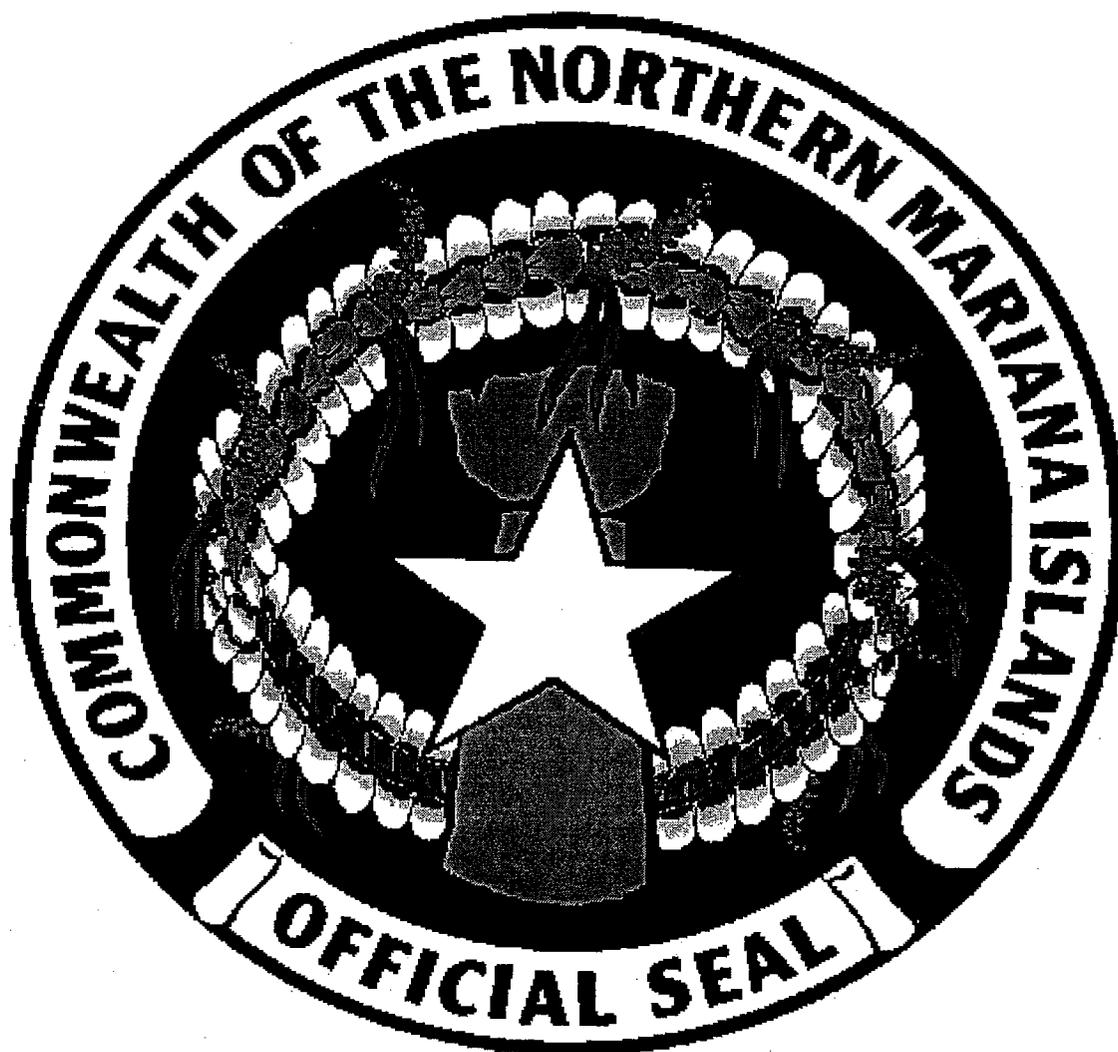


COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS  
SAIPAN, TINIAN, ROTA and NORTHERN ISLANDS



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COMMONWEALTH REGISTER

VOLUME 30  
NUMBER 09

SEPTEMBER 25, 2008

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# COMMONWEALTH REGISTER

VOLUME 30

NUMBER 09

September 25, 2008

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**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

**Benigno R. Fitial**  
Governor

**Timothy P. Villagomez**  
Lieutenant Governor

**EXTENSION OF EMERGENCY  
Volcanic of Anatahan**

**WHEREAS, On May 13, 2003, a Declaration of Emergency was issued with respect to volcanic activity on the island of Anatahan; and**

**WHEREAS, said Declaration declared the island of Anatahan as unsafe for human habitation and restricted all travel to said island with the exception of scientific expeditions; and**

**NOW, THEREFORE, I, BENIGNO R. FITIAL, by the authority vested in me as Governor, and pursuant to Article III, Section 10 of the Commonwealth Constitution and 3 CMC §5121, and in accordance with the Emergency Management Office, Commonwealth of the Northern Mariana Islands and US Geological Survey, do hereby extend a state of disaster emergency in the Commonwealth with the respect of the island of Anatahan under the same terms and conditions as are contained in the original Declaration.**

**This Extension of Emergency shall remain in effect for thirty (30) days, unless the Governor shall, prior to the end of the 30-day period, notify the Presiding Officers of the Legislature that the state of emergency has been revoked or further extended for a like term, and giving reasons for extending the emergency.**

**Dated, this 25<sup>th</sup> of September 2008.**

**BENIGNO R. FITIAL**  
Governor

- Cc: Lt. Governor (Fax: 664-2311)
- Senate President (Fax: 664-8803)
- House Speaker (Fax: 664-8900)
- Mayor of the Northern Islands (Fax: 664-2710)
- Executive Assistant for Carolinian Affairs (Fax: 235-5088)
- Attorney General (Fax: 664-2349)
- Secretary Of Finance (Fax: 664-1115)
- Commissioner of Public Safety (Fax: 664-9027)
- Special Assistant for Management and Budget (Fax: 664-2272)
- Special Assistant for Programs and Legislative Review (Fax: 664-2313)
- Press Secretary (Fax: 664-2290)
- United States Coast Guard (236-2968)



Emergency Management Office  
Office of the Governor  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS



Benigno R. Fitial, Governor  
Timothy P. Villagomez, Lt. Governor

Mark S. Pangelinan, Acting Director

# MEMORANDUM

To: Governor

09/22/08

From: Acting Director, EMO

Subject: Declaration of Emergency

The EMO seismic staff and USGS, once again with close consultation has informed me the status of Anatahan volcano that, **Seismicity remains low with periodic low-amplitude tremor bursts lasting 30 seconds to 90 minutes occurring this week. No plumes have been reported. The volcano appears to have entered a quiescent period but it is still possible for more active activity, including gas and ash emissions, to resume again at any time with little or no warning.**

During more northerly winds, the Anatahan plume will be blown towards CNMI and may be experienced as a sulfur-scented haze. Seismic activity was noted this week.

**A Volcanic Alert Level: ADVISORY and Aviation Color Code: YELLOW remains for Anatahan Volcano.**

Therefore, we are once again respectfully soliciting your assistance in extending the **Declaration of Emergency** for the island of Anatahan for another thirty (30) days and to maintain the *off limits zone from 30 nautical miles to 10 nautical miles* around Anatahan until further notice. Under these conditions, restriction of entry to the said island should continue until a thorough scientific study is done and that the findings suggest otherwise. The current **Declaration of Emergency** has expired on September 25, 2008.

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

Theodore J. Untalan

cc: Governor  
SAA  
Mayor, NI  
DPS  
USCG



## COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

**Benigno R. Fitial**  
Governor

**Timothy P. Villagomez**  
Lieutenant Governor

### **EXTENSION OF EMERGENCY Volcanic of Anatahan**

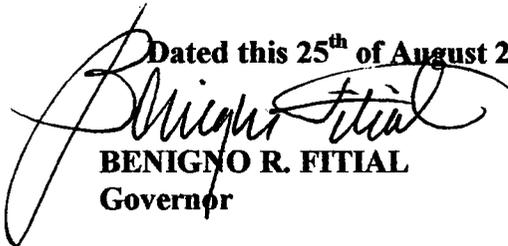
**WHEREAS, On May 13, 2003, a Declaration of Emergency was issued with respect to volcanic activity on the island of Anatahan; and**

**WHEREAS, said Declaration declared the island of Anatahan as unsafe for human habitation and restricted all travel to said island with the exception of scientific expeditions; and**

**NOW, THEREFORE, I, BENIGNO R. FITIAL, by the authority vested in me as Governor, and pursuant to Article III, Section 10 of the Commonwealth Constitution and 3 CMC §5121, and in accordance with the Emergency Management Office, Commonwealth of the Northern Mariana Islands and US Geological Survey, do hereby extend a state of disaster emergency in the Commonwealth with the respect of the island of Anatahan under the same terms and conditions as are contained in the original Declaration.**

**This Extension of Emergency shall remain in effect for thirty (30) days, unless the Governor shall, prior to the end of the 30-day period, notify the Presiding Officers of the Legislature that the state of emergency has been revoked or further extended for a like term, and giving reasons for extending the emergency.**

**Dated this 25<sup>th</sup> of August 2008.**



**BENIGNO R. FITIAL**  
Governor

**Cc: Lt. Governor (Fax: 664-2311)  
Senate President (Fax: 664-8803)  
House Speaker (Fax: 664-8900)  
Mayor of the Northern Islands (Fax: 664-2710)  
Executive Assistant for Carolinian Affairs (Fax: 235-5088)  
Attorney General (Fax: 664-2349)  
Secretary Of Finance (Fax: 664-1115)  
Commissioner of Public Safety (Fax: 664-9027)  
Special Assistant for Management and Budget (Fax: 664-2272)  
Special Assistant for Programs and Legislative Review (Fax: 664-2313)  
Press Secretary (Fax: 664-2290)  
United States Coast Guard (236-2968)**

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**Commonwealth of the Northern Mariana Islands  
Commonwealth Medical Profession Licensing Board**

*In the Matter of Terri H. Clawson, PA,* ) Case No. 2008-02  
(Amendment of practice agreement) )

**BOARD EMERGENCY ORDER #02  
APPROVING PRACTICE AGREEMENT AMENDMENT  
FOR REMOTE SUPERVISION**

**Summary**

This Order extends the order which the Board entered previously in this case.

**Board findings and conclusions**

Terri Clawson's situation has not changed materially at the Tinian Health Center. The Center has not yet hired a physician, and still depends on finding a temporary physician from CHC or the private sector. There is still great uncertainty as to the presence of a physician at the THC. Ms. Clawson still needs a supervising physician.

The Board finds that it would be unfair to the people of Tinian to restrict Ms. Clawson from practicing at the THC merely because the Center has been unable to find a permanent physician. We will not continue the authority provided in this Order indefinitely. But we will continue it for a time.

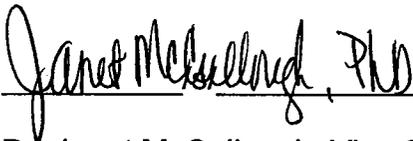
**Ruling and ordering paragraphs**

The Board having been fully advised in the premises of this matter, for the above-stated reasons, hereby ORDERS that:

1. The Board's preceding order in this case is continued through the following date:  
\_\_\_\_\_ *Sept 30th* \_\_\_\_\_, 2008.
2. The Board shall review this matter at its next meeting.
3. A copy of this order shall be placed in a public area of the Tinian Health Center;
4. The Executive Director is directed to do the following in person or by electronic means:

- 1  
2 a. serve this Order on the licensee, Ms. Terri H. Clawson (email:  
3 tclawson@terriclawson.com);  
4  
5 b. serve this Order on the director of the Tinian Health Center (tel: 433-9233;  
6 fax 433-9247);  
7  
8 c. have the Order published in the next Commonwealth Register.  
9

10 A party seeking to appeal this Order is directed to 1 CMC § 9112(b), which provides for  
11 judicial review of final orders within 30 days in the Commonwealth Superior Court. The  
12 Board believes that this IS a final Order.  
13

14  
15   
16 \_\_\_\_\_  
17

Dated: August 29, 2008

18 Dr. Janet McCullough, Vice Chair  
19 Ms. Pamela Carhill, Secretary-Treasurer: /s/  
20 Dr. Leticia Borja, Board Member: /s/  
21

22 Dr. Ken Pierson, Board Member: not voting  
23 Dr. Admad Al-Alou, Chairman (not voting)  
24 Commonwealth Health Care Professions Licensing Board  
25 Building No. 1336, Capitol Hill  
26 Saipan MP 96950  
27

28 tel 670.664.4809  
29 fax: 670.664.4813  
30 bpl@pticom.com  
31

32  
33 0 2 Order Clawson remote practice agreement.wpd

# PUBLIC NOTICE

## OF PROPOSED RULES AND REGULATIONS

WHICH ARE AMENDMENTS TO THE EMPLOYMENT RULES AND REGULATIONS  
("ERAR") OF THE DEPARTMENT OF LABOR

**INTENDED ACTION TO ADOPT THESE PROPOSED RULES AND REGULATIONS:** The Commonwealth of the Northern Mariana Islands, Department of Labor (hereafter the "Department") intends to adopt as permanent regulations the attached Proposed Regulations, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The Regulations would become effective 10 days after adoption. (1 CMC § 9105(b))

**AUTHORITY:** The Secretary is empowered by the Legislature to adopt rules and regulations pertaining to the employment of citizens, permanent residents, and foreign national workers pursuant to Public Law 15-108 §§ 4530, 4606, 496, 4971.

**THE TERMS AND SUBSTANCE:** The proposed revisions are to renumber the regulations to conform to the numbering system adopted for the N.M.I. Administrative Code, to incorporate emergency regulations for the implementation of the federalization cap and the exclusion of unskilled workers, and to incorporate new practice brought about by the implementation of the automated processing system and interactive website that are now integral parts of the Department.

### A SUMMARY OF THE SUBJECTS AND ISSUES INVOLVED:

These rules and regulations are promulgated:

1. To implement the changes that have arisen because the Department has changed its procedures as it brought its new automated processing online and covered certain operations to its new interactive website.
2. In response to requests that certain revisions should be made from participants in the community consultative meetings that the Department convened to discuss the first six months of operation under the new labor law.

CITATION OF RELATED AND/OR AFFECTED STATUTES, RULES AND REGULATIONS. These proposed regulations will supercede (1) Employment Rules and Regulations adopted in the Commonwealth Register, Volume 30, Number 01, pages 28027-28135), (2) Amendment to Employment Rules and Regulations adopted in the Commonwealth Register, Volume 30, Number 08, pages 028620-08621, and (3) and Amendment to the Employment Rules and Regulations adopted in the Commonwealth Register, Volume 30, Number 08, pages 08622-028626).

DIRECTIONS FOR FILING AND PUBLICATION: These Proposed Regulations shall be published in the Commonwealth Register in the section on proposed and newly adopted regulations (1 CMC § 9102(a)(1)) and posted in convenient places in the civic center and in local government offices in each senatorial district, both in English and in the principal vernacular. (1 CMC § 9104(a)(1))

TO PROVIDE COMMENTS: Send or deliver your comments to Deputy Secretary of labor Cinta M. Kaipat, at the above address, fax or email address [DepSec2@gmail.com](mailto:DepSec2@gmail.com), with the subject line "New ERAR". Comments are due within 30 days from the date of publication of this notice. Please submit your data, views or arguments. (1 CMC § 9104(a)(2))

Submitted by:

  
GIL M. SAN NICOLAS

09/26/08  
Date

Secretary of Labor

Received by:

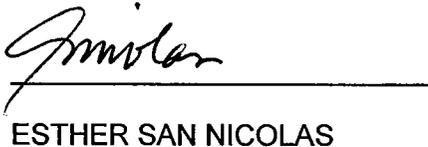
  
ESTHER S. FLEMING

9/26/08  
Date

Governor's Special Assistant for Administration

Filed and

Recorded by:

  
ESTHER SAN NICOLAS

9.25.08  
Date

Commonwealth Register

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

Dated the 26<sup>th</sup> day of September, 2008

*Gregory Baka* DAG for

MATTHEW T. GREGORY,

Attorney General

## NOTISIAN PUPBLIKU

### POT MAPROPONEN AREKLAMENTO YAN REGULASION SIHA

#### ANAI I AMENDASION SIHA PARA I AREKLAMENTO YAN REGULASION SIHA PARA I MAN MANEMPLE'A NI DIPATTAMENTON HOTNALERU

MA'INTENSIONA NA AKSION PARA U MA'ADAPTA ESTE I MAPROPONE NA AREKLAMENTO YAN REGULASION SIHA: I Commonwealth gi Sangkattan Na Isla Marianas siha, i Dipattamenton Hotnaleru (pues i "Dipattamento") ha intensiona para u adapta komu petmanente na regulasion siha ni chechetton gi Mapropone na Regulasion siha, sigun i areklamenton i Akton Administrative Procedure, i CMC § 9104(a). I Regulasion para u efektibu gi halom i dies (10) diha siha despues di ma'adapta. (1CMC § 9105(b).

**ATURIDAT:** I Lehislatura ha nã'i i Sekretario pudet para u adapta i areklamento yan regulasion siha komu para i inemplehan siudadãnu siha, petmanente na siudadãnu siha, yan estrangheru na hotnaleru sigun i Lai Pupbliku 15-108 §§ 4530, 4606, 496, 4971.

**I SUSTANSIAN I PALABRA SIHA:** I marebisan i mapropone na regulasion siha para u mata'lon manumiru para u afakcha' i nuebu na sisteman man numiru ni ma'adapta para i N.M.I. Administrative Code, para u mana'danña' yan i implemantasion i ensigidas na regulasion siha i federalization cap yan para mana' huyong i ti mangkapãs (unskilled) na hotnaleru siha, yan para u mana' danña' i nuebu na prinaktika ni mana'fatto ni i implementasion i sisteman automated processing yan interactive website pã'go anai kumabãles i patte gi Dipattamento.

#### I ASUNTO SIHA NI TINETEKKA' :

Este na Areklamento yan Regulasion siha macho'gue:

1. Para u implementa i tinilaika siha ni manannok sa' i Dipattamento anai ha tulaika i manera siha anai manhãlom i nuebu na automated processing online yan man kinubre palu na operasion siha gi nuebu na interactive website.
2. Sigun gi ineppen i man mamaisen na palu gi marebisa siha na debi u mafa'tinas ginen i kinensttan i pattisipãnten komunidãt gi hunta anai i Dipattamento mandanña' para u madeskute i primet sais meses na operasion gi papa' i nuebu na lain hotnaleru.

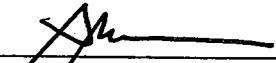
**ANNOK I MAN ACHULE' YAN/PAT INAFEKTA NA LAI, AREKLAMENTO YAN REGULASION SIHA.**

Este i mapropone na regulasion siha para u tinilaika (1) Areklamento yan Regulasion manemplehu ni ma'adapta gi halom i Rehistran Commonwealth, Baluma 30, Numiru 01, pahina 28027 asta 28135), (2) Amendasion Areklamento yan Regulasion man emplehu ma'adapta gi halom i Rehistran Commonwealth, Baluma 30, Numiru 08, pahina 028620 asta 08621, yan (3) yan Amendasion Areklamento yan Regulasion para i manemplehu ma'adapta gi halom i Rehistran Commonwealth, Baluma 30, Numiru 08, pahina 08622 asta 08626).

**DIREKSION PARA U MAPO'LO YAN PUPBLIKASION:** Este i Mapropone na Regulasion siha debi na u mapublika gi halom i Rehistran Commonwealth gi seksioa ni mapropone yan nuebu na ma'adapta na regulasion siha (1CMC § 9102(a)(1) yan u mapega gi mangkombiniente na lugat siha gi halom i civic center yan i ofisinan gobietnamento siha gi kada distriton senadot, gi fino' English yan gi dos na prinsipat na lengguahen natibu. (1CMC § 9104(a)(1)

**PARA U MAPRIBENIYI OPIÑION SIHA:** Na' hanague osino entrega i opinion-mu guatu gi Segundon i Sekretarian Hotnaleru as Cinta M. Kaipat, gi sanhilo' na address, fax pat email address [DepSec2@gmail.com](mailto:DepSec2@gmail.com) yan i subject line "New ERAR". Na' fanhalom todou opinion gi halom trenta(30) diha siha ginen i publikasion este na notisia. Pot fabot na halom i infotmasion, opinion pat testamofion kinontra siha. (1 CMC § 9104(a)(2)

Nina halom as:

  
\_\_\_\_\_  
GIL M. SAN NICOLAS  
Sekretarian Hotnaleru

09/26/08  
Fecha

Rinesibi as:

  
\_\_\_\_\_  
ESTHER S. FLEMING  
Espesiāt Na Ayudante Para I Atministrasion

9/26/08  
Fecha

Pine'lo as:

  
\_\_\_\_\_  
ESTHER SAN NICOLAS  
Rehistran I Commonwealth

9.26.08  
Fecha

Sigun i Lai 1 CMC § 2153(e) (Inabpreban i Abugâdu Henerât na para u macho'gue komu fotma) yan 1 CMC § 9104(a)(3) (u inapreba ni Abugâdu Henerât) I mapropone na regulasion siha ni chechetton guini ya man marebisa komu para fotma yan sufisiente ligât ginen i CNMI Abugâdu Henerât yan debi na u mapublika, 1 CMC § 2153(f) (Areklamento yan Regulasion puplikasion siha).

Mafecha gi diha \_\_\_\_\_ gi Septembre, 2008.

---

**MATTHEW T. GREGORY**  
Abugâdu Henerât

**ARONGOL TOULAP**  
**REEL POMWOL AMMWEL ME AKLLÉGH KKAAL**  
**IYE AA LLIWEL MEREEL ALLÉGHÚL SCHÓÓL ATTARABWAAGHO**  
**(“ERAR”) LLÓL BWULASIYOOL ANGAANG (LABOR)**

**POMWOL FILLÓ REEL ALLÉGH KKAAL:** Bwulasiyool Angaang mellól Téél falúw kka falúwasch Eáng Marianas (Bwulasiyo) ebwe fillóoy bwe ebwele loofósch allégh kka e appasch, sáangi Ammwelil Alléghúl Bwulasiyo, CMC 9104 (a). Allégh kkaal ebwe alúghúlúghúló llól seigh (10) rál mwiril yaal filló (1 CMC 9105 (b)).

**BWÁNGIL:** Samwool e ngáleeey bwángil Sów Fféérúl Allégh ebwe fillóoy allégh kkaal reel umwumwul schóóy angaang, aramasal faleey (permanent resident) me aramasal lúghúl (foreign national workers) kka rebwe angaang, sáangi Alléghúl Toulap ye 15-108, 4530, 4606, 496, 4971.

**AWEWEEL:** Pomwol lliwel kkaal ebwe táli sefááli numurool allégh kkaal bwile ebwe fil fengál me ammwelil numuro kka aa filló ngáli NMI administrative Code; bwe ebwe toolong alléghúl ghitipwotch bwe ebwe akkatééwow reel federalization cap me toowowul unskilled workers me toolongol automated processing system ye e ffé mebwal interactive website ikka raa fillong llól Bwulasiyo.

**AKKÁÁW AWEWE:**

Allégh kkaal aa akkatééló:

1. Bwe ebwele bwél lliwel kka aa téétá bwiegha Bwulasiyo aa liweli aweewe kkaal igha aa toolong automated Processing online me akkááw mwóghutughutul interactive website kka e ffé.
2. Bwile eyoor akkááw ssiwel kka ebwe fféereló sáangi yaar afal schóól mwiisch igha Bwulasiyo e aweweey llól mmwal oloow maramal mwóghutughut faal alléghúl angaang kk e ffé.

**AKKATÉÉL AKKÁÁW ALLÉGH:** Pomwol allégh kkaal nge ebwe mwóghutáágheli (1) Alleghul school Attarabwaagho ye raa fillooy mellol Commonwealth Register, Volume 30, Numuro 01, peigh 28027-28135), (2) Ssiwel reel Alléghúl schóól Attarabwaagho ye raa fillóoy llól Commonwealth Register, Volume 30, Numuro 08, peigh kka 028620-08621, me (3) me Lliwel ngáli Alléghúl Schóól Attarabwaagho ye aa filló llól Commonwealth Register, Volume 30, Numuro 08, peigh 08622-028626).

**AFALAFAL REEL AMMWELIL ME AKKATÉÉL:** Pomwol Allégh kkaal ebwe akkatéélong llól Commwealth Register llól tálil ye re pomwoli me fillóoy allégh kka e ffé (1 CMC Tálil 9102(a)(1)) me ebwe appaschetá igha toulap rebwe weri iye me bwal llól bwulasiyool gobenno kkaal llól senatorial district, kapasal Amerikkónu me Refalúwasch/Remeraalis. (1 CMC Tálil 9104(a)(1))

**ISISILONGOL AGHIYEGH:** Afanga me ngáre bwughiiló ischil mángemángúmwe reel Deputy Secretary of Labor, Ilimwár ye Cinta M. Kaipat, sángx address ye weiláng, fax me ngáre email address DepSec2@gmail.com, reel kkapasal ye “New ERAR”. Ischil mángemáng ebwe isisilong ótol eliigh (30) ráalil yaal akkaté arong yeel. Óutu ghal soong ów ischilong mááfíyámi me ngáre yáámi aingiing. (1 CMC Talil 9104(a)(2))

Isáliyallong:   
GIL M. SAN NICOLAS  
Samwoolul Bwulasiyool Angaang

09/26/08  
Rál

Mwir sángx:   
ESTHER S. FLEMING  
Sów Alillisil Sów Lemelem

9/26/08  
Rál

Ammwel Sangi: \_\_\_\_\_  
ESTHER SAN NICOLAS  
Commonwealth Register

\_\_\_\_\_ Ral

Sángx allégh ye 1 CMC Tálil 2153(e) (Alúghúlúgh mereel AG igha ebwe akkatééló allégh kka ighila) me 1 CMC Tálil 9104(a)(3) (bwughi alúghúlúghúl AG) pomwol allégh kka e appasch nge raa takkal amweri fischi mereel CNMI Sów Bwungul Allégh Lapalap me abwe akkatééló llól, 1 CMC Talil 2153(f) (arongol allégh kkaal)

Ráalil ye \_\_\_\_\_ llól maramal Maan, 2008

\_\_\_\_\_  
MATTHEW T. GREGORY  
Sów Bwungul Allégh Lapalap

N.M.I. ADMINISTRATIVE CODE  
CHAPTER 80 DEPARTMENT OF LABOR

**EMPLOYMENT RULES AND REGULATIONS**

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**Subchapter 80-10. AUTHORITY AND PURPOSE**

Section 80-10.1 Authority. The Department of Labor (the "Department"), pursuant to its powers, duties, and authority under the Commonwealth Employment Act of 2007, PL 15-108; the Minimum Wage and Hour Act, as amended; and Public Laws No. 11-6, 12-11, and 12-58 as amended, does hereby promulgate and issue these regulations that shall govern the hiring of citizens, permanent residents, and foreign national workers in the Commonwealth.

Section 80-10.2 Purpose. The purpose of these regulations is to set forth the necessary procedures and requirements regarding the placement of citizens and permanent resident workers in jobs for which they are qualified or can be trained, to set forth the necessary procedures and requirements regarding the hiring and employment of foreign national workers in jobs that support the Commonwealth's economy, and to provide procedures for investigating and adjudicating complaints regarding violations of the Commonwealth Employment Act of 2007, PL 15-108; the Minimum Wage and Hour Act, as amended; and Public Laws No. 11-6, 12-11, and 12-58 as amended.

Section 80-10.3 Name. These regulations shall be known as the "Employment Rules and Regulations."

#### Subchapter 80- 20. DEPARTMENT OF LABOR

Section 80-20.1 Delegation of authority

Section 80-20.2 Appearance of conflict

Section 80-20.3 Preparation and use of standard forms

#### Subchapter 80-20. DEPARTMENT OF LABOR

Section 80-20.1 Delegation of authority. The Secretary of Labor hereby delegates authority under the Commonwealth Employment Act of 2007, PL 15-108; the Minimum Wage and Hour Act as amended; and Public Laws No. 11-6, 12-11 , and 12-58 to the Director of Employment Services, the Director of Labor, and the hearing officers in the Administrative Hearing Office. Written delegation of authority previously issued shall remain in full force and effect until rescinded, altered, or modified as circumstances require.

Section 80-20.2 Appearance of conflict. 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. 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. 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.

Section 80-20.3 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 these regulations. The Department may require that information on the standard forms be supplemented as provided in these regulations. 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.

