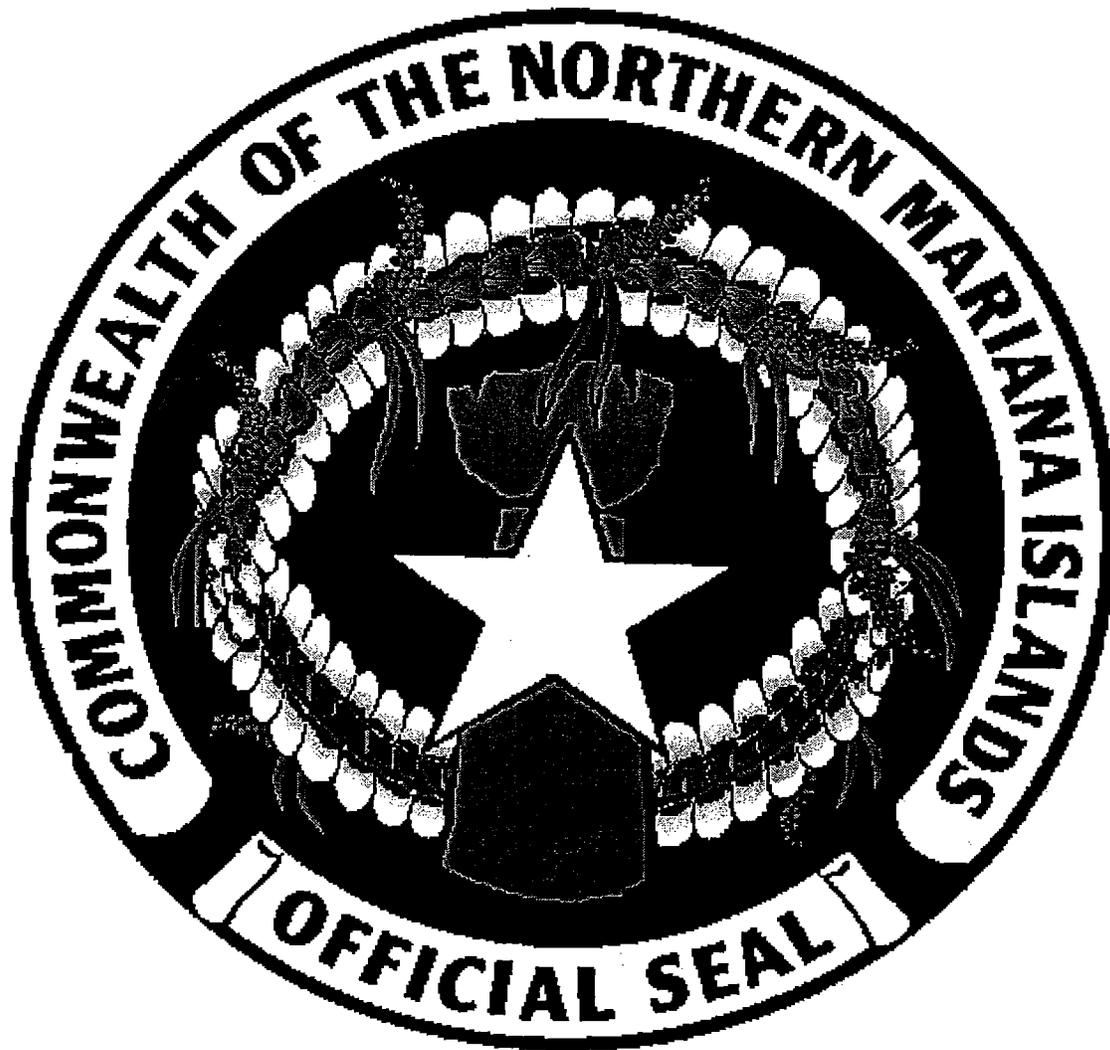


**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
SAIPAN, TINIAN, ROTA and NORTHERN ISLANDS**



.....

COMMONWEALTH REGISTER

VOLUME 32

NUMBER 04

APRIL 19, 2010

COMMONWEALTH REGISTER

VOLUME 32
NUMBER 04

April 19, 2010

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Commonwealth of the Northern Mariana Islands

Department of Public Health

Medical Referral Services



Commonwealth of the Northern Mariana Islands

Department of Public Health,

Medical Referral Services

Joseph K.P. Villagomez, Secretary

P.O. Box 500409 CK, Saipan, MP 96950

tel: 670.234.8950 fax: 670.236.8604

PUBLIC NOTICE OF CERTIFICATION AND ADOPTION

OF REGULATIONS OF

The Medical Referral Services

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER

AS PROPOSED REGULATIONS

Volume 31, Number 2, pp 030062-74, of February 19, 2010

Regulations of the Medical Referral Services: No Changes

ACTION TO ADOPT PROPOSED REGULATIONS: The Commonwealth of the Northern Mariana Islands, Department of Public Health, Medical Referral Committee, HEREBY ADOPTS AS PERMANENT regulations the Proposed Regulations which were published in the Commonwealth Register at the above-referenced pages, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The Medical Referral Committee announced that it intended to adopt them as permanent, and now does so. (Id.) I also certify by signature below that:

as published, such adopted regulations are a true, complete and correct copy of the referenced Proposed Regulations,

P.O. BOX 500409, Saipan, MP 96950

Telephone: (670) 236-8294, Fax: (670) 236-8604

and that they are being adopted without modification or amendment:

PRIOR PUBLICATION: The prior publication was as stated above. The board adopted the regulation as final at its meeting of July 16, 2009.

MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY: None. I further request and direct that this Notice be published in the Commonwealth Register.

AUTHORITY: The Secretary is required by the Legislature to adopt rules and regulations regarding those matters over which the Medical Referral Committee has jurisdiction, including its regulation of the Medical Referral Services.

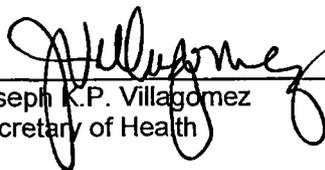
EFFECTIVE DATE: Pursuant to the APA, 1 CMC § 9105(b), these adopted regulations are effective 10 days after compliance with the APA, 1 CMC § 9102 and 9104(a) or (b), which, in this instance, is 10 days after this publication in the Commonwealth Register.

COMMENTS AND AGENCY CONCISE STATEMENT: 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 there are any, in response to filed comments.

ATTORNEY GENERAL APPROVAL for non-modified regulations or regulations with NON-material modification: The adopted regulations were approved for promulgation by the Attorney General in the above-cited pages of the Commonwealth Register, pursuant to 1 CMC § 2605 (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 20th day of February, 2010, at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:



Joseph K.P. Villagomez
Secretary of Health

3-31-2010
Date

Filed and

Recorded by:



ESTHER M. SAN NICOLAS

04.15.10
Date

**PUBLIC NOTICE
OF REPEAL OF THE
IMMIGRATION RULES AND REGULATIONS**

OFFICE OF THE ATTORNEY GENERAL, DIVISION OF IMMIGRATION

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER
AS FINAL REGULATIONS

Volume 30, Number 12 pp. 029100 et seq. of December 22, 2008

**Immigration Rules and Regulations of the Office of Attorney General, Immigration
Division: Part 5, Subchapter 40**

Please take notice that the Office of the Attorney General, Division of Immigration, hereby repeals entirely the referenced Regulations. I also certify by signature below that such adopted regulations are being repealed without modification or amendment.

The reason for the repeal of these immigration regulations is the enactment by the United States Congress of PL 110-229, under which the United States assumes all responsibility for immigration and deportation functions formerly carried out by the Immigration Division. On March 22, 2010, PL 17-1 was signed by the Governor removing all references to immigration and deportation functions from the Commonwealth Code.

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

**Pursuant to 1 CMC §9105(b), the repeal of these adopted regulations is effective as of
March 22, 2010.**

The prior publication was as stated above.

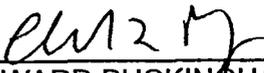
Certified and ordered by:


ELCHONON GOLOB
Assistant Attorney General

4/15/10
Date

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).

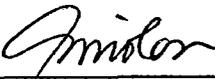
Dated the 15 day of April, 2010



EDWARD BUCKINGHAM
Attorney General

Filed and

Recorded by:



ESTHER SAN NICOLAS
Commonwealth Registrar

04.15.10
Date



GIL M. SAN NICOLAS
Secretary

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY

Second Floor Afetña Square Building, San Antonio, P.O. Box 10007, Saipan, MP 96950
Telephone no. (670) 236-0908 or 0903 Facsimile no. (670) 236-0992



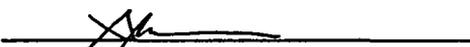
CINTA M. KAIPAT
Deputy Secretary

PUBLIC NOTICE
OF STATUTORY AMENDMENT
WHICH ARE AMENDMENTS TO
THE COMMONWEALTH EMPLOYMENT ACT OF 2007
ENACTED WITH THE IMMIGRATION CONFORMITY ACT OF 2010

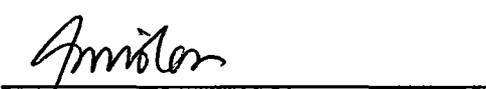
PUBLICATION OF AMENDED STATUTE: The Commonwealth of the Northern Mariana Islands, Secretary of Labor, provides this publication of the Commonwealth Employment Act of 2007 as amended by the Immigration Conformity Act of 2010 for interim use by the public prior to the publication of the official version by the Law Revision Commission. The amendments became effective on March 22, 2010.

AUTHORITY: The Secretary of Labor is authorized to make available to the public through publication materials pertaining to employment of citizens, permanent residents, and foreign national workers and other nonimmigrant aliens admitted for employment in the Commonwealth.

DIRECTIONS FOR FILING AND PUBLICATION: This amendment of PL 15-108 shall be published in the Commonwealth Register in the appropriate section and posted on the Department's website, www.marianaslabor.net.

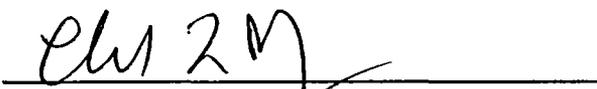
Submitted by:  04/15/10
Gil M. San Nicolas Date
Secretary of Labor

Received by:  4/16/10
ESTHER S. FLEMING Date
Governor's Special Assistant for
Administration

Filed and
Recorded by:  04.16.10
ESTHER SAN NICOLAS 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 16 day of April, 2010


EDWARD BUCKINGHAM
Attorney General



GIL M. SAN NICOLAS
Secretary

**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
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CINTA M. KAIPAT
Deputy Secretary

**NOTISIAN PUBLIKU
GI AMENDASION I STATUTORY**

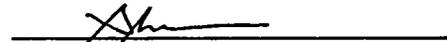
**NI PARA I AMENDASION SIHA PARA I COMMONWEALTH NA ÅKTON I
EMPLEHU 2007 NI MA'OTDENA YAN I ÅKTON 2010 NA IMMIGRATION
CONFORMITY**

PUBLIKASION I MA'AMENDA NA ESTATUA: I Commonwealth gi Sangkattan na Islan Marianas siha, Sekretarion Hotnaleru, ha pribeniyi este na publikasion gi Åkton i Commonwealth Employment gi 2007 komu ma'amenda ginen i Åkton i Immigration Conformity gi 2010 para i uson i interim ginen i publiku åntes di para i publikasion gi ofisiåt na profisiente ginen i Law Revision Commission. I amendasion siha para u ifektibu gi Måtso 22, 2010.

ÅTURIDÅT: I Sekretåtton i Hotnaleru ha åturisa na para u na'guaha para i publiku ginen i materiåt publikasion siha sigun i emplehun i ciudadånu, petmanente na residente siha yan i hotnaleron foreign nationals yan otro nonimmigrant aliens na manma'atmiti para i emplehu gi halom i Commonwealth.

DIREKSION PARA U MAPO'LO YAN PUPBLIKA: Este na amendasion gi PL 15-108 debi na mapupblika gi halom i Rehistran Commonwealth gi apropositu na seksiona yan mapega gi website i Dipattamento gi, www.marianaslabor.net.

Nina'hålom as:



Gil M. San Nicolas
Sekritårion Hotnaler

04/15/10
Fecha

Rinisibi as:



ESTHERS. FLEMING
Espisiåt Na Ayudante Para i
Atministrasion Gobetno

4/14/10
Fecha

Pine'lo yan
Rinikot as:

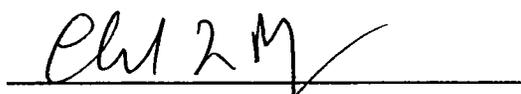


ESTHER SAN NICOLAS
Rehistran Commonwealth

04.16.10
Fecha

Sigun i 1 CMC § 2153(e) (Inapreban Abugådu Heneråt gi regulasion siha na para u macho'gue komu para fotma) yan 1 CMC § 9104(a)(3) (hentan inapreban Abugådu Heneråt) i mapropone na regulasion siha ni mañechetton guini gi manmaribisa yan ma'apreba komu fotma yan ligåt suficiente ginen i CNMI Abugådu Heneråt yan debi na u mappublika, 1 CMC § 2153(f) (publikasion i areklamento yan regulasion siha).

Mafecha gi 16 gi Abrit, 2010



EDWARD BUCKINGHAM
Abugådu Heneråt



GIL M. SAN NICOLAS
Secretary

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY

Second Floor Afetña Square Building, San Antonio, P.O. Box 10007, Saipan, MP 96950
Telephone no. (670) 236-0908 or 0903 Facsimile no. (670) 236-0992



CINTA M. KAIPAT
Deputy Secretary

ARONGORONGOL TOULAP
REEL AWEWEWEL LLIWEL

IYE EBWE SSIWEL NGÁLI ALLÉGHÚL SCHÓÓL ANGAANGAL LLÓL
COMMONWEALTH LLÓL 2007

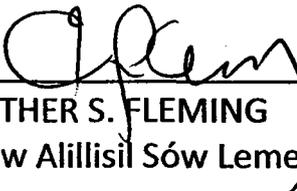
AKKATÉÉL AWEWE KKA EBWE SSIWEL: Commonwealth Téél falúw kka falúwasch Efáng Marianas, Samwoolul Labor, e ayoorátá akkatéél Commonwealth Act llo1 2007 iye aa ssiwel mereel Immigration Conformity Act llól 2010 igha e tempororio ngaliir toulap yaayal mmwal rebwe atoowowu schescheel kkapasal mellol Law Revision Commission. Lliwel kkaal ebwe kkamall ótol Mááilap (March) 22, 2010.

BWÁNGIL: Samwoolul Labor nge eyoor bwángil ebwe akkaté aweewe kka e ghil reel ngáli jaar angaang toulap, aramasal faleey, me schóóy lúghúl me nonimmigrant aliens kka relo bwele jaar angaang mellól Commonwealth.

AFALAFAL REEL AMMWEL ME AKKATÉÉL: Lliwel ye llól Alléghúl Toulap 15-108 bwe ebwe akkatééló llól Commonwealth Register llól táilil ye e fisch me apaschátá llól Department's website, www.marianaslabor.net.

Isaliyallong: 
Gil M. San Nicolas
Samwoolul Labor

04/15/10
Rál

Mwir sangi: 
ESTHER S. FLEMING
Sów Alillisil Sów Lemelem

4/14/10
Rál

Ammwel sangi: 
ESTHER SAN NICOLAS
Commonwealth Register

04.16.10
Rál

Sángi allégh ye 1 CMC Táilil 2153(e) (alughulughul AG reel allégh ebwe akkaté ighila) me 1 CMC Talil 9104(a)(3) (bwughi yaal alughulugh AG) reel pomwol allegh kka e appasch ikka raa takkal amweri fischí allégheló mereel CNMI Sów Bwungul Allégh Lapalap me ebwe akkaté, 1 CMC Táilil 2153(f) (akkatéél allégh kkaal).

Rállil ye 16 llól maramal Séétá, 2010


EDWARD BUCKINGHAM
Sów Bwungul Allégh Lapalap

1 **COMMONWEALTH EMPLOYMENT ACT OF 2007**
2 **AS AMENDED BY THE**
3 **IMMIGRATION CONFORMITY ACT OF 2010**

4
5 **Amendments became effective upon signing by the Governor**
6 **March 22, 2010**

7
8 **Section 1. Short title.** This Act may be referred to as the “Commonwealth
9 Employment Act of 2007.”

10 **Section 2. Findings and purpose.** The Commonwealth Legislature finds the
11 following with respect to fair and adequate employment within the Commonwealth of the
12 Northern Mariana Islands:

13 Economic development and prosperity in the Commonwealth require that citizens and
14 permanent residents be given maximum opportunity for employment in the public and
15 private sectors of the economy.

16 The employment preference for citizens and permanent residents is implemented by
17 clarifying and improving provisions of the current law, such as limiting public sector jobs to
18 citizens and permanent residents to the maximum extent practicable, requiring that employers
19 in the Commonwealth provide jobs to citizens and permanent residents that amount to at least
20 thirty percent (30%) of the employer’s work force, and restructuring the moratorium on new
21 hiring of foreign nationals, among other measures.

22 This employment preference is promoted by effective training to qualify citizen and
23 permanent resident employees, particularly indigenous Carolinian and Chamorro people, for
24 jobs that require special skills, effective advertising of available jobs with full equivalent
25 wages or benefits compared to any wages or benefits that would be offered to a person who
26 is not a citizen or permanent resident, and effective job referral services provided to citizens
27 and permanent residents.

28 The Covenant envisioned the employment of foreign nationals in the Commonwealth
29 in order to create an economic base that would provide the citizens of the Commonwealth the
30 economic opportunities and standard of living that their counterparts on the mainland are
31 able to enjoy because of the vast area and large population from which communities on the
32 mainland may draw employees. In order for the economy to sustain and foster the
33 development that will produce an increasing number of such jobs, foreign national workers

1 must be available to fill the unskilled and lower skilled jobs that make larger business
2 enterprises economically viable in the Commonwealth.

3 The Commonwealth's very substantial investment in secondary and post-secondary
4 education over the past 30 years has strived to produce a local work force well qualified for
5 managerial, supervisory, technical, professional, visitor industry, and other jobs that are of
6 vital importance to the growth and development of the Commonwealth's economy. The
7 Commonwealth's goal is to establish a regulatory environment so that jobs are available for
8 its qualified high school, college, and graduate school graduates. To accomplish that goal,
9 the Commonwealth requires a two-pronged approach. First, with respect to all jobs, citizens
10 and permanent residents must be given preference over foreign workers imported to fill
11 specific jobs. Second, with respect to jobs for which the Commonwealth's investment in its
12 citizens and permanent residents has already produced a sufficient supply of qualified
13 persons, employers must be required to hire only those citizens and permanent residents. As
14 to the second prong, a minimum wage rate may not be sufficient to attract citizens and
15 permanent residents to take a job for which they are qualified. If the job is reserved for
16 citizens and permanent residents, then the competitive economy will cause the wage rate to
17 rise to a level that citizens and permanent residents find acceptable. As to jobs for which
18 qualified citizens and permanent residents are available, the Legislature finds that it benefits
19 the Commonwealth very substantially to have the wage rate rise to the level required. Wage
20 rates will not rise so long as cheap foreign labor is available. The incentives to foreign
21 workers to remain in the Commonwealth are very large because the working conditions in
22 the Commonwealth are so far superior to the working conditions in their home countries. For
23 that reason, foreign workers will always accept lower wages than citizens and permanent
24 residents. It was never the purpose of the legislative enactments with respect to the use of
25 foreign labor in the Commonwealth to perpetuate jobs at the minimum wage rate. If that
26 happens, much of the Commonwealth's investment in secondary and post-secondary
27 education for its citizens will be lost as those citizens migrate outside the Commonwealth to
28 find good-paying jobs.

29 In 2006, the Office of the Public Auditor launched a year-long study to identify jobs
30 in the current Commonwealth economy for which citizens and permanent residents are
31 currently available or will be available in the near future. The Public Auditor reported: "The

1 survey was prompted by complaints from residents who were unable to find employment
2 despite statutory provisions requiring preferential hiring of residents, as well as the added
3 concern of increased resident unemployment due to the workforce reductions in the private
4 sector and possible downsizing within the Government.” The Public Auditor reported that
5 the study’s “conclusions and recommendations are critical foundations in establishing a
6 sustainable resident workforce.” The study identified specific positions that “can be easily
7 filled by the existing resident pool.” The Public Auditor’s study examined carefully all of the
8 jobs currently reserved for citizens and permanent residents and expanded the list of job
9 classifications that should be reserved for residents. The Public Auditor’s study was assisted
10 by an organized committee comprised of private sector employers from various industries,
11 government officials, and other interested parties. The study consulted with the Department
12 of Labor, the Division of Immigration, the Northern Marianas College, the Workforce
13 Investment Agency, and the Department of Commerce. Prior to the release of the jobs study
14 report, more than a dozen presentations on the preliminary study were made to various public
15 and private sector groups to “ensure that input and feedback from the community was
16 considered before final release of the report.”

17
18 The Fourteenth Amendment to the United States Constitution does not deny to States the
19 power to treat different classes of persons in different ways.” *Reed v. Reed*, 404 U.S. 71, 75
20 (1971). Under the rational basis test, “[a] classification ‘must be reasonable, not arbitrary,
21 and must rest upon some ground of difference having a fair and substantial relation to the
22 object of the legislation, so that all persons similarly circumstanced shall be treated alike.’”
23 *Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920). The statistics provided to the
24 Legislature by the Department of Labor with respect to the history of employment in the
25 Commonwealth since 1983 when the initial foreign worker legislation was enacted; the
26 underlying goals with respect to the structure of and progress within the economy in the
27 Commonwealth; and Jobs Study Report and ongoing work of the Public Auditor form a
28 rational basis on which to treat foreign workers, present in the Commonwealth for temporary
29 work, differently from citizens and permanent residents. The Legislature finds these factors
30 form a rational basis for the government’s interest in preventing all nonresident workers from
31 working in specific job classifications and a rational basis for the government’s an interest in
32 singling out specific job classifications from all other jobs in the Commonwealth and finds

1 that the regulatory power delegated to the Secretary of Labor may be exercised in these
2 respects to implement this statute.

3 The current economic situation in the Commonwealth requires the continued
4 availability of foreign nationals to augment the work force in the Commonwealth but also
5 demands that the system for regulating the employment of foreign nationals be more efficient
6 and less costly to operate.

7 The Commonwealth has the responsibility to provide fair employment conditions for
8 foreign nationals, to use their labor for the purposes of economic growth and stability for
9 which it was intended, and to regulate labor practices in order to protect against potential
10 abuses.

11 Experience over the past 30 years has provided certain benchmarks with respect to
12 fair employment conditions for foreign nationals: The system should have clear rules, be easy
13 to understand, provide for lack of facility with the English language, protect basic rights, and
14 assist employers with compliance. The overall guiding policy with respect to foreign national
15 workers is to provide for a stable work force and protect due process rights without creating
16 entitlements.

17 The early-intervention mediation that is an integral part of the current system
18 achieves good results in promoting fair employment relationships between foreign national
19 employees and employers in the Commonwealth. Early intervention can be expanded to
20 prevent and resolve disputes more efficiently to the benefit of both employees and
21 employers.

22 Economic stability and growth in the Commonwealth require support for the visitor
23 industry and other investments, both local and foreign, that generate new employment
24 opportunities. The overall employment system must achieve a balanced approach to
25 opportunities, benefits, and costs to the Commonwealth and, in the Legislature's judgment,
26 that objective is achieved by this Act.

27 It is the intent of the Legislature that this Act shall not apply to persons admitted to
28 the Commonwealth as tourists, or to persons employed illegally, i.e. without the approval of
29 the Department of Labor, or to those persons employing others illegally in the
30 Commonwealth unless specific provision has been made herein. It is the intent of the
31 Legislature that persons illegally employing others or illegally employed be prohibited from

1 using the terms of this Act to receive or avail themselves of a legal right or benefit. This Act
2 shall not bar any other remedy provided by law.

3 The Legislature finds that requiring a foreign national worker to submit proof of
4 earnings in excess of the federal poverty guidelines before bringing family members into the
5 Commonwealth for the first time serves the important government interest of maintaining the
6 public welfare and not overburdening public institutions and services in the Commonwealth.

7 The Legislature finds that a statutory, rather than regulation-based, entry permit for
8 religious activities is necessary due to the need to respect religious requirements and at the
9 same time avoid abuse. The Legislature supports the free expression of religious belief by
10 persons or groups present in the Commonwealth and recognizes the need for their
11 employment of religious professionals for that purpose. The Legislature finds that there is no
12 impairment of the pursuit of religious beliefs or undue burden in the requirement that foreign
13 nationals entering for religious employment be employed by identifiable religious
14 organizations and subject to the same contract requirements as other foreign national
15 workers.

16 It is the intent of the Legislature that this Act shall not conflict with treaty obligations
17 of the United States. In the event of conflict, U.S. treaty provisions shall pre-empt the
18 provisions of this Act.

19 It is the intent of the Legislature that this Act shall not conflict with Chapter 5 of Part
20 1 of Division 1 of Title 6 of the Commonwealth Code (Human Trafficking and Related
21 Offenses). This Act shall in no way limit the authority of the Commonwealth to bring an
22 action pursuant to that chapter.

23 It is the intent of the Legislature to repeal current Chapters 5 and 7 of Division 4 of
24 Title 3 of the Commonwealth Code.

25 It is the intent of the Legislature that this Act shall supersede any conflicting portions
26 of Public Law 15-5, effective April 10, 2006. It is the intent of the Legislature that this Act
27 shall supersede Public Law 15-45, effective January 29, 2007, but shall preserve its purpose
28 and intent.

29 It is with these stated objectives that the 15th Commonwealth Legislature enacts these
30 labor reforms in order to meet the economic needs of citizens, permanent residents,
31 businesses, and foreign national workers in the Commonwealth.

1 (Added by the Immigration Conformity Act of 2010)

2 *Public Law 110-229 does not ipso jure preempt the Commonwealth's labor laws. In*
3 *the United States federal system, there are areas in which the States share responsibilities*
4 *with the federal government. Labor (including the terms and conditions under which workers*
5 *are employed) is such an area. The federal government can regulate labor through its*
6 *control of interstate commerce and immigration. But the States remain free to regulate labor*
7 *under the power to control intrastate commerce and under the general police power. The*
8 *Commonwealth has all of the powers of a State in this area, as well as the powers of local*
9 *self-government under the Covenant. Employers and workers in the Commonwealth must*
10 *comply with both federal and CNMI law.*

11 *It is the intent of the Legislature that this Act shall exercise the authority of the*
12 *Commonwealth to regulate labor conditions and practices within the Commonwealth to the*
13 *full extent that this area could be regulated by a State and can be regulated under the*
14 *Covenant. It is further the intent of the Legislature to regulate the terms and conditions*
15 *under which permits previously issued by the Commonwealth were granted so long as those*
16 *permits remain in force and protect the status of foreign national workers as lawfully present*
17 *in the Commonwealth.*

18 *It is the intent of the Legislature that the umbrella permits issued by the Department*
19 *of Labor in 2009 continue to be governed under the Department's normal processes. All*
20 *umbrella permits and the bases on which they were granted are ratified and approved, nunc*
21 *pro tunc, any other provision of current or former law or regulation notwithstanding.*

22 *It is the intent of the Legislature that this Act shall replace the decisions in Smith &*
23 *Williams v. Royal Crown Ins. Co., NMI Super. Ct. Small Claims Nos. 06-0676 et al.*
24 *(February 5, 2007) and Zhou v. Oceania Ins. Corp., NMI Super. Ct. Small Claims Nos. 08-*
25 *0452 et al. (February 5, 2009) so that plaintiffs holding unpaid awards under orders issued*
26 *by the Administrative Hearing Office of the Department of Labor may proceed with*
27 *collection actions in the Commonwealth courts without first exhausting collection remedies*
28 *at the Department of Labor.*

29 *It is the intent of the Legislature to provide to the maximum extent permitted by law*
30 *an employment priority for United States citizens, United States permanent residents, and*
31 *CNMI permanent residents (as that status was defined by Commonwealth law prior to April*
32 *23, 1981) in the workforce of the Commonwealth in order to develop the human resources of*
33 *the people of the Commonwealth as reflected in the provisions and stated intent of PL 110-*
34 *229. It is the intent of the Legislature that the employment priority for United States citizens,*
35 *United States permanent residents, and CNMI permanent residents established by*
36 *Commonwealth law provide legitimate grounds under the Immigration Reform and Control*
37 *Act (IRCA), P.L. 99-603 (1986) for hiring decisions based on citizenship in both the*
38 *government and private sectors in the Commonwealth.*

39

1 **Section 3. Recodification.** Division 4 of Title 3 of the Commonwealth Code is
2 recodified as follows:

- 3 (a) Chapters 1 and 2 shall be codified as Part 1, Chapters 1 and 2 of Division 4. Part 1
4 shall be entitled "Citizenship."
5 (b) Chapter 3 shall be codified as Part 2, Chapter 1 of Division 4. Part 2 shall be entitled
6 "Entry and Deportation."
7 (c) Chapters 4-8 shall be repealed and reenacted pursuant to Section 4 of this Act and
8 codified as Part 3, Chapters 1-6 of Division 4. Part 3 shall be entitled "Employment."
9 (d) The Commonwealth Law Revision Commission shall have the discretion to adjust the
10 numbering of code divisions, parts, articles, or sections affected by this Act as
11 necessary to effectuate a reasonable codification of Sections 3 and 4 of this Act.

