

TITLE 80: DEPARTMENT OF LABOR

SUBCHAPTER 80-20.1

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Subchapter Authority: Public Laws 15-108 and 17-1; 1 CMC § 2454; 3 CMC § 4424(a)(1) and 4530; Executive Order 94-3 § 301.

Subchapter History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010); Amdts Adopted 31 Com. Reg. 29636 (June 22, 2009); Amdts Proposed 31 Com. Reg. 29557 (May 20, 2009); Amdts Adopted 30 Com. Reg. 28891 (Oct. 25, 2008); Amdts Proposed 30 Com. Reg. 28632 (Sept. 25, 2008); Amdts Adopted 30 Com. Reg. 28622 (Aug. 25, 2008); Amdts Emergency and Proposed 30 Com. Reg. 28477 (May 27, 2008)(effective for 120 days from May 12, 2008); Amdts Adopted 30 Com. Reg. 28620 (Aug. 25, 2008); Amdts Emergency and Proposed 30 Com. Reg. 28326 (Mar. 25, 2008)(effective for 120 days from March 17, 2008); Amdts Emergency and Proposed 30 Com. Reg. 27956 (Jan. 22, 2008)(effective for 120 days from December 19, 2007);* Amdts Adopted 30 Com. Reg. 28027 (Jan. 22, 2008); Amdts Proposed 29 Com. Reg. 27498 (Dec. 18, 2007); Amdts Proposed 29 Com. Reg. 27213 (Nov. 19, 2007); Amdts Proposed 29 Com. Reg. 26785 (Sept. 17, 2007);* Amdts Emergency and Proposed 29 Com. Reg. 26529 (June 18, 2007) (effective for 120 days from June 4, 2007);* Amdts Adopted 28 Com. Reg. 26332 (Nov. 30, 2006); Amdts Emergency and Proposed 28 Com. Reg. 26020 (Aug. 24, 2006) (effective Aug. 4, 2006); Amdts Emergency and Proposed 28 Com. Reg. 25922 (July 21, 2006) (effective for 120 days from June 27, 2006); Amdts Adopted 27 Com. Reg. 25151 (Oct. 24, 2005); Amdts Adopted 27 Com. Reg. 24087 (Feb. 17, 2005); Amdts Emergency and Proposed 27 Com. Reg. 23780 (Jan. 17, 2005) (effective for 120 days from January 14, 2005); Amdts Emergency and Proposed 26 Com. Reg. 22967 (Oct. 26, 2004) (effective for 120 days from Oct. 20, 2004);** Amdts Adopted 26 Com. Reg. 22866 (July 26, 2004); Amdts Proposed 26 Com. Reg. 22676 (June 24, 2004); Amdts Proposed 26 Com. Reg. 22364 (Apr. 23, 2004); Amdts Proposed 26 Com. Reg. 22149 (Mar. 23, 2004); Amdts Emergency and Proposed 25 Com. Reg. 21460 (Nov. 17, 2003) (effective for 120 days from Nov. 7, 2003);* Amdts Emergency and Proposed 20 Com. Reg. 16153 (Oct. 15, 1998) (effective for 120 days from October 13, 1998);* Amdts Adopted 20 Com. Reg. 16260 (Oct. 15, 1998); Amdts Emergency and Proposed 20 Com. Reg. 15970 (July 15, 1998) (effective for 120 days from June 16, 1998); Amdts Adopted 18 Com. Reg. 14210 (July 15, 1996) (adopting in part the December 1995 and October 1994 proposed regulations); Amdts Emergency 18 Com. Reg. 14176 (July 15, 1996) (effective June 28, 1996); Amdts Proposed 17 Com. Reg. 13874 (Dec. 15, 1995); Amdts Emergency and Proposed 16 Com. Reg. 12451 (Oct. 15, 1994) (effective for 120 days from Sept. 20, 1994); Amdts Emergency and Proposed 17 Com. Reg. 12727 (Jan. 15, 1995) (effective for 120 days from Jan. 13, 1995);* Amdts Emergency and Proposed 16 Com. Reg. 12671 (Dec. 15, 1994) (effective for 120 days from Nov. 17, 1994);* Amdts Adopted 16 Com. Reg. 12483 (Oct. 15, 1994); Amdts Emergency and Proposed 16 Com. Reg. 12371 (Sept. 15, 1994) (effective for 120 days from Sept. 7, 1994); Amdts Adopted 16 Com. Reg. 12480 (Oct. 15,

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1994); Amdts Proposed 16 Com. Reg. 12397 (Sept. 15, 1994); Amdts Adopted 16 Com. Reg. 12431 (Sept. 15, 1994); Amdts Proposed 16 Com. Reg. 12044 (June 15, 1994); Amdts Adopted 16 Com. Reg. 12315 (Aug. 15, 1994); Amdts Emergency and Proposed 16 Com. Reg. 12091 (June 15, 1994) (effective for 120 days from May 23, 1994); Amdts Adopted 16 Com. Reg. 12311 (Aug. 15, 1994); Amdts Proposed 16 Com. Reg. 12050 (June 15, 1994); Amdts Adopted 16 Com. Reg. 12307 (Aug. 15, 1994); Amdts Proposed 16 Com. Reg. 12047 (June 15, 1994); Amdts Proposed 15 Com. Reg. 10387 (Jan. 15, 1993);* Amdts Emergency and Proposed 14 Com. Reg. 8743 (Feb. 15, 1992) (effective for 120 days from Jan. 12, 1992);* Certified 14 Com. Reg. 9176 (Apr. 15, 1992); Amdts Adopted 12 Com. Reg. 7135 (June 15, 1990); Amdts Emergency and Proposed 12 Com. Reg. 7013 (May 15, 1990) (effective for 120 days from May 11, 1990); Certified 14 Com. Reg. 9176 (Apr. 15, 1992); Adopted 10 Com. Reg. 5510 (Apr. 15, 1988); Proposed 10 Com. Reg. 5438 (Feb. 15, 1988); Proposed 8 Com. Reg. 4480 (Aug. 15, 1986).

* Notices of adoption for the proposed amendments were not published.

Commission Comment: PL 1-8, tit. 1, ch. 9 (effective Aug. 10, 1978), codified as amended at 1 CMC §§ 2451-2472, originally created a Department of Commerce and Labor (DOCL) within the Commonwealth government. See 1 CMC § 2451. 1 CMC § 2454 directed the Department to adopt rules and regulations regarding those matters over which the Department had jurisdiction. PL 1-8, tit. 1, ch. 9, §§ 4 and 5 created a Division of Labor within the Department of Commerce and Labor, responsible for the day-to-day supervision and administration of matters involving labor. See 1 CMC §§ 2471 and 2472.

PL 3-66 (effective Aug. 18, 1983), the “Nonresident Workers Act,” codified as amended at 3 CMC §§ 4411-4452, was enacted to control the employment of nonresident workers and to create a preference for the employment of resident workers in the Commonwealth. See 3 CMC §§ 4411 and 4413. 3 CMC § 4421 authorized the Department of Commerce and Labor, Division of Labor to implement and enforce the provisions of the act. 3 CMC § 4424(a) directed the Director of DOCL to promulgate rules and regulations to implement the intent 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 §§ 103 and 301:

Section 103. Department of Commerce.

The Department of Commerce and Labor is re-designated the Department of Commerce.

...

Section 301. Department of Labor and Immigration.

(a) Department Established. There is hereby established a Department of Labor and Immigration which shall have at its head a Secretary of Labor and Immigration.

(b) Labor and Employment Services.

(1) The Division of Labor and the Division of Employment Services are transferred from the Department of Commerce to the Department of Labor and Immigration. The Secretary of Labor and Immigration shall strengthen the Division of Employment Services to increase its ability to encourage and locate private sector employment for Commonwealth residents. The Secretary shall coordinate the functions of the two offices such that the availability of resident workers known to the Division of Employment Services is considered by the Division of Labor before non-resident worker certificates are issued.

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

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Executive Order 03-01 (effective May 9, 2003), the “Department of Labor and Immigration Reorganization Plan of 2003,” returned the immigration functions of the executive branch to the Office of the Attorney General and renamed the Department of Labor. According to Executive Order 03-01 § 101:

Section 101. Office of the Attorney General: Division of Immigration. The Division of Immigration, Department of Labor and Immigration is transferred to the Office of the Attorney General to be headed by a Director of Immigration who shall be appointed and serve at the pleasure of the Attorney General. The position shall be exempted from the civil service system pursuant to PL 13-1.

...

(d) The Department of Labor and Immigration shall be renamed the Department of Labor to be headed by a Secretary who shall be appointed by, and serve at the pleasure of, the Governor with advice and consent of the Senate. The Department of Labor shall consist of the Division of Labor, Division of Employment Services and Training, and Administrative Hearing Office. Each division shall be headed by a Director who shall be appointed by, and serve at the pleasure of, the Secretary. The Administrative Hearing Office shall be headed by a Hearing Office Administrator, who shall be appointed by, and serve at the pleasure of, the Secretary. These three position shall be exempt for the civil service system pursuant to PL 13-1.

In 1979, pursuant to the authority of PL 1-8, the Department of Commerce and Labor first issued “Fees for Alien Worker Permit Rules.” See 1 Com. Reg. 430 (Aug. 16, 1979); 1 Com. Reg. 376 (July 16, 1979). DOCL also proposed “Pre-certification of Critical Shortage Occupations Rules.” See 1 Com. Reg. 424 (Aug. 16, 1979); 1 Com. Reg. 379 (July 16, 1979) (inviting the public to submit nominations of occupations to be included on the initial pre-certification list). A notice of adoption for the proposed pre-certification rules was never published.

In 1980, DOCL published a public notice lifting the moratorium on the transfer of nonresident workers imposed on May 1, 1980. See 2 Com. Reg. 888 (Aug. 26, 1980).

In 1981, DOCL issued and administered the 1981 “Protection of Resident Workers and Employment of Non-resident Workers Regulations” and the 1981 “Rules Concerning Procedures for Compliance, Monitoring, Complaints and Grievances, Investigation, Hearings and Enforcement,” pursuant to the authority of PL 1-8. The history of the 1981 rules and regulations is as follows: Amdts Adopted 5 Com. Reg. 2163 (May 27, 1983); Amdts Emergency and Proposed 5 Com. Reg. 1772 (Jan. 31, 1983) (effective for 120 days from Jan. 27, 1983); Adopted 3 Com. Reg. 1315 (July 31, 1981); Proposed 3 Com. Reg. 975 (Feb. 23, 1981); Adopted 3 Com. Reg. 1308 (July 31, 1981); Proposed 3 Com. Reg. 989 (Feb. 23, 1981).

The Department of Commerce and Labor first issued the 1988 Alien Labor Rules and Regulations codified in this subchapter. After Executive Order 94-3 created the Department of Labor and Immigration, beginning with the December 1994 proposed amendments, the new Department continued to amend the existing 1988 Alien Labor Rules and Regulations. In 2003, the newly created Department of Labor began to promulgate amendments to this subchapter.

Attorney General Opinion 07-02 found that “a nonresident worker, as defined in 3 CMC § 4412(i), who did not have a ‘financial interest in or operated or engaged in any business or become an employer’ before July 28, 1987, may not be either a member for the board of directors nor an officer of a corporation.” 29 Com. Reg. 26679 (July 18, 2007). Attorney General Opinion 07-02 emphasized that mere presence in the Commonwealth before July 28, 1987 does not make a nonresident worker eligible to have an interest in or operate a business or become an employer.

Public Law 15-108 (codified at 3 CMC §§ 4401-4973), effective January 1, 2008, the Commonwealth Employment Act of 2007, repealed and re-enacted the Non-Resident Workers Act (PL 3-66 as amended)

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and substantially amended statutory provisions regarding the employment of resident and non-resident workers. PL 15-108, among other things, provides employment preferences for citizens and permanent residents; a moratorium on the hiring of foreign national workers; requirements for the entry/exit and employment of foreign nationals; Department of Labor responsibilities; a complaint/dispute resolution and adjudication process; and the authority for the Department of Labor to promulgate regulations.

In January 2008, the Department of Labor adopted regulations entitled, Employment Rules and Regulations, to comply with PL 15-108. The Employment Rules and Regulations repealed and replaced the Alien Labor Rules and Regulations in their entirety. The former Alien Labor Rules and Regulations were moved to subchapter 80-20.9 for historical purposes.

The Employment Rules and Regulations were first adopted in January 2008 and then renumbered and re-promulgated with amendments in October 2008. The Employment Rules and Regulations, as amended, are set forth in this subchapter.

Title VII of US Public Law 110-229, the Consolidated Natural Resources Act of 2008 (CNRA), enacted on May 8, 2008, extended the Immigration and Nationality Act (INA) and other provisions of United States immigration law to the Commonwealth of the Northern Mariana Islands. The CNRA provides for a transition period before full application of the INA to the Commonwealth, which had been responsible for its own immigration policies prior to the CNRA. The transition period started November 28, 2009 and is scheduled to end on December 31, 2014. Beginning November 28, 2009, the Commonwealth no longer retained jurisdiction over immigration matters in the Commonwealth of the Northern Mariana Islands.

On March 22, 2010, CNMI Public Law 17-1, the Immigration Conformity Act, became law. Section 12 of the Act stated that the Act shall be retroactive to November 28, 2009 except as otherwise provided by law. The Act repealed immigration responsibilities of the Commonwealth found in the Commonwealth statutory code and amended certain provisions of the code addressing labor in the Commonwealth.

In May 2010, the Department of Labor promulgated the Employment Rules and Regulations set forth in this subchapter, as amended, to supersede the previous rules and regulations. Previous history of the regulations are noted following each section and in Commission comments, where appropriate.

Between September, 2007, and January, 2008, the DOL proposed and made emergency amendments to several sections in the former chapter 80-20.1. For § 80-20.1-105(a)(1), see 29 Com. Reg. 26785 (Sept. 2007) (Proposed Amendment). For § 80-20.1-105(a)(8), see 29 Com. Reg. 26785 (Sept. 2007) (Proposed Amendment). For § 80-20.1-105(c)(1), see 29 Com. Reg. 26785 (Sept. 2007) (Proposed Amendment). For § 80-20.1-105(c)(7), see 29 Com. Reg. 26785 (Sept. 2007) (Proposed Amendment). For § 80-20.1-110(d)(3), see 30 Com. Reg. 27956 (Jan. 2008) (Emergency Proposed Amendment). For § 80-20.1-135(f), see 30 CR 27956 (Jan. 2008) (Emergency Proposed Amendment). For § 80-20.1-305(d), see 29 Com. Reg. 26785 (Sept. 2007) (Proposed Amendment). For § 80-20.1-1201(a), see 30 Com. Reg. 27956 (Jan. 2008) (Emergency Proposed Amendment).

Public Law 17-59, effective November 4, 2011, amended PL-15-108 (amending 3 CMC § 4972), giving an exemption to engineers and enabling the Department of Public Works to hire foreign national engineers up to 2015.

Part 001 - Department of Labor

Subpart A - Authority, Purpose and Name

§ 80-20.1-001 Authority

The Department of Labor (the “Department), pursuant to its powers, duties, and authority under the Immigration Conformity Act of 20 10, PL 17-1 ; the Commonwealth

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Employment Act of 2007, PL 15-108; the Minimum Wage and Hour Act, as amended; and Public Laws No. 11-6, 12-1 1, and 12-58 as amended, does hereby promulgate and issue these regulations that shall govern the employment of citizens, permanent residents, foreign national workers, and other nonimmigrant aliens in the Commonwealth.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010); Amdts Adopted 30 Com. Reg. 28891 (Oct. 25, 2008); Amdts Proposed 30 Com. Reg. 28632 (Sept. 25, 2008); Adopted 30 Com. Reg. 28027 (Jan. 22, 2008); Proposed 29 Com. Reg. 27498 (Dec. 18, 2007); Proposed 29 Com. Reg. 27213 (Nov. 19, 2007); Amdts Adopted 26 Com. Reg. 22866 (July 26, 2004); Amdts Proposed 26 Com. Reg. 22676 (June 24, 2004); Amdts Proposed 26 Com. Reg. 22364 (Apr. 23, 2004); Amdts Proposed 26 Com. Reg. 22149 (Mar. 23, 2004); Certified 14 Com. Reg. 9176 (Apr. 15, 1992); Adopted 10 Com. Reg. 5510 (Apr. 15, 1988); Proposed 10 Com. Reg. 5438 (Feb. 15, 1988); Proposed 8 Com. Reg. 4480 (Aug. 15, 1986).

Commission Comment: The 2010 amendments changed the title of part 001 and added PL 17-1. The Commission created the title of subpart A.

§ 80-20.1-005 **Purpose**

The purpose of these regulations is to set forth the necessary organization, procedures and requirements to implement Public Law 15-108 as amended by Public Law 17-1, hereinafter “the Commonwealth Employment Act of 2007, as amended.”

Modified, 1 CMC § 3806(d).

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010); Amdts Adopted 30 Com. Reg. 28891 (Oct. 25, 2008); Amdts Proposed 30 Com. Reg. 28632 (Sept. 25, 2008); Adopted 30 Com. Reg. 28027 (Jan. 22, 2008); Proposed 29 Com. Reg. 27498 (Dec. 18, 2007); Proposed 29 Com. Reg. 27213 (Nov. 19, 2007); Amdts Adopted 26 Com. Reg. 22866 (July 26, 2004); Amdts Proposed 26 Com. Reg. 22676 (June 24, 2004); Amdts Proposed 26 Com. Reg. 22364 (Apr. 23, 2004); Amdts Proposed 26 Com. Reg. 22149 (Mar. 23, 2004); Certified 14 Com. Reg. 9176 (Apr. 15, 1992); Adopted 10 Com. Reg. 5510 (Apr. 15, 1988); Proposed 10 Com. Reg. 5438 (Feb. 15, 1988); Proposed 8 Com. Reg. 4480 (Aug. 15, 1986).

Commission Comment: The 2010 amendments substantially changed this section.

§ 80-20.1-010 **Name**

These regulations shall be known as the “Employment Rules and Regulations.”

Modified 1 CMC § 3806(d).

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010); Amdts Adopted 30 Com. Reg. 28891 (Oct. 25, 2008); Amdts Proposed 30 Com. Reg. 28632 (Sept. 25, 2008); Adopted 30 Com. Reg. 28027 (Jan. 22, 2008); Proposed 29 Com. Reg. 27498 (Dec. 18, 2007); Proposed 29 Com. Reg. 27213 (Nov. 19, 2007).

Commission Comment: The 2010 amendments re-promulgated this section without change.

Subpart B - Organization

§ 80-20.1-015 Department Leaders and Sections

The Department shall be organized with a Secretary, Deputy Secretary, and managers of seven sections: the Citizen Job Availability Section, Citizen Job Placement Section, the Guest Worker Section, the Enforcement Section, the Administrative Hearing Office, the Data Services Section, and the Administration Section. In addition, the Department shall have two coordinators: Federal Relations, and Employer Relations.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

Commission Comment: The Commission created the title of this section.

§ 80-20.1-020 Citizen Job Availability Manager

The Manager of the Citizen Job Availability Section shall manage the forecasts as to job availability over rolling 12-month periods, monitoring of databases with respect to jobs that will become available for citizen placement, maintaining and analyzing reports from employers and employees on jobs currently active in the economy, monitoring compliance with NAICS and O-NET classification requirements, and other matters as assigned by the Secretary.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

Commission Comment: The Commission created the title of this section.

§ 80-20.1-025 Citizen Job Placement Manager

The Manager of the Citizen Job Placement Section shall operate the JVA system, manage the work with individual citizens, CNMI permanent residents, and U.S. permanent residents to match persons seeking jobs to jobs that are or will become available, and to find and coordinate resources from other agencies for job readiness including any necessary training, internship, practice, or other prerequisites to placing citizens in jobs. This manager will also manage the follow-up after citizens are placed in jobs to ensure against hostile workplaces, help secure adequate opportunities to advance, monitor effective dispute resolution, and other matters as assigned by the Secretary.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

Commission Comment: The Commission created the title of this section.

§ 80-20.1-030 Guest Worker Manager

The Manager of the Guest Worker Section shall manage all aspects of the regulatory requirements with respect to employment in the private sector of foreign workers and

other nonimmigrant aliens, the registration of aliens, and other matters as assigned by the Secretary.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

Commission Comment: The Commission created the title of this section.

§ 80-20.1-035 Enforcement Manager

The Chief of the Enforcement Section shall manage enforcement of requirements both with respect to the employment of citizens, CNMI permanent residents, and U.S. permanent residents, and with respect to employment of nonimmigrant aliens in the Commonwealth. This manager will also manage enforcement of minimum wage and other labor laws, and other matters as assigned by the Secretary.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

Commission Comment: The Commission created the title of this section.

§ 80-20.1-040 Administrative Hearing Office Manager

The Manager of the Administrative Hearing Office shall manage the intake of complaints and appeals in job preference cases, labor cases, denial cases, agency cases, and umbrella permit cases, the hearing dockets for all types of cases, maintain the barred list, maintain audio and digital files of transcripts and administrative orders, and other matters as assigned by the Secretary.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

Commission Comment: The Commission created the title of this section.

§ 80-20.1-045 Data Services Manager

The Manager of the Data Services Section shall manage the Department's information technology services including the automation system, the interactive website, and other matters as assigned by the Secretary.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

Commission Comment: The Commission created the title of this section.

§ 80-20.1-050 Administration Manager

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The Manager of the Administration Section shall manage the Department's payroll, contracts, standard forms for various administrative functions, standard operating procedures, and other administrative matters as assigned by the Secretary.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

Commission Comment: The Commission created the title of this section.

§ 80-20.1-055 Federal Relations Liaison Officer

The Federal Relations Liaison Officer is in charge of the Department's liaison with all federal government agencies. The Manager provides a central point of contact with federal officials and agencies, and will search out grant opportunities for the Department to augment its CNMI budgeted funds, coordinate the preparation and presentation of grant applications, and other matters as assigned by the Secretary.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

Commission Comment: The Commission created the title of this section.

§ 80-20.1-060 Employer Relations Liaison Officer

The Employer Relations Liaison Officer is in charge of the Department's liaison with all employers in the Commonwealth as to their employment of U.S. citizens, CNMI permanent residents, U.S. permanent residents, FAS citizens, foreign national workers, transitional workers, and immediate relatives qualified to work. The Manager of Employer Relations will be responsible for the Department's employment census under the new legislative requirements.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

Commission Comment: The Commission created the title of this section.

Subpart C - General

§ 80-20.1-065 Delegation of Authority

(a) The Secretary of Labor hereby delegates authority under the Commonwealth Employment Act of 2007, as amended; the Minimum Wage and Hour Act as amended; and Public Laws No. 11 -6, 12-11, and 12-58 to the Deputy Secretary, the managers in the Department appointed by the Secretary, the liaison officers, and the hearing officers in the Administrative Hearing Office.

(b) Written delegations of authority shall remain in full force and effect until rescinded, altered, or modified as circumstances require.

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(c) An automatic delegation of the Secretary's authority to the Deputy Secretary shall occur whenever the Secretary is off-island.

Modified 1 CMC § 3806(g).