## **Subchapter 80-30. EMPLOYMENT OF CITIZENS AND PERMANENT RESIDENTS**

Section 80-30.1 General

Section 80-30.2 Private Sector Employment Preferences

## **Subchapter 80-30. EMPLOYMENT OF CITIZENS AND PERMANENT RESIDENTS**

Section 80-30.1 GENERAL

Section 80-30.1-100 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 these regulations;

(b) "Caregiver" means a person who assists an employer with care for children, elders, and handicapped persons in the home pursuant to a medical certificate of necessity;

(c) "Citizen" means a person who is a citizen or national of the United States;

(d) "Department" means the Department of Labor;

(e) "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 does not include farmers;

(f) "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, farmer, household maintenance worker, or yard worker; and does not include the government of the United States;

(g) "Employment Services" means the Division of Employment Services of the Department of Labor;

(h) "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 these regulations;

(i) "Indigenous" means a person generally recognized in the community as a person of Northern Marianas Descent, who is also a U.S. citizen or permanent resident of the Commonwealth and speaks the Carolinian or Chamorro language to a degree of fluency such that the person may accomplish the basic daily tasks of life without resorting to a language other than Carolinian or Chamorro;

(j) "Job classification" means the O-NET job classifications required by Employment Services;

(k) "Permanent resident" means a person who is legally residing in the Commonwealth pursuant to a grant of permanent resident status by

operation of Commonwealth law prior to 1985. Immediate relatives of U.S. citizens and citizens of the Freely Associated States are not permanent residents of the Commonwealth; these persons are aliens under Commonwealth law; however, they may be treated as "permanent residents" for employment purposes as provided by law;

(l) "Secretary" means the Secretary of Labor.

## Section 80-30.2 PRIVATE SECTOR EMPLOYMENT PREFERENCES

Section 80-30.2-100 Management of the labor pool in the Commonwealth: The Labor Department's objective under PL 15-108 is to achieve high quality employment for U.S. citizens and permanent residents of the CNMI in productive businesses that drive sustainable economic growth and opportunities. High levels of participation in high quality, well-paid, and diversified employment by an adaptable and skilled workforce will help ensure the economic well-being of the Commonwealth. The Department seeks to make faster and more efficient match-ups of people's skills with the job opportunities that are available and to reduce skill shortages in the future by cooperating with government-private partnership efforts to help people make informed decisions about education and training. At the same time, the Department seeks to provide fair employment opportunities for global skills and talent that support the CNMI's economy in ways that recognize and balance the Commonwealth's objectives with respect to full employment for its citizens. Citizen and permanent resident employment and foreign national worker employment are necessary components of the Commonwealth's economic success in the future.

### Section 80-30.2-200 Job preference.

§ 30.2-205 Primary job preference. Citizens and permanent residents shall be given a primary preference for employment in the Commonwealth. This requirement underlies all regulations with respect to the hiring, renewal, replacement, and termination of employees. An important part of the implementation of the primary job preference is emphasis on jobs and occupations for which citizens and permanent residents are or can be qualified and which should be attractive to them. A Jobs Study by the Office of Public Auditor in 2006 and 2007 provided useful observations and conclusions in these regards. For this purpose, four categories of jobs merit special attention.

1. The "A" list. In the past, certain job classifications were reserved for citizens and permanent residents entirely, or available only on a one-to-one basis with foreign national workers. These job classifications continue to merit the most careful attention and emphasis in implementation of the preference for citizens and permanent residents. These are:

- (a) Accounting clerk
- (b) Bookkeeping clerk
- (c) Bus driver (including transit, tour, and school bus driver)
- (d) Custodian
- (e) Hotel front desk clerk
- (f) Janitor
- (g) Messenger, courier
- (h) Receptionist, information clerk
- (i) Retail trade cashier
- (j) Retail trade clerk
- (k) Secretary (other than legal, medical, and executive)
- (l) Security guard
- (m) Surface tour boat operator, motor boat operator
- (n) Taxi driver, chauffeur
- (o) Telephone receptionist, responder, answering service
- (p) Tour guide and escort

2. The "B" List. Certain jobs, *in addition to* the "A" list, warrant special efforts to place citizens and permanent residents. These are:

- (a) Accountant
- (b) Brickmason, blockmason, stonemason
- (c) Cement mason, concrete finisher

- (d) Electrician
- (e) Executive secretary, administrative assistant
- (f) Heating and airconditioning mechanic, installer
- (g) Human resource manager
- (h) Operating engineer, other construction equipment operator
- (i) Paving, surfacing, and tamping equipment operator
- (j) Refrigeration mechanic, installer
- (k) Service station attendant
- (l) Ship captain, boat captain
- (m) Stock clerk, stockroom, warehouse, storage yard
- (n) Truck driver, light or delivery services

3. The "C" list. Certain jobs require an orientation or transition period but after appropriate training or on-the-job training can readily be filled by citizens and permanent residents. These are:

- (a) Auditing clerk
- (b) Auto mechanic
- (c) Carpenter
- (d) Cook
- (e) Maintenance building repairer
- (f) Sales representative
- (g) Secretary, legal, medical, and executive
- (h) Stock clerk, sales floor
- (i) Warehouse worker

4. The "D" list. Particular care must be given to the preference for citizens and permanent residents in filling any job for which the wage is more than \$10 per hour. All jobs for which the wage rate or

equivalent salary is \$10 per hour or more are included on the "D" list. Examples of these relatively high-paying jobs that citizens and permanent residents can be available to fill are:

- (a) Assistant manager, housekeeping
- (b) Customer complaint clerk
- (c) Diving instructor
- (d) Financial controller
- (e) Food & beverage manager
- (f) Front office manager
- (g) Guest service manager
- (h) Inventory controller
- (i) Kitchen manager
- (j) Maintenance manager
- (k) Preschool teacher
- (l) Teacher
- (m) Sales manager, marketing manager
- (n) Station manager

§ 30.2-210 Secondary job preference. Foreign national workers who are currently in the Commonwealth shall be given a secondary preference for employment within the Commonwealth. Employment Services shall provide services to foreign national workers who are in the Commonwealth, who have abided by Commonwealth law and worked productively, and who seek to continue their employment in the Commonwealth. Foreign national workers 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.

Section 80-30.2-300 Job vacancy announcement.

§ 30.2-305 Posting. An employer who is not otherwise exempt and who intends to employ a foreign national worker (under a new employment contract, a renewal of existing employment contract, or a transfer from an existing employment contract) must post a job vacancy announcement on the Department's website, [www.marianaslabor.net](http://www.marianaslabor.net). Any other employer may also post job vacancy announcements on the Department's website.

§30.2-315 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 off-island hire of a foreign national worker.

§30.2-320 Job description. The job description in a posted job vacancy announcement shall be defined by the Occupational Information Network (O-NET) which is an online database that stores information on occupational titles based on the most current version of the Standard Occupational Classification (SOC) System. The O-NET is found at <http://online.onetcenter.org>. For specialty jobs not adequately defined by O-NET classifications a parenthetical description may be appended to the closest O-NET classification.

§30.2-325 Wages. The statement of wages in a posted job vacancy announcement shall include the hourly or bi-weekly amount to be paid and any statement required to comply with regulations issued pursuant to the Resident Workers Fair Compensation Act.

§30.2-330 Employer registration. Employers shall register with Employment Services online at [www.marianaslabor.net](http://www.marianaslabor.net) or in writing in order to post job vacancy announcements. Registrants shall complete a standard form for registration and 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. The NAICS is available online at [www.census.gov/epcd/www/naics.html](http://www.census.gov/epcd/www/naics.html). Employment Services shall review employer registrations and approve those that meet all requirements. Approved employer registrations remain in effect until further notice from Employment Services. Persons who entered the

Commonwealth for employment may not employ others or utilize the services available to employers from Employment Services.

Section 30.2-400 Job referral.

§30.2-405 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.

§ 30.2-410 Referral service. Employment Services shall provide a referral service for citizens and permanent residents located 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 persons who are willing and able to do the work required by the employer.

§ 30.2-415 Job applicant registration for referral service. Citizens and permanent residents may register with Employment Services for assistance in finding employment in the Commonwealth. Registrants shall complete a standard form for registration online or in writing. Registration remains active for six months..

§ 30.2-420 Orientation and assistance to registered persons . Employment Services will provide orientation materials to help applicants with job applications and interviews and with referrals to other agencies that provide related assistance.

§ 30.2-425 Referral List. Employment Services shall maintain a current list of all persons who have registered within the past six months and who have not yet become employed.

§30.2-430 Employment referral. With respect to each job vacancy announcement, Employment Services shall determine whether any person on the Referral List is qualified for the vacancy. If candidates are available from the Referral List, a suitable number of qualified candidates will be referred to the employer within five (5) working days after receipt of the proposed job vacancy announcement.

§30.2-435 Employer action on referrals. After receiving a referral from Employment Services, an employer may take any of the following actions:

- (a) Any citizen or permanent resident may be hired rather than a person referred by Employment Services without any justification required to be submitted to Employment Services.
- (b) In cases where more than one applicant is referred by Employment Services, any applicant referred may be hired rather than any other applicant referred without any justification required to be submitted to Employment Services.
- (c) Employers may reject persons who are referred by Employment Services using the employer's normal hiring criteria in compliance with Commonwealth law with a short statement of reasons submitted to Employment Services.
- (d) Employers may reevaluate their employment needs and hire no one for the proposed position. In this case, the employer shall notify Employment Services that the vacancy no longer exists.

§ 30.2-440 Good faith effort to hire. An employer must make a good faith effort to hire a citizen or permanent resident for a job vacancy apart from the referral service provided by Employment Services in the event that referral service is unsuccessful in locating a qualified applicant. A good faith effort may include:

- (a) Posting of the job vacancy announcement at the employer's place of business and with the Workforce Investment Agency, the Office of Vocational Rehabilitation, the Adult Development Institute at the Public School System, the Northern Marianas College, and other suitable locations;

(b) Publication in newspapers of general circulation in the Commonwealth, church bulletins and other newsletters, magazines, or similar publications that have a substantial audience with citizens and permanent residents.

(c) Outreach for candidates from the mainland United States if local citizens and permanent residents are not available.

(d) - Employment Services may accept good faith efforts with respect to a position as covering all similar positions for a period up to six months.

§ 30.2-445 No waivers. There are no waivers available with respect to the publication requirement. However, the publication requirement, like all other sections of Subchapter 80-30 of these regulations, does not apply to certain employers who fall within one of the four exemptions in Section 4526 of PL 15-108. (See Section 80-30.2-700.)

§30.2-450 Publication filing. If the job vacancy announcement is published on the Department's website, no filing of proof of publication is required. If the job vacancy announcement is published elsewhere, the employer must file with Employment Services, no later than thirty (30) days from last publication, a statement or invoice from the provider of publication services showing the dates on which the job vacancy announcement was published;

§30.2-455 Employer declaration. Within fourteen (14) days after publication, the employer shall file a declaration on a standard form by e-mail to the address provided by the Department or in writing 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 referred by Employment Services.

§30.2-460 Cancellation of the job vacancy announcement. Employment Services may cancel a job vacancy announcement or deny certification if insufficient reasons are stated for failure to hire or if no statement is received within 14 days. A denial may be appealed to the Director of Labor within ten (10) days after the date of the denial. If affirmed, the

denial may then be appealed to the Administrative Hearing Office within fifteen (15) days after the date of the denial. (See Section 80-50.4-155.)

§30.2-465 Certification of compliance. If no qualified citizen or permanent resident applicant is identified through publication, referral, or good faith efforts to hire, Employment Services shall issue to the employer a certification of compliance document in the standard form prescribed by the Department.

§30.2-470 Career guidance. Employment Services will be proactive in coordinating with representatives of the Workforce Investment Agency, the Public School System, the Northern Marianas College, the CNMI Office of Personnel Management, representatives of private educational institutions in the Commonwealth, the Department of Commerce, or the Strategic Workforce Action Team (SWAT) to discuss and cooperatively implement ways to improve career guidance for citizens and permanent residents.

§30.2-475 Education and training resources. Employment Services will maintain a current inventory of useful education and training resources in the Commonwealth, and will provide persons who register with information about these resources available to help improve job skills and competency.

§30.2-480 Workforce plan.

- (a) The workforce plan. A workforce plan has as its objective an increase in the percentage of citizens and permanent residents in the workforce of the employer. A workforce plan must be appropriate to the particular circumstances of and skills required by the business of the employer. The plan shall identify specific positions on the "A" List, the "B" List, the "C" list, or the "D" List (see Section 80-30.2-205 of these regulations), currently occupied by foreign national workers, for which citizens and permanent residents will be recruited and trained as necessary. The plan shall include a timetable for accomplishing the identified replacement of foreign national workers with citizens and permanent residents and shall identify the employee responsible for carrying out the plan.

- (b) Employers covered. Every employer with ten (10) or more employees, unless exempted, is required to have a workforce plan. Employers with fewer than ten (10) employees who are found to have violated the workforce participation requirement of Section 4525 of PL 15-108 may be ordered by a hearing officer to adopt a workforce plan, and such employers will be subject to all provisions of law and regulations with respect to a workforce plan from and after the date of the hearing officer's order.
- (c) Filing with Employment Services. Every employer required to have a workforce plan must have on file with the Director of Employment Services a written, current plan. A workforce plan is current if it has been updated and filed within the past 14 months.
- (d) Failure to file. Failure to file a required workforce plan is a ground for denial of contract renewal for any foreign national worker holding a position that should have been covered by the workforce plan.
- (e) Exemption for compliance with the workforce participation requirement. An employer that has submitted to the Director of Employment Services adequate documentation with respect to compliance for the immediately preceding two years with the twenty (20) percent requirement for employment of citizens and permanent residents under Section 80-30.2-600 of these regulations is exempt from the requirement to file a workforce plan. Adequate documentation includes a list of the full names of the employees who are citizens and permanent residents and who have been employed during each calendar quarter of the immediately preceding two years.
- (f) Exemption for holder of an exemption from the workforce participation requirement. An employer that is exempt from compliance with the twenty (20) percent requirement for the employment of citizens and permanent residents under Section 80-30.2-600 of these regulations is exempt from the requirement to file a workforce plan. In order to be eligible for the exemption, each employer must file with the Director of Employment Services 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 Director of Employment Services. If circumstances change and

no exemption is available, the employer shall file a Withdrawal of Claim of Exemption on the standard form provided by the Department. If no form has been filed, or an inaccurate form is on file, no exemption is available and the employer is subject to all penalties in the same manner as if the requirement for a workforce plan applied fully to the employer.

(g) Lifting of exemption if two adverse judgments entered. Employers of fewer than ten (10) employees are exempted from the requirement to file a workforce plan. However, if an exempted employer has two or more judgments entered against them within any two-year period, the exemption is automatically lifted and a plan must be filed with Employment Services within 30 days of the entry of the second judgment. All full-time and part-time employees are counted. A "judgment" for purposes of this subsection is a final order by a hearing officer that has not been timely appealed, or a final order of the Secretary that has not been timely appealed. An appeal to a court of competent jurisdiction from a final order of the Secretary does not operate to continue an employer's previous exemption. "Two or more judgments" for purposes of this section means judgments entered in two or more separate cases or judgments entered for two or more individual complainants in the same case. "Within a two-year period" for purposes of this section is any 24-month period. This period does not relate to a calendar year.

(h) Failure to achieve measurable progress. Failure to achieve measurable progress under a workforce plan in filling positions with citizens and permanent residents is a ground for denial of approval for contract renewal or transfer for foreign national workers holding or proposed to fill positions cover by the workforce plan.

§30.2-485 Implementation of secondary job preference. Foreign national workers may register with Employment Services at any time thirty (30) days prior to the termination of a contract or during the 15-day period after termination of a contract. If, in the implementation of the secondary job preference for foreign national workers who are currently located in the Commonwealth, an appropriate job opportunity is identified either by Employment Services or by the foreign national worker, Employment Services shall transmit promptly to a hearing officer the request for permission to transfer. If the hearing officer finds that the employee has no disqualification and the employer has no outstanding unpaid judgments more than 60 days overdue in respect of Department of Labor proceedings or other disqualifications, the hearing officer may authorize the foreign national worker to transfer. The Administrative Hearing Office shall hold hearings on specified days of each month with respect to all

pending requests for permission to transfer. If no written objection is filed prior to the hearing date by the Director of Labor, the Director of Employment Services, the foreign national worker, or the prospective employer of the foreign national worker, the hearing officer may grant permission to transfer so that an employer may file an application with the Director of Labor in connection with the transfer.

Section 80-30.2.500 Compliance with Resident Workers Fair Compensation Act.

[RESERVED. The regulations on medical insurance are published by the Secretary of Public Health. Until such regulations are released for comment and then published in final form, a determination with respect to benefits required under the RWFCFA cannot be completed. ]

Section 80-30.2-600 Workforce participation by citizens and permanent residents.

§30.2-605 Participation requirement. In the full-time workforce of any employer, the number of citizens and permanent residents employed shall be at least twenty (20) percent of all employees and this requirement shall be at least thirty (30) percent by the year 2013. The phase-in to thirty (30) percent shall occur as follows: for the calendar years 2008, 2009, and 2010 the requirement will remain at twenty (20) percent; for the calendar years 2011 and 2012 the requirement will be twenty-five (25) percent; and for the year 2013 and thereafter, the requirement will be thirty (30) percent.

- (a) For purposes of this requirement, a full-time employee is one who works at least 32 hours per week every week . All foreign national workers employed under approved employment contracts are full-time employees.
  
- (b) For purposes of this requirement, an employer may aggregate part-time jobs filled by citizens or permanent residents into the hours required for a full-time job. Under these circumstances, more than one employee is performing the "job" for the employer. This flexibility allows citizens and permanent residents who prefer to

work part-time to have more access to the job market and allows employers to keep valuable citizen employees who prefer to work part-time.

(c) The citizen and permanent resident participation requirement applies during a calendar year to the average number of full-time employees during the year or portion of a year. An employer may compare the average number of full-time employees who are citizens and permanent residents during a calendar year to the average number full-time employees in determining compliance with the percentage requirement. Alternatively, an employer may compare the actual number of full-time employees who are citizens and permanent residents during a calendar year to the actual number of full-time employees. The requirement applies at the time of hire of a foreign national worker.

§30.2-610 Employment on more than one island. If an employer operates on more than one island, the citizen and permanent resident participation requirement applies in aggregate to all islands. Employees on any island are counted toward the aggregate minimum percentage on all islands.

§30.2-615 Employment of consultants. For purposes of the participation requirement, the term "citizens and permanent residents employed" shall not include consultants, advisers, or agents who are independent contractors or who are not full-time employees.

§30.2-620 No waivers. There are no waivers available with respect to the participation requirement. However, the participation requirement, like all other provisions of Section 80-30, does not apply to certain employers who fall within one of the four exemptions in Section 4526 of PL 15-108 (see Section 80-30.2-700 below).

§30.2-625 Reports. Each employer of foreign national workers shall submit quarterly a brief report on a standard form provided by the Department showing any applicable exemption and, for non-exempt employers, for each employee, the full name; classification as citizen, permanent resident, or foreign national worker; classification as full-time, part-time, or part-time aggregated (Section 80-30.2-605(b) above) and last four digits of the social security number or the entire LIIDS number. The report may

be submitted by e-mail to the address provided by the Department or in writing, and a current report must be on file with Employment Services showing compliance with the workforce participation requirement in order for a certification pursuant to Section 80-30.2-465 to be issued by Employment Services.

Section 80-30.2-700 Exemptions.

§30.2-705 Employers with fewer than five employees. The provisions of Section 4525 of PL 15-108 do not apply to employers with fewer than five employees except as provided in this section. For purposes of this section, all full-time employees are counted.

(a) An employer against whom two or more judgments are entered in Department proceedings within any two year period automatically loses this exemption and all provisions of PL 15-108 automatically become applicable. 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 with respect to two complainants in the same action or a case bearing only one case number.

(b) An employer with fewer than five employees who has been in operation in the Commonwealth for three years or more and all retail establishments that handle food stamps no matter how long in operation shall have at least one citizen or permanent resident employee after June 30, 2008.

§30.2-710 Particular construction project. An exemption for a particular construction project is available by written order signed by the Secretary.

- (a) A "particular" project means a project limited to one building or one infrastructure improvement. "Limited duration" means two years or less.
- (b) 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, the O-NET job classifications of the workers on the project, and the arrangements made to repatriate each worker within seven (7) days of the completion of the project.
- (c) Each foreign national worker employed on a construction project under this exemption shall receive from the employer, upon arrival in the Commonwealth, a notice containing a clear explanation of the limitations on the worker's eligibility to remain in the Commonwealth.

§30.2-715 Incentive exemption. An incentive exemption shall be available if the citizen and permanent resident employees in the full-time workforce of an employer in specified job categories exceeds substantially thirty (30) percent of the employer's total full-time workforce in these positions. The incentive benchmark is thirty-five (35) percent for A-List and B-List jobs aggregated within the employer's workforce (See Section 80-30.2-205).

§30.2-720 Light manufacturing employer holding waiver prior to Jan. 1, 2007. Certain light manufacturing employers have in the past held waivers applicable to statutory and regulatory requirements comparable to the requirements of Section 80-30 of these regulations. These past waivers have been long-standing, and business expectations and plans rest on those waivers. An exemption is available for any light manufacturing employer holding a waiver prior to Jan. 1, 2007. For purposes of this section, "manufacturing" means the transformation of raw materials into finished goods for sale, or intermediate processes involving the production or finishing of semi-manufactures. "Light manufacturing" means a light industrial use where all processing, fabricating, assembly, or disassembly of items takes place wholly within an enclosed building. Typical items for processing, fabricating, assembly, or disassembly under

this use include but are not limited to apparel, food, drapes, clothing accessories, bedspreads, decorations, artificial plants, jewelry, instruments, computers, and electronic devices.

Section 80-30.2-800 Investigation. The Director of Labor shall conduct investigations as necessary and appropriate to enforce the provisions of PL 15-108 and the regulations promulgated thereunder to ensure lawful working conditions, employer-supplied benefits, and health and safety for citizens, permanent residents, and foreign national workers. In conducting these investigations, the Director shall have all of the powers delegated and described with respect to inspections and investigations conducted pursuant to Section 80-50 of these regulations.

Section 80-30.2-900 Adjudication of claims.

§30.2-905 Time limit. The adjudication of claims under Section 4528 of PL 15-108 shall proceed according to the rules and regulations in Section 80-50.4 below. Claims must be filed in accordance with the time limits in Section 4962(b) of PL 15-108. 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.

§30.2-910 Just cause. The term "just cause" for rejecting an application for employment includes all of 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 without an educational degree necessary for the position, rejecting persons with no favorable recommendation 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.

§30.2-915 Procedures. All hearings shall be open to the public and shall follow the procedures set out in Section 80-50.4.

§30.2-920 Orders. A hearing officer is authorized to award actual damages for any out-of-pocket costs attributed directly to the action of the employer in refusing employment and liquidated damages of up to six months wages if actual damages are uncertain or cannot be ascertained under a satisfactory or known rule, provided however, any damages award, no matter what components are included, cannot exceed six months' wages for the job for which a citizen or permanent resident applied. A hearing officer is authorized to levy a fine not to exceed \$2,000 for each violation by an employer.

### **Subchapter 80-40. MORATORIUM**

Section 80-40.1 Moratorium phase-out

Section 80-40.2 Exemptions

Section 80-40.3 Federal moratorium

Section 80-40.4 Employment requirements

Section 80-40.5 Enforcement

Section 80-40.6 Penalties

### **Subchapter 80-40. MORATORIUM**

Section 80-40.1 Moratorium phase-out. The previously legislated moratorium on the hiring of foreign national workers is phased out as follows:

Section 40.1-100 Visitor industry. As of January 1, 2008, the moratorium does not apply to the visitor industry. The visitor industry includes hotels, airlines, aircraft services, tour packagers, tour guides, tourist transportation, and tourist sports, charters, and recreation services.

Section 40.1-200 Services industry. As of January 1, 2009, the moratorium does not apply to the services industry. The services industry includes accountants, lawyers, banks and financial services, medical and health care services, maintenance and repair and rental services, restaurants and catering services, retail and wholesale sales and services, bakeries with retail outlets, freight and shipping services, appraisal and surveying services, and education services.

Section 40.1-300 Agricultural. As of January 1, 2010, the moratorium does not apply to agricultural, fishing and fisheries, forestry, and groundskeeping positions.

Section 40.1-400 All other. As of January 1, 2011, the moratorium expires with respect to all remaining positions.

Section 40.1-500 Applications in advance. Applications to bring foreign national workers to the Commonwealth, to renew foreign national workers, or for administrative transfers by foreign national workers may be submitted in advance of the date on which the moratorium no longer applies to the employer to take effect after the date on which the moratorium no longer applies to the employer.

#### Section 80-40.2 Exemptions.

Section 40.2-100 Claims of exemption. While the moratorium is being phased out, there are exemptions to the moratorium, and these are defined areas of economic growth and development and areas set aside for the preservation of the tax base of the Commonwealth. Exemptions are claimed on a standard form. A claim of exemption shall be either granted or denied by the Director of Labor. A denial may be appealed to the Administrative Hearing Office within fifteen (15) days after the date of the denial. (See Section 80-50.4-155.)

Section 40.2-200 Renewals. The renewal of a foreign national worker under an existing approved employment contract is exempt from the moratorium. There is no fee for an exemption from the moratorium for a renewal.

Section 40.2-300 Replacements. The replacement of a foreign national worker who worked for the employer under an approved employment contract and who has departed the Commonwealth on a permanent basis within the preceding 90 days is exempt from the moratorium. Any foreign national worker may be replaced with any other foreign national worker, without regard to job classification, wage rate, or terms of employment so long as the employment contract for the replacement worker is approved by the Director of Labor and the requirements of §80-50.2-225 are met. There is no fee for an exemption from the moratorium for a replacement.

Section 40.2-400 Incentive hiring. This exemption is intended to allow the growth, through the use of foreign national workers, of the businesses of employers who have an exemplary record of employing citizens and permanent residents. An incentive exemption shall be available if the citizen and permanent resident employees in the full-time workforce of an employer are as follows:

(a) A-List jobs: thirty-five (35) percent

(b) B-List jobs: thirty-five (35) percent

(c) C-List jobs: thirty-five (35) percent

(d) D-List jobs: thirty-five (35) percent

Section 40.2-500 Visitor industry supporting services. This exemption is intended to allow the growth, through the use of foreign workers, of the businesses that support the visitor industry and that have a good record of employing citizens and permanent residents. "Visitor industry supporting services" means businesses that supply services to tourists, residents, and others, but whose customers are, in significant part, persons visiting the Commonwealth as tourists. This exemption recognizes that a web of commercial services supports the visitor industry and is necessary for it to prosper. In order to qualify for an exemption, an employer must demonstrate:

- (a) Compliance with the requirement that twenty (20) percent of the full-time workforce be citizens and permanent residents.
  
- (b) Alternatively, that compliance will be met within one year as to the requirement that twenty (20) percent of the full-time workforce be citizens and permanent residents. This provision permits new businesses and expanding businesses some leeway to accomplish the necessary hiring. Compliance is determined on an annual basis from one year after the date of the grant of the exemption.
  
- (c) An exemption for visitor industry supporting services is subject to a fee under §50-60.8 until January 1, 2009 when the moratorium no longer applies.

Section 40.2-600 Major new development. Applicants for the grant of an exemption for a major new development must submit documentation and supporting information to demonstrate that the necessary findings can be made by the Secretary, that:

- (a) The major new development is in the best interest of the Commonwealth. This may be demonstrated by participation in or support of income-generating activities that will significantly expand the tax base of the Commonwealth's economy, attract additional visitors, extend the stay of existing visitors, or other similar factors.
  
- (b) The prospective employer has invested at least \$1 million in the Third Senatorial District or \$250,000 in the First or Second Senatorial Districts in a building, facility, or infrastructure where the exempted employment will occur. Except in unusual circumstances, this must be demonstrated by submission of an audited financial statement.

There is no fee for an exemption from the moratorium for a major new development

Section 40.2-700 Particular projects. Projects that receive an exemption for a construction project under Section 80-30.2-710 from the requirement for

participation of citizens and permanent residents in the workforce may also receive an exemption under this subsection. The exemptions must be applied for separately. There is no fee for an exemption from the moratorium for a particular project.

Section 80-40.3 Federal moratorium.

Section 40.3-100 Federal requirement. The federal legislation (S. 2739, Section 103(i), P.L. 110-229) requires: "During the period beginning on the date of the enactment of this Act and ending on the transition program effective date . . . the Government of the Commonwealth shall not permit an increase in the total number of alien workers who are present in the Commonwealth as of the date of the enactment of this Act."

Section 40.3-200 Numerical cap. The number of "alien workers who are present in the Commonwealth" is 22,417. The Commonwealth established this benchmark when the House and Senate passed the legislation (as closely approximating and fairly representing the actual number of persons with current status on the precise date) so as to be able to implement the federal requirement immediately, as is the intent of the law.

