category indicated on the certificate. Applications for renewal of a Health

1 Certificate shall not be accepted more than thirty (30) days prior to its expiration,
2 unless authorized by the Director.
3 (b) All Temporary Health Certificates shall be valid for only the period of
4 the temporary event for which the certificate was issued, and its expiration date
5 cannot exceed sixty (60) days; and the Temporary Health Certificate cannot be
6 renewed. A person may not possess two (2) consecutive Temporary Health
7 Certificates within any six (6) month period.
8 **§4418. Presentation of Health Certificate, Interim Health**
9 **Certificate, Temporary Health Certificate, and Certificate of Management**
10 **Certification.** (a) Every person required to have a Health Certificate under
11 §22101 of Title 10 GCA, shall have the Health Certificate in that person's personal
12 possession at all times during his or her working hours.
13 (b) Unless exempted elsewhere in these rules and regulations, or any
14 other rules and regulations promulgated by the Department, all valid copies of
15 Health Certificates, Interim Health Certificates, and Certificates of Management
16 Certification shall be conspicuously posted at the facility where the employee is
17 working. The location within the establishment where the Health Certificates are
18 to be posted is at the discretion of the establishment; however, it shall be readily
19 available when requested by the Director during inspection of the establishment.
20 "Readily available" shall mean that the documents are separated from all other
21 records and made available for inspection in a reasonable amount of time.
22 **§4419. Suspension or Revocation of Health Certificate and**
23 **Certificate of Management Certification.** (a) The Director may suspend or
24 revoke any Health Certificate, Temporary Health Certificate, or Interim Health
25 Certificate issued under these rules and regulations, or any other rules and
26 regulations promulgated by the Director requiring a Health Certificate, for
27 providing false information in his or her application, violation of the provisions of

1 these or any other related rules and regulations, or in the event the holder of any
2 Health Certificate has been determined to be harboring a communicable disease.
3 The holder of the suspended or revoked Health Certificate shall return the said
4 certificate to the Department.

5 (b) The Director may suspend or revoke any Certificate of Management
6 Certification issued under these rules and regulations when the holder or the
7 persons under his/her supervision repeatedly fails to comply with the rules and
8 regulations for eating and drinking establishments, and food establishments.

9 (c) Before any Health Certificate, Interim Health Certificate, Temporary
10 Health Certificate, or Certificate of Management Certification is suspended or
11 revoked, the person shall have the right to a written notice of the action to be taken,
12 and other administrative remedies in accordance with §4421 of these Rules and
13 Regulations.

14 (d) Before imposing an administrative penalty against a person or a
15 health-regulated establishment, the Director shall issue a notice of intent to impose
16 the penalty and provide the person or health-regulated establishment an
17 opportunity to request a hearing on the proposed penalty. The request for a hearing
18 must be made within ten (10) days of the date that the notice is served upon the
19 person or health-regulated establishment. The hearing shall be conducted in
20 accordance with §4421 of these rules and regulations.

21 **§4420. Administrative Penalties.** (a) In accordance with Title 10
22 GCA, Chapter 22, §22106, the Director may impose a fine for any health-regulated
23 establishment that permits a person to perform services without having in their
24 possession a valid Health Certificate at the time the services are performed. The
25 monetary fine for the administrative violation is not to exceed Three Hundred
26 Dollars ($300.00) for the first offense, and shall impose a fine of One Thousand

1 Dollars ($1,000.00) for a second offense involving the same person occurring
2 within one (1) year of the first offense.
3 (b) Any person who is required to obtain a Health Certificate under §4405
4 of these rules and regulations shall be cited for administrative violation if they are
5 found working at a health-regulated establishment without a valid Health
6 Certificate or not having the valid Health Certificate in the person's personal
7 possession during working hours. The Director shall assess the monetary fine in
8 accordance to law.
9 (c) When more than one person is cited within the same health-regulated
10 establishment, at the same time, for not possessing valid Health Certificates, each
11 citation shall be considered a separate administrative violation and the Director
12 shall assess the required monetary fines to the establishment.
13 (d) Before imposing an administrative penalty against a person or a
14 health-regulated establishment, the Director shall issue a notice of intent to impose
15 the penalty and provide the person or health-regulated establishment an
16 opportunity to request a hearing on the proposed penalty. The request must be
17 made within ten (10) days of the date that the notice is served upon the person or
18 health-regulated establishment.
19 (e) Any person or health-regulated establishment may seek review of any
20 administrative penalty imposed before the Superior Court of Guam. Such review
21 shall be upon the record established before the Director and not *de novo*. The
22 Superior Court may sustain, modify or vacate any administrative penalty it
23 reviews.
24 (f) If any person, or a health-regulated establishment, fails to comply
25 with an administrative penalty order after it has become final, the Attorney General
26 shall bring a civil action to enforce the order and to recover the amount ordered or

assessed, plus current interest from the date of the final order or decision. To prevail in such an action, the Director need establish only that:

(1) notice was given as required;

(2) a hearing was granted to the defendant or that the defendant requested no hearing; and

(3) the penalty was imposed and has become final either because the administrative order was not appealed to the Superior Court, or that after judicial review the administrative order remains an unsatisfied obligation.