12
13 (Added by the Immigration Conformity Act of 2010)

14
15 *Title 3 of the Commonwealth Code is amended as follows:*

16
17 *Part 1: Citizenship*

- 18 A. *Division 4 (Immigration), Part 1 (Citizenship), Chapter 1 (Interim Citizenship Status)*
19 *is repealed.*
20 B. *Division 4 (Immigration), Part 1 (Citizenship), Chapter 2 (Permanent Residency*
21 *Status) is repealed.*

22
23 *Part 2: Entry and Deportation*

- 24 C. *Division 4 (Immigration), Part 2 (Entry and Deportation), Chapter 1 (Commonwealth*
25 *Entry and Deportation Act), Article 1 (General) is repealed.*
26 D. *Division 4 (Immigration), Part 2 (Entry and Deportation), Chapter 1 (Commonwealth*
27 *Entry and Deportation Act), Article 2 (Organization) is repealed.*
28 E. *Division 4 (Immigration), Part 2 (Entry and Deportation), Chapter 1 (Commonwealth*
29 *Entry and Deportation Act), Article 3 (Persons Entering the Commonwealth) is*
30 *repealed.*
31 F. *Division 4 (Immigration), Part 2 (Entry and Deportation), Chapter 1 (Commonwealth*
32 *Entry and Deportation Act), Article 4 (Entry requirements and procedures) is*
33 *repealed.*
34 G. *Division 4 (Immigration), Part 2 (Entry and Deportation), Chapter 1 (Commonwealth*
35 *Entry and Deportation Act), Article 5 (Deportation and departure) is repealed.*
36 H. *Division 4 (Immigration), Part 2 (Entry and Deportation), Chapter 1 (Commonwealth*
37 *Entry and Deportation Act), Article 6 (Registration of aliens) is repealed.*

-
- 1 *I. Division 4 (Immigration), Part 2 (Entry and Deportation), Chapter 1 (Commonwealth*
2 *Entry and Deportation Act), Article 7 (Criminal penalties and miscellaneous*
3 *provisions) is repealed.*
4 *J. Division 4 (Immigration), Part 2 (Entry and Deportation), Chapter 1 (Commonwealth*
5 *Entry and Deportation Act), Article 8 (Detection and apprehension of illegal aliens)*
6 *is repealed.*

7
8 **Section 4. Repealer and reenactment.** The Nonresident Workers Act of the
9 Commonwealth of the Northern Mariana Islands, codified in Title 3, Division 4, Chapters 4-8
10 of the Commonwealth Code, is repealed and re-enacted as Part 3, Chapters 1-6 of Division 4
11 of Title 3 as follows:

12 (Added by the Immigration Conformity Act of 2010)

13 *Division 4 of Title 3 is renamed "Employment and Registration" and the name*
14 *"Immigration" is deleted. Part 1 of Division 4 is repealed. Part 2 of Division 4 is repealed.*
15 *Part 3 (Employment) of Division 4 is renamed Part 1 (Employment). A new Part 2*
16 *(Registration) is added.*

17
18 *Division 4 (Immigration), Part 3 (Employment), Chapter 3 (Moratorium on the Hiring of*
19 *Foreign National Workers) is repealed.*

20
21 *Division 4 (Immigration), Part 3 (Employment), Chapter 4 (Reserved) is repealed.*

22
23 *Division 4 (Immigration), Part 3 (Employment), Chapter 5 (Certification Pre-Clearance) is*
24 *repealed.*

25
26 *Division 4 (Immigration), Part 3 (Employment), Chapter 6 (Employment of Foreign*
27 *Nationals) is renumbered Chapter 3.*

28

29 **PART 1. Employment.**

30 **CHAPTER 1. Department of Labor.**

31 **CHAPTER 2. Employment Preference for Citizens, CNMI Permanent Residents**
32 **and U.S. Permanent Residents.**

33 **CHAPTER 3. Employment of Foreign Nationals.**

34

35 **CHAPTER 1. Department of Labor.**

36 **§ 4401. [Reserved]**

1 § 4402. [Reserved]
2 § 4403. Conflicts of interest
3 § 4404. Duties and responsibilities
4

5
6 § 4401. [Reserved]
7 § 4402. [Reserved]

8 § 4403. Conflicts of interest.

9 No employee or official of the Department of Labor, or his or her immediate relative,
10 shall own or have an equity interest in an employment agency or other business engaged in
11 recruiting or processing employment-related documents. No employee of the Department of
12 Labor shall accept a gratuity or other benefit from an employer or employee whose activities
13 are regulated by this Act unless otherwise permitted by law or regulation. Any person who
14 violates this section shall be guilty of a felony, and may be punished by a fine of five
15 thousand dollars (\$5,000). In addition to any fine, any person who violates this section may
16 be punished by imprisonment for not more than five (5) years. A person convicted under this
17 section shall be terminated from his or her government employment and shall not be re-
18 employed by the Commonwealth government, in any capacity, for a period of ten (10) years
19 from the date of conviction.

20 §4404. Duties and responsibilities.

21 The Secretary may appoint and by regulation define duties and responsibilities for
22 directors and managers in order that the Department's functions may be adjusted flexibly to
23 meet citizen employment needs under changing conditions.
24

25 **CHAPTER 2. Employment Preference for Citizens, CNMI Permanent Residents and**
26 **U.S. Permanent Residents.**

27
28 **Article 1. General**

29 **Article 2. Private sector employment preference**

30 **Article 3. Government employment preference**
31

1 **Article 1. General**

2 **§ 4511. Definitions**

3

4 **§ 4511. Definitions**

5 As used in this chapter, the following terms shall, unless the context clearly indicates
6 otherwise, have the following meanings:

- 7 (a) “Administrative Hearing Office” means the hearing office of the Department of
8 Labor; and for purposes of 1 CMC §§9109 and 9110 as those provisions may apply to
9 this chapter;
- 10 (b) “Citizen” means a person who is a citizen or national of the United States;
- 11 (c) “CNMI permanent resident” means a person who was granted the status of CNMI
12 permanent resident by the CNMI government prior to April 23, 1981;
- 13 (d) “Department” means the Department of Labor;
- 14 (e) “Domestic helper” means a person who assists an employer with the domestic duties
15 of a household, including but not limited to cooking, cleaning, and care for children,
16 elders, and handicapped persons in the home; and does not include farmers;
- 17 (f) “Employer” means a person, corporation, partnership, or other legal entity that has a
18 current business license issued by the Commonwealth, is doing business in the
19 Commonwealth, and has one or more approved employment contracts with foreign
20 national workers, or is acting directly or indirectly in the interest of a person,
21 corporation, partnership or other legal entity in relation to an employee; or a person
22 employing a farmer or domestic helper; and does not include the government of the
23 United States;
- 24 (g) “FAS citizen” means a citizen of the Freely Associated States, which are the
25 Federated States of Micronesia, The Republic of the Marshall Islands, and the
26 Republic of Palau, who is legally residing in the Commonwealth;
- 27 (h) “Hearing officer” means a hearing officer appointed by the Secretary who serves in
28 the Administrative Hearing Office and who conducts mediations, hearings, and other
29 proceedings as necessary; and for purposes of 1 CMC §§9109 and 9110 as those
30 provisions may apply to this chapter;

-
- 1 (i) “Indigenous” means a person generally recognized in the community as a person of
2 Northern Marianas Descent, who is also a citizen or CNMI permanent resident and
3 speaks the Carolinian or Chamorro language to a degree of fluency such that the
4 person may accomplish the basic daily tasks of life without resorting to a language
5 other than the Carolinian or Chamorro language;
- 6 (j) “Job classification” means the job classifications described by regulations;
- 7 (k) “Permanent resident” or “permanent residents” includes U.S. permanent residents,
8 CNMI permanent residents, and FAS citizens residing in the Commonwealth;
- 9 (l) “Regulation” means a regulation or regulations promulgated by the Secretary of
10 Labor or the Secretary of Public Health pursuant to this part;
- 11 (m) “Secretary” means the Secretary of Labor;
- 12 (n) “U.S. permanent resident” means a person who has been granted permanent resident
13 status by the United States.
- 14

15 **Article 2. Private sector employment preference**

16 **§ 4521. Job preference**

17 **§ 4522. Job vacancy announcement**

18 **§ 4523. Job referral and advertising**

19 **§ 4524. Compliance with the “Resident Workers Fair Compensation Act”**

20 **§ 4525. Work force participation by citizens, CNMI permanent residents and U.S.**
21 **permanent residents**

22 **§ 4526. Exemptions**

23 **§ 4527. Investigations**

24 **§ 4528. Adjudication of claims**

25 **§ 4529. Statistical data**

26 **§ 4530. Regulations**

27
28 **§ 4521. Job preference.**

29 Citizens, CNMI permanent residents and U.S. permanent residents shall be given
30 preference for employment in the Commonwealth. Capability in the official languages of the

1 Commonwealth is an important skill with respect to working effectively within the
2 Commonwealth.

3 **§ 4522. Job vacancy announcement.**

4 Any employer may utilize the Department to fill a job vacancy by filing a job vacancy
5 announcement which includes information as required by the Secretary by regulation. Any
6 employer seeking permission to employ workers other than citizens or CNMI permanent
7 resident and U.S. permanent residents shall utilize the Department as provided in this
8 chapter.

9 **§4523. Job referral and advertising.**

10 Upon receiving a job vacancy announcement, the Department shall assess the good faith
11 efforts by the employer to fill the job vacancy with a qualified citizen, CNMI permanent
12 resident or U.S. permanent resident and then shall endeavor to fill the job vacancy by referral
13 of qualified citizens, CNMI permanent residents or U.S. permanent residents registered with
14 the Department. If sufficient qualified citizens, CNMI permanent residents, or U.S.
15 permanent residents are not supplied by such good faith efforts or referral, the Department
16 shall cause the existence of the vacancy and other applicable information regarding the job to
17 be published as prescribed by regulation. The job vacancy announcement shall state the
18 wages and all benefits offered, together with the net cash equivalent of employer-supplied
19 medical insurance, housing, food, transportation, and other benefits, if any, and shall be
20 published for no less than two consecutive days in each of two weeks or equivalent. This
21 requirement may not be waived.

22 **§4524. Compliance with the “Resident Workers Fair Compensation Act.”**

23 All notices issued under this Article shall comply with 4 CMC §9501 et seq., the
24 “Resident Workers Fair Compensation Act.”

25 **§4525. Work force participation by citizens, CNMI permanent residents and U.S.**
26 **permanent residents.**

27 (a) In the full-time workforce of any employer, the percentage of citizens, U.S.
28 permanent residents, and CNMI permanent residents and their immediate relatives
29 employed shall equal or exceed the percentage of citizens, U.S. permanent residents,
30 and CNMI permanent residents and their immediate relatives in the available private

1 sector workforce unless attainment of this goal is not feasible within the current
2 calendar year after all reasonable efforts have been made by the employer.

3 (b) The Secretary shall not waive the requirements of this section.

4 **§ 4526. Exemptions.**

5 (a) The provisions of section 4525 shall not apply to employers of fewer than five (5)
6 employees, provided however, the Secretary may, by regulation, require each
7 business to have at least one employee who is a citizen, CNMI permanent resident or
8 U.S. permanent resident, or remove the exemption available to employers against
9 whom two or more judgments are entered in Department proceedings in any two (2)
10 year period.

11 (b) The Secretary, or an authorized designee, may grant an exemption from this chapter
12 for a particular construction project of limited duration.

13 **§ 4527. Investigations.**

14 The Department or a designee shall conduct investigations as the Department may deem
15 appropriate and necessary to enforce the provisions of this chapter and regulations
16 promulgated thereunder, and to ensure lawful working terms and conditions.

17 **§ 4528. Adjudication of claims.**

18 (a) A citizen, CNMI permanent resident, or U.S. permanent resident who is qualified for
19 a job may make a claim for damages if an employer has not met the requirements of
20 Section 4525, the employer rejects an application for the job without just cause, and
21 the employer employs a person who is not a citizen, CNMI permanent resident, or
22 U.S. permanent resident for the job.

23 (b) The Administrative Hearing Office has original jurisdiction to resolve all claims filed
24 pursuant to this section.

25 (c) A hearing officer shall have general power to issue subpoenas, summon witnesses,
26 require production of books, papers, documents and records, administer oaths, and
27 such other powers as may be necessary to implement this chapter effectively. A
28 hearing officer may refer a matter to the Department for investigation if the hearing
29 officer deems investigation warranted and justified under the circumstances.

30 (d) A hearing shall be commenced as soon as practicable after filing of a complaint and
31 any mediation that may be held in the matter. Notwithstanding any other provision of

1 law, hearings shall be open to the public. Adequate notice and opportunity to present
2 relevant evidence shall be given to all parties.

3 (e) The hearing officer shall, upon concluding the hearing, issue any necessary findings,
4 decisions, and orders as soon as practicable. Issuance of findings, decisions, and
5 orders shall be pursuant to 1 CMC §9110, but shall not be judicially reviewable until
6 final.

7 (f) The hearing officer is authorized to:

8 (1) Award actual and liquidated damages in an amount up to six months' wages for
9 the job for which a citizen, CNMI permanent resident, or U.S. permanent resident
10 applied; and

11 (2) Levy a fine not to exceed two thousand dollars (\$2,000) for each violation of any
12 provision of this chapter.

13 (g) Within fifteen (15) days of issuance, any person or party affected by findings,
14 decisions, or orders made pursuant to subsection (f) of this section may appeal to the
15 Secretary. Upon appeal, the Secretary may, in the Secretary's discretion, restrict
16 review to the existing records, supplement the record with new evidence, hear oral
17 argument, or hear the matter *de novo* pursuant to 1 CMC §§9109 and 9110. The
18 Secretary shall have the same powers as a hearing officer in addition to other powers
19 pursuant to this section. Upon completion of review, the Secretary shall affirm or
20 modify the finding, decision, or order in writing. Any modification shall include
21 supplemental findings. The Secretary's decision shall constitute final action for
22 purposes of judicial review.

23 (h) Judicial review of a final action of the Secretary is authorized after exhaustion of all
24 administrative remedies and shall be initiated within thirty (30) days of the final
25 action. Judicial review shall be pursuant to 1 CMC §9112. Appeals from a final
26 action by the Secretary shall be made directly to the Commonwealth Superior Court.

27 **§ 4529. Statistical data.**

28 The Secretary shall maintain statistical data with respect to the number of citizens and
29 CNMI permanent resident and U.S. permanent residents employed in each of the relevant
30 NAICE categories. The Secretary shall describe any special definitions used in these regards

1 to account for all employment of citizens, CNMI permanent residents and U.S. permanent
2 residents within the enumerated categories.

3 **§ 4530. Regulations.**

4 The Secretary shall promulgate regulations to implement the intent of this chapter
5 pursuant to the Administrative Procedures Act including any delegation of the Secretary's
6 duties as imposed herein to any employee of the Department.

7

8 **Article 3. Government employment preference**

9 **§ 4531. Restrictions on government employment**

10 **§ 4532. Exemptions**

11 **§ 4533. Manpower training programs**

12 **§ 4534. [Reserved]**

13 **§ 4535. Contract personnel**

14 **§ 4536. Payment of medical and related expenses**

15

16 **§ 4531. Restrictions on government employment.**

17 Employment by departments, agencies, and all other instrumentalities of the
18 Commonwealth government is limited to citizens and permanent residents; provided that the
19 government may enter into contracts with foreign nationals for services performed outside of
20 the Commonwealth.

21 **§ 4532. Exemptions.**

22 Persons other than citizens and permanent residents may be exempted from the
23 employment restriction in 3 CMC §4531 and employed within the following government
24 entities and positions, on a case by case basis.

25 (a) Department of Public Health. United States or Canadian board-certified physicians
26 and dentists licensed to practice in the Commonwealth.

27 (b) Department of Commerce. Temporary or part-time employees as needed for
28 censuses and statistical surveys.

29 (c) Government translators. Approved foreign national translators for: the Department of
30 Labor, the Office of the Attorney General, the Office of the Public Defender, the
31 Department of Public Safety, the Commonwealth Superior Court, the Commonwealth

1 Supreme Court, and the Marianas Visitors Authority. The Attorney General shall
2 establish guidelines for the approval of foreign national translators for the Executive
3 Branch. The Supreme Court may establish guidelines for the approval of foreign
4 national translators for the Judiciary.

5 **§4533. Manpower training programs.**

6 In coordination with the Office of Personnel Management, the Northern Marianas
7 College, the Public School System, and the Workforce Investment Agency, each
8 Commonwealth government entity, except the judiciary, authorized pursuant to this chapter
9 to employ workers other than citizens and permanent residents shall develop, maintain, and
10 implement a comprehensive manpower training and education plan covering each position
11 held by a foreign national worker. Failure of the government hiring authority to comply with
12 this provision shall, after thirty (30) days, automatically suspend the privilege of hiring
13 workers other than citizens and permanent residents by the non-complying entity, and this
14 provision shall be strictly enforced. The Office of Personnel Management shall monitor
15 automatic suspensions and shall not approve any contract for the employment of a foreign
16 national worker at a government agency that has been suspended for non-compliance
17 pursuant to this section.

18 **§ 4534. [Reserved]**

19 **§ 4535. Contract personnel.**

20 A government entity authorized to employ persons other than citizens and permanent
21 residents under this chapter may employ such persons through a direct employment contract
22 or by a contract for such services with a licensed manpower agency.

23 **§ 4536. Payment of medical and related expenses.**

24 All employment contracts in which any branch, agency or instrumentality of the
25 Commonwealth government is the employer shall provide for payment of the costs of health
26 insurance for a foreign national worker, as defined in 3 CMC §4911, on the same terms as for
27 citizen and permanent resident employees and other workers, and shall provide for the
28 payment of the costs of repatriation, as defined in 3 CMC §4911.

29
30
31

1 **CHAPTER 3. Employment of Foreign Nationals**

2

3 **Article 1. General**

4 **Article 2. Identification and documentation**

5 **Article 3. Standards for employment**

6 **Article 4. Adjudication of employment disputes**

7 **Article 5. Exit from the Commonwealth**

8 **Article 6. Other provisions**

9

10 **Article 1. General.**

11 **§ 4911. Foreign National Workers: Definitions**

12

13 **§ 4911. Foreign National Workers: Definitions.**

14 The definitions in 3 CMC §4511 are hereby incorporated by reference and, in addition, as
15 used in this chapter, the following terms shall, unless the context clearly indicates otherwise,
16 have the following meanings:

17 (a) “Approved employment contract” means a written contract between a foreign
18 national worker and an employer, which has been approved by the Secretary,
19 specifying the terms and conditions for work to be performed by the foreign national
20 worker within the Commonwealth;

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

24 (c) “Approved security contract” means a written contract executed by an employer
25 providing full security for all employer obligations with respect to the employment of
26 foreign national workers as required by this chapter, in a form that has been approved
27 by the Secretary;

28 (d) “*Bona fide* non-profit religious undertaking” means a religious organization legally
29 established or incorporated in the Commonwealth that is exempt from
30 Commonwealth taxation, or U.S. taxation as an organization described in 26 U.S.C.
31 §501(c)(3);

-
- 1 (e) “Debarment” means, pursuant to an administrative order, the temporary or
2 permanent prohibition on employment by an employer of foreign national workers;
- 3 (f) “Foreign national worker” means a person who is not a United States citizen, a
4 United States permanent resident, a CNMI permanent resident, or an immediate
5 relative of a United States citizen or a United States permanent resident, or an
6 immediate relative of a CNMI permanent resident, and who entered the CNMI as a
7 nonimmigrant for the declared purpose of being employed in the Commonwealth;
- 8 (g) “Identification card” means an identification card issued by the Department using the
9 Labor Information Data System (LIDS) or comparable system to assign a unique
10 identification number to a particular person;
- 11 (h) “Immediate relative” means a parent, spouse, or child, whether natural or adopted, if
12 adopted before his or her eighteenth birthday, up to twenty-one years of age including
13 step children. A disabled child of any age qualifies as an immediate relative if in the
14 continuous custody and care of the parent;
- 15 (i) “Mediation” means an informal, non-public, confidential meeting attended by the
16 parties to a labor dispute or potential labor dispute together with a mediator at the
17 Administrative Hearing Office in order to seek a voluntary resolution of the dispute
18 satisfactory to all parties and reflected in a written agreement;
- 19 (j) “Repatriation” means the exit from the Commonwealth and travel to the point of hire
20 for a foreign national worker or immediate relative of a foreign national worker by
21 voluntary action of the foreign national worker; and in the case of the death of a
22 foreign national worker while in the Commonwealth, the embalming and shipment of
23 the body to the point of hire;
- 24 (k) “Termination” means, with respect to an approved employment contract, the
25 expiration of the contract according to its terms, termination by a party for cause or as
26 otherwise permitted by this chapter during the term of the contract, or termination by
27 the Secretary for cause during the term of the contract; and
- 28 (l) “Transfer” means any process by which a foreign national worker who is a party to an
29 approved employment contract with one employer becomes employed by a different
30 employer without first exiting the Commonwealth.

1 (m) "Umbrella permit" means a two-year permit issued prior to November 28, 2009 by
2 the Department of Labor, the Department of Commerce, or under the authority of the
3 Attorney General, to expire on November 27, 2011, that protects the status of the
4 holder to remain in the Commonwealth until revoked or expired.
5

6 **Article 2. Identification and documentation.**

7 **§ 4921. [Reserved]**

8 **§ 4922. Approved employment contract**

9 **§ 4923. Health certification**

10 **§ 4924. Approved security contract**

11 **§ 4925. Foreign national worker status**

12 **§ 4926. Immediate relative of foreign national worker status**
13

14 **§ 4921. [Reserved]**

15 **§ 4922. Approved employment contract.**

16 (a) Each foreign national worker in the Commonwealth shall be a party to a currently
17 effective approved employment contract.

18 (b) An employer may apply to the Department for an approved employment contract
19 pursuant to which a specifically identified foreign national worker will be employed
20 for a one (1) year or a two (2) year term, at the employer's option, provided however
21 that the Secretary may, by regulation, provide for approved employment contracts of
22 shorter terms for specialty jobs and provide for part-time casual and other
23 employment.

24 (c) The application for an approved employment contract shall be accompanied by a non-
25 refundable application fee to be established by the Department and supported by the
26 following documentation:

27 (1) A proposed employment contract signed by the foreign national worker in full
28 compliance with all applicable Commonwealth laws;

29 (2) A copy of the Notice to Foreign National Workers, required by section 4938(a),
30 that has been delivered to the foreign national worker in his or her native
31 language;

-
- 1 (3) An approved health insurance contract signed by the employer;
2 (4) Such other documentation as required by the Secretary; and
3 (5) All applicable fees.
- 4 (d) The Department shall, in writing, either approve the application or deny the
5 application and state the reasons for denial; provided however, the Department may
6 defer action on any application if the employer is a party to any pending case either in
7 the Department or in any court arising from an alleged violation of Commonwealth
8 labor or wage laws.
- 9 (e) The Department shall approve only one employment contract for any foreign national
10 worker; provided however, that a foreign national worker in addition to one full time
11 contract employment, or an eligible immediate relative of a foreign national worker,
12 may be employed by the Central Statistics Division of the Department of Commerce
13 on a temporary or part-time basis as an enumerator or translator to assist with the
14 census and surveys to be conducted by the Central Statistics Division.

15 **§4923. Health certification.**

- 16 (a) [Reserved]
- 17 (b) The Secretary may require a foreign national worker admitted to the Commonwealth,
18 or a person admitted to the Commonwealth as an immediate relative of a foreign
19 national worker, to undergo a physical examination in the Commonwealth performed
20 by any medical physician licensed to practice general medicine in the Commonwealth
21 by the Commonwealth Medical Professional Licensing Board within ten (10)
22 business days after entry into the Commonwealth. The cost of a physical examination
23 of a foreign national worker shall be paid by the employer of the foreign national
24 worker. The cost of an examination of an immediate of the foreign national worker
25 shall be paid by the foreign national worker.
- 26 (c) Within ten (10) business days after the examination, the examining physician shall
27 transmit the certificate to the Secretary of Public Health for transmission to the
28 Secretary of Labor together with a finding as to whether there is any medical reason
29 that the person should not be permitted to remain in the Commonwealth. This finding
30 shall be based on the medical probability that any disease, whether or not
31 communicable, or any disability or any other medical condition would result in

1 significant danger to the health of the inhabitants of the Commonwealth or the need
2 for prolonged medical care or treatment while in the Commonwealth.

- 3 (d) Upon receiving notice that there is a medical reason any foreign national worker or
4 immediate relative should not be permitted to remain in the Commonwealth for health
5 reasons designated as a threat to the public health in the Commonwealth by the
6 Secretary of Public Health, the Secretary shall notify the foreign national worker and
7 offer repatriation at the earliest date on which it is medically safe to travel. If
8 repatriation is not accomplished, the Secretary shall forward the relevant
9 documentation to the federal immigration authorities for deportation.

10 **§ 4924. Approved security contract.**

- 11 (a) Prior to commencement of work by a foreign national worker, an employer shall
12 submit to the Secretary an approved security contract providing financial assurance,
13 in an amount acceptable to the Secretary, for the faithful performance of the
14 obligations of the employer under the approved employment contract and
15 Commonwealth law with respect to the employment of foreign national workers.
- 16 (b) After the commencement of operation of the LTARF as provided in subsection (e) of
17 this section, the approved security contract must be in one of three forms:
- 18 (1) Bonding by contract with a bonding company carrying a national rating in the
19 United States and approved by the Secretary;
- 20 (2) Bonding by contract with a bonding company approved by the Secretary and
21 within an allotment established by the Secretary for that company for a specified
22 number of foreign workers based on the financial assets of the company, the
23 estimated total repatriation costs plus an estimated amount to meet other
24 obligations of the employers to be covered by the company's financial assets, and
25 other relevant factors as provided by regulation; or
- 26 (3) Trust account coverage by direct contract with the Department for payment for
27 each foreign national worker into an account maintained by the Department,
28 provided however that only employers with no outstanding unpaid amounts due
29 the trust account or judgments arising out of Department proceedings more than
30 sixty (60) days in arrears, except those pending appeal, are eligible for trust
31 account coverage. The total amount paid into the trust account by an employer

1 must cover the estimated total repatriation cost for the foreign worker plus an
2 estimated amount to cover other obligations of the employer. If a foreign national
3 worker is repatriated by the employer and the Department determines that there
4 are no outstanding obligations of the employer with respect to that worker, the
5 amount paid into the trust account with respect to that worker shall be repaid by
6 the Department to the employer less an amount, as determined by the Secretary,
7 to reimburse the Department for its actual administrative costs; such costs shall
8 not exceed 4% of the amount deposited by the employer.

9 (c) Each approved security contract shall include the term "Department of Labor surety."

10 An instrument including the term "Department of Labor surety" is payable up to the
11 full amount, without regard to any limiting terms, notice, attendance at hearing, or
12 any other procedural requirement, immediately upon issuance of a final order or
13 judgment by a hearing officer, the Secretary, or a court of competent jurisdiction
14 arising out of any Department proceeding.

15 (d) Any default on an approved security contract shall require the Department to publish
16 an appropriate notice that the defaulting person or corporate entity is no longer
17 acceptable to the Department. An employer that is a party to any approved security
18 contract with such defaulting person or entity must provide the Department with a
19 substitute approved security contract within sixty (60) days of receipt of notice or
20 forfeit the privilege of employing foreign national workers.

21 (e) There is hereby created the Labor Trust Account Revolving Fund (LTARF) which
22 shall be accounted for separately from the General Fund.

23 (1) All monies received as payments under contracts provided for in subsection (b)(3)
24 above shall be deposited into the LTARF.

25 (2) Expenditure authority over the LTARF is vested in the Secretary. Monies in the
26 revolving fund shall be available without appropriation by the Legislature and
27 shall be used to pay judgments for repatriation, unpaid wages, and other damages
28 against employers arising out of Department proceedings with respect to foreign
29 national workers, which remain unpaid by employers or their bonding companies
30 after sixty (60) days or as provided by regulation. The Department shall have a
31 right to proceed against any such employer or bonding company in the place of

1 the foreign national worker to whom or on whose behalf payments were made
2 from the revolving fund. Any balance remaining from funds collected under
3 subsection (b)(3) shall be refunded to the employer in accordance with that
4 subsection.

5 (3) Any interest earned on the LTARF shall become part of the fund.

6 (4) With respect to the management of the LTARF and the expenditures made from
7 it, the Department is exempt from Title 1, Division 7, Part 1, Chapters 1 through
8 7, 1 CMC §7101 et seq.

9 **§ 4925. Foreign national worker status.**

10 (a) The Secretary shall cause to be issued an identification card which shall include the
11 foreign national worker's name, LIDS number, such identifying information as the
12 Secretary shall find necessary, and the expiration date of the card.

13 (b) Each identification card may be renewed annually until the foreign national worker
14 leaves the Commonwealth.

15 (c) The Secretary, by regulation, may establish streamlined procedures for renewals,
16 including letter renewal, if there are no changes in the information contained on the
17 initial application.

18 (d) All fees for the initial application for and annual renewals of the identification card
19 for a foreign national worker shall be the responsibility of and shall be paid, without
20 offset or charge back to the foreign national worker, by the employer or the
21 employer's registered agent.

22 (e) Umbrella permits issued by the Department continue in full force and effect until
23 revoked. Each holder of an umbrella permit must also hold a current identification
24 card.

25 **§ 4926. Immediate relative of foreign national worker status.**

26 (a) [Reserved]

27 (b) Each immediate relative of a foreign national worker shall be issued an identification
28 card which shall include the sponsoring foreign national worker's name, and the
29 relative's name, LIDS number, such identifying information as the Secretary finds
30 necessary, and the expiration date of the card. The expiration date of the card shall be

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- 1 the same expiration date as the identification card held by the sponsoring foreign
2 national worker.
- 3 (c) [Reserved]
- 4 (d) Each identification card for an immediate relative shall be renewed annually.
- 5 (e) All fees for the initial application for and annual renewals of identification cards for
6 immediate relatives shall be the responsibility of the foreign national worker.
- 7 (f) Umbrella permits issued by the Department to immediate relatives continue in full
8 force and effect until revoked. Each holder of an umbrella permit must also hold a
9 current identification card.