§40.3-205 Immigration classification. The term "alien workers" for this purpose includes persons admitted to the Commonwealth in immigration classifications 706A, 706B, 706D, 706F, 706I, 706J, 706K, 706L, 706M, 706N, and 706P. Persons in each of these categories are "aliens" and they are all admitted to the Commonwealth under conditions that permit work while in the Commonwealth. Persons who entered or enter the Commonwealth as tourists, students, immediate relatives of aliens (who are not permitted to work), for investment purposes, or under treaty provisions are not included in the term "alien workers." Classification of any alien present in the Commonwealth is determined by the last approved permit application.

§40.3-210 Present in the Commonwealth. The term "present in the Commonwealth" includes "alien workers" who had an Authorization for Entry on the effective date, "alien workers" who were temporarily absent from the Commonwealth on the effective date due to medical referral, home leave, family leave, vacation, work assignment, or other temporary absence, and alien workers without current status on the effective date.

Section 40.3-300 Transparency. The Department of Labor will publish each month on its website, on the day after the last business day of the month, the names of the "alien workers" who have departed the Commonwealth within that month and will publish at the same time the names of the "alien workers" who have entered the Commonwealth within that month. The Department will not allow entry of "alien workers" in a number that exceeds the number who have departed.

Section 40-3.400 Fairness. "Alien workers" will be admitted to the Commonwealth for slots vacated by "alien workers" who have departed the Commonwealth (after the effective date of the federal legislation) under the following priorities:

§40.3-405 Replacements. An employer who repatriates a foreign national worker (that is, arranges, completes, and pays for a worker's voluntary departure from the Commonwealth) may utilize the slot created by this departure so long as the completed application for the worker for whom the slot will be utilized is filed with the Department within 90 days of the departure of the repatriated foreign national worker and the requirements of §80-50.2-225 are met.

§40.3-410 Point system. For slots available and not filled by replacements, priority will be established by a point system. The Director of Labor will allocate available slots to the applications on hand having the most points, provided however that the Director may reserve slots for an anticipated major development as necessary. Applications may remain in the process for as long as a need for the foreign national worker continues to exist.

Employers may submit a point total with each application as follows:

(a) For employment of U.S. citizen and permanent resident workers, one point for each percentage of total employment and, in addition, one point for each percentage of total employment above 20%;

(b) For years of operation as an established business in the Commonwealth, one point for each year;

- (c) For major developments as defined in Section 4602(e) of P.L. 15-108 and Section 80-40.2-600 of these regulations, one hundred points;
- (d) For classification as a part of the visitor industry, twenty points; and for classification as part of the visitor support industry, ten points; and
- (e) For providing the Department of Labor with a reasonably accurate forecast (updated as necessary) of need for new-entrant foreign workers three months in advance of the proposed arrival, ten points.

§40.3-415 Lottery. The Director of Labor may hold approximately 10% of the available slots for a lottery each month whose participants will be small businesses with fewer than five employees and who have at least one citizen or permanent resident worker in the workforce. Small businesses may also submit applications under the point system above.

Section 40.3-500 Adjustment of status. The adjustment of status from one immigration classification to another does not affect compliance under the cap if both immigration classifications are included under §80-40.3-205. The adjustment of status from one immigration classification to another does affect compliance under the cap if one immigration classification is included under §80-40.3-205 and the other is not.

Section 40.3-600 Sanctions. The sanctions for non-compliance fall only on the foreign worker. The federal law provides: "[A]n alien [is subject to removal] at any time if the alien entered the Commonwealth after the date of the enactment of the ... Act and the Secretary of Homeland Security has determined that the Government of the Commonwealth has violated [the cap]."

Section 80-40.4 Employment requirements. If an exemption to the moratorium is available, and a foreign national worker is hired, all of the requirements of Subchapter 80-50 of these regulations with respect to the employment of foreign

national workers must be met. No provision of Subchapter 80-50 of these regulations is waived by qualification for an exemption from the moratorium.

## **Subchapter 80- 50. EMPLOYMENT OF FOREIGN NATIONAL WORKERS**

- Section 80-50.1: General
- Section 80-50.2: Entry into the Commonwealth
- Section 80-50.3: Standards for Employment
- Section 80-50.4: Adjudication of Disputes
- Section 80-50.5: Exit from the Commonwealth

## **Subchapter 80-50. EMPLOYMENT OF FOREIGN NATIONAL WORKERS**

### Section 80-50.1 GENERAL

Section 50.1-100 Definitions. The definitions in Section 80-30.1 are incorporated by reference and, in addition, as used in this Subchapter 80-50, the following terms shall, unless the context clearly indicates otherwise, have the following meanings:

(a) "Approved employment contract" means a written contract between a foreign national worker and an employer, which has been approved by the Director of Labor, specifying the terms and conditions for work to be performed by the foreign national worker within the Commonwealth;

(b) "Approved health insurance contract" means a written contract executed by an employer, providing coverage for health care costs of one or more foreign national workers, in a form that has been approved by the Secretary of Public Health;

(c) "Approved security contract" means a written contract executed by an employer providing security for employer obligations with respect to the employment of foreign national workers, in a form and amount that has been approved by the Director of Labor;

(d) "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);

(e) "Debarment" means, pursuant to an administrative order, the temporary or permanent prohibition on employment by an employer of any foreign national worker;

(f) "Entry permit" means the entry permit card issued by Commonwealth immigration authority and delivered to a foreign national worker pursuant to these regulations;

(g) "Foreign national worker" means any person who is not a citizen of the United States or a permanent resident of the Commonwealth who enters the Commonwealth for the purpose of being employed or otherwise performing services for compensation in the private sector in the Commonwealth; but does not include immediate relatives of U.S. citizens and permanent residents, citizens of the Freely Associated States, and other persons exempted pursuant to Section 4965 of PL 15-108;

(h) "Immediate relative" means a legally recognized spouse, and a child under the age of twenty-one (21) years, whether natural or adopted before the age of eighteen (18) years, and a stepchild if the marriage that created the stepchild relationship took place before the child's eighteenth birthday;

(i) "Mediation" means an informal, non-public, confidential meeting attended by the parties to a labor dispute or potential labor dispute together with a mediator at the Administrative Hearing Office in order to seek a voluntary resolution of the dispute satisfactory to all parties and reflected in a written agreement;

(j) "Repatriation" means the exit from the Commonwealth and travel to the point of hire for a foreign national worker whether by voluntary action of the foreign national worker or by deportation; and in the case of the death of a foreign national worker while in the Commonwealth, the embalming and shipment of the body to the point of hire;

(k) "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 by this chapter during the term of the contract, or termination by the Director of Labor for cause during the term of the contract; and

(l) "Transfer" means any process by which a foreign national worker who enters the Commonwealth pursuant to an approved employment

contract with one employer becomes employed by a different employer without first exiting the Commonwealth.

## SECTION 80-50.2 ENTRY INTO THE COMMONWEALTH

### Section 50.2-100 Entry by foreign national workers.

§ 50.2-105 Entry permit required. Every foreign national worker admitted to the Commonwealth for purposes of employment must have an entry permit issued by the Commonwealth immigration authority. The entry permit is issued when the Commonwealth immigration authority receives notification from the Director of Labor that a foreign national worker is qualified to work in the Commonwealth and other immigration requirements are satisfied. The entry permit is delivered to the foreign national worker when the worker has completed airport processing and orientation. The entry permit remains valid so long as the foreign national worker is engaged in work under an approved employment contract or is otherwise permitted to remain in the Commonwealth under these regulations.

§ 50.2-110 Airport processing. When a foreign national worker arrives at the airport for initial entry to the Commonwealth, he or she shall have for inspection by the Commonwealth immigration authority a copy of the approved employment contract for the worker's services and a copy of the sworn affidavit required under Section 80-50.2-205(4) of these regulations. If the affidavit was executed outside the Commonwealth, the foreign national worker shall attest under penalty of perjury that all information contained in the affidavit is true. The arriving foreign national worker shall sign a standard form in the worker's native language with an English translation attached attesting to notice with respect to the description of the job in the employment contract, attesting to notice with respect to attendance at an orientation session, specifying any recruiting agreement, and acknowledging receipt of the telephone numbers and offices where assistance will be provided in case there are any problems locating the employer or the job. If a foreign national worker cannot complete these requirements at the airport for any reason, the worker may be paroled into the Commonwealth for a specified period of time in which to correct deficiencies or may be repatriated.

§50.3-115 Orientation. Every foreign national worker who enters the Commonwealth shall attend the first orientation session available after date of entry unless excused for illness or other unavoidable circumstance. Upon renewal or transfer, the Director of Labor may require that some or all of the foreign national workers who entered the Commonwealth prior to the availability of the orientation program also attend an orientation session. 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.

(a) Presentation. The orientation program in Saipan shall be presented every Tuesday morning at 9:00 a.m. at the conference room, second floor, Afetna Square Bldg, San Antonio, Saipan, unless rescheduled or canceled by the Director of Labor. The orientation program on Rota and Tinian will be scheduled as necessary.

(b) Format. The presentation format is video tape augmented by oral presentations as necessary. The videotape will address common questions from and problems faced by foreign national workers in the Commonwealth. The videotape will be revised periodically to incorporate new material or increase the effectiveness of the presentation.

(c) Translations. The orientation shall be made available in Mandarin, Tagalog, and Korean, in addition to English. Foreign national workers from India and Bangladesh are presumed to have sufficient English to participate meaningfully in an orientation session in English. For other languages, the employer shall provide a translator when the foreign national worker attends the orientation session.

(d) Attendance by employer representatives. Any employer or representative of an employer of foreign national workers may attend an orientation session at any time.

(e) Entry permit. The entry permit will be delivered personally to the foreign national worker at the orientation session, and the worker will sign a receipt for the entry permit that will become a part of the Department's records.

Section 50.2-200 Approved employment contract .

§50.2-205 Application. 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 Director of Labor on a standard form provided by the Department 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. The Director shall review the application to ascertain if it is complete. An incomplete application will not be accepted. The Director shall take action on a complete application as soon as practicable after receipt, depending primarily on the time required for investigation, if any, of representations made in the application. The Director may approve or deny the application. A denial shall be on a standard form. No other documentation with respect to a denial is required. A denial may be appealed to the Administrative Hearing Office within fifteen (15) days after the date of the denial. (See Section 80-50.4-155.)

§50.2-210 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. Proposed health insurance contract. A contract signed by the employer (after the date on which the Secretary of Public Health publishes final regulations in that regard) that would cover the foreign national worker if entry to the Commonwealth is granted.

4. Worker affidavit. A sworn affidavit from the foreign national worker, executed under penalty of perjury as to the foreign national worker's age of 21 years or more; a minimum of two (2) years experience in the O-NET job classification for which the contract has been entered; receipt and understanding of the Notice to Foreign National Workers provided by the employer; marital status and identity, age, address, and relationship of immediate relatives; and criminal record, if any; and the payment of recruiting fees in the country of origin and the identification of the recruiting agency or agent. The affidavit shall be accompanied by a color photo and an original or certified copy of a birth certificate and police clearance. No employer shall be held liable for false information contained in the affidavit unless the employer has knowledge that the information is false. A standard form of affidavit is provided by the Department.
5. Recruiting agreement. A copy of any recruitment agreement made between the employer and the foreign national worker, or between the employer and a recruitment agent or agency with respect to the foreign national worker.
6. Notice to Foreign National Workers. A copy of the notice required under Section 80-50.3-605 that has been delivered to the prospective foreign national worker. A standard form of notice is provided by the Department.
7. Employer waiver, consent, and certification. A waiver, consent, and certification shall be provided in the form provided by the Department.
  - (a) 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.
  - (b) An express written consent shall be provided with respect to administrative inspections by the Department of the employer's worksites in accordance with the provisions of Section 80-50.3-700 of these regulations.
  - (c) 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 and permanent residents set out in Subchapter 80-30 of these regulations; all

applicable statutory or regulatory requirements of the United States; and all regulatory requirements of the foreign national worker's home country that are the subject of a memorandum or other arrangement with the Commonwealth; and an attestation that the statements made in the application, the contract, and the supporting papers are true.

(d) 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 Section 80-50.3-610(b).

8. Payment of fee. Payment of the fee required under Section 80-60.8 of these regulations.

§ 50.2-215 Barred List. The Director of Labor 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 and no entry permit shall be issued to or 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 must petition the Director of Labor to be removed from the Barred List.

§50.2-220 Effect of pending cases. The Director of Labor may suspend action on any application for an approved employment contract during the pendency of any case before the Administrative Hearing Office. The Director shall give written notice to the employer of such suspension. An employer may appeal the decision to suspend processing to the Administrative Hearing Office and request an expedited hearing.

§ 50.2-225 Effect of on-island labor pool. The Director of Labor may reject an application for an off-island hire if the circumstances of the on-island labor pool indicate that there is no substantial justification of need. The Director of Labor may issue temporary holds with respect to all application for off-island hires in the event of business closings or other events that cause a temporary increase in the unemployed on-island labor pool.

§50.2-230 Unskilled labor. The Director of Labor shall not, unless in the best interests of the Commonwealth, approve any such application for employment in an unskilled position of a foreign national worker coming from outside the Commonwealth in order to ensure employment of foreign national workers already in the Commonwealth who have become unemployed as a result of past and anticipated business closures.

Section 50.2-300 Health certifications.

[RESERVED. The requirements for health certifications in effect in 2007 remain in place until final regulations for this section are provided by the Secretary of Public Health.]

Section 50.2-400 Approved security contract.

[RESERVED. The requirements for bonding in effect in 2007 remain in place until final regulations for medical insurance are provided by the Secretary of Public Health. The government bonding pool provided in PL 15-108 depends upon the availability of government-sponsored pool insurance.]

Section 50.2-500 Work permit.

§50.2-505 Work permit required. Every foreign national worker admitted to the Commonwealth for purposes of employment must have a current entry permit or work permit in his or her possession at all times as provided under Section 80-50.3-110. If an entry permit or work permit lapses and is no longer current, the foreign national worker is automatically, as of the day after the expiration date of the permit, not eligible to remain in the Commonwealth.

§50.2-515 Initial work permit. The entry permit issued by the Commonwealth immigration authority serves as the initial work permit for the term of the contract for which the entry permit was issued. Subsequent work permits shall be issued when an approved employment contract for a foreign national worker is renewed or when a foreign national worker transfers to a new employer.

§50.2-520 Annual registration. A foreign national worker shall register annually as required by Commonwealth law. After January 1, 2009, annual registration of foreign national workers shall be accomplished by the Director of Labor.

§50.2-525 Adjustment of status while within the Commonwealth. A person seeking to adjust status to permit work in the private sector pursuant to an approved employment contract may notify the Director of Labor of the intent to adjust status, present a suitable employer pursuant to these regulations, obtain the necessary notification from the Director of Labor of qualification to work in the Commonwealth, and present the required documentation to the Commonwealth immigration authority in order to obtain an entry permit under the new status. Exit from the Commonwealth is not required in order to adjust status.

### SECTION 80-50-3 STANDARDS FOR EMPLOYMENT

#### Section 50.3-100 Standard conditions of employment.

§50.3-105 Single employer. A foreign national worker may be employed by only one employer pursuant to a single approved employment contract except for approved part-time work.

(a) 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.

(b) 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.

(c) Part-time employer. Any business or non-business employer may also be a part-time employer.

- (i) Eligibility. A foreign national worker who entered the Commonwealth pursuant to an approved employment contract and who is currently eligible to remain in the Commonwealth may engage in part-time employment.
- (ii) Full-time employer responsibilities. A full-time employer under an approved employment contract with a foreign national worker has no liability for wages for part-time work under this section. That employer remains responsible for financial obligations under the one-year, full-time employment contract with the foreign national worker.
- (iii) Hiring for part-time. An employer may employ a foreign national worker part-time for no more than 32 hours a month. A notice of part-time hiring on the standard form provided by the Department must be filed before any work by the foreign national worker begins. The notice, once filed, is sufficient to satisfy Section 4963(c) of PL 15-108. An employer who has signed an approved employment contract with a foreign national worker may not hire that foreign national worker for part-time work. An employer may not hire a foreign national worker for part-time work for any type of work done by regular employees of the business. A notice of part-time hiring may be denied by the Director of Labor if it appears that the part-time employment is being used to circumvent the requirement of full-time work under an approved employment contract, a non-business employer is not financially responsible, or the part-time work is otherwise in violation of Commonwealth law. A denial may be appealed to the Administrative Hearing Office within fifteen (15) days after the date of the denial. (See Section 80-50.4-155.)
- (iv) No renewal required. A notice filed with the Department in connection with part-time work is good until the foreign national worker's status as eligible to remain in the Commonwealth under an approved employment contract changes.
- (v) Failure to file. Any person who employs a foreign national worker for part-time work without first filing a notice with the Department may be barred by the Director of Labor from further employment of foreign national workers in any capacity

and may be assessed a fee equal to all of the fees applicable to an approved employment contract under Section 80-60.8. An order of debarment and an assessment of fees may be appealed to the Administrative Hearing Office within fifteen (15) days after the date of the order. (See Section 80-50.4-155.)

§50.3-110 Identification. A foreign national worker must keep his or her entry permit or work permit 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 entry permit or work permit 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 Director of Labor and update that information as necessary so that the foreign national worker may be located by the Department.

§50.3-115 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. Part-time employment, see Section 80-50.3-105(c), is employment at will and has no set term, however, part-time employment may not continue beyond the foreign national worker's eligibility under an approved employment contract to remain in the Commonwealth.

§50.3-120 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, household maintenance and yard workers, and farmers shall be stated in hourly terms. No foreign national worker employed pursuant to these regulations 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.

§50.3-125 Location of worksite. A foreign national worker may have one or more worksites, however a worker may be assigned on only one island. The island where a foreign national worker will be assigned to work must be stated in the approved employment contract or in an approved change to the employment contract. Assigning a foreign national worker to work in a location not specified in the approved employment contract or in an approved contract change is a ground for denial of a renewal of the contracts of any foreign national workers in that O-NET job classification.

§50.3-130 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.

§50.3-135 Payment of wages. A foreign national worker shall be paid bi-weekly 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. The employer shall retain receipts for cash payments, cancelled checks or deposit records of payment for two years.

§50.3-140 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 (30) percent of a worker's bi-weekly wages or the maximum permitted under the Fair Labor Standards Act (FLSA), whichever is less. The only permitted deductions are those described in this section.

(a) Deductions for medical insurance premiums.

[RESERVED. Regulations with respect to deductions for medical insurance premiums will be provided when the Secretary of Public Health publishes final regulations for the pool insurance.]

(b) Deductions for employer-supplied housing. An employer providing housing for a foreign national worker may deduct from the wages of a foreign national worker who earns the minimum wage no more than \$100 per month for the cost of housing. The deduction for a foreign national worker who earns more than the minimum wage shall not exceed the fair market value of the housing supplied.

(c) Deductions for employer-supplied food, transportation, and other purposes. Allowable deductions for employer-supplied food, transportation to and from the worksite, utilities for the personal use of a foreign national worker, and other benefits or purposes may be no more than the expenses actually incurred by the employer in providing such benefits.

(d) 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 without regard to the thirty (30) percent limitation.

(e) Deductions under court or administrative order. Employers may deduct amounts required or allowed by court or administrative order.

(f) 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.

(g) 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.

§50.3-145 Documents. A copy of the approved employment contract shall be provided to the foreign national worker by the employer prior to arrival in the Commonwealth. An entry permit shall be provided to the foreign national worker at the orientation session. (See Section 80-50.3-115(e).) No employer may withhold from any foreign national worker any passport, entry or work permit, approved employment contract, or other document related to the status of the foreign national worker.

§50.3-150 Subcontracting. Any subcontract by an employer to another employer for the services of a foreign national worker shall be implemented or performed only with the prior approval of the Director of Labor. Application for approval of a subcontract shall be submitted on a standard form provided by the Department. Temporary census workers may be subcontracted to the Department of Commerce without prior approval.

§50.3-155 Contract amendment and reduction in hours. Any change to an existing approved employment contract shall be implemented or performed only with prior agreement of both parties to the contract, provided however that hours may not be reduced below thirty-two (32) per week, and with prior submission on a standard form provided by the Department. A contract amendment or change does not require prior approval of but may be denied by the Director of Labor. A denial by the Director may be appealed to the Administrative Hearing Office within fifteen (15) days after the date of the denial. (See Section 80-50.4-155.)

§50.3-160 Safe workplace conditions. Every employer shall provide safe workplace conditions for all employees, including domestic helpers and farmers.

- (a) 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, noise 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.

(b) An employer shall provide an adequate supply of drinking water and sufficient and sanitary toilet facilities at the worksite or reasonable access thereto.

(c) 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.

§50.3-165 Safe housing conditions. Every employer who provides housing for employees shall provide safe housing conditions.

(a) The site of the housing shall be safe.

(i) Grounds around worker housing shall be adequately drained to prevent flooding, collection of waste water, and mosquito breeding.

(ii) Grounds around worker housing shall be maintained in a clean and sanitary condition, free of rubbish, debris, waste paper, garbage, and other refuse. Occupants of employer-supplied housing are responsible for assisting in this maintenance to the extent that they generate such refuse.

(iii) Whenever worker housing is closed on a temporary or permanent basis, the employer shall ensure that all garbage, waste, and other refuse is collected and disposed of, and that the grounds and housing are left in a clean and sanitary condition.

(b) The building structure for housing shall be safe.

(i) Worker housing shall be constructed in a manner which will provide protection against the elements, including, wind, rain, flood, and fire.

- (ii) Each room for sleeping purposes shall contain at least 50 square feet of floor space for each occupant. At least a seven-foot ceiling shall be provided.
  
  - (iii) Separate bedding, which may include bunks, shall be provided for each occupant. Spacing of single bedding shall not be closer than 36 inches both side-to-side and end-to-end. Elevation of single bedding shall be at least 12 inches from the floor.
  
  - (iv) Where workers cook, live, and sleep in a single room, a minimum of 100 square feet per person shall be provided.
  
  - (v) Natural ventilation consisting of operable windows shall be provided, the area of which shall be not less than one-fourth the floor area of the living quarters. In lieu of natural ventilation, mechanical ventilation may be provided which shall supply at least 15 cubic feet of fresh air per person per minute.
  
  - (vi) All exterior openings shall be screened with at least 16-mesh per inch material.
  
  - (vii) An adequate and convenient water supply shall be provided for drinking, cooking, bathing, and laundry purposes.
- (c) Toilet facilities shall be safe.
- (i) The sit down toilets provided shall be no fewer than one per fifteen (15) persons. Where there are ten (10) or more persons of different sexes using the toilets, separate toilet facilities, appropriately identified, shall be provided for each sex.
  
  - (ii) Toilet facilities shall be located within 200 feet of the sleeping quarters. No toilet facility shall be located in a room used for other than toilet purposes.

- (iii) Natural ventilation consisting of operable windows or other openings shall be provided, the area of which shall not be less than one-tenth of the floor area of the toilet facility. In lieu of natural ventilation, mechanical ventilation capable of exhausting at least two cubic feet per minute per foot of floor space may be used.
  - (iv) All outside openings shall be screened with at least 16-mesh per inch material.
  - (v) Toilet facilities shall be of sanitary and easily cleanable construction and shall be maintained in sanitary condition by the Individuals using the facilities or by the employer.
  - (vi) Toilet facilities shall have adequate lighting.
  - (vii) An adequate supply of toilet paper shall be assured by the employer.
  - (viii) Access to toilet facilities shall not intrude upon sleeping quarters.
- (d) Laundry, hand-washing, and bathing facilities shall be safe.
- (i) Sanitary laundry, hand-washing, and bathing facilities shall be provided in the following ratio: one laundry tray or tub for every fifteen (15) or fewer persons or an equivalent laundry alternative; one hand-wash basin per family or per six or fewer persons; and one showerhead for every ten (10) or fewer persons.
  - (ii) Facilities shall be of sanitary and easily cleanable construction and shall be maintained in sanitary condition by the individuals using the facilities or by the employer. Floors shall be of a smooth, but not slippery, surface.
- (e) Sewage and refuse disposal shall be safe.

- (i) Where public sewers are available, all sewer lines and floor and sink drains from toilet, laundry, hand-washing, bathing, or kitchen facilities shall be connected thereto. Septic tanks shall be installed or constructed where public sewers are not available.
  - (ii) Where public sewers are not available, facility wastewater shall be treated or disposed of using an on-site wastewater treatment system meeting all applicable Commonwealth regulations.
  - (iii) Garbage shall be stored in disposable or cleanable containers that are secured from flies, rodents, other vermin, and water. Containers shall be kept clean. Containers shall be emptied not less than twice a week. Refuse shall be disposed of only in Commonwealth-approved solid waste landfills. Burning trash is prohibited.
- (f) Food storage, kitchen, and eating facilities shall be safe.
- (i) Cooking facilities are to be provided wherever workers are provided common living quarters.
  - (ii) Cooking facilities shall be in an enclosed and screened shelter.
  - (iii) Food shall be stored safe from contamination by water, dirt, poisonous substances, rats, flies, or other vermin.
  - (iv) Refrigeration facilities shall be provided for storage of perishable food.
  - (v) Facilities shall be adequate for ensuring sanitary maintenance of eating and cooking utensils.
- (g) Health measures.
- (i) Adequate first aid supplies shall be available at the living site for the emergency treatment of injured persons.

(ii) The employer shall report to the Division of Health Services the name and address of any foreign national worker known to have or suspected of having a communicable disease.

(iii) The employer shall report to the Division of Health Services and the Health and Safety Section any case of food poisoning or unusual prevalence of any illness in which fever, diarrhea, sore throat, vomiting, or jaundice is a prominent symptom.

(iv) The employer shall provide adequate access to medical care if the employee's condition appears to be serious.

Section 50.3-200 Medical insurance and other benefits.

§50.3-205 Medical insurance

[RESERVED. These regulations are published by the Secretary of Public Health. Until such regulations are published, employers remain responsible for medical care for foreign national workers in the same manner as provided under the Nonresident Workers Act. See Section 4972(g) of PL 15-108.]

§50.3-210 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.

Section 50.3-300 Contract renewal, non-renewal, and termination

§50.3-305 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 PL 15-108 or these regulations. Renewal is granted or denied by the Director of Labor taking account of the interests of the Commonwealth with respect to

employment of citizens and permanent residents and enforcement of the requirements of PL 15-108 and these regulations.

(a) 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 §50.3-115.)

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

(c) Time. A request for renewal shall be submitted no earlier than forty-five (45) 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 §50-60.8.) Renewal requests filed more than sixty (60) days after the contract termination date will be denied. A denial may be appealed to the Administrative Hearing Office. (See §60-50.4-155.)

(d) Documents. A request for renewal shall be accompanied by copies of an approved employment contract, an approved health insurance contract (after the date on which the Secretary of Public Health publishes final regulations in that regard), 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.

(e) 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.

(f) Outstanding obligations. A renewal may not be granted if the employer has any outstanding payment more than sixty (60) days in arrears with respect to any approved health insurance contract (after the date on which the Secretary of Public Health publishes

final regulations in that regard), any approved security contract, or any judgment in a Department proceeding , except those on appeal.

- (g) Barred List. No renewal of an employment contract shall be approved for an employer on the Barred List. (See Section 80-50.2-215.)
- (h) Pending cases. The Director of Labor may suspend action on any application for renewal of an approved employment contract during the pendency of any case before the Administrative Hearing Office. The Director shall give written notice to the employer of such suspension. An employer may appeal the decision to suspend processing and request an expedited hearing.
- (i) Effect of denial. The denial of a request for renewal may be appealed to the Administrative Hearing Office within fifteen (15) days after the date of the denial. (See Section 80-50.4-155.) While an appeal is pending, an employee may continue to work for the employer.

§50.3-310 Non-renewal. An employer may elect not to renew an approved employment contract of a foreign national worker. No reason need be given.

- (a) 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 (30) days before the termination date in the approved employment contract.
- (b) Effect of failure to give notice. If an employer fails to give notice properly 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 (30) days beyond the termination date of the contract until notice is given and thirty (30) 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. At any time until thirty (30) days after the termination date of the contract,

the employee may register with Employment Services and proceed under Section 80-30.2-485 or file a complaint and proceed under Section 80-50.4-150 but may not pursue both avenues simultaneously.

§50.3-315 Termination. The parties may terminate an approved employment contract.

(a) 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 (10) 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 Director of Labor may investigate a termination to determine if the termination was in compliance with Commonwealth law and these regulations.

(b) 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 (10) days prior to the termination date.

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

(d) 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.

Section 50.3-400 Transfer by administrative order.

§50.3-405 Order. A transfer may be made only pursuant to an administrative order issued by a hearing officer.

§50.3-410 Registration for transfer. A foreign national worker may register to transfer at any time from thirty (30) days prior to, and up to fifteen (15) days after, the termination of the worker's approved employment contract. In the event that the employer has failed to give the required thirty (30) days notice of nonrenewal, the worker has an automatic extension of the contract for thirty (30) days. Employment Services shall register a foreign worker for transfer and, when an employer has been identified by the worker within thirty (30) days of the date of registration, shall transmit the request for permission to transfer to the Administrative Hearing Office.