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010); Amdts Adopted 31 Com. Reg. 29636 (June 22, 2009); Amdts Proposed 31 Com. Reg. 29557 (May 20, 2009); Amdts Adopted 30 Com. Reg. 28891 (Oct. 25, 2008); Amdts Proposed 30 Com. Reg. 28632 (Sept. 25, 2008); Adopted 30 Com. Reg. 28027 (Jan. 22, 2008); Proposed 29 Com. Reg. 27498 (Dec. 18, 2007); Proposed 29 Com. Reg. 27213 (Nov. 19, 2007).

Commission Comment: The 2010 amendments renumbered this section from § 80-20.1-101 and amended subsection (c). The Commission created the title of subpart C and inserted a comma after "Deputy Secretary" in subsection (a) to correct a manifest error.

§ 80-20.1-070 Appearance of Conflict

(a) Employees of the Department shall avoid the appearance of conflicts of interest by reporting to the Secretary any contractual interest in an employment agency or other business engaged in recruiting or processing employment-related documents when the contractual interest is held by or for the benefit of the employee or a member of the immediate family of the employee.

(b) For purposes of this section, the term "employee" means any person whose salary is paid by or through the Department and any contractor with the Department and the term "immediate family" means parent, spouse, sibling, or child.

(c) Employees of the Department shall advise the Secretary if any person with a close familial or personal relationship appears before the employee at the Department or requests the employee to act in regard to the exercise of any power of the Department under this Act and shall perform no such act unless permitted in writing by the Secretary.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010); Amdts Adopted 30 Com. Reg. 28891 (Oct. 25, 2008); Amdts Proposed 30 Com. Reg. 28632 (Sept. 25, 2008); Adopted 30 Com. Reg. 28027 (Jan. 22, 2008); Proposed 29 Com. Reg. 27498 (Dec. 18, 2007); Proposed 29 Com. Reg. 27213 (Nov. 19, 2007).

Commission Comment: The 2010 amendments renumbered this section from § 80-20.1-105 without changing the content.

§ 80-20.1-075 Preparation and Use of Standard Forms

It is the policy of the Department to use standard forms where possible to simplify administrative tasks, to permit the use of online filing, and to make operations more efficient. The Secretary or a designee may, at any time, amend, modify, alter, or substitute any of these forms, or add new forms as may be necessary for efficient operation of the Department, all without any amendment of this subchapter. The Department may require that information on the standard forms be supplemented as

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provided in this subchapter. Providing a standard form in no way limits the Secretary as to information that may be required in support of an application, request, or submission to the Department.

Modified 1 CMC § 3806(d).

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010); Amdts Adopted 30 Com. Reg. 28891 (Oct. 25, 2008); Amdts Proposed 30 Com. Reg. 28632 (Sept. 25, 2008); Adopted 30 Com. Reg. 28027 (Jan. 22, 2008); Proposed 29 Com. Reg. 27498 (Dec. 18, 2007); Proposed 29 Com. Reg. 27213 (Nov. 19, 2007).

Commission Comment: The 2010 amendments re-promulgated this section without change.

§ 80-20.1-080 **Definitions**

The following terms shall, unless the context clearly indicates otherwise, have the following meanings:

- (a) “Administrative Hearing Office” means the hearing office of the Department of Labor; and for purposes of 1 CMC §§ 9109 and 9110 as those provisions may apply to this subchapter;
- (b) “Approved employment contract” means a written contract between a foreign national worker and an employer, which has been approved by the Secretary, specifying the terms and conditions for work to be performed by the foreign national worker within the Commonwealth;
- (c) “Approved security contract” means a written contract executed by an employer providing security for defined employer obligations with respect to the employment of foreign national workers in a form that has been approved or accepted by the Secretary;
- (d) “Citizen” means a person who is a citizen or national of the United States;
- (e) “CNMI permanent resident” means a person who was granted the status of CNMI permanent resident by the CNMI government prior to April 23, 1981;
- (f) “Debarment” means, pursuant to an administrative order, the temporary or permanent prohibition on employment by an employer of foreign national workers and other nonimmigrant aliens;
- (g) “Department” means the Department of Labor;
- (h) “Domestic helper” means a person who assists an employer with the domestic duties of a household, including but not limited to cooking, and cleaning, and care for children, elders, and handicapped persons in the home; and does not include farmers;

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- (i) “Employer” means a person, corporation, partnership, or other legal entity that has a current business license issued by the Commonwealth, is doing business in the Commonwealth, and has one or more approved employment contracts with foreign national workers, or is acting directly or indirectly in the interest of a person, corporation, partnership or other legal entity in relation to an employee; or a person employing a domestic helper or farmer; and does not include the government of the United States;
- (j) “FAS citizen” means a citizen of the Freely Associated States, which are the Federated States of Micronesia, The Republic of the Marshall Islands, and the Republic of Palau, who is legally residing in the Commonwealth;
- (k) “Foreign national worker” means a person who is not a United States citizen, a United States permanent resident, a CNMI permanent resident, or an immediate relative of a United States citizen or a United States permanent resident, or an immediate relative of a CNMI permanent resident, and who entered the CNMI as a nonimmigrant prior to November 28, 2010 for the declared purpose of being employed in the Commonwealth;
- (l) “Hearing officer” means a hearing officer appointed by the Secretary who serves in the Administrative Hearing Office and who conducts mediations, hearings, and other proceedings as necessary; and for purposes of 1 CMC §§ 9109 and 9110 as those provisions may apply to this subchapter;
- (m) “Identification card” means an identification card issued by the Department using the Labor Information Data System (LIDS) or comparable system to assign a unique identification number to a particular person;
- (n) “Immediate relative” means a spouse by marriage, or equivalent status in a family relationship, or a natural, adopted, or step child under the age of twenty-one years, if adopted before the child reached the age of eighteen years, or if the marriage that created the stepchild relationship took place before the child reached the age of eighteen years. A disabled child of any age qualifies as an immediate relative if in the continuous custody and care of the parent;
- (o) “Mediation” means an informal, non-public, confidential meeting attended by the parties to a labor dispute or potential labor dispute together with a mediator designated by the Administrative Hearing Office in order to seek a voluntary resolution of the dispute satisfactory to all parties and reflected in a written agreement;
- (p) “Nonimmigrant alien” means a person described in Section 101 (a)(15) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15);
- (q) “Private sector” means economic activity carried on by business or non-business employers who are not governmental entities or entities owned or controlled by any government;

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- (r) “Repatriation” means the exit from the Commonwealth and travel to the point of hire for a foreign national worker or transitional worker, or immediate relative of a foreign national worker or transitional worker, by voluntary action; and in the case of death while in the Commonwealth, the embalming and shipment of the body to the point of hire;
- (s) “Secretary” means the Secretary of Labor;
- (t) “Status-qualified” refers to a participant in the workforce who is a citizen, CNMI permanent resident, or U.S. permanent resident or an immediate relative of a citizen, CNMI permanent resident, or U.S. permanent resident;
- (u) “Termination” means, with respect to an approved employment contract, the expiration of the contract according to its terms, termination by a party for cause or as otherwise permitted during the term of the contract, or termination by the Secretary for cause during the term of the contract;
- (v) “Transfer” means a process by which a foreign national worker who is or has been a party to an approved employment contract with one employer, or has adjusted status, becomes employed by a new employer without first exiting the Commonwealth;
- (w) “Transitional worker” means a nonimmigrant alien admitted by the federal government for employment in the Commonwealth after November 27, 2009 pursuant to the special provision to ensure adequate employment, Section 702(a) [§ 6(d)], of Pub. L. No. 110-229;
- (x) “U.S. permanent resident” means a person who has been granted permanent resident status by the United States; and
- (y) “Umbrella permit” means a permit issued prior to November 28, 2009 by the Department of Labor, the Department of Commerce, or under the authority of the Attorney General, to expire on November 27, 2011 or as may be extended, that protects the status of the holder to remain in the Commonwealth until revoked or expired.

Modified 1 CMC § 3806(d), (g).

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010); Amdts Adopted 30 Com. Reg. 28891 (Oct. 25, 2008); Amdts Proposed 30 Com. Reg. 28632 (Sept. 25, 2008); Adopted 30 Com. Reg. 28027 (Jan. 22, 2008); Proposed 29 Com. Reg. 27498 (Dec. 18, 2007); Proposed 29 Com. Reg. 27213 (Nov. 19, 2007).

Commission Comment: The 2010 amendments renumbered this section from § 80-20.1-201 and made no changes to the content of subsections (a), (d), (g), (l) and (s). The 2010 amendments changed subsections (h)-(i) and added all other subsections. The Commission added a semi-colon at the end of subsection (m) to correct a manifest error. The Commission struck the figures “21” and “18” from subsection (n) pursuant to 1 CMC § 3806(e). The Commission corrected the citation to Pub. L. No. 110-229 in subsection (w) pursuant to 1 CMC § 3806(g).

Part 100 - Commonwealth Employment Policies

Subpart A - Job Preference for Citizens

§ 80-20.1-101 Preference Requirement

(a) It is the policy of the Commonwealth that citizens, CNMI permanent residents and U.S. permanent residents shall be given preference for employment in the private sector workforce in the Commonwealth. This requirement underlies all regulations with respect to the hiring, renewal, transfer, and termination of employees everywhere in the private sector in the Commonwealth. Job preference is of critical importance to the Commonwealth because its isolated location does not allow its citizens the luxury of nearby alternative job markets, and jobs for its citizens are a key underpinning of the Commonwealth's small economy. Job preference is crucial to the Commonwealth's efforts to provide a U.S. standard of living for its citizens without becoming dependent upon government welfare payments.

(b) Job preference in the Commonwealth is consistent with, and a key underlying objective of, Pub. L. No. 110-229, the Consolidated Natural Resources Act (2008). The Senate Committee explained in its report: "Section 102(a) expresses Congressional intent to ... [extend] the INA with special provisions for ... providing *opportunities for locals to work*." The law directs the Secretary of the Interior "to assist employers in the Commonwealth in securing employees *first* from among citizens and nationals resident in the Commonwealth and, if an adequate number of such [local citizen] workers are not available, from among legal permanent residents, including lawfully admissible citizens of the freely associated states." Emphasis added.

(c) Job preference in the Commonwealth is consistent with, and expressly permitted by, Pub. L. No. 99-603, the Immigration Reform and Control Act (IRCA) (1986). That act provides in Section 274B the following:

"(2) EXCEPTIONS. --

Paragraph (1) [the prohibition on discrimination on the basis of citizenship status]

shall not apply to --

"(A) a person or other entity that employs three or fewer employees,

"(B) a person's or entity's discrimination because of an individual's national origin in the discrimination with respect to that person or entity and that individual is covered under section 703 "42 USC 2000e-2" of the Civil Rights Act of 1964, or

"(C) discrimination because of citizenship status which is otherwise required in order to comply with law, regulation, or executive order, or required by Federal, State, or local government contract, or which the Attorney General determines to be essential for an employer to do business with an agency or department of the Federal, State, or local government.

(d) Notice to those entitled to preference.

The benefits of job preference for citizens cannot be attained without adequate notice to allow qualified citizens to compete fairly for available jobs. Both federal and Commonwealth law recognize the essential requirement of adequate notice. Under the circumstances prevailing in the Commonwealth, notice of every vacancy in a full-time job in the private sector in the Commonwealth for which any alien may be hired must be given to all those entitled to a preference by the broadest means available, which is the Department's free interactive website, www.marianaslabor.net. Notice by other means is sufficient only if a person entitled to preference is hired.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

Commission Comment: The quotation marks in subsection (c) were left exactly as provided in the original. The Commission corrected citations to federal public laws pursuant to 1 CMC § 3806(g).

§ 80-20.1-105 Workforce Participation Objective

The stability and growth potential of the Commonwealth's economy depend upon active participation by U.S. citizens, CNMI permanent residents, and U.S. permanent residents in the workforce. Because the Commonwealth has a relatively small population, the goal of a U.S.-equivalent standard of living cannot be attained by a workforce composed solely of U.S. citizens, CNMI permanent residents, and U.S. permanent residents. That workforce is simply too small. As with many small communities in the U.S. that support private sector businesses, the Commonwealth needs to draw portions of its workforce from beyond its borders. However, in doing so, the Commonwealth recognizes the need to ensure adequate and meaningful opportunities for its citizens, CNMI permanent residents, and U.S. permanent residents to participate in the local workforce. The workforce participation objective is a means for accomplishing that goal.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

Subpart B - Secondary Preference for FAS Citizens

§ 80-20.1-110 Secondary Preference for FAS Citizens

FAS citizens who are currently in the Commonwealth shall be given a secondary preference for employment within the Commonwealth. FAS citizens are permitted by free association compacts with the United States to enter and work in the U.S. For that reason, FAS citizens are an available resource to augment the Commonwealth workforce.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

Subpart C - Workforce Support from Foreign National Workers and Transitional Workers

§ 80-20.1-115 Workforce Support from Foreign National Workers and Transitional Workers

Foreign national workers, transitional workers, and nonimmigrant aliens who fill jobs that support the CNMI economy, in an appropriate balance with the Commonwealth's objectives regarding citizen employment, are a valuable resource to the Commonwealth and their work and contributions are important.

Modified 1 CMC § 3806(g).

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

Commission Comment: The Commission added "and Transitional Workers" to the title of this section to be consistent with the table of contents in the original.

Subpart D - Collection of Administrative Awards

§ 80-20.1-120 Collection of Administrative Awards

The Commonwealth Employment Act of 2007, as amended in Section 4950, replaces the decisions in *Smith & Williams v. Royal Crown Ins. Co.*, NMI Super. Ct. Small Claims Nos. 06-0676 et al. (February 5, 2007) and *Zhou v. Oceania Ins. Corp.*, NMI Super. Ct. Small Claims Nos. 08-0452 et al. (February 5, 2009) so that complainants holding unpaid awards under orders issued by the Administrative Hearing Office of the Department of Labor may proceed with collection actions in the Commonwealth courts without first exhausting collection remedies at the Department of Labor. The Department may elect, but is not required, to pursue collection actions either against bonding companies or employers. In general, the Department will not pursue collection actions in individual cases because of resource constraints.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

Part 200 - Workforce Participation by Citizens, CNMI Permanent Residents, and U.S. Permanent Residents

Subpart A - General

§ 80-20.1-201 Appropriate Classification of Employers

(a) Employers in the Commonwealth shall be classified under the North American Industrial Classification System (NAICS). NAICS is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. NAICS was developed under the auspices of the federal Office of Management and Budget (OMB), and adopted in 1997 to replace the Standard Industrial Classification (SIC) system. Its manual and website include definitions for each industry.

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(b) Each employer shall select an appropriate NAICS classification for the nature of the enterprise or non-business activity conducted by the employer. The appropriate NAICS classification number shall be entered as required on Department forms.

(c) Employers without a self-selected NAICS classification or with an inappropriate self-selected NAICS classification shall be assigned a classification by the Department which shall be binding on the employer. Assignment of NAICS classification by the Department (and denial of the self-selected classification) may be appealed by filing an appeal with the Administrative Hearing Office. See § 80-20.1-455(h).

Modified 1 CMC § 3806(c).

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

§ 80-20.1-205 Fair Qualification for Employment

(a) Jobs performed in the Commonwealth shall be classified under the O*NET classification for each job in which any person is employed. The Occupational Information Network (O*NET) is a program of the US Department of Labor Employment and Training Administration that is the nation's primary source of occupational information. The O*NET database, contains information on hundreds of standardized and occupation-specific descriptors. The database, which is available to the public at no cost, is continually updated by surveying a broad range of workers from each occupation. Information from this database forms the heart of O*NET OnLine, an interactive application for exploring and searching occupations. The database also provides a set of valuable assessment instruments for workers looking to find or change jobs.

(b) Each employer shall select an appropriate O*NET classification for the each job performed by each employee or prospective employee for the employer. The appropriate O-NET classification shall be entered as required on Department forms.

(c) Employers without a self-selected O*NET classification for each job or with an inappropriate self-selected O*NET classification shall be assigned a classification by the Department which shall be binding on the employer. Assignment of an O*NET classification by the Department (and denial of the self- selected classification) may be appealed by filing an appeal with the Administrative Hearing Office. See § 80-20.1-455(h).

Modified 1 CMC § 3806(c).

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

Commission Comment: The Commission standardized the spelling of "O*NET" pursuant to 1 CMC § 3806(g).

Subpart B - Private Sector Workforce Participation

§ 80-20.1-210 Participation Objective

(a) In the workforce of any employer, the percentage of citizens, U.S. permanent residents, and CNMI permanent residents and the immediate relatives of citizens, US. permanent residents, and CNMI permanent residents (“status-qualified participants”) employed shall equal or exceed the percentage of status-qualified participants in the private sector workforce unless attainment of this goal is not feasible within the current calendar year after all reasonable efforts have been made by the employer.

(b) The workforce participation calculation applies at the time of hire of a foreign national worker, transitional worker, or other nonimmigrant alien. At that time, the actual number of employees who are status-qualified participants in the workforce is compared to the actual number of employees.

(c) For purposes of workforce participation:

(1) The workforce in the Commonwealth is defined in the same way as the labor force in the United States is defined, per the U.S. Department of Labor Bureau of Labor Statistics. It is based on the civilian noninstitutional population 16 years or older. (Persons in institutions such as nursing homes and prisons, and persons on active duty in the Armed Forces, are not included.) It is made up of persons with jobs (“employed”) and persons who are jobless, looking for jobs, and available for work (“unemployed”). Persons are available for work if they have a status or permit that allows work in the Commonwealth and are otherwise available for work. Persons who are not employed or unemployed are not in the workforce.

(2) The private sector workforce is the number of employed and unemployed persons (as defined in subsection (c)(1) above) residing in the Commonwealth less the number of persons employed by the Commonwealth or other governments, including all types of government entities.

(3) The percentage of status-qualified participants in the private sector workforce is the percentage derived from the decennial census or any other census conducted by the U.S. Census Bureau or from a survey as a part of the Current Population Survey or any other survey conducted by the U.S. Bureau of Labor Statistics, for a period of one year after the actual collection of the data (so that the data are not out of date), or, in the absence of current U.S. data as defined above, the percentage specified by the Department by regulation. The current percentage specified by the Department until other data become available is 30%.

(4) Persons retained by an employer as consultants, advisers, or agents who are independent contractors are not included in the number of status-qualified participants.

(d) Employment on more than one island. If an employer operates on more than one island, workforce participation is calculated in aggregate as to all islands, employees on any island are counted toward the aggregate minimum percentage on all islands.

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(e) Reductions in force.

The workforce participation objective applies to reductions in force.

(f) No waivers.

No waivers are available with respect to the workforce participation objective.

Modified 1 CMC § 3806(c).

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010); Amdts Adopted 31 Com. Reg. 29636 (June 22, 2009); Amdts Proposed 31 Com. Reg. 29557 (May 20, 2009); Amdts Adopted 30 Com. Reg. 28891 (Oct. 25, 2008); Amdts Proposed 30 Com. Reg. 28632 (Sept. 25, 2008); Adopted 30 Com. Reg. 28027 (Jan. 22, 2008); Proposed 29 Com. Reg. 27498 (Dec. 18, 2007); Proposed 29 Com. Reg. 27213 (Nov. 19, 2007).

Commission Comment: The Commission included the above history of former section § 80-20.1-230, entitled “Workforce Participation by Citizens and Permanent Residents.” The Commission corrected the capitalization of the word “employees” in subsection (e) pursuant to 1 CMC § 3806(f).

§ 80-20.1-215 Exemptions from Workforce Participation

(a) Employers with fewer than five employees.

The provisions of Section 4525 of the Commonwealth Employment Act of 2007, as amended, do not apply to employers with fewer than five employees except as provided in this section. For purposes of this section, all employees are counted in determining whether an employer has fewer than five employees. All such employers are subject to the job vacancy announcement requirements for all job vacancies and all such employers are subject to the job preference requirements as to citizens, CNMI permanent residents, and U.S. permanent residents.

(1) An employer against whom two or more judgments are entered in Department proceedings within any two year period automatically loses this exemption. No administrative proceeding is required to remove the exemption. A “judgment” for purposes of this section is a final action, which includes a decision of a hearing officer that has not been appealed within the time allowed, or a decision of the Secretary on a matter that has been appealed within the time allowed, provided however that a stay of the removal of the exemption may be provided by a court of competent jurisdiction. The exemption automatically becomes unavailable on the date on which the second judgment is entered. The term “two judgments” includes judgments in two separate actions or cases bearing two separate case numbers, and also includes judgments respect to two complainants in the same action or a case bearing only one case number.

(2) All retail establishments that handle food stamps shall employ at least one citizen, CNMI permanent resident, or U.S. permanent resident.

(3) An employer or business owner with fewer than five employees who has been in operation or who has held a business license in the Commonwealth for three years or more shall employ at least one citizen, CNMI permanent resident, or U.S. permanent resident.

(b) Particular construction project.

An exemption for a particular construction project is available by written order signed by the Secretary.

(1) A “particular” project means a project limited to one building or one infrastructure improvement. “Limited duration” means two years or less.

(2) An application for an exemption for a particular construction project shall be made in writing, signed by the employer, stating the name of the project, the purpose of the project, the nature of the construction, the location of the project, the total cost of the project, the duration of the project, the number of foreign national workers to be employed on the project, and the O*NET job classifications of the workers on the project.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010); Amdts Adopted 31 Com. Reg. 29636 (June 22, 2009); Amdts Proposed 31 Com. Reg. 29557 (May 20, 2009); Amdts Adopted 30 Com. Reg. 28891 (Oct. 25, 2008); Amdts Proposed 30 Com. Reg. 28632 (Sept. 25, 2008); Adopted 30 Com. Reg. 28027 (Jan. 22, 2008); Proposed 29 Com. Reg. 27498 (Dec. 18, 2007); Proposed 29 Com. Reg. 27213 (Nov. 19, 2007).

Commission Comment: The Commission included the above history of former section § 80-20.1-235, entitled “Exemptions.” The Commission corrected the spelling of “O*NET” in subsection (b)(2) pursuant to 1 CMC § 3806(g).

Subpart C - Private Sector Employment Preference

§ 80-20.1-220 Job Preference Requirement

(a) Job preference for citizens, CNMI permanent residents, and U.S. permanent residents. Employers shall give qualified citizens, CNMI permanent residents and U.S. permanent residents preference for employment in the private sector workforce in the Commonwealth over foreign national workers, transitional workers, and nonimmigrant aliens. No employer may hire a foreign national worker, transitional worker, or other nonimmigrant alien if a qualified citizen, CNMI permanent resident, or U.S. permanent resident applies for the job in a timely fashion. Immediate relatives of citizens, CNMI permanent residents, and U.S. permanent residents are not included in the job preference requirement, which mandates Department assistance to individuals. (Immediate relatives of citizens, CNMI permanent residents, and U.S. permanent residents are included in the workforce objective which mandates employer attention to minimizing the employment of nonimmigrant aliens.)

(b) Notice of job vacancies.

In order to ensure maximum participation of citizens, CNMI permanent residents and U.S. permanent residents in the private sector workforce in the Commonwealth, persons in these status categories are entitled to notice of every full-time job that becomes available or open in the Commonwealth with a fair opportunity to apply and demonstrate qualifications.

