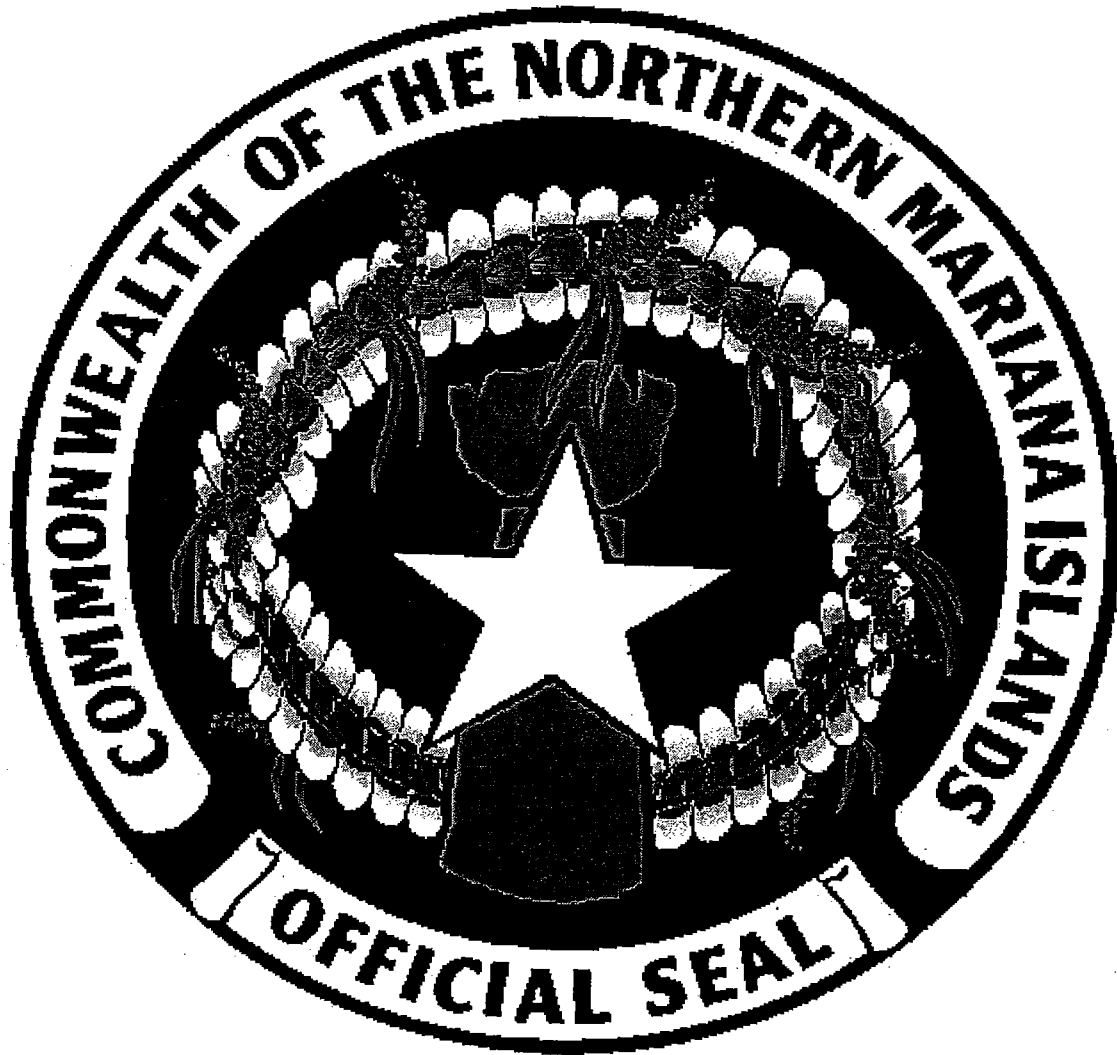


**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
SAIPAN, TINIAN, ROTA and NORTHERN ISLANDS**



**COMMONWEALTH REGISTER
VOLUME 32
NUMBER 05
MAY 21, 2010**

COMMONWEALTH REGISTER

VOLUME 32
NUMBER 05

May 21, 2010

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Number: 2010-01
Subject: Declaration of a State of Disaster Emergency:
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Authority: Article III, §10 of the CNMI Constitution and 3 CMC §5121
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Number: 2010-02
Subject: Declaration of a State of Disaster Emergency:
CUC's Imminent Generation and Other Failure and
The need to Provide Immediate Reliable Power,
Water and Wastewater Services
Authority: Article III, §10 of the CNMI Constitution and 3 CMC §5121
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Number: 2010-03
Subject: Declaration of a State of Disaster Emergency:
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The need to Prove Immediate Reliable Power,
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Authority: Article III, §10 of the CNMI Constitution and 3 CMC §5121
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Number: 2010-04
Subject: Declaration of a State of Disaster Emergency:
CUC's Imminent Generation and other Failure and
The need to Prove Immediate Reliable Power,
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Authority: Article III, §10 of the CNMI Constitution and 3 CMC §5121
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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lt. Governor

EXTENSION OF EMERGENCY **Volcanic of Anatahan**

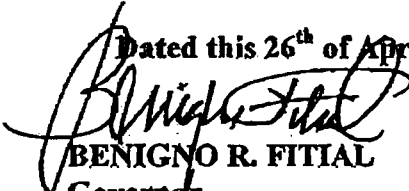
WHEREAS, On May 13, 2003, a Declaration of Emergency was issued with respect to volcanic activity on the island of Anatahan; and

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

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

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

Dated this 26th of April 2010.


BENIGNO R. FITIAL
Governor

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

Caller Box 10007 Saipan, MP 96950 Telephone: (670) 664-2200/2201 Facsimile: (670) 664-2211



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS



STATE BOARD OF EDUCATION
PUBLIC SCHOOL SYSTEM
P.O. BOX 501370
SAIPAN, MP 96950

Lucia L. Blanco-Maratita
Chairperson

Marylou S. Ada
Vice-Chairperson

D. Tanya King
Secretary/Treasurer

Members
Herman T. Guerrero
Galvin S. Deleon Guerrero

Non Public School Rep.