§50.3-420. Extension of time. Extensions of time within which to locate an employer may be granted by the Director of Labor upon application submitted within ten (10) days after expiration of the initial period of time within which to locate an employer and assumption of full responsibility by the foreign national worker for medical and other expenses with an appropriate guarantor under terms acceptable to the Director and payment of a fee.

§50.3-420. Hearing Office procedure. The Administrative Hearing Office shall circulate to all Sections within the Department each request for permission to transfer received from Employment Services. If no objection is received, a hearing officer may issue an order granting permission to transfer. If an objection is received, a hearing officer shall conduct a hearing on the objection and the burden of proof is on the objecting officer of the Department.

§50.3-425. Barred List. A foreign national worker may not transfer to an employer on the Barred List

§50.3-430. Transfer after order. An application for an approved employment contract in the case of a transfer must be submitted within the time allowed by administrative order. 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 Director of Labor. If an application for an approved employment contract is filed and has correctable deficiencies, an automatic extension of ten (10) 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 will be automatically denied if deficiencies remain. Denial of a transfer may be appealed to the Administrative Hearing Office within fifteen (15) days after the date of the denial. (See Section 80-50.4-155.)

§50.3-435 Responsibilities of employer after transfer. 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.

#### Section 50.3-500 Reductions in force.

§50.3-505 Limitations. 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 allows employers to employ foreign national workers only by entering into an employment contract approved by the Department, and because foreign national workers are permitted to remain in the Commonwealth only by virtue of being a party to such an employment contract, the right of employers of foreign national workers to reduce their workforce is not unlimited.

§50.3-510 Notice. 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.

§50.3-515 Effective date. 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. The employment contracts and work permits of laid-off foreign national workers shall terminate automatically on the effective date of a reduction in force.

§50.3-520 Permission to enter and meet. 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.

§50.3-525 Order of layoff. The employer shall layoff foreign workers before laying off citizen or permanent resident workers in the same O-NET job classification except as agreed with the Department for important business reasons. The employer shall lay off more recently arrived foreign national workers before laying off longer-term foreign national workers in the same O-NET job classification except as agreed with the Department.

§50.3-530 Cooperation with the Director. The employer shall cooperate with the Director by providing documentation indicating which foreign national workers seek repatriation; which workers intend to seek a transfer employer; payroll summaries for the three pay periods preceding the effective termination date; and such other documentation as necessary to allow the Department to account for all of the laid off employees. Upon request, the employer shall also produce documentation confirming the economic necessity of the lay-offs. Economic necessity may be shown by a substantial reduction in work orders, a substantial reduction in funds, or a good faith reorganization to improve efficiency, among other factors. The Department may conduct an investigation related to lay-offs of foreign national workers if the Director or a designee has reason to believe the lay-offs were not prompted by economic necessity. Nothing in this Section 50.3-500 shall be construed to limit the right of foreign national workers to file meritorious complaints against an employer for violations of the PL 15-108, the Minimum Wage and Hour Act, or these regulations, related to the lay-off.

§50.3-535 Company housing. The employer shall permit laid-off foreign national workers housed in employer-provided housing at the time of the reduction in force to remain in that housing for a period of 30 days following the effective date of termination upon the same terms stated in each affected workers' employment contract. The employer is not responsible for providing food for laid-off workers.

§50.3-540 Limitations on new hires of foreign national workers.

(a) On-island hires. An employer who has laid off foreign national workers shall be barred for a period of 90 days from the effective

date of termination. from hiring any new foreign national workers to work in the O-NET job classifications held by laid-off workers

(b) Off-island hires. An employer who has laid off foreign national workers shall be barred for a period of six months following the effective date of termination from hiring foreign national workers from off-island to work in the O-NET job classifications held by laid-off workers.

(c) Relief from time limits. An employer may petition the Director in writing for relief from the time limits stated in subsections (a) and (b) above. The Director may grant such relief for good cause shown. A denial of a petition for relief may be appealed to the Administrative Hearing Office within fifteen (15) days after the date of the denial. (See Section 80-50.4-155.)

§50.3-545 Pending applications for approved employment contracts. Upon receipt of notice from an employer of a reduction in force, downsizing or partial closure, the Director shall immediately deny all pending applications filed by the employer to hire foreign national workers from off-island for O-NET job classifications held by the laid-off workers.

§50.3-550 Transfers in event of reduction in force. In the event of a reduction in force due to economic necessity, other remedies are ordinarily not sufficient to provide the foreign national worker with the benefit of the bargain made when entering an approved employment contract and a transfer may be granted. The Administrative Hearing Office shall convene a hearing within fifteen (15) days of notice to workers with respect to a reduction in force to determine worker status.

§50.3-555 WARN Act. The rights and remedies afforded all employees under these regulations, 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, these regulations 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.

Section 50.3-600 Avoidance and early resolution of potential labor disputes.

§50.3-605 Notice to Foreign National Workers. The notice required under Section 4938 (a) of PL 15-108 shall be in the standard form provided by the Department. The notice will be supplied by the Department in English, Mandarin, Tagalog, and Korean. Foreign national workers from India and Bangladesh are presumed to have sufficient English to understand the English-language version of the notice. Employers bringing foreign national workers from countries requiring translation to other languages shall supply a translation. The notice shall be delivered to the foreign national worker while in the home country before departure for the Commonwealth. Receipt of the notice shall be confirmed by the foreign national worker upon arrival in the Commonwealth. See Section 80-50.2-105.

§50.3-610 Employer capability to meet financial obligations. An employer must be financially able to meet the obligations of an employment contract. The Director of Labor shall evaluate employer financial capability upon receipt of an application for an approved employment contract (initial, renewal, or transfer).

(a) Financial requirements for business employers. The Director may request such evidence of financial capability as is required for an evaluation of the financial capability of the business. The Director 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.

(b) 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 State of Hawaii. These guidelines are at *Federal Register*, Vol. 72, No. 15, January 24, 2007, pp. 3147–3148 or at <http://aspe.hhs.gov/poverty/07poverty.shtml>.

(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.

(c) Tax standing. An employer must be in good standing with respect to the payment of all taxes in order to utilize Employment Services. Employment Services shall obtain from the employer a certification of good standing from the Department of Revenue and Taxation.

(d) Outstanding complaints and judgments. An employer must have no outstanding judgments 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.

§50.3-615 Reporting of disputes. A system of informal reporting of disputes is intended to facilitate early resolution of the potential dispute and to maintain the employment relationship. Disputes may be reported orally, by telephone or in person, or in writing to the Director of Labor.

(a) Reporting by employees. In the event that an employer fails to make full and complete payment of bi-weekly wages on two

successive occasions, or if a conflict arises between the foreign national worker and the employer about working conditions or the implementation of the terms of the approved employment contract, the foreign national worker shall report the potential dispute to the Director of Labor promptly.

(b) Reporting by employers. In the event that a foreign national worker fails to report for work for five successive workdays without notice to the employer of medical or other reasons for absence, or if a conflict arises between the employer and the foreign national worker about working conditions or the implementation of the terms of the approved employment contract, the employer shall report the potential dispute to the Director of Labor promptly. This provision does not limit the right of an employer to terminate an approved employment contract for cause pursuant to the terms of the contract.

§50.3-620 Mediation of disputes. Disputes reported under Section 80-50.3-615 above may be mediated under the procedures set out in Section 80-50.4-200.

§50.3-625 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 Director of Labor within fifteen (15) business days.

#### Section 50.3-700 Inspections and investigations.

§50.3-705 Timing and frequency of inspections. An administrative schedule of worksite inspections shall be established each year. Normally worksites are inspected once per calendar year, and not more than four times in any calendar year, except that follow up inspections of worksites where violations have been found may be conducted with more frequency.

§50.3-710 Procedure for inspections and investigations.

- (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 and perform all functions listed in subsection (b) above. 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 disqualified by the Department from employing foreign national workers or enjoined from future refusals with respect to inspection.

§50.3-715 Violations. If upon inspection a violation is found of any provision of the Commonwealth Employment Act of 2007, the Minimum Wage and Hour Act, or the Departments regulations promulgated pursuant to Commonwealth law, the Director may, within thirty (30) days:

- (a) Warning. Issue a warning to the responsible party to correct the violation. If the responsible party does not comply within ten (10) days and correct the violation, the Director 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 Director of Labor as the complainant. If the notice of violation is issued in circumstances where a complaint has been filed with the Administrative Hearing Office by an individual complainant, the

caption on the case may be amended to reflect the Director of Labor as the complainant. The Division of Labor's legal counsel shall represent the Division of Labor and the Director in such actions.

§50.3-720 Inspections pursuant to warrant. For purposes of Section 4939(g) of PL 15-108, "reasonable suspicion" means specific facts about the suspected employer or worksite justifying inspection efforts beyond the norm for businesses of that type.

§50.3-725 Investigation. The Director of Labor may conduct investigations as necessary and appropriate to enforce the provisions of PL 15-108 with respect to foreign national workers and these regulations to ensure lawful working conditions, employer-supplied benefits, and health and safety for foreign national workers. In conducting these investigations, the Director shall have all of the powers delegated and described with respect to inspections and investigations pursuant to Subchapter 80-50 of these regulations.

#### SECTION 80-50.4 ADJUDICATION OF DISPUTES

##### Section 50.4-100 Complaints and actions in labor matters.

§50.4-105 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.

§50.4-110 Rules of practice. Pursuant to the Administrative Procedure Act, these rules and regulations in this Section 80-50.4 are generally applicable to adjudicative proceedings in all actions pursued by the Director of Labor and other persons. 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.

§50.4-115 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.

§50.4-120 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 with Employment Services may be deemed a "complaint" by a hearing officer under circumstances in which it is appropriate to do so and an order may issue.

§50.4-125 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.

§50.4-130 Location for filing. A complaint and any other pleadings shall be filed at the office of the Department of Labor on the island where the employment occurred, unless good cause is shown.

§50.4-135 Signature on pleading. Each pleading shall be signed by the party filing it or by an attorney admitted to practice in the CNMI representing a 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.

§50.4-140 Computation of time periods. In computing any period of time under these rules, 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 (7) days or less, Saturdays, Sundays, and non-work days shall be excluded from the computation.

§50.4-145 Filing of a consolidated agency case. The Director of Labor 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. The Director may request an order requiring all foreign national workers employed by an employer to attend a hearing for purposes of determining eligibility for awards of damages and transfer relief.

§50.4-150 Filing of a labor case.

(a) Any employer or employee may file a complaint with the Administrative Hearing Office regarding any violation of the Commonwealth Employment Act of 2007, the Minimum Wage and Hour Act, as amended, the Fair Labor Standards Act, as amended, and Public Laws 11-6 and 12-11, as amended, and these rules and regulations; or any breach of an approved employment contract, an approved health insurance contract (after the date on which the Secretary of Public Health publishes final regulations in that regard), or any other document filed with the Department. 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.

(b) A foreign national worker may file a complaint if the worker entered the Commonwealth for employment even if an incomplete application has been filed, the employment contract has not been approved, the employer never provided any job, the employment contract has been terminated, the employee has fallen into illegal status, the employee has been working illegally, the employee has violated Commonwealth law, or similar circumstances exist. The Administrative Hearing Office will adjudicate all timely filed complaints of those who entered the Commonwealth for employment regardless of when they entered the Commonwealth or their current status in the Commonwealth.

Persons who did not enter the Commonwealth for employment (such as tourists or students) may pursue their claims in the Commonwealth courts.

- (c) A complaint may be filed only after the violation or breach has occurred. Prior to filing an action in any Commonwealth court, a foreign national worker shall file a complaint with the Division of Labor so that remedies available under Commonwealth law may be considered expeditiously and potential violations may be investigated by the Director of Labor for the potential benefit of other similarly-situated workers.
- (d) A complaint filed by an individual shall be filed on the standard form provided by the Department. No other form of complaint is required. Any additional or explanatory materials may be filed at the option of the complainant in any form chosen by the complainant. The Administrative Hearing Office shall provide personnel to assist *pro se* complainants in filling out the complaint form. No pleading will be refused or stricken for failures of form, however the hearing officer may direct that more understandable pleadings be substituted or that a proper signature be added.

§50.4-155 Filing of a denial case. In the event of an administrative denial under these regulations, the employer or employee adversely affected by the denial (or both) may file a denial case with the Administrative Hearing Office on a standard form provided by the office challenging the basis for the denial. Appeals of an administrative denial must be filed within fifteen (15) days of the date of the denial.

§50.4-160 Filing of a labor case to determine status. The Director of Labor may file a complaint in the Administrative Hearing Office in a labor case in the matter of a foreign national worker who is litigating in some other forum and who is not currently employed under an approved employment contract in order to determine eligibility for transfer.

§50.4-165 No administrative rejection for untimeliness. Failure to file within the statutory time limit of six months (see Section 80-60.2) shall not be grounds for refusal to accept the papers for a complaint or appeal.

§50.4-170 No filing fee for 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 Section 80-60.8.)

§50.4-175 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.

§50.4-180 No response to the complaint required. The respondent may, but is not required to, file a written response to the complaint.

§50.4-185 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.

§50.4-190 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.

Section 50.4-200 Mediation of the complaint.

§50.4-205 Schedule. The Administrative Hearing Office may refer each complaint in a labor case for mediation. Mediations may be conducted by the Director of Labor or a designee, 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 five (5) days of filing of the complaint, and notify the parties.

§50.4-210 Notice. The parties must be given at least three (3) 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.

§50.4-215 Proceedings. Mediations will be conducted informally and confidentially without a taped or other record of the proceedings. No oral statement made at a 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 within three (3) days after the mediation session. . If the foreign national worker is represented by counsel or a professional assistant, any mediator may approve the settlement agreement. If the foreign national worker is unrepresented, a hearing officer must approve the settlement agreement.

§50.4-220 Failure to attend.

(a) If a foreign national worker who is a complainant does not attend the mediation session after adequate notice, a hearing officer may deny authorization to seek temporary work pending a hearing on the matter. If a foreign national worker does not attend the mediation session after requesting a rescheduling and does not provide the Administrative Hearing Office with at least five (5) days notice, the hearing officer may dismiss the complaint without prejudice.

(b) If an employer who is a complainant does not attend the mediation session after adequate notice, a hearing officer may dismiss the complaint without prejudice.

§50.4-225 Failure to file in a timely manner. If the complaint is not resolved at mediation, the Director of Labor may move to dismiss if the complaint has not been timely filed. 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 Section 50.4-800.

§50.4-230. Hearing date. If the complaint is timely filed, at or immediately after the mediation, the hearing officer shall set a hearing date and inform both parties of the date.

§ 50.4-235 Permission to seek 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.

(a) 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 Labor Enforcement 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.

(b) 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 (10) days after the date of a hearing officer's final order in the case, or in the event of a timely appeal ten (10) days after the date of the Secretary's order, or in the event of a timely appeal to a court ten (10) days after the date of the court's final order.

(c) 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 the standard form provided by the Department.

- (d) The financial obligations with respect to medical expenses (see regulations published by the Secretary of Public Health) and repatriation (see Section 80-50.5-500) 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.
  
- (e) If employment under the temporary work authorization ends prior to the determination of the pending case, the foreign national worker shall report to Labor Enforcement within ten (10) days for a renewal of the permission to seek temporary work.

§50.4-240 Investigation of the complaint. A hearing officer may refer a complaint to the Director of Labor for investigation, and the Director 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 living quarters, 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.

§50.4-245 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 Director of Labor shall decide the request based only on the written affidavit.

Section 50.4-300 Jurisdiction of the Administrative Hearing Office. The Administrative Hearing Office shall have jurisdiction to decide all issues of fact and related issues of law on appeals from decisions of the Director of Labor, the Director of Employment Services, or arising out of complaints filed with the Administrative Hearing Office by U.S. citizens or permanent residents pursuant to Section 80-30.2-900 and foreign national workers or employers pursuant to Section 80-50.4-100. 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 the complaint. The Administrative Hearing Office does not have jurisdiction with respect to the claims of tourists, students, and others who enter the Commonwealth other than as foreign national workers. Those claims are pursued in the Commonwealth Superior Court.

Section 50.4-400 Powers of the hearing officer .

§50.4-405 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.

§50.4-410 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 (10) 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.

§50.4-415 Prehearing 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.

§50.4-420 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.

§50.4-425 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.

§50.4-430 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.

§50.4-435 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 (10) 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 ten (10) 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.

§50.4-440 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.

§50.4-445 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 request of the Labor Department office on Rota or Tinian or at the request of a party on Saipan. At the conclusion of a hearing, a hearing officer shall issue such findings, decisions, and orders as are necessary to resolve the matter.

§50.4-450 Continuances. Continuances may be granted only 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 (5) 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.

§50.4-455 Further investigation. A hearing officer may refer a matter to the Director of Labor for further investigation of the complaint at hand or of the actions of the complainant or respondent.

§50.4-460 Attendance at hearings. A hearing officer may grant an extension of time to a foreign national worker who has exited the Commonwealth to re-enter more than five (5) days prior to a scheduled hearing for which his or her attendance is required. A hearing officer may grant to a foreign national worker who has re-entered the Commonwealth in order to attend a hearing an extension of time for exit from the Commonwealth after a hearing.

§50.4-465 Amendments to conform to the evidence. When issues are not raised in a pleading, prehearing stipulation, or prehearing 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.

§50.4-470 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.

§50.4-475 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.

Section 50.4-500 Service of process.

§50.4-505 Service of a complaint, time requirements. Service of the complaint on the respondent shall be made within five (5) days of the filing and proof of service shall be filed with the Administrative Hearing Office within two (2) 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.

§50.4-510 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 twenty (20) calendar days after service of the complaint.

§50.4-515 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.

§50.4-520 Service, methods. 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.

(a) 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.

(b) 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 (5) days is added to the prescribed period after service to exercise a right or take an action.

(c) 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. If the

Department uses publication service without first attempting personal or mail service, publication with respect to any party who is a citizen of a foreign country may 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.

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

§50.4-525 Service by a party. Either personal service or mail service must be attempted before publication service may be used by a party.

§50.4-530 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.

#### Section 50.4-600 Conduct of hearings.

§50.4-605 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.

§50.4-610 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.

§50.4-615 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.

§50.4-620 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.

§50.4-625 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.

§50.4-630 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.

§50.4-635 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.

§50.4-640 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.

§50.4-645 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.

§50.4-650 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.

§50.4-655 Expedited hearings. The Commonwealth immigration authority may request and the Administrative Hearing office, in its discretion, may order that any pending labor matter involving a party who is currently in deportation proceedings in the Commonwealth Superior Court be heard and decided on an expedited basis.

Section 50.4-700 Orders and relief.

§ 50.4-705 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 Section 50.4-800.

§50.4-710 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.

§50.4-715 Authority. The hearing officer is authorized to:

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

- (c) Cancel or modify an entry permit or work permit 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;
- (d) 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;
- (e) Disqualify a foreign national worker, temporarily or permanently, from employment in the Commonwealth;
- (f) Levy a fine not to exceed \$2,000 for each violation of any provision of PL 15-108;
- (g) Issue declaratory or injunctive relief as appropriate;
- (h) Award attorneys fees when appropriate in addition to any other remedy; provided however that attorneys fees shall not be recoverable against the Commonwealth and
- (i) 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.

§50.4-720 Transfers. Only a hearing officer may grant a transfer. Nothing in the Commonwealth Employment Act of 2007, PL 15-108, or in these regulations creates any right to a transfer. A hearing officer may grant a transfer 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.

(a) The grounds for granting transfer relief 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 these regulations or PL 15-108;
  - (iii) A reduction in force pursuant to Section 4937 of PL 15-108;
  - (iv) The abandonment of the worker during the term of an approved employment contract, but prior to ninety (90) 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.
- (b) A transfer may be granted 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.
- (c) 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 (30) days from the date of the order unless the hearing officer makes specific findings of exigent circumstances requiring a longer period.
- (d) The order granting a transfer shall be transmitted by the Administrative Hearing Office to Employment Services within three days of issuance.

§50.4-725 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 concluded successfully may be granted a transfer by a hearing officer even if not qualified under Section 80-50.4-720 above.

§50.4-730 Repatriation. The hearing officer may assess costs for repatriation of a foreign national worker.

§50.4-735 Frivolous actions. The hearing officer may find an action to be frivolous if it is unfounded in fact or law or initiated primarily to obtain an undue pecuniary benefit or for distraction or delay. The filing of an action which is determined by a preponderance of the evidence to be frivolous shall be grounds for permanently disqualifying the foreign national worker who filed the action from employment in the Commonwealth or permanently barring an employer who filed the action from further employment of foreign national workers.

§50.4-740 Solicitation of sponsorships. The purpose of Section 4963(k) and Section 4964(d) of PL 15-108 is to prevent illegal sponsorships in which the employer is offering no viable job but files an application in order to allow the foreign national worker to remain in the Commonwealth. These sections do not apply to employment arrangements in which the employer is offering a legitimate, viable, wage-paying job. The hearing officer shall apply these sections in this way.

- (a) A foreign national worker who intentionally and knowingly violates Commonwealth law by paying an application fee or a renewal fee that should be paid by an employer solely in order to remain in the Commonwealth, under circumstances in which the employer provides no viable wage-paying job for the worker, may be deported if, under all the circumstances of the case, deportation is the appropriate remedy.
- (b) A foreign national worker who pays an application or renewal fee in connection with an existing, viable, wage-paying job may not be deported on account of the violation of these sections. If the employer provides a viable job for which the worker has been employed, they have not participated in an illegal sponsorship arrangement involving sham employment. Foreign national workers who pay an application or renewal fee under these circumstances may have a claim against the employer whose responsibility it is to pay the fee and may be awarded damages if, under all the circumstances of the case, damages are the appropriate remedy. Similarly, a foreign national worker who pays an application or renewal fee without knowledge or intent to participate in an illegal sponsorship arrangement may not be deported on account of the violation of these sections. A hearing officer may take account of the information about illegal sponsorships provided at an orientation session.
- (c) An employer who engages in an illegal sponsorship by filing an application for an approved employment contract without the intent or present ability to provide a viable, wage-paying job for a foreign national worker may be barred from further employment of

foreign national workers if, under all the circumstances of the case, debarment is the appropriate remedy.

- (d) An employer who requires or permits a foreign national worker to pay an application or renewal fee in connection with an existing, viable, wage-paying job may be fined up to \$2,000 and ordered to pay the amount of the fees to the worker in addition to any other remedies if, under all the circumstances of the case, these are the appropriate remedies.

§50.4-745 Order. As soon as practicable, and generally within fifteen (15) 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, on each material issue of fact or law presented on the record. 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.

§50.4-750 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.

§50.4-755 Motion for reconsideration. A party may file a motion for reconsideration within fifteen (15) days after service of an order. The motion shall state concisely the matters or controlling decisions that a party believes the hearing officer overlooked or misapprehended. A response may be filed no later than five (5) days after the filing of the motion. No affidavits shall be filed or additional evidence offered. No oral argument shall be heard unless the hearing officer directs to the contrary. A motion for reconsideration may be granted for mistake, inadvertence, surprise, or excusable neglect; newly discovered evidence which, by due diligence, could not have 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 properly filed and served motion for reconsideration tolls the time for filing a notice of appeal but is not itself appealable. The time for appeal begins to run again on the date the decision on a motion for reconsideration is signed. 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.

§50.4-760 Correction of errors. A hearing officer may *sua sponte* correct an error prior to the time the record is certified for appeal.

§50.4-765 Referral to the Commonwealth immigration authority. The hearing officer shall notify the Commonwealth immigration authority promptly upon cancellation or modification of an entry permit or work permit. The hearing officer may refer any person to the Commonwealth immigration at the conclusion of any labor case.

§50.4-770 Referral to the Commonwealth Superior Court. If an order including an award of money damages is not paid pursuant to the terms of the order, the Administrative Hearing Office shall provide the prevailing party with instructions for filing with the Commonwealth Superior Court in order to enforce the administrative order.

Section 50.4-800 Appeal to the Secretary.

§50.4-805 Commencing an appeal. 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. A notice of appeal must be filed within fifteen (15) days of service of the decision on the party who is appealing. See Section 80-50.4-140 above with respect to computation of time limits.

§50.4-815 Procedural requirements. Service of process with respect to appeals shall be as provided in Section 80-50.4-500 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 fifteen (15) days notice to the parties.

§50.4-820 Preparation of the record. Upon receipt of a timely notice of appeal and the fee required in Section 80-60.8 of these regulations, a party may provide a tape (or other storage media) and request the

Administrative Hearing Office to make a copy of the tape (or other media) on which the proceeding was recorded. If a written transcript is necessary, it is the responsibility of the appealing party to prepare and certify it.

§50.4-825 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 fifteen (15) days notice or change a hearing date with less than fifteen (15) days notice.

§50.4-830 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.

Section 50.4-900 Judicial review. Judicial review of a final action of the Secretary is authorized after exhaustion of all administrative remedies and shall be initiated within thirty (30) days of the final action. Except as provided in PL 15-108, judicial review shall be pursuant to 1 CMC §9112. Appeal from a final action by the Secretary shall be directly to the Commonwealth Superior Court.

#### SECTION 80-50.5 EXIT FROM THE COMMONWEALTH

Section 50.5-100 Exit during the contract term. A foreign national worker may exit and re-enter the Commonwealth during the term of an approved employment contract. A foreign national worker who exits the Commonwealth during the term of an approved employment contract may file with the Director of Labor, a notice of temporary exit on the standard form provided by the Department. A foreign national worker who fails to file the

notice before departing the Commonwealth may not have a defense if an employment contract is terminated while the worker is out of the Commonwealth.

Section 50.5-200 Exit after the contract term. Each foreign national worker is required to exit the Commonwealth within fifteen (15) 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 a fifteen (15) day extension in connection with processing a transfer or filing a complaint (Section 80-50.5-600).

Section 50.5-300 Periodic exit.

§50.5-305 Policy with respect to periodic exit. There are three policy reasons for a periodic exit requirement. The first and primary reason is to open up opportunities for U.S. citizens and permanent residents to be trained and employed in positions previously held by foreign national workers. Substantial survey and other work by the Office of Public Auditor, the Northern Marianas College, the Special Workforce Action Team, the Workforce Investment Agency, and other agencies and groups with responsibilities to train and place U.S. citizens and permanent residents, in addition to data generated by the Department of Labor, has documented the very great difficulty in finding job opportunities for citizens when jobs are filled on a long-term basis by foreign national workers. This is an especially difficult problem in a relatively small jobs market. Increased employment for citizens and permanent residents is essential to the economic well-being of the Commonwealth. The second reason, is to enforce the basic bargain that was made with each foreign national worker who entered the Commonwealth for employment that supports the Commonwealth's economy and not for permanent residence or change in status. Data, studies, and surveys including those regarding past experience when an open-ended permission was granted to settle in the Commonwealth indicate that there would be a substantial burden on the Commonwealth's economy and its taxpayers if employment in the Commonwealth could lead to a change in status. The third reason is that the Commonwealth's need to ensure that overstayers are kept to a minimum and the laws with respect to permission to work in the Commonwealth are fairly and rigorously enforced.

§50.5-310 Repatriation. An exit by a foreign national worker under the periodic exit requirement is a repatriation. (See Section 80-50.5-400).

§50.5-315 Timing of exit. A foreign national worker must exit the Commonwealth within three years of the date on which the foreign national worker entered the Commonwealth and remain outside the Commonwealth for at least six consecutive months.

- (a) The date on which a foreign national worker entered the Commonwealth is the entry date stamped on the worker's passport.
- (b) The date on which a foreign national worker exited the Commonwealth is the exit date stamped on the worker's passport.
- (c) If a tourist visa is issued to the foreign national worker after exit from the Commonwealth for purposes of a visit to the Commonwealth, the six month period shall begin again from the date on which, under the tourist visa, the foreign national worker exits the Commonwealth.
- (d) The timing of the periodic exit is left up to the employer and the employee.

§50.5-320 Employers and employees covered. Unless an exemption applies, the periodic exit requirement covers all employers in the Commonwealth who employ foreign national workers and all foreign national workers who are present in the Commonwealth. On or before June 15 of each year, the employer shall e-mail to the address provided by the Department or file in writing with Labor Enforcement the names of employees who have exited or will exit during the calendar year. This list may be amended at the end of any calendar quarter.

§50.5-325 The "key employee" exemption. Each employer with ten (10) or more employees may designate certain employees as key to the business and exempt them from the exit requirement. This allows each business to determine for itself whether a worker has skills important to the continued success of the business. The exemption may not reach more than ten (10) percent of an employer's foreign national workers. On or before March 15 of each year, the employer shall e-mail to the address provided by the Department or file in writing with Labor Enforcement the names of employees exempt from the periodic exit requirement. This list may be amended at the end of any calendar quarter. In any event, every employer shall be entitled to designate at least one foreign national worker as a key employee.