(c) Use of website for notice.

Notice of every vacancy in a full-time job in the private sector in the Commonwealth for which any person other than a citizen, CNMI permanent resident, or U.S. permanent resident may be hired must be given to all those entitled to a preference by the broadest

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means available, which is the Department's free interactive website, www.marianaslabor.net. Notice by other means is sufficient only if a person entitled to preference is hired.

(d) Other use of the website.

After satisfying registration requirements to maintain quality and in conformity with applicable procedures, any employer seeking to fill a vacancy and any person seeking employment may use the Department's website.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010); Amdts Adopted 30 Com. Reg. 28891 (Oct. 25, 2008); Amdts Proposed 30 Com. Reg. 28632 (Sept. 25, 2008); Adopted 30 Com. Reg. 28027 (Jan. 22, 2008); Proposed 29 Com. Reg. 27498 (Dec. 18, 2007); Proposed 29 Com. Reg. 27213 (Nov. 19, 2007).

Commission Comment: The Commission included the above history of former section § 80-20.1-210, entitled "Job Preference."

§ 80-20.1-225 Job Vacancy Announcement

(a) Posting.

An employer who intends to employ a foreign national worker, transitional worker, or nonimmigrant alien on a full-time basis (under any new employment arrangement, any renewal of any existing employment arrangement, or any transfer) must post a job vacancy announcement on the Department's website, www.marianaslabor.net.

(b) Content.

The posted job vacancy announcement shall include a job description, a statement of the wages to be paid, a statement of all benefits to be provided, and, if applicable, a statement that the job is posted in connection with a proposed renewal or transfer of a foreign national worker or is posted in connection with a proposed on-island hire of a transitional worker or off-island hire of a transitional worker or nonimmigrant alien. A job vacancy announcement for which a transitional worker or nonimmigrant alien with another federal credential may be hired must have content that satisfies U.S. Labor requirements. See 20 CFR 655.

(c) Job description.

The job description in a posted job vacancy announcement shall be defined by the appropriate Occupational Information Network (O*NET) classification. For specialty jobs not adequately defined by O*NET classifications, a parenthetical description may be appended to the closest O*NET classification.

(d) Wages.

The statement of wages in a posted job vacancy announcement shall include the hourly or bi-weekly amount to be paid.

(e) No waiver.

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There are no waivers available with respect to the job vacancy announcement requirement.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010); Amdts Adopted 30 Com. Reg. 28891 (Oct. 25, 2008); Amdts Proposed 30 Com. Reg. 28632 (Sept. 25, 2008); Adopted 30 Com. Reg. 28027 (Jan. 22, 2008); Proposed 29 Com. Reg. 27498 (Dec. 18, 2007); Proposed 29 Com. Reg. 27213 (Nov. 19, 2007).

Commission Comment: The 2010 amendments changed this section and renumbered it from former section § 80-20.1-215. The Commission corrected the spelling of “O*NET” in subsection (c) pursuant to 1 CMC § 3806(g).

§ 80-20.1-230 Employer Registration

Employers shall register online at www.marianaslabor.net in order to post job vacancy announcements. Registrants shall provide the Tax Identification Number issued by the Division of Revenue and Taxation and an industry code from the North American Industrial Classification System (NAICS) appropriate to their line of business. Approved employer registrations remain in effect until further notice from the Department.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010); Amdts Adopted 30 Com. Reg. 28891 (Oct. 25, 2008); Amdts Proposed 30 Com. Reg. 28632 (Sept. 25, 2008); Adopted 30 Com. Reg. 28027 (Jan. 22, 2008); Proposed 29 Com. Reg. 27498 (Dec. 18, 2007); Proposed 29 Com. Reg. 27213 (Nov. 19, 2007).

Commission Comment: The 2010 amendments changed this section and renumbered it from former section § 80-20.1-215(e).

§ 80-20.1-235 Job Referral

(a) Job applicant use of the website.
Any person may use the Department’s website to post a resume, review posted jobs, and contact employers who have posted jobs.

(b) Referral service.
The Citizen Job Placement Section shall provide a referral service for citizens, CNMI permanent residents and U.S. permanent residents in the Commonwealth. This service shall match information about prospective employees with information about job vacancies so that private sector jobs may be filled expeditiously with qualified citizens who are willing and able to do the work required by the employer.

(c) Job applicant registration for referral service. Citizens, CNMI permanent residents, and U.S. permanent residents may register with the Citizen Job Placement Section for assistance in finding employment in the Commonwealth. Registrants shall complete a standard form for registration online. Registration remains active for six months.

(d) Employment referrals.

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With respect to each job vacancy announcement, the Citizen Job Placement Section may refer to the employer one or more qualified candidates within ten working days after the job vacancy announcement has been posted.

(c) Employer action on referrals.

After receiving a referral from the Citizen Job Placement Section, an employer may take any of the following actions:

(1) Any citizen, CNMI permanent resident or U.S. permanent resident may be hired rather than a person referred without any justification required to be submitted to the Department.

(2) In cases where more than one applicant is referred by the Citizen Job Placement Section, any applicant referred may be hired rather than any other applicant referred without any justification required to be submitted to the Department.

(3) Employers may reject persons who are referred using the employer's normal hiring criteria in compliance with Commonwealth law with a short statement of reasons submitted to the Citizen Job Placement Section.

(4) Employers may reevaluate their employment needs and hire no one for the proposed position. In this case, the employer shall notify the Department that the vacancy no longer exists.

(d) Good faith effort to hire.

An employer must make a good faith effort to hire a citizen, CNMI permanent resident or U.S. permanent resident for a job vacancy apart from the referral service provided by the Department in the event that referral service is unsuccessful in locating a qualified applicant.

(e) Employer Declaration.

In the event that a citizen, CNMI permanent resident, or U.S. permanent resident was not hired, within fourteen days after publication, the employer shall file a declaration on a standard form in digital format with respect to the citizens and permanent residents who applied for the job, the action taken on each application, and a short statement of the reasons for rejecting any applicant who was referred. No declaration is required if a citizen or permanent resident is hired.

(f) Shortening of time.

Upon request to the Department and good cause shown, time requirements with respect to the job preference requirements may be shortened by the Department.

(g) Certification.

If no qualified citizen, CNMI permanent resident, or U.S. permanent resident applicant is identified through posting on the website, referral by the Department, or good faith efforts to hire, the Department shall issue to the employer a certification of compliance document in the standard form prescribed by the Department.

(h) Denial of certification.

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If insufficient justification is provided by the employer for failure to hire a citizen, CNMI permanent resident, or U.S. permanent resident, or if no statement is received within 14 days, certification may be denied by the Department. A denial may be appealed to the Administrative Hearing Office within fifteen days after the date of the denial. (See § 80-20.1-455(h).)

Modified 1 CMC § 3806(c), (e).

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010); Amdts Adopted 31 Com. Reg. 29636 (June 22, 2009); Amdts Proposed 31 Com. Reg. 29557 (May 20, 2009); Amdts Adopted 30 Com. Reg. 28891 (Oct. 25, 2008); Amdts Proposed 30 Com. Reg. 28632 (Sept. 25, 2008); Adopted 30 Com. Reg. 28027 (Jan. 22, 2008); Proposed 29 Com. Reg. 27498 (Dec. 18, 2007); Proposed 29 Com. Reg. 27213 (Nov. 19, 2007).

Commission Comment: The 2010 amendments changed this section and renumbered it from former section § 80-20.1-220.

§ 80-20.1-240 Reductions in Force

(a) The rights and remedies afforded all employees under this subchapter and the obligations imposed upon employers, are in addition to, and not in lieu of, any other contractual or statutory rights and remedies. In particular, the regulations in this subchapter do not excuse employers from the requirements of the federal Worker Adjustment and Retraining Notification Act (the “WARN Act”), 21 U.S.C. § 2101 et seq. (1988)*, pursuant to which covered employers must provide affected employees and specified government entities at least 60 days notice of a mass lay-off or company closure.

(b) Circumstances of economic necessity may require an employer to reduce the workforce or close the business. Employers have the right to make such decisions. However, because Commonwealth law requires job preference for citizens, CNMI permanent residents, and U.S. permanent residents, the right of employers of these participants to reduce their workforce with respect to these participants is not unlimited.

(c) Before commencement of a reduction in force, an employer shall give at least 60 days written notice to the Department and at least 30 days notice to each affected employee on the standard form provided by the Department.

(d) The effective date of a reduction in force is a date at least 30 days after the employees to be laid off have received notice of termination due to reduction in force, downsizing, or closure of the business.

(e) The employer shall allow representatives from the Department to meet on employer premises with the employees to be laid off, during work hours. The purpose of the meeting shall be to advise the employees of their rights and responsibilities in connection with the lay-off, and to answer their questions.

(f) The employer shall layoff foreign national workers, transitional workers, and nonimmigrant aliens before laying off citizens, CNMI permanent residents, and U.S. permanent residents in the same O*NET job classification or any O*NET job classification with lesser requirements except as agreed with the Department or in the event a job in a lesser O*NET classification is refused. The employer may lay off aliens in any order except that the employer shall lay off aliens other than citizens of the freely associated states before laying off citizens of the freely associated states in the same O*NET job classification or any O*NET job classification with lesser requirements except as agreed with the Department or in the event a job in a lesser O*NET classification is refused.

(g) The employer shall cooperate with the Department by providing documentation as necessary to allow the Department to account for all of the laid off employees. The Department may conduct an investigation related to lay-offs in the event foreign national workers, transitional workers, or nonimmigrant aliens remain employed by the employer. Nothing in this section shall be construed to limit the right of employees to file meritorious complaints against an employer for violations of the Commonwealth Employment Act of 2007, as amended, the Minimum Wage and Hour Act, as amended, the WARN Act, or this subchapter, related to the lay-off.

* So in original. See Commission Comment.

Modified 1 CMC § 3806(d).

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010); ; Amdts Adopted 31 Com. Reg. 29636 (June 22, 2009); Amdts Proposed 31 Com. Reg. 29557 (May 20, 2009); Amdts Adopted 30 Com. Reg. 28891 (Oct. 25, 2008); Amdts Proposed 30 Com. Reg. 28632 (Sept. 25, 2008); Adopted 30 Com. Reg. 28027 (Jan. 22, 2008); Proposed 29 Com. Reg. 27498 (Dec. 18, 2007); Proposed 29 Com. Reg. 27213 (Nov. 19, 2007).

Commission Comment: The 2010 amendments changed this section and renumbered it from former section § 80-20.1-420. The Commission corrected the spelling of “O*NET” in subsection (f) pursuant to 1 CMC § 3806(g).

The current version of 21 U.S.C. § 2101, referenced in subsection (a), contains food safety laws, not the WARN act.

Subpart D - Private Sector Compliance with Resident Worker Fair Compensation Act

§ 80-20.1-245 The Resident Worker Fair Compensation Act

(a) The Act¹ requires:

All benefits mandated by law to be given to non-resident workers, including, but not limited to subsidized food, housing, local transportation, health insurance, or medical expenses must also be given to resident workers as provided herein. These benefits may be provided in the form of in-kind benefits or in a cash equivalent, at the option of the

¹ 4 CMC § 9503

resident worker. Such in-kind benefits or cash equivalent shall be provided to all resident workers in jobs where the standard hourly wage is less than \$5.15, or the prevailing United States Federal minimum wage, whichever is higher. Any cash compensation benefit shall be added to resident workers' base wages or salary.

Modified 1 CMC § 3806(g).

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

Commission Comment: The Commission added an apostrophe to “workers” in the last sentence of subsection (a) to correct a manifest error. The Commission corrected the capitalization of “federal” pursuant to 1 CMC § 3806(f). Footnote in original.

§ 80-20.1-250 Classification of Workers

(a) Federal minimum wage.

The term “prevailing United States federal minimum wage” as that term is used in the Resident Worker Fair Compensation Act means the federally-mandated minimum wage applicable to the Commonwealth.

(b) Resident workers.

The term “resident workers” as that term is used in the Resident Worker Fair Compensation Act includes citizens, CNMI permanent residents, and U.S. permanent residents. Resident workers are covered by the Resident Worker Fair Compensation Act if they are paid an hourly wage less than \$5.15 per hour. When the federally-mandated minimum wage applicable to the Commonwealth exceeds \$5.15 per hour, then resident workers who earn less than that minimum wage will be covered.

(c) Non-resident workers.

The term “non-resident workers” as that term is used in the Resident Worker Fair Compensation Act includes all foreign national workers, transitional workers, and other nonimmigrant alien employees who earn less than \$5.15 per hour or the federally mandated minimum wage applicable to the Commonwealth, whichever is higher.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

Commission Comment: The Commission corrected the capitalization of “federal” in subsection (a) pursuant to 1 CMC § 3806(f).

§ 80-20.1-255 Benefits

(a) Benefits mandated by law.

The benefits mandated by law with respect to enforcement of the Resident Worker Fair Compensation Act are those related directly to and arising out of compensation involved in the employment relationship.

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(1) Benefits mandated by federal law are social security benefits and worker compensation benefits.

(2) Benefits mandated by Commonwealth law are health insurance or payment of medical expenses.²

(b) Subsidized benefits.

“Subsidized” benefits as that term is used in the Resident Worker Fair Compensation Act means benefits provided at employer expense the fair value of which is not deducted by the employer from the employee’s wages.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

Commission Comment: Footnote in original.

§ 80-20.1-260 Payment of Benefits by Employers

(a) Federal benefits.

Employers shall provide benefits under federal law to all employees as required under federal law.

(b) Commonwealth benefits.

Employers shall provide benefits under Commonwealth law to resident workers as follows:

(1) Health insurance. Health insurance coverage provided by an employer for nonresident workers, the premiums for which are not deducted from wages, shall be provided for resident workers covered by the Act on an equivalent basis.

(2) Medical expenses. (RESERVED. The health care reform legislation recently enacted by the U.S. Congress has not yet been put into effect in the Commonwealth. After this legislation is in effect, further regulation with respect to medical expenses will be considered in light of any mandated insurance coverage that may apply.)

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010); Amdts Adopted 30 Com. Reg. 28891 (Oct. 25, 2008); Amdts Proposed 30 Com. Reg. 28632 (Sept. 25, 2008); Adopted 30 Com. Reg. 28027 (Jan. 22, 2008); Proposed 29 Com. Reg. 27498 (Dec. 18, 2007); Proposed 29 Com. Reg. 27213 (Nov. 19, 2007).

Commission Comment: The Commission included the above history of former section § 80-20.1-414, entitled “Medical Insurance and Other Benefits.”

² Public Law 15-108, § 4932, provides: Medical insurance. Employers shall pay all expenses of necessary medical care for foreign national workers except as provided by regulation. After commencement of operation of the LHIRF as provided in subsection (d) of this section, employers of foreign national workers shall be required to have an approved health insurance contract providing coverage for each foreign national worker employed. This contract shall be effective upon entry of the foreign national worker to the Commonwealth and may be cancelled upon the expiration of the employer’s obligation as provided in subsection (b) of this section.

Part 300 - Workforce Participation by Aliens

Subpart A - FAS Citizens

§ 80-20.1-301 Status

FAS citizens may reside and work in the Commonwealth pursuant to the compacts between the Freely Associated States and the United States. The immediate relatives of FAS citizens are permitted under Commonwealth law to work in the Commonwealth so long as the FAS citizen sponsor resides in the Commonwealth.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

§ 80-20.1-305 Secondary Preference

Qualified FAS citizens have a secondary preference for available jobs in the private sector in the Commonwealth. The Department shall provide assistance to FAS citizens residing in the Commonwealth in the use of the Department's website to post resumes and locate employment. FAS citizens who fill jobs that support the CNMI economy, in an appropriate balance with the Commonwealth's objectives regarding citizen employment, are a valuable resource to the Commonwealth and their work and contributions are important.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010); Amdts Adopted 30 Com. Reg. 28891 (Oct. 25, 2008); Amdts Proposed 30 Com. Reg. 28632 (Sept. 25, 2008); Adopted 30 Com. Reg. 28027 (Jan. 22, 2008); Proposed 29 Com. Reg. 27498 (Dec. 18, 2007); Proposed 29 Com. Reg. 27213 (Nov. 19, 2007).

Commission Comment: The 2010 amendments changed this section and renumbered it from former section § 80-20.1-210(b).

§ 80-20.1-310 Job Preference

(a) Statutory basis.

An underlying purpose of Pub. L. No. 110-229, the Consolidated Natural Resources Act, is to promote the employment of FAS citizens in priority over guest workers. Section 702(a)(2)(D) declares the intention of Congress to maximize the Commonwealth's potential for future economic and business growth by "providing opportunities for individuals authorized to work in the United States, including citizens of the freely associated states." Section 702(a) [Section 6(d)(2)] provides with respect to the goal of reducing the number of nonimmigrant alien workers to zero: "This system may be based on any reasonable method and criteria determined by the Secretary of Homeland Security to promote the maximum use of, and to prevent adverse effects on wages and working conditions of, workers authorized to be employed in the United States, including lawfully admissible freely associated state citizen labor." Section 702(e) provides for "technical assistance, including assistance in recruiting, training, and hiring of workers, to assist employers in the Commonwealth in securing employees first from among United States

citizens and nationals resident in the Commonwealth and if an adequate number of such workers are not available, from among legal permanent residents, including lawfully admissible citizens of the freely associated states.”

(b) Method.

An FAS citizen who wishes to claim a secondary job preference shall provide to employers the necessary information about FAS citizenship. Once that information is provided by an applicant or is known to an employer, the preference for qualified FAS citizens over any other nonimmigrant alien shall operate as provided in subpart C of Part 200 after the preference for citizens, CNMI permanent residents, and U.S. permanent residents.

(c) Access to dispute resolution.

FAS citizens may utilize the Department’s dispute resolution system as provided in Part 400.

Modified 1 CMC § 3806(g).

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

Commission Comment: The Commission inserted “of” in between “number” and “nonimmigrant” in subsection (a) to correct a manifest error. The Commission substituted the reference numbers in subsections (b) and (c) pursuant to 1 CMC § 3806(d). The Commission corrected the citation to Pub. L. No. 110-229 pursuant to 1 CMC § 3806(g).

Subpart B - Umbrella Permit Holders

§ 80-20.1-315 General

(a) Umbrella permit categories.

Umbrella permits are in the following categories:

- 240B Nonimmigrant aliens who are CNMI government employees
- 240D Immediate relatives of citizens, CNMI permanent residents, and U.S. permanent residents
- 240E Immediate relatives of nonimmigrant aliens who have permits to be employed or invest in the Commonwealth
- 240G Foreign investors
- 240H Foreign students
- 240K Foreign national workers
- 240L Foreign ministers
- 240M Foreign missionaries
- 240N Foreign business owners
- 240O Foreign retirees
- 240P Nonimmigrant aliens who are witnesses and victims of crime

(b) Term and conditions.

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Umbrella permits have a term of two years from November 27, 2009 to November 27, 2011 or until the end of any extension of this period unless earlier revoked by the Department. Every umbrella permit was issued pursuant to conditions stated on the face of the permit. The conditions applicable to the various categories of permits are reproduced at Appendix B.

(c) Report-back date.

Each permit has on its face a report-back date. This is a date on or before which the Department will confirm that the conditions under which the permit was issued continue to be met. Report-back dates were assigned in the categories described in Appendix C. The report-back date is an important measure for ensuring compliance with employment requirements. In the event the Department is unable to confirm that conditions continue to be met, the permit will be revoked.

(d) Correcting permits.

Umbrella permits that contain incorrect information may be corrected by order of a hearing officer upon good cause shown. Application should be made to the Administrative Hearing Office.

(e) Replacing permits.

Umbrella permits that have been lost may be replaced in connection with the holder's next employment or registration. When the employment or registration is approved or completed, the umbrella permit will be replaced. The Department will provide confirmation, by telephone or e-mail, to a prospective employer that the holder is entitled to a replacement permit as a part of the Department's employment documentation process.

(f) Revocation of permits.

Umbrella permits may be revoked by order of a hearing officer for failure to comply with Commonwealth law or regulations; failure to appear at a hearing or failure to comply with an order of a hearing officer; material failure to comply with the terms and conditions of a permit (including payment of medical expenses); failure to register to transfer; unemployment beyond the period permitted by Commonwealth law or extensions granted by a hearing officer; employment without a permit issued pursuant to federal or Commonwealth regulations except employment allowed by Commonwealth regulations to be performed without a permit; material false statement in connection with the issuance, correction, or replacing of a permit; or conviction of a felony or more than one misdemeanor.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

§ 80-20.1-320 Requirements for Permit Holders, General

(a) Report-back date.

On or before this date, the holder of the permit must demonstrate continued satisfaction of the conditions under which the permit was granted. Satisfaction of conditions may be demonstrated by Department records, as with a current registration to transfer or extension of time, online by filling out the Department's form in this regard, by mailing in records, as with the family records for qualification as an immediate relative, or by appearing personally if that is necessary to respond to a notice of hearing.

(b) Health certification.

The holder of an umbrella permit must have a health certification from the Commonwealth Health Center or a provider approved by the Commonwealth Health Center that was issued no more than 12 months ago.

(c) Documentation.

The holder of an umbrella permit must have a valid passport.

(d) Registration.

Annual registration is required unless the federal authorities elect to register all nonimmigrant aliens in the Commonwealth pursuant to their authority under Pub. L. No. 110-229. Registration is required on or before the anniversary date of the current or last permit. Registration may be completed in person at the Guest Worker Section, by mail using a form available on the Department's website, or (after July 1, 2010) on line. Immediate relatives may need to provide a bond or suitable alternative assurances to cover medical and repatriation expenses. With registration, a prior Commonwealth-issued work permit (for those who have no umbrella permit) may be amended or extended for good cause shown.

(e) Adjustment of status while within the Commonwealth.

A person seeking to adjust status to permit work in the private sector may register to transfer. After registration, the person seeking to adjust status shall present a suitable employer pursuant to this subchapter, and obtain an order from the Administrative Hearing Office, upon good cause shown, permitting change of status and transfer employment. Exit from the Commonwealth is not required in order to adjust status.

Modified 1 CMC § 3806(d).

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

Commission Comment: The Commission corrected the citation to Pub. L. No. 110-229 pursuant to 1 CMC § 3806(g).

§ 80-20.1-325 Requirements for Permit Holders, Employment-Qualified

(a) Employment-qualified permits.

(1) Permitted employment. Holders of permits in 240D, 240G, 240H, 240N, 240O and 240P categories may, but are not required to, work. Holders of 240D and 240P permits may work without restrictions. Holders of 240G and 240N permits (and their

immediate relatives) may work without restriction but only in the business enterprises in which they have invested. Holders of 240H permits may work only part-time and only in employment consistent with their educational program as provided in Department of Commerce regulations.

(2) Required employment. Holders of permits in 240B, 240K, 240L, and 240M categories are required to maintain employment.

(b) Employment.

Permit holders in the categories that require employment shall remain productively employed on a self-sustaining basis.

(1) Full-time employment. Full-time employment is employment of 30 hours per week or more for a single employer. A foreign national worker may be employed by only one employer on a full-time basis.