Francine R. Babauta
Student Representative

Teacher Representative

Commissioner of Education
Rita A. Sablan, Ed.D.
coe.ras@pss.cnmi.mp

PUBLIC NOTICE OF CERTIFICATION AND ADOPTION
OF REGULATIONS OF
THE COMMONWEALTH BOARD OF EDUCATION

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER AS PROPOSED
RULES AND REGULATIONS

Volume 31, Number 12, pp 029988-029990, of December 22, 2009

Regulations of the Commonwealth Board of Education: § 60-20-720

ACTION TO ADOPT PROPOSED REGULATIONS: The Commonwealth of the Northern Mariana Islands State Board of Education ("Board") HEREBY ADOPTS AS PERMANENT REGULATIONS the Proposed Regulations which were published in the Commonwealth Register at pages 029988 to 029990 in Volume 31, Number 12 on December 22, 2009 pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The Board 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, and that they are being adopted without modification or amendment.

PRIOR PUBLICATION: The prior publication was as stated above. The Board adopted the regulations as final at its meeting of April 22, 2010.

AUTHORITY: The Board is required by the Legislature to adopt rules and regulations regarding those matters over which the Board has jurisdiction, including its regulation of the policies of the Public School System, pursuant to Article XV of the CNMI Constitution and to 1 CMC § 2261.

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 publication in the Commonwealth Register.

COMMENTS AND AGENCY CONCISE STATEMENT: Pursuant to the APA, 1 CMC § 9104 (a)(2), the agency has considered fully all written and oral submissions respecting the proposed regulations. Upon the 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

Board of Education
Telephone : (670) 237-3010
Fax : (670) 664-3711

website: http://www.pss.cnmi.mp


Commissioner of Education
Telephone : (670) 237-3001
Fax : (670) 664-3798

concise statement of the principal reasons for and against adoption, incorporating therein its reasons for overruling the considerations urged against its adoption. Please see the following pages for this agency's concise statement, if any, in response to any filed comments, which requested a response.

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

I DECLARE under the penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 12 day of May, 2010, at Tinian, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:




Lucia L. Blanco-Maratita, Chairperson
Board of Education

5/12/10

Date

Filed and
Recorded by:



Esther M. San Nicolas
Commonwealth Register

5.14.10

Date

60-20-720 Accounting and Reporting: Travel and Reimbursement

(c) Travel Authorization (TA)

(8) Within CNMI travel requests shall be submitted to the Commissioner. Out of CNMI travel requests shall be submitted to the Commissioner or the Chairperson of the Board of Education, as appropriate, no later than 10 working days prior to commencement of travel, except for extenuating circumstances.



Commonwealth of the Northern Mariana Islands

Department of Labor

Gil M. San Nicolas, Secretary
Afetna Square Building, 2nd floor, San Antonio
P.O. Box 10007, Saipan, MP 96950
tel: 670.236-0902 fax: 670.236-0990

PUBLIC NOTICE OF CERTIFICATION AND ADOPTION OF REGULATIONS OF The Commonwealth Department of Labor

**PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER
AS PROPOSED REGULATIONS
Volume 32, Number 4, pp. 030096 et seq., of April 19, 2010**

Regulations of the Department of Labor: Parts 80-10 – 80-70

ACTION TO ADOPT PROPOSED REGULATIONS: The Commonwealth of the Northern Mariana Islands, Department of Labor (the "Department"), 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 Department 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, and that they are being adopted without modification or amendment, except as stated as follows, which changes are non-material:

1. Section 80-10: Added missing underlining, periods, and grammatical changes suggested in comments; substituted the title "Liaison" for "Manager" with respect to Federal Relations and Employer Relations; changed "mediator at the Administrative Hearing Office" to mediator designated by the Administrative Hearing Office".
2. Section 80-20: Added missing underlining and periods; added clarification to §20.1-120 from "full-time job in the private sector in the Commonwealth" to "full-time job in the private sector in the Commonwealth for which any alien may be hired" as suggested by comments.
3. Section 80-30: Added missing underlining, periods, and grammatical changes suggested by comments; added clarification "NAICS classification number" in §30.1-105; added clarification "not included in the number of status-qualified participants" in §30.2-120(d) as suggested by a comment; added in §30.3-210 a reference to the U.S. Department of Labor regulations, 20 CFR 655 as suggested by them for information purposes; corrected cross-references; changed the title of Section 80-30.4 from "Private Sector Compensation, Compliance with Resident Worker Fair Compensation Act" to "Private Sector Compliance with Resident Worker Fair Compensation Act" as suggested by comments.
4. Section 80-40: Added missing underlining and periods; moved a portion of Section 80-40.2-100 to Appendix A for clarity as suggested by a comment; clarified in §40.2-130 that a hearing officer would determine if changes to an umbrella permit for correcting mistakes could be made; clarified in §40.2-135 that the Department will confirm that an umbrella permit holder who has lost his or her permit is in fact covered by a permit; added a clarification in §40.2-301 differentiating between permits that allow employment (investors, business owners, students) and permits that require employment (workers, ministers, missionaries); added subsections in §40.2-310(c) to make it easier to read as suggested in comments; modified §40.2-430(c) to

require a certificate only when the Department requests it, in order to reduce the paperwork burden on businesses; modified §40.2-452 on location of worksite to allow an employer to identify the principal place where a worker will be employed as suggested by a comment to reduce paperwork; added language to §40.2-465 to clarify that employers may deduct co-pays on insurance payments so long as the total deductions do not exceed the ceiling on deductions, as suggested by one commenter; and added "from another country" in §40.3-205 to clarify that notice is required only when someone arrives from abroad.

5. Section 80-50: Added underlining and periods for consistent formatting; added as §50.1-400 a cross reference to U.S. Labor regulations for information purposes; deleted §50.4-625 as unnecessary paperwork for service of process by parties and allowed the same options as the Department has; clarified in §50.6-820 that the term "unpaid wages" includes awards of prospective contract damages; moved some language (without change) from §50.6-820(m) to §50.6-820(l) for consistency as suggested by a comment; clarified the section with respect to motions for reconsideration to make the section simpler; and changed §50.4-935 to use the exact statutory language per a comment.
6. Section 80-60: Added underlining and periods for consistent formatting; changed §60.2-200 to use the full phrase "citizens, U.S. permanent residents, and CNMI permanent residents" instead of a shorthand term;
7. Section 80-70: Added underlining and periods for consistent formatting; clarified §70.2-300 with respect to time periods; made minor word changes for clarification of the fee schedule in §70.4; added the effective date of June 1, 2010 in §70.6.