10

11 **Article 3. Standards for employment.**

12 **§ 4931. Standard conditions of employment**

13 **§ 4932. Medical insurance**

14 **§ 4933. Benefits**

15 **§ 4934. Orientation**

16 **§ 4935. Contract renewal**

17 **§ 4936. Transfer by administrative order**

18 **§ 4937. Reductions in force**

19 **§ 4938. Avoidance and early resolution of potential labor disputes**

20 **§ 4939. Inspection of worksites**

21 **§ 4940. Investigations**

22

23 **§ 4931. Standard conditions of employment.**

- 24 (a) Single employer. A foreign national worker may be employed by only one employer
25 pursuant to a single approved employment contract, except as provided by regulation.
- 26 (b) Identification. Upon being issued an identification card, a foreign national worker
27 shall maintain the identification card in his or her personal possession at all times
28 during working hours, including at all times during travel by airplane or boat during
29 working hours. Loss or destruction of the identification card shall be reported to the
30 Department within two (2) business days. Seizure of an identification card by an
31 employer shall be a violation of this section.

- 1 (c) Wage rates. No foreign national worker employed pursuant to this chapter shall be
2 paid less than the minimum wage provided by law. An approved employment
3 contract shall provide that any future increase in the applicable minimum wage prior
4 to the termination of the contract shall apply to work performed under the contract on
5 or after the effective date of the increase.
- 6 (d) Location of work site. The location of the work site shall be specified in the
7 approved employment contract.
- 8 (e) Hours of work. The hours of work shall be specified in the approved employment
9 contract. Overtime work may be offered by the employer but not required. Any
10 period of time during which the foreign national worker is required to be present at
11 any location within the Commonwealth designated by his or her employer shall be
12 considered working hours for purposes of determining wages and overtime pay.
- 13 (f) Payment of wages. Unless otherwise provided by law, a foreign national worker
14 shall be paid bi-weekly in an amount specified in the approved employment contract.
15 Nothing in this section requires an employer to pay wages for which the employee
16 did not work. Payment of wages shall be in full compliance with Commonwealth law
17 and applicable federal law.
- 18 (g) Deductions from wages. Each expense of the employer to be deducted from the
19 wages of a foreign national worker shall be specified in the approved employment
20 contract and shall be itemized on the wage documentation provided to the foreign
21 national worker by the employer. Allowable deductions shall be defined in
22 regulations, and no other deductions may be made from the wages of a foreign
23 national worker.
- 24 (h) Documents. The employer shall provide to each foreign national worker promptly
25 after arrival in the Commonwealth a copy of the approved employment contract. No
26 employer may withhold from any foreign national worker any passport, identification
27 card, or other document related to the status of the foreign national worker.
- 28 (i) Subcontracting. Any subcontract by an employer to another employer for the
29 services of a foreign national worker shall be implemented or performed only with
30 the prior approval of the Secretary. The exception for census workers in section
31 4922(e) shall apply to this subsection.

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- 1 (j) Contract changes. Any change to an existing approved employment contract shall be
2 implemented or performed only with the prior approval of the Secretary.
- 3 (k) Manpower plan. Prior to the approval of an employment contract for a foreign
4 national worker, an employer with ten (10) or more employees shall submit to the
5 Department a comprehensive manpower training and education plan for increasing
6 the percentage of citizens and permanent residents in the workforce of the employer;
7 provided however, the Secretary may, by regulation, remove the exemption available
8 to employers against whom two (2) or more judgments are entered in Department
9 proceedings in any two (2) year period. An employer that has submitted adequate
10 documentation with respect to compliance for the immediately preceding two (2)
11 years with Section 4525 may be exempted at the discretion of the Secretary.

12 **§ 4932. Medical insurance.**

- 13 (a) Employers shall pay all expenses of necessary medical care for foreign national
14 workers except as provided by regulation. After commencement of operation of the
15 LHIRF as provided in subsection (d) of this section, employers of foreign national
16 workers shall be required to have an approved health insurance contract providing
17 coverage for each foreign national worker employed. This contract shall be effective
18 upon entry of the foreign national worker to the Commonwealth and may be
19 cancelled upon the expiration of the employer's obligation as provided in subsection
20 (b) of this section.
- 21 (b) The employer's obligation to carry medical insurance for each foreign national
22 worker employed shall continue for the duration of an approved employment contract
23 and until the earliest of the following:
- 24 (1) Exit of the foreign national worker from the Commonwealth; or
- 25 (2) Sixty (60) days after the lawful termination of an approved employment contract
26 with the foreign national worker, except that the employer's obligation to pay
27 medical expenses shall continue during the pendency of a renewal application
28 filed with the Department.
- 29 (c) The approved health insurance contract must cover all needed nonelective care for
30 foreign national workers, include a co-pay element approved by the Secretary of
31 Health, and must be in one of three forms:

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- 1 (1) Self insurance by direct contract with one or more medical providers licensed in
2 the Commonwealth or elsewhere, provided however that only employers with
3 more than \$1 million in assets and no outstanding unpaid bills more than sixty
4 (60) days in arrears to CHC are eligible to self-insure;
- 5 (2) Insurance by contract with an insurance company carrying a national rating in the
6 United States and approved by the Secretary of Public Health; or
- 7 (3) Pool insurance by direct contract with the Commonwealth Health Center for a
8 monthly premium for each foreign national worker, provided however that only
9 employers with no outstanding unpaid premiums more than sixty (60) days in
10 arrears to CHC are eligible for pool insurance and the total annual premium
11 payments for pool insurance must be calculated to cover the total annual cost of
12 the care provided to workers in the pool. The Secretary of Public Health shall
13 promulgate regulations for the implementation of this section.

14 (d) There is hereby created the Labor Health Insurance Revolving Fund (LHIRF) which
15 shall be accounted for separately from the General Fund.

16 (1) All monies received as payments under contracts provided for in subsection (c)(3)
17 above shall be deposited into the LHIRF.

18 (2) Expenditure authority over the LHIRF is vested in the Secretary of Public Health.
19 Monies in the revolving fund shall be available without appropriation by the
20 Legislature and be used to pay for the health care obligations of participating
21 employers with respect to foreign national workers and the health care obligations
22 of participating foreign national workers with respect to their immediate relatives
23 and associated or supporting expenses of the Commonwealth Health Center.

24 (3) Any interest earned on the LHIRF shall become part of the Fund.

25 (4) With respect to the management of the revolving fund and the expenditures made
26 from it, the Department of Public Health is exempt from Title 1, Division 7, Part
27 1, Chapters 1 through 7, 1 CMC §7101 et seq.

28 **§ 4933. Benefits.**

29 Except as otherwise provided by a memorandum or other agreement between the
30 Commonwealth and the foreign country that issued a passport to the foreign national worker,
31 employers may but are not required to provide housing, food, transportation, and other

1 benefits beyond the medical insurance required under Section 4932; and foreign national
2 workers may not be required by an employer to utilize housing, food, transportation, or other
3 benefits beyond the medical insurance required under Section 4932 .

4 **§ 4934. Orientation.**

5 (a) Within one (1) week of arrival in the Commonwealth each foreign national worker
6 shall attend an orientation at the Department or other location as designated by the
7 Secretary. The orientation shall cover the rights and obligations of employers, agents
8 of employers, and foreign national workers and such other information as the
9 Secretary deems useful in avoiding potential labor disputes. Orientations shall be
10 conducted on normal business days by employees of the Department.

11 (b) Identification cards issued pursuant to 3 CMC §4925 shall be delivered to the foreign
12 national worker at the orientation session. The foreign national worker shall
13 acknowledge receipt of the identification card and attendance at the orientation.

14 (c) Any employer of a foreign national worker or a representative may attend an
15 orientation session at any time.

16 (d) The Secretary may cancel an orientation session due to lack of demand.

17 **§ 4935. Contract renewal.**

18 (a) An approved employment contract with a foreign national worker may be renewed.
19 The criteria for approval of renewals shall be provided by regulation.

20 (b) A request for renewal shall be made by submitting to the Secretary a renewal form
21 signed by the employer and foreign national worker; a new approved employment
22 contract if necessary; an approved health insurance contract as provided in section
23 4932, an approved security contract as provided in Section 4924; a nonrefundable and
24 nontransferable renewal application fee; and such additional documentation the
25 Secretary may require by regulation.

26 (c) A request for renewal shall be submitted no earlier than forty-five (45) days prior to
27 the termination date and no later than thirty (30) days prior to the termination date of
28 an approved employment contract.

29 **§ 4936. Transfer by administrative order.**

30 A foreign national worker shall not transfer from one employer to another at any time
31 prior to or after contract expiration. A transfer or extension of time to transfer may be granted

1 as a remedy only pursuant to an administrative order issued by a hearing officer. This section
2 shall not limit any right or remedy provided under Commonwealth law.

3 **§ 4937. Reductions in force.**

4 An employer who employs foreign national workers may reduce the number of current
5 employees based on economic necessity. The employer shall provide notice to the
6 Department at least sixty (60) days prior to the reduction in force.

7 **§ 4938. Avoidance and early resolution of potential labor disputes.**

8 (a) Notice to Foreign National Workers. The Secretary shall approve a form of written
9 notice and each employer shall deliver the notice to each foreign national worker
10 upon commencement of employment within the Commonwealth. The notice shall be
11 in the principal language of the foreign national worker and shall explain clearly, in
12 separate sentences, each of the basic legal employment rights of foreign national
13 workers in the Commonwealth as provided by law; and such other information as the
14 Secretary deems useful in avoiding potential labor disputes.

15 (b) Reporting of potential disputes.

16 (1) In the event that an employer fails to make full and complete payment of bi-
17 weekly wages less allowable deductions on two successive occasions, or if a
18 conflict arises between the foreign national worker and the employer about
19 working conditions or the implementation of the terms of the approved
20 employment contract, the foreign national worker shall report the potential
21 dispute to the Department promptly in order to facilitate early resolution of the
22 potential dispute and to maintain the employment relationship.

23 (2) In the event that a foreign national worker fails to report for work for two (2)
24 successive weeks without notice to the employer of medical or other reasons for
25 absence, or if a conflict arises between the employer and the foreign national
26 worker about working conditions or the implementation of the terms of the
27 approved employment contract, the employer shall report the potential dispute to
28 the Department promptly in order to facilitate early resolution of the potential
29 dispute and to maintain the employment relationship.

30 (c) Accountability. Each employer is accountable for every foreign national worker for
31 whom the employer has had an approved employment contract in effect at any time

1 during the preceding calendar year and shall ensure that such persons are currently
2 employed by the employer, have transferred to another employer by administrative
3 order, have exited the Commonwealth, are otherwise accounted for as remaining in
4 the Commonwealth lawfully, or are deceased. In the event that an employer becomes
5 unable to account for a foreign national worker, the employer shall report to the
6 Department within fifteen (15) business days. This provision shall have only
7 prospective application.

8 (d) Mediation of labor disputes. The Administrative Hearing Office shall, as it finds
9 necessary and useful, conduct early intervention in potential and actual labor disputes
10 in order to seek a mediated resolution.

11 (1) Upon the filing of a labor complaint, or upon the receipt of a report from an
12 employer or a foreign national worker pursuant to subsection (c) of this section
13 that reasonably appears likely to be resolved through mediation, the
14 Administrative Hearing Office may set the matter for prompt mediation and
15 notify the parties to appear.

16 (2) In the event that a matter is set for mediation, the parties shall attend the
17 mediation and make a good faith attempt to settle the dispute before proceeding
18 with the claim. If the Department is the complainant, it may waive the mediation
19 requirement.

20 (3) Failure of a complainant to appear at the mediation without providing the
21 Administrative Hearing Office with advance written notice at least five (5) days
22 prior to the scheduled appearance may result in the dismissal of a complaint
23 without prejudice.

24 (4) At a mediation session, a hearing officer may issue a notice of hearing with
25 respect to the complaint, dismiss a complaint as untimely under section 4962(b),
26 and take other administrative actions to assist in the prompt resolution of the
27 complaint.

28 **§ 4939. Inspection of worksites.**

29 (a) Administrative inspections of worksites. In order to enforce the labor laws of the
30 Commonwealth, the Secretary or a designee may inspect any worksite where foreign
31 national workers are employed.

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- 1 (1) No warrant is required for inspection of a worksite, and the Department need not
2 present any evidence of a violation of labor laws or regulations as a basis for such
3 an inspection. As a condition of enjoying the privilege of employing foreign
4 national workers in the Commonwealth, every employer who executes an
5 approved employment contract with a foreign national worker shall be deemed to
6 have consented, expressly and in writing, to administrative inspections of the
7 employer's worksites in accordance with the provisions of this chapter.
- 8 (2) No notice of the date and time of the inspection need be given to the employer in
9 advance of the actual inspection.
- 10 (3) The Department shall furnish, at a reasonable cost, to every employer of foreign
11 national workers whose worksite is subject to inspection a list of revised statutes
12 and regulations describing the employer's obligations and defining the
13 inspector's authority.
- 14 (b) Frequency of inspections. The rules governing the frequency of administrative
15 inspections shall be prescribed by regulation and published in an administrative
16 schedule.
- 17 (c) Scope of inspections. The inspector may inspect:
- 18 (1) All public areas of the worksite and premises to which the general public might
19 reasonably be expected to have access to during normal business hours;
- 20 (2) All areas of the worksite and premises in which workers are observed, or might
21 reasonably be expected to have access to during the normal operation of the
22 employer's business;
- 23 (3) The employer's payroll records, approved foreign national worker contracts, or
24 any other documents or business records the employer is required to collect,
25 maintain or produce for inspection pursuant to this chapter, regulations, and the
26 Minimum Wage and Hour Act;
- 27 (4) All equipment, machines, tools, or devices any worker might reasonably be
28 expected to use, operate or maintain, in the normal course of the employer's
29 business;
- 30 (5) All safety devices, safeguards (such as machine guarding, electrical protection,
31 scaffolding, safe walking-working surfaces, means of egress in case of

1 emergencies or fire, ventilation, noise exposure protection, personal protective
2 equipment for eyes, face, head and feet, fire protection and sanitation), drinking
3 water supply and toilet facilities;

4 (6) All waste disposal equipment, trash and refuse containers; and

5 (7) Employer-provided housing and common areas, including, but not limited to: fire
6 protection devices or improvements; sanitation equipment; ventilation, whether
7 natural or mechanical; drinking water supply; toilet facilities; cooking facilities,
8 equipment and appliances; food and food storage equipment and facilities;
9 lighting; windows and screens; bedding; laundry facilities, equipment and
10 supplies.

11 (d) Authority of inspectors.

12 (1) If a violation of any labor law or regulation is found, the inspector may issue a
13 citation, notice of violation, or other process intended to correct the violation or
14 enjoin the employer from certain practices or commence an enforcement action
15 against the employer.

16 (2) The inspector may contact all persons on the worksite to ascertain whether they
17 are foreign national workers and whether they are in possession of valid
18 identification cards, as required by law.

19 (3) The inspector shall not detain or arrest any person, but may refer any person to
20 another enforcement agency for further action consistent with the laws of the
21 Commonwealth or of the United States.

22 (e) Show cause hearing. The Administrative Hearing Office shall disqualify an employer
23 who has refused inspection from employing foreign national workers for a period of
24 at least six (6) months, unless the employer can prove by clear and convincing
25 evidence, that the inspection:

26 (1) Was not requested during normal business hours;

27 (2) Exceeded the frequency of inspections allowed;

28 (3) Exceeded the scope of inspections allowed or was outside the regulatory authority
29 of the Department;

30 (4) Was motivated by spite, harassment, or some improper motive unrelated to the
31 enforcement of this chapter;

1 (5) Was contrary to specific, valid privacy concerns to the employer that are not
2 accommodated by provisions (1) through (4) of this subsection.

3 (f) Personnel for inspections. For purposes of carrying out responsibilities pursuant to
4 this section, the Secretary may, by agreement with other agencies of the
5 Commonwealth government, utilize with or without reimbursement, the services,
6 personnel, or facilities of the other agencies.

7 (g) Inspections of worksites pursuant to warrant.

8 (1) In those instances where the Secretary or a designee intends to inspect any
9 location or worksite in furtherance of obtaining evidence related to a specific
10 criminal investigation, a search warrant from the Commonwealth Superior Court,
11 requiring a showing of probable cause, shall be required.

12 (2) In the event that an employer refuses consent for an inspection or if the
13 Department's inspection will exceed the scope or frequency of the inspections
14 authorized under subsections (a) through (e) of this section, the Secretary or a
15 designee may seek an administrative warrant from the Department's
16 Administrative Hearing Office.

17 (3) An administrative warrant shall be granted if the Department demonstrates to the
18 satisfaction of a hearing officer that one of the following standards has been met:

19 (i) The worksite has been chosen for an inspection on the basis of a general
20 administrative plan derived from neutral criteria for the enforcement of
21 Commonwealth labor laws and regulations;

22 (ii) The Department has presented evidence establishing reasonable suspicion of a
23 recent, ongoing or imminent violation of this chapter, regulations, the
24 Minimum Wage and Hour Act, or any other Commonwealth law protecting
25 the health and safety of employees, at the worksite for which the
26 administrative warrant is sought; or

27 (iii) The Department has presented evidence that the employer has been cited for
28 a violation of Commonwealth labor laws or regulations within the past twelve
29 (12) months at the worksite in question, and the past violation is one that is
30 easily repeated, easily concealed, and poses a risk to the health and safety of
31 one or more employees.

1 **§ 4940. Investigations.**

2 The Department or a designee shall conduct investigations as the Department may deem
3 appropriate and necessary to enforce the provisions of this chapter and regulations, and to
4 ensure lawful working conditions, employer-supplied benefits, and the health and safety of
5 foreign national workers.

6

7 **Article 4. Adjudication of employment disputes.**

8 **§ 4941. Complaints and actions in labor matters**

9 **§ 4942. Jurisdiction of the Administrative Hearing Office**

10 **§ 4943. [Reserved]**

11 **§ 4944. Powers of the hearing officer**

12 **§ 4945. Service of process**

13 **§ 4946. Conduct of hearings**

14 **§ 4947. Orders and relief**

15 **§ 4948. Appeal to the Secretary**

16 **§ 4949. Judicial review**

17 **§4950. Preservation of private rights of action**

18

19

20 **§ 4941. Complaints and actions in labor matters.**

21 (a) Individual complaints. Any foreign national worker who is aggrieved by the failure
22 or refusal of his or her employer to comply with an approved employment contract
23 may make a complaint to the Department. Any employer of a foreign national
24 worker who is aggrieved by the failure or refusal of his or her employee to comply
25 with an approved employment contract may make a complaint to the Department.

26 (b) Department actions. The Department may commence an action against an employer
27 or a foreign national worker for an alleged violation of the labor or wage laws of the
28 Commonwealth.

29 (c) Court actions. The Attorney General, at the request of the Secretary, may institute an
30 action in any court of competent jurisdiction for a temporary restraining order,
31 injunction, or other appropriate remedy to enforce any provision of this chapter.

1 **§ 4942. Jurisdiction of the Administrative Hearing Office.**

2 (a) Jurisdiction. The Administrative Hearing Office shall have original jurisdiction to
3 resolve all actions involving alleged violations of the labor and wage laws of the
4 Commonwealth, including but not limited to any violation of this chapter and
5 regulations promulgated thereunder. The Commonwealth Superior Court shall have
6 concurrent jurisdiction to resolve all labor and wage violations that are criminal in
7 nature.

8 (b) Single action required. The Administrative Hearing Office shall hear all claims of the
9 foreign national worker or the employer in a single action. The failure of a party to
10 assert all claims before the Administrative Hearing Office arising out of an
11 employment relationship shall result in a waiver by the party of unasserted claims and
12 bar assertion in a subsequent proceeding to the fullest extent permitted by
13 Commonwealth law.

14 (c) Limitation on stays of proceedings. The Administrative Hearing Office shall not stay
15 any proceeding to allow the parties to proceed with their claims in a different forum
16 except upon order of a court of competent jurisdiction.

17 **§ 4943. [Reserved]**

18 **§ 4944. Powers of the hearing officer.**

19 A hearing officer shall have general power to issue subpoenas, summon witnesses,
20 require production of books, papers, documents and records, administer oaths, and such other
21 powers as may be necessary to implement this chapter effectively. A hearing officer may
22 refer a matter to the Department for investigation if the hearing officer deems investigation
23 warranted and justified under the circumstances.

24 **§ 4945. Service of process.**

25 Service of process for any notice of any kind required for any proceeding conducted by
26 the Administrative Hearing Office may be by personal service, by first class mail, postage
27 prepaid, to the foreign national worker at the address supplied with the complaint or any
28 written update provided to the Department, and to the employer at the address supplied with
29 the application for the approved employment contract or any written update provided to the
30 Department, or by publication in any English-language newspaper of general circulation in
31 the Commonwealth, at the discretion of the Administrative Hearing Office.

1 **§ 4946. Conduct of hearings.**

2 A hearing shall be commenced as soon as practicable after filing of a complaint and any
3 mediation that may be held in the matter. Adequate notice and opportunity to present
4 relevant evidence shall be given to all parties. Notwithstanding any other provision of law, a
5 hearing may be closed at the discretion of the Administrative Hearing Office upon a showing
6 that it is in the best interests of a party. A decision to close or not to close a hearing shall be
7 reviewable by the Secretary.

8 **§ 4947. Orders and relief.**

9 (a) The hearing officer may, after notice and an opportunity to be heard is provided to the
10 parties, dismiss *sua sponte* a complaint that the hearing officer finds ~~on its face~~ to be
11 without merit. Dismissal shall be reviewable pursuant to the Administrative
12 Procedure Act (1 CMC §9101 et seq.)

13 (b) The hearing officer shall, upon concluding a hearing, issue any necessary findings,
14 decisions, and orders as soon as practicable.

15 (c) Issuance of findings, decisions, and orders shall be pursuant to 1 CMC §9110, but
16 shall not be judicially reviewable until final.

17 (d) The hearing officer is authorized to:

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

23 (2) Assess liquidated damages in twice the amount of unpaid wages or overtime
24 compensation in any case in which a foreign national worker prevails on unpaid
25 wages or overtime compensation claims unless the hearing officer finds
26 extenuating circumstances; and assess liquidated damages in an amount to be
27 determined at the hearing in cases in which the employer's conduct in failing to
28 pay wages or overtime is found to have been willful or retaliatory;

29 (3) Cancel or modify an identification card or an approved employment contract;

30 (4) Order temporary or permanent debarment of an employer;

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- 1 (5) Disqualify a foreign national worker, temporarily or permanently, from
2 employment in the Commonwealth;
- 3 (6) Levy a fine not to exceed two thousand dollars (\$2,000) for each violation of any
4 provision of this chapter;
- 5 (7) Issue declaratory or injunctive relief as appropriate; and
- 6 (8) Award attorneys fees when appropriate in addition to any other enumerated
7 remedy; provided however that attorneys fees shall not be recoverable against the
8 Commonwealth.
- 9 (9) Modify an umbrella permit. An umbrella permit may be continued in effect on
10 any of the bases upon which it could have been granted.
- 11 (10) Revoke umbrella permits for violation of, or condition the continuation in
12 effect of umbrella permits as appropriate to secure compliance with,
13 Commonwealth law, regulations, orders of a hearing officer, or terms of the
14 permit.
- 15 (11) Impose such other sanction, order or relief as may reasonably give effect to
16 Division 4, Title 3.
- 17 (e) If other remedies are insufficient to provide a foreign national worker the benefit of
18 the bargain made when entering the approved employment contract, the hearing
19 officer may grant a transfer so that a foreign national worker may become employed
20 under a new approved employment contract without first exiting the Commonwealth,
21 provided that:
- 22 (1) The grounds for granting transfer relief are limited to an unlawful termination of
23 an approved employment contract by an employer; the voiding of an approved
24 employment contract or debarment of an employer for a violation under this
25 chapter; a reduction in force pursuant to Section 4937; the abandonment of the
26 worker during the term of an approved employment contract, but prior to ninety
27 (90) days before the termination date of the contract, by an employer who failed
28 to pay bi-weekly wages on two successive occasions, closed a business, declared
29 bankruptcy, or exited the Commonwealth evidencing an intent not to return; or,
30 upon a finding by the hearing officer that the foreign national worker has

1 prevailed under an equivalent theory of law or equity and that transfer relief is
2 appropriate.

3 (2) A transfer may be granted only to a foreign national worker who has complied
4 with the provisions of the approved employment contract to the extent practicable
5 under the circumstances, and for whom transfer relief is required in order to
6 assure receipt of the benefit of the bargain under the contract that is the subject of
7 the action.

8 (3) A transfer shall be completed within thirty (30) days of the order and in
9 compliance with Sections 4922, 4924, and 4925 of this chapter.

10 (f) The hearing officer may authorize a foreign national worker to be employed in the
11 Commonwealth on a temporary basis pending a hearing with respect to a labor
12 complaint. A temporary work authorization shall end two (2) business days after the
13 hearing officer's order is issued.

14 (g) The hearing officer may assess costs for repatriation of a foreign national worker.

15 (h) The hearing officer may find an action to be frivolous if it is unfounded in fact or law
16 or initiated primarily to obtain an undue pecuniary benefit or for distraction or delay.
17 The filing of an action which is determined by a preponderance of the evidence to be
18 frivolous shall be grounds for permanently disqualifying the foreign national worker
19 who filed the action from employment in the Commonwealth or permanently barring
20 an employer who filed the action from further employment of foreign national
21 workers.

22 (i) The hearing officer shall notify the federal immigration authority promptly upon
23 cancellation or modification of an identification card.

24 **§ 4948. Appeal to the Secretary.**

25 (a) Within fifteen (15) days of issuance, any person or party affected by findings,
26 decisions, or orders made pursuant to Section 4947 of this chapter may appeal to the
27 Secretary by filing a written notice of appeal, in a form prescribed by regulations,
28 stating the grounds for the appeal. If no appeal is made to the Secretary within fifteen
29 (15) days, the findings, decisions, or orders shall be unreviewable administratively or
30 judicially.

1 (b) Upon appeal, the Secretary may, in the Secretary's discretion, restrict review to the
2 existing records, supplement the record with new evidence, hear oral argument, or
3 hear the matter *de novo* pursuant to 1 CMC §§9109 and 9110. The Secretary shall
4 have the same powers as a hearing officer, including but not limited to the power to
5 grant or extend a temporary work authorization, in addition to other powers pursuant
6 to this chapter.

7 (c) Upon completion of review, the Secretary shall confirm or modify the finding,
8 decision, or order in writing as soon as practicable. Any modification shall include
9 supplemental findings. The Secretary's decision shall constitute final action for
10 purposes of judicial review. Failure by the Secretary to confirm or modify a finding,
11 decision, or order within thirty (30) days shall constitute confirmation of each of the
12 findings, decisions, or orders of the hearing officer as the final action of the Secretary
13 for purposes of judicial review.

14 **§ 4949. Judicial review.**

15 (a) Judicial review of a final action of the Secretary is authorized after exhaustion of all
16 administrative remedies and shall be initiated within thirty (30) days of final action.

17 (b) Except as may be contrary to the provisions of this chapter, judicial review shall be
18 pursuant to 1 CMC §9112. Appeal from a final action by the Secretary shall be
19 directly to the Commonwealth Superior Court.

20 (c) Notwithstanding any other provision of law:

21 (1) Notice of all actions and proceedings pursuant to this section shall be served upon
22 the Attorney General;

23 (2) Judicial review shall be confined to the record; and

24 (3) Actions involving judicial review of final action by the Secretary shall be limited
25 to the appeal; other causes of action may not be alleged in the action for judicial
26 review.

27 **§4950. Preservation of private rights of action.**

28 (a) A foreign national worker may bring a direct action in the Commonwealth
29 courts against an employer, or against the issuer of any bond required by the
30 Department of Labor to secure the performance of an employer, with respect

1 to any obligation to pay wages, overtime, medical expenses, or other benefits
2 secured by an employment contract.

3 (b) The Department of Labor may, but is not required to, enforce its
4 administrative orders by bringing an action in the courts.

5 (c) Nothing in this Act shall be construed as limiting the ability of a foreign
6 national worker third-party beneficiary of a bond to bring suit directly against
7 the surety to enforce the bond and collect from the surety to the limits of the
8 bond any finally adjudicated unsatisfied liabilities of the employer to the
9 worker.

10 (d) This section shall have retroactive effect. Claims shall be preserved that are
11 pending or were dismissed or subject to dismissal for lack of authority to
12 bring a direct action. Any statute of limitations for such claims shall be tolled
13 from February 5, 2007, to the effective date of this Act.

14
15

16 **Article 5. Exit from the Commonwealth.**

17 **§ 4951. Exit during the contract term**

18 **§ 4952. Exit after the contract term**

19 **§ 4953. [Reserved]**

20 **§ 4954. Responsibility for costs of repatriation**

21 **§ 4955. [Reserved]**

22 **§ 4956. Limited stay and re-entry for litigation purposes**

23 **§ 4957. No stay or bar in other actions**

24

25 **§ 4951. Exit during the contract term.**

26 A foreign national worker who exits the Commonwealth during the term of an approved
27 employment contract for any purpose other than employment shall inform the Department of
28 the date of exit and date of return. No final administrative order shall be entered during the
29 absence of a foreign national worker in compliance with this section prior to the date of
30 return indicated.

31 **§ 4952. Exit after the contract term**

1 A foreign national worker shall exit the Commonwealth within fifteen (15) days after the
2 date of termination of the approved employment contract or renewal, except as provided by
3 §4956 of this chapter.