(2) Part-time employment. Part-time employment is employment of no more than 32 hours a month for a single employer. A foreign national worker may be employed by more than one employer on a part-time basis.

(3) Minister and missionary employment. A minister or missionary may be employed by a bona fide religious undertaking without regard to the requirements of Part 200. "Bona fide non-profit religious undertaking" means a religious organization legally established or incorporated in the Commonwealth that is exempt from Commonwealth taxation or U.S. taxation as an organization described in 26 U.S.C. § 501(c)(3).

(4) Service provider employment. A foreign national worker who is currently eligible to work in the Commonwealth and who has been employed successfully in the Commonwealth for ten years or longer may become a service provider and sell his or her services, but not any kind of goods or products or the services of others, upon approval by the Secretary and in compliance with the equivalent of section 80-20.1-330(e) (self-paid bonding), section 80-20.1-330(f) (financial capability), section 80-20.1-330(o) (self-paid medical expenses), section 80-20.1-330(u) (self-paid repatriation) and section 80-20.1-635(c) (self-paid Commonwealth fee). A service provider must be in good standing with respect to payment of all taxes and charges of the Commonwealth Health Center.

(c) Transfer by administrative order.

Permit holders may transfer only pursuant to an administrative order issued by a hearing officer.

(1) A foreign national worker may transfer, without regard to job classification, wage rate, or terms of employment, so long as the employment contract for the transferred worker is approved by the Department.

(2) A foreign national worker may register to transfer at any time from thirty days prior to, and up to fifteen days after, the termination of the worker's approved employment contract or at other times permitted by a hearing officer or this subchapter. In the event that the employer has failed to give the required thirty days notice of nonrenewal, the worker has an automatic extension for thirty days of the time to register. Registration to transfer shall be on the Department's standard form and shall allow the foreign national worker thirty days in which to find employment and file an employer intent form identifying the prospective employer and employment.

(3) Extensions of time within which to locate an employer may be granted by the Administrative Hearing Office upon application submitted within ten days of the report-back date on an umbrella permit or the expiration of the thirty-day period following registration or the expiration of any prior extension of time.

(i) The Department has the discretionary right to grant or deny an extension. Unemployed foreign national workers create a risk of additional burdens for Commonwealth tax payers, and Commonwealth law grants no right to an extension of time to transfer. Any applicant for an extension of time must assume full responsibility for medical and repatriation expenses under terms that the hearing officer finds sufficient to avoid possible burdens on Commonwealth taxpayers and must pay the administrative fee assessed to meet the Department's costs in handling extension requests. No fee waivers will be granted.

(ii) Extensions of time may be granted upon a showing that the applicant holds a valid umbrella permit, has had a prior history of successful employment in the Commonwealth, has located a named employer for a specified job and needs additional time to complete arrangements or has described in detail specific skills to become successfully employed, recent actions taken to locate work, and specific facts that support reasonable cause to conclude that employment will be located within the next thirty days.

(iii) The hearing officer will consider the applicant's written application and may, but is not required to, consider the Department's records as to the applicant's employment history, registration, permit, and prior requests for extensions of time in deciding whether to grant an extension of time. The Department has no obligation to make any investigation with respect to an applicant's circumstances or to develop any factual record or to inquire into the credibility of claims. The hearing officer may consider any extended period of unemployment as reasonable cause to conclude that employment will not be located within the next thirty days.

(iv) Nearly all individual employment situations are different, and the fact of the grant of an extension of time to any particular applicant provides no support for the grant of a request made by any other applicant unless that support is stated in specific detail in the application.

(v) Extensions of time, if granted, are generally for thirty days and may be granted for longer periods depending on the applicant's skills, the circumstances of the applicant's search for employment, and the Department's available resources to deal with extension requests. No applicant has any entitlement to any specific period of extension.

(vi) In the event a request for an extension of time is denied on the written record, a request may be submitted for reconsideration with a hearing. See § 80-20.1-485(i), § 80-20.1-615.

(4) A foreign national worker who remains in the Commonwealth after the expiration of the employer's responsibility for medical expenses shall be personally responsible for his or her medical expenses, and failure to pay outstanding bills for medical expenses or lack of means to pay significant medical bills that may be incurred in the future may be considered by hearing officers under appropriate circumstances with respect to eligibility to transfer.

(5) A foreign national worker may not transfer to an employer on the Barred List or an employer lacking sufficient financial capability to ensure payment of obligations for wages, medical expenses, and repatriation expenses.

(6) Each employer intent form shall circulate to all sections within the Department. If no objection is received, a hearing officer may issue an order granting permission to transfer. If an objection is received, the employer or employee may make a written offer of compliance which may be considered and approved or rejected without a hearing, or a hearing officer shall conduct a hearing on the objection and the burden of proof is on the objecting officer of the Department. After grant of permission to transfer, the standard procedures for transfer will apply. (See § 80-20.1-330(s)). Denial of permission to transfer may be appealed. (See § 80-20.1-490.)

(d) Identification.

A foreign national worker must keep his or her identification card in his or her personal possession at all times during the worker's working hours or when on a plane or boat during business hours. "Personal possession" means actual physical possession on the person or within the immediate reach of the person. Personal possession shall not be a requirement when the foreign national worker is receiving medical treatment or when physical possession would not be practicable, at which time the identification card shall be kept within a reasonable distance of the foreign national worker. This requirement is not in conflict with the Anti-Trafficking Act of 2005 which makes confiscation of travel documents for the purpose of controlling an alien's movements a criminal offense. A foreign national worker who is not currently employed under an approved employment contract (and therefore cannot be located at the employer's address) must provide a current residence address and telephone contact to the Department and update that information as necessary so that the foreign national worker may be located by the Department.

(e) Exit after the contract term.

Each foreign national worker is required to exit the Commonwealth within thirty days after the date of termination of an approved employment contract unless the contract is renewed, or a case or transfer is pending, or the worker has filed for an extension in connection with processing a transfer or filing a complaint.

(f) Stay for litigation purposes.

(1) Extension for purposes of filing a claim. An automatic extension of an additional thirty days to exit the Commonwealth after the date of termination of a contract is available if the foreign national worker is in the process of preparing a complaint to be filed with the Labor Department, a complaint in a civil matter to be filed with the any court, or a complaint to the Department of Public Safety with respect to a criminal matter.

(2) Extension by order of a hearing officer. A foreign national worker who attends a mediation session after filing a complaint (see section 80-20.1-465) may request an extension of time for departure from the Commonwealth from the hearing officer. In deciding a request for extension of time the hearing officer shall consider whether the foreign national worker is likely not to appear at the hearing, the foreign national worker may continue a fraudulent scheme to the detriment of the Commonwealth, or equivalent circumstances exist. A hearing officer's order granting an extension of time shall also set an initial hearing date in the matter. A denial of a request for an extension of time may be

appealed to the Administrative Hearing Office within fifteen days after the date of the denial. (See section 80-20.1-455(h).)

(3) Extension by order of a court. A foreign national worker who files an action with a court may request from a court an extension of time for departure from the Commonwealth and permission to seek temporary work pending resolution of the case. The court order in these regards shall be presented to the Chief of the Enforcement Section who shall allow temporary work on the same terms as would be available from a hearing officer.

Modified 1 CMC § 3806(c), (d), (e).

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010); Amdts Adopted 31 Com. Reg. 29636 (June 22, 2009); Amdts Proposed 31 Com. Reg. 29557 (May 20, 2009); Amdts Adopted 30 Com. Reg. 28891 (Oct. 25, 2008); Amdts Proposed 30 Com. Reg. 28632 (Sept. 25, 2008); Adopted 30 Com. Reg. 28027 (Jan. 22, 2008); Proposed 29 Com. Reg. 27498 (Dec. 18, 2007); Proposed 29 Com. Reg. 27213 (Nov. 19, 2007).

Commission Comment: The Commission included the above history of former sections § 80-20.1-412 and 418, entitled “Standard Conditions of Employment” and “Transfer by Administrative Order,” respectively. The Commission substituted section numbers pursuant to 1 CMC § 3806(d).

§ 80-20.1-330 Requirements for Employers, Full-time Employment of Permit Holders

(a) General.

(1) Business employer. An employer of any foreign national worker other than a domestic helper, farmer, or household maintenance or yard worker must hold a business license. An employer who holds a business license may be a corporation, partnership, or other legal entity, or may be a single individual person in a sole proprietorship.

(2) Non-business employer. A non-business employer is a single individual person who is not incorporated or operating as a partnership or limited liability company and who does not have a business license. A non-business employer may employ a foreign national worker only as a domestic helper, a farmer, a household maintenance worker, or a yard worker.

(3) Employment permitted. An employer may employ any foreign national worker holding an umbrella permit or other current employment credential in any job category, in compliance with the job preference and workforce participation requirements in Part 200.

(b) Written employment contract.

In order to prevent disputes and to help ensure employment under lawful conditions, full-time employment of a foreign national worker must be pursuant to a written employment contract. A standard form contract is provided by the Department for this purpose. Equivalent contract forms may be used.

(c) Department approval.

In order to ensure compliance with Commonwealth law and to guard against unfair employment practices, Department approval is required for each employment contract

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with a foreign national worker. An application for approval of an employment contract must be signed by a director, officer, or manager of a corporation or other business organization and must be submitted to the Department on a standard form provided by the Department or the equivalent in person by an employee of a corporation or other business organization who shall present sufficient identification and proof of status. An application must be signed and submitted in person by a non-business employer. No person who is an agent and no person holding a power of attorney may sign or submit an application. Approval or denial of the application shall be on a standard form. A denial may be appealed to the Administrative Hearing Office within fifteen days after the date of the denial. (See § 80-20.1-455(h).)

(d) Documentation.

An application for approval of an employment contract shall be accompanied by the following documentation:

(1) Certification of compliance with the job vacancy announcement requirements.

If posting of a job vacancy announcement is required (see Section 80-30.2-465* above), the application must be accompanied by a certification that the job vacancy announcement requirement has been met.

(2) Proposed employment contract. A standard form contract provided by the Department and signed by the foreign national worker that complies with all applicable Commonwealth laws.

(3) Employer waiver, consent and certification. A waiver, consent, and certification shall be provided in the form provided by the Department.

(i) A waiver shall be provided of rights to confidentiality concerning records with respect to the employer in the possession of other government agencies. Such records may be made available to the Department upon its request, for purposes of administering the labor laws.

(ii) An express written consent shall be provided with respect to administrative inspections by the Department of the employer's worksites.

(iii) A certification shall be provided, under penalty of perjury, by the employer of satisfaction and compliance with all Commonwealth statutory and regulatory requirements for preference for the employment of citizens, CNMI permanent residents and U.S. permanent residents; and an attestation that the statements made in the application, the contract, and the supporting papers are true.

(iv) A non-business employer (an employer who does not have a business license) must certify, in addition, that he or she is not receiving certain specified government assistance and has met the financial requirements.

(See § 80-20.1-330(f)(2).)

(4) Receipt for payment of fee. Receipt for payment of the fee required under § 80-20.1-635.

(e) Approved security contract.

Prior to the commencement of work by a foreign national worker, an employer shall submit to the Secretary a bond or other security arrangement providing financial assurance, in an amount acceptable to the Secretary, for the faithful performance of the obligations of the employer for payment of wages and overtime, payment of medical

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expenses, and payment of repatriation expenses for the worker. The Secretary will accept bonds from insurance companies licensed by and in good standing with the Department of Commerce.

(f) Employer capability to meet financial obligations.

An employer must be financially able to meet the obligations of an employment contract. The Department shall evaluate employer financial capability upon receipt of an application for an approved employment contract (initial, renewal, or transfer).

(1) Financial requirements for business employers. The Manager of the Guest Worker Section may request such evidence of financial capability as is required for an evaluation of the financial capability of the business. The Manager of the Guest Worker Section may reject an application for an approved employment contract upon a finding that the employer has presented insufficient evidence that the employer is financially capable.

(2) Financial requirements for non-business employers. A non-business employer is a single individual person who is not incorporated or operating as a partnership or limited liability company and who does not have a business license.

(i) Non-business employers may employ full time foreign national workers only as domestic helpers, farmers, household maintenance workers, and yard workers.

(ii) Non-business employers must not currently be receiving nor within the past year have received assistance from the Nutrition Assistance Program, Security Supplemental Income from the Social Security Administration, any government subsidy in the form of public utilities from the Commonwealth Utilities Corporation, or low income housing from the Mariana Islands Housing Authority.

(iii) A non-business employer must earn an annual wage or salary equal to or greater than 150% of the United States Department of Health and Human Services Poverty Guidelines for the Territory of Guam.

(iv) Members of a household may aggregate their income for purposes of qualifying as a non-business employer, but every person whose income is considered for purposes of meeting the financial requirements of this section must sign the foreign national worker's approved employment agreement and thereby becomes fully responsible, jointly and severally, for all of the employer's obligations under the agreement.

(3) Tax standing. An employer must be in good standing with respect to the payment of all taxes in order to employ foreign national workers and, if requested by the Department, shall provide a certification of good standing from the Department of Revenue and Taxation.

(4) Outstanding awards, billings, and complaints. An employer must have no outstanding unpaid awards arising out of Department proceedings or outstanding billings on behalf of a foreign national worker from the Commonwealth Health Center that are more than 60 days in arrears, except matters on appeal. An employer with more than one outstanding complaint pending with the Department may not be a suitable employer. A proposed employment contract with a foreign national worker may be rejected if the employer has presented insufficient evidence that outstanding judgments or complaints should not disqualify the employer.

(g) Barred List.

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The Administrative Hearing Office shall maintain a Barred List containing the names of employers who have been barred from employing foreign national workers in an administrative order of a hearing officer, or in an order by the Secretary on appeal. The Barred List is available to the public. No employment contract shall be approved for an employer on the Barred List. Employers barred for a specific period of time shall be removed from the Barred List upon the expiration of the specified time period. Employers barred permanently may petition the Administrative Hearing Office to be removed from the Barred List.

(h) Contract term.

The usual approved employment contract provides for a one-year term. An employer and employee may agree on a two-year term, provided however that a foreign national worker employed under a two-year contract must provide a new health certification within the first month of the second year under the contract. Employers with special needs or specialty jobs may contract for a shorter period of time than one year.

(i) Wage rates.

Wages shall be stated in hourly terms unless the foreign national worker is overtime exempt, in which case wages shall be stated in bi-weekly terms. The wages of domestic helpers, farmers, household maintenance and yard workers shall be stated in hourly terms. No foreign national worker employed pursuant to this subchapter shall be paid less than the minimum wage provided by law. An approved employment contract shall provide that any future increase in the applicable minimum wage prior to the termination of the contract shall apply to work performed under the contract on or after the effective date of the increase.

(j) Location of worksite.

A foreign national worker may have one or more worksites, located on one or more islands, however the principal island where a foreign national worker will be assigned to work must be stated in the approved employment contract.

(k) Hours of work.

The hours of work shall be specified in the approved employment contract. Overtime work may be offered by the employer but not required. Any period of time during which the worker is required to be present at any location within the Commonwealth designated by his or her employer shall be considered working hours for purposes of determining wages and overtime pay. If a foreign national worker accepts employer-supplied housing, the employer shall not require the worker to remain in the housing during non-working hours or take or threaten to take any adverse action against the worker for refusing to remain in the housing during non-working hours. A domestic helper who lives in the same household as the employer and is on "sleeping time" or "rest time" is not on working hours.

(l) Payment of wages.

A foreign national worker shall be paid biweekly in cash or by check or direct deposit in a United States bank payable in United States currency in an amount specified in the

approved employment contract. Receipts for cash payments must be signed by the foreign national worker.

(m) Deductions from wages.

Each expense of the employer to be deducted from the wages of a foreign national worker shall be specified in the approved employment contract and the total deductions shall not exceed thirty percent of a worker's bi-weekly wages or the minimum permitted under the Fair Labor Standards Act (FLSA), whichever is less.

(1) Deductions by non-business employers. Non-business employers may deduct up to \$100 per month for housing and up to \$100 per month for food, local transportation and all other benefits even though the \$200 per month deduction may exceed the thirty percent limitation.

(2) Deductions under court or administrative order. Employers may deduct amounts required or allowed by court or administrative order without regard to the thirty percent limitation.

(3) Documentation of deductions. The amount of and reason for each deduction shall be identified on the wage statement or other documentation of wage payment provided to the employee.

(4) Loans and advances. Loans and advances may be agreed between an employer and foreign national worker in writing signed by the worker. However, repayment of loans and advances occurs under a separate arrangement and may not be accomplished pursuant to a deduction from wages absent a court or administrative order. Loans may not be made for recruitment, processing, or other employment-related fees.

(n) Documents.

A copy of the employment contract shall be provided to the foreign national worker by the employer within a reasonable time after signing by the parties. No employer may withhold from any foreign national worker any passport, entry or work permit, contract, or other document related to the status of the foreign national worker.

(o) Medical expenses.

Employers shall pay all expenses of necessary medical care for foreign national workers except that co-pay requirements under insurance contracts may be deducted from wages in compliance with § 80-20.1-330(m) and except as provided in this subchapter. (See § 80-20.1-335.) The last employer of record shall be responsible for medical expenses of the foreign national worker for up to a maximum of 96 days after termination of the approved employment contract to allow for the completion of transfers, cases, and appeals.

(p) Other Benefits.

Employers may but are not required to provide housing, food, transportation, and other benefits beyond medical care; and foreign national workers may not be required by an employer to utilize housing, food, transportation, or other benefits. If the employer provides housing, minimum standards apply. (See § 80-20.1-420.)

(q) Contract amendment and reduction in hours.

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An extension to an existing contract for up to six months or an amendment of the other terms of an existing contract may be agreed by the parties at any time during the term of the contract and filed with the Department on the standard form provided by the Department for that purpose. A contract extension or amendment does not require prior approval of, but may be denied by, the Department. A denial may be appealed to the Administrative Hearing Office within fifteen days after the date of the denial. (See § 80-20.1-455(h).)

(r) Contract renewal, non-renewal, and termination.

(1) Renewal. An approved employment contract may be renewed. No right to renewal for either the employer or foreign national worker is conferred by Section 4935 or any other section of the Commonwealth Employment Act of 2007, as amended, or this subchapter. Renewal is approved or denied by the Department taking account of the interests of the Commonwealth with respect to employment of citizens and permanent residents and enforcement of the requirements of the Commonwealth Employment Act of 2007, as amended, and this subchapter.

(i) Form. A request for renewal is made on the standard form provided by the Department. Renewal may be for any time period, provided however renewals shall be for no less than six months and no longer than the maximum allowed for initial contracts. (See 550.3-115*.)

(ii) A nonrefundable, nontransferable fee for renewal, as provided in Section 80-60.8*, must be paid at the time the request is submitted.

(iii) Time. A request for renewal shall be submitted no earlier than forty-five days prior to the termination date of the approved employment contract. Late fees may be imposed if a renewal request is submitted after the contract termination date. (See §550-60.8*.) Renewal requests filed more than sixty days after the contract termination date will be denied. A denial may be appealed to the Administrative Hearing Office. (See §50-50.6-155*.)

(iv) Documents. A request for renewal shall be accompanied by the signed employment contract and an approved security contract covering the foreign national worker to be renewed. An employer may submit a new employment contract with new terms as necessary. A request for renewal may be submitted and approved without an accompanying health certificate, but the health certificate must be submitted within sixty days of approval or the renewal is subject to revocation. A request for renewal may be submitted and approved if the Job Vacancy Announcement is on file (on line), but the JVA must be certified within sixty days of approval or the renewal is subject to revocation.

(v) No disputes. A request for renewal shall be accompanied by a certification by the employer and the employee that there are, as of the date of the application, no disputes pending between them, no complaints outstanding, and no grievances unaddressed.

(vi) Outstanding obligations. A renewal may not be granted if the employer has any outstanding payment more than sixty days in arrears with respect to any obligation to pay medical expenses or to pay any judgment in a Department proceeding, except those on appeal, or if the employer is on the Barred List.

(vii) Effect of denial. The denial of a request for renewal may be appealed to the Administrative Hearing Office within fifteen days after the date of the denial. (See § 80-

20.1-455(h.) While an appeal is pending, an employee may continue to work for the employer.

(2) Non-renewal. An employer may elect not to renew an approved employment contract of a foreign national worker. No reason need be given.

(i) Notice. An employer shall provide to the foreign national worker, obtain a signature acknowledgment from the worker for, and file with the Department a notice of the employer's intent not to renew on a standard form provided by the Department at least thirty days before the termination date in the approved employment contract.

(ii) Effect of failure to give notice. If an employer fails to give proper notice pursuant to subsection (a) above, the employer remains the last employer of record (responsible for medical expenses and repatriation) and is liable to pay the employee's full wages up to a maximum of thirty days beyond the termination date of the contract until notice is given and thirty days has elapsed. After the termination date of the contract, the employee is not required to work for the employer in order to be entitled to wages for the thirty-day period. At any time until thirty days after the termination date of the contract, the employee may register to transfer and proceed under § 80-20.1-330(s) or file a complaint and proceed under § 80-20.1-455(g) but may not pursue both avenues simultaneously.

(3) Termination. The parties may terminate an approved employment contract.

(i) Termination for cause. During the term of the contract, an employer or employee may terminate an approved employment contract for cause as defined in the contract. An employer shall give written notice to the foreign national worker and to the Department on a standard form provided by the Department at least ten days prior to the termination date. A foreign national worker may file a complaint with the Administrative Hearing Office contesting a termination for cause. The Department may investigate a termination to determine if the termination was in compliance with Commonwealth law and this subchapter.

(ii) Termination by consent. An employer and employee may terminate an approved employment contract by consent during the term of the contract. The consent of the employee shall be evidenced by an appropriate writing filed with the Department at least ten days prior to the termination date.

(iii) Termination by expiration. An approved employment is terminated automatically on the date of expiration of the term of the contract.

(iv) Last employer of record. Under any termination of an approved employment contract, the employer remains the last employer of record (responsible for medical expenses and repatriation) until the foreign national worker transfers, is repatriated; or in the case of medical expenses, a period of 96 days expires.

(s) Transfer.

An application for an approved employment contract in the case of a transfer must be submitted within the time allowed by administrative order. If an application for an approved employment contract is filed and has correctable deficiencies, an automatic extension of ten days from the end of the time allowed by administrative order is afforded to file a proper application. The employer and the foreign national worker are responsible for staying in contact with the Department and ensuring that no deficiencies remain at the end of the automatic extension. No further extensions will be granted and the transfer

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will be automatically denied if deficiencies remain. Denial of a transfer may be appealed to the Administrative Hearing Office within fifteen days after the date of the denial. (See § 80-20.1-455(h).) If a transfer is completed as required by this section, the new employer shall assume all legal responsibilities for the transferred foreign national worker, including but not limited to the costs of repatriation and medical expenses incurred on and after the date of approval of the employment contract. The new employer is not responsible for any of the obligations of the former employer up to the date of approval of the employment contract.