PRIOR PUBLICATION: The prior publication was as stated above. The Department adopted the regulations as final at the end of the comment period. The revisions to the regulations as adopted are attached to this notice.

MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY: All modifications are shown above. I further request and direct that this Notice be published in the Commonwealth Register.

AUTHORITY: The Department is required by the Legislature to adopt rules and regulations regarding those matters over which the Department has jurisdiction, including its regulation of the workforce participation, job preference, and foreign worker requirements, as provided in P.L. 15-108 as amended by P.L. 17-1.

EFFECTIVE DATE: Pursuant to the APA, 1 CMC sec. 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.

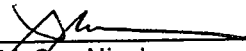
COMMENTS AND AGENCY CONCISE STATEMENT: Pursuant to the APA, 1 CMC sec. 9104(a)(2), the Department reports that it has received no written or oral submissions respecting the proposed regulations other than those noted in the modifications set out above except one comment that pointed out the problem of a lack of regulations from the Secretary of Public Health so that the Department could put into operation the insurance pool provided in P.L. 15-108. That commenter also requested additional language about deductions for co-pay and insurance premiums. A clarification was added for co-pay but insurance premiums may require a case-by-case analysis as to the cap on deductions. The Department circulated the proposed regulations extensively before publication and adopted the informal oral comments it received in the proposed regulations that were published. Informal staff reviews revealed a few points, described above, for clarifying changes. 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 its adoption. The Department received no comments stating reasons against its adoption.

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 sec. 2153(e) (To review and

approve, as to form and legal sufficiency, all rules and regulations to be promulgated by any department, agency or instrumentality of the Commonwealth government, including public corporations, except as otherwise provided by law).

I DECLARE under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 18th day of May, 2010, at Saipan, Commonwealth of the Northern Mariana Islands.


Certified and ordered by:



Gil M. San Nicolas,
Secretary of Labor


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 certified final regulations, modified as indicated above from the cited proposed regulations, 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 18 day of MAY, 2010.



EDWARD BUCKINGHAM
Attorney General

Filed and
Recorded by:



ESTHER M. SAN NICOLAS
Commonwealth Register

May 18, 2010
Date

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

EMPLOYMENT RULES AND REGULATIONS

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

§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 other 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 job preference cases, labor cases, denial cases, agency cases, and umbrella permit cases, the hearing dockets for all types of cases, maintain the barred list, maintain audio and digital files of transcripts and administrative orders, and other matters as assigned by the Secretary.

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

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

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

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 Deputy Secretary the managers in the Department appointed by the Secretary, the liaison officers, 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 and other nonimmigrant aliens;
- (g) “Department” means the Department of Labor;
- (h) “Domestic helper” means a person who assists an employer with the domestic duties of a household, including but not limited to cooking, 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 domestic helper or farmer; and does not include the government of the United States;
- (j) “FAS citizen” means a citizen of the Freely Associated States, which are the Federated States of Micronesia, The Republic of the Marshall Islands, and the Republic of Palau, who is legally residing in the Commonwealth;
- (k) “Foreign national worker” means a person who is not a United States citizen, a United States permanent resident, a CNMI permanent resident, or an immediate relative of a United States citizen or a United States permanent resident, or an immediate relative of a CNMI permanent resident, and who entered the CNMI as a nonimmigrant prior to November 28, 2010 for the declared purpose of being employed in the Commonwealth;
- (l) “Hearing officer” means a hearing officer appointed by the Secretary who serves in the Administrative Hearing Office and who conducts mediations, hearings, and other proceedings as necessary; and for purposes of 1 CMC §§9109 and 9110 as those provisions may apply to this 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 designated by the Administrative Hearing Office in order to seek a voluntary resolution of the dispute satisfactory to all parties and reflected in a written agreement;
- (p) “Nonimmigrant alien” means a person described in Section 101(a)(15) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15);
- (q) “Private sector” means economic activity carried on by business or non-business employers who are not governmental entities or entities owned or controlled by any government;
- (r) “Repatriation” means the exit from the Commonwealth and travel to the point of hire for a foreign national worker or transitional worker, or immediate relative of a foreign national worker or transitional worker, by voluntary action; and in the case of death while in the Commonwealth, the embalming and shipment of the body to the point of hire;
- (s) “Secretary” means the Secretary of Labor;
- (t) “Status-qualified” refers to a participant in the workforce who is a citizen, CNMI permanent resident, or U.S. permanent resident or an immediate relative of a citizen, CNMI permanent resident, or U.S. permanent resident;
- (u) “Termination” means, with respect to an approved employment contract, the expiration of the contract according to its terms, termination by a party for cause or as otherwise permitted during the term of the contract, or termination by the Secretary for cause during the term of the contract;
- (v) “Transfer” means a process by which a foreign national worker who is or has been a party to an approved employment contract with one employer, or has adjusted status, becomes employed by a new employer without first exiting the Commonwealth;
- (w) “Transitional worker” means a nonimmigrant alien admitted by the federal government for employment in the Commonwealth after November 27, 2009 pursuant to the special provision to ensure adequate employment, Section 702(a) [§6(d)], of 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 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 for which any alien may be hired must be given to all those entitled to a preference by the broadest means available, which is the Department's free interactive website, www.marianaslabor.net. Notice by other means is sufficient only if a person entitled to preference is hired.

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 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 classification number 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 each job performed by each employee or prospective employee for the employer. The appropriate O-NET classification shall be entered as required on Department forms.

§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 noninstitutional population 16 years or older. (Persons in institutions such as nursing homes and prisons, and persons on active duty in the Armed Forces, are not included.) It is made up of persons with jobs (“employed”) and persons who are jobless, looking for jobs, and available for work (“unemployed”). Persons are available for work if they have a status or permit that allows work in the Commonwealth and are otherwise available for work. Persons who are not employed or unemployed are not in the workforce.
- (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 other data become available is 30%.
- (d) Persons retained by an employer as consultants, advisers, or agents who are independent contractors are not included in the number of status-qualified participants.