§50.5-330 Equivalent exit. The periodic exit requirement serves two objectives that are important to the management of the Commonwealth's labor pool. First, and primarily, the periodic exit serves

the objective of promoting employment opportunities for U.S. citizens and permanent residents. Second, the periodic exit requirement serves the objective of promoting enforcement, understanding and clarity with respect to the requirement that the status of guest workers does not change as a result of their work in the Commonwealth.

- (a) Employers who have complied with the requirements of Section 4525 of PL 15-108 with respect to citizen and permanent resident participation in their full-time workforce have met the primary objective of the periodic exit requirement. They have provided significant employment opportunities for U.S. citizens and permanent residents. For that reason, these employers may satisfy the periodic exit requirement by repatriating their foreign national workers under Section 4953(a) of PL 15-108 for 60 consecutive days (rather than six consecutive months) and submitting to the Department a consent document signed by the foreign national worker acknowledging permanent residence in the country that issued the worker's passport and no change in status by reason of employment in the Commonwealth. The consent document shall be accompanied by a legal opinion, signed by an attorney admitted to practice in the Commonwealth, that the consent document was signed under circumstances that make it legally effective in the Commonwealth, given the nature of the employment, the education and language capability of the foreign national worker, and any other circumstances appropriately considered.
- (b) Non-business employers who have hired domestic helpers, farmers, household maintenance workers or yard workers in compliance with Sections 4522 and 4922 of PL 15-108 may utilize the 60-day alternative as provided in subsection (a) above. Statistical analyses by the Division of Employment Services demonstrate that these jobs, although advertised and open to U.S. citizens and permanent residents, are very rarely filled by persons other than foreign national workers. Foreign workers employed by non-business employers facilitate the holding of jobs by U.S. citizens and permanent residents and maintenance of residences by foreign investors all of which benefits the CNMI economy.
- (c) Should any 60-day exit requirement be found by a hearing officer or court not to be applicable to any worker, then the six-month exit requirement would automatically apply to that worker.

§50.5-335 Work while the foreign national worker is outside the Commonwealth. A foreign national worker who exits the Commonwealth and is residing in a foreign country may perform work for an employer located in the Commonwealth under any contract arrangement acceptable to the employer and the worker. When a foreign national

worker is outside the Commonwealth (and outside the United States), the worker is not working under Commonwealth law with respect to foreign national workers and the minimum wage does not apply.

§50.5-340 Exit while awaiting processing. A foreign national worker who is proceeding with a renewal or transfer may sign a contract and undergo a health examination while on-island and then fulfill the periodic exit requirement by exiting until their documents are processed. Under circumstances of a transfer, the foreign national worker may claim the 60-day equivalent exit if available either under the entitlement of the former or new employer.

§50.5-345 Automatic contract extension or renewal. An employer may employ a foreign national worker in his or her former job after the periodic exit has been completed. If the foreign national worker exits during the term of an employment contract, that employment contract may be automatically extended, without fee, by the six month or 60-day period that the foreign national worker exited. If the foreign national worker exits at the end of a contract term, that employment contract may be renewed, without fee, under the terms of Section 4935 of PL 15-108 substituting the termination date of the periodic exit for the termination date of the contract.

§50.5-350 Contract adjustments to accommodate exit. Under circumstances in which a foreign national worker has completed a one-year contract, and the employer plans to renew the employee but wishes to schedule the employee for a six-month exit, the employer may enter into an employment contract with the employee for six months under Section 80-50.3-115 at half the cost of the application fee under Section 80-60.8, process the necessary documents while the employee is completing the exit period, and re-start the employee again under a one-year contract at the end of the periodic exit.

§50.5-355 Status. Foreign national workers who return to the Commonwealth after six months' or sixty days abroad are starting a new period of residence in the Commonwealth. No period of prior residence is relevant to status after return. A foreign national worker loses employment status in the Commonwealth on the last exit date available to that worker to remain in compliance with Commonwealth law.

§50.5-360 Disqualification. An employer may not employ a foreign national worker, who is not exempt, who has not complied with the periodic exit requirement.

Section 50.5-400 Responsibility for costs of repatriation.

§50.5-405 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.

§50.5-410 Employment on temporary work authorization. An employer of a foreign national worker under temporary work authorization (see Section 80-50.4-230) is not responsible for repatriation costs.

§50.5-415 Illegal employment. An employer who employs a foreign national worker without an approved employment contract, without an approved security contract or without an approved health insurance contract (after the date on which the Secretary of Public Health publishes final regulations in that regard), or who is otherwise in violation of Commonwealth law shall be assessed full or partial repatriation costs by the Director of Labor.

§50.5-420 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 Director of Labor 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.

§50.5-425 Appeals. Within fifteen (15) days of the issuance of an assessment of repatriation costs by the Director of Labor, any person or party affected by the assessment order may appeal the order in accordance with Section 80-50.4-800. A standard form for an appeal is provided by the Department.

Section 50.5-500 Responsibility for medical expenses. 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. In the event of requests for extensions of time to pursue cases and appeals, the hearing officer may inquire as to how medical expenses will be met in order that this burden not fall upon the Commonwealth government. 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.

Section 50.5-600 Stay and re-entry for litigation purposes.

§50.5-605 Extension for purposes of filing a claim. A foreign national worker must exit the Commonwealth within fifteen (15) days after the termination of an approved employment contract or any renewal. An automatic extension of an additional fifteen (15) days 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.

§50.5-610 Extension by order of a hearing officer. A foreign national worker who attends a mediation session after filing a complaint (see Section 80-50.4-200) 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, or a deportation order already has been entered, the foreign national worker may continue a fraudulent scheme to the detriment of the Commonwealth, the foreign worker has adequate resources to return to the Commonwealth for proceedings before the Department, 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 (15) days after the date of the denial. (See Section 80-50.4-155.)

§50.5-615 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 Director of Labor who shall allow temporary work on the same terms as would be available from a hearing officer.

### **Subchapter 80-60 OTHER PROVISIONS**

Section 80-60.1 Regulations

Section 80-60.2 Limitations

Section 80-60.3 Prohibitions

Section 80-60.4 Sanctions and penalties

Section 80-60.5 Exemptions

Section 80-60.6 No liability

Section 80-60.7 Required records

Section 80-60.8 Fees

Section 80-60.9 Statistical data

Section 80-60.10 Required reports

Section 80-60.11 Electronic filing and access

Section 80-60.12 Transition

### **Subchapter 80-60 OTHER PROVISIONS**

Section 60.1 Regulations. In order to implement the legislative oversight requirement, amendments to these regulations shall be transmitted to the presiding officers of the Legislature for a thirty (30) day period of consideration 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 (30) day period, the regulations shall be amended accordingly before going into effect. No further period for public comment is required after submission to the Legislature.

Section 60.2 Limitations. The Commonwealth Employment Act of 2007 includes provisions to avoid disputes where possible and to resolve disputes as

promptly as possible. In the past, very large backlogs have built up in large part because complainants had one year in which to file complaints and often waited until the very end of the period to file, then claimed damages back to the very beginning of the contract. An extensive orientation session will brief incoming foreign national workers on their rights. Documentation requirements have been improved. For these reasons, the statute of limitations with respect to filing individual labor complaints is six months from the date the actionable conduct occurred or could have been discovered with reasonable diligence. In any event, an individual must file a complaint within thirty (30) days of the termination of an approved employment contract. However, the Director of Labor 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 Director may file a complaint does not commence until after an investigation involving multiple workers has been concluded.

Section 60.3 Prohibitions.

[RESERVED]

Section 60.4 Sanctions and penalties.

[RESERVED]

Section 60.5 Exemptions.

[RESERVED]

Section 60.6 No liability.

[RESERVED]

Section 60.7 Required records. An employer of a foreign national worker shall keep for at least two years, and present immediately upon written request by the Director of Labor or a designee, the following information:

1. 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;

2. 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;
3. Documentation for each foreign national worker including approved employment contract, police clearance, health certificate, and tax payment records;
4. The employer's business license and security contract information with respect to each foreign national worker; and
5. The number and type of employment-related accidents or illnesses involving workers and adequate identification of each worker involved.

Section 60.8 Fees. The following fees shall be collected by the Department. All fees are nonrefundable and nontransferable unless otherwise provided in these regulations.

- |  |        |
|--|--------|
| 1. Posting a job vacancy announcement fee  | No     |
| 2. Registration with Employment Services fee                                     | No     |
| 3. Application for an approved contract (initial, transfer, renewal)<br>\$300.00 |        |
| 4. Application for an approved contract, non-business employer<br>\$250.00       |        |
| 5. Attendance at orientation   | No fee |
| 6. Application for part-time employment<br>\$40.00                               |        |
| 7. Request for contract amendment or change<br>\$25.00                           |        |
| 8. Request for exemption (moratorium)<br>\$500.00                                |        |
| 9. Request for approval of subcontracting<br>\$25.00/person                      |        |

10. Request for certificate of good standing  
\$100.00
11. Filing of workforce plan  
No fee
12. Replacement or duplicate permit  
\$50.00
13. Penalty fee for untimely renewal (limit 15 days)  
\$5.00/day
14. Processing a temporary work authorization  
\$150.00
15. Renewal of temporary work authorization  
\$50.00
16. Mediation of labor disputes  
fee  
No
17. Filing a labor complaint  
\$20.00
18. Filing an appeal to the Secretary  
\$40.00
19. Copying costs for documents in Department files  
\$0.50/page
20. Transcript of labor hearing (tape only; tape provided by requester)  
\$10.00/tape
21. Expedited processing (in addition to fee)  
\$150.00
22. Miscellaneous certifications  
\$25.00
23. Request for extension of transfer  
\$50.00/month
24. Annual registration  
\$25.00
25. Penalty fee if check or credit card payments do not clear  
\$35.00
26. Specialty data request  
Less than one hour required, individual's own records  
and employers complying with 20% requirement  
\$25.00

Less than one hour required, others  
\$95.00

More than one hour required (as available)  
Cost

Section 60.9 Statistical data.

Section 60.9-100 Annual report data. The Department will aggregate the NAICS data for full-time employees and part-time employees who are U.S. citizens and permanent relatives and who are foreign national workers into the following categories for purposes of the Department's annual report.

1. Professional, technical, and managerial
2. Clerical, sales, and service
3. Agricultural, fisheries, forestry, and groundskeeping
4. Light manufacturing
5. Construction and structural work
6. Care for children, elders, or handicapped persons in the home, housework, gardening, and related private residence work

Section 60.9-200 Standard data sets. The Department will publish on its website and provide to the Department of Commerce quarterly statistics with respect to the number of applications submitted and permits approved within industry categories by citizenship of foreign worker.

Section 60.10 Required reports.

[RESERVED]

Section 60.11 Electronic filing and access.

Section 60.11-100 Electronic forms. These regulations 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.

Section 60.11-200 Online access. The Department will provide for access via the Department's website for employers and foreign national workers to revised statutes and regulations, announcements, notices, opinions and orders, and public data from the Department.

Section 60.12 Transition.

Section 60.12-100 Transition for employment contracts.

§60.12-105 The transition for employment contracts is for the purpose of ensuring that, the maximum number of contracts are in compliance with PL 15-108, without impairing any existing contract.

§60.12-110 An employment contract in effect on January 1, 2008 shall be performed under these regulations, provided however that reasonable expectations and business plans grounded in the regulations that applied in 2007 will be respected upon request to and approval of the Director of Labor. Employment contracts, the applications for which were submitted in 2008, shall be performed under these regulations.

§60.12-115 An employment contract in effect on January 1, 2008 under which a foreign national worker of an age of less than 21 years is working may be performed in accordance with its terms after January 1, 2008, the effective date of PL 15-108. However, the employer of an underage worker must bring the worker to the Department by February 15, 2008 to meet with an investigator who will determine whether the employer and the nature of the employment are suitable for an underage person. The contract may be renewed if the foreign national worker is under the age of 21 at the time of renewal provided that an investigator has determined in connection with the renewal application that the employer and the nature of the employment are suitable for an underage person. Underage persons who are in unsuitable employment may register with Employment Services to find suitable employment and may remain in the Commonwealth until suitable employment is found or the person gains the age of 21, at which time the person shall have 30 days to find an employer and these regulations shall apply in full.

Section 60.12-200 Transition for religious occupations. The transition for religious occupations is for the purpose of phasing out the availability of approved employment contracts for foreign national workers hired by *bona fide* religious affiliates as employees rather than as leaders.

§60.12-205 The transition for religious occupations is in effect from January 1, 2008, the effective date of PL 15-108, through October 1, 2008.

§69.12-210 During the transition period, the Director of Labor may approve employment contracts under which a *bona fide* religious undertaking is the employer and the position to be filled by the foreign national worker is a professional position in a religious vocation or occupation. Such an employment contract may be for a term of three years.

§60.12-215 After October 1, 2008, the Director of Labor may not approve any employment contract other than for a priest or similar leader of a *bona fide* religious undertaking. No employment contracts for foreign national workers as employees of a *bona fide* religious undertaking will be approved. Existing contracts in effect on January 1, 2008, with foreign national workers who are employees and not leaders are not affected but may not be renewed at termination in 2008 unless the contract term will not extend beyond October 2008.

Section 60.12-300 Transition for periodic exit requirement.

§60.12-305 The transition for the periodic exit requirement is for the purpose of ensuring that these exits occur in an orderly fashion throughout the first three -year period after the effective date of PL 15-108 and are not bunched at the very end of the three-year period. It would adversely affect the economy of the Commonwealth if all exits occurred in the third year of the three-year period.

(a) The transition for the periodic exit requirement is in effect from January 1, 2008, the effective date of PL 15-108, to July 1, 2011, a date 42 months after the effective date of PL 15-108.

(b) For purposes of the transition, foreign national workers lawfully in the Commonwealth on January 1, 2008, the effective date of PL 15-

108, shall be deemed to have entered the Commonwealth on that date, except as provided below.

(c) During the transition period, each employer shall have an exemption for key employees of up to ten (10) percent of the employer's total number of foreign national workers.

(d) During the transition period, each employer may earn additional exemptions up to a total of five (5) percent of the employer's total number of foreign national workers. Employers who carry out the periodic exit requirement of at least twenty (20) percent of the exit-eligible workforce during the period from January 1, 2008 through December 31, 2009 shall be able to claim a key employee exemption for an additional three (3) percent of the full-time workforce. Employers who carry out the periodic exit requirement of at least thirty (30) percent of the exit-eligible workforce from January 1, 2010 through June 30, 2010 shall be able to claim a key employee exemption for an additional two (2) percent of their exit-eligible workforce.

§60.12-310 Employers with only one exit-eligible employee shall accomplish the periodic exit for that employee no later than September 30, 2010 unless alternative arrangements are made with the Director of Labor before June 30, 2010. The Director will accommodate reasonable requests based on personal needs, scheduling problems, vacation or school requirements, or other factors.

§60.12-315 In the event that the Department determines that periodic exits have not begun or been accomplished by at least thirty percent of the exit-eligible foreign national workers by September 30, 2009, the Department shall hold a lottery to determine which exit-eligible foreign national workers shall begin the periodic exit during the period January 1, 2010 through March 30, 2010 in order to ensure that a sufficient number of exits will occur in order to keep the exit program on schedule so that there is no bunching of exits at the end of the initial three-year period. In the event that the Department determines that periodic exits have not begun or been accomplished by at least sixty percent of the exit-eligible foreign national workers by September 30, 2010, the Department shall hold a lottery to determine which exit eligible foreign national workers shall begin the periodic exit during the period January 1, 2011 through March 30, 2011

in order to keep the exit program on schedule so that there is no bunching of exits at the end of the initial three-year period.

§60.12-320 The exit of every exit-eligible employee shall be accomplished by December 30, 2011. An additional lottery shall be held, as necessary, to accomplish this result.

§60.12-325 A renewal application under Section 80-50.3-305 of these regulations may be denied for failure to comply with the transition provisions implementing the periodic exit requirement. The renewal period may be truncated to less than one year in order to ensure compliance with the periodic exit requirement.

§60.12-330 Effect of the moratorium. While the moratorium is in effect (from 2008 through 2011), Section 4602 of PL 15-108 provides that a foreign national worker who exits the Commonwealth and is covered by the moratorium shall, at the conclusion of the required absence, be considered a renewal for the purposes of the moratorium. This section affects only the exemption from the moratorium and no other circumstance. The resumption of employment is considered a renewal only for purposes of accommodating the moratorium and so as not to affect foreign national workers solely because of the application of the moratorium. This provision affords an exemption to the moratorium but does not afford any right to a renewal.

## **Subchapter 80-70. SEVERABILITY AND EFFECTIVE DATE**

Section 70.1 Severability

Section 70.2 Effective date

## **Subchapter 80-70. SEVERABILITY AND EFFECTIVE DATE**

Section 70.1 Severability. If any provision of these regulations 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.

Section 70.2 Effective date. These regulations are effective on November 1, 2008, and shall not apply retroactively to applications in the Division of Labor or proceedings in the Administrative Hearing Office that were pending before that date.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS  
OFFICE OF THE ATTORNEY GENERAL  
2ND FLOOR HON. JUAN. A. SABLAN MEMORIAL BLDG., CAPITAL HILL  
CALLER BOX 10007, SAIPAN, MP 96950  
TELEPHONE: 664-2341  
TELECOPIER: 664-2349

## MEMORANDUM

**Date:** September 26, 2008

**To:** All Department Heads

**From:** Attorney General *atg*

**Re:** Contracts

---

Effective today Deputy Attorney General Gregory Baka will be signing all government contracts and other documents requiring the signature of the Attorney General. Likewise, should you have questions, concerns or simply want to follow up on a contract, please refer those concerns to Mr. Baka.

PUBLIC NOTICE  
PROPOSED AMENDMENT TO RULES AND REGULATIONS FOR  
THE SAIPAN HIGHER EDUCATION FINANCIAL ASSISTANCE PROGRAM

The Saipan Higher Education Financial Assistance Board for the Saipan Higher Education Financial Assistance Program under the Office of the Mayor of Saipan hereby notifies the general public of its intention to adopt amendments to Section Eight and Eighteen of the rules and regulations governing the SHEFA program. These amended regulations are promulgated pursuant to the authority set forth in Saipan Local Law 13-21. Specifically, the amendment to the rules and regulations on Section Eight is to *ADD* the field of Criminal Justice as a priority field of study in the existing rules and regulations to be made effective Spring 2009. The proposed amendment to Section Eighteen would *clarify* the intent of SHEFA's performance-based scholarship to restrict a recipient of this incentive award from taking any remedial or below-level course, including not repeating any course previously taken for credit and / or grade, the initial regulations in both sections being first published in the Commonwealth Register in Volume 26, Number 06 on June 24, 2004. Section eight was further amended on May 17, 2006 in Volume 28, Number 05 and section has not been amended since it was initially adopted in 2004.

All interested persons may examine the proposed amended regulations and submit written comments to the Chairperson, Saipan Higher Education Financial Assistance Program, P.O. 10001, PMB 3648, Saipan MP 96950 or by facsimile at (670) 233-5996 or E-mail: [contact@saipanshefa.com](mailto:contact@saipanshefa.com) within 30 calendar days following the publication of this notice in the Commonwealth Register.

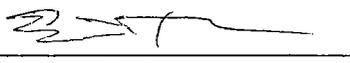
Dated this 29<sup>th</sup> day of July 2008, at Saipan, Northern Mariana Islands.

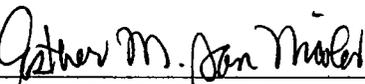
Submitted by:   
Felicidad T. Ogumoro  
Chairperson, SHEFA Board

8/22/08  
Date

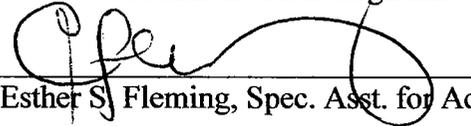
Pursuant to 1 CMC & 2153, as amended by PL 10-50, the proposed regulations for the Saipan Higher Education Financial Assistance Program, a copy of which is attached hereto, have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General's Office.

Dated this 4<sup>th</sup> day of August, 2008,

  
Mathew T. Gregory  
Attorney General

Filed and Recorded by:   
Bernadita B. Dela Cruz  
Commonwealth Registrar

09.25.08  
Date

Received by:   
Esther S. Fleming, Spec. Asst. for Admin.

9/25/08  
Date

The Municipality of Saipan

Office of the Mayor of Saipan

Proposed Amendments to the Rules and Regulations for the Saipan Higher Education  
Financial Assistance Program  
(SHEFA)

Citation of Statutory Authority: The proposed regulations for the Saipan Higher Education Financial Assistance are promulgated pursuant to Saipan Local Law (SLL) 13-21.

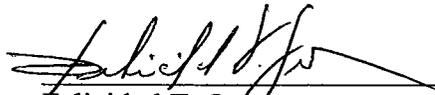
Statement of Goals and Objectives: To implement the provisions of Saipan Local Law 13-21 and by amending Section Eight and Section Eighteen of the existing rules and regulations of the Saipan Higher Education Financial Assistance (SHEFA).

Brief Summary of the Rules: The proposed amendment to the rules and regulations in section eight is to ADD the field of criminal justice as one of SHEFA's priority field of study in the existing rules and regulations on that section pertaining to eligibility for SHEFA priority field of study incentive. The proposed amendment to section eighteen is to clarify the intent in promulgating SHEFA's performance-based scholarship which restricts recipients from taking any remedial or below-level course, including repeating any course previously taken for credit and / or grade in the existing SHEFA rules and regulations.

For Further Information, Contact: Chairperson, Saipan Higher Education Financial Assistance Program, P.O. 10001, PMB 3648, Saipan MP 96950, telephone: (670) 233-5995 or by facsimile at (670) 233-5996 or at E-mail address: [contact@saipanshefa.com](mailto:contact@saipanshefa.com)

Citation of Related and / or Affected Statutes, Regulations and Orders: Saipan Local Law 13-21 and SHEFA Rules and Regulations and SHEFA Directive #1.

Submitted By:



Felicidad T. Ogunoro  
Chairwoman, SHEFA  
Board of Directors

\_\_\_\_\_  
Date

## AMENDMENT TO THE SHEFA REGULATIONS

### SECTION EIGHT

Section Eight of the SHEFA Rules and Regulations is hereby AMENDED to read as follows: (Amended text is underlined.)

#### SECTION EIGHT, SUBSECTION FOUR

All recipients of any SHEFA loan pursuant to Section 8(3) of these rules and regulations made available to a student from Saipan in pursuit of post-secondary education at any U.S. accredited institution of higher education shall have a legal obligation of paying back twenty-five percent (25%) of the total loan amount received and providing a minimum of three (3) years service in either the private or public sector on Saipan on all loan amounts received while in school. However, for purposes of entering into a promissory note / memorandum of agreement with SHEFA and the recipient, the recipient will be deemed and classified as a debtor of SHEFA funds unless all conditions, requirements and stipulations of the note and SHEFA rules and regulations are abided to at all times during the term or life of the agreement, and after completion of his/her studies, or non-enrollment from school or termination from the institution of record.

- ***Priority Field of Study for Saipan*** includes Accounting; Nursing; Teaching / Specialized Special Education / Early Childhood Ed. / Library Science / Counseling / Bilingual Ed.; Business Management and Administration; Hospitality & Information Technology, Anthropology / Sociology for Teaching; Biology (Science) for Teaching; Criminal Justice leading to Forensic Science; Lab Technology; Psychology other than leading to Counseling; Human Resources Development / Personnel Management; Social Worker; Mathematics for Teaching; Engineering / Architect (A&E); Medical and Allied Fields, including Psychiatry; Environmental Studies / Conservation (e.g., natural resources, volcanology, marine biology, fish & wildlife, meteorology & archeology); Criminal Justice and Computer Graphics, including technical or specialized trades such as journalism, management information, computer programming and other fields of study sanctioned by the board in accordance with the administrative procedures act.

## AMENDMENT TO THE SHEFA REGULATIONS

### SECTION EIGHTEEN

Section Eighteen of the SHEFA Rules and Regulations is hereby amended to read as follows: (Amended text is underlined.)

### SECTION EIGHTEEN

Miscellaneous: Any recipient of SHEFA financial assistance who withdraws or drops out of any class or on less-than-fulltime status must immediately notify the SHEFA board in writing, as a change in status may affect future financial assistance. Failure to inform the SHEFA board may be deemed as a material breach of the SHEFA rules and regulations, and more specifically section thirteen (13) of the rules and regulations. A change in a field of study must be immediately reported in writing to the SHEFA board with reasons for the change, especially for SHEFA recipients having a declared major in the SHEFA priority field of study and / or admitted by the institution of record into the program field of study. Under no circumstances will any applicant or recipient of SHEFA funds be authorized to satisfy any fulltime status and G.P.A. requirements of SHEFA with any remedial course, except on account of a requirement by the institution of record based on a placement test. This exception on non-acceptance of remedial courses is limited to one (1) academic year for incoming freshmen only for English and Math. Any recipient of performance-based scholarship assistance is not authorized to take any remedial or repeated course (s) at all. Use of SHEFA financial assistance is strictly for on-campus study requiring student residency.

## NOTISIAN PUPBLIKU

### MAPROPONEN AMENDASION PARA I AREKLAMENTO YAN REGULASION SIHA PARA I INASISTEN FAINANSIÁT NA Prográma GI SANHILO' NA EDUKASION SAIPAN

I Kuetpon i Saipan Inasisten Fainansiát gi Sanhilo' na Edukasion para i Saipan Inasisten Fainansiát na prográma para i Sanhilo' na Edukasion gi papa' i Ofisinan i Mayot Saipan gaige na para u notisia i pupbliku henerát ni i intension-ña na para u adápta i amendasion siha para i Seksiona Ocho yan Dies i Ocho para i areklamento yan regulasion siha ni ginobebietna i SHEFA na prográma. Este i ma'amenda na regulasion siha man ma cho' gue sigun i áturidát ni mapo'lo mo'na gi halom i Saipan Local Law 13-21.

Espesifikulátmente, i amendasion para i areklamento yan i regulasion siha gi Seksiona Ocho ni para u mana'danña' i field of Criminal Justice komu guiya finene'na gi field of study gi halom i a'annok na areklamento yan regulasion siha na debi na u mana' ifektibu gi Spring 2009. I maproponen i amendasion para i Seksiona Dies i Ocho para u klarifika i intension i SHEFA's Performance-Based scholarship ni para u priba i manresisibe pat i aplikánte nui este na incentive award ginen i ha chuchule' maseha háfa na remedial pat below-level course, inengklulusu na ti para u marepiti maseha háfa na course ni esta monháyan machule' gi ma'pos para kreditu yan / pat grádu, i ma'pos na regulasion siha gi todú i dos na seksiona mapupblika gi halom i Rehistran Commonwealth gi Baluma 26, Numiru 06 gi Huniu bente i kuátro(24), 2004. I Seksiona Ocho esta hagas ma'amenda gi Máyu dies i siette(17) 2006 Baluma 28, Numiru 05 yan seksiona ni ti ma'amemenda desde anai ma'amenda gi 2004.

Todú man interesáo na petsona siha siña ma'eksamina i mapropone ni ma'amenda na regulasion siha yan u mana'hálo i opiñion siha guatu gi Kuetpon, Saipan Inasisten Fainansiát gi Sanhilo' na Edukasion na Prográma, P.O. Box 10001, PMP 3648, Saipan M.P. 96950 pat i facsimile gi (670) 233-5996 pat E-mail: [contact@saipanshefa.com](mailto:contact@saipanshefa.com) gi halom trenta(30)diha siha ni tinattitíyi este na notisa gi halom i Rehistran Commonwealth.

Mafecha este gi 29<sup>th</sup> na ha'áni gi Huliú 2008, giya Saipan, Sangkattan Na Isla Marianas.

Nina'hálo as:

\_\_\_\_\_  
Felicidat T. Ogomoro  
Kabiseyu, Kuetpon SHEFA

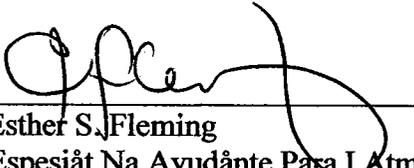
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Sigun i Lai 1CMC & 2153m komu ma'amenda ni Lai Pupbliku 10-50, ni mapropone na regulasion siha para i Prográman Inasisten Fainansiát Sanhilo' na Edukasion Saipan, i kopia ni chechetton guini, man marebisa yan man ma'apreba komu fotma yan suficiente ligát ginen i CNMI ofisinin Abugádu Henerát.

Mafecha este gi 4<sup>th</sup> gi Agosto, 2008.