§4421. Right to Notice, Hearing, and Administrative Process. (a) Any person who has been denied a Health Certificate, Interim Health Certificate, Temporary Health Certificate, or Certificate of Management Certification under these Rules and Regulations, or whose Health Certificate, Interim Health Certificate, Temporary Health Certificate, or Certificate of Management Certification is to be suspended or revoked under these Rules and Regulations, or any person or health-regulated establishment that is subject to an Administrative Penalty under these Rules and Regulations has the right to a notice in writing from the Director stating the action to be taken by the Department, has the right to request in writing for an administrative hearing, has the right to an administrative hearing, and has the right to an appeal of an administrative hearing decision. Any written notice given pursuant to §§4419 and 4420 of these Rules and Regulations shall advise that the right to notice, hearing, and appeal is available as provided in these rules and regulations, and to the extent consistent herewith, pursuant to the Administrative Adjudication Law, Title 5, Guam Code Annotated, §§ 9200 through 9242, as amended.

(b) The procedures and requirements set out in these Rules and Regulations, and to the extent consistent herewith, in the Administrative Adjudication Law at Title 5, Guam Code Annotated, §§ 9200 through 9242, as

amended, shall be followed by the Director, and by any person or health-regulated establishment adversely affected by decisions of the Department pursuant to these Rules and Regulations.

(c) Upon an administrative adjudication the Director shall make the final determination whether to issue a Health Certificate, Interim Health Certificate, or Certificate of Management Certification, to suspend or revoke a Health Certificate, Interim Health Certificate, or Certificate of Management Certification, or to uphold an Administrative Penalty.

§4422. Variances. (a) The Director of the Department may grant a variance to a requirement only if doing so will not endanger the health and welfare of the public and does not contradict the spirit and intent of these rules and regulations.

(b) Any variance issued by the Director of the Department shall be put forth in writing providing an explanation for the variance and its approval, with the signature of the Director, and date and filed accordingly for records.

§4423. Effective Date. These rules and regulations shall be effective upon enactment. At that time, all other rules and regulations or parts of other rules and regulations that conflict with these rules and regulations are repealed. The adoption of these rules and regulations shall not prohibit the Department from delaying the implementation of all or certain sections of these rules and regulations if the Department believes doing so would better effectuate its purpose; provided, such delay shall not exceed three hundred sixty-five (365) days of its effective date.

§4424. Severability. If any provision or application of any provision of these regulations is held invalid, that invalidity shall not affect the other provisions or applications of these rules and regulations.

I, _____, a holder of "Certificate of Management Certification" and the supervisor of _____ at _____ enter into this voluntary agreement with the Department of Public Health and Social Services, in accordance with §4409(a)(3) of the Health Certificate Regulations, to provide the basic knowledge and skill in the proper sanitary handling, preparing, and/or cooking of foods at the establishment to the above employee. In a cooperative effort with the Department of Public Health and Social Services, along with my responsibility and obligation to practice and promote food safety at the work place, I will ensure that the employee is taught the following so that the food commodity made available by this establishment for human consumption may not endanger the health and welfare of the public:

(To be determined by DPHSS.)

I understand that any failing on my part to fulfill the agreement in properly training the above employee may lead to the revocation of the employee's Health Certificate in accordance to§4419 of the Health Certificate Regulations.

_____	_____	_____
EMPLOYEE-Print	SIGNATURE	DATE
_____	_____	_____
SUPERVISOR-Print	SIGNATURE	DATE
_____	_____	_____
DPHSS REPRESENTATIVE-Print	SIGNATURE	DATE

ANNEX I

I, _____, the immediate supervisor of _____ at _____ enter into this voluntary agreement with the Department of Public Health and Social Services, in accordance with §4409(a)(3) of the Health Certificate Regulations, to provide basic sanitation knowledge and skill in the operation of my business.

In a cooperative effort with the Department of Public Health and Social Services, along with my responsibility and obligation to practice and promote proper sanitation and safety at the work place, I will ensure that the employee is taught the following so that the activities of my employee identified in this agreement may not endanger the health and welfare of the public:

(To be determined by DPHSS.)

I understand that any failing on my part to fulfill the agreement in properly training the above employee may lead to the revocation of the employee's Health Certificate in accordance to §4419 of the Health Certificate Regulations.

_____ _____ _____

EMPLOYEE-Print SIGNATURE DATE

_____ _____ _____

SUPERVISOR-Print SIGNATURE DATE

_____ _____ _____

DPHSS REPRESENTATIVE-Print SIGNATURE DATE

ANNEX II

TEMPORARY HEALTH CERTIFICATE CONTRACT

I, _____, a holder of "Certificate of Management Certification" and the operator of the food establishment, _____, during the temporary event, _____, enter into this written contract with the Department of Public Health and Social Services, in accordance with §4411(a) of the Health Certificate Regulations, to ensure that my employee, _____, who was issued a Temporary Health Certificate to work in my food establishment, will be supervised by me to ensure the employee abides by the requirements of the Guam Food Code. Such supervision will include the following:

- Prohibit the employee from working if he/she is infected with Norovirus, Shigella spp., Shiga toxin-producing E. coli; symptomatic with vomiting, jaundice, and/or diarrhea; and possesses health conditions that would cause the employee to be excluded from a food establishment pursuant to 2-201.12 of the Guam Food Code;
- Effective washing of hands when required pursuant to 2-301.12(b) and 2-301.14 of the Guam Food Code; and
- Proper use of barriers when handling ready-to-eat meals pursuant to 3-301.11 and 3-304.15 of the Guam Food;

I understand that failure on my part to fulfill this contract will cause the employee's Temporary Health Certificate to become invalid, thereby prohibiting the said employee from working at my food establishment.

_____	_____	_____
EMPLOYEE-Print	SIGNATURE	DATE
_____	_____	_____
SUPERVISOR-Print	SIGNATURE	DATE
_____	_____	_____
DPHSS REPRESENTATIVE-Print	SIGNATURE	DATE

ANNEX III