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

§ 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 in determining whether an employer has fewer than five employees. All such employers are subject to the job vacancy announcement requirements for all job vacancies and all such employers are subject to the job preference requirements as to citizens, CNMI permanent residents, and U.S. permanent residents.

- (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 employ at least one citizen, CNMI permanent resident, or U.S. permanent resident.
- (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 employ at least one citizen, CNMI permanent resident, or U.S. permanent resident.

§ 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. A job vacancy announcement for which a transitional worker or nonimmigrant alien with another federal credential may be hired must have content that satisfies U.S. Labor requirements. See 20 CFR 655.

§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 80-50.4-240).

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 or in the event a job in a lesser O-NET classification is refused. The employer may lay off aliens in any order except that the employer shall lay off aliens other than citizens of the freely associated states before laying off citizens of the freely associated states in the same O-NET job classification or any O-NET job classification with lesser requirements except as agreed with the Department or in the event a job in a lesser O-NET classification is refused.

§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 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.

¹ 4 CMC §9503

§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.

§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.

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

§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.

(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.

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

- 240B Nonimmigrant aliens who are CNMI government employees
- 240D Immediate relatives of citizens, CNMI permanent residents, and U.S. permanent residents
- 240E Immediate relatives of nonimmigrant aliens who have permits to be employed or invest in the Commonwealth
- 240G Foreign investors
- 240H Foreign students

- 240K Foreign national workers
- 240L Foreign ministers
- 240M Foreign missionaries
- 240N Foreign business owners
- 240O Foreign retirees
- 240P Nonimmigrant aliens who are witnesses and victims of crime

§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 by order of a hearing officer upon good cause shown. Application should be made to the Administrative Hearing Office.

§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. The Department will provide confirmation, by telephone or e-mail, to a prospective employer that the holder is entitled to a replacement permit as a part of the Department's employment documentation process.

§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 permit. Registration may be completed in person at the Guest Worker Section, by mail using a form available on the Department's website, or (after July 1, 2010) on line. Immediate relatives may need to provide a bond or suitable alternative assurances to cover medical and repatriation expenses. With registration, a prior Commonwealth-issued work permit (for those who have no umbrella permit) may be amended or extended for good cause shown.

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

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

§40.2-301 Employment-qualified permits

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

only in the business enterprises in which they have invested. Holders of 240H permits may work only part-time and only in employment consistent with their educational program as provided in Department of Commerce regulations.

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

§40.2-305 Employment. Permit holders in the categories that require employment 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. Permit holders may transfer 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 or at other times permitted by a hearing officer or these regulations. In the event that the employer has failed to give the required thirty (30) days notice of nonrenewal, the worker has an automatic extension for thirty (30) days of the time to register. Registration to transfer shall be on the Department's standard form and shall allow the foreign national worker thirty (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.
- (i) The Department has the discretionary right to grant or deny an extension. Unemployed foreign national workers create a risk of additional burdens for Commonwealth tax payers, and Commonwealth law grants no right to an extension of time to transfer. Any applicant for an extension of time must assume full responsibility for medical and repatriation expenses under terms that the hearing officer finds sufficient to avoid possible burdens on Commonwealth taxpayers and must pay the administrative fee assessed to meet the Department's costs in handling extension requests. No fee waivers will be granted.
- (ii) Extensions of time may be granted upon a showing that the applicant holds a valid umbrella permit, has had a prior history of successful employment in the Commonwealth, has located a named employer for a specified job and needs additional time to complete arrangements or has described in detail specific skills to become successfully employed, recent actions taken to locate work, and specific facts that support reasonable cause to conclude that employment will be located within the next thirty (30) days.
- (iii) The hearing officer will consider the applicant's written application and may, but is not required to, consider the Department's records as to the applicant's employment history, registration, permit, and prior requests for extensions of time in deciding whether to grant an extension of time. The Department has no obligation to make any investigation with respect to an applicant's circumstances or to develop any factual record or to inquire into the credibility of claims. The hearing officer may consider any extended period of unemployment as reasonable cause to conclude that employment will not be located within the next thirty (30) days.

- (iv) Nearly all individual employment situations are different, and the fact of the grant of an extension of time to any particular applicant provides no support for the grant of a request made by any other applicant unless that support is stated in specific detail in the application.
- (v) Extensions of time, if granted, are generally for thirty (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.
- (vi) In the event a request for an extension of time is denied on the written record, a request may be submitted for reconsideration with a hearing. See §50.4-850, §70.2-300.
- (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 with respect to eligibility to transfer.
- (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) Each employer intent form shall circulate to all sections within the Department. If no objection is received, a hearing officer may issue an order granting permission to transfer. If an objection is received, the employer or employee may make a written offer of compliance which may be considered and approved or rejected without a hearing, or a hearing officer shall conduct a hearing on the objection and the burden of proof is on the objecting officer of the Department. After grant of permission to transfer, the standard procedures for transfer will apply. (See §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, 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 an 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 Section may request such evidence of financial capability as is required for an evaluation of the financial capability of the business. The Manager of the Guest Worker Section may reject an application for an approved employment contract upon a finding that the employer has presented insufficient evidence that the employer is financially capable.
- (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 employ foreign national workers and, if requested by the Department, shall provide a certification of good standing from the Department of Revenue and Taxation.
- (d) Outstanding awards, billings, and complaints. An employer must have no outstanding unpaid awards arising out of Department proceedings or outstanding billings on behalf of a foreign national worker from the

Commonwealth Health Center that are more than 60 days in arrears, except matters on appeal. An employer with more than one outstanding complaint pending with the Department may not be a suitable employer. A proposed employment contract with a foreign national worker may be rejected if the employer has presented insufficient evidence that outstanding judgments or complaints should not disqualify the employer.

§ 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 may 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, farmers, household maintenance and yard workers 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, located on one or more islands, however the principal island where a foreign national worker will be assigned to work must be stated in the approved employment contract.

§ 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.