(t) **Accountability.**

Each employer is accountable for every foreign national worker for whom the employer has had an approved employment contract in effect at any time during the preceding calendar year and shall ensure that such persons are currently employed by the employer, have transferred to another employer by administrative order, have exited the Commonwealth, are otherwise accounted for as remaining in the Commonwealth lawfully, or are deceased. In the event that an employer becomes unable to account for a foreign national worker, the employer shall report to the Department within fifteen business days.

(u) **Responsibility for costs of repatriation.**

(1) **Last employer of record.** The last employer of record is the employer under the most recent approved employment contract, on file at the Department, with respect to the foreign national worker. The last employer of record is responsible for all of the costs of repatriation of a foreign national worker. Repatriation costs include the costs with respect to the embalming and transport of deceased workers back to the point of hire.

(2) **Employment on temporary work authorization.** An employer of a foreign national worker under temporary work authorization (see § 80-20.1-470(c)) is not responsible for repatriation costs.

(3) **Illegal employment.** An employer who employs a foreign national worker in violation of Commonwealth law or these regulations may be assessed full or partial repatriation costs by the Department.

(4) **Joint and several liability.** In situations in which there is a last employer of record and a foreign national worker has also been employed illegally by another employer, the Department may assess repatriation costs entirely to the last employer of record, entirely to the illegal employer, or partially to both employers. If a foreign national worker has been employed illegally and a last employer of record is assessed repatriation costs, that employer may recover the assessed repatriation costs from the illegal employer in an action before the Commonwealth Superior Court.

(5) **Appeals.** Within fifteen days of the issuance of an assessment of repatriation costs, any person or party affected by the assessment order may appeal the order in accordance with § 80-20.1-490. A standard form for an appeal is provided by the Department.

* So in original. Citation is to a non-existent section of the regulation.

Modified 1 CMC § 3806(c), (d), (e).

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History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010); Amdts Adopted 31 Com. Reg. 29636 (June 22, 2009); Amdts Proposed 31 Com. Reg. 29557 (May 20, 2009); Amdts Adopted 30 Com. Reg. 28891 (Oct. 25, 2008); Amdts Proposed 30 Com. Reg. 28632 (Sept. 25, 2008); Adopted 30 Com. Reg. 28027 (Jan. 22, 2008); Proposed 29 Com. Reg. 27498 (Dec. 18, 2007); Proposed 29 Com. Reg. 27213 (Nov. 19, 2007).

Commission Comment: The Commission included the above history of former sections § 80-20.1-404, 412 and 416, entitled “Approved Employment Contract,” “Standard Conditions of Employment” and “Contract Renewal, Non-renewal and Termination,” respectively. The Commission substituted section numbers pursuant to 1 CMC § 3806(d).

§ 80-20.1-335 Requirements for Employers, Other than Full-Time Employment of Permit Holders

(a) Part-time employment.

Any business or non-business employer may be a part-time employer.

(1) Hiring for part-time. An employer may employ a foreign national worker who holds an umbrella permit on a part-time basis for no more than 32 hours a month. No filing with the Department is required.

(2) Full-time employer responsibilities. An employer who has an approved employment contract with a foreign national worker for full-time work has no liability for wages for part-time work performed by that worker for another employer. The full-time employer remains responsible for medical expenses and repatriation obligations under the full-time employment contract with the foreign national worker.

(3) Part-time employer responsibilities. An employer who hires a foreign national worker for part-time work under circumstances in which the worker does not have a contract with another employer for full-time work becomes responsible for medical expenses and repatriation of the part-time employee until the employee stops working for the part-time employer.

(b) Contract with a service provider.

An employer who contracts for services with a foreign national worker who holds a service provider permit issued by the Department is not responsible for medical or repatriation expenses of the service provider and is not required to provide any bond to secure payment. A part of the service provider’s undertaking to secure the permit is sufficient financial capability and assurances to the Commonwealth in these regards.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010); Amdts Adopted 31 Com. Reg. 29636 (June 22, 2009); Amdts Proposed 31 Com. Reg. 29557 (May 20, 2009); Amdts Adopted 30 Com. Reg. 28891 (Oct. 25, 2008); Amdts Proposed 30 Com. Reg. 28632 (Sept. 25, 2008); Adopted 30 Com. Reg. 28027 (Jan. 22, 2008); Proposed 29 Com. Reg. 27498 (Dec. 18, 2007); Proposed 29 Com. Reg. 27213 (Nov. 19, 2007).

Commission Comment: The Commission included the above history of former section § 80-20.1-412, entitled “Standard Conditions of Employment.”

Subpart C - Transitional Workers

§ 80-20.1-340 General

The Commonwealth is a very small jurisdiction located very far from the administrative centers of the federal government. It has a very small economy that suffers from isolation, limited natural resources, limited transportation availability, a very small tax base, and the necessity to support services for its people that in the rest of the United States would rest on a much larger geographic and economic base. The presence of nonimmigrant aliens who enter the Commonwealth for employment helps support the economy if the aliens are gainfully employed under fair circumstances that do not generate undue disputes or financial burdens to the Commonwealth. The weaknesses of the controls in the U.S. immigration system with respect to preventing abuses of nonimmigrant aliens and failing to deport illegal aliens are well-documented, and many reform measures have been proposed in the U.S. Congress over the past decade to deal with these serious problems. The Commonwealth has had similar problems in the past, albeit on a much smaller scale in percentage and frequency terms. To deal with its problems, the Commonwealth has enacted a guest worker system that provides protection for both nonimmigrant aliens and Commonwealth taxpayers. Certain of those protections apply to transitional workers holding permits granted by the federal government because their employment in the Commonwealth is statutorily defined as temporary and subject to being reduced to zero and for that reason they are vulnerable, many transitional workers originally entered the Commonwealth on permits issued by the Commonwealth and have for many years relied on protections made available under Commonwealth law for which there are no analogs in federal law, and the social problems caused by failed employment arrangements with aliens fall almost exclusively on the Commonwealth's taxpayers. These protections do not burden the federal system in any way. They simply protect the Commonwealth with respect to economic and social burdens that would occur in the Commonwealth's unique circumstances if these protections were not available.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

§ 80-20.1-345 Requirements for Employers of Transitional Workers

(a) Notice.

Employers shall ensure that every transitional worker who enters the Commonwealth from another country is provided a notice in the standard form provided by the Department with respect to working conditions and requirements in the Commonwealth. Employers bringing transitional workers from countries requiring translation to other languages shall supply a translation. The notice shall be delivered to the transitional worker while in the home country before departure for the Commonwealth. Receipt of the notice shall be confirmed by the nonimmigrant worker upon arrival in the Commonwealth.

(b) Orientation.

Employers shall ensure that every transitional worker who enters the Commonwealth from another country attends the first orientation session available after date of entry unless excused for illness or other unavoidable circumstance. The orientation program in Saipan shall be presented every Tuesday morning at 9:00 a.m. at the conference room,

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second floor, Afetna Square Bldg, San Antonio, Saipan, unless rescheduled or canceled by the Department. The orientation program on Rota and Tinian will be scheduled as necessary.

(c) Standard employment requirements.

(1) Employers shall ensure that the requirements with respect to health certification (§ 80-20.1-320(b)) and registration (§ 80-20.1-320(d)) are met by each transitional worker.

(2) Employers shall ensure that the requirements with respect to written contracts (§ 80-20.1-330(b)), bonding (§ 80-20.1-330(e)), and standard conditions of employment (Sections 40.2-451-470*) are met with respect to each transitional worker.

(3) Employers are responsible for the costs of repatriation of each transitional worker. (§ 80-20.1-330(u))

* So in original. Citation is to a non-existent section of the regulation.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

Commission Comment: The Commission substituted section numbers pursuant to 1 CMC § 3806(d).

Part 400 - Labor Investigations and Dispute Resolution

Subpart A - Safe Workplace Conditions

§ 80-20.1-401 Safe Workplace Conditions

Every employer shall provide safe workplace conditions for all employees, including domestic helpers and farmers.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

§ 80-20.1-405 Safety Devices and Safeguards

Every employer shall furnish and ensure the use of such safety devices and safeguards (such as machine guarding, electrical protection, scaffolding, safe walking and working surfaces, means of egress in case of emergency or fire, ventilation, smoke exposure protection, personal protective equipment for eyes, face, head, and feet, fire protection, and sanitation) and shall adopt and use such means and practices as are reasonably adequate to render safe the employment and place of employment of all employees.

Modified 1 CMC § 3806(g).

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

Commission Comment: The Commission inserted a period at the end of this section to correct a manifest error and created the title of this section.

§ 80-20.1-410 Drinking Water

An employer shall provide an adequate supply of drinking water and sufficient and sanitary toilet facilities at the worksite or reasonable access there to.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

Commission Comment: The Commission created the title of this section.

§ 80-20.1-415 Occupational Safety and Health Regulations

The U.S. Department of Labor’s Occupational Safety and Health regulations as published and amended in the Code of Federal Regulations are recognized as the minimum standards required of every employer in the Commonwealth.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

Commission Comment: The Commission created the title of this section. The Commission corrected the spelling of “Safety” pursuant to 1 CMC § 3806(g).

§ 80-20.1-420 Employee Housing

The U.S. Department of Labor’s regulations with respect to employer-supplied housing, 20 CFR 654, Subpart E, are recognized as the minimum standards required of every employer in the Commonwealth who elects to provide employee housing unless a variance is obtained from the Department.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

Commission Comment: The Commission created the title of this section.

Subpart B - Lawful Employment Practices

§ 80-20.1-425 Lawful Employment Practices

Every employer shall maintain sufficient documentation to demonstrate compliance with federal and Commonwealth employment requirements as provided in law and applicable regulations.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

Subpart C - Inspections and Investigations

§ 80-20.1-430 Procedure for Inspections and Investigations

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(a) Inspections shall be conducted during normal business hours or, if an administrative warrant is obtained, at any other reasonable time under the circumstances.

(b) The investigator shall present himself or herself to the authorized representative at the worksite and shall provide identification as a Department investigator. The investigator shall inform the authorized representative at the worksite that the worksite has been chosen for inspection by the Department, and shall furnish to such person a copy of the current statutes and regulations authorizing worksite inspections.

(c) The investigator shall ask the authorized representative at the worksite if he or she consents to the inspection. If the authorized representative consents to the inspection, the investigator is authorized to inspect all areas of the worksite and premises. If the authorized representative refuses to permit entry, or does not consent to allow inspection of the worksite, the investigator may not proceed with the inspection unless an administrative warrant is obtained.

(d) In all cases where the authorized representative refuses to permit entry, does not consent to allow inspection of the worksite, or unreasonably obstructs the investigator in carrying out the inspection, the investigator shall serve notice upon the authorized representative of an administrative hearing at which the employer shall be required to show cause why the employer should not be sanctioned.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

§ 80-20.1-435 Violations

If upon inspection a violation is found of any provision of the Commonwealth Employment Act of 2007, as amended, the Minimum Wage and Hour Act, as amended, or the Department regulations promulgated pursuant to Commonwealth law, the investigator may, within thirty days:

(a) Warning.

Issue a warning to the responsible party to correct the violation. If the responsible party does not comply within ten days and correct the violation, the Chief of the Enforcement Section may issue a notice of violation.

(b) Notice of violation.

Issue a notice of violation to the responsible party. Upon issuance of a notice of violation, an action is opened in the Administrative Hearing Office with the Chief of the Enforcement Section as the complainant. If the notice of violation is issued in circumstances where the complaint has been filed with the Administrative Hearing Office by an individual complainant, the caption on the case may be amended to reflect the Chief of the Enforcement Section as the complainant.

Modified 1 CMC § 3806(e).

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History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

§ 80-20.1-440 Inspections Pursuant to Warrant

For purposes of Section 4939(g) of the Commonwealth Employment Act of 2007, as amended, “reasonable suspicion” means specific facts about the suspected employer or worksite justifying inspection efforts beyond the norm for businesses of that type.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

§ 80-20.1-445 Investigation

The Department may conduct investigations as necessary and appropriate to enforce the provisions of the Commonwealth Employment Act of 2007, as amended, and this subchapter to ensure lawful employment arrangements, payment of wages and overtime, working condition, employer-supplied benefits, and health and safety for employees. Pursuant to appropriate inter-agency arrangements, the Department may investigate related business license, tax, insurance, and other matters that intersect with its responsibilities for labor enforcement. In conducting these investigations, the Department’s investigator shall have all of the powers delegated and described with respect to inspections and investigations pursuant to Part 400 of these regulations and the powers to inspect any records that an employer is required to keep, to make copies of records, and to interview employees.

Modified 1 CMC § 3806(e).

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010); Amdts Adopted 30 Com. Reg. 28891 (Oct. 25, 2008); Amdts Proposed 30 Com. Reg. 28632 (Sept. 25, 2008); Adopted 30 Com. Reg. 28027 (Jan. 22, 2008); Proposed 29 Com. Reg. 27498 (Dec. 18, 2007); Proposed 29 Com. Reg. 27213 (Nov. 19, 2007).

Commission Comment: The 2010 amendments changed this section and renumbered it from former section § 80-20.1-240. The Commission substituted part numbers pursuant to 1 CMC § 3806(d).

Subpart D - Adjudication of Disputes

§ 80-20.1-450 Jurisdiction of the Administrative Hearing Office

(a) The Administrative Hearing Office shall have jurisdiction to conduct adjudicative proceedings with respect to all issues of fact and law arising under labor laws applicable in the Commonwealth.

(b) Jurisdiction with respect to complaints.

(1) Disputes involving citizens, CNMI permanent residents, and U.S. permanent residents. The Administrative Hearing Office shall have jurisdiction over complaints filed with the Administrative Hearing Office by U.S. citizens, CNMI permanent residents or

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U.S. permanent residents, and agency complaints filed by the Department, with respect to violations of the requirements of job preference and workforce participation pursuant to the Commonwealth Employment Act of 2007, as amended, and other violations of labor laws applicable in the Commonwealth.

(2) Disputes involving foreign national workers. The Administrative Hearing Office shall have jurisdiction over complaints filed with the Administrative Hearing Office by foreign national workers, and agency complaints filed by the Department, with respect to violations of Commonwealth law and regulations regarding employment and other labor laws applicable in the Commonwealth.

(3) Disputes involving other nonimmigrant aliens. The Administrative Hearing Office shall have jurisdiction over complaints filed with the Administrative Hearing Office by other nonimmigrant aliens with respect to violations of Commonwealth law and regulations regarding employment.

(c) Jurisdiction with respect to appeals from denials issued by the Department. The Administrative Hearing Office shall have exclusive jurisdiction over initial appeals from decisions of the administrative units of the Department denying applications, petitions, or requests of individual employers and employees.

(d) Jurisdiction attaches upon filing. Jurisdiction attaches upon the filing of a complaint or appeal, and no procedural or investigative document is required in order for the Administrative Hearing Office to hold a hearing on a complaint.

(e) No jurisdiction over tourists. The Administrative Hearing Office does not have jurisdiction with respect to the claims of tourists. Those claims are pursued in the Commonwealth Superior Court.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010); Amdts Adopted 30 Com. Reg. 28891 (Oct. 25, 2008); Amdts Proposed 30 Com. Reg. 28632 (Sept. 25, 2008); Adopted 30 Com. Reg. 28027 (Jan. 22, 2008); Proposed 29 Com. Reg. 27498 (Dec. 18, 2007); Proposed 29 Com. Reg. 27213 (Nov. 19, 2007).

Commission Comment: The 2010 amendments changed this section and renumbered it from former section § 80-20.1-430.

§ 80-20.1-455 **Complaints and Actions in Labor Matters**

(a) Adjudicative proceeding.
“Adjudicative proceeding” means a judicial-type proceeding leading to the issuance of a final order. The parties to an adjudicative proceeding are one or more complainants and one or more respondents. A complainant is a person who is seeking relief from any act or omission in violation of a statute, executive order, contract, or regulation. A respondent is a person against whom findings may be made or who may be required to provide relief or take remedial action. A “person” in this context includes an individual, partnership,

corporation, association or other entity or organization. A “party” to an adjudicative proceeding is a person or government agency admitted as a party to the proceeding.

(b) Complaint.

“Complaint” means any document initiating an adjudicative proceeding, whether designated a complaint, appeal, or an order for proceeding, or otherwise. Registration by a foreign national worker to transfer may be deemed a “complaint” by a hearing officer under circumstances in which it is appropriate to do so and an order may issue. Each individual complainant shall file a separate complaint. Cases may be handled together, but complaints shall not cover the allegations of more than one complainant.

(c) Case numbers.

Each case shall be assigned a unique case number at the time of the filing of the complaint. All pleadings of any kind shall clearly show the case number.

(d) Location for filing.

A complaint and any other pleadings shall be filed at the office of the Department on the island where the employment occurred, unless good cause is shown.

(e) Signature on pleading.

Each pleading shall be signed by the party filing it or by an attorney admitted to practice in the CNMI representing the party. The signature constitutes a certificate by the signer that he or she has read the pleading; that to the best of his or her knowledge, information, and belief, there are good grounds to support it; and that it is not filed for purposes of delay.

(f) Filing of a job preference case.

Any citizen, CNMI permanent resident, or U.S. permanent resident who is qualified for a job, as described in a job vacancy announcement, may file a complaint making a claim for damages if an employer rejects an application for the job without just cause and the employer employs a person who is not a citizen, CNMI permanent resident, or U.S. permanent resident for the job.

(1) Just cause. The term “just cause” for rejecting an application for employment includes the lawful criteria that an employer normally applies in making hiring decisions such as rejecting persons with criminal records for positions of trust, rejecting persons who present fraudulent or inaccurate documentation in support of the application; rejecting persons without an educational degree necessary for the position, rejecting persons with unfavorable recommendations from prior employment, rejecting persons with an employment history indicating an inability to perform the job successfully, rejecting persons with an educational background making it unlikely that the necessary education or training to hold the position could be accomplished successfully within a reasonable time; and similar just causes.

(2) Criteria. Any criteria in making hiring decisions advanced in support of just cause must be consistent with the published job vacancy announcement for the job and must be a part of the employer’s established hiring procedures.

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(g) Filing of a labor case.

Any employer or employee may file a complaint with the Administrative Hearing Office regarding any violation of the Commonwealth Employment Act of 2007, as amended; the Fair Labor Standards Act, as amended; the Resident Worker Fair Compensation Act, or Public Laws 11-6 and 12-11, as amended, and the rules and regulations in this subchapter; or any breach of an employment contract, or any breach of the undertakings in any document filed with the Department.

(h) Filing of a denial case.

In the event of an administrative denial under this subchapter, the employer or employee adversely affected by the denial (or both) may file a denial case (appeal of the denial) with the Administrative Hearing Office on a standard form provided by the office challenging the basis for the denial.

(i) Filing of a consolidated agency case.

The Chief of the Enforcement Section may commence an action against an employer or employee for an alleged violation of the labor or wage laws in force in the Commonwealth by filing a complaint with the Administrative Hearing Office. The caption shall set forth the names and addresses of the parties. The complaint shall contain a short description of the nature of the alleged violation of law and the relief sought.

(1) Agency complaints in complex cases. The Chief of the Enforcement Section may file an administrative complaint with the Administrative Hearing Office in any case in which an investigator determines that the nature of the violation, number of persons affected, possibility of retaliation against individual complainants, or urgency of resolving the matter requires that the Department prosecute a complaint.

(2) Agency complaints in workforce participation and job preference cases. In the event that an employer fails to meet the workforce participation requirement or fails to hire a qualified applicant entitled to a preference and hires any nonimmigrant alien instead, the Chief of the Enforcement Section may file an administrative complaint with the Administrative Hearing Office on behalf of the applicant denied employment seeking damages, sanctions, and any other available relief.

(3) Agency complaints in umbrella permit cases. The Chief of the Enforcement Section may file an administrative complaint to modify or revoke an umbrella permit for good cause shown.

(j) No administrative rejection for untimeliness.

Failure to file within the statutory time limit (see subpart B of Part 600) shall not be grounds for refusal to accept the papers for a complaint or appeal.

(k) No filing fee for complaints by indigents.

Indigent complainants may file in forma pauperis and are not required to pay a filing fee. The standards of the Commonwealth Superior Court with respect to waiver of fees for indigents shall be followed. A complainant who files in forma pauperis and is later found by a hearing examiner not to qualify for that status may be ordered to pay the filing fee. (For filing fees, see § 80-20.1-635.)

(l) No retaliation.

An employer shall not retaliate against an employee for filing a complaint. Such retaliation is a separate cause of action against the employer.

(m) No response to the complaint required.

The respondent may, but is not required to, file a written response to the complaint.

(n) Assistance and representation.

Any party may be represented by counsel, at the party's own expense. A party appearing pro se may be assisted by any person, regardless of whether that person is a lawyer, except that a person who is deportable or who has been the subject of debarment for past misconduct may not serve as an assistant. Each authorized counsel or assistant must file a written notice of appearance with the Administrative Hearing Office. A standard form for this purpose is provided by the Department.

(o) Translation.

A party requiring the services of a translator to and from English shall provide a competent translator at their expense. The Administrative Hearing Office may require certification of a translator in order for the translator to participate in a hearing. A translator who has translated a document shall sign the document on its face as evidence of the translation. Such a signature constitutes a declaration, under the penalty of perjury, that the translator has accurately translated the document and has not included any statements beyond those made in the document. A hearing officer may disqualify a person from participating in a proceeding as a translator, upon a finding, supported by credible evidence, that the person is not sufficiently competent or truthful as a translator.

Modified 1 CMC § 3806(d), (g).

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010); Amdts Adopted 30 Com. Reg. 28891 (Oct. 25, 2008); Amdts Proposed 30 Com. Reg. 28632 (Sept. 25, 2008); Adopted 30 Com. Reg. 28027 (Jan. 22, 2008); Proposed 29 Com. Reg. 27498 (Dec. 18, 2007); Proposed 29 Com. Reg. 27213 (Nov. 19, 2007).

Commission Comment: The 2010 amendments changed this section and renumbered it from former section § 80-20.1-426. The Commission removed the duplicate "regardless of" in the second sentence of subsection (n) to correct a manifest error. The Commission substituted part and section numbers pursuant to 1 CMC § 3806(d).

§ 80-20.1-460 General Procedures

(a) Rules of practice.

These rules in subpart D implement the Administrative Procedures Act and are generally applicable to adjudicative proceedings in all actions. Upon notice to all parties, a hearing officer may, with respect to matters pending before that hearing officer, modify or waive any rule herein upon a determination that no party will be prejudiced and the ends of justice will be served.

(b) Pro se litigants.

In applying the rules of procedure to adjudicative proceedings, a hearing officer shall give added accommodation to parties appearing pro se to ensure that no party is prejudiced and that the ends of justice will be served. The hearing officer should take all steps necessary to develop the record fully, including the record adverse to the Department.

(c) Separation of functions.

No officer, employee, or agent of the Commonwealth engaged in the performance of investigative or prosecutorial functions in connection with any proceeding shall, in that proceeding or a factually related proceeding, participate or advise in the decision of a hearing officer except as witness or counsel in the proceedings.

(d) Recusal of a hearing officer.