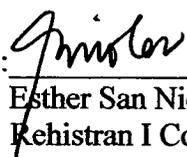
\_\_\_\_\_  
Matthew T. Gregory  
Abugádu Henerát

Rinesibe as:

  
\_\_\_\_\_  
Esther S. Fleming  
Espesiát Na Ayudánte Para I Atministradot

9/25/08  
Fecha

Nina'háлом yan Rinekot as:

  
\_\_\_\_\_  
Esther San Nicolas  
Rehistran I Commonwealth

9.25.08  
Fecha

**ARONGOL TOULAP  
POMWOL LLIWEL NGÁLI ALLÉGHÚL PROGRÓOMAL SAIPAN HIGHER  
EDUCATION FINANCIAL ASISSTANCE**

Mwiischil Saipan Higher Education Financial Asisstance mellól Seipél, Bwulasiyool Maghalaay ekke arongaar toulap igha ebwe fillóoy lliwel kkaal llól Tálil alléghúl Waluuw me Seigh me Waluuw iye e lemeli progróomal SHEFA. Lliwel mellól allégh kkaal ebwe akkaté bwelle bwáang ye tooto mereel Alléghúl Toulap 13-21. Schéschéél, lliwel sáangi allégh kkaal llól Tálil Waluuw ebwe toolong gakkool Criminal Justice ngáre e pisisu bwe ebwe allégheló ótol Spring 2009. Pomwol lliwel yeel llól Tálil Seigh me Waluuw iyq ebwe affatewow mángemángil SHEFA reel kkapasal scholarchip igha ebwe akkayúúló bweibwoghól incentive ngáre ekke bweibwogh akkáaw tappal alillis (remedial) I me ngáre below-level course, e bwal toolong bweibwogh sefaal course kkewe aa takkal bwughi, mmwal plóónol allégh kkaal llól ii me ruwoow tálil kka ebwe akkatééló llól Commonwealth Register llól Volume 26, Numuro 06 ótol Ghúúw 24, 2004. Tálil waluuw nge e sóbwósóbw yaal lliwel llól Ghúúw 17, 2006 llól Volume 28, Numuro 05 me tálil kka esáál ssiwel sáangi schagh igha re ghommwal fillóoy llól 2004.

Schóókka eyoor mááfiyeer reel lliwelóól allégh kkaal rebwe isch ngáli Assamwoolul, Saipan Higher Education Financial Asisstance Program, P.O. 10001, PMB, 3648, Seipél MP 96950 me ngáre facsimile reel (670) 233-6996 me Email: [contact@saipanshefa.com](mailto:contact@saipanshefa.com) llól eliigh (30) raalil mwiril igha e arongowow akkaté yeel llól Commonwealth Register.

Ráálil ye \_\_\_\_ llól Wuun, me Seipél, Teel falúw kka falúwasch Efang Marianas.

Isaliyallong: \_\_\_\_\_  
Felicidad T. Ogumorro  
Samwoolul, Mwiischil SHEFA

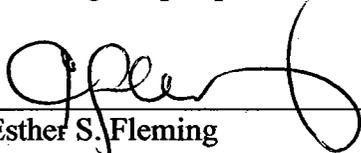
\_\_\_\_\_ Rál

Sáangi allégh ye 1 CMC me 2153, ikka aa liwelló mereel Alléghúl Toulap 10-50, pomwol allégh kkaal ngáli Alléghúl Progróomal Saipan Higher Education Financial Asistance, tilighial ikka e appasch, nge raa takkal amweri fischi mereel CNMI Bwulasiyool Sów Bwungul Allégh Lapalap.

Rááilil ye \_\_\_\_\_ llól maramal Elúwel, 2008.

\_\_\_\_\_  
Matthew T. Gregory  
Sów Bwungul Allégh Lapalap

Mwir sáangi: \_\_\_\_\_

  
Esther S. Fleming  
Sów Alillisil Sów Lmelem

9/25/08  
Rál

Ammwel sáangi: \_\_\_\_\_

Esther San Nicolas  
Commonwealth Register

\_\_\_\_\_  
Rál



Commonwealth of the Northern Mariana Islands  
Department of Finance - Division of Procurement & Supply  
Eloy S. Inos, Secretary  
Department of Finance, Division of Procurement & Supply, PO Box 510008 CK  
Lower Base, Across from Power Plant #1, Saipan MP 96950  
tel: 670.664.1500 fax: 670.664.1515

**PUBLIC NOTICE OF CERTIFICATION AND ADOPTION  
OF REGULATIONS OF  
DEPARTMENT OF FINANCE, DIVISION OF PROCUREMENT & SUPPLY**

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER  
AS PROPOSED RULES AND REGULATIONS  
Volume 30 Number 07, pp 028554-562, of July 28, 2008

**Rules and Regulations of the Department of Finance, Division of Procurement & Supply: Part 70-30.3-320**

Please take notice that the Department of Finance, Division of Procurement & Supply hereby adopts as permanent, the referenced Proposed Regulations. I also certify by signature below that such adopted regulations are being adopted without modification or amendment.

I further request and direct that this Notice be published in the Commonwealth Register.

**Pursuant to 1 CMC sec. 9105(b), these adopted regulations are effective 10 days after compliance with 1 CMC §§ 9102 and 9104(a) or (b), which, in this instance, is 10 days after this publication in the Commonwealth Register.**

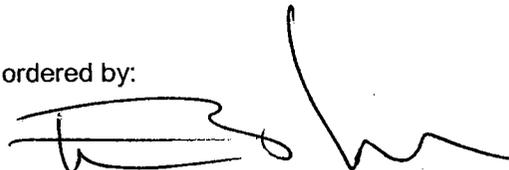
The prior publication was as stated above.

Comments and agency concise statement. Pursuant to 1 CMC sec. 9104(a)(2), the agency has considered fully all written and oral submissions respecting the proposed regulations. Upon this adoption of the regulations, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption. Please see the following pages for this agency's concise statement, if any, in response to filed comments.

Attorney General approval. The proposed regulations were approved for promulgation by the Attorney General in the above-cited pages of the Commonwealth Register, pursuant to 1 CMC sec. 2153(e) (To review and approve, as to form and legal sufficiency, all rules and regulations to be promulgated by any department, agency or instrumentality of the Commonwealth government, including public corporations, except as otherwise provided by law).

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 23rd day of September, 2008, at Saipan, Commonwealth of the Northern Mariana Islands.

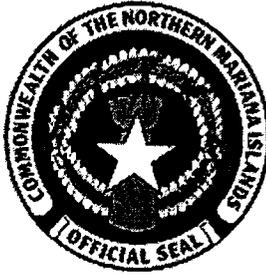
Certified and ordered by:

  
Eloy S. Inos, 9/25/08  
Chair, Department of Finance Date

Filed and  
Recorded by:

  
ESTHER SAN NICOLAS 09.25.08  
Commonwealth Register Date

0 NOFA P&s Software Regs[1].wpd



Commonwealth of the Northern Mariana Islands  
Commonwealth Zoning Board

Henry S. Hofschneider, Chair  
Caller Box 10007, Saipan, MP 96950, Tel. 670-234-9663, FAX 670-234-9666  
2<sup>nd</sup> Floor, Joeten Dan Dan Building  
Email: ZoningBoard@zoning.gov.mp

**PUBLIC NOTICE OF CERTIFICATION AND ADOPTION  
OF REGULATIONS OF  
THE COMMONWEALTH ZONING BOARD**

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER  
AS PROPOSED REGULATIONS  
Volume 30, Number 07, pp 028563-579, of July 28, 2008

**Regulations of the Commonwealth Zoning Board: Parts 100 - 600**

Please take notice that the Commonwealth Zoning Board hereby adopts as permanent, the referenced Proposed Regulations. I also certify by signature below that such adopted regulations are being adopted without modification or amendment except as follows, which are changes which are non-material:

The "History", §1-10-000102(c)(3)(ii) and (iii) has been amended to fill in date and page numbers.

Section 165-30.1-502 Small Wind Energy System Requirements has been revised as follows:

1. Revise subsection "(b)" to delete approval by the American Wind Energy Association and substitute a requirement for approval by National Electrical Manufacturers Association and CNMI Department of Public Works Division of Building Safety.
2. Edit subsection "(b)" to start a new subsection "(c) Design Approval" and renumber the following subsections.
3. Edit subsection "(d)" to replace "entity with care and control" with "owner or other entity with significant proprietary interest in..."
4. Edit subsection "(e)" to change the maximum dBA from 50 to 55.
5. Edit subsection "(k)" to add a new subsection "(3)" allowing the Zoning Administrator to grant an extension of the removal deadline for good cause shown.
6. Make other minor editing and formatting changes to make it easier to understand.

I further request and direct that this Notice be published in the Commonwealth Register.

**Pursuant to 1 CMC sec. 9105(b), these adopted regulations are effective 10 days after compliance with 1 CMC §§ 9102 and 9104(a) or (b), which, in this instance, is 10 days after this publication in the Commonwealth Register.**

The prior publication was as stated above. The Board adopted the regulations as final at its meeting of September 4, 2008.





# COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

**Benigno R. Fitial**  
Governor

**Timothy P. Villagomez**  
Lieutenant Governor

EXECUTIVE ORDER 2008- 01

**DECLARATION OF A STATE OF DISASTER EMERGENCY:  
COMMONWEALTH UTILITIES CORPORATION'S INABILITY TO  
PROVIDE CRITICAL POWER GENERATION SERVICES TO THE  
CNMI**

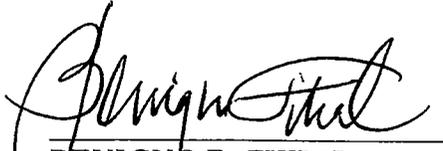
I, BENIGNO R. FITIAL, pursuant to the authority vested in me as Governor of the Commonwealth of the Northern Mariana Islands by Article III, Section 10 of the Commonwealth Constitution and 3 CMC § 5121 of the Natural Disaster Relief Act of 1979, do hereby declare a continued State of Disaster Emergency for the Commonwealth of the Northern Mariana Islands due to the Commonwealth Utilities Corporation's ("CUC") inability to provide critical power generation service to the CNMI and the extreme, immediate and imminent threat such condition poses to the Commonwealth of the Northern Mariana Islands.

This Declaration of a State of Disaster Emergency is made after finding that the justifications that existed for the Declaration of a State of Disaster Emergency issued on December 5, 2007 (Executive Order 2007-11) remain in existence and that the emergency measures taken pursuant to such Declaration must remain in place in order to insure the safety of the people of the CNMI. See Attachment (Power Generation Report, January 2, 2008).

Accordingly, the Declaration of State of Disaster Emergency dated December 5, 2007, all memoranda, directives and other measures taken in accordance with such Declaration shall remain in effect for an additional thirty (30) days unless I, prior to the end of the thirty (30) day period, notify the Presiding Officers of the Legislature that the state of

emergency has been lifted or has been extended for an additional period of thirty (30) days. A comprehensive report on the exercise of my constitutional authority shall be transmitted to the presiding officers of the Legislature as soon as practicable in accordance with 1 CMC § 7403(a).

Done this 4<sup>th</sup> day of January, 2008.

  
BENIGNO R. FITIAL  
Governor

**Commonwealth Utilities Corporation**  
**Power Generation Division, Lower Base**



**GENERATION STATUS**

as of **02-Jan-08**

Power Plant	Design MW	Available MW	Restriction %	Due Service Hours	Run Hours since last OH	Overdue Hours	Hours for nxt. Major OH	Remarks
<b>PP 1</b>								
D/E 1	7.27	0.0	0.0	2,000	1,131	-869	34,869	Down \ for Crankshaft Replacement
D/E 2	7.27	6.0	82.5	12,000	23,760	11,760	12,240	Operational, overdue for maintenance
D/E 3	7.27	6.0	82.5	12,000	34,771	22,771	1,229	Operational, overdue for maintenance
D/E 4	7.27	0.0	0.0	36,000	44,690	8,690	Overdue	Down \ for Crankshaft Replacement
D/E 5	13.04	8.5	65.2	36,000	40,656	4,656	Overdue	Back on line 8/30/07 1830H
D/E 6	13.04	8.5	65.2	36,000	41,757	5,757	Overdue	Operational /engine cooling system issue
D/E 7	13.04	0.0	0.0	36,000	41,573	5,573	Overdue	Down, Generator Stator winding burnt
D/E 8	13.04	0.0	0.0	8,000	8,502	502	27,498	Down, due to engine vibration
<b>Sub Total</b>	<b>81.24</b>	<b>29.0</b>						
<b>PP 2</b>								
D/E 1	2.50	1.9	76.0					Operational
D/E 2	2.50	0.0	0.0					for rehabilitation
D/E 3	2.50	0.0	0.0					for rehabilitation
D/E 4	2.50	0.0	0.0					Down (with cracked connecting rods)
D/E 5	2.50	2.0	80.0					Operational
D/E 6	2.50	1.5	60.0					Operational
<b>Sub Total</b>	<b>15.00</b>	<b>5.4</b>						
<b>PP 4</b>								
D/E 2	2.29	2.0	87.3					Operational
D/E 3	2.29	2.0	87.3					Operational
D/E 4	2.50	2.2	88.0					Operational
D/E 5	2.50	2.2	88.0					Operational
D/E 6	1.14	0.9	78.9					Operational
D/E 7	1.14	0.9	78.9					Operational
D/E 8	1.14	0.9	78.9					Operational
D/E 9	1.14	0.9	78.9					Operational
D/E 10	2.60	2.2	84.6					Operational
<b>Sub Total</b>	<b>16.74</b>	<b>14.2</b>						
<b>Total</b>	<b>112.98</b>	<b>48.6</b>						

**Remarks:**

- PP 1 unit no. 1 for crankshaft replacement (down since Nov. 12, 2006)
- PP 1 unit no. 4 for crankshaft replacement (down since July 16, 2005)
- PP 1 unit no. 8 was shutdown last Jan. 24, 2007 due to cracked engine crankcase bed, for assessment by outside contractor.
- **Unit nos. 5, 6, & 7 are overdue for 36,000 hrs. PMI; Unit 2 & 3 are overdue for 12000 hrs. PMI**
- **PP 1 D/E 7 went down last 7/27/07 found broken main bearing bolts, end bearings, LO supply pipes damaged.... (completed repair)**
- **During testing, last 8/18/07, Generator tripped and Stator winding burnt (could be caused by moisture or low insulation resistance)**  
(repair works on the Generator by CISCO and TANO on progress..)
- PP 1 D/E 5 auto-tripped Oil Mist Detector activated last 8/14/07 found C/P #8 badly damaged..decided to replaced all C/P & Main brgs.  
(work completed last 8/29/07...performed load test on 8/31/07..)



# COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

**Benigno R. Fitial**  
Governor

**Timothy P. Villagomez**  
Lieutenant Governor

## **EXECUTIVE ORDER 2008- 02**

### **DECLARATION OF A STATE OF DISASTER EMERGENCY: COMMONWEALTH UTILITIES CORPORATION'S INABILITY TO PROVIDE CRITICAL POWER GENERATION SERVICES TO THE CNMI**

I, **TIMOTHY P. VILLAGOMEZ**, pursuant to the authority vested in me as Acting Governor of the Commonwealth of the Northern Mariana Islands by Article III, Section 10 of the Commonwealth Constitution and 3 CMC § 5121 of the Natural Disaster Relief Act of 1979, do hereby declare a continued State of Disaster Emergency for the Commonwealth of the Northern Mariana Islands due to the Commonwealth Utilities Corporation's ("CUC") inability to provide critical power generation service to the CNMI and the extreme, immediate and imminent threat such condition poses to the Commonwealth of the Northern Mariana Islands.

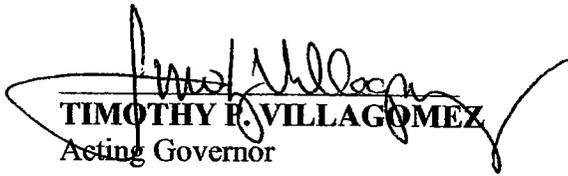
This Declaration of a State of Disaster Emergency is made after finding that the justifications that existed for the Declaration of a State of Disaster Emergency issued on December 5, 2007 (Executive Order 2007-11) and January 4, 2008 (Executive Order 2008-1) remain in existence and that the emergency measures taken pursuant to such Declaration must remain in place in order to insure the safety of the people of the CNMI.

Accordingly, the Declaration of State of Disaster Emergency dated January 4, 2008, all memoranda, directives and other measures taken in accordance with such Declaration

Caller Box 10007 Saipan, MP 96950 Telephone: (670) 664-2200/2300 Facsimile: (670) 664-2211/2311

shall remain in effect for an additional thirty (30) days unless I, prior to the end of the thirty (30) day period, notify the Presiding Officers of the Legislature that the state of emergency has been lifted or has been extended for an additional period of thirty (30) days. A comprehensive report on the exercise of my constitutional authority shall be transmitted to the presiding officers of the Legislature as soon as practicable in accordance with 1 CMC § 7403(a).

Done this 4<sup>th</sup> day of February, 2008.

  
**TIMOTHY R. VILLAGOMEZ**  
Acting Governor

Commonwealth Utilities Corporation  
Power Generation Division, Lower Base



**Generation Status**

February 4, 2008

Power Plant	Design MW	Available MW	Restriction %	Sched. Hours for PMI	Run Hrs after last OH	Overdue Hours	Remarks
<b>PP I</b>							
D/E 1	7.27	0.0	0.0	36000	1,131	-869	Down Crankshaft Replacement
D/E 2	7.27	6.0	82.5	8,000	25,316	13,316	Operational
D/E 3	7.27	6.0	82.5	12000	37,046	25,046	Operational
D/E 4	7.27	0.0	0.0	36000	44,690	8,690	Down (7/16/05) Crankshaft problem
D/E 5	13.04	8.5	65.2	12000	42,169	6,169	Operational / Engine cooling problem
D/E 6	13.04	8.5	65.2	4000	42,229	6,229	JCW Radiator Tubings/Motor
D/E 7	13.04	0.0	0.0	12000	41,892	5,892	Down Generator Repair
D/E 8	13.04	0.0	0.0	4000	8,832	832	Down Foundation Repair
<b>Total</b>	<b>81.24</b>	<b>29</b>					
<b>PP II</b>							
D/E 1	2.5	1.8	72.0				Operational
D/E 2	2.5	0.0	0.0				Under Rehabilitation/waiting for parts
D/E 3	2.5	0.0	0.0				Under Rehabilitation/waiting for parts
D/E 4	2.5	0.0	0.0				Down Bearing & Power Packs
D/E 5	2.5	1.8	72.0				Operational
D/E 6	2.5	0.0	0.0				Down Water Pump 1/9/08
<b>Total</b>	<b>15.0</b>	<b>3.6</b>					

<b>PP IV</b>							
D/E 1	3.50	0.00	0.0				Down
D/E 2	2.50	2.00	87.3				Operational
D/E 3	2.50	2.00	87.3				Operational
D/E 4	2.50	2.20	88.0				Operational
D/E 5	2.50	2.20	88.0				Operational
D/E 6	1.00	0.90	78.9				Operational
D/E 7	1.00	0.90	78.9				Operational
D/E 8	1.00	0.90	78.9				Operational
D/E 9	1.00	0.90	78.9				Operational
D/E 10	2.50	2.20	84.6				Operational
<b>Total</b>	<b>19.00</b>	<b>14.20</b>					

<b>Grand Total</b>	<b>115.24</b>	<b>46.80</b>					
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Commonwealth Utilities Corporation  
Power Generation Division, Lower Base

Total Hours since last Overhaul

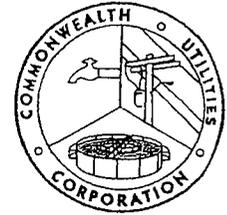
As of 2/4/2008

	This Month Run Hrs.	Total RH after last OH (last Month)	Total RH after last OH (this Month)
D/E 1	0	61,019.0	61,019.0
D/E 2	417.6	13,229.8	13,647.4
D/E 3	431.2	25,031.6	25,462.8
D/E 4	0	44,690.0	44,690.0
D/E 5	417.9	31,156.0	31,573.9
D/E 6	394.5	11,064.4	11,458.9
D/E 7	424	31,448.3	31,872.3
D/E 8	372.5	5,071.9	5,444.4

Remarks: PP 1 Unit # 1 for crankshaft replacement (down since 11/12/06)  
 PP 1 Unit # 4 for crankshaft replacement (down since 7/16/05)  
 Unit # 3,5,6 & 7 are overdue for 36,000 PMI: Unit # 2 is overdue for 12,000 hrs PMI  
 PP 1 Unit # 7 went down last 7/27/07 replacement of crankpin & main bearing bolts,  
 Upon generation excitation on 8/18/07 sparks were noted, generator winding damage.  
 PP 1 Unit # 8 was shut down last 1/24/07 due to crack crankcase bed & foundation



Commonwealth Utilities Corporation  
Office of the Executive Director



February 4, 2008

The Honorable Timothy P. Villagomez  
Acting Governor  
Commonwealth of the Northern Mariana  
Islands  
Capitol Hill  
Saipan, MP 96950

Dear Acting Governor Villagomez:

This is to inform your office that we received confirmation last Friday by Mobil Oil Marianas, Inc. that the scheduled tanker payment and delivery for the Commonwealth Utilities Corporation (CUC) is now set for this coming Thursday, February 7, 2008.

This delivery to CUC is for 25,000KB/barrels at \$120.0864/barrel or \$2.8592/gallon for a total of \$3,002,160.00. Please note that Mobil requires that payment be made in full prior to commencement of the pipeline delivery.

CUC will require again the assistance of the Administration to meet the above obligation to Mobil.

Thank you for your utmost attention on the above matter and for your understanding.

Sincerely,

ANTHONY C. GUERRERO  
Executive Director

cc: Secretary of Finance  
Special Assistant for Management & Budget  
CUC Acting Chief Financial Officer  
CUC Purchasing Officer  
CUC Legal Counsel

*CUC is an Equal Opportunity Provider and Employer*

Third Floor, Joeten Bandan Building ♦ P.O. Box 501220 CR



# COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

**Benigno R. Fitial**  
Governor

**Timothy P. Villagomez**  
Lieutenant Governor

EXECUTIVE ORDER NO. 08-03

SUBJECT: Re-organization Plan No. 01 of 2008

AUTHORITY: Constitution, Article III, Section 15

**WHEREAS**, Section 15 of Article III of the Constitution requires that Executive Branch offices, agencies and instrumentalities of the Commonwealth Government be allocated among and within not more than fifteen principal departments, groups as far as practicable according to major purposes; and

**WHEREAS**, pursuant to that section, regulatory, quasi-judicial, and temporary agencies may be so allocated, but need not be; and

**WHEREAS**, the Governor may make changes in the allocation of offices, agencies and instrumentalities, and in their functions and duties, as necessary for efficient administration; and

**WHEREAS**, such changes may affect existing law; and

**WHEREAS**, the existence of a multitude of offices, agencies, and instrumentalities outside of the principal departments has resulted in duplication of functions, overlaps of responsibility, lack of coordination, and other forms of inefficient administration; and

**WHEREAS**, the power of the Governor to reorganize the Executive Branch has been affirmed and upheld by the Superior Court of the Commonwealth of the Northern Mariana Islands in its Decision and Judgment dated June 23, 1994, in the case of *Marianas Visitors Bureau v. Commonwealth*, Civ. No. 94-0516 (Memorandum Decision and Judgment);

**WHEREAS**, the Commonwealth Ports Authority, through its inability to get a quorum at a number of its board of director meetings, has approached technical default on the March 1, 1998 indenture on the Commonwealth Ports Authority Airport Revenue Bonds; and

**WHEREAS**, such technical default will adversely effect the ability of the Commonwealth Ports Authority to maintain and manage the ports of the Commonwealth.

**NOW, THEREFORE**, to comply with the mandate of the Constitution and to promote efficient administration, it is hereby

**ORDERED:**

That the following provisions shall constitute Re-organization Plan No. \_\_\_ of 2008:

**PART 1. COMMONWEALTH PORTS AUTHORITY**

Section 101. Commonwealth Ports Authority. The Commonwealth Ports Authority is allocated to the Office of the Governor for a period of one hundred and twenty days.

**PART 2. GENERAL PROVISIONS**

Section 201. Definition of Agency. As used in this part, the term "agency" means any office, division, bureau, board, commission, authority, corporation, instrumentality, or other entity or component of the Commonwealth Government, other than one within the Legislative or Judicial branches.

Section 202. Legal and Regulatory References. All references in law or regulation to any agency or official re-designated by this plan shall be deemed to be a reference to such agency or official as so re-designated. In addition, references to an agency and to the head of such agency are used interchangeably in this plan as regards the authority or a function thereof.

Section 203. Transfer of Records, Property, and Personnel. All records and property (including office equipment) of the various agencies, and all records and property used primarily in the administration of any function transferred by this plan and, except as otherwise provided, all the personnel used in the administration of such agencies and functions (including employees whose chief duties relate to such administration) are hereby transferred to the respective departments or other agencies concerned for use in the administration of the agencies and functions transferred by this plan.

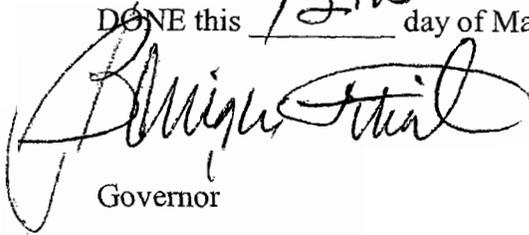
Section 204. Transfer of Funds. So much of the unexpended balances of appropriations, allocations, allotments, or other funds available for the use of any agency in the exercise of any function transferred by this plan, or for the use of the head of any department or other agency in the exercise of any function so transferred, shall be transferred to the department or other agency concerned for use in connection with the exercise of the function so transferred. In the transfer of such funds, an amount may be included for the liquidation of obligations incurred prior to the transfer. The Governor may reprogram any portion of such balances not so transferred.

Section 205. Codification of Changes. The Law Revision Commission shall codify the designations, allocations, and changes in existing law affected by this plan.

Section 206. Effective Date. In accordance with the Constitution, this plan shall become effective upon signing.

this 12<sup>th</sup> day of May, 2008.

DONE this 12<sup>th</sup> day of May



Governor



# COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

**Benigno R. Fitial**  
Governor

**Timothy P. Villagomez**  
Lieutenant Governor

## EXECUTIVE ORDER 08-04

### DECLARATION OF A STATE OF DISASTER EMERGENCY: COMMONWEALTH PORTS AUTHORITY'S APPROACH OF TECHNICAL DEFAULT ON \$20 MILLION INDENTURE

I, BENIGNO R. FITLAL, pursuant to the authority vested in me as Governor of the Commonwealth of the Northern Mariana Islands ("CNMI") by Article III, Section 10 of the Commonwealth Constitution and 3 CMC § 5121 of the Commonwealth Disaster Relief Act of 1979, do hereby declare a State of Disaster Emergency for the Commonwealth of the Northern Mariana Islands due to the inability of the Commonwealth Ports Authority ("CPA") to avoid technical default on the March 1, 1998 indenture on the CPA Airport Revenue Bonds; and the extreme, immediate and imminent threat such condition poses to the Commonwealth of the Northern Mariana Islands.

I find that a technical default could result in the entire principal and interest of the bonds becoming immediately due and payable, adversely affecting CPA's ability to raise future capital. Such a default will degrade the ability of CPA to maintain and manage the ports of the Commonwealth, to the extreme detriment of the economy and the people of the CNMI.

I also find that this Declaration is necessary to insure that a CPA technical default does not have a cumulative impact on the CNMI economy, which has been in a constant and prolonged downward trend as shown, among other examples, by the closure of several businesses, the withdrawal of Japan Airlines from CNMI service, the decline in tourism, and the persistent rise in fuel and electricity costs. Thus, ultimately, this Declaration is necessary to protect the health and safety of all CNMI residents and visitors.

Therefore, I hereby invoke my authority under Article III, § 10 of the Commonwealth Constitution and 3 CMC § 5121(f) to take all necessary measures to address the imminent threat facing the Commonwealth of the Northern Mariana Islands.