§ 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 even though the \$200 per month deduction may exceed 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 that co-pay requirements under

insurance contracts may be deducted from wages in compliance with §40.2-455) and 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. If the employer provides housing, minimum standards apply. (See §50.1-400)

§ 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 other terms of an existing contract may be agreed by the parties at any time during the term of the contract and filed with the Department on the standard form provided by the Department for that purpose. A contract extension or amendment does not require prior approval of, but may be denied by, the Department. A denial may be appealed to the Administrative Hearing Office within fifteen (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 approved or denied by the Department taking account of the interests of the Commonwealth with respect to employment of citizens and permanent residents and enforcement of the requirements of the Commonwealth Employment Act of 2007, as amended, and 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 proper notice pursuant to subsection (a) above, the employer remains the last employer of record (responsible for medical expenses and repatriation) and is liable to pay the employee's full wages up to a maximum of thirty (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 for the thirty-day period. At any time until thirty (30) days after the termination date of the contract, the employee may register to transfer and proceed under Section 80-40.2-485 or file a complaint and proceed under Section 80-50.4-235 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 80-50.4-520) 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 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. An employer who has an approved employment contract with a foreign national worker for full-time work has no liability for wages for part-time work performed by that worker for another employer. The full-time employer remains responsible for medical expenses and repatriation obligations under the full-time employment contract with the foreign national worker.
- (c) Part-time employer responsibilities. An employer who hires a foreign national worker for part-time work under circumstances in which the worker does not have a contract with another employer for full-time work becomes responsible for medical expenses and repatriation of the part-time employee until the employee stops working for the part-time employer.

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

§ 40.3-210 Orientation. Employers shall ensure that every transitional worker who enters the Commonwealth from another country attends the first orientation session available after date of entry unless excused for illness or other unavoidable circumstance. The orientation program in Saipan shall be presented every Tuesday morning at 9:00 a.m. at the conference room, 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 40.2-220) 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 40.2-451-470) 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 and housing 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 50.1-400 The U.S. Department of Labor's regulations with respect to employer-supplied housing, 20 CFR 654, Subpart E, are recognized as the minimum standards required of every employer in the Commonwealth who elects to provide employee housing unless a variance is obtained from the Department.

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 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, 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 regarding employment 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 regarding employment.

§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 the party. The signature constitutes a certificate by the signer that he or she has read the pleading; that to the best of his or her knowledge, information, and belief, there are good grounds to support it; and that it is not filed for purposes of delay.

§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 file a complaint making a claim for damages if an employer rejects an application for the job without just cause and the employer employs a person who is not a citizen, CNMI permanent resident, or U.S. permanent resident for the job.

- (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 recommendations from prior employment, rejecting persons with an employment history indicating an inability to perform the job successfully, rejecting persons with an educational background making it unlikely that the necessary education or training to hold the position could be accomplished successfully within a reasonable time; and similar just causes.
- (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 (appeal of the denial) 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 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 complaints by indigents. Indigent complainants may file *in forma pauperis* and are not required to pay a filing fee. The standards of the Commonwealth Superior Court with respect to waiver of fees for indigents shall be followed. A complainant who files *in forma pauperis* and is later found by a hearing examiner not to qualify for that status may be ordered to pay the filing fee. (For filing fees, see 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 Procedures Act and are generally applicable to adjudicative proceedings in all actions. Upon notice to all parties, a hearing officer may, with respect to matters pending before that hearing officer, modify or waive any rule herein upon a determination that no party will be prejudiced and the ends of justice will be served.

§ 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 as promptly as practicable, usually within 90 days of completion of the mediation, and inform both parties of the date.

Section 50.4-500 Powers of the hearing officer.

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

determination is required. At any time, an investigator may request from Administrative Hearing Office a continuance of the hearing for further investigation.

§50.4-515 Attendance at orientation. A hearing officer may require any foreign national worker who files a complaint to attend an orientation session in order to be informed of rights and responsibilities.

§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 the Enforcement Section at least once in each calendar month to report on such efforts to find work. Failure to make a good faith effort to find work shall be grounds for denying a request for transfer. Failure to report or false or fraudulent reports shall be grounds to dismiss the pending case.
- (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 (6) 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 repatriation expenses remain with the last employer of record at the time the complaint was filed and are not shifted to the employer who hires the worker under a temporary work authorization. The financial obligations with respect to payment of wages and any employer-supplied housing or other benefits (other than medical expenses) are the responsibility of the employer who hires the worker under a temporary work authorization.
- (e) If employment under the temporary work authorization ends prior to the determination of the pending case, the foreign national worker shall report to the Enforcement Section within ten (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 pre-hearing conference. At a pre-hearing conference, a hearing officer may discuss any matter that may facilitate resolution of the dispute, including settlement. Pre-hearing conferences may be conducted by telephone, in writing, or in person. A hearing officer may, but is not required to, reduce the results of a pre-hearing conference to an order. A statement on the record at the hearing may be used as an alternative.

§ 50.4-540 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 Hearing 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, but is not required to, 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.

§ 50.4-630 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 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, pre-hearing stipulation, or pre-hearing order and are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence may be ordered by a hearing officer.

§ 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 (which includes prospective contract damages, if any) or overtime compensation, amounts unlawfully deducted from wages or unlawfully required by an employer to be paid by a foreign national worker, damages for 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 on any of the bases on which an umbrella permit described in §40.2-110 could have been granted. An umbrella permit may be modified to condition the continuation in effect of an umbrella permit as appropriate to secure compliance with Commonwealth law, regulations, orders of a hearing officer, or terms of the permit;
- (m) Revoke an umbrella permit for violation of 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 in connection with the adjudication of a claim include:
 - (i) An unlawful termination of an approved employment contract by an employer;

- (ii) The voiding of an approved employment contract or debarment of an employer for a violation of 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 in connection with the adjudication of a claim only to a foreign national worker who has complied with the provisions of the approved employment contract to the extent practicable under the circumstances, and for whom transfer relief is required in order to assure receipt of the benefit of the bargain under the contract that is the subject of the action. A settlement may include transfer relief, if appropriate, and subject to approval by a hearing officer.
- (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 circumstances justifying a longer period.

§ 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, and information with respect to any relevant bond.

§ 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 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. 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 bring a direct action in the Commonwealth Superior Court to enforce the administrative order and collect the award by filing a complaint seeking enforcement of that order. See the Commonwealth Employment Act of 2007, as amended, §4950(a).

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

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

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 and classification 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 and classification 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 citizens, U.S. permanent residents, and CNMI permanent residents and the immediate relatives of citizens, U.S. permanent residents and CNMI permanent residents in the workforce of the employer.