A hearing officer shall be impartial. A hearing officer may voluntarily enter a recusal if the hearing officer's impartiality might be called into question. A party may request the recusal of a hearing officer. The request must be in writing supported by a sworn affidavit based on facts as to which the affiant would be qualified to testify under evidentiary rules with respect to hearsay. The hearing officer shall decide the request based only on the written affidavit. If the hearing officer refuses the recusal, the hearing officer shall state reasons for the refusal. A party may contest the refusal by written petition to the Secretary.

(e) Recusal of an investigator.

An investigator shall be impartial. An investigator may voluntarily enter a recusal if the investigator's impartiality might be called into question. A party may request the recusal of an investigator. The request must be in writing supported by a sworn affidavit. The Deputy Secretary or a designee shall decide the request based only on the written affidavit.

Modified 1 CMC § 3806(c).

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

§ 80-20.1-465 Mediation of Complaints

(a) Schedule.

The Administrative Hearing Office may refer each complaint for mediation. Mediations may be conducted by a hearing officer or by a mediator designated by the Administrative Hearing Office. Mediators need not be lawyers or have any formal certification. The Administrative Hearing Office shall schedule the mediation as promptly as practicable, normally within fifteen days of filing of the complaint, and notify the parties.

(b) Notice.

The parties must be given at least three days notice before a mediation session. Notice of mediation may be issued to the complainant when the complaint is filed. Telephone notice of the mediation session is sufficient.

(c) Proceedings.

Mediations will be conducted informally and confidentially without a taped or other record of the proceedings. No oral statement made at mediation is admissible in evidence. If the mediation is successful, the mediator shall reduce the agreement to writing and the agreement shall be signed by both parties and the mediator within three days after the mediation session.

(d) Failure to attend.

If a complainant does not attend the mediation session after adequate notice, a hearing officer may dismiss the complaint without prejudice.

(e) Failure to file in a timely manner.

If the complaint is not resolved at mediation, a hearing officer may then examine the complaint for timeliness. If the complaint is not timely filed, the hearing officer shall dismiss the complaint with prejudice. A party against whom a dismissal is entered may appeal to the Secretary pursuant to § 80-20.1-490.

(f) Hearing date.

If the complaint is timely filed, at or immediately after the mediation, the hearing officer shall set a hearing date as promptly as practicable, usually within 90 days of completion of the mediation, and inform other parties of the date.

Modified 1 CMC § 3806(c), (e).

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010); Amdts Adopted 30 Com. Reg. 28891 (Oct. 25, 2008); Amdts Proposed 30 Com. Reg. 28632 (Sept. 25, 2008); Adopted 30 Com. Reg. 28027 (Jan. 22, 2008); Proposed 29 Com. Reg. 27498 (Dec. 18, 2007); Proposed 29 Com. Reg. 27213 (Nov. 19, 2007).

Commission Comment: The 2010 amendments changed this section and renumbered it from former section § 80-20.1-428. The Commission substituted section numbers pursuant to 1 CMC § 3806(d).

§ 80-20.1-470 Powers of the Hearing Officer

(a) Investigation of complaint.

A hearing officer may refer a complaint to the Chief of the Enforcement Section for investigation, and the Chief or a designee may also initiate such investigation of the complaint as appears warranted by the allegations, other information provided by the complainant or available to the Department, and past complaints filed by the complainant or violations adjudicated against the respondent. Investigators may conduct interviews of the parties and others, request documents from the parties, inspect worksites, and undertake such other investigative actions as are warranted. Any non-privileged information gathered during an investigation shall be made available to the parties on request. Investigators may make such written report of the investigation as may be useful, but no written determination is required. At any time, an investigator may request from Administrative Hearing Office a continuance of the hearing for further investigation.

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(b) Attendance at orientation.

A hearing officer may require any foreign national worker who files a complaint to attend an orientation session in order to be informed of rights and responsibilities.

(c) Authorization for temporary work pending a hearing.

A hearing officer may authorize a foreign national worker who attends a mediation session at which no agreement is reached to seek employment on a temporary basis pending a hearing in the case.

(1) A foreign national worker to whom permission to seek temporary work is granted shall make a good faith effort to find work and shall appear in person at the Enforcement Section at least once in each calendar month to report on such efforts to find work. Failure to make a good faith effort to find work shall be grounds for denying a request for transfer. Failure to report or false or fraudulent reports shall be grounds to dismiss the pending case.

(2) If a foreign national worker who has received permission to seek temporary work finds an employer, the Department shall issue a temporary work authorization for up to six months while the case is pending. A temporary work authorization may be renewed for an equal term and shall expire automatically ten days after the date of a hearing officer's final order in the case or, in the event of a timely appeal ten days after the date of the Secretary's order or, in the event of a timely appeal to a court ten days after the date of the court's final order.

(3) An employer who hires a foreign national worker under a temporary work authorization shall file with the Department, prior to the commencement of any work by the foreign national worker, a statement of employment terms on a standard form provided by the Department.

(4) The financial obligations with respect to medical expenses and repatriation expenses remain with the last employer of record at the time the complaint was filed and are not shifted to the employer who hires the worker under a temporary work authorization. The financial obligations with respect to payment of wages and any employer-supplied housing or other benefits (other than medical expenses) are the responsibility of the employer who hires the worker under a temporary work authorization.

(5) If employment under the temporary work authorization ends prior to the determination of the pending case, the foreign national worker shall report to the Enforcement Section within ten days for a renewal of the permission to seek temporary work.

(d) Amendment of pleadings.

A hearing officer may allow appropriate amendments to pleadings when the determination of a controversy on the merits will be facilitated thereby and it is in the public interest.

(e) Motions and requests.

An application for an order or any other request may be made by motion. The hearing officer may allow oral motions or require motions to be made in writing. The hearing officer may allow oral argument or written briefs in support of motions. Within ten days

after a written motion is served, or within such other period as a hearing officer may fix, any party to the proceeding may file and serve a response in opposition to the motion. Within three days after an opposition brief is served, the moving party may file and serve a reply to the opposition.

(f) Pre-hearing conferences.

A hearing officer may direct the parties to participate in a pre-hearing conference. At a pre-hearing conference, a hearing officer may discuss any matter that may facilitate resolution of the dispute, including settlement. Pre-hearing conferences may be conducted by telephone, in writing, or in person. A hearing officer may, but is not required to, reduce the results of a pre-hearing conference to an order. A statement on the record at the hearing may be used as an alternative.

(g) Consolidation.

A hearing officer may consolidate two or more matters for hearing if the issues or evidence are the same or substantially similar. When consolidated hearings are held, a single record of the proceedings may be made, evidence introduced in one matter may be considered in consolidated matters, and the decision of the matters may be separate or joint, at the discretion of the hearing officer.

(h) Bifurcation.

A hearing officer may bifurcate or separate one or more matters (such as status and eligibility for transfer separated from damages and other claims) for hearing on separate occasions. When separate hearings are held, evidence introduced at one session may be considered in another session, and the decision of the issues may be separate or joint, at the discretion of the hearing officer.

(i) Discovery.

A hearing officer may, but is not required to, allow discovery. A party may request discovery regarding any matter, not privileged, that is relevant to the subject matter of the proceeding. If discovery is permitted, it is not ground for objection that the information sought will not be admissible at the hearing. Appropriate methods of discovery include depositions on oral examination or written questions, written interrogatories, production of documents or other evidence for inspection, and requests for admissions. Upon motion and good cause shown, a hearing officer may make any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. If a party fails to respond to discovery permitted by a hearing officer, an order may be entered by the hearing officer compelling response in accordance with the request.

(j) Subpoenas.

Upon written application by a party or sua sponte, a hearing officer may issue a subpoena as authorized by law. A subpoena may compel attendance of non-party witnesses and production of relevant records and other tangible things in the possession or under the control of the non-party witness. Any person compelled to testify in response to a subpoena may be represented, counseled or advised by a lawyer or authorized agent.

Within ten days of the receipt of a subpoena but no later than the date of the hearing, the person against whom the subpoena is directed may move to quash or limit the subpoena. Any such motion shall be answered within five days. An order with respect to a subpoena shall specify the date, if any for compliance. Upon the failure of any person to comply, a party adversely affected may apply to the Commonwealth Superior Court for enforcement.

(k) Classified or sensitive material.

The hearing officer may implement procedures for dealing with classified or sensitive material, including limiting discovery or the introduction of evidence, redacting documents, using unclassified or non-sensitive summaries, and conducting in camera hearings.

Modified 1 CMC § 3806(g).

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010); Amdts Adopted 30 Com. Reg. 28891 (Oct. 25, 2008); Amdts Proposed 30 Com. Reg. 28632 (Sept. 25, 2008); Adopted 30 Com. Reg. 28027 (Jan. 22, 2008); Proposed 29 Com. Reg. 27498 (Dec. 18, 2007); Proposed 29 Com. Reg. 27213 (Nov. 19, 2007).

Commission Comment: The 2010 amendments changed this section and renumbered it from former section § 80-20.1-432.

The Commission changed “complainst” to “complaint” in the title of subsection (a) to correct a manifest error. The Commission struck the duplicated word “six” in subsection (c)(2) pursuant to 1 CMC § 3806(g).

§ 80-20.1-475 Service of Process

(a) Service of a complaint, time requirements.

Service of the complaint on the respondent shall be made within five days of the filing and proof of service shall be filed with the Administrative Hearing Office within two days of service. If a complainant is represented by counsel, counsel shall complete service. If complainant is not represented by counsel, the Administrative Hearing Office shall complete service.

(b) Service of a response, time requirements.

No response is required, however if a written response is made, it shall be served on the Administrative Hearing Office and the complainant within ten calendar days after service of the complaint.

(c) Service, address.

Employers and employees are responsible for keeping contact information in the Department’s records up to date and accurate. Service may be made at the address currently shown on the records of the Department unless a party knows of an actual current address.

(d) Service, methods.

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Service of any pleading, notice, or order may be made anywhere within the territorial limits of the Commonwealth. Service may be made by delivery to the party personally; or service may be made by United States mail first class postage prepaid; or service may be made by publication in a newspaper of general daily circulation on business days in the Commonwealth.

(1) Personal service. Personal service is made by delivery of a copy of the pleading, notice, or order to the party personally or by leaving a copy of the pleading, notice or order at the party's dwelling house or usual place of abode with some person of suitable age and discretion then residing there. If a party is represented by counsel, personal service may be made on counsel. If a party is represented by an agent authorized by appointment or by law to receive service of process, personal service may be made on the agent. Service may be made on any person designated by the complainant. Service is complete upon delivery.

(2) Mail service. Mail service is made by delivery of a copy of the pleading, notice, or order to the United States Post Office, with first class postage prepaid, addressed to the complainant at the address provided on the complaint form or addressed to the respondent at the address provided on the approved employment contract unless a party has notified the Department of a change of address in which case service shall be made to the address last provided by the party. If a party is represented by counsel, mail service may be made on counsel. If a party is represented by an agent authorized by appointment or by law to receive service of process, mail service may be made on the agent. Service is complete upon mailing. When documents are served by mail, five days is added to the prescribed period after service to exercise a right or take an action.

(3) Publication service. Publication service is made by publishing a copy of the pleading, notice, or order in an English-language newspaper of general daily circulation on business days in the Commonwealth at least once in each of two weeks. The Department's experience in using publication service demonstrates that it is far more effective in achieving receipt of notice and attendance at hearings than either attempts at personal or mail service due primarily to indeterminate addresses (without street names or numbers) in the Commonwealth and frequency of changes of address. Publication service is not required to provide any statement of grounds for any action to be taken at a hearing; the party noticed by publication may obtain any relevant documents or statement of grounds by inquiry at the Administrative Hearing Office. If the Department uses publication service with respect to any party who is a citizen of a foreign country and likely not to read English, service may, but is not required to, be supplemented by a one time publication in a newspaper of the party's national language if such newspaper exists in the Commonwealth. Service is complete upon last publication. Reconsideration may be requested within a reasonable time in the event a party who does not speak English and did not see an English-language publication misses a hearing.

(4) Alternative service. Notice may be given by telephone or electronic mail as the Administrative Hearing Office determines appropriate.

(e) Service by the Department.

The Department may use publication service for any notice or any order without first attempting any personal or mail service. The Department normally will publish on the first Monday of a month, and normally will publish at least once in each of two

successive weeks, but is not required to do so. In matters in which a Department representative has personally informed a foreign national worker and confirmed in writing or it has been ordered by a hearing officer that notices with respect to a particular matter may be posted under defined circumstances, the Department may use posting in a public place as service for any notice without first attempting any other service.

(f) Notice to bonding companies.

The Department may, but is not required to, provide notice to a bonding company of potential claims, claims, or hearings in which employers or employees covered by a bond issued by the bonding company are or may be involved, unless the claim or hearing is conducted with respect to enforcement directly against the bonding company pursuant to § 80-20.1-485(l). Bonding companies control the terms of the bonds they write and may elect to include provisions that require employers, whose obligations are secured by the bond, to provide notice of any proceedings in which the bond may be affected in any way together with provisions that allow sufficient rights of inspection of an employer's books and records to protect the bonding company's interests in these regards. In addition, bonding companies are deemed to have notice of information provided on the Department's website and in the Department's published notices for any proceedings that may affect bonds they have issued. The Department has no obligation to make any bonding company a party to any hearing on a claim by an employee against an employer or by an employer against an employee however, upon motion to a hearing officer, a bonding company may intervene in and become a party to such hearings in order to protect its interests.

Modified 1 CMC § 3806(c), (e).

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010); Amdts Adopted 30 Com. Reg. 28891 (Oct. 25, 2008); Amdts Proposed 30 Com. Reg. 28632 (Sept. 25, 2008); Adopted 30 Com. Reg. 28027 (Jan. 22, 2008); Proposed 29 Com. Reg. 27498 (Dec. 18, 2007); Proposed 29 Com. Reg. 27213 (Nov. 19, 2007).

Commission Comment: The 2010 amendments changed this section and renumbered it from former section § 80-20.1-434. The Commission substituted section numbers pursuant to 1 CMC § 3806(d).

§ 80-20.1-480 Conduct of Hearings

(a) Public proceedings.

Absent a finding by a hearing officer, hearings shall be open to the public. In unusual circumstances, a hearing officer may order a hearing or any part thereof closed if doing so would be in the best interests of the parties, a witness, the public, or other affected persons. Any order closing the hearing shall set forth the reasons for the decision. Any objections thereto shall be made a part of the record.

(b) Conduct of hearings.

A hearing officer shall preside at each hearing conducted by the Administrative Hearing Office. A hearing officer shall administer oaths and may examine witnesses. A hearing officer may exercise, for the purpose of the hearing and in regulating the conduct of the proceeding, such powers vested in the Secretary as are necessary and appropriate. A

hearing officer may conduct a hearing telephonically or by videoconference. At the conclusion of a hearing, a hearing officer shall issue such findings, decisions, and orders as are necessary to resolve the matter.

(c) Standards of conduct.

All persons appearing in proceedings before a hearing officer are expected to act with integrity and in an ethical manner. A hearing officer may exclude parties, participants, and their representatives for refusal to comply with directions, continued use of dilatory tactics, refusal to adhere to reasonable standards of orderly and ethical conduct, failure to act in good faith, or acting in violation of these rules and regulations. A hearing officer shall state on the record the cause for suspending or barring any person from participation in a proceeding. Any person so suspended or barred may appeal to the Secretary, but no proceeding shall be delayed or suspended pending disposition of the appeal. A hearing officer shall suspend the proceeding for a reasonable time if it is necessary for a party to obtain another lawyer or representative. A hearing officer may apply the Commonwealth Disciplinary Rules and Procedures for guidance when issuing decisions regarding ethics.

(d) Ex parte communications.

A hearing officer shall not consult any person or party on any issue of fact or question of law unless upon notice and opportunity for all parties to participate or learn the results of such communication. Communications for the sole purpose of scheduling hearings or considering requests for extensions of time are not considered ex parte communications so long as other parties are notified of any request and given an opportunity to respond. A person who makes or attempts to make an ex parte communication may be subject to sanction including exclusion from the proceedings and adverse ruling on the issue which is the subject of the prohibited communication.

(e) Rules of evidence for hearings.

The Commonwealth rules of evidence are generally applicable to adjudicative proceedings before the Administrative Hearing Office. To the extent that these rules may be inconsistent with a rule of special application as provided by statute, executive order, or regulation, the latter are controlling. The parties may offer such evidence as is relevant to the dispute, and the hearing officer may request the production of evidence by a party. Strict adherence to the formal rules of evidence shall not be necessary, and the hearing officer shall make appropriate accommodations for pro se litigants. The hearing officer may make rulings on evidentiary issues and the introduction of evidence. The hearing officer may waive any rule upon a determination that no party will be prejudiced and that the ends of justice will be served.

(f) Exhibits.

Parties shall exchange copies of exhibits at the earliest practicable time and, in any event, at the commencement of the hearing. Exhibits offered in evidence shall be numbered and marked for identification. One copy shall be furnished to each of the parties and to the hearing officer. If a record from any other proceeding is offered in evidence, a true copy shall be presented for the record in the form of an exhibit unless the hearing officer directs otherwise. The hearing officer shall direct the use of documents as to which only

parts are relevant or bulky documents, so as to limit irrelevant material in the record. The authenticity of all documents submitted as proposed exhibits in advance of a hearing shall be presumed unless written objection is made prior to the hearing. Objection to authenticity shall not prevent the admission of a document, but a hearing officer may consider matters of authenticity when deciding the weight to give the evidence.

(g) Judicial notice.

A hearing officer may take judicial notice of adjudicative facts that are not subject to reasonable dispute provided however that as to facts so noticed, the parties shall be given adequate opportunity to show the contrary.

(h) Privilege.

Except as otherwise required by law, the privilege of a witness, person, government or political subdivision shall be governed by the principles of common law as they may be interpreted by the courts of the Commonwealth in light of reason and experience.

(i) Continuances.

Continuances may be granted in cases of prior commitments for a court proceeding, a showing of undue hardship, or a showing of other good cause. Requests for continuance must be in writing and must be filed more than five days prior to the date set for the hearing. Oral orders with respect to continuances shall be confirmed in writing. The Administrative Hearing Office shall not stay any proceeding to allow the parties to proceed with their claims in a different forum except upon order of a court of competent jurisdiction.

(j) Amendments to conform to the evidence.

When issues are not raised in a pleading, pre-hearing stipulation, or pre-hearing order and are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence may be ordered by a hearing officer.

(k) Record.

All hearings shall be recorded. Parties may provide a stenographic reporter at their own expense. The media on which recordings of proceedings are made shall be maintained by the hearing office until the expiration of all appeals, at which time the media may be destroyed.

(l) Default.

Except for good cause shown, failure of a party to appear at a hearing after timely being served notice to appear shall be deemed to constitute a waiver of any right to pursue or contest the allegations in the complaint. If a party defaults, the hearing officer may enter a final order containing such findings and conclusions as may be appropriate.

(m) Closing the record.

When a hearing is conducted, the record shall be closed at the conclusion of the hearing unless the hearing officer directs otherwise. If any party waives a hearing, the record shall

be closed upon receipt of submissions of the parties or at the time deadlines set by the hearing officer for receipt of such submissions. Unless the hearing officer directs otherwise, no document or other evidentiary matter may be submitted after the record is closed.

Modified 1 CMC § 3806(e).

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010); Amdts Adopted 30 Com. Reg. 28891 (Oct. 25, 2008); Amdts Proposed 30 Com. Reg. 28632 (Sept. 25, 2008); Adopted 30 Com. Reg. 28027 (Jan. 22, 2008); Proposed 29 Com. Reg. 27498 (Dec. 18, 2007); Proposed 29 Com. Reg. 27213 (Nov. 19, 2007).

Commission Comment: The 2010 amendments changed this section and renumbered it from former section § 80-20.1-436.

§ 80-20.1-485 Orders and Enforcement

(a) Issuance of orders.

The hearing officer shall, upon concluding a hearing, issue any necessary findings, decisions, and orders as soon as practicable. Issuance of findings, decisions, and orders shall be pursuant to 1 CMC § 9110, but shall not be judicially reviewable until final.

(b) Dismissal.

A complaint may be dismissed upon its abandonment or settlement by the party or parties who filed it. A party shall be deemed to have abandoned a request for hearing if neither the party nor the party's representative appears at the time and place fixed for the hearing unless good cause is shown. A dismissal may be entered against any party failing, without good cause, to appear at a hearing. A dismissal may be entered against any person who has left the CNMI and has been absent for six months or more without having notified the Administrative Hearing Office of their contact information. A party against whom a dismissal is entered may appeal to the Secretary pursuant to § 80-20.1-490.

(c) Authority.

The hearing officer is authorized to:

(1) In a job preference case, award actual and liquidated damages in an amount up to six months' wages for the job for which a citizen, CNMI permanent resident, or U.S. permanent resident applied.

(2) Award unpaid wages (which includes prospective contract damages, if any) or overtime compensation, amounts unlawfully deducted from wages or unlawfully required by an employer to be paid by a foreign national worker, damages for unlawfully termination of an approved employment contract, or damages, when appropriate, for conduct of the employer that is in violation of Commonwealth or federal law;

(3) Assess liquidated damages of up to six months wages if actual damages are uncertain or cannot be ascertained under a satisfactory or known rule in cases in which the employer's conduct is found to have been retaliatory;

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- (4) Cancel or modify an umbrella permit or identification card or an approved employment contract or require an employer thereafter to pay foreign national workers only by check or direct deposit in a United States bank payable in United States currency (no cash payments) in cases where payment records have been negligently or inappropriately kept;
- (5) Order temporary or permanent debarment of an employer or order an employer to attend one or more orientation sessions under Section 80-50.2-115* for education as to rights and responsibilities under Commonwealth law;
- (6) Disqualify a foreign national worker, temporarily or permanently, from employment in the Commonwealth;
- (7) Levy a fine not to exceed \$2,000 for each violation of any provision of the Commonwealth Employment Act of 2007, as amended;
- (8) Issue declaratory or injunctive relief as appropriate;
- (9) Amend or extend any permission previously granted by the Commonwealth;
- (10) Award attorneys' fees when appropriate in addition to any other remedy; provided however that attorneys' fees shall not be recoverable against the Commonwealth;
- (11) Modify an umbrella permit. An umbrella permit may be continued in effect on any of the bases upon which it could have been granted or on any of the bases on which an umbrella permit described in § 80-20.1-315(b) could have been granted. An umbrella permit may be modified to condition the continuation in effect of an umbrella permit as appropriate to secure compliance with Commonwealth law, regulations, orders of a hearing officer, or terms of the permit;
- (12) Revoke an umbrella permit for violation of Commonwealth law, regulations, orders of a hearing officer, or terms of the permit;
- (13) Impose such other sanction, order or relief as may reasonably give effect to the requirements of Commonwealth law; and
- (14) Use the inherent powers of a hearing officer and powers granted by the Administrative Procedures Act to further the interests of justice and fairness in proceedings.

(d) Transfer relief.

Only a hearing officer may grant a transfer. Nothing in the Commonwealth Employment Act of 2007, as amended, or in this subchapter creates any right to a transfer. A hearing officer may grant a transfer in connection with the adjudication of a claim if other remedies are insufficient to provide a foreign national worker the benefit of the bargain made when entering the approved employment contract. If a hearing officer grants a transfer, a foreign national worker may become employed under a new approved employment contract without first exiting the Commonwealth.