4 § 4953. [Reserved]

5 § 4954. **Responsibility for costs of repatriation.**

6 (a) The last employer of record of a foreign national worker shall be responsible for the
7 costs of repatriating that worker except that employment under a temporary work
8 authorization shall not give rise to this obligation. For the purposes of this section, a
9 person employing a foreign national worker without an approved employment
10 contract or identification card or otherwise in violation of Commonwealth law may
11 be held jointly or severally liable for repatriation costs whenever assessed.

12 (b) A foreign national worker shall be responsible for the repatriation costs for any
13 immediate relative of that worker previously declared upon entry to the
14 Commonwealth regardless of divorce or any other claim or controversy with respect
15 to status as immediate relative.

16 (c) The Department may assess repatriation costs by order to a last employer of record or
17 other employer or, in the case of an immediate relative, to a foreign national worker.
18 Within fifteen (15) days of the issuance of an assessment of repatriation costs by the
19 Department, any person or party affected by the assessment order may appeal the
20 order in accordance with Section 4948 and seek judicial review in accordance with
21 Section 4949.

22 § 4955. [Reserved]

23 § 4956. **Limited stay and re-entry for litigation purposes.**

24 (a) A foreign national worker who is required to exit the Commonwealth shall be
25 permitted to remain in the Commonwealth for a period not to exceed thirty (30) days
26 in order to pursue a civil or criminal claims, or to pursue violations of any
27 Commonwealth labor law. After the filing of an action, this period may be extended
28 and departure stayed by a hearing officer or court of competent jurisdiction as
29 necessary to ensure due process rights are protected.

30 (b) A foreign national worker who has exited the Commonwealth shall be permitted to
31 re-enter the Commonwealth not more than five (5) days prior to a scheduled trial or

1 for any other proceeding for which his or her attendance is required, unless a court of
2 competent jurisdiction orders otherwise.

3 (c) A foreign national worker remaining or re-entering under this section shall exit the
4 Commonwealth within three (3) days of the close of the proceeding, unless a court of
5 competent jurisdiction orders otherwise.

6 (d) [Reserved]

7 **§ 4957. No stay or bar in other actions.**

8 No provision of this chapter shall make available or operate as a stay of any court order
9 of deportation. No provision of this chapter shall bar any other civil or criminal action.

10

11 **Article 6. Other provisions.**

12 **§ 4961. Regulations and legislative oversight**

13 **§ 4962. Limitations**

14 **§ 4963. Prohibitions**

15 **§ 4964. Sanctions and penalties**

16 **§ 4965. [Reserved]**

17 **§ 4966. No liability**

18 **§ 4967. Required records**

19 **§ 4968. Fees**

20 **§ 4969. Statistical data**

21 **§ 4970. Required reports**

22 **§ 4971. Electronic filing**

23 **§ 4972. Transition provisions**

24 **§ 4973. Authorization for appropriations**

25

26 **§ 4961. Regulations and legislative oversight.**

27 (a) The Secretary, the Secretary of Public Health, and any other government agency so
28 authorized by this part shall promulgate regulations to implement the intent of this
29 part pursuant to the Administrative Procedure Act (1 CMC §9101 et seq.), including
30 the delegation of any duties as imposed herein.

1 (b) Any changes to the regulations after the effective date of this part, before coming into
2 effect, shall be put before the Legislature for thirty (30) days and may be rejected in
3 whole or in part by joint resolution.

4 **§ 4962. Limitations.**

5 (a) Limitation on effect of foreign national worker status. No employment contract,
6 registration, certification, permit, or the presence of a foreign national worker in the
7 Commonwealth pursuant thereto, shall be grounds for naturalization, or citizenship,
8 or permanent residence in the Commonwealth except as may otherwise be provided
9 by law.

10 (b) Limitation on time for filing labor complaints. No labor complaint may be filed more
11 than six (6) months after the date of the last-occurring event that is the subject of the
12 complaint, except in cases where the actionable conduct was not discoverable upon
13 the last-occurring event. In such instance no labor complaint may be filed more than
14 six (6) months after the date a complainant of reasonable diligence could have
15 discovered the actionable conduct. In any event, no labor complaint may be filed
16 more than thirty (30) days after the termination of an approved employment contract.

17 **§ 4963. Prohibitions.**

18 (a) (1) No person who enters the Commonwealth as a nonimmigrant resident alien may
19 obtain a financial interest in, operate, or engage in any business, or become an
20 employer without first qualifying under Chapter 9 of Division 5 of Title 4, or
21 under other applicable provisions of Commonwealth law; provided however that
22 only U.S. citizens may qualify as a notary public.

23 (2) No person who enters the Commonwealth as a nonimmigrant resident alien may
24 employ a foreign national worker.

25 (3) No person who has at any time entered the Commonwealth for employment may
26 maintain a financial interest in, operate, or engage in any business, or employ
27 others without first qualifying under Chapter 9 of Division 5 of Title 4, or under
28 other applicable provisions of Commonwealth law.

29 (b) No foreign national worker under the age of twenty-one (21) shall be employed in the
30 Commonwealth.

-
- 1 (c) A foreign national worker shall not perform any services or labor within the
2 Commonwealth for any employer other than the employer with whom the foreign
3 national worker has an approved employment contract, except as provided by
4 regulation.
- 5 (d) An employer or a foreign national worker shall not make a materially false statement
6 or give materially misleading information, orally or in writing, to the Department or
7 any employee or officer of the Executive Branch with respect to any requirement of
8 this chapter.
- 9 (e) A foreign national worker shall not work in any capacity, including but not limited to
10 employment or engagement for training, other pre-employment purposes, or any other
11 arrangement that constitutes an employment relationship, prior to the issuance or after
12 the expiration of an identification card.
- 13 (f) A foreign national worker, after filing a labor complaint, shall not perform services or
14 labor for any employer other than under an approved employment agreement or under
15 a temporary work authorization issued by the Department.
- 16 (g) An employer with a total full-time work force of ten (10) or more employees shall not
17 employ foreign national workers who hold temporary work authorizations in more
18 than ten (10) percent of all positions. An employer with a total full-time work force
19 of fewer than ten (10) employees shall not employ more than one foreign national
20 worker who holds a temporary work authorization.
- 21 (h) An employer shall not pay a foreign national worker at a rate of pay lower than the
22 minimum wage as provided by Commonwealth law or applicable federal law or at a
23 rate of pay higher than the rate at which the job was advertised in compliance with 3
24 CMC § 4523.
- 25 (i) An employer shall not make any deduction from the wages of a foreign national
26 worker in violation of Commonwealth law.
- 27 (j) An employer shall not employ a person who is not a citizen or permanent resident and
28 who has entered the Commonwealth without authorization to work; provided
29 however, the Attorney General may authorize a witness or victim of human
30 trafficking or a material witness or victim in another civil or criminal proceeding to
31 work in the Commonwealth without regard to this provision.

1 (k) An employer shall not file an application for an approved employment contract with
2 the Department without the intent or present capability to provide a viable wage-
3 paying job for the foreign national worker within the Commonwealth.

4 (l) This section shall not stay or bar any civil or criminal action in any court.

5 **§ 4964. Sanctions and penalties.**

6 After hearing pursuant to the Administrative Procedure Act, 1 CMC §9101 et seq.:

7 (a) Violation of any subsection of Sections 4923 and 4931 by an employer shall be
8 grounds for debarment of the employer; provided however confiscation of travel
9 documents for the purpose of controlling the movements of a trafficking victim
10 pursuant to the Anti-Trafficking Statute, Chapter 5 of Division 1 of Title 6, is not a
11 violation of this chapter

12 (b) Violation of any subsection of Sections 4923 and 4931 by a foreign national worker
13 shall be grounds for repatriation.

14 (c) An employer who knowingly requires or permits a foreign national worker to pay
15 initial application or renewal fees shall be subject to debarment.

16 (d) In order to prevent the solicitation of sponsorships under circumstances when a
17 foreign national worker is present in the Commonwealth and seeking to stay, a
18 foreign national worker who, while in the Commonwealth, pays for an application fee
19 or a renewal fee shall be subject to repatriation.

20 (e) Violation of Section 4931(k) by making any unapproved change to an approved
21 employment contract shall be, in the discretion of the Secretary and in addition to
22 other available sanctions, grounds for a declaration that the contract is void and for
23 revocation of an identification card of a foreign national worker, and for debarment of
24 an employer.

25 (f) Failure by a foreign national worker to comply with Section 4934(a) by failing to
26 attend an orientation session shall be grounds for cancellation of the identification
27 card and repatriation of the foreign national worker.

28 (g) Violation of Section 4937 by failing to provide notice of a reduction in force shall be
29 grounds for imposition of a fine in the employer of up to two thousand dollars
30 (\$2,000) for each foreign national worker terminated in the reduction in force and
31 debarment of the employer.

-
- 1 (h) Violation of Section 4952 by failing to exit the Commonwealth as required by law
2 shall be grounds for repatriation and the imposition of a fine on the foreign national
3 worker of up to two thousand dollars (\$2,000).
- 4 (i) Violation of any subsection of section 4963 by an employer shall be grounds for the
5 denial of an application for an approved employment contract, voiding of an existing
6 approved employment contract, debarment of an employer, and a fine of up to two
7 thousand dollars (\$2,000) for each unlawful action.
- 8 (j) Violation of any subsection of Section 4963 by a foreign national worker shall be
9 grounds for repatriation and forfeiture of all claims by a foreign national worker for
10 money damages and other relief with respect to employment in the Commonwealth.
- 11 (k) Debarment of an employer shall apply to all business organizations for which that
12 employer serves as an officer, board member, partner, or limited liability corporation
13 member. Such business organizations shall be prohibited from hiring foreign national
14 workers on the same terms as the employer against whom the debarment was issued.
15 Debarment of an employer that is a business organization shall apply to all persons
16 who serve that business organization as an officer, board member, partner, or limited
17 liability corporation member.
- 18 (l) Failure after thirty (30) days from assessment to pay repatriation expenses for a
19 foreign national worker incurred by the Commonwealth shall be grounds for the
20 Attorney General to order the Division of Revenue and Taxation to deduct the full
21 amount of the repatriation costs and the full amount of the award from the employer's
22 NMTIT tax rebate.
- 23 (m) Failure by an employer to make prompt and reasonable efforts to repatriate a foreign
24 national worker, thereby allowing the worker to become an illegal resident of the
25 Commonwealth and subject to repatriation, shall be grounds for the Attorney General
26 to order the Division of Revenue and Taxation to deduct the full amount of the
27 anticipated repatriation costs from the employer's NMTIT tax rebate.
- 28 (n) Failure to comply with the payment terms of an administrative order, in addition to
29 any penalties or damages imposed in the order, shall be subject to additional
30 monetary sanctions of up to twenty-five (25) dollars per day until the obligation is
31 satisfied. Such additional penalties may be assessed as a sanction either by the

1 Administrative Hearing Office, or by the Commonwealth Superior Court pursuant to
2 a civil action filed by the Attorney General.

3 (o) Any fine pursuant to this section may be imposed by a hearing officer in an
4 administrative order or by a court in an action filed by the Attorney General.

5 (p) This section shall not stay or bar any civil or criminal action or remedy in any court
6 of competent jurisdiction.

7 **§ 4965. [Reserved]**

8 **§ 4966. No liability.**

9 The review and approval of any employment contract for a foreign national worker shall
10 not subject the Secretary, the Department, or the Commonwealth government to liability on
11 the employment contract, even if the approved employment contract does not comply with
12 the requirements of laws or regulations.

13 **§ 4967. Required records.**

14 An employer of any foreign national worker shall keep, and present immediately upon
15 demand by the Secretary or a designee, the following information:

16 (a) Personnel records for each foreign national worker including the name, current
17 residence address, age, domicile, citizenship, point of hire, and approved employment
18 contract termination date;

19 (b) Payroll records for each foreign national worker including the job classification;
20 wage rate or salary, number of hours worked each week, gross compensation,
21 itemized deductions, and net payments made biweekly;

22 (c) Documentation for each foreign national worker including police clearance, health
23 certificate, and tax payment records; and

24 (d) Business license and any other information or documentation required by regulations.

25 **§ 4968. Fees.**

26 (a) The Secretary shall establish fees for the administrative actions to be taken by the
27 Department under this Act. The Commonwealth government shall be exempted from
28 paying such fees.

29 (b) Fees imposed under subsection (a) for providing data not otherwise published by the
30 Department shall reflect, to the extent practicable, the full allocated cost of collecting,
31 storing, and delivering the data in usable form.

1 (c) All fees collected pursuant to subsection (a) of this section shall be deposited into a
2 fund to be known as the Foreign Worker Fee Fund. The Secretary shall be the
3 expenditure authority for this account. The Secretary of Finance shall collect the
4 funds and direct proceeds annually into four separate accounts as set forth below:

5 (1) Northern Marianas College Human Resources and Business Development
6 Account. Except as provided in subsections (c)(2)-(4), all of the fees collected
7 shall be placed into an account known as the Northern Marianas College Human
8 Resources and Business Development Account. This account shall be available
9 for legislative appropriation. An appropriation from this account shall be used
10 only to fund business, professional, or visitor industry programs conducted or
11 sponsored by the Northern Marianas College.

12 (2) Northern Marianas College U.S. Apprenticeship Program Account. Fifty percent
13 (50%) or a maximum of one million five hundred thousand dollars (\$1,500,000)
14 of fees collected shall be reserved for the Northern Marianas College U.S.
15 Apprenticeship Program Account. This program shall be administered and
16 coordinated by the Northern Marianas College. Funds shall be expended only for
17 the implementation and purposes of Public Law 15-5, and shall not be
18 commingled with other funds of the College. The president of the college shall
19 have expenditure authority for these funds.

20 (3) Tinian and Rota Account. Five percent (5%) or a maximum of seventy-five
21 thousand dollars (\$75,000) of fees collected shall be reserved for Tinian and five
22 percent (5%) or a maximum of seventy-five thousand dollars (\$75,000) of fees
23 collected shall be reserved for Rota which shall be used for youth employment
24 training programs on those islands. The mayors of Tinian and Rota shall have
25 expenditure authority for these funds.

26 (4) Department of Labor Account. Twenty-five percent (25%) or a maximum of five
27 hundred seventy-five thousand dollars (\$575,000) of fees collected shall be
28 reserved for the Department for use in administering and enforcing the provisions
29 of this part.

30 (d) All funds dedicated under 1 CMC §2282(a)(1) and (a)(2) shall be deposited in the
31 Technical Education Program unless otherwise provided by law.

1 **§ 4969. Statistical data.**

2 (a) The Secretary shall maintain statistical data with respect to the number of foreign
3 national workers employed in each of the relevant NAICS categories.

4 (b) The Secretary shall describe any special definitions used in these regards to account
5 for all employment of foreign national workers within the enumerated categories.

6 **§ 4970. Required reports.**

7 (a) The Secretary shall prepare and submit to the Governor and the presiding officers of
8 the Legislature the following written reports:

9 (1) Within one hundred twenty (120) days of the end of the government fiscal year,
10 the Secretary shall prepare an annual report including data regarding the number
11 of foreign national workers employed in the Commonwealth during the year, the
12 citizenship of the workers, the job classifications filled by the workers; data
13 regarding the number of citizens and permanent residents employed in the
14 Commonwealth during the year, the job classifications filled by these employees;
15 and other information as appropriate.

16 (2) Pursuant to Section 4526(c), the Secretary shall report any exemptions granted
17 within thirty (30) days after the close of each calendar quarter.

18 (3) Pursuant to Section 4527, the Secretary shall investigate and report in writing to
19 the Attorney General any death of a citizen or permanent resident employee as a
20 result of employment, or any injury of a citizen or permanent resident employee
21 as a result of employment which causes substantial physical or mental
22 impairment.

23 (4) Pursuant to Section 4924, the Secretary shall submit a yearly report on the status
24 of approved security contracts not later than thirty (30) days after the close of the
25 fiscal year. The report shall contain the number of approved security contracts
26 accepted in the fiscal year, the dollar limits of each approved security contract
27 arrangement accepted, and a list of any signatories to approved security contracts
28 in default.

29 (5) Pursuant to Section 4940, the Secretary shall investigate and report in writing to
30 the Attorney General any death of a foreign national worker as a result of

1 employment, or any injury to a foreign national worker as a result of employment
2 which causes substantial physical or mental impairment.

3 (b) Pursuant to section 4533, at least sixty (60) days prior to the beginning of each fiscal
4 year, any government entity employing foreign national workers shall prepare and
5 submit to the Governor and the presiding officers of the Legislature a report on the
6 progress of implementation of the manpower training and education plan together
7 with a funding request necessary to implement the plan.

8 (c) Pursuant to Section 4968(d), no later than ninety (90) days after the end of the fiscal
9 year:

10 (1) The Secretary of Finance shall prepare and submit to the Governor and the
11 presiding officers of the Legislature a report on the status of the Foreign Worker
12 Fee Fund;

13 (2) The president of the Northern Marianas College shall prepare and submit to the
14 Governor and the presiding officers of the Legislature a report on the expenditure
15 of such funds; and

16 (3) The mayors of Rota and Tinian shall prepare and submit to the Governor and the
17 presiding officers of the Legislature a report on the expenditure of such funds.

18 **§ 4971. Electronic filing and access.**

19 (a) The Secretary shall establish by regulation a plan for switching from hard copy filing
20 of documents to electronic filing of documents at the Department in order to reduce
21 paperwork and the cost of administration of the requirements with respect to foreign
22 national workers in the Commonwealth. Employers with one hundred (100) or more
23 employees shall be converted to electronic filing by 2010. Employers with more than
24 fifty (50) but fewer than one hundred (100) employees shall be converted to
25 electronic filing by 2012. Employers with fifty (50) or fewer employees shall be
26 converted to electronic filing as prescribed by regulations.

27 (b) The Secretary shall establish by regulation a plan for access via the Internet for
28 employers and foreign national workers to revised statutes and regulations,
29 announcements, notices, opinions and orders, and public data from the Department.
30 The plan shall also include secure access to data pertaining to individual employers or

1 foreign national workers for purposes of updating, correction, or supplementation of
2 the Department's records.

3 **§4972. Transition provisions.**

4 (a) Transition for employment contracts: Any employer employing foreign national
5 workers in the Commonwealth, and any foreign national worker within the
6 Commonwealth, shall comply fully with all provisions of this chapter, and no
7 contract, contract modification, renewal, or transfer shall be permitted except in full
8 compliance with this chapter.

9 (b) Transition exemptions for government employment.

10 (1) Public School System. Foreign language instructors may be exempted if they are
11 graduates of a college or university approved or accredited in accordance with the
12 Public School System Regulations on Employment of Certified Personnel.
13 Specialists in special education and pre-primary education may be exempted not
14 to exceed a total of 10 positions when required in order to comply with federal
15 law provided that the Public School System will first recruit for such positions in
16 Canada, England, Australia, and New Zealand. Persons exempted under this
17 subsection shall, prior to being issued an identification card, pass a teacher
18 certification test as designated by the Board of Education. This exemption shall
19 expire on September 30, 2010, and no contract may provide to the contrary.

20 (2) Department of Public Health.

21 (i) Nurses may be exempted if they are graduates of recognized colleges or
22 universities with a degree in nursing science and satisfy the professional
23 licensing requirements in their country of origin as well as satisfying the
24 licensing requirements established by the Commonwealth Board of Nursing
25 for Licensed Practical Nurse (LPN) or Registered Nurse (RN). Nurses
26 employed pursuant to this subsection shall meet all minimum requirements for
27 employment as provided by law, except that any minimum experience
28 requirement shall not apply to a foreign national worker who completed the
29 nursing education program at the Northern Marianas College or other
30 approved vocational nursing school in the Commonwealth, passed the

1 NCLEX exam, and is employed on or before December 31, 2009, in a nursing
2 position at the Department of Public Health.

3 (ii) Engineering technicians and allied health personnel such as lab technicians, x-
4 ray technicians, respiratory technicians, physical therapists, pharmacy
5 therapists and pharmacy specialists may be exempted if they are graduates of
6 recognized colleges and universities with a degree in their area of specialty in
7 their country of origin and shall have satisfied all of their country's
8 professional licensing and certification requirements in addition to satisfying,
9 if applicable, the licensure requirements established by the Commonwealth
10 Medical Professional Licensure Board.

11 (iii) The exemptions provided in subsections (b)(2)(i) and (ii) of this section shall
12 expire on September 30, 2017, for all positions covered thereunder, and no
13 contract may provide to the contrary.

14 (3) [Reserved]

15 (4) Northern Marianas College. Foreign language instructors and research scientists
16 at the Northern Marianas College may be exempted if they are graduates of
17 colleges or universities in the United States, or colleges or universities which are
18 accredited by United States accrediting associations, or, alternatively, if they have
19 earned degree(s) from colleges, universities, or institutions abroad that are
20 recognized by the Board of Regents and meet all other professional requirements
21 set by the Board of Regents. This exemption shall expire on September 30, 2010,
22 and no contract may provide to the contrary.

23 (5) [Reserved]

24 (c) [Reserved]

25 (d) Transition for owners of businesses. Persons who are not citizens or permanent
26 residents and whose first entry into the Commonwealth for purposes of employment
27 occurred on or before July 28, 1987, and who at the time of enactment of this chapter
28 have a financial interest in, operate, or engage in any business or are employing
29 others in the Commonwealth pursuant to a valid business license shall be granted a
30 transition period by the Department to qualify for entry under Chapter 9 of Division 5
31 of Title 4, or under other applicable provisions of Commonwealth law. The

1 Secretary, in consultation with the Department of Commerce, shall implement a
2 reasonable transition process and time period not to exceed two (2) years from the
3 effective date of this chapter. This subsection shall expire and automatically repeal
4 two years from the effective date of this chapter.

5 (e) Transition for notaries public. The Department of Commerce shall not renew the
6 license as a notary public of any person who is not a citizen or permanent resident
7 after January 1, 2009.

8 (f) [Reserved]

9 (g) Transition for regulations: The Secretary of Labor may implement regulations
10 pursuant to Section 4961(a) separately from the regulations of the Secretary of Public
11 Health. In the event that the Secretary of Public Health does not implement
12 regulations with respect to Section 4932 on medical insurance prior to the effective
13 date of this statute, the provisions of prior law with respect to the responsibility of
14 employers for the medical care of foreign national workers shall continue in full force
15 and effect until the effective date of such final regulations.

16 **§4973. Authorization of Appropriations.**

17 There is hereby authorized to be appropriated such sums as may be necessary to carry out
18 the provisions of this chapter.

19
20 (Added by the Immigration Conformity Act of 2010)

21 *Division 4 (Employment and Registration), Part 2 (Registration) shall be added, as follows:*

22
23 **PART 2. Registration.**

24 **CHAPTER 1. Registration.**

25 **§5001 Registration of aliens.**

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

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

30 (b) Registration shall be conducted by the Department for all classes of aliens.

31 Registration information may be taken on oath or by declaration. Such

1 registration information as the Secretary may require is confidential and may be
2 made available only on request of law enforcement authorities in connection with
3 criminal or juvenile delinquency investigations.

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

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

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

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

15
16 **Section 5. Global amendment.** All references to the term “non-resident worker” in
17 the Commonwealth Code shall be replaced by the term “foreign national worker” as defined
18 in Sections 4911 and 4965 of this Act. The term “resident worker” in 4 CMC §9502(b) shall
19 be replaced by the term “citizen or CNMI permanent resident or U.S. permanent resident”
20 worker as defined in Section 4511 of this Act.

21 **Section 6. Amendment.** Title 4 Section 5941 of the Commonwealth Code is
22 amended as follows:

23 **“5941. Long Term Business Certificate; conditions.**

24 (a) A holder of a long term business certificate is entitled to lawfully engage in business
25 in the Commonwealth for a period of two years; provided, however, that the holder
26 shall post \$25,000 to secure payment of claims made by the Commonwealth
27 government for taxes and government fees and penalties. The deposit shall be in the
28 form of a bond in the amount of \$25,000 issued by a surety company licensed to
29 transact business in the Commonwealth, and approved by the Commonwealth
30 Insurance Commissioner, naming the Secretary of the Department of Commerce as
31 the beneficiary. Such surety company shall be listed as acceptable for federal projects

1 by the United States Department of the Treasury or other surety companies having
2 positive capital/surplus as determined and approved by the Commonwealth Insurance
3 Commissioner. The Secretary of the Department of Commerce may, by regulation,
4 impose such other requirements as the Secretary may find reasonably necessary to
5 ensure the reliability and capability of such surety. The bond must run for a minimum
6 term of ~~two years~~ one year, renewable annually, must provide for a minimum of 30
7 days notice to the Secretary prior to its being cancelled, and must contain such other
8 terms that the Secretary, by regulation, deems necessary and proper.

9 No matter the type of security used for the deposit, the security shall not be
10 released until the alien investor provides the Secretary of the Department of
11 Commerce with a statement from the Department of Finance that all applicable taxes
12 and financial obligations to the CNMI Government are fully satisfied. The alien
13 investor must also publish the notice, in at least one daily newspaper distributed
14 throughout the Commonwealth, once a week for four consecutive weeks, that he the
15 investor has either ceased operation or has divested ~~himself of his~~ its interest ~~of his~~ in
16 the business in the Commonwealth and has applied to the Secretary of the
17 Department of Commerce for release of ~~his~~ the security deposit. Said notice must also
18 contain any details as prescribed by the Secretary of the Department of Commerce by
19 regulation, but, at a minimum, will apprise the Commonwealth government that the
20 security deposit shall be released unless a claim is served upon the Secretary of the
21 Department of Commerce within six months of the last publication of the notice
22 together with a copy of a complaint showing that a civil action has been filed in a
23 court of competent jurisdiction in the Commonwealth during said six month period. If
24 no claim is filed, or if the claim is for less than the entire security deposit, then the
25 excess shall be refunded to the alien investor. If a claim is filed, then the security
26 deposit, or remaining balance thereof, shall be transferred to the Clerk of Court and
27 shall be held by the same until the matter is finally resolved.

28 (b)-(d) Unchanged.”

29 **Section 7. Severability.** If any provision of this Act or the application of any such
30 provision to any person or circumstance should be held invalid by a court of competent

1 jurisdiction, the remainder of the Act or the application of its provisions to persons or
2 circumstances other than those to which it is held invalid shall not be affected thereby.

3 **Section 8. Savings clause.** This Act and any repealer contained herein shall not be
4 construed as affecting any existing right acquired under contract or acquired under statutes
5 repealed or under any rule, regulation or order adopted under the statutes. Repealers
6 contained in this Act shall not affect any proceeding instituted under or pursuant to prior law.
7 The enactment of the Act shall not have the effect of terminating, or in any way modifying,
8 any liability, civil or criminal, which shall already be in existence on the date this Act
9 becomes effective.

10 **Section 9. Effective date.** This Act shall take effect on January 1, 2008, upon its
11 approval by the Governor or becoming law without such approval. This Act shall have only
12 prospective application.

13

14 (Added by the Immigration Conformity Act of 2010)

15 **Section 9. Global amendment.** *The Commonwealth Code is amended to change the*
16 *term “Labor and Immigration Identification Data System” and the corresponding acronym*
17 *“LIIDS” to “Labor Information Data System” and the corresponding acronym “LIDS”*
18 *wherever they occur.*

19 **Section 10. Severability.** *If any provision of this Act or the application of any such*
20 *provision to any person or circumstance should be held invalid by a court of competent*
21 *jurisdiction, the remainder of the Act or the application of its provisions to persons or*
22 *circumstances other than those to which it is held invalid shall not be affected thereby.*

23 **Section 11. Savings clause.** *This Act and any repealer contained herein shall not be*
24 *construed as affecting any existing right acquired under contract or acquired under statutes*
25 *repealed or under any rule, regulation or order adopted under the statutes. Repealers*
26 *contained in this Act shall not affect any proceeding instituted under or pursuant to prior*
27 *law. The enactment of the Act shall not have the effect of terminating, or in any way*
28 *modifying, any liability, civil or criminal, which shall already be in existence on the date this*
29 *Act becomes effective.*

1 *Section 12. Effective date. This Act shall take effect upon its approval by the*
2 *Governor or becoming law without such approval and shall be retroactive to November 28,*
3 *2009 except as otherwise specifically provided herein.*



GIL M. SAN NICOLAS
Secretary

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY

Second Floor Afetña Square Building, San Antonio, P.O. Box 10007, Saipan, MP 96950
Telephone no. (670) 236-0908 or 0903 Facsimile no. (670) 236-0992



CINTA M. KAIPAT
Deputy Secretary

PUBLIC NOTICE

**OF PROPOSED RULES AND REGULATIONS
WHICH ARE AMENDMENTS TO
THE EMPLOYMENT RULES AND REGULATIONS
ISSUED BY THE SECRETARY OF LABOR**

INTENDED ACTION TO ADOPT THESE PROPOSED RULES AND REGULATIONS:

The Commonwealth of the Northern Mariana Islands, Secretary of Labor, 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 of Labor is authorized to promulgate regulations pertaining to employment of citizens, permanent residents, and foreign national workers pursuant to PL 15-108 §§ 4530, 4606, 4961, 4971, and 4972.

THE TERMS AND SUBSTANCE: The proposed revisions are to implement changes to PL 15-108 enacted in PL 17-1, the Immigration Conformity Act of 2010. That Act removed references to immigration and deportation from the Commonwealth Code, as these are now federal functions. That Act also made certain other changes in the labor law.