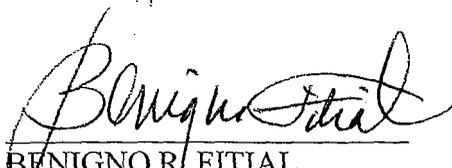
Exercise of the Constitutional and statutory authority invoked herein will be effectuated by the issuance of Executive Directives setting forth the measures to be taken to address the State of Disaster Emergency pursuant to 3 CMC § 5121(f), which states:

- (f) In addition to any other powers conferred upon the Governor by law, the Governor may, during a state of disaster emergency:
- (1) Suspend the provisions of any regulatory statute prescribing the procedures for conduct of the Commonwealth's business, or the orders, rules, or regulations of any Commonwealth activity or agency, if strict compliance with the provision of any such statute, order, rule or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency;
  - (2) Utilize all available resources of the Commonwealth as reasonably necessary to cope with the disaster emergency of the Commonwealth;
  - (3) Transfer the direction, personnel, or functions of the Commonwealth departments and agencies or units thereof for the purpose of performing or facilitating emergency services;

3 CMC § 5121(f)(1)-(3).

This Declaration of a State of Disaster Emergency shall take effect immediately and all memoranda, directives and other measures taken in accordance with this Declaration shall remain in effect for thirty (30) days from the date of this Executive Order unless I, prior to the end of the thirty (30) day period, notify the Presiding Officers of the Legislature that the state of emergency has been lifted or has been extended for an additional period of thirty (30) days. A comprehensive report on the exercise of my constitutional authority shall be transmitted to the presiding officers of the Legislature as soon as practicable in accordance with 1 CMC § 7403(a).

Done this 13<sup>th</sup> day of May 2008.

  
BENIGNO R. FITIAL  
Governor



# COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

**Benigno R. Fitial**  
Governor

**Timothy P. Villagomez**  
Lieutenant Governor

EXECUTIVE ORDER NO. 08-05

SUBJECT: Re-organization Plan No. 02 of 2008

AUTHORITY: Constitution, Article III, Section 15

WHEREAS, Section 15 of Article III of the Constitution requires that Executive Branch offices, agencies and instrumentalities of the Commonwealth Government be allocated among and within not more than fifteen principal departments, groups as far as practicable according to major purposes; and

WHEREAS, pursuant to that section, regulatory, quasi-judicial, and temporary agencies may be so allocated, but need not be; and

WHEREAS, the Governor may make changes in the allocation of offices, agencies and instrumentalities, and in their functions and duties, as necessary for efficient administration; and

WHEREAS, such changes may affect existing law; and

WHEREAS, the existence of a multitude of offices, agencies, and instrumentalities outside of the principal departments has resulted in duplication of functions, overlaps of responsibility, lack of coordination, and other forms of inefficient administration; and

WHEREAS, the power of the Governor to reorganize the Executive Branch has been affirmed and upheld by the Superior Court of the Commonwealth of the Northern Mariana Islands in its Decision and Judgment dated June 23, 1994, in the case of *Marianas Visitors Bureau v. Commonwealth*, Civ. No. 94-0516 (Memorandum Decision and Judgment);

WHEREAS, the Commonwealth Ports Authority, through its inability to get a quorum at a number of its board of director meetings, has approached technical default on the March 1, 1998 indenture on the Commonwealth Ports Authority Airport Revenue Bonds; and

WHEREAS, such technical default will adversely effect the ability of the Commonwealth Ports Authority to maintain and manage the ports of the Commonwealth.

NOW, THEREFORE, to comply with the mandate of the Constitution and to promote efficient administration, it is hereby

**ORDERED:**

That Executive Order No. 08-03 promulgating Re-organization Plan No. 01 of 2008 is hereby superseded.

That the following provisions shall constitute Re-organization Plan No. 02 of 2008:

**PART 1. COMMONWEALTH PORTS AUTHORITY**

Section 101. Commonwealth Ports Authority. The Commonwealth Ports Authority is allocated to the Office of the Governor for a period of one hundred and twenty days upon the effective date of this Re-organization Plan.

**PART 2. GENERAL PROVISIONS**

Definition of Agency. As used in this part, the term "agency" means any office, division, bureau, board, commission, authority, corporation, instrumentality, or other entity or component of the Commonwealth Government, other than one within the Legislative or Judicial branches.

Section 202. Legal and Regulatory References. All references in law or regulation to any agency or official re-designated by this plan shall be deemed to be a reference to such agency or official as so re-designated. In addition, references to an agency and to the head of such agency are used interchangeably in this plan as regards the authority or a function thereof.

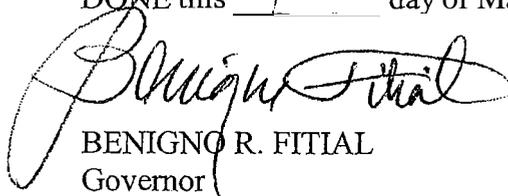
Section 203. Transfer of Records, Property, and Personnel. All records and property (including office equipment) of the various agencies, and all records and property used primarily in the administration of any function transferred by this plan and, except as otherwise provided, all the personnel used in the administration of such agencies and functions (including employees whose chief duties relate to such administration) are hereby transferred to the respective departments or other agencies concerned for use *in* the administration of the agencies and functions transferred by this plan.

Section 204. Transfer of Funds. So much of the unexpended balances of appropriations, allocations, allotments, or other funds available for the use of any agency in the exercise of any function transferred by this plan, or for the use of the head of any department or other agency in the exercise of any function so transferred, shall be transferred to the department or other agency concerned for use in connection with the exercise of the function so transferred. In the transfer of such funds, an amount may be included for the liquidation of obligations incurred prior to the transfer. The Governor may reprogram any portion of such balances not so transferred.

Section 205. Codification of Changes. The Law Revision Commission shall codify the designations, allocations, and changes in existing law affected by this plan.

Section 206. Effective Date. In accordance with Article III, Section 15 of the Constitution, this plan shall become effective sixty days after submission to the Legislature, unless specifically modified or disapproved by a majority of the members of each house of the Legislature, provided that in case it shall appear to the Governor that the interests of economy or management require that any transfer, consolidation, or abolishment be delayed beyond the date of this plan becomes effective, the Governor may, in his discretion, fix a later date therefore, and he may for like cause further defer such date from time to time.

DONE this 13<sup>th</sup> day of May, 2008.



BENIGNO R. FITIAL  
Governor



# COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

**Benigno R. Fitial**  
Governor

**Timothy P. Villagomez**  
Lieutenant Governor

## EXECUTIVE ORDER 08-06

### RENEWAL OF DECLARATION OF A STATE OF DISASTER EMERGENCY:

### COMMONWEALTH PORTS AUTHORITY'S APPROACH OF TECHNICAL DEFAULT ON \$20 MILLION INDENTURE

I, BEMGNOR. FITLAL, pursuant to the authority vested in me as Governor of the Commonwealth of the Northern Mariana Islands ("CNMI") by Article III, Section 10 of the Commonwealth Constitution and 3 CMC § 5121 of the Commonwealth Disaster Relief Act of 1979, do hereby renew the declaration a State of Disaster Emergency for the Commonwealth of the Northern Mariana Islands which **was** issued due to **the** inability of the Commonwealth Ports Authority ("CPA") to avoid **technical** default on the March 1, 1998 indenture on the CPA Airport Revenue Bonds; and the extreme, immediate and imminent threat such condition poses to the Commonwealth of the Northern Mariana Islands. The original declaration of a state of disaster was set forth in Executive Order 08-04 issued on May 13, 2008.

Pursuant to my meeting with the current management of the CPA and representatives of the trustee of the March 1, 1998 indenture, I find that while significant steps have been taken to avoid technical default, additional steps have to be taken. Such a technical default could result in the entire principal and interest of the bonds becoming immediately due and payable, adversely affecting CPA's ability to raise **future** capital. Such a default will degrade the ability of CPA to maintain and manage the ports of the Commonwealth, to the extreme detriment of the economy and the people of the CNMI.

I also find that this Declaration is necessary to insure that a CPA technical default does not have a cumulative impact on the CNMI economy, which has been in a constant and prolonged downward trend as shown, among other examples, by the closure of several businesses, the withdrawal of Japan Airlines from CNMI service, the decline in tourism, and the persistent rise in fuel and electricity costs.

I **find** that the resignation of all members of the board of directors of the CPA has resulted in an ongoing vacuum of leadership at the CPA. Lack of appropriate leadership brought the CPA to the brink of technical default on the March 1, 1998 indenture. Until strong and appropriate leadership is restored to the CPA board of directors the danger of technical default on the March 1, 1998 indenture will remain a **significant** risk to the CPA and the CNMI as a whole.

I find that the emergency conditions that resulted in Executive Order 08-04 still exist. Thus, ultimately, this Declaration renewal is necessary to protect the health and safety of all CNMI residents and visitors.

Therefore, I hereby invoke my authority under Article III, § 10 of the Commonwealth Constitution and 3 CMC § 5121(c) and (f) to take all necessary measures to address the imminent **threat** facing the Commonwealth of the Northern Mariana Islands by extending the declaration of emergency.

Exercise of the Constitutional and statutory authority invoked herein will be effectuated by the issuance or implementation, or both, of Executive Directives setting forth the measures to be taken to address the State of Disaster Emergency pursuant to 3 CMC § 5121(f), which states:

(f) In addition to any other powers conferred upon the Governor by law, the Governor may, during a state of disaster emergency:

(1) Suspend the provisions of any regulatory statute prescribing the procedures for conduct of the Commonwealth's business, or the orders, rules, or regulations of any Commonwealth activity or agency, if strict compliance with the provision of any such statute, order, rule or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency;

(2) Utilize all available resources of the Commonwealth as reasonably necessary to cope with the disaster emergency of the Commonwealth;

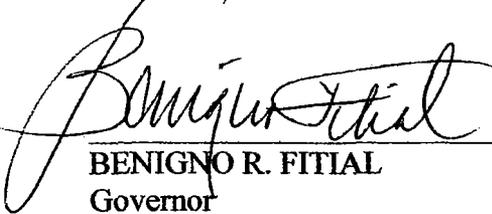
(3) Transfer the direction, personnel, or functions of the Commonwealth **departments** and agencies or units thereof for the purpose of performing or facilitating emergency services;

3 CMC § 5121(f)(1)-(3).

This renewed Declaration of a State of Disaster Emergency shall take effect immediately and all memoranda, directives and other measures taken in accordance with this Declaration shall remain in effect for thirty (30) days **from** the date of this Executive Order unless I, prior to the end of the thirty (30) day period, notify the Presiding **Officers** of the Legislature that the state of emergency has been lifted or has been extended for an additional period of thirty (30) days.

A comprehensive report on the exercise of my constitutional authority shall be transmitted to the presiding officers of the Legislature as soon **as** practicable in accordance with 1 CMC § 7403(a).

Done this 12<sup>th</sup> day of June 2008.

  
BENIGNO R. FITIAL  
Governor



# COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

**Benigno R. Fitial**  
Governor

**Timothy P. Villagomez**  
Lieutenant Governor

## **EXECUTIVE ORDER 08-07:**

### **DECLARATION OF A STATE OF DISASTER EMERGENCY: COMMONWEALTH PORTS AUTHORITY'S APPROACH OF TECHNICAL DEFAULT ON \$20 MILLION INDENTURE**

I, BENIGNO R. FITIAL, pursuant to the authority vested in me as Governor of the Commonwealth of the Northern Mariana Islands ("CNMI") by Article III, Section 10 of the Commonwealth Constitution and 3 CMC § 5121 of the Commonwealth Disaster Relief Act of 1979, do hereby declare a State of Disaster Emergency for the Commonwealth of the Northern Mariana Islands due to the inability of the Commonwealth Ports Authority ("CPA"), as a result of the lack of a board of directors, to continue the actions and policies set into place by this administration to avoid technical default on the March 1, 1998 indenture on the CPA Airport Revenue Bonds and due to the need to maintain the proper operation of the CPA. The extreme, immediate and imminent threats such condition poses to the Commonwealth of the Northern Mariana Islands.

The May 13, 2008 declaration of emergency, set forth in Executive Order 08-04 was a result of my finding that a technical default could result in the entire principal and interest of the bonds becoming immediately due and payable, adversely affecting CPA's ability to raise future capital. Such a default would have degraded the ability of CPA to maintain and manage the ports of the Commonwealth, to the extreme detriment of the economy and the people of the CNMI. That declaration of emergency was extended on June 12, 2008 because of my finding that it additional steps were necessary to insure that technical default does not occur and my finding that the resignation of all the members of the board of directors of the CPA and the resulting lack of appropriate leadership would cause the danger of a technical default on the March 1, 1998

indenture and would remain a significant risk to the CPA and the CNMI as a whole. However, the extension of the state of emergency lapsed on June 12, 2008.

While some appointments have been made to fill vacancies on the board of directors of the CPA, those appointments are awaiting the advice and consent of the Senate. Other necessary appointments are under consideration by the administration. Until a sufficient number of the appointments have been made and consented to by the Senate, the state of emergency still exists. The administration looks forward to working with the Senate to address this problem.

Because the state of emergency still exists, I find that this declaration is necessary to assure that a CPA technical default does occur and not result in a cumulative impact on the CNMI economy, which has been in a constant and prolonged downward trend as shown, among other examples, by the closure of several businesses, the withdrawal of Japan Airlines from CNMI service, the decline in tourism, and the persistent rise in fuel and electricity costs. Thus, ultimately, this Declaration is necessary to protect the health and safety of all CNMI residents and visitors.

Therefore, I hereby invoke my authority under Article III, § 10 of the Commonwealth Constitution and 3 CMC § 5121(f) to take all necessary measures to address the imminent threat facing the Commonwealth of the Northern Mariana Islands.

Exercise of the Constitutional and statutory authority invoked herein will be effectuated by the issuance of Executive Directives setting forth the measures to be taken to address the State of Disaster Emergency pursuant to 3 CMC § 5121(f), which states:

(f) In addition to any other powers conferred upon the Governor by law, the Governor may, during a state of disaster emergency:

(1) Suspend the provisions of any regulatory statute prescribing the procedures for conduct of the Commonwealth's business, or the orders, rules, or regulations of any Commonwealth activity or agency, if strict compliance with the provision of any such statute, order, rule or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency;

(2) Utilize all available resources of the Commonwealth as reasonably necessary to cope with the disaster emergency of the Commonwealth;

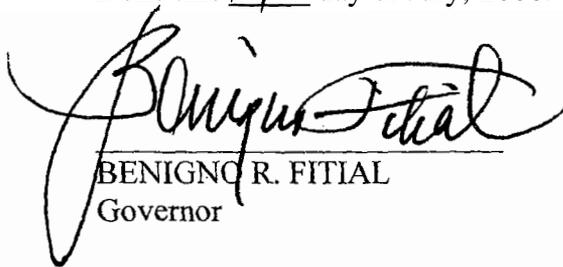
(3) Transfer the direction, personnel, or functions of the Commonwealth departments and agencies or units thereof for the purpose of performing or facilitating emergency services;

3 CMC § 5121(f)(1)-(3).

This Declaration of a State of Disaster Emergency shall take effect immediately and all memoranda, directives and other measures taken in accordance with this Declaration shall remain in effect for thirty (30) days from the date of this Executive Order unless I, prior to the end of the thirty (30) day period, notify the Presiding Officers of the Legislature that the state of emergency has been lifted or has been extended for an additional period of thirty (30) days.

A comprehensive report on the exercise of my constitutional authority shall be transmitted to the presiding officers of the Legislature as soon as practicable in accordance with 1 CMC § 7403(a).

Done this 14<sup>th</sup> day of July, 2008.



BENIGNO R. FITIAL  
Governor



# COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

**Benigno R. Fitial**  
Governor

**Timothy P. Villagomez**  
Lieutenant Governor

EXECUTIVE ORDER NO. 08-08

SUBJECT: Re-organization Plan No. 03 of 2008 — Amendment to  
Re-organization Plan No. 02 of 2006 (Executive Order 2006-4)

AUTHORITY: Constitution, Article III, Section 15

WHEREAS, Section 15 of Article III of the Constitution requires that Executive Branch offices, agencies and instrumentalities of the Commonwealth Government be **allocated** among and within not more than **fifteen** principal departments, groups as far as practicable according to major purposes; and

**WHEREAS**, pursuant to that section, regulatory, quasi-judicial, and temporary agencies may be so allocated, but need not be; and

WHEREAS, the Governor may make changes in the allocation of offices, agencies and instrumentalities, and in their **functions** and duties, as necessary for efficient administration; and

**WHEREAS**, such changes may **affect** existing law; and

WHEREAS, the existence of a multitude of offices, agencies, and instrumentalities outside of the principal departments has resulted in duplication of **functions**, overlaps of **responsibility**, **lack** of coordination, and other forms of inefficient administration; and

**WHEREAS**, the power of the Governor to reorganize the Executive Branch has been **affirmed** and upheld by the Superior Court of the Commonwealth of the Northern Mariana Islands in its Decision and Judgment dated June 23, 1994, in the case of *Marianas Visitors Bureau v. Commonwealth*, Civ. No. 94-0516 (Memorandum Decision and Judgment); and

WHEREAS, the Commonwealth Utilities Corporation (CUC) was reorganized under Re-organization Plan No. 02 of 2006 (Executive Order 2006-4) issued Friday, May 5, 2006 and received by the 15th Commonwealth Legislature on Monday, May 8, 2006, becoming effective 60 days **thereafter** in the absence of modification or disapproval by a majority of the members of each house of the Legislature; and

WHEREAS, Section 8123(c) of Re-organization Plan No. 02 of 2006 (Executive Order 2006-4), *codified* at 1 CMC § 8123(c), requires that any CUC borrowing in excess of \$500,000 be "approved by law specifically authorizing such borrowing".

NOW, THEREFORE, to comply with the mandate of the Constitution and to promote efficient administration, it is hereby

**ORDERED:**

That the following shall constitute Re-organization Plan No. 03 of 2008:

1. Amendment of Prior Executive Order. Executive Order No. 2006-04 promulgating Re-organization Plan No. 02 of 2006 is amended upon the effective date of this Executive Order.
2. Provisions of the Executive Order. The provisions of the Executive Order amend Title One of the Commonwealth Code, Subsection 8123(e), deleting the \$500,000 debt ceiling "provided" clause to read as follows:

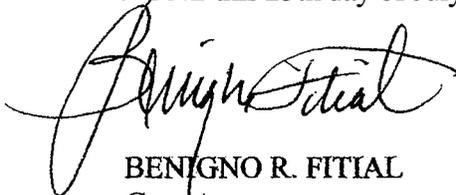
§ 8123. Commonwealth Utilities Corporation: Powers.

\* \* \*

(e) To borrow money from any private or public source, either within the Commonwealth or the United States or in any country, and to give security in connection with such borrowing.

3. Codification of Changes. The Law Revision Commission shall codify the changes in existing law affected by this plan.
4. Effective Date. In accordance with Article III, Section 15 of the Constitution, this plan shall become effective sixty days after submission to the Legislature, unless specifically modified or disapproved by a majority of the members of each house of the Legislature; provided that in the event it is approved by one house of the Legislature it shall become effective immediately upon such approval.

DONE this 25th day of July, 2008.



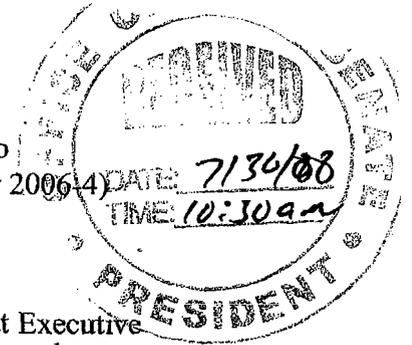
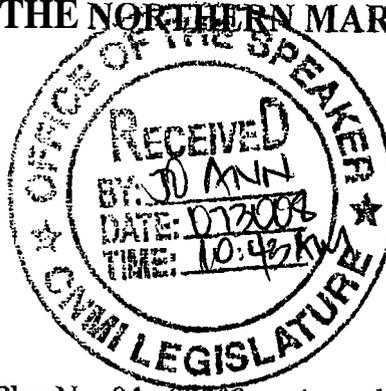
BENIGNO R. FITIAL  
Governor



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Timothy P. Villagomez
Lieutenant Governor



EXECUTIVE ORDER NO. 08-09

SUBJECT: Re-organization Plan No. 04 of 2008 — Amendment to Re-organization Plan No. 02 of 2006 (Executive Order 2006-4)

AUTHORITY: Constitution, Article III, Section 15

WHEREAS, Section 15 of Article III of the Constitution requires that Executive Branch offices, agencies and instrumentalities of the Commonwealth Government be allocated among and within not more than fifteen principal departments, groups as far as practicable according to major purposes; and

WHEREAS, pursuant to that section, regulatory, quasi-judicial, and temporary agencies may be so allocated, but need not be; and

WHEREAS, the Governor may make changes in the allocation of offices, agencies and instrumentalities, and in their functions and duties, as necessary for efficient administration; and

WHEREAS, such changes may affect existing law; and

WHEREAS, the existence of a multitude of offices, agencies, and instrumentalities outside of the principal departments has resulted in duplication of functions, overlaps of responsibility, lack of coordination, and other forms of inefficient administration; and

WHEREAS, the power of the Governor to reorganize the Executive Branch has been affirmed and upheld by the Superior Court of the Commonwealth of the Northern Mariana Islands in its Decision and Judgment dated June 23, 1994, in the case of Marianas Visitors Bureau v. Commonwealth, Civ. No. 94-0516 (Memorandum Decision and Judgment); and

WHEREAS, the Commonwealth Utilities Corporation (CUC) was reorganized under Re-organization Plan No. 02 of 2006 (Executive Order 2006-4) issued Friday, May 5, 2006 and received by the 15th Commonwealth Legislature on Monday, May 8, 2006, becoming effective 60 days thereafter in the absence of modification or disapproval by a majority of the members of each house of the Legislature; and

WHEREAS, Section 8123(e) of Re-organization Plan No. 02 of 2006 (Executive Order 2006-4), codified at 4 CMC § 8123(e), requires that any CUC borrowing in excess of \$500,000 be "approved by law specifically authorizing such borrowing".

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**NOW, THEREFORE,** to comply with the mandate of the Constitution and to promote efficient administration, it is hereby

**ORDERED:**

That the following shall constitute Re-organization Plan No. **04** of 2008:

1. Withdrawal and Rescission of Prior Executive Order. Executive Order No. **08-08** promulgating Re-organization Plan No. **03** of 2008, transmitted to the 16th Commonwealth Legislature on Friday, July 25, 2008 and not yet acted upon, is withdrawn and rescinded effective immediately.
2. Amendment of Prior Executive Order. Executive Order No. 2006-04 promulgating Re-organization Plan No. 02 of 2006 is amended upon the effective date of this Executive Order.
3. Provisions of the Executive Order. The provisions of the Executive Order correct a **typographic** error in paragraph 4 of Executive Order No. 2006-04, in that "1 CMC Section 8111" is hereby changed to "4 CMC Section 8111", and amend Title Four of the Commonwealth Code, Subsection 8123(e), to increase the **debt** ceiling from \$500,000 to \$5,000,000, causing this subsection to read as follows:

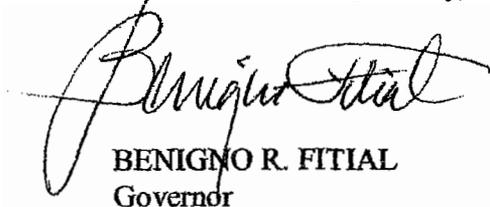
§ 8123. Commonwealth Utilities Corporation: Powers.

\* \* \*

(e) To barrow **money from any private or public source, either within the Commonwealth or the United States or in any country, and to give security in connection with such borrowing;** provided that any such borrowing that is in excess of **\$5,000,000** is approved by **law specifically authorizing such borrowing.**

4. Codification of Changes. The Law Revision Commission shall **codify** the changes in **existing** law affected by this plan.
5. Effective Date. In accordance with **Article III**, Section 15 of the Constitution, this plan shall become effective sixty days after **submission** to the **Legislature, unless specifically modified** or disapproved by a majority of the members of each house of the Legislature.

DONE this 30th day of July, 2008.



BENIGNO R. FITIAL  
Governor

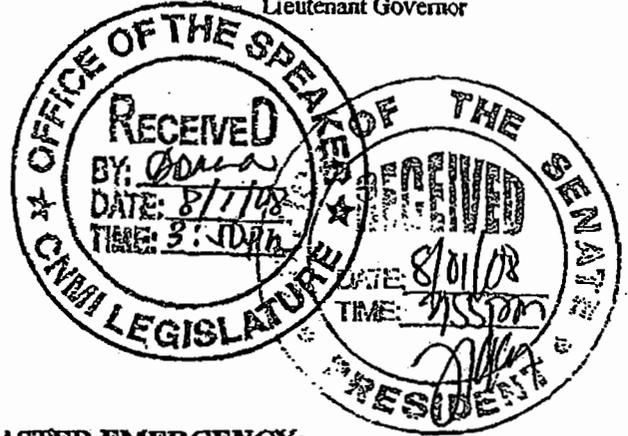


COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial  
Governor

Timothy P. Villagomez  
Lieutenant Governor

ACTING PRESIDENT  
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EXECUTIVE ORDER 2008-10

DECLARATION OF A STATE OF DISASTER EMERGENCY:  
COMMONWEALTH UTILITIES CORPORATION'S  
IMMINENT GENERATION FAILURE AND THE NEED TO PROVIDE  
IMMEDIATE RELIABLE POWER DURING REPAIRS

I, BENIGNO R. FITIAL, pursuant to the authority vested in me as Governor of the Commonwealth of the Northern Mariana Islands by Article III, Section 10 of the Commonwealth Constitution and 3 CMC §5121 of the Commonwealth Disaster Relief Act of 1979, do hereby declare a State of Disaster Emergency for the Commonwealth of the Northern Mariana Islands due to the inability of the Commonwealth Utilities Corporation ("CUC") to provide critical power generation service to the CNMI and the extreme, immediate and imminent threat such condition poses to the Commonwealth of the Northern Mariana Islands.

I find that CUC Power Plant #1's engines will be unable to provide power necessary to meet basic needs of the island of Saipan and that one or more of its engines is so damaged by wear and lack of adequate maintenance for many years that it may experience a catastrophic failure.

Such a failure could produce an explosion that could maim or kill CUC power plant workers. The condition of the engines is so bad that the technical experts at the Plant cannot predict precisely the time of failure. But they do predict such a catastrophic failure.

Caller Box 10007 Saipan, MP 96950 Telephone: (670) 664-2200/2300 Facsimile: (670) 664-2211/2311

EO - 2008-10

Decl of disaster emergency: CUC engines

If one or more of Power Plant #1's engines fails as described, CUC's Saipan service territory will experience massive blackouts, even more extensive than the present load-shedding which Saipan's residents have been experiencing for the past months. CUC's ability to generate electricity could be so compromised that Saipan could experience a complete shutdown of its power generation system.

The effect of the failure described above would likely include the following: CUC will be without power to pump and purify water; CUC will be unable to pump or treat sewage; street lights and traffic lights would go offline; the Hospital and medical clinics would be without CUC power, dependent on their limited diesel oil supplies and on-site generators', communications media would go offline, including MCV cable television and radio stations which do not have their own fuel supplies and generation. Also, our schools, homes, and work places will be subject to blackouts. In particular, the very young, the ill and the elderly who are dependent on refrigeration for food and medicine will be without power.

This Declaration is necessary to protect the health and safety of our children, our senior citizens, businesses and all other CNMI residents and visitors. Therefore, I hereby invoke my authority under Article III, § 10 of the Commonwealth Constitution and 3 CMC § 5121(f) to take all necessary measures to address the imminent threat facing the Commonwealth of the Northern Mariana Islands.

Exercise of the Constitutional and statutory authority invoked herein will be effectuated by the issuance of Executive Directives setting forth the measures to be taken to address the State of Disaster Emergency pursuant to 3 CMC § 5121(f), which states:

(f) In addition to any other powers conferred upon the Governor by law, the Governor may, during a state of disaster emergency:

- (1) Suspend the provisions of any regulatory statute prescribing the procedures for conduct of the Commonwealth's business, or the orders, rules, or regulations of any Commonwealth activity or agency, if strict compliance with the provision of any such statute, order, rule or regulation would in any way prevent, hinder, or delay necessary action in coping

EO - 2008-10

Decl of disaster emergency: CUC engines

with the emergency;

(2) Utilize all available resources of the Commonwealth as reasonably necessary to cope with the disaster emergency of the Commonwealth;

(3) Transfer the direction, personnel, or functions of the Commonwealth departments and agencies or units thereof for the purpose of performing or facilitating emergency services;

3 CMC § 5121(f)(1)-(3).

**Directive 1:** CUC's Procurement Regulations and the CNMI Procurement Regulations applicable to CUC, if any, are hereby suspended as to CUC procurements, except that CUC must fully document all procurement activity for Executive, Public Auditor and Legislative review.

**Directive 2:** The Commonwealth Public Utility Commission ("PUC") Act of 2006, PL 15-35, as amended, is hereby suspended insofar as it would require the presentation of CUC procurement information, including contracts and other measures relating to the supply of power or the operation and maintenance of CUC's generation, for PUC review.

**Directive 3:** CUC is specifically empowered to execute the wholesale generation power contract it has negotiated with an independent power producer for a period of two years or less.