- (1) The grounds for granting transfer relief in connection with the adjudication of a claim include:
 - (i) An unlawful termination of an approved employment contract by an employer;
 - (ii) The voiding of an approved employment contract or debarment of an employer for a violation of the regulations in this subchapter or the Commonwealth Employment Act of 2007, as amended;
 - (iii) A reduction in force pursuant to Section 4937 of the Commonwealth Employment Act of 2007, as amended;

(iv) The abandonment of the worker during the term of an approved employment contract, but prior to ninety days before the termination date of the contract, by an employer who failed to pay bi-weekly wages on two successive occasions, closed a business, declared bankruptcy, or exited the Commonwealth evidencing an intent not to return; or,

(v) Upon a finding by the hearing officer that the foreign national worker has prevailed under an equivalent theory of law or equity and that transfer relief is appropriate.

(2) A transfer may be granted in connection with the adjudication of a claim only to a foreign national worker who has complied with the provisions of the approved employment contract to the extent practicable under the circumstances, and for whom transfer relief is required in order to assure receipt of the benefit of the bargain under the contract that is the subject of the action. A settlement may include transfer relief, if appropriate, and subject to approval by a hearing officer.

(3) The order granting a transfer shall specify the time period within which the foreign national worker must secure new employment, which time period shall not be longer than thirty days from the date of the order unless the hearing officer makes specific findings of circumstances justifying a longer period.

(e) Whistleblower relief.

In order to promote the public interest in securing compliance with Commonwealth law, a foreign national worker who provides the Department with information on the basis of which a compliance agency case is brought may be granted a transfer by a hearing officer even if not otherwise qualified.

(f) Repatriation.

The hearing officer may assess costs for repatriation of a foreign national worker.

(g) Order.

As soon as practicable, and generally within fifteen days after the close of the record, the hearing officer shall complete and issue or enter any necessary decisions and orders. A decision of a hearing officer shall include findings of fact and conclusions of law, with reasons therefore, as appropriate. A decision shall be based on the whole record, supported by reliable, probative evidence, and in accordance with the statutes and rules and regulations conferring jurisdiction. An order may be made with respect to amounts to be paid, actions to be taken, or other relief to be accorded. An order shall include a schedule of payment for all awards, if any, to the prevailing party, and information with respect to any relevant bond.

(h) Date of an order.

The hearing officer shall sign and enter the date on which an order was signed. The date on which the order was signed is the date the order was issued or entered.

(i) Motion for reconsideration.

A motion for reconsideration may be granted for mistake, inadvertence, surprise, or excusable neglect; newly discovered evidence which, by due diligence, could not have

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been discovered in time to move into evidence at the hearing; fraud, misrepresentation, or misconduct of an adverse party; the judgment is void, has been satisfied, released, or discharged, or a prior judgment on which it is based has been reversed; or other reason justifying relief. A party may file a motion for reconsideration within fifteen days after service of an order. A response may be filed no later than five days after the filing of the motion. After a decision on a motion for reconsideration is signed, no further motions or filings may be made with the Administrative Hearing Office other than a notice of appeal.

(j) Correction of errors.

A hearing officer may sua sponte correct an error prior to the time the record is certified for appeal.

(k) Administrative enforcement by the Department.

If a party fails to comply with an administrative order, the Chief of the Enforcement Section may, but is not required to, bring an administrative enforcement proceeding against the party or against a bonding company that issued a bond securing the party's obligations. Administrative enforcement actions by the Department shall be initiated by a complaint filed with the Administrative Hearing Office by the Chief of the Enforcement Section, and notice shall be served and hearings held as provided in this subchapter.

(l) Court enforcement by the Department.

If a party fails to comply with an administrative order, the Department may, but is not required to, seek enforcement of the administrative order in Commonwealth Superior Court.

(m) Choice of venue.

A person who has been awarded damages or other relief by an administrative order issued by a hearing officer may bring a direct action in the Commonwealth Superior Court to enforce the administrative order and collect the award by filing a complaint seeking enforcement of that order. See the Commonwealth Employment Act of 2007, as amended, §4950(a).

* So in original. This citation refers to a section that does not exist in the regulation.

Modified 1 CMC § 3806(c), (d), (e).

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010); Amdts Adopted 31 Com. Reg. 29636 (June 22, 2009); Amdts Proposed 31 Com. Reg. 29557 (May 20, 2009); Amdts Adopted 30 Com. Reg. 28891 (Oct. 25, 2008); Amdts Proposed 30 Com. Reg. 28632 (Sept. 25, 2008); Adopted 30 Com. Reg. 28027 (Jan. 22, 2008); Proposed 29 Com. Reg. 27498 (Dec. 18, 2007); Proposed 29 Com. Reg. 27213 (Nov. 19, 2007).

Commission Comment: The Commission included the above history of former section § 80-20.1-438, entitled "Orders and Relief." The Commission corrected the phrase "attorneys fees" in subsection (c)(11) to "attorneys' fees" pursuant to 1 CMC § 3806(g). The Commission substituted section numbers pursuant to 1 CMC § 3806(d).

§ 80-20.1-490 Appeals

(a) Commencing an appeal to the Secretary.

An appeal is commenced by filing a notice of appeal on the standard form provided by the Department and payment of the fee required in Section 80-60.8* of these regulations.

(b) Procedural requirements.

Service of process with respect to appeals shall be as provided in § 80-20.1-470 of these regulations. Alternative forms of notice by telephone or electronic mail may be used. The party who seeks relief from the Secretary is the appellant. The party against whom relief is sought is the appellee. The Secretary may entertain an amicus brief with ten days notice to the parties.

(c) Record before the Secretary.

The record before the Secretary consists of the complaint, pleadings filed, exhibits, and order of the hearing officer. A party may request that the record before the Secretary be supplemented by a written transcript of the proceedings before the hearing officer and may request additional time to prepare and certify it.

(d) Rules of practice on appeals before the Secretary.

When the Secretary is exercising jurisdiction over appeals from final orders of the Administrative Hearing Office, the Secretary shall have all the powers and responsibilities of a hearing officer. No hearing or oral argument on an appeal is required. The Secretary shall notify the parties of the time and place for any hearing on the appeal and shall not schedule the hearing with less than ten days notice or change a hearing date with less than ten days notice.

(e) Administrative review by the Secretary.

In a review on appeal, the Secretary may restrict review to the existing record, supplement the record with new evidence, hear oral argument, or hear the matter de novo pursuant to 1 CMC §§ 9109 and 9110. Upon completion of review, the Secretary shall affirm, reverse, or modify the findings, decision, or order of the hearing officer. The Secretary may remand under appropriate instructions all or part of the matter to the Administrative Hearing Office for further proceedings. The Secretary's decision shall constitute final agency action for purposes of judicial review.

(f) Time for issuance of order.

The time within which the Secretary must confirm or modify a finding, decision or order of a hearing officer that has been appealed to the Secretary begins to run on the date on which a party certifies to the Secretary that the record and any necessary briefing is complete.

(g) Judicial review.

Judicial review of a final action of the Secretary is authorized after exhaustion of all administrative remedies. Appeal from a final action by the Secretary shall be directly to the Commonwealth Superior Court. Except as otherwise required by a rule of the

Commonwealth Superior Court, the pleading initiating judicial review shall be a Petition for Judicial Review. The Petition shall identify the order of the Secretary being appealed and the order of the Administrative Hearing Office that was appealed to the Secretary and shall attach copies of both. The Petition shall set out each ground for appeal in summary form in a separate numbered paragraph, and shall state that the requirements of the Commonwealth Employment Act with respect to appeals of final orders of the Secretary have been met.

* So in original. This citation refers to a section that did not exist in the regulation.

Modified 1 CMC § 3806(c), (e).

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010); Amdts Adopted 31 Com. Reg. 29636 (June 22, 2009); Amdts Proposed 31 Com. Reg. 29557 (May 20, 2009); Amdts Adopted 30 Com. Reg. 28891 (Oct. 25, 2008); Amdts Proposed 30 Com. Reg. 28632 (Sept. 25, 2008); Adopted 30 Com. Reg. 28027 (Jan. 22, 2008); Proposed 29 Com. Reg. 27498 (Dec. 18, 2007); Proposed 29 Com. Reg. 27213 (Nov. 19, 2007).

Commission Comment: The Commission included the above history of former sections § 80-20.1-440 and 442, entitled “Appeal to the Secretary and Judicial Review, respectively.” The Commission substituted section numbers pursuant to 1 CMC § 3806(d).

Part 500 - Records, Reports, and Registration

Subpart A - Records

§ 80-20.1-501 Required Records

An employer of a foreign national worker shall keep for at least two years, and present immediately upon written request by the Secretary or a designee, the following information:

- (a) Personnel records for each foreign national worker including the name, current residence address in the Commonwealth, age, domicile, citizenship, point of hire, and approved employment contract termination date;
- (b) Payroll records for each foreign national worker including the O*NET job classification; wage rate or salary, number of hours worked each week, gross compensation, itemized deductions, and evidence of net payments made and received biweekly;
- (c) Receipts for cash payments, cancelled checks or deposit records of payment of wages and overtime.
- (d) Documentation for each foreign national worker including approved employment contract, police clearance, health certificate, and tax payment records;

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- (e) The employer's business license and security contract information with respect to each foreign national worker; and
- (f) The number and type of employment-related accidents or illnesses involving workers and adequate identification of each worker involved.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010); Amdts Adopted 30 Com. Reg. 28891 (Oct. 25, 2008); Amdts Proposed 30 Com. Reg. 28632 (Sept. 25, 2008); Adopted 30 Com. Reg. 28027 (Jan. 22, 2008); Proposed 29 Com. Reg. 27498 (Dec. 18, 2007); Proposed 29 Com. Reg. 27213 (Nov. 19, 2007).

Commission Comment: The 2010 amendments renumbered this section from § 80-20.1-530 and changed it by adding a new subsection (c) and re-designating the remaining subsections. The Commission corrected the spelling of "O*NET" in subsection (b) pursuant to 1 CMC § 3806(g).

Subpart B - Reporting

§ 80-20.1-505 Census of Employment

- (a) Census of employment.
The effective and fair administration of governmental efforts to secure full employment for citizens, CNMI permanent residents and U.S. permanent residents in the Commonwealth requires accurate and up-to-date information about employment in the Commonwealth. The Commonwealth Employment Act of 2007, as amended, requires the Department to collect and report such information.
- (b) Each business employer shall report quarterly, as of the last day of the calendar quarter and within the time limits for filing the business gross receipts tax return, the number and classification of employees for whom wages were paid during the quarter.
- (c) Each non-business employer shall report annually, as of the last day of the calendar year and no later than the first business day in February, the number and classification of employees for whom wages were paid during the year.
- (d) Census reports shall be made on the form provided by the Department and filed according to the instructions on the form.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

§ 80-20.1-510 Workforce Plan

- (a) A workforce plan has as its objective an increase in the percentage of citizens, U.S. permanent residents, and CNMI permanent residents and the immediate relatives of citizens, U.S. permanent residents and CNMI permanent residents in the workforce of the employer.
- (b) The workforce plan.

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A workforce plan shall identify specific positions currently occupied by nonimmigrant aliens. The plan shall include a timetable for accomplishing the replacement of nonimmigrant aliens with qualified citizens, CNMI permanent residents, and U.S. permanent residents until the workforce participation objective is met.

(c) Employers covered.

Every employer who employs nonimmigrant aliens, unless exempted, is required to have on file with the Department a written, current plan. A workforce plan is current if it has been updated and filed within the past 12 months.

(d) Exemptions.

(1) Compliance with the workforce participation requirement. An employer that has submitted to the Department adequate documentation with respect to compliance for the immediately preceding two years with the workforce participation requirement is exempt from the requirement to file a workforce plan.

(2) Exemption from the workforce participation requirement. An employer that is exempt from the workforce participation requirement is exempt from the requirement to file a workforce plan. In order to be eligible for the exemption, each employer must file with the Department a Claim of Exemption on the standard form provided by the Department. It is the responsibility of the employer to ensure that a Claim of Exemption continues to be an accurate representation to the Department.

(3) Loss of exemption. An employer against whom two or more judgments in labor cases or consolidated agency cases are entered in Department proceedings within any two year period automatically loses any applicable exemption and a plan must be filed with the Department within 30 days of the entry of the second judgment.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010); Amdts Adopted 31 Com. Reg. 29636 (June 22, 2009); Amdts Proposed 31 Com. Reg. 29557 (May 20, 2009); Amdts Adopted 30 Com. Reg. 28891 (Oct. 25, 2008); Amdts Proposed 30 Com. Reg. 28632 (Sept. 25, 2008); Adopted 30 Com. Reg. 28027 (Jan. 22, 2008); Proposed 29 Com. Reg. 27498 (Dec. 18, 2007); Proposed 29 Com. Reg. 27213 (Nov. 19, 2007).

Commission Comment: The 2010 amendments changed this section and renumbered it from former section § 80-20.1-220(p). The Commission corrected the spelling of “workforce” in subsection (a) pursuant to 1 CMC § 3806(g).

Subpart C - Registration of Aliens

§ 80-20.1-515 General

The registration of aliens present in the Commonwealth is permitted under both federal and Commonwealth law.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

§ 80-20.1-520 Federal Registration

Federal law provides for registration of aliens as follows:

Section 702(a) [Section 6(e)(3)] of Pub. L. No. 110-229, the Consolidated Natural Resources Act, provides:

REGISTRATION. The Secretary of Homeland Security may require any alien present in the Commonwealth on or after the transition period effective date to register with the Secretary in such a manner, and according to such schedule, as he may in his discretion require. Paragraph (1) [prohibition on removal] and Paragraph (2) [employment authorization] of this subsection shall not apply to any alien who fails to comply with such registration requirement.

Section 262 of the Immigration and Nationality Act, 8 U.S.C. 1302 provides:

Registration of aliens.

- (a) It shall be the duty of every alien now or hereafter in the United States, who
 - (1) is fourteen years of age or older,
 - (2) has not been registered and fingerprinted under section 1201(b) of this title or section 30 or 31 of the Alien Registration Act, 1940, and
 - (3) remains in the United States for thirty days or longer, to apply for registration and to be finger printed before the expiration of such thirty days.
- (b) It shall be the duty of every parent or legal guardian of any alien now or hereafter in the United States, who
 - (1) is less than fourteen years of age,
 - (2) has not been registered under section 1201(b) of this title or section 30 or 31 of the Alien Registration Act, 1940, and
 - (3) remains in the United States for thirty days or longer, to apply for the registration of such alien before the expiration of such thirty days. Whenever any alien attains his fourteenth birthday in the United States he shall, within thirty days thereafter, apply in person for registration and to be fingerprinted.
- (c) The Attorney General may, in his discretion and on the basis of reciprocity pursuant to such regulations as he may prescribe, waive the requirement of fingerprinting specified in subsections (a) and (b) of this section in the case of any nonimmigrant.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

Commission Comment: The Commission did not modify the paragraph and subsection designations in this section to allow the federal law designations to remain the same. The Commission corrected the citation to Pub. L. No. 110-229 pursuant to 1 CMC § 3806(g).

§ 80-20.1-525 Commonwealth Registration

Commonwealth law has provided for the annual registration of aliens since 1983.

Title 3, Section 5001 provides:

Registration of aliens.

- (a) Every alien who remains in the Commonwealth longer than 90 days shall by regulation be required to be registered. Registration shall be renewed annually. The

parents or legal guardians of aliens under the age of 18 are responsible for such child's registration.

(b) Registration shall be conducted by the Department for all classes of aliens. Registration information may be taken on oath or by declaration. Such registration information as the Secretary may require is confidential and may be made available only on request of law enforcement authorities in connection with criminal or juvenile delinquency investigations.

(c) Registered aliens will be issued an identification card, which will contain the name of the alien, the LIDS number, such identifying information as the Secretary may require, and the expiration date of the card.

(d) Registered aliens 18 years old or older shall keep their identification card in their personal possession or control at all times.

(e) Any alien who knowingly fails to comply with this section shall be guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not more than 90 days, or fine of not more than \$500 or both.

(f) An alien, for purposes of this section, is any person who is not a citizen, national, or permanent resident of the United States, or a CNMI permanent resident as provided by Commonwealth law prior to April 23, 1981.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

Commission Comment: The Commission did not modify the paragraph and subsection designations in this section to allow the CNMI law designations to remain the same.

§ 80-20.1-530 No Duplicate Registration

To the extent that the federal government registers all aliens present in the Commonwealth and provides registration information to the Commonwealth, the Commonwealth will not duplicate the registration requirement.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

Part 600 - Other Provisions

Subpart A - Regulations

§ 80-20.1-601 Regulations

In order to implement the legislative oversight requirement, amendments to this subchapter shall be transmitted to the presiding officers of the Legislature for a thirty day period of consideration, prior to, concurrently with, or subsequent to publication for comment. If all or any part of the regulations is rejected by a joint resolution within the thirty day period, the regulations shall be amended accordingly before going into effect. No further period for public comment is required after action by the Legislature.

Modified 1 CMC § 3806(d).

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010); Amdts Adopted 30 Com. Reg. 28891 (Oct. 25, 2008); Amdts Proposed 30 Com. Reg. 28632 (Sept. 25, 2008); Adopted 30 Com. Reg. 28027 (Jan. 22, 2008); Proposed 29 Com. Reg. 27498 (Dec. 18, 2007); Proposed 29 Com. Reg. 27213 (Nov. 19, 2007).

Commission Comment: The 2010 amendments renumbered this section from former section § 80-20.1-501 without changing the content.

Subpart B - Limitations

§ 80-20.1-605 Computation of Time Periods

In computing any period of time under the rules in this subchapter, or in a decision or order issued hereunder, the time begins with the day following the act, event, or default, and includes the last day of the period unless it is a Saturday, Sunday, or non-work day observed by the Commonwealth government, in which case the time period includes the next business day. When a prescribed period of time is seven days or less, Saturdays, Sundays, and non-work days shall be excluded from the computation.

Modified 1 CMC § 3806(d), (e).

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010); Amdts Adopted 30 Com. Reg. 28891 (Oct. 25, 2008); Amdts Proposed 30 Com. Reg. 28632 (Sept. 25, 2008); Adopted 30 Com. Reg. 28027 (Jan. 22, 2008); Proposed 29 Com. Reg. 27498 (Dec. 18, 2007); Proposed 29 Com. Reg. 27213 (Nov. 19, 2007).

Commission Comment: The 2010 amendments renumbered this section from former section § 80-20.1-426(h) without changing the content.

§ 80-20.1-610 Time Limit for Filing Complaints

(a) General Time Limit.

No complaint may be filed more than six months after the date of the last-occurring event that is the subject of the complaint, except in cases where the actionable conduct was not discoverable upon the last-occurring event. In such instance, no complaint may be filed more than six months after the date a complainant of reasonable diligence could have discovered the actionable conduct.

(b) Time limit for filing after termination.

In any event, an individual must file a complaint within thirty days of the termination of an approved employment contract. However, the Department may file an action against an employer on behalf of individual workers after the 30-day period for an individual complaint has expired. The six month period within which the Department may file a complaint does not commence until after an investigation has been commenced.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

§ 80-20.1-615 Motions for Reconsideration

A party may file a motion for reconsideration within fifteen days after service of an order.

Modified 1 CMC § 3806(e).

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010); Amdts Adopted 30 Com. Reg. 28891 (Oct. 25, 2008); Amdts Proposed 30 Com. Reg. 28632 (Sept. 25, 2008); Adopted 30 Com. Reg. 28027 (Jan. 22, 2008); Proposed 29 Com. Reg. 27498 (Dec. 18, 2007); Proposed 29 Com. Reg. 27213 (Nov. 19, 2007).

Commission Comment: The 2010 amendments changed this section and renumbered it from former section § 80-20.1-438(k).

§ 80-20.1-620 Time for Filing Appeals

(a) Time for filing administrative appeals.

Appeals of an administrative denial must be filed with the Administrative Hearing Office within fifteen days of the date of the denial unless good cause is shown. In no event may an administrative appeal be taken more than six months from the date of the denial.

(b) Time for filing appeals to the Secretary.

A notice of appeal to the Secretary must be filed within fifteen days of issuance of the order by a hearing officer.

(c) Time for filing appeals to the Court.

Appeal from a final action by the Secretary must be filed with the Commonwealth Superior Court within thirty days of the final action by the Secretary.

Modified 1 CMC § 3806(e).

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

Subpart C - Electronic Filing and Access

§ 80-20.1-625 Electronic Forms

The regulations in this subchapter are designed to foster the use of Internet access so that forms may be filed via the Department's website. To that end, most submissions to the Department are standard forms that are available for downloading from the Department's website, www.marianaslabor.net.

Modified 1 CMC § 3806(d).

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010); Amdts Adopted 30 Com. Reg. 28891 (Oct. 25, 2008); Amdts Proposed 30 Com. Reg. 28632 (Sept. 25, 2008); Adopted 30 Com. Reg. 28027 (Jan. 22, 2008); Proposed 29 Com. Reg. 27498 (Dec. 18, 2007); Proposed 29 Com. Reg. 27213 (Nov. 19, 2007).

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Commission Comment: The 2010 amendments changed this section and renumbered it from former section § 80-20.1-550(a).

§ 80-20.1-630 Online Access

The Department provides access via the Department's website to revised statutes and regulations, announcements, notices, opinions and orders, and public data from the Department.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010); Amdts Adopted 30 Com. Reg. 28891 (Oct. 25, 2008); Amdts Proposed 30 Com. Reg. 28632 (Sept. 25, 2008); Adopted 30 Com. Reg. 28027 (Jan. 22, 2008); Proposed 29 Com. Reg. 27498 (Dec. 18, 2007); Proposed 29 Com. Reg. 27213 (Nov. 19, 2007).

Commission Comment: The 2010 amendments changed this section and renumbered it from former section § 80-20.1-550(b).

Subpart D - Fees

§ 80-20.1-635 Fees

The following fees shall be collected by the Department. All fees are nonrefundable and nontransferable unless otherwise provided in this subchapter.

- | | |
|--|---|
| (a) Posting a job vacancy announcement | No fee |
| (b) Registration to transfer | No fee |
| (c) Application for an approved contract (initial, transfer, renewal) | \$300.00 unless a federal fee has been paid, in which case no fee |
| (d) Application for an approved contract non-business employer | \$250.00 unless a federal fee has been paid, in which case no fee |
| (e) Attendance at orientation | No fee |
| (f) Request for contract amendment or change | \$25.00 |
| (g) Request for certificate of good standing | \$100.00 |
| (h) Filing of workforce plan | No fee |
| (i) Replacement or duplicate permit | \$50.00 |
| (j) Penalty fee for untimely renewal (limit 60 days) | \$5.00/day |
| (k) Processing a temporary work authorization (6 months) | \$150.00 |
| (l) Renewal of temporary work authorization (per month) | \$25.00 |
| (m) Mediation of labor disputes | No fee |
| (n) Filing a complaint with the Hearing Office | \$20.00/person |
| (o) Filing an appeal to the Hearing Office | \$25.00/person |
| (p) Filing an appeal to the Secretary (per person, except in agency cases) | \$40.00 |
| (q) Transcript of labor hearing (tape only; tape | \$75.00/tape |

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- provided by requester)
- (r) Expedited processing (in addition to fee) \$150.00
 - (s) Miscellaneous certifications \$25.00
 - (t) Request for extension of transfer \$50.00
 - (u) Annual registration \$25.00
 - (v) Penalty fee if check or credit card payments do not clear \$35.00
 - (w) Specialty data request
 - Less than one hour required for
 - Individual's own records \$25.00
 - Employer's own records \$25.00
 - Less than one hour required, others \$95.00
 - More than one hour required (as available) Cost to locate, assemble, and copy
 - (x) Contract extensions (up to six months) \$35.00/month

Modified 1 CMC § 3806(d).