§ 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 qualified 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:

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.

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 all aliens present 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 has been commenced.

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	
Less than one hour required for	
Individual's own records	\$25.00
Employer's own records	\$25.00
Less than one hour required, others	\$95.00
More than one hour required (as available)	Cost to locate, assemble, and copy
(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 June 1, 2010 and shall not apply retroactively to applications filed or proceedings in the Administrative Hearing Office that were pending before that date.

**Group Health Insurance Program
Commonwealth of the Northern Mariana Islands**

Mark A. Aguon, Administrator

1st Floor, Honorable Lorenzo I. Deleon Guerrero Retirement Fund Building, Isa Drive, Capital Hill
P.O. Box 501247 CK, Saipan, MP 96950-1247
Tel. No. (670) 322-3863~10; Fax No. (670) 664-8080; E-mail: administrator01@nmiretirement.com

**PUBLIC NOTICE OF PROPOSED RULES AND REGULATIONS
WHICH ARE AMENDMENTS TO THE RULES AND REGULATIONS OF THE
GROUP HEALTH INSURANCE PROGRAM**

INTENDED ACTION TO ADOPT THESE PROPOSED RULES AND REGULATIONS: The Northern Mariana Islands Retirement Fund ("NMIRF"), intends to adopt as permanent rules and regulations the attached Proposed Amendments to the Rules and Regulations Governing the Group Health Insurance Program, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The Rules and Regulations would become effective 10 days after adoption and publication in the Commonwealth Register. (1 CMC § 9105(b)).

AUTHORITY: The Northern Mariana Islands Retirement Fund ("Retirement Fund") is empowered by the Legislature to adopt rules and regulations for the administration of the Government Health and Life Insurance Program. 1 CMC § 8424.

THE TERMS AND SUBSTANCE: The Program is underwritten exclusively by the CNMI Government to provide an affordable health insurance plan for the benefit of CNMI government employees. The Program is designed to be self sufficient, and therefore, must establish rates sufficient to pay for administration of the Program and particularly claims incurred by Enrollees in the Plan.

Furthermore, the following citations, statutes and regulations are affected by these proposed amendments: Article 2 – Definitions: Sections 2.13, 2.16, 2.58, 2.62 and 2.65, codified at NMIAC § 110-30.1-005; Article 3 – Eligibility: Sections 3.03, 3.07 and 3.15, codified at NMIAC § 110-30.1-110, 130 and 170; Article 4 - Enrollment: Sections 4.01, 4.10 and 4.15, codified at NMIAC § 110-30.1-201, 218 and 228; Article 5 - Benefits: Section 5.04, codified at NMIAC § 110-30.1-315; Article 8 - Exclusions: Section 8.01(G)(2)(h), (t1) and (r2), codified at NMIAC § 110-30.1-601; Article 10 - Premiums: Section 10.15, codified at NMIAC § 110-30.1-870; Article 11 - Claims and Payment for Services: Sections 11.05(B) and 11.06(A), codified at NMIAC § 110-30.1-920 and 925; Article 13 - Coordination of Benefits and Double Coverage, Section 13.04(A), codified at NMIAC § 110-30.1-1115; Article 15 - Changing Benefits and Enrollment: Section 15.01, codified at NMIAC § 110-30.1-1301; Article 19 - Termination: Section 19.01(K) and (L), codified at NMIAC § 110-30.1-1701; and the Rules and Regulations as published in the Commonwealth Register, Volume 28, Number 08, dated August 24, 2006, and as amended and adopted as published in the Commonwealth Register Volume 29, Number 07, dated July 18, 2007 and Volume 29, Number 08, dated August 17, 2007 (effective August 27, 2007), respectively; and as further amended and adopted as published in the Commonwealth Register Volume 29, Number 11, dated November 19, 2007 and Volume 29, Number 12, dated December 18, 2007 (effective December 28, 2007), respectively; and as further amended as

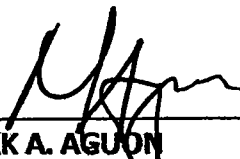
emergency as published in the Commonwealth Register Volume 31, Number 10, dated October 29, 2009 (effective October 29, 2009) and adopted as published in the Commonwealth Register Volume 31, Number 12, dated December 22, 2009 (effective January 1, 2010).

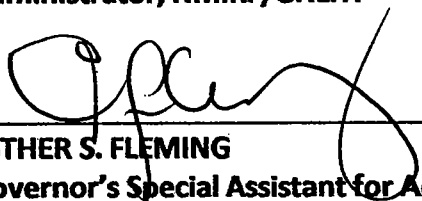
THE SUBJECTS AND ISSUES INVOLVED: These rules and regulations would:

1. Allow members to add to coverage for their domestic partners, provided the member pay 100% of the premium for the domestic partner (no government contribution toward the premium).

DIRECTIONS FOR FILING AND PUBLICATION: These Proposed Rules and 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 Mark A. Aguon, Administrator, Attn: Proposed Amendments to the Rules and Regulations Governing the Group Health Insurance Program, at the above address, fax or email address, with the subject line "Proposed Amendments to Rules and Regulations Governing Group Health Insurance Program". Comments are due within 30 days from the date of publication of this notice. Please submit your data, views or arguments. (1 CMC § 9104(a)(2)).


Submitted by: 
MARK A. AGUON
Administrator, NMIRF/GHLITF
Date: 4/16/10

Received by: 
ESTHER S. FLEMING
Governor's Special Assistant for Administration
Date: 5/12/10

Filed and Recorded by: 
ESTHER M. SAN NICOLAS
Commonwealth Register
Date: 5.12.10

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 Rules and 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 this 12 day of May 2010.

for  **EDWARD T. BUCKINGHAM**
Attorney General

Sangkattan Na Isla Marianas Fondon Ritiru
COMMONWEALTH GI SANGKATTAN NA ISLAN MARIANAS SIHA

Mark A. Aguon, Atministradot

Primet Bibienda, Honoráppli Lorenzo I. Guerrero Guma' Fondon Ritiru, Isa Drive, Capital Hill

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**NOTISIAN PUBLIKU POT I MANMAPROPONEN AREKLAMENTO YAN
REGULASION SIHA NI MANMA'AMENDA PARA I AREKLAMENTO YAN
REGULASION SIHA GI PARA I PROGRAMAN GURUPON HINEMLO' NA INSURANCE**