A SUMMARY OF THE SUBJECTS AND ISSUES INVOLVED: These rules and regulations are promulgated:

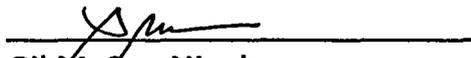
1. To implement the changes in definitions provided in PL 17-1;
2. To change the former 20% citizen participation requirement to a floating benchmark;
3. To implement the requirement under PL 17-1 for an identification card;

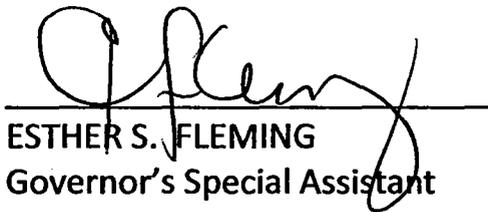
4. To replace the decisions in **SMITH & WILLIAMS V. ROYAL CROWN INS. CO.**, NMI Super. Ct. Small Claims Nos. 06-0676 et al. (February 5, 2007) and **ZHOU V. OCEANIA INS. CORP.**, NMI Super. Ct. Small Claims Nos. 08-0452 et al. (February 5, 2009) so that plaintiffs holding unpaid awards under orders issued by the Administrative Hearing Office of the Department of Labor may proceed with collection actions in the Commonwealth courts without first exhausting collection remedies at the Department of Labor;
5. To provide for the registration of aliens; and
6. To make other conforming changes.

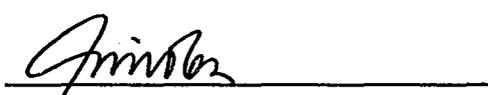
CITATION OF RELATED AND/OR AFFECTED STATUTES, RULES AND REGULATIONS. These proposed regulations will supersede the designated sections of Title 20, Chapter 30, Subchapters 30.1, 30.2, and 30.3 of the N.M.I. Administrative Code and by adding Subchapters 30.4 and 30.5 of the N.M.I. Administrative Code.

~~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 the Deputy Secretary of Labor, at P.O. Box 10007, Saipan, MP 96950, or by fax at 236-0991 or by email at depsec2@gmail.com with the subject line "Proposed Regulations". Comments are due within 30 days from the date of publication of this notice. Please submit your data, views or proposed changes. (1 CMC § 9104(a)(2))

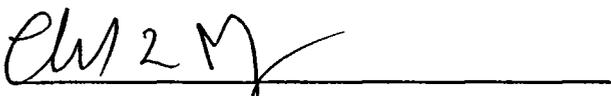
Submitted by:  04/15/10
Gil M. San Nicolas
Secretary of Labor
Date

Received by:  4/14/10
ESTHER S. FLEMING
Governor's Special Assistant
for Administration
Date

Filed and
Recorded by:  04.16.10
ESTHER SAN NICOLAS
Commonwealth Register
Date

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 16 day of April 2010


EDWARD BUCKINGHAM
Attorney General



GIL M. SAN NICOLAS
Secretary

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY

Second Floor Afetña Square Building, San Antonio, P.O. Box 10007, Saipan, MP 96950
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CINTA M. KAIPAT
Deputy Secretary

NOTISIAN PUBLIKU

**GI MAPROPONE NA AREKLAMENTO YAN REGULASION SIHA
NI PARA I AMENDASION I EMPLERU NA AREKLAMENTO YAN REGULASION
SIHA NI NILAKNOS GINEN I SEKRIŦARION HOTNALERU**

**MA'INTENSIONA NA AKSION NI PARA U MA'ADĀPTA ESTE SIHA
MANMAPROPONE NA AREKLAMENTO YAN REGULASION SIHA:** I
Commonwealth gi Sangkattan na Islan Marianas, Sekritarion i Hotnaleru, ha
intensiona na para u adĀpta komu petmanente na regulasion siha
ni mañechetton gi Manmapropone na Regulasion siha, sigun gi manera siha gi
Ākton i Administrative Procedures 1 CMC § 9104(a). I Regulasions siha para u
ifektibu gi dies(10) diha siha despues di ma'dĀpta. (1 CMC § 9105(b)).

ĀTURIDĀT: I Sekritarion Hotnaleru ha Āturisa para u cho'gue i sigun i emplehun
i ciudadĀnu, petmanente na residente siha yan foreign national workers sigun
gi PL 15-108 §§ 4530, 4606, 4961, 4971, yan 4972.

I SUSTĀNSIAN I PALĀBRA SIHA: I mapropone ni maribisa siha
manma'implementa na tinilaika siha gi PL 15-108 ni ma'otdena gi PL 17-1, i
Ākton i Immigration Conformity gi 2010. Ayu na Ākto mana'suha i references
para i immigration yan dipattasion ginen i Kodigon Commonwealth, komu
este siha pĀ'go funksion federĀt siha. Ayu na Ākto lokkue' ha na'siguru i otro
siha na tinilaika gi halom lain hotnaleru.

I SUHETO NI MASUMĀRIA YAN SUNTO NI MANTINEKKA:

Este na areklamento yan regulasion siha manmacho'gue:

1. Para u implementa i tinilaika siha gi halom i definasion siha ni
mapribeniyi gi PL 17-1;

2. Para u tulaika i finene'na na bente (20%) pot sientu na pattispanten siudadanu ni dinimanda para i floating benchmark;
3. Para u implementa i dinimanda gi papa' i PL 17-1 para i kattan aidentikasion;
4. Para u tahgui i disision siha gi as *Smith & Williams v. Royal Crown Ins. Co.*, NMI Super, Ct. Small Claims Nos. 06-0676 et al. (Fibreru 5, 2007) yan *Zhou v Oceania Ins. Corp.*, NMI Super, Ct. Small Claims Nos. 08-0452 et al. (Fibreru 5, 2009) pues ayu kaosadot siha ha gogo'te i unpaid awards gi papa' i etden siha ni malaknos ginen i Ofisinan i Administrative Hearing gi Dipattamenton Hotnaleru ni siña ha konsigi i aksion rinikohi siha gi halom i kotten i Commonwealth sin i finene'namalachai i rimedio na koleksion siha gi Dipattamenton Hotnaleru.
5. Para u pribeniyi para i rehistrasion i estrangheru siha; yan
6. Para u fa'tinas otro na kinonfotma na tinilaika siha.

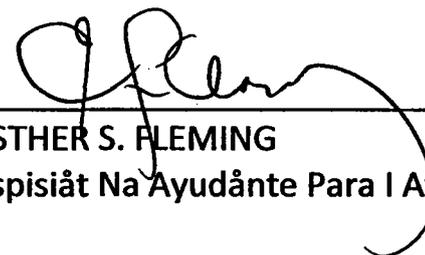
SITASION GI MANACHULE' YAN/PAT MANINAFEKTA NI ESTATUA, AREKLAMENTO YAN REGULASION SIHA. Este i manmapropone na regulasion siha para u supersede i masiñala na seksiona siha gi Titulu 20, Kapitulu 30, Subchapters 30.1, 30.2, yan 30.3 gi N. M. I. Kodigon Administrative yan mana'dañña'i i Subchapters 30.4 yan 30.5 gi N. M. I. Kodigon Administrative.

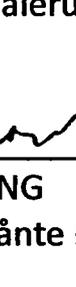
DIREKSION PARA U MAPO'LO YAN MAPUPBLIKA: Este i Manmapropone na Regulasion siha debi na u mapupblika gi halom i Rehistran Commonwealth gi seksiona ni mapropone yan nuebu na ma'adapta na regulasion siha (1 CMC 9102(a)(1) yan u mapega gi halom kombiniente na lugat siha gi halom i civic center yan gi halom i ofisinan gobetnamento gi kada distriton senadot, parehu gi English yan gi lengguahin natibu. (1 CMC § 9104(a)(1)).

PARA U MAPRIBENIYI OPIÑION SIHA: Na'hanao pat entrega i imfetmasion-mu guatu gi i Deputy Secretary of Labot, gi P.O. Box 10007, Saipan, MP 96950, pat fax gi 236-0991 pat email gi depsec2@gmail.com yan i rayan suheto pot i

“Mapropone na Regulasion siha”. Todu imfotmasyon siha debi na u fan hãlom trenta(30)diha siha ginen i fechan este na notisian publikasyon. Pot fabot na’hãlom i imfetmasyon, opiñon pat i manmatulaikan i manmapropone siha. (1 CMC § 9104(a)(2)).

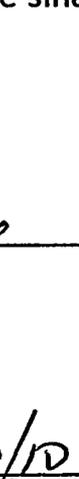
Nina’hãlom as:  _____ 04/15/10
Gil M. San Nicolas Fecha
Sekritãrion Hotnaleru

Rinisibi as:  _____ 4/14/10
ESTHER S. FLEMING Fecha
Espisiãt Na Ayudãnte Para I Administrasion Gobetno

Pine’lo yan
Rinikot as:  _____ 04.16.10
ESTHER M. SAN NICOLAS Fecha
Rehistran Commonwealth

Sigun gi 1 CMC § 2153(e) Inapreban i Abugãdu Henerãt gi regulasion siha ni para u macho’gue komu para fotma) yan 1 CMC § 9104(a)(3) (hentan inapreban i Abugãdu Henerãt) i mapropone na regulasion siha ni mañechetton guini ni manmaribisa yan ma’apreba komu para fotma yan suficiente ligãt ginen i CNMI Abugãdu Henerãt yan debi na u mapublika, 1 CMC §(f) (publikasyon i areklamento yan regulasion siha).

Mafecha gi diha 16 gi Abrit 2010

 _____
EDWARD BUCKINGHAM
Abugãdu Henerãt



GIL M. SAN NICOLAS
Secretary

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY

Second Floor Afetña Square Building, San Antonio, P.O. Box 10007, Saipan, MP 96950
Telephone no. (670) 236-0908 or 0903 Facsimile no. (670) 236-0992



CINTA M. KAIPAT
Deputy Secretary

ARONGORONGOL TOULAP
REEL POMWOL ALLÉGH KKAAL

IKKA EBWE SSIWEL NGÁLI ALLÉGHÚL SCHÓÓL ANGAANG IYE E TOOWOW
MEREEL SAMWOOLUL LABOR

MÁNGEMÁNG IGHA EBWE FILLÓÓY POMWOL ALLÉGH KAAL: Ghatchúl falúw kka falúwasch Efáng, Samwoolul Labor, nge e tipeli ebwe ipigh fillóóy Pomwol Allégh kkaal, sáangi mwóghutul Administrative Procedure Act, 1 CMC Tálil 9104(a). Allégh kkaal ebwe kkamall schagh llól seigh (10) rááilil mwiril yaar fillóóy. (1 CMC Tálil 9105(b)).

BWÁNGIL: Samwoolul Labor nge eyoor bwángil ebwe akkaté allégh kkaal bwelle yaar angaang toulap, aramasal faleey, me aramasal lúghúl kka rekke angaang sáangi Alléghúl Toulap 15-108 Tálil kka 4530, 4606, 4971, me 4972.

AWEEWEL ME ÓUTOL: Pomwol fféer sefáál kkaal ebwe ayoora ssiwel reel Alléghúl Toulap 15-108 ikka e allégh sefáál llól Alléghúl Toulap ye 17-1, alléghúl Immigration Conformity Act llól 2010. Allegh yeel nge ebwe atottoolong mellól Immigration me assefáálló sáangi Commonweath Code, bweigha aa llo mwoghutul federood

EGHÚS AWEWEEL ME KKPASAL KKA E TÉÉTÁ:

Allégh kkaal nge aa akkatééló:

1. Rebwe fféer ssiwel reel aweewe kka eyoor mellól Alléghúl Toulap 17-1;
2. Rebwe siweli mmwal tingor ye 20% reer toulap ngáli floating benchmark;

3. Rebwe ayoor tingór iye elo faal Alléghúl Toulap ye 17-1 reel identification card;
4. Rebwe siweli disisionul Smith & Williams v. Royal Crown Ins. Co., NMI Super. Ct Small Claims Nos. 06-76 et al. (Febuary 5, 2007) me Zhou v. Oceania Ins. Corp., NMI Super. Ct Small Claims Nos. 08-0452 et al. (Febuary 5, 2009) bweigha plaintiffs kka resaal bweibwogh salaapial ye e towoow mereel Administrative Hearing Officers llól Bwulasiyool Labor rete mwir sangi imwal aweewe rese mmwal yaali salaapi ye eyoor llol Bwulasiyool Labor;
5. Rebwe ayoor a bwe aliens (schóóy lughul) rebwe register; me
6. Rebwe fféer akkááw alughulugh (conforming changes).

AWEEWE KKA E GHIL ME/FITIGHOGHOL ALLÉGH KKAAL

Pomwol allégh kkaal ebwe siweli Tálil ye re fili llól Title 20, Ghilighil 30, Ghilighil kka 30. 1, 30.2, me 30.2, me 30.3 mellol N.M.I. Administrative Code me aschulongol Ghilighil kka 30.4 me 30.5 mellól N.M.I. Administrative Code.

AFALAFAL REEL AMMWEL ME AKKATÉÉL: Pomwol Allégh kkaal ebwe ak'atéelo llól Commonwealth Register llól Tálil rekke pomwoli me fillóól allégh ffé (1 CMC Tálil 9102(a)(1)) me appaschetá mellól civic center kkaal me llól bwulasiyool gobenno kka eyoor mellól senatorial district, llól mwaliyeer Amerikkónu, Remeraalis Refalúwasch. (1 CMC Talil 9104(a)(1)).

ISISILONGOL MÁNGEMÁNG: Afangaaló ischil mángemángúmw reel Deputy Secretary of Labor, reel P.O. Box 10007, Seipél, MP 96950, me ngáre fax sáangi 236-0991 me email reel depsec2@gmail.com sangi kkapasal ye "Proposed

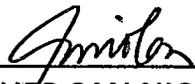
Regulations". Aghiyegh ebwe atotoolong llól eliigh (30) ráálil igha schagh e akkatéwów arong yeel. Óutu ghal soong, ów ischilong reel ssiwel kkaal. (1 CMC Talil 9104(a)(2))

Isaliyallong: 
Gil M. San Nicolas
Samwoolul Labor

04/15/10
Rál

Mwir sáangi: 
ESTHER S. FLEMING
Sów Alillisil Sów Lemelem

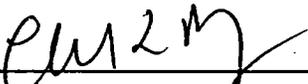
4/16/10
Rál

Ammwel sáangi: 
ESTHER SAN NICOLAS
Commonwealth Register

04.16.10
Rál

Sangi allegh ye 1 CMC Talil 2153(e) (Alughulugh mereel AG reel allegh kka ebwe akkate) me 1 CMC Talil 9104(a)(3) (bwughi yaal alughulugh AG) pomwol allegh kka e appasch nge raa takkal amweri fischi me alegehelegh mereel CNMI Sow Bwungul Allegh Lapalap me ebwe akkateelo, 1 CMC Talil 2153(f) (akkateel allegh kkaal).

Rállil ye 16 llól maramal Séétá 2010


EDWARD BUCKINGHAM
Sów Bwungul Allégh Lapalap

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

EMPLOYMENT RULES AND REGULATIONS

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Subchapter 80-50 Labor Investigations and Dispute Resolution

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Subchapter 80-70 Other Provisions

Subchapter 80-10 Department of Labor

Section 80-10.1 Authority

Section 80-10.2 Purpose

Section 80-10.3 Name

Section 80-10.4 Organization

Section 80-10.5 Definitions

Subchapter 80-10. DEPARTMENT OF LABOR

Section 80-10.1 Authority. The Department of Labor (the "Department), pursuant to its powers, duties, and authority under the Immigration Conformity Act of 2010, PL 17-1; 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 employment of citizens, permanent residents, foreign national workers, and nonimmigrant aliens in the Commonwealth.

Section 80-10.2 Purpose. The purpose of these regulations is to set forth the necessary organization, procedures and requirements to implement Public Law 15-108 as amended by Public Law 17-1, hereinafter "the Commonwealth Employment Act of 2007, as amended."

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

Section 80-10.4 Organization

Section 80-10.4-100 The Department shall be organized with a Secretary, Deputy Secretary, and managers of seven sections: the Citizen Job Availability Section, Citizen Job Placement Section, the Guest Worker Section, the Enforcement Section, the Administrative Hearing Office, the Data Services Section, and the Administration Section. In addition, the Department shall have two coordinators: Federal Relations, and Employer Relations.

§ 10.4-110 The Manager of the Citizen Job Availability Section shall manage the forecasts as to job availability over rolling 12-month periods, monitoring of databases with respect to jobs that will become available for citizen placement, maintaining and analyzing reports from employers and employees on jobs currently active in the economy, operating the JVA system, monitoring compliance with NAICS and O-NET classification requirements, and other matters as assigned by the Secretary.

§10.4-115 The Manager of the Citizen Job Placement Section shall manage the work with individual citizens, CNMI permanent residents, and U.S. permanent residents to match persons seeking jobs to jobs that are or will become available, and to find and coordinate resources from other agencies for job readiness including any necessary training, internship, practice, or other prerequisites to placing citizens in jobs. This manager will also manage the follow-up after citizens are placed in jobs to ensure against hostile workplaces, help secure adequate opportunities to advance, monitor effective dispute resolution, and other matters as assigned by the Secretary.

§10.4-120 The Manager of the Guest Worker Section shall manage all aspects of the regulatory requirements with respect to employment in the private sector of

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

§10.4-125 The Chief of the Enforcement Section shall manage enforcement of requirements both with respect to the employment of citizens, CNMI permanent residents, and U.S. permanent residents, and with respect to employment of nonimmigrant aliens in the Commonwealth. This manager will also manage enforcement of minimum wage and other labor laws, and other matters as assigned by the Secretary.

§10.4-130 The Manager of the Administrative Hearing Office shall manage the intake of complaints and appeals in labor cases, the hearing dockets for all types of cases, maintain the barred list, maintain transcripts and administrative orders, and other matters as assigned by the Secretary.

§10.4-135 The Manager of the Data Services Section shall manage the Department's information technology services including the interactive website, and other matters as assigned by the Secretary.

§10.4-140 The Manager of the Administration Section shall manage the Department's payroll, contracts, standard forms for various administrative functions, standard operating procedures, and other administrative matters as assigned by the Secretary.

§10.4-145 The Manager of Federal Relations is in charge of the Department's liaison with all federal government agencies. The Manager provides a central point of contact with federal officials and agencies, and will search out grant opportunities for the Department to augment its CNMI budgeted funds, coordinate the preparation and presentation of grant applications, and other matters as assigned by the Secretary.

§10.4-150 The Manager of Employer Relations is in charge of the Department's liaison with all employers in the Commonwealth as to their employment of U.S. citizens, CNMI permanent residents, U.S. permanent residents, FAS citizens, foreign national workers, transitional workers, and immediate relatives qualified to work. The Manager of Employer Relations will be responsible for the Department's employment census under the new legislative requirements.

Section 10.4-200 Delegation of authority. The Secretary of Labor hereby delegates authority under the Commonwealth Employment Act of 2007, as amended; the Minimum Wage and Hour Act as amended; and Public Laws No. 11-6, 12-11, and 12-58 to the managers in the Department appointed by the Secretary and the hearing officers in the Administrative Hearing Office.

§10.4-205 Written delegations of authority shall remain in full force and effect until rescinded, altered, or modified as circumstances require.

§10.4-210 An automatic delegation of the Secretary's authority to the Deputy Secretary shall occur whenever the Secretary is off-island.

Section 10.4-300 Appearance of conflict. Employees of the Department shall avoid the appearance of conflicts of interest by reporting to the Secretary any contractual interest in a business that engages in transactions with the Department when the contractual interest is held by or for the benefit of the employee or immediate relative of the employee.

§10.4-305 For purposes of this section, the term "employee" means any person whose salary is paid by or through the Department or any contractor with the Department, and the term "immediate relative" means parent, spouse, sibling, or child.

§10.4-310 Employees of the Department shall advise the Secretary if any immediate relative or person with a close 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 10.4-400 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.

Section 80-10.5 Definitions. The following terms shall, unless the context clearly indicates otherwise, have the following meanings:

- (a) "Administrative Hearing Office" means the hearing office of the Department of Labor; and for purposes of 1 CMC §§9109 and 9110 as those provisions may apply to this chapter;
- (b) "Approved employment contract" means a written contract between a foreign national worker and an employer, which has been approved by the Secretary, specifying the terms and conditions for work to be performed by the foreign national worker within the Commonwealth;

- (c) "Approved security contract" means a written contract executed by an employer providing security for defined employer obligations with respect to the employment of foreign national workers in a form that has been approved or accepted by the Secretary;
- (d) "Citizen" means a person who is a citizen or national of the United States;
- (e) "CNMI permanent resident" means a person who was granted the status of CNMI permanent resident by the CNMI government prior to April 23, 1981;
- (f) "Debarment" means, pursuant to an administrative order, the temporary or permanent prohibition on employment by an employer of foreign national workers;
- (g) "Department" means the Department of Labor;
- (h) "Domestic helper" means a person who assists an employer with the domestic duties of a household, including but not limited to cooking, cleaning, and care for children, elders, and handicapped persons in the home; and does not include farmers;
- (i) "Employer" means a person, corporation, partnership, or other legal entity that has a current business license issued by the Commonwealth, is doing business in the Commonwealth, and has one or more approved employment contracts with foreign national workers, or is acting directly or indirectly in the interest of a person, corporation, partnership or other legal entity in relation to an employee; or a person employing a farmer or domestic helper; and does not include the government of the United States;
- (j) "FAS citizen" means a citizen of the Freely Associated States, which are the Federated States of Micronesia, The Republic of the Marshall Islands, and the Republic of Palau, who is legally residing in the Commonwealth;
- (k) "Foreign national worker" means a person who is not a United States citizen, a United States permanent resident, a CNMI permanent resident, or an immediate relative of a United States citizen or a United States permanent resident, or an immediate relative of a CNMI permanent resident, and who entered the CNMI as a nonimmigrant prior to November 28, 2010 for the declared purpose of being employed in the Commonwealth;
- (l) "Hearing officer" means a hearing officer appointed by the Secretary who serves in the Administrative Hearing Office and who conducts mediations, hearings, and other proceedings as necessary; and for purposes of 1 CMC §§9109 and 9110 as those provisions may apply to this chapter;
- (m) "Identification card" means an identification card issued by the Department using the Labor Information Data System (LIDS) or comparable system to assign a unique identification number to a particular person
- (n) "Immediate relative" means a spouse by marriage, or equivalent status in a family relationship, or a natural, adopted, or step child under the age of twenty-one (21) years, if adopted before the child reached the age of eighteen (18) years, or if the marriage that created the stepchild relationship took place before the child reached the age of eighteen (18) years. A disabled child of any age qualifies as an immediate relative if in the continuous custody and care of the parent;

- (o) "Mediation" means an informal, non-public, confidential meeting attended by the parties to a labor dispute or potential labor dispute together with a mediator 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;
- (p) "Nonimmigrant alien" means a person described in Section 101(a)(15) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15);
- (q) "Private sector" means economic activity carried on by business or non-business employers who are not governmental entities or entities owned or controlled by any government;
- (r) "Repatriation" means the exit from the Commonwealth and travel to the point of hire for a foreign national worker or transitional worker, or immediate relative of a foreign national worker or transitional worker, by voluntary action; and in the case of death while in the Commonwealth, the embalming and shipment of the body to the point of hire;
- (s) "Secretary" means the Secretary of Labor;
- (t) "Status-qualified" refers to a participant in the workforce who is a citizen, CNMI permanent resident, or U.S. permanent resident or an immediate relative of a citizen, CNMI permanent resident, or U.S. permanent resident;
- (u) "Termination" means, with respect to an approved employment contract, the expiration of the contract according to its terms, termination by a party for cause or as otherwise permitted during the term of the contract, or termination by the Secretary for cause during the term of the contract;
- (v) "Transfer" means any process by which a foreign national worker who is a party to an approved employment contract with one employer becomes employed by a different employer without first exiting the Commonwealth;
- (w) "Transitional worker" means a nonimmigrant alien admitted by the federal government for employment in the Commonwealth after November 27, 2009 pursuant to the special provision to ensure adequate employment, Section 702(a) [§6(d)], of PL 110-229;
- (x) "U. S. permanent resident" means a person who has been granted permanent resident status by the United States; and
- (y) "Umbrella permit" means a two-year permit issued prior to November 28, 2009 by the Department of Labor, the Department of Commerce, or under the authority of the Attorney General, to expire on November 27, 2011 or as may be extended, that protects the status of the holder to remain in the Commonwealth until revoked or expired.

Subchapter 80- 20. COMMONWEALTH EMPLOYMENT POLICIES

Section.80-20.1 Job Preference for Citizens

Section 80-20.2 Secondary Preference for FAS Citizens

Section 80-20.3 Workforce Support from Foreign National Workers and Transitional Workers

Section 80-20.4 Collection of Administrative Awards

Subchapter 80-20. COMMONWEALTH EMPLOYMENT POLICIES

Section 80-20.1 Job preference for citizens

Section 20.1-100 Preference requirement. It is the policy of the Commonwealth that citizens, CNMI permanent residents and U.S. permanent residents shall be given preference for employment in the private sector workforce in the Commonwealth. This requirement underlies all regulations with respect to the hiring, renewal, transfer, and termination of employees everywhere in the private sector in the Commonwealth. Job preference is of critical importance to the Commonwealth because its isolated location does not allow its citizens the luxury of nearby alternative job markets, and jobs for its citizens are a key underpinning of the Commonwealth's small economy. Job preference is crucial to the Commonwealth's efforts to provide a U.S. standard of living for its citizens without becoming dependent upon government welfare payments.

§20.1-105 Job preference in the Commonwealth is consistent with, and a key underlying objective of, PL 110-229, the Consolidated Natural Resources Act (2008). The Senate Committee explained in its report: "Section 102(a) expresses Congressional intent to . . . [extend] the INA with special provisions for . . . providing opportunities for locals to work." The law directs the Secretary of the Interior "to assist employers in the Commonwealth in securing employees first from among citizens and nationals resident in the Commonwealth and, if an adequate number of such [local citizen] workers are not available, from among legal permanent residents, including lawfully admissible citizens of the freely associated states." Emphasis added.

§20.1-110 Job preference in the Commonwealth is consistent with, and expressly permitted by, PL 99-603, the Immigration Reform and Control Act (IRCA) (1986). That act provides in Section 274B the following: "(2) EXCEPTIONS. -- Paragraph (1) [the prohibition on discrimination on the basis of citizenship status] shall not apply to --

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

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

"(C) discrimination because of citizenship status which is otherwise required in order to comply with law, regulation, or executive order, or required by Federal, State, or local government contract, or which the Attorney General determines to

be essential for an employer to do business with an agency or department of the Federal, State, or local government.

§20.1-120 Notice to those entitled to preference. The benefits of job preference for citizens cannot be attained without adequate notice to allow qualified citizens to compete fairly for available jobs. Both federal and Commonwealth law recognize the essential requirement of adequate notice. Under the circumstances prevailing in the Commonwealth, notice of every vacancy in a full-time job in the private sector in the Commonwealth must be given to all those entitled to a preference by the broadest means available, which is the Department's free interactive website, www.marianaslabor.net. Notice by other means is sufficient only if a person entitled to preference is hired.

Section 20.1-200 Workforce participation objective. The stability and growth potential of the Commonwealth's economy depend upon active participation by U.S. citizens, CNMI permanent residents, and U.S. permanent residents in the workforce. Because the Commonwealth has a relatively small population, the goal of a U.S.-equivalent standard of living cannot be attained by a workforce composed solely of U.S. citizens, CNMI permanent residents, and U.S. permanent residents. That workforce is simply too small. As with many small communities in the U.S. that support private sector businesses, the Commonwealth needs to draw portions of its workforce from beyond its borders. However, in doing so, the Commonwealth recognizes the need to ensure adequate and meaningful opportunities for its citizens, CNMI permanent residents, and U.S. permanent residents to participate in the local workforce. The workforce participation objective is a means for accomplishing that goal.

Section 80-20.2 Secondary preference for FAS citizens. FAS citizens who are currently in the Commonwealth shall be given a secondary preference for employment within the Commonwealth. FAS citizens are permitted by free association compacts with the United States to enter and work in the U.S. For that reason, FAS citizens are an available resource to augment the Commonwealth workforce.

Section 80-20.3 Workforce support from foreign national workers. Foreign national workers, transitional workers, and nonimmigrant aliens who fill jobs that support the CNMI economy, in an appropriate balance with the Commonwealth's objectives regarding citizen employment, are a valuable resource to the Commonwealth and their work and contributions are important.

Section 80-20.4 Collection of Administrative Awards. The Commonwealth Employment Act of 2007, as amended in Section 4950, replaces the decisions in *Smith & Williams v. Royal Crown Ins. Co.*, NMI Super. Ct. Small Claims Nos. 06-0676 et al. (February 5, 2007) and *Zhou v. Oceania Ins. Corp.*, NMI Super. Ct. Small Claims Nos. 08-0452 et al. (February 5, 2009) so that complainants holding unpaid awards under orders issued by the Administrative Hearing Office of the Department of Labor may proceed with

collection actions in the Commonwealth courts without first exhausting collection remedies at the Department of Labor. The Department may elect, but is not required, to pursue collection actions either against bonding companies or employers. In general, the Department will not pursue collection actions in individual cases because of resource constraints.

Subchapter 80-30. WORKFORCE PARTICIPATION BY CITIZENS, CNMI PERMANENT RESIDENTS, AND U.S. PERMANENT RESIDENTS

Section 80-30.1 General

Section 80-30.2 Private Sector Workforce Participation

Section 80-30.3 Private Sector Employment Preference

Section 80-30.4 Private Sector Compensation, Compliance with Resident Worker Fair Compensation Act

Subchapter 80-30. WORKFORCE PARTICIPATION BY CITIZENS, CNMI PERMANENT RESIDENTS, AND U.S. PERMANENT RESIDENTS

Section 80-30.1 General

Section 30.1-100 Appropriate classification of employers. Employers in the Commonwealth shall be classified under the North American Industrial Classification System (NAICS). NAICS is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. NAICS was developed under the auspices of the federal Office of Management and Budget (OMB), and adopted in 1997 to replace the Standard Industrial Classification (SIC) system. Its manual and website include definitions for each industry.

§30.1-105 Each employer shall select an appropriate NAICS classification for the nature of the enterprise or non-business activity conducted by the employer. The appropriate NAICS shall be entered as required on Department forms.