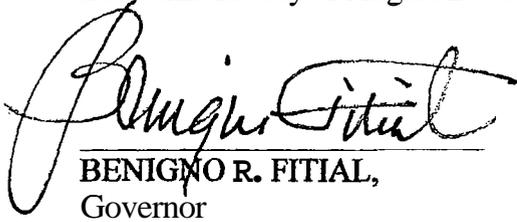
A measure passed yesterday by the Legislature, and which I have signed, removes substantial impediments to CUC's securing by contract immediate, reliable, and cost-effective temporary power from an independent, non-utility power producer. PL 16-9. That law amends the Commonwealth PUC Act of 2006, specifically requiring a gubernatorial declaration of disaster emergency pursuant to 3 CMC § 5121, so that CUC may sign an emergency wholesale power generation contract for two years or less without pre-review of the PUC or the PUC's issuance of a certificate of convenience and necessity. Each of these PUC decisions would have taken so long to investigate and make that the conditions discussed above may have developed in the meantime. If CUC can immediately execute such a contract, it can quickly have temporary replacement generators placed into service and then shut down the dangerous Power Plant #1 engines. By this disaster declaration I intend to enable CUC, within the definitions of PL 16-9, to sign a power contract with the appropriate "person".

**EO - 2008-10**

Decl of disaster emergency: CUC engines

This Declaration of a State of Disaster Emergency shall take effect immediately and all memoranda, directives and other measures taken in accordance with this Declaration shall remain in effect for ~~thirty~~ **(30)** days ~~from~~ the date of this Executive Order unless I, prior to the end of the ~~thirty~~ **(30)** day period, notify the Presiding Officers of the Legislature that the state of emergency has ~~been~~ lifted or has been extended for an additional period of ~~thirty~~ **(30)** days. A comprehensive report on the exercise of my constitutional authority shall be transmitted to the presiding officers of the Legislature as soon as practicable in accordance with 1 CMC § 7403(a).

**Done** this 1st day of August **2008**.



**BENIGNO R. FITIAL,**  
Governor

0 Declaration of State of Disaster Emergency EO 2008-10(31Jul08).wpd



# COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

**Benigno R. Fitial**  
Governor

**Timothy P. Villagomez**  
Lieutenant Governor

## EXECUTIVE ORDER 08-11

### RENEWAL OF DECLARATION OF A STATE OF DISASTER EMERGENCY:

### COMMONWEALTH PORTS AUTHORITY'S APPROACH OF TECHNICAL DEFAULT ON \$20 MILLION INDENTURE

I, BENIGNO R. FITIAL, pursuant to the authority vested in me as Governor of the Commonwealth of the Northern Mariana Islands ("CNMI") by Article III, Section 10 of the Commonwealth Constitution and 3 CMC § 5121 of the Commonwealth Disaster Relief Act of 1979, do hereby renew the declaration a State of Disaster Emergency for the Commonwealth of the Northern Mariana Islands which was issued due to the inability of the Commonwealth Ports Authority ("CPA"), as a result of a lack of a board of directors, to continue the actions and policies set into place by this administration to avoid technical default on the March 1, 1998 indenture on the CPA Airport Revenue Bonds and due to the need to maintain the proper operation of the CPA. The extreme, immediate and imminent threat such condition poses to the Commonwealth of the Northern Mariana Islands must be avoided. The original declaration of a state of disaster was set forth in Executive Order 08-07 issued on July 14, 2008.

The July 14, 2008 declaration of emergency was a result of my findings that a technical default could result in the entire principal and interest of the bonds becoming immediately due and payable, adversely affecting CPA's ability to raise future capital. Such a default would have degraded the ability of CPA to maintain and manage the ports of the Commonwealth, to the extreme detriment of the economy and the people of the CNMI. It was also based upon my finding that the resignation of all of the members of the CPA board of directors resulted in an ongoing vacuum of leadership at the CPA and that until strong

and appropriate leadership is restored the danger of technical default will remain a **significant** risk to the CPA **and** the CNMI as a whole. I **further** found that while some of appointments have been made to fill vacancies on the board of directors of the CPA, other appointments are awaiting the advice and consent of the Senate. Until a **sufficient** number of the appointments have been made and consented to by the Senate, the state of emergency continues to exist.

I found that the declaration **was** necessary to insure that a CPA **technical** default does not have a cumulative impact on the **CNMI** economy, **which has** been in a constant and prolonged downward trend as shown, **among** other examples, by the closure of several businesses, the withdrawal of Japan Airlines **from** CNMI service, the decline in tourism, and the persistent rise in fuel and electricity costs.

I find that the emergency conditions that resulted in Executive Order 08-07 still exist. **Thus**, ultimately, this renewal of that declaration is necessary to **protect** the health and safety of **all** CNMI residents **and** visitors.

Therefore, I hereby invoke my authority **under** Article III, § 10 of **the** Commonwealth Constitution and 3 CMC § 5121(c) and (f) to take all necessary measures to address the imminent threat facing the Commonwealth of the Northern Mariana Islands by extending the declaration of emergency.

Exercise of the Constitutional and statutory authority invoked herein will be effectuated by the issuance or **implementation, or both**, of Executive Directives setting forth the measures to be taken to address the State of Disaster Emergency pursuant to 3 CMC § 5121(f), which states:

- (f) In addition to any other powers conferred upon the **Governor** by law, the Governor may, during a state of disaster emergency:
  - (1) **Suspend the provisions of any regulatory statute prescribing the procedures for conduct of the Commonwealth's business, or the orders, rules, or regulations of any Commonwealth activity or agency, if strict compliance with the provision of any such statute, order, rule or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency;**

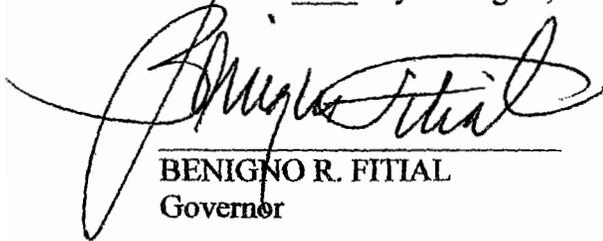
- (2) Utilize **all** available resources of the Commonwealth as reasonably necessary to cope with the disaster emergency **of** the Commonwealth;
- (3) Transfer the direction, personnel, or functions of the Commonwealth departments and agencies or units thereof for the purpose of **performing** or facilitating emergency services;

3 CMC § 5 121(f)(1)-(3).

This renewed Declaration of a State of Disaster Emergency shall take effect immediately and all memoranda, directives **and** other measures taken in accordance with this Declaration shall remain in effect for thirty (30) days from the date **of** this Executive Order unless I, prior to the end of the thirty (30) day period, notify the Presiding Officers of the Legislature that the state of emergency has been lifted or has been extended for an additional period of thirty (30) days. A comprehensive **report** on the exercise of my constitutional authority shall be transmitted to the presiding officers of the Legislature as soon as practicable in accordance with 1 CMC § 7403(a).

As I stated in that declaration of emergency, the administration looks forward to working with the Senate to address this problem.

Done this 13<sup>th</sup> day of August, 2008.



BENIGNO R. FITIAL  
Governor



# COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

**Benigno R. Fitial**  
Governor

**Timothy P. Villagomez**  
Lieutenant Governor

## **EXECUTIVE ORDERS 08-12**

### **TERMINATION OF DECLARATION OF A STATE OF DISASTER EMERGENCY:**

#### **COMMONWEALTH PORTS AUTHORITY'S APPROACH OF TECHNICAL DEFAULT ON \$20 MILLION INDENTURE**

I, **BENIGNO R FITAL**, pursuant to the authority vested in me as Governor of the Commonwealth of the Northern **Mariana** Islands ("CNMI") by Article **III**, Section 10, of the Commonwealth Constitution and 3 CMC § 5121 of the Commonwealth Disaster Relief Act of 1979, do hereby **TERMINATE** the declaration of a State of Disaster Emergency for the Commonwealth of the Northern Mariana Islands which was issued due to the inability of the Commonwealth Ports Authority ("CPA"), as a result of a lack of a board of directors, to continue the actions and policies set into place by this administration to avoid technical default on the March 1, 1998, indenture on the CPA Airport Revenue Bonds and due to the need to maintain the proper operation of the CPA. The declaration of a state of disaster was set forth in Executive Order 08-07 issued on July 14, 2008 and renewed by Executive Order 08-11.

The July 14, 2008, declaration of emergency was a result of my finding that a technical default could result in the entire principal and interest of the bonds becoming immediately due and payable, adversely affecting CPA's ability to raise future capital. Such a default would have degraded the ability of CPA to maintain and manage the ports of the Commonwealth, to the extreme detriment of the economy and the people of the **CNMI**. It was also based upon my finding that the resignation of all of the members of the CPA board of directors resulted in an ongoing vacuum of leadership at the CPA and that until strong and appropriate leadership was restored the danger of technical default would **remain a**

significant risk to the **CPA** and the **CNMI** as a whole. I further found that while some of appointments had been made to fill vacancies on the board of directors of the **CPA**, other appointments are awaiting the advice and consent of the Senate and that until a sufficient number of the appointments were made and consented to by the Senate, the state of emergency would continue to exist.

The renewal of that executive order in **August** was based upon my findings that the conditions constituting the emergency were still in existence.

During the state of emergency my administration took actions to address the technical default on the bonds by increasing revenues and decreasing costs at the CPA. Among the actions taken were the following:

1. **imposed** rate increases for emplanement and landing fees on airlines **as** recommended by bond consultants who were hired pursuant to requirements of the indenture;
2. increased rates for airport incinerator charges;
3. **imposed** charges for airport triturator services;
4. terminated the airline incentive program which would have cost the Commonwealth approximately two million dollars per year; and
5. **imposed** austerity measures throughout the **CPA** including a freeze on travel, **freeze** on overtime, freeze on hiring, operational cuts and reduction in work hours;

The administration addressed the lack of strong and appropriate leadership at the **CPA** by appointing dedicated, hard working and competent individuals to serve on the board of directors. The individuals appointed have the experience and will to continue the actions and policies set in place by my administration and to properly modify those actions and policies **as** the conditions at the **CPA** warrant. The Senate confirmed a sufficient number of those individuals to allow the CPA board of directors to meet its quorum requirements. The new board of directors meets today for the first time. This is the time to return control of the **CPA** over to them and allow them to do their job.

My administration is grateful to the Senate for its efforts during this emergency, to the

employees of the CPA for their understanding of the need to take austerity measures affecting them, to the citizens of Commonwealth for their patience and to the individuals who have agreed to serve on the CPA board of directors.

Executive Order 08-07, as renewed by Executive Order 08-11, is hereby **TERMINATED**.

Done this 3<sup>rd</sup> day of September, 2008.

 BENIGNO R. FITIAL  
Governor



# COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

**Benigno R. Fitial**  
Governor

**Timothy P. Villagomez**  
Lieutenant Governor

## EXECUTIVE ORDER 2008-13

### DECLARATION OF A STATE OF DISASTER EMERGENCY: COMMONWEALTH UTILITIES CORPORATION'S IMMINENT GENERATION FAILURE AND THE NEED TO PROVIDE IMMEDIATE RELIABLE POWER DURING REPAIRS

#### CONTINUATION #1

I, BENIGNO R. FITIAL, pursuant to the authority vested in me as Governor of the Commonwealth of the Northern Mariana Islands by Article III, Section 10 of the Commonwealth Constitution and 3 CMC § 5121 of the Commonwealth Disaster Relief Act of 1979, do hereby declare a State of Disaster Emergency for the Commonwealth of the Northern Mariana Islands due to the inability of the Commonwealth Utilities Corporation ("CUC") to provide critical power generation service to the CNMI and the extreme, immediate and imminent **threat** such condition poses to the Commonwealth of the Northern Mariana Islands.

This Executive Order is intended to, and does, continue in effect my preceding disaster emergency declaration on this matter, EO 2008-10. As more fully stated below, this Executive Order shall expire on the 31<sup>st</sup> day following the date of my signature. The following findings and conclusions further support continuation.

I find that:

1. All findings and conclusions of EO 2008-10 are incorporated by reference herein.

**EO - 2008-13**

Decl of disaster emergency: CUC engines - continuation 1

2. CUC Power **Plant #1's** engines have continued to fail. In the preceding month all but one engine has failed. Blackouts have lengthened and covered increasingly larger **parts** of Saipan. There is no immediate prospect for repair and continued operation of the **failed** engines. As of this date, two engines are operating. The remaining operating engines, according to CUC engineering staff, may fail at any time.
3. The effect of the failure described above has included the following: CUC has had to ration power deliveries in the past month. In so doing, it has been unable to **fully** power its well pumps to add water to the distribution system. Many customers have gone without the water supplies that CUC standards normally require.
4. Aggreko **has** begun to deliver machinery, equipment and supplies to **Saipan** for deployment of the temporary power generators, pursuant to CUC contract # **CUC-PG-08-C016**. Unforeseen technical issues have arisen **regarding** the Aggreko installation that have required the attention of **non-CUC** personnel, **including** security, **pipefitters**, **and** the related personnel, **materials and** supplies. Other issues may arise in the deployment period that will require rapid attention by CUC contractors and the securing of materials and supplies.
5. **CUC has** sought or intends to seek regulatory approvals for the deployment of Aggreko's equipment. CUC states that it desires to **comply** with environmental and land'use regulations, **but** fears that the lack of **permits** or the permitting process would postpone or eliminate the **in-**service date, **and** uninterrupted **service**, for the power generating equipment.
6. This Declaration is still necessary to protect the health **and** safety of our children, our senior citizens, businesses **and** all other CNMI residents and visitors.

Therefore, I hereby invoke my authority under Article **III**, § 10 of the Commonwealth Constitution **and** 3 CMC § 5121(**f**) to take **all** necessary measures to address the imminent **threat** **facing** the Commonwealth of the Northern Mariana Islands.

Exercise of the Constitutional and statutory authority invoked herein will be effectuated by the issuance of Executive Directives setting forth the measures to be taken to address the State of Disaster Emergency pursuant to 3 CMC § 5121(**f**), which states:

(**f**) In addition to my other powers conferred upon the Governor by **law**, the Governor may, during a state of disaster emergency:

- (1) Suspend the provisions of any regulatory statute prescribing the procedures for conduct of the Commonwealth's business, or the orders,

EO - 2008-13

Decl of disaster emergency: CUC engines - continuation 1

rules, or regulations of any Commonwealth activity or agency, if strict compliance with the provision of **any** such statute, order, rule or regulation would in any way prevent, hinder, or delay necessary **action in coping** with the emergency;

(2) Utilize all available resources of the Commonwealth as reasonably necessary to cope with the disaster emergency of the Commonwealth;

(3) Transfer the direction, personnel, or functions of the Commonwealth departments and agencies or **units** thereof for the purpose of performing or facilitating emergency services;

3 CMC § 5121(f)(1)-(3).

I hereby **reaffirm** and reissue my first three directives, amend Directive 2 **with the term** "advance" and add one:

Directive 1: **CUC's** Procurement Regulations **and** the CNMI Procurement Regulations applicable to CUC, if any, are hereby suspended **as to** CUC procurements, **except** that CUC **must** fully document all procurement activity for Executive, Public Auditor and Legislative **review**.

Directive 2: The Commonwealth Public Utility Commission ("PUC") Act of 2006, PL 15-35, **as** amended, is hereby suspended insofar as it would require the presentation of CUC procurement information, including contracts and other measures relating to the supply of power or the operation and maintenance of **CUC's** generation, for PUC advance review.

Directive 3: CUC is **specifically** empowered to execute the wholesale generation power contract it has negotiated with an independent power producer for a period of two years or less.

Directive 4: All regulatory statutes and regulations relating to the Agrekko temporary wholesale generation power contract, # CUC-PG-08-C016, which CUC determines in writing will interfere with the deployment, in-service dates, **and/or** operation of the temporary power production facilities, are hereby suspended, except that CUC must within **30** days provide to me in writing its plan for compliance, and a **copy** of each agency's permits or a complete explanation why compliance has not yet been achieved and how it will be achieved.

Directive 5: CUC shall notify as soon as possible by **email** after each procurement governed by Directive 1, at least the following persons, advising of at least the following matters:

a: Persons: The Governor, President of the Senate, Speaker of the House, Public

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Decl of disaster emergency: CUC engines - continuation 1

Auditor; and

b: Matters: Subject of the procurement; contractors **and/or** suppliers; amounts involved; the extent to which competitive bids or proposals were used; and short description of the reason for the action.

As stated in EO 2008-10, PL 16-9 removed substantial impediments to CUC's securing by contract immediate, reliable, and cost-effective **temporary** power **from** an independent, non-utility power producer. That law amends the Commonwealth PUC Act of 2006, **specifically** requiring a gubernatorial declaration of disaster emergency pursuant to 3 CMC § 5121, so that CUC might sign **an** emergency wholesale power generation contract for two years or **less** without pre-review of the PUC or the PUC's issuance of a certificate of convenience and necessity. Each of these PUC decisions would have **taken** so long to investigate and make that **the** conditions discussed above may have developed in the meantime.

I determined that, if CUC could immediately execute such a contract, it could **quickly** have temporary replacement generators placed into service and then shut down the dangerous Power Plant #1 engines. By disaster **declaration** EO-2008-10 I intended to enable CUC, within the definitions of PL 16-9, to sign a power contract **with** the appropriate "person".

By today's disaster emergency declaration, I intend to enable CUC, **within** the intent of PL 16-9, to implement the temporary power contract which it signed. The purpose is to make the electric system as reliable as practicable, as soon as practicable, **during** the period of repair of CUC's generators. I also intend that government leaders be kept informed as to the progress of the effort to place the temporary power equipment into service.

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Decl of disaster emergency: CUC engines - continuation 1

This Declaration of a State of Disaster Emergency shall take effect immediately and all memoranda, directives and other measures taken in accordance ~~with~~ this Declaration shall remain in effect for thirty (30) days ~~from~~ the date of this Executive Order unless I, prior to the end of the thirty (30) day period, notify the Presiding Officers of the Legislature that the state of emergency has been lifted or has been extended for an additional period of thirty (30) days. A comprehensive report on the exercise of my constitutional authority shall be transmitted to the presiding officers of the Legislature as soon as practicable in accordance with 1 CMC § 7403(a).

Done this 4th day of September 2008.

✓ BENIGN R. FITIAL,  
Governor

0 Declaration of State of Disaster Emergency EO 2008-10(31Jul08) - add 1.wpd



# Commonwealth of the Northern Mariana Islands

**Benigno R. Fitial**  
Governor

**Timothy P. Villagomez**  
Lieutenant Governor

## **EXECUTIVE ORDER 2008-14**

### **DECLARATION OF A STATE OF DISASTER EMERGENCY: WATER SYSTEM POLLUTANTS PUBLIC HEALTH EMERGENCY CLOSURE OF CERTAIN PUBLIC SCHOOLS**

I, BENIGNO R. FITIAL, pursuant to the authority vested in me as Governor of the Commonwealth of the Northern Mariana Islands by Article III, Section 10 of the Commonwealth Constitution and 3 CMC § 5121 of the Commonwealth Disaster Relief Act of 1979, do hereby declare a State of Disaster Emergency for the Commonwealth of the Northern Mariana Islands due to the Division of Environmental Quality's laboratory finding dangerous levels of *Total Coliform* bacteria in the public water system at certain locations. I order the affected public schools to be closed due to the potential to expose the staff and school children to this contaminated water.

The water is contaminated due to the **unplanned** outages of Commonwealth Utility Corporation's electrical system and the loss of electric service it causes to the pumps and chlorination equipment necessary to keep the domestic water supply safe and uncontaminated. This constitutes an extreme, immediate and imminent threat to the Commonwealth of the Northern Mariana Islands.

EO - 2008-14

Decl of Disaster Emergency: Public School System and Contaminated Water

This Executive Order shall expire on the 31<sup>st</sup> day following the date of my signature, or sooner if I so order. The following findings and conclusions further support continuation.

I HEREBY FIND THAT:

1. CUC's Saipan electric system has been subject to unplanned outages, as stated in EO 2008-10 and EO 2008-13.
2. CUC manages the domestic water supply for Saipan. The chlorination equipment for that water system relies on CUC's electricity. The chlorination system failed in some parts of the distribution system during the past week.
3. DEQ and CUC between them conduct daily testing of the domestic water supply. They look for contaminants, including a bacterium commonly found in the lower intestine of warm-blooded animals. Some of the strains of this bacterium, Total *Coliform*, can cause food poisoning symptoms. Such symptoms can be very dangerous for children, the infirm and the elderly. Over the weekend DEQ laboratories found unacceptable levels of the bacterium Total Coliform in the water system at certain public school facilities.
4. DEQ and DPH officials have, by laboratory testing, identified certain reservoirs and distribution areas as contaminated by Total Coliform:
5. The Public School System, DEQ and DPH have determined that the following schools are within the service areas of the identified facilities ("the affected schools"):
  - a) Koblerville Elementary
  - b) Kagman Elementary
  - c) Oleai Headstart
  - d) Marianas High School
6. The staff of the Department of Public Health has determined that the staff and students of the affected schools would be in danger of exposure to the contaminated water if they occupied the affected schools. The Secretary of Health has advised me and the Commissioner of the Public School System to close the affected schools until DPH and DEQ can assure me that the water at the affected schools is no longer contaminated.

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Decl of Disaster Emergency: Public School System and Contaminated Water

7. This Declaration is necessary to protect the health and safety of our children in the affected public schools, visitors, and the adult staff who work there.

Therefore, I hereby invoke my authority under Article III, § 10 of the Commonwealth Constitution and 3 CMC § 5121(f) to take all necessary measures to address the imminent threat facing the Commonwealth of the Northern Mariana Islands.

Exercise of the Constitutional and statutory authority invoked herein will be effectuated by the issuance of Executive Directives setting forth the measures to be taken to address the State of Disaster Emergency pursuant to 3 CMC § 5121(f), which states:

**(f)** In addition to any other powers conferred upon the Governor by law, the Governor may, during a state of disaster emergency:

(1) Suspend the provisions of any regulatory statute prescribing the procedures for conduct of the Commonwealth's business, or the orders, rules, or regulations of any Commonwealth activity or agency, if strict compliance with the provision of any such statute, order, rule or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency;

(2) Utilize all available resources of the Commonwealth as reasonably necessary to cope with the disaster emergency of the Commonwealth;

(3) Transfer the direction, personnel, or functions of the Commonwealth departments and agencies or units thereof for the purpose of performing or facilitating emergency services;

3 CMC § 5121(f)(1)-(3).

I HEREBY ISSUE THE FOLLOWING DIRECTIVES:

Directive 1: The affected schools shall be closed until further notice. The Commissioner may assign staff to work at those schools as she determines prudent, subject to measures intended to avoid the staffs contact with the contaminated water.

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Decl of Disaster Emergency: Public School System and Contaminated Water

Directive 2: If the Commissioner determines, in consultation with the Secretary of Health and the Director of DEQ, that other schools are also affected by the contaminated water, she shall apply Directive 1 to close those schools.

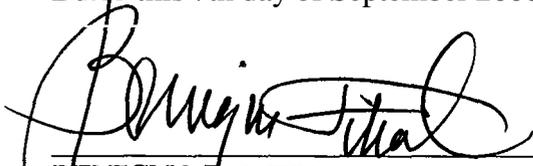
Directive 3: DEQ's Director and the Secretary of Health shall notify me and the Commissioner when they have determined that the water for the affected schools is safe.

Directive 4: All regulatory statutes and regulations relating to the closure of the affected schools are hereby suspended in order to allow the measures stated in Directives 1 - 3.

By today's disaster emergency declaration, I intend to allow the school system and our children and staff to be protected immediately.

This Declaration of a State of Disaster Emergency shall take effect immediately and all memoranda, directives and other measures taken in accordance with this Declaration shall remain in effect for thirty (30) days from the date of this Executive Order unless I, prior to the end of the thirty (30) day period, notify the Presiding Officers of the Legislature that the state of emergency has been lifted or has been extended for an additional period of thirty (30) days. A comprehensive report on the exercise of my constitutional authority shall be transmitted to the presiding officers of the Legislature as soon as practicable in accordance with 1 CMC § 7403(a).

Dated this 7th day of September 2008.



BENIGNO R. FITIAL  
Governor



# Commonwealth of the Northern Mariana Islands

**Benigno R Fitial**  
Governor

**Timothy P. Villagomez**  
Lieutenant Governor

## **EXECUTIVE ORDER 2008-15**

### **RESCINDING THE DECLARATION OF A STATE OF DISASTER EMERGENCY IN EXECUTIVE ORDER 2008-14:**

I, BENIGNO R. FITIAL, pursuant to the authority vested in me as Governor of the Commonwealth of the Northern Mariana Islands by Article III, Section 10 of the Commonwealth Constitution and 3 CMC § 5121 of the Commonwealth Disaster Relief Act of 1979, do hereby rescind Executive Order 2008-14 declaring a State of Disaster Emergency for the Commonwealth of the Northern Mariana Islands due to the Division of Environmental Quality's laboratory finding unacceptable levels of bacteria in the public water system at certain Public School System locations.

#### **FINDINGS**

In connection with Executive Order 2008-14, the Public School System has gone to great lengths to comply with all necessary public health regulations. Moreover, the results of the latest laboratory tests done on September 08, 2008, are negative.

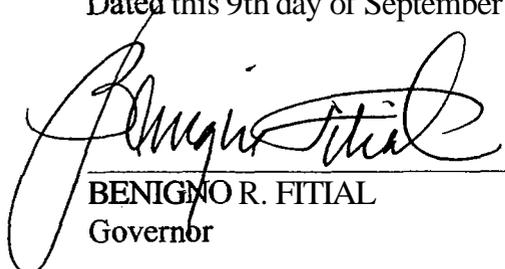
#### **ORDER**

Therefore, pursuant to 3 CMC § 5121(b), I hereby order that Executive Order 2008-14 is rescinded. In keeping with the foregoing, Koblerville Elementary, Kagran Elementary, Oleai Headstart and Marianas High School are authorized to re-open upon the direction of the Commissioner of the Public School System.

**Executive Order 2008-15**  
**Order Rescinding Executive Order 2008-14**

This Executive Order shall take effect immediately and the Presiding Officers of the Legislature shall be notified that the state of emergency has been **lifted**. A comprehensive report on the exercise of my constitutional authority shall be transmitted to the Presiding Officers of the Legislature as soon as practicable in accordance with 1 CMC § 7403(a).

Dated this 9th day of September 2008.



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BENIGNO R. FITIAL  
Governor

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS  
2<sup>ND</sup> FLOOR JUAN P. SABLAN MEMORIAL HILL  
CALLER BOX 10007, SAIPAN, MP 96950  
TELEPHONE: (670) 488-1111  
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OFFICE OF THE ATTORNEY GENERAL  
CIVIL DIVISION

**ATTORNEY GENERAL OPINION NO. 08-01**

**January 30, 2008**

**To:** Special Assistant for Administration,  
Special Assistant for ~~Office~~ of Management and Budget

**From:** Attorney General

**Subject:** Interpretation of Article II, Section 16(b)

It is the opinion of the Attorney General that the NMI Constitution requires that members of the House of Representatives shall receive funding equal to the level of funding for members of the Senate.

Article II, Section 16(b) is ambiguous on its face. It **states**:

Each member of each house shall receive an amount within this ceiling not to exceed one hundred fifty-five thousand dollars annually for office and related expenses including all expenses for travel. Members may voluntarily pool **all** or part of these **funds**.

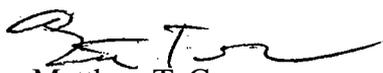
That wording can be interpreted to mean that all members of the House of Representatives shall received the same amount of funds as all other members of the House. It can also be interpreted to mean that all members of the House of Representatives and the Senate shall receive the same amount of funds as all other members.

I could not **find** any legislative history on the legislative initiative that resulted in the passage of the amendment that resulted in the word of Article II, Section 16(b). The

only indication of the meaning of that section is found in Public Law 11-01, an appropriations act. It states in its findings and purpose that:

The Legislature finds that the voters of the Commonwealth approved Legislative Initiative 10-8 on November 1, 1997. In approving the legislative initiative, the voters intended that the Commonwealth Legislature have sufficient funds to fully and effectively perform its constitutional responsibilities. In particular, the voters expected that members of the House of Representatives would receive funding to support their offices and activities equal to the level of funding received by members of the Senate. At the same time, the voters had not intended that **funding** for members of the Senate be reduced below present levels. (Emphasis added.)

Since both the House of Representatives and the Senate voted **affirmatively** on Public Law 11-01 containing the above quoted findings and there is no legislative history to use to interpret Article 11, Section **16(b)**, it must be presumed by the Executive Branch that those findings are the correct interpretation of the section. Article 11, Section **16(b)** must be disbursed accordingly. Therefore, each member of both the House of Representatives and the Senate must receive the same amount of funding.

  
Matthew T. Gregory  
Attorney General, CNMI