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010); Amdts Adopted 31 Com. Reg. 29636 (June 22, 2009); Amdts Proposed 31 Com. Reg. 29557 (May 20, 2009); Amdts Adopted 30 Com. Reg. 28891 (Oct. 25, 2008); Amdts Proposed 30 Com. Reg. 28632 (Sept. 25, 2008); Adopted 30 Com. Reg. 28027 (Jan. 22, 2008); Proposed 29 Com. Reg. 27498 (Dec. 18, 2007); Proposed 29 Com. Reg. 27213 (Nov. 19, 2007).

Commission Comment: The 2010 amendments changed this section and renumbered it from former section § 80-20.1-535.

Subpart E - Severability and Effective Date

§ 80-20.1-640 Severability

If any provision of the regulations in this subchapter or the application of such regulations to any person or circumstance shall be held invalid by a court of competent jurisdiction, the remainder of such regulations or the application of such regulations to persons or circumstances other than those as to which it was held invalid shall not be affected thereby.

Modified 1 CMC § 3806(d).

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010); Amdts Adopted 30 Com. Reg. 28891 (Oct. 25, 2008); Amdts Proposed 30 Com. Reg. 28632 (Sept. 25, 2008); Adopted 30 Com. Reg. 28027 (Jan. 22, 2008); Proposed 29 Com. Reg. 27498 (Dec. 18, 2007); Proposed 29 Com. Reg. 27213 (Nov. 19, 2007).

Commission Comment: The 2010 amendments renumbered this section from former section § 80-20.1-601 without changing the content.

§ 80-20.1-645 Effective Date

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The regulations in this subchapter are effective on June 1, 2010 and shall not apply retroactively to applications filed or proceedings in the Administrative Hearing Office that were pending before that date.

Modified 1 CMC § 3806(d).

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010); Amdts Adopted 30 Com. Reg. 28891 (Oct. 25, 2008); Amdts Proposed 30 Com. Reg. 28632 (Sept. 25, 2008); Adopted 30 Com. Reg. 28027 (Jan. 22, 2008); Proposed 29 Com. Reg. 27498 (Dec. 18, 2007); Proposed 29 Com. Reg. 27213 (Nov. 19, 2007).

Commission Comment: The 2010 amendments changed this section and renumbered it from former section § 80-20.1-605.

**Appendix A
Former Immigration Categories**

The following immigration categories of persons entitled to work in the Commonwealth were included in the Immigration Regulations effective in the Commonwealth on November 27, 2009. The numbering is from those regulations. The references to “Director” are to the former CNMI Director of Immigration.

§ 5-40.3-240(b) Government Employment Entry Permit

An alien hired as a Commonwealth government employee in accordance with 3 CMC § 4532 or § 4972, an alien hired as a Federal government employee, or an alien performing services under a contract (either directly or indirectly) with the Commonwealth or Federal governments, who meets other applicable requirements to enter the Commonwealth as set out in these regulations, may enter and remain in the Commonwealth for one (1) year. The application must include a copy of the contract which has been approved by the government agency. This class of entry permit is renewable. Holders of this class of entry permit may engage in any work in the Commonwealth that is covered by the government employment or contract.

§ 5-40.3-240(d) Immediate Relative of Citizen. U.S. National or CNMI Permanent Resident Entry Permit

Immediate relatives of persons who are citizens, U.S. nationals, or CNMI permanent residents may enter and remain in the Commonwealth for one year so long as the immediate relative status is in effect, the citizen, U.S. national, or permanent resident meets the qualifications as a sponsor of the alien, and all other qualifications are met. The application for an Immediate Relative Entry Permit shall be filed not earlier than 60 days following the marriage and during the period in which the alien has a lawful immigration status in the Commonwealth. In the event a marriage is terminated by judicial decree, the alien has a grace period of 60 days from the date of the final decree either to change to a different lawful immigration status or to depart the Commonwealth. In the event a marriage is terminated by the death of the U.S. citizen spouse, a widow or widower may apply at any time for a two-year permit in order to facilitate change of status to U.S. permanent resident (green card holder) or other status. Upon application and such documentation as the Director may require, the Director may waive restrictions applicable to an immediate relative who is a dependent child or dependent adult who is physically or mentally challenged and whose care and support is provided by the sponsoring U.S. citizen or other person qualified under this section.

§ 5-40.3-240(e) Immediate Relative of Alien Entry Permit

An immediate relative of an alien, or a common-law marriage spouse of an alien whose family unit includes one or more natural, adopted, or step children under the age of 16 years, may enter and remain in the Commonwealth under an Entry Permit for the same term as the sponsoring alien’s Entry Permit if the immediate relative or common-law

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marriage spouse satisfies the applicable requirements under these regulations, the sponsoring alien meets the requirements to be a sponsor, the sponsoring alien posts a cash bond with the Director in the amount of twice the cost of return travel to the point of origin at the time of application, and the immediate relative or common-law marriage spouse is not an excludable alien. This class of entry permit has the following sub-classifications:

EB: Immediate relative of a government employee

EG: Immediate relative of a foreign investor

EK: Immediate relative of a foreign national worker

EL: Immediate relative of a minister or religious leader

EM: Immediate relative of a missionary

EN: Immediate relative of a long-term business permit holder

EO: Immediate relative of a retiree investor

ET: Immediate relative of the holder of a passport issued by a Freely Associated State

Upon application, the Director may waive restrictions applicable to an immediate relative who is a dependent child who is physically or mentally challenged and whose care and support is provided by the sponsoring alien.

(g) Foreign Investor Entry Permit

An alien who presents a certificate of foreign investment issued by the Department of Commerce and meets the other applicable immigration requirements in these regulations may be issued a Foreign Investor Entry Permit. An alien who has been issued a certificate of foreign investment by the Department of Commerce may enter and remain in the Commonwealth as long as the Department's certificate remains in effect. A holder of this class of entry permit may not work or be employed in the Commonwealth except within the business or activity that constitutes the foreign investment and that has been approved by the Department of Commerce.

(k) Private Sector Employment Entry Permit

An alien who presents a certificate of eligibility to work in the private sector in the Commonwealth issued by the Department of Labor and who meets the other applicable immigration requirements in these regulations may be issued a Foreign Worker Entry Permit. An alien who has been issued a certificate of eligibility by the Department of Labor may enter and remain in the Commonwealth as long as the Department's certificate remains in effect and the person is qualified to work and employed in the Commonwealth. Persons entering for religious occupations pursuant to 3 CMC § 4927 after October 1, 2008 shall be included in this class.

§ 5-40.3-240(h) Foreign Student Entry Permit

An alien who presents a certificate of admission to an educational institution or school established by Commonwealth law or licensed to operate by the Department of Commerce and who meets the other applicable immigration requirements in these regulations may be issued a Foreign Student Entry Permit. An alien who is a holder of

this class of entry permit may enter and remain in the Commonwealth as long as the alien is qualified to study and is a full-time student in the Commonwealth, and the educational institution or school remains qualified under Commonwealth law or a license issued by the Department of Commerce. This class of entry permit does not include enrollees or students in preschool programs. A holder of this class of entry permit may not work or be employed in the Commonwealth except for participation in an on-campus work-study program intended to defray the cost of tuition or living expenses; work for a licensed business not more than 10 hours a week in the student's field of study; or participation in paid activities constituting academic research or training in the student's field of study.

(a) § 5-40.3-240(1) Minister of Religion Entry Permit

An alien who has a vocation of minister of religion or its equivalent, and seeks entry to the Commonwealth to be employed at a bona fide non-profit religious undertaking in the Commonwealth that has no current minister or its equivalent for the purposes of carrying on the vocation of minister of religion or its equivalent, may be issued a Minister of Religion Entry Permit. For purposes of this section, a “bona fide non-profit religious undertaking” means a religious organization legally established or incorporated in the Commonwealth that is exempt from Commonwealth taxation or U.S. taxation as an organization described in 26 U.S.C. § 501(c)(3). For purposes of this section, a “vocation of minister or its equivalent” means that the person has been an active, registered, or recognized member of the religious organization for the two continuous years immediately preceding entry to the Commonwealth and seeks entry for the primary purpose of serving as a minister, priest, cleric, preacher, rector, parson, reverend, nun, monk, or equivalent position that directs the religious affairs of a bona fide non-profit religious undertaking that currently has no minister or its equivalent. An immediate relative of the holder of this class of entry permit may be issued an immediate relative entry permit for the same duration as the holder's permit, provided that such person is not an excludable alien.

§ 5-40.3-240(m) Missionary Entry Permit

Prior to October 1, 2008, an alien who is a bona fide missionary who is in the Commonwealth solely for the purpose of engaging in religious doctrine teaching and not receiving compensation at the level of a living standard of monetary compensation, may be issued a Missionary Entry Permit. The missionary must be petitioned for by a bonafide religious organization showing that the missionary's services are needed by a denomination having a bonafide organization in the Commonwealth. Missionary work is limited to teaching religious doctrine in a church, classroom, or in a home visit setting. After October 1, 2008, the entry class of missionary ceases to exist, provided however that persons holding multiyear permits issued prior to October 1, 2008 may register each year within this class until the term of the original permit expires.

§ 5-40.3-240(n) Long-term Business Entry Permit

The Long-Term Business Entry Permit allows an alien to remain in the Commonwealth

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for up to two (2) years. The applicant must present a certificate of eligibility for a long-term business entry permit issued by the Department of Commerce. A holder of this class of entry permit may engage in any lawful business or commercial activity in the Commonwealth as permitted by the Department of Commerce. A holder of this class of entry permit may not work or be employed in the Commonwealth except to be employed in the business for which the Department of Commerce approved the entry permit.

§ 5-40.3-240(o) Retiree Investor Entry Permit

An alien who is at least 55 years of age on the date of arrival in the Commonwealth, who presents a certificate of foreign retiree investment issued by the Department of Commerce, and who meets the other applicable immigration requirements in these regulations, may be issued a Retiree Investor Entry Permit. The holder of a Retiree Investor Entry Permit may be employed for less than 20 hours a week in the Commonwealth.

§ 5-40.3-240(p) Temporary Work Permit

At the discretion of the Attorney General, an alien who is a victim or witness in a civil or criminal proceeding or party in a civil or criminal matter pending before a Commonwealth court or agency, or a person who has applied for refugee protection pursuant to § 5-40.4-100 of these regulations, may be issued a Temporary Work Permit for up to two years while the relevant matter is pending. This work permit is temporary and does not extend beyond the time required for the relevant matter and reasonable arrangements thereafter as determined by the Attorney General unless the holder of the permit becomes employed as approved by the Director of Labor. . This class of entry permit may be modified or revoked after the relevant matter is no longer pending. A holder of this class of entry permit may be employed in the Commonwealth.

§ 5-40.3-240(t) Holders of passports issued by a Freely Associated State

An alien who is the holder of a passport issued by a Freely Associated State may enter the Commonwealth upon presentation of a valid passport. No entry permit is required.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

Appendix B
Umbrella Permit Conditions

Every umbrella permit was issued pursuant to conditions stated on the face of the permit. Those conditions are reproduced here for convenience of reference.

(a) General conditions. All umbrella permits contain these general conditions: “Agreement and acknowledgment: I, the person to whom this permit is issued as named and identified above, agree to the permit conditions set out above and acknowledge as a condition of the issuance of this permit allowing my residence and employment in the Commonwealth that every aspect of the issuance, modification, or termination of this permit is governed by Commonwealth law and is administered by the Department of Labor. I agree to abide by the applicable labor regulations. I understand that the adjudication of any disputes with respect to this permit is the responsibility, in the first instance, of the Commonwealth Department of Labor and that I have a right of appeal to the Commonwealth Superior Court as defined by Commonwealth law and regulations.”

(b) Specific conditions. All umbrella permits contain specific conditions.

(i) 240K permit:

Conditions: This permit authorizes the holder to be employed in accordance with an approved employment contract as provided in Department of Labor regulations and, as necessary, to seek to be employed, and to transfer for new employment in the private sector during the two-year term of the permit. This permit remains in effect until revoked. This permit may be revoked under the terms of CNMI law and regulations governing the employment of aliens as of the date of issue. Revocations will be published on the DoL website: www.marianaslabor.net. This permit is without effect after November 27, 2011.

Extension of employment: this permit may be revoked at the termination of an employment contract unless, on or before the expiration date of an approved employment contract (the next filing date shown above), the employer elects to extend the employment of the holder of this permit. The employer must submit the proposed extension contract and pay the applicable fee. This permit does not require employment in a particular employment category or on a particular island.

Change of employment. This permit may be revoked under circumstances when the holder changes employment unless the holder registers with the Division of Employment Services and files an Employer Intent Form no later than thirty days after termination of an existing employment contract. Upon the filing of an Employer Intent Form, the Department will follow its usual processes under these regulations.

Seeking employment: This permit may be revoked under circumstances when the holder is not employed and is seeking employment unless the holder makes diligent efforts to locate full time employment suitable to the holder’s skills and abilities and finds an employer within a reasonable time. While seeking employment, the holder of this permit is responsible for all medical and repatriation expenses for the holder, and sponsored

immediate relatives, and minor children so as not to create any financial burden on the CNMI, and the holder will maintain sufficient resources or provide a sufficient bond or undertaking by a financially responsible third party to meet these obligations. CNMI law provides no right to an extension of time to seek employment; each request is considered by a hearing officer on the merits of the written request as to whether employment is likely to be obtained within a reasonable time and any risk to the Commonwealth has been met.

(ii) 240B permit: Same as 240K permit.

Conditions: This holder of this permit has status in the Commonwealth as the immediate relative of a U.S. citizen, and this permit authorizes the holder to work in the Commonwealth. This permit remains in effect until revoked. This permit may be revoked under the terms of CNMI law and regulations governing aliens who are immediate relatives of U.S. citizens as of the date of issue and as amended thereafter. Revocations will be published on the DoL website: www.marianaslabor.net. This permit is without effect after November 27, 2011.

Documentation required: This permit may be revoked unless supported by documentation confirming identity and citizenship of the holder the equivalent status that was the basis of the issuance of this permit unless the holder notifies the Department of Labor and files an intent to change status no later than thirty days after termination of the marriage or equivalent relationship.

Dissolution of marriage or equivalent status: This permit may be revoked under circumstances when the holder is no longer in the marriage or marriage or equivalent status in a family relationship with a U.S. citizen resident in the Commonwealth, and the identity and citizenship of the U.S. citizen spouse as well as that person's residence in the Commonwealth. Documentation may be presented at the time of issuance of this permit or no later than the next filing date to avoid revocation specified above. The holder of this permit must submit the required documentation and pay the applicable fee.

Sponsor's undertaking: The sponsor of the holder of this permit is responsible for all medical and repatriation expenses for the holder, any sponsored alien immediate relatives, and minor children, so as not to create any financial burden on the CNMI and the holder will maintain sufficient resources or provide a sufficient bond or undertaking by a financially responsible third party to meet these obligations.

(iv) 240E permit:

Conditions: This holder of this permit has status in the Commonwealth as the immediate relative of a sponsoring alien. This permit remains in effect until revoked. This permit may be revoked under the terms of CNMI law and regulations governing aliens who are immediate relatives of aliens as of the date of issue and as amended thereafter. Revocations will be published on the DoL website: www.marianaslabor.net. This permit is without effect after November 27, 2011.

Documentation required: This permit may be revoked unless supported by

documentation confirming identity and citizenship of the holder, the equivalent status that was the basis of the issuance of this permit unless the holder notifies the Department of Labor and files an intent to change status no later than thirty days after termination of the marriage or equivalent relationship.

Dissolution of marriage or equivalent status: This permit may be revoked under circumstances when the holder is no longer in the marriage or marriage or equivalent status in a family relationship with a qualified alien resident in the Commonwealth, and the identity and citizenship of the alien spouse as well as that person's employment and residence in the Commonwealth. Documentation may be presented at the time of issuance of this permit or no later than the next filing date to avoid revocation specified above. The holder of this permit must submit the required documentation and pay the applicable fee.

Sponsor's undertaking: The sponsor of the holder of this permit is responsible for all medical and repatriation expenses for the holder, any sponsored alien immediate relatives, and minor children, so as not to create any financial burden on the CNMI and the holder will maintain sufficient resources or provide a sufficient bond or undertaking by a financially responsible third party to meet these obligations.

(v) 240G permit

Conditions: This holder of this permit has status in the Commonwealth as an investor or long-term business owner or operator, and this permit authorizes the holder to work in the Commonwealth. This permit remains in effect until revoked. This permit may be revoked under the terms of CNMI law and regulations governing aliens who are investors or business owners or operators as of the date of issue or as amended thereafter. Revocations will be published by the Department of Commerce. This permit is without effect after November 27, 2011.

Documentation required: This permit may be revoked unless supported by documentation as required by the Department of Commerce with business that was the basis of the issuance of this permit unless the holder notifies the Department of Commerce and files an intent to change status no later than thirty days after termination of the investment or business relationship.

Dissolution of business: This permit may be revoked under circumstances when the holder is no longer a participant in the investment or the respect to doing business in the Commonwealth. Documentation may be presented at the time of issuance of this permit or no later than the next filing date to avoid revocation specified above. The holder of this permit must submit the required documentation and pay the applicable fee.

(vi) 240H permit:

Conditions: This holder of this permit has status in the Commonwealth as a foreign student, and this permit authorizes the holder to engage in certain types of work in the Commonwealth. This permit remains in effect until revoked. This permit may be revoked under the terms of CNMI law and regulations governing aliens who are students as of the

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date of issue or as amended thereafter. Revocations will be published by the Department of Commerce. This permit is without effect after November 27, 2011.

Documentation required: This permit may be revoked unless supported by documentation as required by the Department of Commerce education program that was the basis of the issuance of this permit unless the holder notifies the Department of Commerce and files an intent to change status no later than thirty days after end of the course of study or education program.

End of course of study: This permit may be revoked under circumstances when the holder is no longer a participant in a course of study or with respect to qualifying as a foreign student in the Commonwealth. Documentation may be presented at the time of issuance of this permit or no later than the next filing date to avoid revocation specified above. The holder of this permit must submit the required documentation and pay the applicable fee.

(vii) 240L permit:

Conditions: This permit authorizes the holder to work as a minister or missionary in accordance with an approved application from a bona fide non-profit religious undertaking employer as provided in the Commonwealth's immigration regulations and, as necessary, to seek to be employed, and to transfer for new employment with a bona fide non-profit religious undertaking employer during the two-year term of the permit. This permit remains in effect until revoked. This permit may be revoked under the terms of CNMI law and regulations governing the employment of aliens as of the date of issue. Revocations will be published on the DoL website: www.marianaslabor.net. This permit is without effect after November 27, 2011.

Documentation required: This permit may be revoked at the termination of the current period of admission to the Commonwealth unless, on or before the expiration of the current permit, the holder notifies the Department of Labor and files an Employer Intent Form no later than thirty days after termination of an existing permit. Upon the filing of an Employer Intent Form, the Department of Labor will determine that the employment is with a bona fide non-profit religious undertaking in the Commonwealth and complies with the regulatory requirements to which the permit was subject when issued or last renewed or that the employment qualifies under the regulatory requirements for a permit under Category 240K.

Change of employment: This permit may be revoked under circumstances when the holder changes employment unless the holder notifies the Department of Labor before the expiration of the current permit (the next filing date shown above), the bona fide non-profit religious undertaking employer elects to extend the employment of the holder of this permit. The employer must submit the proposed extension application and pay the applicable fee.

Seeking employment: While seeking employment, the holder of this permit is responsible for all medical and repatriation expenses for the holder, any sponsored alien immediate relatives, and minor children, so as not to create any financial burden on the CNMI and the holder will maintain sufficient resources or provide a sufficient bond or undertaking

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by a financially responsible third party to meet these obligations. CNMI law provides no right to an extension of time to seek employment; each request is considered by a hearing officer on the merits of the written request as to whether employment is likely to be obtained within a reasonable time and any risk to the Commonwealth has been met.

(viii) 240M permit: Same as 240L permit

(ix) 240N permit: Same as 240G permit

(x) 240O permit: Same as 240G permit

(xi) 240P permit: Same as 240K permit.

History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).

Appendix C
Report-Back Dates for Umbrella Permits

Every umbrella permit was issued with a report-back date. The report-back dates were determined initially by the category in which the holder of the permit fell at the time of issuance. Subsequent report-back dates, required by hearing officers, are relevant to fulfilling specific conditions of the permit.

(a) Holders of valid work permits. The report-back date for holders of valid work permits on the date when the umbrella permit was issued is the anniversary date on which the current authorized employment is scheduled to end. On the report-back date, if employment has been extended or renewed, or other qualifications for continuance of the permit exist, the permit will continue in effect.

(b) Persons whose applications were in process. The report-back date for persons who did not have a valid work permit on the date when the umbrella permit was issued but who had applications pending on that date was January 15, 2010, subsequently extended to February 15, 2010. On the report-back date, if the application has been approved, or other qualifications for continuance of the permit exist, the permit will continue in effect.

(c) Persons with pending cases or appeals. The report-back date for persons who did not have a valid work permit on the date when the umbrella permit was issued but who had a pending case or appeal in the Department, the Commonwealth courts, or the federal courts is a staggered set of dates on which the case or appeal was anticipated to be completed. On the report-back date, if the case or appeal has been completed, the holder of the umbrella permit must demonstrate another qualification (such as employment) for continuance of the permit.

(d) Persons with extensions of time to transfer. The report-back date for persons who did not have a valid work permit on the date when the umbrella permit was issued but who had a current extension of time to transfer granted by a hearing officer is a staggered set of dates on which the transfer was anticipated to be completed. On the report-back date, the holder of the umbrella permit must demonstrate either employment, substantial likelihood that employment will be secured in the immediate future, or another qualification for continuance of the permit.

(e) Persons with immediate relative status. The report-back date for persons who had immediate relative status on the date when the umbrella permit was issued is the anniversary date of the granting of immediate relative status. On the report-back date, the holder of the umbrella permit must demonstrate that the immediate relative status continues to exist or another qualification for continuance of the permit.

(f) Persons in other circumstances. The Protocol provided for issuance of umbrella permits to persons in other circumstances. On the report-back date, the holder of the umbrella permit must demonstrate qualification for continuance of the permit.

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History: Amdts Adopted 32 Com. Reg. 30254 (May 21, 2010); Amdts Proposed 32 Com. Reg. 30159 (Apr. 19, 2010).