§30.1-110 Employers without a self-selected NAICS classification or with an inappropriate self-selected NAICS classification shall be assigned a classification by the Department which shall be binding on the employer. Assignment of NAICS classification by the Department (and denial of the self-selected classification) may be appealed by filing an appeal with the Administrative Hearing Office. See §50.4-240.

Section 30.1-200 Fair qualification for employment. Jobs performed in the Commonwealth shall be classified under the O-NET classification for each job in which any person is employed. The Occupational Information Network (O*NET) is a program of the US Department of Labor Employment and Training Administration that is the nation's primary source of occupational information. The O*NET database, contains information on hundreds of standardized and occupation-specific descriptors. The database, which is available to the public at no cost, is continually updated by surveying a broad range of workers from each occupation. Information from this database forms the heart of O*NET OnLine, an interactive application for exploring and searching occupations. The database also provides a set of valuable assessment instruments for workers looking to find or change jobs.

§30.1-205 Each employer shall select an appropriate O-NET classification for the nature of each job performed for the employer. The appropriate O-NET classification shall be entered as required on Department forms.

§30.1-210 Employers without a self-selected O-NET classification for each job or with an inappropriate self-selected O-NET classification shall be assigned a classification by the Department which shall be binding on the employer. Assignment of an O-NET classification by the Department (and denial of the self-selected classification) may be appealed by filing an appeal with the Administrative Hearing Office. See §50.4-240.

Section 80-30.2 Private Sector Workforce participation.

Section 30.2-100 Participation objective. In the workforce of any employer, the percentage of citizens, U.S. permanent residents, and CNMI permanent residents and the immediate relatives of citizens, U.S. permanent residents, and CNMI permanent residents ("status-qualified participants") employed shall equal or exceed the percentage of status-qualified participants in the private sector workforce unless attainment of this goal is not feasible within the current calendar year after all reasonable efforts have been made by the employer.

§ 30.2-115 The workforce participation calculation applies at the time of hire of a foreign national worker, transitional worker, or other nonimmigrant alien. At that time, the actual number of employees who are status-qualified participants in the workforce is compared to the actual number of employees.

§30.2-120 For purposes of workforce participation:

- (a) The workforce in the Commonwealth is defined in the same way as the labor force in the United States is defined, per the U.S. Department of Labor Bureau of Labor Statistics. It is based on the civilian non-institutional population 16 years or older. (Persons in institutions such as

nursing homes and prisons, and persons on active duty in the Armed Forces, are not included.) It is made up of persons with jobs (“employed”) and persons who are jobless, looking for jobs, and available for work (“unemployed”). Persons are available for work if they have a status or permit that allows work in the Commonwealth and are otherwise available for work. Persons who are not employed or unemployed are not in the workforce.

- (b) The private sector workforce is the number of employed and unemployed persons (as defined in subsection (a) above) residing in the Commonwealth less the number of persons employed by the Commonwealth or other governments, including all types of government entities.
- (c) The percentage of status-qualified participants in the private sector workforce is the percentage derived from the decennial census or any other census conducted by the U.S. Census Bureau or from a survey as a part of the Current Population Survey or any other survey conducted by the U.S. Bureau of Labor Statistics, for a period of one year after the actual collection of the data (so that the data are not out of date), or, in the absence of current U.S. data as defined above, the percentage specified by the Department by regulation. The current percentage specified by the Department until census data becomes available is 30%.
- (d) Persons retained by an employer as consultants, advisers, or agents who are independent contractors are not included.

§ 30.2-130 Employment on more than one island. If an employer operates on more than one island, workforce participation is calculated in aggregate to all islands, Employees on any island are counted toward the aggregate minimum percentage on all islands.

§ 30.2-140 Reductions in force. The workforce participation objective applies to reductions in force.

§ 30.2-145 No waivers. No waivers are available with respect to the workforce participation objective.

Section 30.2-200 Exemptions from workforce participation

§ 30.2-205 Employers with fewer than five employees. The provisions of Section 4525 of the Commonwealth Employment Act of 2007, as amended, do not apply to employers with fewer than five employees except as provided in this section. For purposes of this section, all employees are counted. All such employers are subject to the job vacancy announcement requirements for all job vacancies and

all such employers are subject to the job preference requirements as to citizens, CNMI permanent residents, and U.S. permanent residents.

- (a) An employer against whom two or more judgments are entered in Department proceedings within any two year period automatically loses this exemption. No administrative proceeding is required to remove the exemption. A 'judgment' for purposes of this section is a final action, which includes a decision of a hearing officer that has not been appealed within the time allowed, or a decision of the Secretary on a matter that has been appealed within the time allowed, provided however that a stay of the removal of the exemption may be provided by a court of competent jurisdiction. The exemption automatically becomes unavailable on the date on which the second judgment is entered. The term "two judgments" includes judgments in two separate actions *or* cases bearing two separate case numbers, and also includes judgments respect to two complainants in the same action or a case bearing only one case number.
- (b) All retail establishments that handle food stamps shall have at least one citizen, CNMI permanent resident, or U.S. permanent resident employee.
- (c) An employer or business owner with fewer than five employees who has been in operation or who has held a business license in the Commonwealth for three years or more shall have at least one citizen, CNMI permanent resident, or U.S. permanent resident employee.

§ 30.2-210 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, and the 0-NET job classifications of the workers on the project.

Section 80-30.3 Private Sector Employment Preference

Section 30.3-100 Job preference requirement

§30.3-105 Job preference for citizens, CNMI permanent residents, and U.S. permanent residents. Employers shall give qualified citizens, CNMI permanent residents and U.S. permanent residents preference for employment in the private

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

§30.3-110 Notice of job vacancies. In order to ensure maximum participation of citizens, CNMI permanent residents and U.S. permanent residents in the private sector workforce in the Commonwealth, persons in these status categories are entitled to notice of every full-time job that becomes available or open in the Commonwealth with a fair opportunity to apply and demonstrate qualifications.

§30.3-115 Use of website for notice. Notice of every vacancy in a full-time job in the private sector in the Commonwealth for which any person other than a citizen, CNMI permanent resident, or U.S. permanent resident may be hired must be given to all those entitled to a preference by the broadest means available, which is the Department's free interactive website, www.marianaslabor.net. Notice by other means is sufficient only if a person entitled to preference is hired.

§30.3-120 Other use of the website. After satisfying registration requirements to maintain quality and in conformity with applicable procedures, any employer seeking to fill a vacancy and any person seeking employment may use the Department's website.

Section 30.3-200 Job vacancy announcement

§ 30.3-205 Posting. An employer who intends to employ a foreign national worker, transitional worker, or nonimmigrant alien on a full-time basis (under any new employment arrangement, any renewal of any existing employment arrangement, or any transfer) must post a job vacancy announcement on the Department's website, www.marianaslabor.net.

§30.3-210 Content. The posted job vacancy announcement shall include a job description, a statement of the wages to be paid, a statement of all benefits to be provided, and, if applicable, a statement that the job is posted in connection with a proposed renewal or transfer of a foreign national worker or is posted in connection with a proposed on-island hire of a transitional worker or off-island hire of a transitional worker or nonimmigrant alien.

§30.3-215 Job description. The job description in a posted job vacancy announcement shall be defined by the appropriate Occupational Information Network (O-NET) classification. For specialty jobs not adequately defined by O-NET classifications, a parenthetical description may be appended to the closest O-NET classification.

§30.3-220 Wages. The statement of wages in a posted job vacancy announcement shall include the hourly or bi-weekly amount to be paid.

§30.3-230 No waiver. There are no waivers available with respect to the job vacancy announcement requirement.

Section 30.3-300 Employer Registration. Employers shall register online at www.marianaslabor.net in order to post job vacancy announcements. Registrants shall provide the Tax Identification Number issued by the Division of Revenue and Taxation and an industry code from the North American Industrial Classification System (NAICS) appropriate to their line of business. Approved employer registrations remain in effect until further notice from the Department.

Section 30.3-400 Job referral

§ 30.3-405 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.

§ 30.3-410 Referral service. The Citizen Job Placement Section shall provide a referral service for citizens, CNMI permanent residents and U.S. permanent residents in the Commonwealth. This service shall match information about prospective employees with information about job vacancies so that private sector jobs may be filled expeditiously with qualified citizens who are willing and able to do the work required by the employer.

§ 30.3-415 Job applicant registration for referral service. Citizens, CNMI permanent residents, and U.S. permanent residents may register with the Citizen Job Placement Section for assistance in finding employment in the Commonwealth. Registrants shall complete a standard form for registration online. Registration remains active for six months.

§ 30.3-430 Employment referrals. With respect to each job vacancy announcement, the Citizen Job Placement Section may refer to the employer one or more qualified candidates within ten (10) working days after the job vacancy announcement has been posted.

§ 30.3-435 Employer action on referrals. After receiving a referral from the Citizen Job Placement Section, an employer may take any of the following actions:

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

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

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

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

§ 30.3-440 Good faith effort to hire. An employer must make a good faith effort to hire a citizen, CNMI permanent resident or U.S. permanent resident for a job vacancy apart from the referral service provided by the Department in the event that referral service is unsuccessful in locating a qualified applicant.

§ 30.3-450 Employer Declaration. In the event that a citizen, CNMI permanent resident, or U.S. permanent resident was not hired, within fourteen (14) days after publication, the employer shall file a declaration on a standard form in digital format with respect to the citizens and permanent residents who applied for the job, the action taken on each application, and a short statement of the reasons for rejecting any applicant who was referred. No declaration is required if a citizen or permanent resident is hired.

§30.3-455 Shortening of time. Upon request to the Department and good cause shown, time requirements with respect to the job preference requirements may be shortened by the Department.

§ 30.3-460 Certification. If no qualified citizen, CNMI permanent resident, or U.S. permanent resident applicant is identified through posting on the website, referral by the Department, or good faith efforts to hire, the Department shall issue to the employer a certification of compliance document in the standard form prescribed by the Department.

§30.3-465 Denial of certification. If insufficient justification is provided by the employer for failure to hire a citizen, CNMI permanent resident, or U.S. permanent resident, or if no statement is received within 14 days, certification may be denied by the Department. A denial may be appealed to the Administrative Hearing Office within fifteen (15) days after the date of the denial. (See Section 80-50.4-155).

Section 30.3-500 Reductions in Force

§30.3-510 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.

§30.3-515 Circumstances of economic necessity may require an employer to reduce the workforce or close the business. Employers have the right to make such decisions. However, because Commonwealth law requires job preference for citizens, CNMI permanent residents, and U.S. permanent residents, the right of employers of these participants to reduce their workforce with respect to these participants is not unlimited.

§30.3-520 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.

§30.3-525 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.

§30.3-530 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.

§30.3-535 The employer shall layoff foreign national workers, transitional workers, and nonimmigrant aliens before laying off citizens, CNMI permanent residents, and U.S. permanent residents in the same O-NET job classification or any O-NET job classification with lesser requirements except as agreed with the Department for important business reasons. The employer may lay off aliens in any order except that the employer shall lay off aliens other than citizens of the freely associated states before laying off citizens of the freely associated states in

the same O-NET job classification or any O-NET job classification with lesser requirements except as agreed with the Department.

§30.3-540 The employer shall cooperate with the Department by providing documentation as necessary to allow the Department to account for all of the laid off employees. The Department may conduct an investigation related to lay-offs in the event foreign national workers, transitional workers, or nonimmigrant aliens remain employed by the employer. Nothing in this section shall be construed to limit the right of employees to file meritorious complaints against an employer for violations of the Commonwealth Employment Act of 2007, as amended, the Minimum Wage and Hour Act, as amended, the WARN Act, or these regulations, related to the lay-off.

Section 80-30.4 Private Sector Compensation, Compliance with Resident Worker Fair Compensation Act

Section 30.4-100 The Resident Worker Fair Compensation Act. The Act¹ requires:

All benefits mandated by law to be given to non-resident workers, including, but not limited to subsidized food, housing, local transportation, health insurance, or medical expenses must also be given to resident workers as provided herein. These benefits may be provided in the form of in-kind benefits or in a cash equivalent, at the option of the resident worker. Such in-kind benefits or cash equivalent shall be provided to all resident workers in jobs where the standard hourly wage is less than \$5.15, or the prevailing United States Federal minimum wage, whichever is higher. Any cash compensation benefit shall be added to resident workers base wages or salary.

Section 30.4-200 Classification of workers

§30.4-205. Federal minimum wage. The term “prevailing United States Federal minimum wage” as that term is used in the Resident Worker Fair Compensation Act means the federally-mandated minimum wage applicable to the Commonwealth.

§30.4-210 Resident workers. The term “resident workers” as that term is used in the Resident Worker Fair Compensation Act includes citizens, CNMI permanent residents, and U.S. permanent residents. Resident workers are covered by the Resident Worker Fair Compensation Act if they are paid an hourly wage less than \$5.15 per hour. When the federally-mandated minimum wage applicable to the Commonwealth exceeds \$5.15 per hour, then resident workers who earn less than that minimum wage will be covered.

¹ 4 CMC §9503

§30.4-215 Non-resident workers. The term “non-resident workers” as that term is used in the Resident Worker Fair Compensation Act includes all foreign national workers, transitional workers, and other nonimmigrant alien employees. who earn less than \$5.15 per hour or the federally mandated minimum wage applicable to the Commonwealth, whichever is higher.

Section 30.4-300 Benefits

§30.4-305. Benefits mandated by law. The benefits mandated by law with respect to enforcement of the Resident Worker Fair Compensation Act are those related directly to and arising out of compensation involved in the employment relationship.

- (a) Benefits mandated by federal law are social security benefits and worker compensation benefits.
- (b) Benefits mandated by Commonwealth law are health insurance or payment of medical expenses.²

§30.4-310. Subsidized benefits. “Subsidized” benefits as that term is used in the Resident Worker Fair Compensation Act means benefits provided at employer expense the fair value of which is not deducted by the employer from the employee’s wages.

Section 30.4-400. Payment of benefits by employers

§30.4-405 Federal benefits. Employers shall provide benefits under federal law to all employees as required under federal law.

§30.4-410 Commonwealth benefits. Employers shall provide benefits under Commonwealth law to resident workers as follows:

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

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

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

Subchapter 80- 40. WORKFORCE PARTICIPATION BY ALIENS

Section 80-40.1 FAS citizens

Section 80-40.2 Umbrella permit holders

Section 80-40.3 Transitional Workers

Subchapter 80-40. WORKFORCE PARTICIPATION BY NONIMMIGRANT ALIENS

Section 80-40.1 FAS Citizens

Section 40.1-100 Status. FAS citizens may reside and work in the Commonwealth pursuant to the compacts between the Freely Associated States and the United States. The immediate relatives of FAS citizens are permitted under Commonwealth law to work in the Commonwealth so long as the FAS citizen sponsor resides in the Commonwealth.

Section 40.1-200 Secondary preference. Qualified FAS citizens have a secondary preference for available jobs in the private sector in the Commonwealth. The Department shall provide assistance to FAS citizens residing in the Commonwealth in the use of the Department's website to post resumes and locate employment. FAS citizens who fill jobs that support the CNMI economy, in an appropriate balance with the Commonwealth's objectives regarding citizen employment, are a valuable resource to the Commonwealth and their work and contributions are important.

Section 40.1-300 Job preference

§40.1-305 Statutory basis. An underlying purpose of PL 110-229, the Consolidated Natural Resources Act, is to promote the employment of FAS citizens in priority over guest workers. Section 702(a)(2)(D) declares the intention of Congress to maximize the Commonwealth's potential for future economic and business growth by "providing opportunities for individuals authorized to work in the United States, including citizens of the freely associated states." Section 702(a) [Section 6(d)(2)] provides with respect to the goal of reducing the number nonimmigrant alien workers to zero: "This system may be based on any reasonable method and criteria determined by the Secretary of

Homeland Security to promote the maximum use of, and to prevent adverse effects on wages and working conditions of, workers authorized to be employed in the United States, including lawfully admissible freely associated state citizen labor.” Section 702(e) provides for “technical assistance, including assistance in recruiting, training, and hiring of workers, to assist employers in the Commonwealth in securing employees first from among United States citizens and nationals resident in the Commonwealth and if an adequate number of such workers are not available, from among legal permanent residents, including lawfully admissible citizens of the freely associated states.”

§40.1-310 Method. An FAS citizen who wishes to claim a secondary job preference shall provide to employers the necessary information about FAS citizenship. Once that information is provided by an applicant or is known to an employer, the preference for qualified FAS citizens over any other nonimmigrant alien shall operate as provided in Section 80-30.3 after the preference for citizens, CNMI permanent residents, and U.S. permanent residents.

§40.1-320 Access to dispute resolution. FAS citizens may utilize the Department’s dispute resolution system as provided in Section 80-50.

Section 80-40.2 Umbrella Permit Holders

Section 80-40.2-100 General

§40.2-105 Commonwealth immigration categories. Prior to November 28, 2009, nonimmigrant aliens entered the Commonwealth under the Commonwealth’s immigration system. The Commonwealth immigration regulations provided for eleven categories of permits related to employment. The umbrella permit system follows these categories and carries forward the limitations contained in the immigration regulations (under which the initial permits for all of these holders were issued) with respect to employment in the Commonwealth. (The relevant sections of these regulations are reproduced in Appendix A for convenience. The numbering is from the immigration regulations.) The former immigration categories governing permits issued to nonimmigrant aliens permitted to be continue to reside in the Commonwealth were extended in some instances by the Commonwealth’s Protocol for Implementation of P.L. 110-229, Part II(B), issued September 21, 2009.

§40.2-110 Umbrella permit categories. Umbrella permits were issued in the following categories:

- 240B Nonimmigrant aliens who are CNMI government employees
- 240D Immediate relatives of citizens, CNMI permanent residents, and U.S. permanent residents

- 240E Immediate relatives of nonimmigrant aliens who have permits to be employed in the Commonwealth
- 240G Foreign investors
- 240H foreign students
- 240K Foreign national workers
- 240L Foreign ministers
- 240M Foreign missionaries
- 240N Foreign business owners
- 240O Foreign retirees
- 240P Temporary permits for witnesses and victims of crime

§40.2-120 Term and conditions. Umbrella permits have a term of two years from November 27, 2009 to November 27, 2011 or until the end of any extension of this period unless earlier revoked by the Department. Every umbrella permit was issued pursuant to conditions stated on the face of the permit. The conditions applicable to the various categories of permits are reproduced at Appendix B.

§40.2-125 Report-back date. Each permit has on its face a report-back date. This is a date on or before which the Department will confirm that the conditions under which the permit was issued continue to be met. Report-back dates were assigned in the categories described in Appendix C. The report-back date is an important measure for ensuring compliance with employment requirements. In the event the Department is unable to confirm that conditions continue to be met, the permit will be revoked.

§40.2-130 Correcting permits. Umbrella permits that contain incorrect information may be corrected upon request to the Manager of the Guest Worker Program and good cause shown.

§40.2-135 Replacing permits. Umbrella permits that have been lost may be replaced in connection with the holder's next employment or registration. When the employment or registration is approved or completed, the umbrella permit will be replaced.

§40.2-135 Revocation of permits. Umbrella permits may be revoked by order of a hearing officer for failure to comply with Commonwealth law or regulations; failure to appear at a hearing or failure to comply with an order of a hearing officer; material failure to comply with the terms and conditions of a permit (including payment of medical expenses); failure to register to transfer; unemployment beyond the period permitted by Commonwealth law or extensions granted by a hearing officer; employment without a permit issued pursuant to federal or Commonwealth regulations except employment allowed by Commonwealth regulations to be performed without a permit; material false statement in connection with the issuance, correction, or replacing of a permit; or conviction of a felony or more than one misdemeanor.

Section 80-40.2-200 Requirements for permit holders, general

§40.2-205 Report-back date. On or before this date, the holder of the permit must demonstrate continued satisfaction of the conditions under which the permit was granted. Satisfaction of conditions may be demonstrated by Department records, as with a current registration to transfer or extension of time, online by filling out the Department's form in this regard, by mailing in records, as with the family records for qualification as an immediate relative, or by appearing personally if that is necessary to respond to a notice of hearing.

§40.2-210 Health certification. The holder of an umbrella permit must have a health certification from the Commonwealth Health Center or a provider approved by the Commonwealth Health Center that was issued no more than 12 months ago.

§40.2-215 Documentation. The holder of an umbrella permit must have a valid passport.

§40.2-220 Registration. Annual registration is required unless the federal authorities elect to register all nonimmigrant aliens in the Commonwealth pursuant to their authority under PL 110-229. Registration is required on or before the anniversary date of the current or last employment. Registration may be completed in person at the Guest Worker Unit, by mail using a form available on the Department's website, or (after July 1, 2010) on line. Immediate relatives may need to provide a bond or suitable alternative assurances to cover medical and repatriation expenses. With registration, a prior Commonwealth-issued work permit (for those who have no umbrella permit) may be amended or extended for good cause shown.

§ 40.2-225 Adjustment of status while within the Commonwealth. A person seeking to adjust status to permit work in the private sector may notify the Chief of the Enforcement Section of the intent to adjust status and obtain permission to register to transfer. After registration, the person seeking to adjust status shall present a suitable employer pursuant to these regulations, and obtain an order from the Administrative Hearing Office, upon good cause shown, permitting change of status. Exit from the Commonwealth is not required in order to adjust status.

Section 80-40.2-300 Requirements for permit holders, 240K employment-qualified

§40.2-305 Employment. Permit holders shall remain productively employed on a self-sustaining basis.

- (a) Full-time employment. Full-time employment is employment of 30 hours per week or more for a single employer. A foreign national worker may be employed by only one employer on a full-time basis.
- (b) Part-time employment. Part-time employment is employment of no more than 32 hours a month for a single employer. A foreign national worker may be employed by more than one employer on a part-time basis.
- (c) Minister and missionary employment. A minister or missionary may be employed by a *bona fide* religious undertaking without regard to the requirements of subchapter 80-30 (workforce participation by citizens). “*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)
- (d) Service provider employment. A foreign national worker who is currently eligible to work in the Commonwealth and who has been employed successfully in the Commonwealth for ten years or longer may become a service provider and sell his or her services, but not any kind of goods or products or the services of others, upon approval by the Secretary and in compliance with the equivalent of Section 40.2-425 (self-paid bonding), Section 40.2-430 (financial capability), Section 40.2-465 (self-paid medical expenses), Section 40.2-495 (self-paid repatriation) and Section 70.4(c) (self-paid Commonwealth fee). A service provider must be in good standing with respect to payment of all taxes and charges of the Commonwealth Health Center.

§40.2-310 Transfer by administrative order. A transfer may be made only pursuant to an administrative order issued by a hearing officer.

- (a) A foreign national worker may transfer, without regard to job classification, wage rate, or terms of employment, so long as the employment contract for the transferred worker is approved by the Department.
- (b) 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. Registration to transfer shall be on the Department's standard form and shall allow the foreign national worker thirty (30) days in which to find employment and file an employer intent form identifying the prospective employer and employment.

- (c) Extensions of time within which to locate an employer may be granted by the Administrative Hearing Office upon application submitted within ten (10) days of the report-back date on an umbrella permit or the expiration of the thirty-day period following registration or the expiration of any prior extension of time. The Department has the discretionary right to grant or deny an extension. Unemployed foreign national workers create a risk of additional burdens for Commonwealth tax payers, and Commonwealth law grants no right to an extension of time to transfer. Any applicant for an extension of time must assume full responsibility for medical and repatriation expenses under terms that the hearing officer finds sufficient to avoid possible burdens on Commonwealth taxpayers and must pay the administrative fee assessed to meet the Department's costs in handling extension requests. No fee waivers will be granted. Extensions of time may be granted upon a showing that the applicant holds a valid umbrella permit, has had a prior history of successful employment in the Commonwealth, has specific skills to become successfully employed in the very near future, and has located a named employer for a specified job and needs additional time to complete arrangements or has described in detail specific recent actions taken to locate work and specific facts that support reasonable cause to conclude that employment will be located within the next thirty (30) days. The Department has no obligation to make any investigation with respect to an applicant's circumstances or to develop any factual record or to inquire into the credibility of claims, and has no resources with which to do so. The hearing officer will consider the applicant's written application and may, but is not required to, consider the Department's records as to the applicant's employment history, registration, permit, and prior requests for extensions of time in deciding whether to grant an extension of time. The hearing officer may consider any extended period of unemployment as reasonable cause to conclude that employment will not be located within the next thirty (30) days. Nearly all individual employment situations are different, and the fact of the grant of an extension of time to any particular applicant provides no support for the grant of a request made by any other applicant unless that support is stated in specific detail in the application. Extensions of time, if granted, are generally for thirty (30) days and may be granted for longer periods depending on the applicant's skills, the circumstances of the applicant's search for employment, and the Department's available resources to deal with extension requests. No applicant has any entitlement to any specific period of extension.
- (d) 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.

- (e) A foreign national worker may not transfer to an employer on the Barred List or an employer lacking sufficient financial capability to ensure payment of obligations for wages, medical expenses, and repatriation expenses.
- (f) The Administrative Hearing Office shall circulate to all sections within the Department each employer intent form. If no objection is received, a hearing officer may issue an order granting permission to transfer. If an objection is received, the employer or employee may make a written offer of compliance which may be considered and approved or rejected without a hearing, or a hearing officer shall conduct a hearing on the objection and the burden of proof is on the objecting officer of the Department. After grant of permission to transfer, the standard procedures for transfer will apply. (See §40.2-485). Denial of permission to transfer may be appealed. (See §50.4-900)

§ 40.2-320 Identification. A foreign national worker must keep his or her identification card in his or her personal possession at all times during the worker's working hours or when on a plane or boat during business hours. "Personal possession" means actual physical possession on the person or within the immediate reach of the person. Personal possession shall not be a requirement when the foreign national worker is receiving medical treatment or when physical possession would not be practicable, at which time the identification card shall be kept within a reasonable distance of the foreign national worker. This requirement is not in conflict with the Anti-Trafficking Act of 2005 which makes confiscation of travel documents for the purpose of controlling an alien's movements a criminal offense. A foreign national worker who is not currently employed under an approved employment contract (and therefore cannot be located at the employer's address) must provide a current residence address and telephone contact to the Department and update that information as necessary so that the foreign national worker may be located by the Department.

§40.2-330 Exit after the contract term. Each foreign national worker is required to exit the Commonwealth within thirty (30) days after the date of termination of an approved employment contract unless the contract is renewed, or a case or transfer is pending, or the worker has filed for an extension in connection with processing a transfer or filing a complaint.

§40.2-340 Stay for litigation purposes

- (a) **Extension for purposes of filing a claim.** An automatic extension of an additional thirty (30) days to exit the Commonwealth after the date of termination of a contract is available if the foreign national worker is in the process of preparing a complaint to be filed with the Labor Department, a complaint in a civil matter to be filed with the any court, or a complaint to the Department of Public Safety with respect to a criminal matter.

- (b) Extension by order of a hearing officer. A foreign national worker who attends a mediation session after filing a complaint (see Section 50.4-235) 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, 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 50.4-240.)
- (c) Extension by order of a court. A foreign national worker who files an action with a court may request from a court an extension of time for departure from the Commonwealth and permission to seek temporary work pending resolution of the case. The court order in these regards shall be presented to the Chief of the Enforcement Section who shall allow temporary work on the same terms as would be available from a hearing officer.

Section 80-40.2-400 Requirements for employers, full-time employment of permit holders

§40.2-405 General

- (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) Employment permitted. An employer may employ any foreign national worker holding a 240K umbrella permit or other current employment credential in any job category, in compliance with the job preference and workforce participation requirements in Section 80-30.

§40.2-410 Written employment contract. In order to prevent disputes and to help ensure employment under lawful conditions, full-time employment of a foreign

national worker must be pursuant to a written employment contract. A standard form contract is provided by the Department for this purpose. Equivalent contract forms may be used.

§40.2-415. Department approval. In order to ensure compliance with Commonwealth law and to guard against unfair employment practices, Department approval is required for each employment contract with a foreign national worker. An application for approval of an employment contract must be signed by a director, officer, or manager of a corporation or other business organization and must be submitted to the Department on a standard form provided by the Department or the equivalent in person by an employee of a corporation or other business organization who shall present sufficient identification and proof of status. An application must be signed and submitted in person by a non-business employer. No person who is an agent and no person holding a power of attorney may sign or submit an application. Approval or denial of the application shall be on a standard form. A denial may be appealed to the Administrative Hearing Office within fifteen (15) days after the date of the denial. (See Section 50.4-240.)

§ 40.2-420 Documentation. An application for approval of an employment contract shall be accompanied by the following documentation:

- (a) 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.
- (b) 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.
- (c) Employer waiver, consent and certification. A waiver, consent, and certification shall be provided in the form provided by the Department.
 - (i) A waiver shall be provided of rights to confidentiality concerning records with respect to the employer in the possession of other government agencies. Such records may be made available to the Department upon its request, for purposes of administering the labor laws.
 - (ii) An express written consent shall be provided with respect to administrative inspections by the Department of the employer's worksites.
 - (iii) A certification shall be provided, under penalty of perjury, by the employer of satisfaction and compliance with all Commonwealth statutory and regulatory requirements for preference for the employment of citizens, CNMI permanent residents and U.S. permanent; and an attestation that the

statements made in the application the contract, and the supporting papers are true.

(iv) A non-business employer (an employer who does not have a business license) must certify, in addition, that he or she is not receiving certain specified government assistance and has met the financial requirements. (See §40.2-430(b))

(d) Receipt for payment of fee. Receipt for payment of the fee required under Section 80-70.4 of these regulations.

§40.2-425 Approved security contract. Prior to the commencement of work by a foreign national worker, an employer shall submit to the Secretary a bond or other security arrangement providing financial assurance, in an amount acceptable to the Secretary, for the faithful performance of the obligations of the employer for payment of wages and overtime, payment of medical expenses, and payment of repatriation expenses for the worker. The Secretary will accept bonds from insurance companies licensed by and in good standing with the Department of Commerce.