MA INTENSIONA NA AKSION PARA U MA'ADÁPTA ESTE I MANMAPROPONE NA AREKLAMENTO YAN REGULASION SIHA: I Sangkattan na Islan Marianas Fondon Ritiru ("NMIRF"), ha intensiona na para u adápta komu petmaniente i areklamento yan i regulasion siha ni mañechetton ni Manmapropone na Amendasion siha para i Areklamento yan Regulasion siha ni Ginibebetna i Prográman Gurupon Hinemlo'na Insurance, sigun gi manera siha gi Ákton i Administrative Procedure, 1 CMC § 9104(a). I Areklamento yan i Regulasion siha para u ifektibu gi dies(10) diha siha despues di ma'adápta yan mapublika gi halom i Rehistran Commonwealth. (1 CMC § 9105(b)).

ÁTURIDÁT: I Sangkattan na Islan Marianas Fondon Ritiru ("Retirement Fund") ináturisa ni Lehislatura na para u adápta i areklamento yan i regulasion siha para i atministrasion gi i Government Health Insurance yan i Prográman i Life Insurance. 1 CMC § 8424.

I SUSTÁNSIAN I PALÁBRA SIHA: Ginen i Gobetnamenton CNMI ha na'sahngi gi sampapa' i Prográma ni para u pribeniyi plánon health insurance ni affordable para i benifision i emple'aon gobetnamenton CNMI siha. I Prográma maplaneha na para u self sufficient, yan láo, debi na u ma'estapblesi sufisiente na ápas ni para u apási i atministrasion gi Prográma yan pattikulátmiente i claims incurred gi halom i Plánon i Enrollees.

Itmàs, i sigiente na sitasion siha, estatua yan i regulasion siha maninafekta ginen este i manmapropone na amendasion siha: Attikulu 2 – Difinision siha: Seksiona Siha 2.13, 2.16, 2.58, 2.62, yan 2.65, ni makodigu gi NMIAC § 110-30.1 -005; Attikulu 3 – Nombráyon: Seksiona Siha 3.03, 3.07 yan 3.15, ni makodigu gi NMIAC § 110-30.1-110, 130 yan 170; Attikulu 4 – Enrollment: Seksiona Siha 4.01, 4.10 yan 4.15, ni makodigu gi NMIAC § 110-30.1-201, 218 yan 228; Attikulu 5 – Benefisiu Siha: Seksiona 5.04, ni makodigu gi NMIAC § 110-30.1-315; Attikulu 8 – Exclusions: Seksiona Siha 8.01(G)(2)(h), (tl) yan (r2), ni makodigu gi NMIAC § 110-30.1-601; Attikulu 10 – Premiums: Seksiona 10.15, ni makodigu gi NMIAC § 110-30.1-870; Attikulu 11 – Claims yan Ápas para i Setbision Siha: Seksiona Siha 11.05(B) yan 11.06(A), ni makodigu gi NMIAC § 110-30.1-920 yan 925; Attikulu 13 – Coordination i Benefisiu siha yan Dopbli na Coverage, Seksiona 13.04(A), ni makodigu gi NMIAC § 110-30.1-1115; Attikulu 15- Matulaikan Benefisiu siha yan Enrollment: Seksiona 15.01, ni makodigu gi NMIAC § 110-30.01-1301; Attikulu 19 – Tetminasion: Seksiona 19.01(K) yan (L), ni makodigu gi NMIAC § 110-30.1-1701; yan i

Areklamento yan i Regulasion siha ni mapupblika gi halom i Rehistran Commonwealth, Baluma 28, Numiru 08, ni mafecha gi Agosto 24, 2006, yan komu ma'amenda yan ma'adapta komu mapupblika gi halom i Rehistran Commonwealth Baluma 29, Numiru 07, ni mafecha gi Hului 18, 2007 yan Baluma 29, Numiru 08, ni mafecha gi Agosto 17, 2007 (umifektibu gi Agosto 27, 2007), kon respetu; yan itmás mo'na ma'amenda yan ma'adapta komu mapupblika gi halom i Rehistran Commonwealth Baluma 29, Numiru 11, ni mafecha gi Nubembre 19, 2007 yan Baluma 29, Numiru 12, ni mafecha gi Disembre 18, 2007 (umifektibu gi Disembre 28, 2007), yan más mo'na ma'amenda komu emergency ya mapupblika gi halom i Rehistran Commonwealth Baluma 31, Numiru 10, ni mafecha gi Oktubri 29, 2009 (umifektibu gi Oktubri 29, 2009) yan ma'adapta komu mapupblika gi halom i Rehistran Commonwealth Baluma 31, Numiru 12, ni mafecha gi Disembre 22, 2009 umifektibu gi Ineru i, 2010).

SUHETO NI MASUMARIA YAN ASUNTO NI TINEKKA: Este i manma'amenda na areklamento yan regulasion siha para u:

1. U masedi i miembro siha na u mana'dañña' para i coverage para i iyon-ñiha domestic partners, mapribeniyi i miembro na u apási siento(100%) pot siento gi premium para i domestic partner (táya' kontribusion gobetnamento kontra i premium).

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


PARA U MAPRIBENIYI OPINON SIHA: Na'hánao pat entrega i imfotmasion guatu gi as Mark A. Aguon, Atministradot, Attn: I Mapropone na Amendasion para i Areklamento yan Regulasion siha ni ginebebetna i apelan Administrative Process, gi sanhilo' na address, fax pat email address, yan i ráyan suheto "Mapropone na Amendasion para i Areklamento yan Regulasion siha ni Ginebebetna i Apelan Administrative Process". Todu imfotmasion debi na u fanhálorom gi halom trenta(30) diha siha ginen i fechan este na notisian publikasion. Pot fabot na'hálorom i imfetmasion, hinasso pat testamoñon kinentra siha. (1 CMC § 9104(a)(2)).