§40.2-430 Employer capability to meet financial obligations. An employer must be financially able to meet the obligations of an employment contract. The Department shall evaluate employer financial capability upon receipt of an application for an approved employment contract (initial, renewal, or transfer).

(a) Financial requirements for business employers. The Manager of the Guest Worker Program may request such evidence of financial capability as is required for an evaluation of the financial capability of the business. The Manager of the Guest Worker Program 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 Territory of Guam.

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

(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.

§ 40.2-435 Barred List. The Administrative Hearing Office shall maintain a Barred List containing the names of employers who have been barred from employing foreign national workers in an administrative order of a hearing officer, or in an order by the Secretary on appeal. The Barred List is available to the public. No employment contract shall be approved for an employer on the Barred List. Employers barred for a specific period of time shall be removed from the Barred List upon the expiration of the specified time period. Employers barred permanently must petition the Administrative Hearing Office to be removed from the Barred List.

§ 40.2-450 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.

§ 40.2-451 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.

§ 40.2-452 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.

§ 40.2-453 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.

§ 40.2-454 Payment of wages. A foreign national worker shall be paid biweekly in cash or by check or direct deposit in a United States bank payable in United States currency in an amount specified in the approved employment contract. Receipts for cash payments must be signed by the foreign national worker. The employer shall retain receipts for cash payments, cancelled checks or deposit records of payment for two years.

§ 40.2-455 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 minimum permitted under the Fair Labor Standards Act (FLSA), whichever is less.

(a) 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.

- (b) Deductions under court or administrative order. Employers may deduct amounts required or allowed by court or administrative order without regard to the thirty (30) percent limitation.
- (c) 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.

§ 40.2-460 Documents. A copy of the employment contract shall be provided to the foreign national worker by the employer within a reasonable time after signing by the parties. No employer may withhold from any foreign national worker any passport, entry or work permit, contract, or other document related to the status of the foreign national worker.

§ 40.2-465 Medical expenses. Employers shall pay all expenses of necessary medical care for foreign national workers except as provided in these regulations. (See §40.2-500) 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.

§ 40.2-470 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.

§ 40.2-475 Contract amendment and reduction in hours. An extension to an existing contract for up to six months or an amendment of the terms of an existing contract may be agreed by the parties at any time during the term of the contract and filed with the Department on the standard form provided by the Department for that purpose. A contract extension or amendment does not require prior approval of, but may be denied by, the Department. A denial may be appealed to the Administrative Hearing Office within fifteen (15) days after the date of the denial. (See Section 80-50.4-155.)

§ 40.2-480 Contract renewal, non-renewal, and termination

- (a) Renewal. An approved employment contract may be renewed. No right to renewal for either the employer or foreign national worker is conferred by Section 4935 or any other section of the Commonwealth Employment Act of 2007, as amended, or these regulations. Renewal is granted or denied by the Department taking account of the interests of the Commonwealth with respect to employment of citizens and permanent residents and enforcement of the requirements of the Commonwealth Employment Act of 2007, as amended, and these regulations.
- (i) Form. A request for renewal is made on the standard form provided by the Department. Renewal may be for any time period, provided however renewals shall be for no less than six months and no longer than the maximum allowed for initial contracts. (See 550.3-115.)
- (ii) Fee. A nonrefundable, nontransferable fee for renewal, as provided in Section 80-60.8, must be paid at the time the request is submitted.
- (iii) Time. A request for renewal shall be submitted no earlier than forty-five (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 550-60.8.) 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 § 50-50.6-155.)
- (iv) Documents. A request for renewal shall be accompanied by the signed employment contract and an approved security contract covering the foreign national worker to be renewed. An employer may submit a new employment contract with new terms as necessary. A request for renewal may be submitted and approved without an accompanying health certificate, but the health certificate must be submitted within sixty (60) days of approval or the renewal is subject to revocation. A request for renewal may be submitted and approved if the Job Vacancy Announcement is on file (on line), but the JVA must be certified within sixty (60) days of approval or the renewal is subject to revocation.
- (v) No disputes. A request for renewal shall be accompanied by a certification by the employer and the employee that there are, as of the date of the application, no disputes pending between them, no complaints outstanding, and no grievances unaddressed.
- (vi) Outstanding obligations. A renewal may not be granted if the employer has any outstanding payment more than sixty (60) days in arrears with respect to any obligation to pay medical expenses or to pay any judgment

in a Department proceeding, except those on appeal, or if the employer is on the Barred List.

(vii) Effect of denial. The denial of a request for renewal may be appealed to the Administrative Hearing Office within fifteen (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.

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

(i) Notice. An employer shall provide to the foreign national worker obtain a signature acknowledgment from the worker for, and file with the Department a notice of the employer's intent not to renew on a standard form provided by the Department at least thirty (30) days before the termination date in the approved employment contract.

(ii) 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.

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

(i) Termination for cause. During the term of the contract, an employer or employee may terminate an approved employment contract for cause as defined in the contract. An employer shall give written notice to the foreign national worker and to the Department on a standard form provided by the Department at least ten (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 Department may investigate a termination to determine if the termination was in compliance with Commonwealth law and these regulations.

(ii) Termination by consent. An employer and employee may terminate an approved employment contract by consent during the term of the contract. The consent of the employee shall be evidenced by an appropriate writing

filed with the Department at least ten (10) days prior to the termination date.

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

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

§ 40.2-485 Transfer. An application for an approved employment contract in the case of a transfer must be submitted within the time allowed by administrative order. If an application for an approved employment contract is filed and has correctable deficiencies, an automatic extension of ten (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.) 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.

§ 40.2-490 Accountability. Each employer is accountable for every foreign national worker for whom the employer has had an approved employment contract in effect at any time during the preceding calendar year and shall ensure that such -persons are currently employed by the employer, have transferred to another employer by administrative order, have exited the Commonwealth, are otherwise accounted for as remaining in the Commonwealth lawfully, or are deceased. In the event that an employer becomes unable to account for a foreign national worker, the employer shall report to the Department within fifteen (15) business days.

§40.2-495 Responsibility for costs of repatriation

(a) 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.

- (b) 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.
- (c) Illegal employment. An employer who employs a foreign national worker in violation of Commonwealth law or these regulations may be assessed full or partial repatriation costs by the Department.
- (d) Joint and several liability. In situations in which there is a last employer of record and a foreign national worker has also been employed illegally by another employer, the Department may assess repatriation costs entirely to the last employer of record, entirely to the illegal employer, or partially to both employers. If a foreign national worker has been employed illegally and a last employer of record is assessed repatriation costs, that employer may recover the assessed repatriation costs from the illegal employer in an action before the Commonwealth Superior Court.
- (e) Appeals. Within fifteen (15) days of the issuance of an assessment of repatriation costs, any person or party affected by the assessment order may appeal the order in accordance with Section 80-50.4-800. A standard form for an appeal is provided by the Department.

Section 80-40.2-500 Requirements for employers, other than full-time employment of permit holders

§40.2-505 Part-time employment. Any business or non-business employer may also be a part-time employer.

- (a) Hiring for part-time. An employer may employ a foreign national worker who holds an umbrella permit on a part-time basis for no more than 32 hours a month. No filing with the Department is required.
- (b) Full-time employer responsibilities. A full-time employer who has an approved employment contract with a foreign national worker has no liability for wages for part-time work for another employer. The full-time employer remains responsible for medical expenses and repatriation obligations under the full-time employment contract with the foreign national worker.
- (c) Part-time employer responsibilities. A part-time employer who hires a foreign national worker who does not have a contract with a full-time employer

becomes responsible for medical expenses and repatriation of the part-time employee until the foreign national worker stops working for the part-time employer and becomes employed by a subsequent employer.

§ 40.2-510 Contract with a service provider. An employer who contracts for services with a foreign national worker who holds a service provider permit issued by the Department is not responsible for medical or repatriation expenses of the service provider and is not required to provide any bond to secure payment. A part of the service provider's undertaking to secure the permit is sufficient financial capability and assurances to the Commonwealth in these regards.

Section 80-40.3 Transitional Workers

Section 80-40.3-100 General. The Commonwealth is a very small jurisdiction located very far from the administrative centers of the federal government. It has a very small economy that suffers from isolation, limited natural resources, limited transportation availability, a very small tax base, and the necessity to support services for its people that in the rest of the United States would rest on a much larger geographic and economic base. The presence of nonimmigrant aliens who enter the Commonwealth for employment helps support the economy if the aliens are gainfully employed under fair circumstances that do not generate undue disputes or financial burdens to the Commonwealth. The weaknesses of the controls in the U.S. immigration system with respect to preventing abuses of nonimmigrant aliens and failing to deport illegal aliens are well-documented, and many reform measures have been proposed in the U.S. Congress over the past decade to deal with these serious problems. The Commonwealth has had similar problems in the past, albeit on a much smaller scale in percentage and frequency terms. To deal with its problems, the Commonwealth has enacted a guest worker system that provides protection for both nonimmigrant aliens and Commonwealth taxpayers. Certain of those protections apply to transitional workers holding permits granted by the federal government because their employment in the Commonwealth is statutorily defined as temporary and subject to being reduced to zero and for that reason they are vulnerable, many transitional workers originally entered the Commonwealth on permits issued by the Commonwealth and have for many years relied on protections made available under Commonwealth law for which there are no analogs in federal law, and the social problems caused by failed employment arrangements with aliens fall almost exclusively on the Commonwealth's taxpayers. These protections do not burden the federal system in any way. They simply protect the Commonwealth with respect to economic and social burdens that would occur in the Commonwealth's unique circumstances if these protections were not available.

Section 80-40.3-200 Requirements for employers of transitional workers

§ 40.3-205 Notice Employers shall ensure that every transitional worker who enters the Commonwealth is provided a notice in the standard form provided by the Department with respect to working conditions and requirements in the Commonwealth. Employers bringing transitional workers from countries requiring translation to other languages shall

supply a translation. The notice shall be delivered to the transitional worker while in the home country before departure for the Commonwealth. Receipt of the notice shall be confirmed by the nonimmigrant worker upon arrival in the Commonwealth.

§ 40.3-210 Orientation. Employers shall ensure that every transitional worker who enters the Commonwealth attends the first orientation session available after date of entry unless excused for illness or other unavoidable circumstance. 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. 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 Department. The orientation program on Rota and Tinian will be scheduled as necessary.

§40.3.2-220 Standard employment requirements.

- (a) Employers shall ensure that the requirements with respect to health certification (Section 40.2-210) and registration (Section 40.2-225) are met by each transitional worker.
- (b) Employers shall ensure that the requirements with respect to written contracts (Section 40.2-410), bonding (Section 40.2-425), and standard conditions of employment (Sections 40.2-450-470) are met with respect to each transitional worker.
- (c) Employers are responsible for the costs of repatriation of each transitional worker. (Section 40.2-495)

Subchapter 80-50 Labor Investigations and Dispute Resolution

- Section 80-50.1 Safe workplace conditions
- Section 80-50.2 Lawful employment practices
- Section 80-50.3 Inspections and investigations.
- Section 80-50.4 Adjudication of disputes

Subchapter 80-50 Labor Investigations and Dispute Resolution

Section 80.50.1 Safe workplace conditions. Every employer shall provide safe workplace conditions for all employees, including domestic helpers and farmers.

Section 50.1-100 Every employer shall furnish and ensure the use of such safety devices and safeguards (such as machine guarding, electrical protection, scaffolding, safe walking and working surfaces, means of egress in case of emergency or fire; ventilation, smoke

exposure protection, personal protective equipment for eyes, face, head, and feet, fire protection, and sanitation) and shall adopt and use such means and practices as are reasonably adequate to render safe the employment and place of employment of all employees

Section 50.1-200 An employer shall provide an adequate supply of drinking water and sufficient and sanitary toilet facilities at the worksite or reasonable access thereto.

Section 50.1-300 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.

Section 80-50.2 Lawful employment practices. Every employer shall maintain sufficient documentation to demonstrate compliance with federal and Commonwealth employment requirements as provided in law and applicable regulations.

Section 50.3 Inspections and investigations

Section 50.3-100 Procedure for inspections and investigations.

§50.3-105 Inspections shall be conducted during normal business hours or, if an administrative warrant is obtained, at any other reasonable time under the circumstances.

§50.3-110 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.

§50.3-115 The investigator shall ask the authorized representative at the worksite if he or she consents to the inspection. If the authorized representative consents to the inspection, the investigator is authorized to inspect all areas of the worksite and premises. If the authorized representative refuses to permit entry, or does not consent to allow inspection of the worksite, the investigator may not proceed with the inspection unless an administrative warrant is obtained.

§ 50.3-120 In all cases where the authorized representative refuses to permit entry, does not consent to allow inspection of the worksite, or unreasonably obstructs the investigator in carrying out the inspection, the investigator shall serve notice upon the authorized representative of an administrative hearing at which the employer shall be required to show cause why the employer should not be sanctioned.

Section 50.3-200 Violations. If upon inspection a violation is found of any provision of the Commonwealth Employment Act of 2007, as amended, the Minimum Wage and Hour Act, as amended, or the Department regulations promulgated pursuant to Commonwealth law, the investigator may, within thirty (30) days:

§50.3-205 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 Chief of the Labor Enforcement Section may issue a Notice of Violation.

§50.3-210 Notice of violation. Issue a notice of violation to the responsible party. Upon issuance of a notice of violation, an action is opened in the Administrative Hearing Office with the Chief of the Enforcement Section as the complainant. If the notice of violation is issued in circumstances where the complaint has been filed with the Administrative Hearing Office by an individual complainant, the caption on the case may be amended to reflect the Chief of the Enforcement Section as the complainant.

Section 50.3-300 Inspections pursuant to warrant. For purposes of Section 4939(g) of the Commonwealth Employment Act of 2007, as amended, "reasonable suspicion" means specific facts about the suspected employer or worksite justifying inspection efforts beyond the norm for businesses of that type.

Section 50.3-400 Investigation. The Department may conduct investigations as necessary and appropriate to enforce the provisions of the Commonwealth Employment Act of 2007, as amended, and these regulations to ensure lawful employment arrangements, payment of wages and overtime, working conditions, employer-supplied benefits, and health and safety for employees. Pursuant to appropriate inter-agency arrangements, the Department may investigate related business license, tax, insurance, and other matters that intersect with its responsibilities for labor enforcement. In conducting these investigations, the Department's investigator shall have all of the powers delegated and described with respect to inspections and investigations pursuant to Subchapter 80-50 of these regulations and the powers to inspect any records that an employer is required to keep, to make copies of records, and to interview employees.

Section 80-50.4 Adjudication of disputes

Section 50.4-100 Jurisdiction of the Administrative Hearing Office. The Administrative Hearing Office shall have jurisdiction to conduct adjudicative proceedings with respect to all issues of fact and law arising under labor laws applicable in the Commonwealth.

§ 50.4-105 Jurisdiction with respect to complaints

(a) Disputes involving citizens, CNMI permanent residents, and U.S. permanent residents. The Administrative Hearing Office shall have jurisdiction over

complaints filed with the Administrative Hearing Office by U.S. citizens, CNMI permanent residents or U.S. permanent residents, and agency complaints filed by the Department, with respect to violations of the requirements of job preference and workforce participation pursuant to the Commonwealth Employment Act of 2007, as amended, §§4525, 4528 and other violations of labor laws applicable in the Commonwealth.

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

§50.4-110 Jurisdiction with respect to appeals from denials issued by the Department. The Administrative Hearing Office shall have exclusive jurisdiction over initial appeals from decisions of the administrative units of the Department denying applications, petitions, or requests of individual employers and employees.

§50.4-120 Jurisdiction attaches upon filing. Jurisdiction attaches upon the filing of a complaint or appeal, and no procedural or investigative document is required in order for the Administrative Hearing Office to hold a hearing on a complaint.

§50.4-130 No jurisdiction over tourists. The Administrative Hearing Office does not have jurisdiction with respect to the claims of tourists. Those claims are pursued in the Commonwealth Superior Court.

Section 50.4-200 Complaints and actions in labor matters

§ 50.4-205 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.

§ 50.4-210 Complaint. "Complaint" means any document initiating an adjudicative proceeding, whether designated a complaint, appeal, or an order for proceeding, or

otherwise. Registration by a foreign national worker to transfer may be deemed a "complaint" by a hearing officer under circumstances in which it is appropriate to do so and an order may issue. Each individual complainant shall file a separate complaint. Cases may be handled together, but complaints shall not cover the allegations of more than one complainant.

§ 50.4-215 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.

§ 50.4-220 Location for filing. A complaint and any other pleadings shall be filed at the office of the Department on the island where the employment occurred, unless good cause is shown.

§ 50.4-225 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.

§50.4-230 Filing of a job preference case. Any citizen, CNMI permanent resident, or U.S. permanent resident who is qualified for a job, as described in a job vacancy announcement, may make a claim for damages if an employer rejects an application for the job without just cause and the employer employs a person who is not a citizen, CNMI permanent resident, or U.S. permanent resident for the job.

(a) Just cause. The term "just cause" for rejecting an application for employment includes the lawful criteria that an employer normally applies in making hiring decisions such as rejecting persons with criminal records for positions of trust, rejecting persons who present fraudulent or inaccurate documentation in support of the application; rejecting persons without an educational degree necessary for the position, rejecting persons with unfavorable 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.

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

§ 50.4-235 Filing of a labor case. Any employer or employee may file a complaint with the Administrative Hearing Office regarding any violation of the Commonwealth Employment Act of 2007, as amended; the Fair Labor Standards Act,

as amended; the Resident Worker Fair Compensation Act, or Public Laws 11-6 and 12-11, as amended, and these rules and regulations; or any breach of an employment contract, or any breach of the undertakings in any document filed with the Department.

§50.4-240 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.

§ 50.4-245 Filing of a consolidated agency case. The Chief of the Enforcement Section may commence an action against an employer or employee for an alleged violation of the labor or wage laws in force in the Commonwealth by filing a complaint with the Administrative Hearing Office. The caption shall set forth the names and addresses of the parties. The complaint shall contain a short description of the nature of the alleged violation of law and the relief sought.

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

(b) Section 50.3-200 Agency complaints in workforce participation and job preference cases. In the event that an employer fails to meet the workforce participation requirement or fails to hire a qualified applicant entitled to a preference and hires any nonimmigrant alien instead, the Chief of the Enforcement Section may file an administrative complaint with the Administrative Hearing Office pursuant to Public Law 15-108, Section 4528, on behalf of the applicant denied employment seeking damages, sanctions, and any other available relief.

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

§ 50.4-250 No administrative rejection for untimeliness. Failure to file within the statutory time limit (see Section 70.2) shall not be grounds for refusal to accept the papers for a complaint or appeal.

§ 50.4-255 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 70.4.)

§ 50.4-260 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.

§ 50.4-265 No response to the complaint required. The respondent may, but is not required to, file a written response to the complaint.

§ 50.4-270 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.

§ 50.4-275 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 50.4-300 General procedures

§ 50.4-305 Rules of practice. These rules in Section 50.4 implement the Administrative Procedure Act and are generally applicable to adjudicative proceedings in all actions. Upon notice to all parties, a hearing officer may, with respect to matters pending before that hearing officer, modify or waive any rule herein upon a determination that no party will be prejudiced and the ends of justice will be served.

§ 50.4-310 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.

§ 50.4-320 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.

§ 50.4-330 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.

§ 50.4-340 Recusal of an investigator. An investigator shall be impartial. An investigator may voluntarily enter a recusal if the investigator's impartiality might be called into question. A party may request the recusal of an investigator. The request must be in writing supported by a sworn affidavit. The Deputy Secretary or a designee shall decide the request based only on the written affidavit.

Section 50.4-400 Mediation of complaints

§ 50.4-405 Schedule. The Administrative Hearing Office may refer each complaint for mediation. Mediations may be conducted by a hearing officer or by a mediator designated by the Administrative Hearing Office. Mediators need not be lawyers or have any formal certification. The Administrative Hearing Office shall schedule the mediation as promptly as practicable, normally within fifteen (15) days of filing of the complaint, and notify the parties.

§ 50.4-410 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.

§ 50.4-415 Proceedings. Mediations will be conducted informally and confidentially without a taped or other record of the proceedings. No oral statement made at mediation is admissible in evidence. If the mediation is successful, the mediator shall reduce the agreement to writing and the agreement shall be signed by both parties and the mediator within three (3) days after the mediation session.

§ 50.4-420 Failure to attend. If a complainant does not attend the mediation session after adequate notice, a hearing officer may dismiss the complaint without prejudice.

§ 50.4-425 Failure to file in a timely manner. If the complaint is not resolved at mediation, a hearing officer may then examine the complaint for timeliness. If the complaint is not timely filed, the hearing officer shall dismiss the complaint with

prejudice. A party against whom a dismissal is entered may appeal to the Secretary pursuant to Section 50.4-900.

§ 50.4-430. 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.

Section 50.4-500 Powers of the hearing officer

§ 50.4-510 Investigation of the complaint. A hearing officer may refer a complaint to the Chief of the Enforcement Section for investigation, and the Chief or a designee may also initiate such investigation of the complaint as appears warranted by the allegations, other information provided by the complainant or available to the Department, and past complaints filed by the complainant or violations adjudicated against the respondent. Investigators may conduct interviews of the parties and others, request documents from the parties, inspect worksites, and undertake such other investigative actions as are warranted. Any non-privileged information gathered during an investigation shall be made available to the parties on request. Investigators may make such written report of the investigation as may be useful, but no written determination is required. At any time, an investigator may request from Administrative Hearing Office a continuance of the hearing for further investigation.

§50.4-520 Authorization for temporary work pending a hearing. A hearing officer may authorize a foreign national worker who attends a mediation session at which no agreement is reached to seek employment on a temporary basis pending a hearing in the case.

- (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 a standard form provided by the Department.

- (d) The financial obligations with respect to medical expenses and 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.

§ 50.4-525 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.

§ 50.4-530 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.

§ 50.4-535 Pre-hearing conferences. A hearing officer may direct the parties to participate in a preheating 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.

§ 50.4-540 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.

§ 50.4-545 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.

§ 50.4-550 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.

§ 50.4-555 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 five (5) 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.

§ 50.4-560 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.

Section 50.4-600 Service of process

§ 50.4-605 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.

§ 50.4-610 Service of a response, time requirements. No response is required, however if a written response is made, it shall be served on the Administrative

Heating Office and the complainant within ten (10) calendar days after service of the complaint.

§ 50.4-615 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.

§ 50.4-620 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. The Department's experience in using publication service demonstrates that it is far more effective in achieving receipt of notice and attendance at hearings than either attempts at personal or mail service due primarily to indeterminate addresses (without street names or numbers) in the Commonwealth and frequency of changes of address. Publication service is not required to provide any statement of grounds for any action to be taken at a hearing; the party noticed by publication may obtain any relevant documents or statement of

grounds by inquiry at the Administrative Hearing Office. If the Department uses publication service with respect to any party who is a citizen of a foreign country and likely not to read English, service may be supplemented by a onetime publication in a newspaper of the party's national language if such newspaper exists in the Commonwealth. Service is complete upon last publication. Reconsideration may be requested within a reasonable time in the event a party who does not speak English and did not see an English-language publication misses a hearing.

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

§ 50.4-625 Service by a party. Either personal service or mail service must be attempted before publication service may be used by a party.

§ 50.4-630 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.

§50.4-640 Notice to bonding companies. The Department may, but is not required to, provide notice to a bonding company of potential claims, claims, or hearings in which employers or employees covered by a bond issued by the bonding company are or may be involved, unless the claim or hearing is conducted with respect to enforcement directly against the bonding company pursuant to Section 50.4-860. Bonding companies control the terms of the bonds they write and may elect to include provisions that require employers, whose obligations are secured by the bond, to provide notice of any proceedings in which the bond may be affected in any way together with provisions that allow sufficient rights of inspection of an employer's books and records to protect the bonding company's interests in these regards. In addition, bonding companies are deemed to have notice of information provided on the Department's website and in the Department's published notices for any proceedings that may affect bonds they have issued. The Department has no obligation to make any bonding company a party to any hearing on a claim by an employee against an employer or by an employer against an employee however, upon motion to a hearing officer, a bonding company may intervene in and become a party to such hearings in order to protect its interests.

Section 50.4-700 Conduct of hearings

§ 50.4-705 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.

§ 50.4-710 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.

§ 50.4-715 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.

§ 50.4-720 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.

§50.4-725 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.

§ 50.4-730 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.

§ 50.4-735 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.

§ 50.4-740 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.

§ 50.4-745 Continuances. Continuances may be granted in cases of prior commitments for a court proceeding, a showing of undue hardship, or a showing of other good cause. Requests for continuance must be in writing and must be filed more than five (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.

§ 50.4-750 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.

§ 50.4-755 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.

§ 50.4-760 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.

§ 50.4-765 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.

Section 50.4-800 Orders and enforcement

§ 50.4-810 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.

§ 50.4-815 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 50.4-900.

§ 50.6-820 Authority. The hearing officer is authorized to:

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

- (d) 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;
- (e) Cancel or modify an umbrella permit or identification card or an approved employment contract or require an employer thereafter to pay foreign national workers only by check or direct deposit in a United States bank payable in United States currency (no cash payments) in cases where payment records' have been negligently or inappropriately kept;
- (f) 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;
- (g) Disqualify a foreign national worker, temporarily or permanently, from employment in the Commonwealth;
- (h) Levy a fine not to exceed \$2,000 for each violation of any provision of the Commonwealth Employment Act of 2007, as amended;
- (i) Issue declaratory or injunctive relief as appropriate;
- (j) Amend or extend any permission previously granted by the Commonwealth;
- (k) Award attorneys fees when appropriate in addition to any other remedy; provided however that attorneys fees shall not be recoverable against the Commonwealth;
- (l) Modify an umbrella permit. An umbrella permit may be continued in effect on any of the bases upon which it could have been granted or any of the bases provided in §40.2-110.
- (m) Revoke an umbrella permit for violation of, or condition the continuation in effect of an umbrella permit as appropriate to secure compliance with Commonwealth law, regulations, orders of a hearing officer, or terms of the permit;
- (n) Impose such other sanction, order or relief as may reasonably give effect to the requirements of Commonwealth law; and
- (o) 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.

§ 50.4-825 Transfer relief. Only a hearing officer may grant a transfer. Nothing in the Commonwealth Employment Act of 2007, as amended, or in these regulations creates any right to a transfer. A hearing officer may grant a transfer in connection with the adjudication of a claim if other remedies are insufficient to provide a foreign national worker the benefit of the bargain made when entering the approved employment contract. If a hearing officer grants a transfer, a foreign national worker may become employed under a new approved employment contract without first exiting the Commonwealth.

(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 the Commonwealth Employment Act of 2007, as amended;
- (iii) A reduction in force pursuant to Section 4937 of the Commonwealth Employment Act of 2007, as amended;
- (iv) The abandonment of the worker during the term of an approved employment contract, but prior to ninety (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 transfer shall be transmitted by the Administrative Hearing Office to Employment Services within three days of issuance.

§ 50.4-830 Whistleblower relief. In order to promote the public interest in securing compliance with Commonwealth law, a foreign national worker who provides the Department with information on the basis of which a compliance agency case is brought may be granted a transfer by a hearing officer even if not otherwise qualified.

§ 50.4-835 Repatriation. The hearing officer may assess costs for repatriation of a foreign national worker.

§ 50.4-840 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, as appropriate. A decision shall be based on the whole record, supported by reliable, probative evidence, and in accordance with the statutes and rules and regulations conferring jurisdiction. An order may be made with respect to amounts to be paid, actions to be taken, or other relief to be accorded. An order shall include a schedule of payment for all awards, if any, to the prevailing party.

§ 50.4-845 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.

§ 50.4-850 Motion for reconsideration. A motion for reconsideration shall state concisely the matters or controlling decisions that a party believes the hearing officer overlooked or misapprehended. 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 party may file a motion for reconsideration within fifteen (15) days after service of an order. A response may be filed no later than five (5) days after the filing of the motion. 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.

§ 50.4-855 Correction of errors. A hearing officer may *sua sponte* correct an error prior to the time the record is certified for appeal.

§50.4-860 Administrative enforcement by the Department. If a party fails to comply with an administrative order, the Chief of the Enforcement Section may, but is not required to, bring an administrative enforcement proceeding against the party or against a bonding company that issued a bond securing the party's obligations. Administrative enforcement actions by the Department shall be initiated by a complaint filed with the Administrative Hearing Office by the Chief of the Enforcement Section, and notice shall be served and hearings held as provided in these regulations.

§50.4-865. Court enforcement by the Department. If a party fails to comply with an administrative order, the Department may, but is not required to, seek enforcement of the administrative order in Commonwealth Superior Court.

§50.4-870 Choice of venue. A person who has been awarded damages or other relief by an administrative order issued by a hearing officer may elect to bring a direct action in the Commonwealth Superior Court by filing a complaint seeking enforcement of that order. See the Commonwealth Employment Act of 2007, as amended, §4950(a).

Section 50.4-900 Appeals

§ 50.4-905 Commencing an appeal to the Secretary. An appeal is commenced by filing a notice of appeal on the standard form provided by the Department and payment of the fee required in Section 80-60.8 of these regulations.

§ 50.4-915 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 ten (10) days notice to the parties.

§ 50.4-920 Record before the Secretary. The record before the Secretary consists of the complaint, pleadings filed, exhibits, and order of the hearing officer. A party may request that the record before the Secretary be supplemented by a written transcript of the proceedings before the hearing officer and may request additional time to prepare and certify it.

§ 50.4-925 Rules of practice on appeals before the Secretary. When the Secretary is exercising jurisdiction over appeals from final orders of the Administrative Hearing Office, the Secretary shall have all the powers and responsibilities of a hearing officer. No hearing or oral argument on an appeal is required. The Secretary shall notify the parties of the time and place for any hearing on the appeal and shall not schedule the hearing with less than ten (10) days notice or change a hearing date with less than ten (10) days notice.

§ 50.4-930 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.

§50.4-935 Time for issuance of order. The time within which the Secretary must issue an order begins to run on the date on which a party certifies to the Secretary that the record and any necessary briefing is complete.

§50.4-940 Judicial review. Judicial review of a final action of the Secretary is authorized after exhaustion of all administrative remedies. Appeal from a final action by the Secretary shall be directly to the Commonwealth Superior Court. Except as otherwise required by a rule of the Commonwealth Superior Court, the pleading initiating judicial review shall be a Petition for Judicial Review. The Petition shall identify the order of the Secretary being appealed and the order of the Administrative Hearing Office that was appealed to the Secretary and shall attach copies of both. The Petition shall set out each ground for appeal in summary form in a separate numbered paragraph, and shall state that the requirements of the Commonwealth Employment Act with respect to appeals of final orders of the Secretary have been met.

Subchapter 80-60 Records, Reports, and Registration

- Section 80-60.1 Records
- Section 80-60.2 Reports
- Section 80-60.3 Registration

Subchapter 80-60 Reporting Requirements

Section 60.1 Required records. An employer of a foreign national worker shall keep for at least two years, and present immediately upon written request by the Secretary or a designee, the following information:

- (a) Personnel records for each foreign national worker including the name, current residence address in the Commonwealth, age, domicile, citizenship, point of hire, and approved employment contract termination date;
- (b) Payroll records for each foreign national worker including the O-NET job classification; wage rate or salary, number of hours worked each week, gross

compensation, itemized deductions, and evidence of net payments made and received biweekly;

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

Section 80-60.2 Reporting

Section 60.2-100 Census of employment. The effective and fair administration of governmental efforts to secure full employment for citizens, CNMI permanent residents and U.S. permanent residents in the Commonwealth requires accurate and up-to-date information about employment in the Commonwealth. The Commonwealth Employment Act of 2007, as amended, requires the Department to collect and report such information.

§60.2-105 Each business employer shall report quarterly, as of the last day of the calendar quarter and within the time limits for filing the business gross receipts tax return, the number of employees for whom wages were paid during the quarter.

§60.2-110 Each non-business employer shall report annually, as of the last day of the calendar year and no later than the first business day in February, the number of employees for whom wages were paid during the year.

§60.2-120 Census reports shall be made on the form provided by the Department and filed according to the instructions on the form.

Section 60.2-200 Workforce plan. A work force plan has as its objective an increase in the percentage of U.S. -qualified participants in the workforce of the employer.

§ 60.2-205 The workforce plan. A workforce plan shall identify specific positions currently occupied by nonimmigrant aliens. The plan shall include a timetable for accomplishing the replacement of nonimmigrant aliens with citizens, CNMI permanent residents, and U.S. permanent residents until the workforce participation objective is met.

§60.2-210 Employers covered. Every employer who employs nonimmigrant aliens, unless exempted, is required to have on file with the Department a written, current plan. A workforce plan is current if it has been updated and filed within the past 12 months.

§ 60.2-220 Exemptions

- (a) Compliance with the workforce participation requirement. An employer that has submitted to the Department adequate documentation with respect to compliance for the immediately preceding two years with the workforce participation requirement is exempt from the requirement to file a workforce plan.
- (b) Exemption from the workforce participation requirement. An employer that is exempt from the workforce participation requirement is exempt from the requirement to file a workforce plan. In order to be eligible for the exemption, each employer must file with the Department a Claim of Exemption on the standard form provided by the Department. It is the responsibility of the employer to ensure that a Claim of Exemption continues to be an accurate representation to the Department.
- (c) Loss of exemption. An employer against whom two or more judgments in labor cases or consolidated agency cases are entered in Department proceedings within any two year period automatically loses any applicable exemption and a plan must be filed with the Department within 30 days of the entry of the second judgment.

Section 80-60.3 Registration of aliens

Section 80-60.3-100 General. The registration of aliens present in the Commonwealth is permitted under both federal and Commonwealth law.

Section 80-60.3-200. Federal registration. Federal law provides for registration of aliens as follows:

§60.3-205. Section 702(a) [Section 6(e)(3)] of PL 110-229, the Consolidated Natural Resources Act, provides:

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

§3-210. Section 262 of the Immigration and Nationality Act, 8 U.S.C. 1302 provides:

Registration of aliens. (a) It shall be the duty of every alien now or hereafter in the United States, who (1) is fourteen years of age or older, (2) has not been registered and fingerprinted under section 1201(b) of this title or section 30 or 31 of the Alien Registration Act, 1940, and (3) remains in the United States for thirty days or longer,

to apply for registration and to be fingerprinted before the expiration of such thirty days.

(b) It shall be the duty of every parent or legal guardian of any alien now or hereafter in the United States, who (1) is less than fourteen years of age, (2) has not been registered under section 1201(b) of this title or section 30 or 31 of the Alien Registration Act, 1940, and (3) remains in the United States for thirty days or longer, to apply for the registration of such alien before the expiration of such thirty days. Whenever any alien attains his fourteenth birthday in the United States he shall, within thirty days thereafter, apply in person for registration and to be fingerprinted.

(c) The Attorney General may, in his discretion and on the basis of reciprocity pursuant to such regulations as he may prescribe, waive the requirement of fingerprinting specified in subsections (a) and (b) of this section in the case of any nonimmigrant.

Section 80-60.3-300. Commonwealth registration. Commonwealth law has provided for the annual registration of aliens since 1983. Title 3, Section 5001 provides: Registration of aliens.

- (a) Every alien who remains in the Commonwealth longer than 90 days shall by regulation be required to be registered. Registration shall be renewed annually. The parents or legal guardians of aliens under the age of 18 are responsible for such child's registration.
- (b) Registration shall be conducted by the Department for all classes of aliens. Registration information may be taken on oath or by declaration. Such registration information as the Secretary may require is confidential and may be made available only on request of law enforcement authorities in connection with criminal or juvenile delinquency investigations.
- (c) Registered aliens will be issued an identification card, which will contain the name of the alien, the LIDS number, such identifying information as the Secretary may require, and the expiration date of the card.
- (d) Registered aliens 18 years old or older shall keep their identification card in their personal possession or control at all times.
- (e) Any alien who knowingly fails to comply with this section shall be guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not more than 90 days, or fine of not more than \$500 or both.
- (f) An alien, for purposes of this section, is any person who is not a citizen, national, or permanent resident of the United States, or a CNMI permanent resident as provided by Commonwealth law prior to April 23, 1981.

Section 80-60.3-400. No duplicate registration. To the extent that the federal government registers aliens in the Commonwealth and provides registration information to the Commonwealth, the Commonwealth will not duplicate the registration requirement.

Subchapter 80-70 Other Provisions

Section 80-70.1 Regulations

Section 80-70.2 Limitations

Section 80-70.3 Electronic filing and access

Section 80-70.4 Fees

Section 80-70.5 Severability

Section 80-70.6 Effective date

Subchapter 80-70 Other Provisions

Section 70.1 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, prior to, concurrently with, or subsequent to publication for comment. If all or any part of the regulations is rejected by a joint resolution within the thirty (30) day period, the regulations shall be amended accordingly before going into effect. No further period for public comment is required after action by the Legislature.

Section 70.2 Limitations

Section 70.2-100 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.

Section 70.2-200 Time limit for filing complaints

§70.2-205 General Time Limit. No complaint may be filed more than six months after the date of the last-occurring event that is the subject of the complaint, except in cases where the actionable conduct was not discoverable upon the last-occurring event. In such instance, no complaint may be filed more than six months after the date a complainant of reasonable diligence could have discovered the actionable conduct.

§70.2-210 Time limit for filing after termination. In any event, an individual must file a complaint within thirty (30) days of the termination of an approved employment contract. However, the Department may file an action against an employer on behalf of individual workers after the 30-day period for an individual complaint has expired. The six month period within which the Department may file a complaint does not commence until after an investigation involving multiple workers has been concluded.

Section 70.2-300. Motions for reconsideration. A party may file a motion for reconsideration within fifteen (15) days after service of an order.

Section 70.2-400 Time for filing appeals

§70.2-405 Time for filing administrative appeals. Appeals of an administrative denial must be filed with the Administrative Hearing Office within fifteen (15) days of the date of the denial unless good cause is shown. In no event may an administrative appeal be taken more than six months from the date of the denial.

§70.2-410 Time for filing appeals to the Secretary. A notice of appeal to the Secretary must be filed within fifteen (15) days of issuance of the order by a hearing officer.

§70.2-415 Time for filing appeals to the Court. Appeal from a final action by the Secretary must be filed with the Commonwealth Superior Court within thirty (30) days of the final action by the Secretary.

Section 70.3 Electronic filing and access.

Section 70.3-100 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, www.marianaslabor.net.

Section 70.3-200 Online access. The Department provides access via the Department's website to revised statutes and regulations, announcements, notices, opinions and orders, and public data from the Department.

Section 70.4 Fees. The following fees shall be collected by the Department. All fees are nonrefundable and nontransferable unless otherwise provided in these regulations.

(a) Posting a job vacancy announcement No fee

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

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

Section 70.5 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 70.6 Effective date. These regulations are effective on May 15, 2010, or completion of publication, whichever is later, and shall not apply retroactively to applications filed or proceedings in the Administrative Hearing Office that were pending before that date.

APPENDIX A: FORMER IMMIGRATION CATEGORIES

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

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

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

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

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

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

An immediate relative of an alien, or a common-law marriage spouse of an alien

whose family unit includes one or more natural, adopted, or step children under the age of 16 years, may enter and remain in the Commonwealth under an Entry Permit for the same term as the sponsoring alien's Entry Permit if the immediate relative or common-law marriage spouse satisfies the applicable requirements under these regulations, the sponsoring alien meets the requirements to be a sponsor, the sponsoring alien posts a cash bond with the Director in the amount of twice the cost of return travel to the point of origin at the time of application, and the immediate relative or common-law marriage spouse is not an excludable alien. This class of entry permit has the following sub-classifications:

EB: Immediate relative of a government employee

EG: Immediate relative of a foreign investor

EK: Immediate relative of a foreign national worker

EL: Immediate relative of a minister or religious leader

EM: Immediate relative of a missionary

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

EO: Immediate relative of a retiree investor

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

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

(g) Foreign Investor Entry Permit

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

(k) Private Sector Employment Entry Permit

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

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

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

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

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

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

Prior to October 1, 2008, an alien who is a bona fide missionary who is in the Commonwealth solely for the purpose of engaging in religious doctrine teaching and not receiving compensation at the level of a living standard of monetary compensation, may be issued a Missionary Entry Permit. The missionary must be petitioned for by a bonafide religious organization showing that the missionary's services are needed by a denomination having a bonafide organization in the

Commonwealth. Missionary work is limited to teaching religious doctrine in a church, classroom, or in a home visit setting. After October 1, 2008, the entry class of missionary ceases to exist, provided however that persons holding multi-year permits issued prior to October 1, 2008 may register each year within this class until the term of the original permit expires.

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

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

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

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

§5-40.3-240(p) Temporary Work Permit

At the discretion of the Attorney General, an alien who is a victim or witness in a civil or criminal proceeding or party in a civil or criminal matter pending before a Commonwealth court or agency, or a person who has applied for refugee protection pursuant to §5-40.4-100 of these regulations, may be issued a Temporary Work Permit for up to two years while the relevant matter is pending. This work permit is temporary and does not extend beyond the time required for the relevant matter and reasonable arrangements thereafter as determined by the Attorney General unless the holder of the permit becomes employed as approved by the Director of Labor. .

This class of entry permit may be modified or revoked after the relevant matter is no longer pending. A holder of this class of entry permit may be employed in the Commonwealth.

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

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

APPENDIX B: UMBRELLA PERMIT CONDITIONS

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

- (a) General conditions. All umbrella permits contain these general conditions:
“Agreement and acknowledgment: I, the person to whom this permit is issued as named and identified above, agree to the permit conditions set out above and acknowledge as a condition of the issuance of this permit allowing my residence and employment in the Commonwealth that every aspect of the issuance, modification, or termination of this permit is governed by Commonwealth law and is administered by the Department of Labor. I agree to abide by the applicable labor regulations. I understand that the adjudication of any disputes with respect to this permit is the responsibility, in the first instance, of the Commonwealth Department of Labor and that I have a right of appeal to the Commonwealth Superior Court as defined by Commonwealth law and regulations.”
- (b) Specific conditions. All umbrella permits contain specific conditions.
- (i) 240K permit:

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

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

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

Seeking employment: This permit may be revoked under circumstances when the holder is not employed and is seeking employment unless the holder makes diligent

efforts to locate full time employment suitable to the holder's skills and abilities and finds an employer within a reasonable time. While seeking employment, the holder of this permit is responsible for all medical and repatriation expenses for the holder, and sponsored immediate relatives, and minor children so as not to create any financial burden on the CNMI, and the holder will maintain sufficient resources or provide a sufficient bond or undertaking by a financially responsible third party to meet these obligations. CNMI law provides no right to an extension of time to seek employment; each request is considered by a hearing officer on the merits of the written request as to whether employment is likely to be obtained within a reasonable time and any risk to the Commonwealth has been met.

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

(iii) 240D permit:

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

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

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

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

(iv) 240E permit:

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

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

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

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

(v) 240G permit

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

Documentation required: This permit may be revoked unless supported by documentation as required by the Department of Commerce with business that was

the basis of the issuance of this permit unless the holder notifies the Department of Commerce and files an intent to change status no later than thirty days after termination of the investment or business relationship.

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

(vi) 240H permit:

Conditions: This holder of this permit has status in the Commonwealth as a foreign student, and this permit authorizes the holder to engage in certain types of work in the Commonwealth. This permit remains in effect until revoked. This permit may be revoked under the terms of CNMI law and regulations governing aliens who are students as of the date of issue or as amended thereafter. Revocations will be published by the Department of Commerce. This permit is without effect after November 27, 2011.

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

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

(vii) 240L permit:

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

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

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

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

- (viii) 240M permit: Same as 240L permit
- (ix) 240N permit: Same as 240G permit
- (x) 240O permit: Same as 240G permit
- (xi) 240P permit: Same as 240K permit.

APPENDIX C: REPORT-BACK DATES FOR UMBRELLA PERMITS

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

- (a) Holders of valid work permits. The report-back date for holders of valid work permits on the date when the umbrella permit was issued is the anniversary date on which the current authorized employment is scheduled to end. On the report-back date, if employment has been extended or renewed, or other qualifications for continuance of the permit exist, the permit will continue in effect.
- (b) Persons whose applications were in process. The report-back date for persons who did not have a valid work permit on the date when the umbrella permit was issued but who had applications pending on that date was January 15, 2010, subsequently extended to February 15, 2010. On the report-back date, if the application has been approved, or other qualifications for continuance of the permit exist, the permit will continue in effect.
- (c) Persons with pending cases or appeals. The report-back date for persons who did not have a valid work permit on the date when the umbrella permit was issued but who had a pending case or appeal in the Department, the Commonwealth courts, or the federal courts is a staggered set of dates on which the case or appeal was anticipated to be completed. On the report-back date, if the case or appeal has been completed, the holder of the umbrella permit must demonstrate another qualification (such as employment) for continuance of the permit.
- (d) Persons with extensions of time to transfer. The report-back date for persons who did not have a valid work permit on the date when the umbrella permit was issued but who had a current extension of time to transfer granted by a hearing officer is a staggered set of dates on which the transfer was anticipated to be completed. On the report-back date, the holder of the umbrella permit must demonstrate either employment, substantial likelihood that employment will be secured in the immediate future, or another qualification for continuance of the permit.
- (e) Persons with immediate relative status. The report-back date for persons who had immediate relative status on the date when the umbrella permit was issued is the anniversary date of the granting of immediate relative status. On the report-back date, the holder of the umbrella permit must demonstrate that the immediate relative status continues to exist or another qualification for continuance of the permit.
- (f) Persons in other circumstances. The Protocol provided for issuance of umbrella permits to persons in other circumstances. On the report-back date, the holder of the umbrella permit must demonstrate qualification for continuance of the permit.



Commonwealth of the Northern Mariana Islands
Department of Public Health-Hospital Division

Joseph Kevin P. Villagoemz, Secretary
Department of Public Health, Hospital Division, PO Box 500409 CK
Lower Navy Hill, Saipan, MP 96950

Tel 670.234.8950; fax:670.234-8930
jkvsaipan@aol.com

**PUBLIC NOTICE OF PROPOSED REGULATIONS
WHICH ARE AMENDMENTS TO SCHEDULE OF FEES OF
THE COMMONWEALTH HEALTH CENTER**

INTENDED ACTION TO ADOPT THESE PROPOSED REGULATIONS: The Commonwealth of the Northern Mariana Islands, Department of Public Health, Hospital Division, of the Commonwealth Health Center (CHC) 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 and publication in the Commonwealth Register (1 CMC § 9105(b)).

AUTHORITY: The Secretary is empowered by the Legislature to adopt rules and regulations for the administration and enforcement of the statute governing his activities. 1 CMC § 2557 (rules and regulations). See also Executive Order 94-3 (effective August 23, 1994, reorganizing the Executive branch).

THE TERMS AND SUBSTANCE: These Rules and Regulations provide for the adoption of new rates for the services and procedures provided at the Commonwealth Health Center. Specifically, they provide that services and procedures are priced for billing purpose.

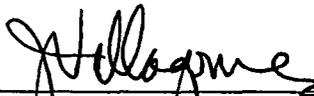
THE SUBJECTS AND ISSUES INVOLVED: These Regulations:

1. Add the attached rates in the Commonwealth Health Center's Schedule of Fees.

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 Joseph Kevin P.

Villagomez, Attn: Commonwealth Health Center's Schedule of Fees, at the above address, fax or email address, with the subject line "Commonwealth Health Center's Schedule of Fees". 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)). These proposed regulations were approved by the Secretary on January 08, 2010.

Submitted by:  4-16-2010
JOSEPH KEVIN P. VILLAGOMEZ
Secretary of Health Date

Received by:  4/19/10
ESTHER S. FLEMING
Governor's Special Assistant for Administration Date

Filed and Recorded by:  4.19.10
ESTHER M. SAN NICOLAS
Commonwealth Register Date

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 19th day of April, 2010


for EDWARD BUCKINGHAM
Attorney General

Commonwealth Téel falúw kka falúwasch Efang Marianas
Bwulasiyool Imwal Limilimal Iligh-Hospital Division
Joseph Kevin P. Villagomez, Samwool
Bwulasiyool Imwal Limilimal Iligh, Hospital Division, P.O. Box 500409 CK
Lower Navy Hill, Seipél, MP 96950

Tilifoon: 670.234-8950; fax 670.234-8930

Jkvsaipan@aol.com

**ARONGOL TOULAP REEL ALLÉGH KKA EBWE LIWELI ÓTOL ÓBWOS
MELLÓL COMMONWEALTH CENTER**

MÁNGEMÁNGIL IGHA EBWE FILLÓÓY POMWOL ALLÉGH KKAAL:
Depattamentool Imwal Limilimal Iligh, Hospital Division mellól Commonwealth Téel falúw kka falúwasch Efang Marianas, mellól Commonwealth, Bwuleyil Limilimal Iligh (CHC) e tipeli ebwe ipigh fillóóy pomwol allégh kkaal, Allégh kkaal ebwe kkamall llól seigh (10) ráálil ngáre schagh raa fillóóy me atéw llól Commonwealth Register. (1 CMC Talil 9105(b))

BWÁNGIL: Samwoolul Imwal Limilimal Iligh nge e ngalleey bwángil Sów Fféérú Allégh (Legislature) ebwe fillóóy allégh kkaal ngáli administration me mwóghut ágheli aweewe ye e lemeli mwóghutughutul. 1 CMC Tálil kka 2557 (allégh kkaal). Bwal amweri yaal Sów Lemelem tingór 94-3 (schéschéél wóol Eluwel 23, 1994, siweli Executive branch).

ÓUTOL ME KKAPASAL: Allégh kkaal nge eyoorátá bwele rebwe fillóóy óbwós kka e ffé reel alillis kkaal me angaangal kka e toowow mereel Commonwealth Health Center. Schéschéél, re ayoorá tepang kkaal me mwóghutul obwos.

KKAPASAL ME MILIKKA E TÉÉTA: Allégh kkaal ebwe:

1. Aschuwulong llapal mwutta llol otol obwos mellol Commonwealth Health Center:

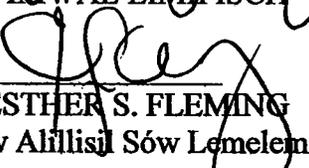
AFALAFAL REEL AMMWEL ME AKKATÉÉL: Allegh ebwe akkateelo llol Commonwealth Register llól Tálil kka rekke pomwoli me fillóóy allégh kka e ffé (1 CMC Tálil 9102(a)(1)) me appaschetá llól civic center kka e fisch me llól bwulasiyool gobenno kka yaasch, llól senatorial district, e weewe schagh llól mwaliyeer Amerikkonu, Remeraalis me Refúwasch. (1 CMC Talil 9104(a)(1))

ISISILONGOL AGHIYEGH: Afanga me ngare bwughiilo ischil mangemangumw reel Joseph Kevin P. Villagomez, Attn: Commonwealth Health Center's Schedule of Fees, sangi address ye weilang, fax me ngare email address, reel aweewe ye "Commonwealth Health Center's schedule of Fees". Aghiyegh ebwe atotoolong llól eliigh (30) ráálil igha schagh e akkatééló arong yeel. Óutu ghal soong, isisilong ischil Mááfiyami. (1 CMC Tálil 9104(a)(2))

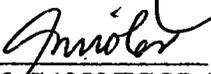
Pomwol allégh kkaal nge aléghélégh mereel Samwool ótol Schoow 08, 2010.

Isaliyallong: 
JOSEPH KEVIN P. VILLAGOMEZ
SAMWOOLUL IMWAL LIMFISCH

4-16-10
Rál

MWIR SANGI: 
ESTHER S. FLEMING
Sów Alillisil Sów Lemelem

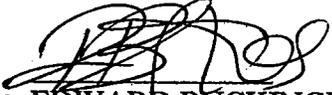
4/19/10
Rál

AMMWEL SÁNGI: 
ESTHER M. SAN NICOLAS
Commonwealth Register

4.19.10
Rál

Sáangi allégh ye 1 CMC Talil 2153(e) (alughulugh mereel AG reel allégh kka ebwe akkaté ighila) me 1 CMC Tálil 9104(a)(3) (bwughi yaal alughulugh AG) reel pomwol allégh e appasch ikka raa takkal amweri fisch me allégheló mereel CNMI Sów Bwungul Allégh Lapalap me ebwe akkatééló, 1 CMC Tálil 2153(f) (akkatéél allégh kkaal).

Rállil ye 19th Ilól maramal Abriid, 2010


for EDWARD BUCKINGHAM
Sów Bwungul Allégh Lapalap

COMMONWEALTH GI SANGKATTAN NA ISLAN MARIANAS SIHA

Dipattamenton Hinemlo' Publiku-Dibision Espitåt

Joseph Kevin P. Villagomez, Sekretario

Dipattamenton Hinemlo' Publiku, Dibision Espitåt, PO Box 500409 CK

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**NOTISIAN PUBLIKU POT I MANMAPROPONEN REGULASION SIHA NI PARA I
AMENDASION PARA I SCHEDULE I APAS SIHA GI COMMONWEALTH SENTRON
HINEMLO'**

**MA INTENSIONA NA AKSION PARA U MA'ADAPTA ESTE I MANMAPROPONE NA
REGULASION SIHA:** I Commonwealth gi Sangkattan na Islan Marianas siha, i Dipattamenton
Hinemlo' Publiku, Dibision Espitåt, gi Commonwealth Sentron Hinemlo' (CHC) ha intensiona na
para u adapta komu petmanente na regulasion siha ni mañechetton i Manmapropone na Regulasion siha,
sigun gi manera siha gi Akton i Administrative Procedures, 1 CMC [§ 9104(a)]. I Regulasion siha
para u ifektibu gi halom i dies(10) diha despues di adaptasion yan publikasion gi halom i Rehistran
Commonwealth. (1 CMC § 9105(b))

ATURIDAT: I Lehislatura ha na'i fuetsa i Sekretario na para u adapta i areklamento yan regulasion
siha para i atministrasion yan i enforcement gi estatua ni ginebebetna i aktibidat-na siha.
1 CMC §§ 2557 (areklamento yna regulasion siha). *Atan lokkue'* i Etden Eksekatibu 94-3 ifektibu
gi Agosto 23, 1994, ya mata'lon ma'otganisa i rãmas Eksekatibu).

I SUSTANSIAN I PALABRA SIHA: Este na Areklamento yan Regulasion siha para u pribeniyi
para i adaptasion i nuebu na apas para i sebisio siha yan i manera ni mapribeniyi siha ni matãsa para
i rason kubrãsa.

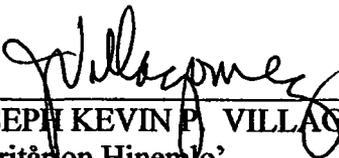
SUHETO NI MASUMARIA YAN ASUNTO NI TINEKKA: Este na Regulasion siha:

- 1 Suman i mañechetton na apas gi halom i Commonwealth Sentron Hinemlo' ni Masiñãla na
Apas siha.

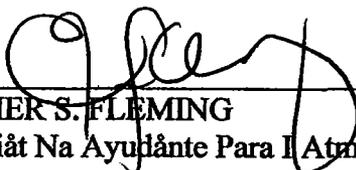
DIREKSION PARA U MAPO'LO YAN MAPUBLIKA: Este i Manmapropone na Regulasion
siha debi na mapublika gi halom i Rehistran Commonwealth gi seksiona gi mapropone yan nuebu
na ma'adapta na regulasion siha (1 CMC § 9102(a)(1)) yan mapega gi kombiniente na lugat siha gi
halom i civic center yan gi halom i ofisinan gobetnamento siha gi kada distriton senadot, parehu gi
English yan gi lengguãhen natibu. (1 CMC § 9104(a)(1))

PARA U MAPRIBENIYI OPIÑON SIHA: Na'hánao pat entrega i imfetmasion-mu guatu gi as Joseph Kevin P. Villagomez, *Attn: Commonwealth Sentron Hinemlo' Ni Masiñála Na Ápas Siha*, gi sanhilo' na address, fax pat email address, yan i ráyan suheto "Commonwealth Sentron Hinemlo' ni Masiñála Na Ápas Siha". Todu imfotmasion siha debi na u fanhálom trenta(30) diha siha ginen i fechan publikasion este na notisia. Pot fabot na'háлом i imfetmasion, opiñon, pat testamoñon kinentra siha. (1 CMC 9104(a)(2)).

Este i manmapropone na regulasion siha manma'apreba ginen i Sekretário Ineru 08, 2010.

Nina'háлом as: 

JOSEPH KEVIN P. VILLAGOMEZ
Sekretário Hinemlo' 4-16-10
Fecha

Rinisibi as: 

ESTHER S. FLEMING
Espisiát Na Ayudánte Para I Administrasion Gobetno 4/19/10
Fecha

Pine'lo Yan Rinikot as: 

ESTHER M. SAN NICOLAS
Rehistran Commonwealth 4.19.10
Fecha

Sigun i 1 CMC § 2153(e) (I Abugádu Henerát ha apreba i regulasion siha na para u macho' gue komu fotma) yan 1 CMC § 9104(a)(3) (hentan inapreban Abugádu Henerát) i manmapropone na regulasion siha ni mafiechetton guini ni manmarebisa yan manma'apreba komu fotma yan suficiente ligát ginen i CNMI Abugádu Henerát yan debi na u mapublika, 1 CMC § 2153(f) (publikasion areklamento yan regulasion siha).

Mafecha guini gi diha 19, gi Abrit, 2010


for _____
EDWARD BUCKINGHAM
Abugádu Henerát

Amendments to CHC Fee Schedule

Jan-10

Page 1 of 1

CPT/HCPCS	Description	Physician/Professional Fee/Component	Technical/Facility Fee/Component
34520	Cross-over vein graft	1330.00	5.00
35301	Rechanneling of artery	1358.00	5.00
35371	Rechanneling of artery	1075.00	5.00
43820	Fusion of stomach and bowel	1487.00	5.00
45119	Remove rectum w/reservoir	2206.00	5.00
49421	Insert abdom drain, permanent	445.62	59.00
50200	Renal biopsy; percutaneous, by trocar or needle	184.80	29.00
59612	Vbac delivery only	858.60	441.40
90935	Hemodialysis, one evaluation	89.00	N/A
P9021	RED BLOOD CELLS		ACTUAL COST + OVERHEAD
P9021	RED BLOOD CELLS, QUAD		ACTUAL COST + OVERHEAD
P9017	FRESH FROZEN PLASMA (SINGLE DONOR), FROZEN WITHIN 8 HOURS OF COLLECTION		ACTUAL COST + OVERHEAD
P9012	CRYOPRECIPITATE		ACTUAL COST + OVERHEAD
P9034	PLATELETS, PHERESIS		ACTUAL COST + OVERHEAD

Notes:

1. Physician/Professional Fee - is a fee for the services of a medical professional
2. Facility Fee - fees for the services of the hospital/outpatient facility
3. Both Professional and Facility fees are charged when the medical professional is an *employee* of CHC. or if the medical professional is contracted to provide services for CHC
4. If the medical professional is working for a private clinic, the patient will receive a bill from CHC for the facility fee only and will receive a separate bill from the private clinic for the professional component.
5. Some procedures may only have either the professional component or the facility component and therefore, will only have one of the components with a fee.