Nina'hálorom as:


Mark A. Aguon
Atministradot, NMIRF

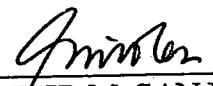
4/16/10
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Rinisibi as:


ESTHER S. FLEMING
Espisiát Na Ayudánte Para I Atministrasion

5/12/10
Fecha

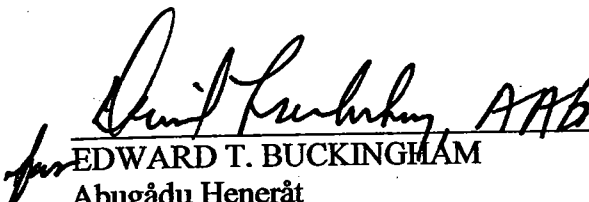
Pine'lo Yan Rinekot as:


ESTHER M. SAN NICOLAS
Rehistran Commonwealth

5.12.10
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) (ahentan inapreban Abugádu Henerát) i manmapropone na Areklamento yan Regulasion siha ni mañechetton guini ni manmarebisa yan manma'apreba komu fotma yan suficiente igát ginen i CNMI Abugádu Henerát yan debi na u mapublika, 1 CMC § 2153(f) (publikasion areklamento yan regulasion siha).

Mafecha guini gi diha 12, MAYO, 2010.


EDWARD T. BUCKINGHAM
Abugádu Henerát

Northern Mariana Islands Retirement Fund Commonwealth Téél falúw kka
falúwasch Efáng Marianas

Mark A. Aguon , Samwool

Mmwal pwó. Awóólingil Lorenzo I. Deleon Guererro Retirement Fund Building,
Isa

Drive, Capital Hill

P.O.Box 591247 CK, Seipel, MP 96950 – 1247

Tilifoon, No. (670)322-3863-10; Fax No. (670)664-8080; E-mail:

Administrator01@nmiretirement.com

ARONGOL TOULAP REEL POMWOL ALLÉGH KKA E EBWE LIWEL GROUP HEALTH
INSURANCE PROGRAM

MÁNGEMÁNGIL IGHA EBWE FILLÓÓY POMWOL ALLÉGH KKAAL:

Northern Mariana Islands Retirement Fund ((‘NMIRF’), e tipeli bwe ebwe schéschéél fillóóy pomwol Lliwel kkaal ngáli Alléghúl Adminstrative iye e lemeli Group Health Insurance Program, bwelle mwóghutul Administrsrative Procedure Act, 1 CMC Tálil 9104(a). Allégh kkaal ebwe kkamall llól seigh (10)ráálil mwiril fillóól me akkatéél llól Commonwealth Register, (1CMC Talil 9105(b)).

BWÁNGIL: Northern Mariana Islands Retirment Funds (“Retirement Fund”) nge e ngálleey bwángil schóóy fféerúl Allégh (Legislature) rebwe fillóóy allégh ngáli administration reel Government Health Life Insurance Program. 1 CMC Tálil 8424.

AWEEWEL ME NGÚLÚWAL: Sángi plóónul gobennool CNMI nge ebwe alemweiló progróomal health insurance iye e fisch ngáliir schóóy angaangal llól gobenno. Progróoma yeel nge e ghi ghatch, me bwal, rebwe ayoora rate ye e ghatch ebwe obwóssuw ngáli administration bwele Progróoma yeel, schéschéél schóókka rebwe toolong llól plóóno yeel.

SÓBWÓLÓÓL: Tálil aweewe kkaal me allégh kka ebwe weires mereel pomwol lliwel kkaal: Peigh Article 2 – Aweewe:, Tálil 2.13, 2.2.16, 2.58, 2.62 me 2.62 me 2.65, codified mellól NMIAC Tálil 110-30,1-005; Tálil 3-Fillongol: Tálil 3.03, 3.07 me 3.15, codified mellól NMIAC Tálil 110-30.-201, 228; Article 5 – Salapial: Tálil 5.04, codified mellól NMIAC Tálil 110-30.1-601; Article 8 – Exclusions: Tálil 8.01(G)(2)(h), (t1) me (r2), codified mellól NMIAC Tálil 110-30.1-601; Article 10-Premiums: Tálil 10.15, codified mellól NMIAC Tálil 110-30.1-870; Article 11-Claims me Salapial alillis yeel: Tálil 11.05(B) me 11.06 (A), codified mellól NMIAC Tálil 110-30.1-920 me 925; Article 13- aweewel benefisio me Double Coverage, Tálil 13.04(A), codified llól NMIAC Tálil 110-30.1-1115; Article 15-Lliwel reel benefisio me schóól toolong (Enrollment): Tálil 15.01, codified mellól NMIAC Tálil 110-30.1-1301; Article 19-Akkayúulóól (Termination): Tálil 19.01(K) me (L), codified llól NMIAC Tálil 110-30.1-1701; me Allégh kka aa akkatééló llól Commonwealth Register, Volume 28 Numero 08, ótol Agosto 24, 2006, me iye aa lliwel me fillóól llól Commonwealth Register Volume 29, Numero 07, ótol Wuun 18, 2007 me Volume 29, Numero 08 ótol Agosto 17, 2007 (schéschéél Agosto 27, 2007), schéschéél; me sobwolóól yaal lliwel me filló llól Commonweath Register Volume 29, Numero 11, ótol Aremwoy 19, 2007 me Volume 29 Numero 12 ótol Tumwur 18, 2007 (schéschéél Tumwur 28, 2007), schéschéél; me iye e sobwosobwoló ghitipwotchol lliwel kkaal llól Commonwealth Register Volume 31, Numero 10, ótol Sarobwel 29, 2009 (schéschéél Sarobwel 29, 2009) me fillóól igha ebwe akkatééló Commonwealth Register Volume 31, Numero 12, ótol Tumwur 22, 2009 (schéschéél Schoow 1, 2010).

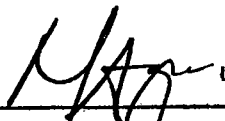
AWEEWEL ME MILIKKA E TEETA: Allégh ebwe :


1. Emmwel bwe aramasal membro yeel rebwe toolong faal yaal coverage, ngáre malle e membro ebwe óbwóssuw yaal 100% premium (Essóbw yoor premium ye gobenno ibwe isisilong).

AFALAFAL REEL AMMWEL ME MILIKKA E TÉÉTÁ: Pomwol allégh kkaal ebwe akkatééló llól Commonwealth Register mellól Tálil ye rekke pomwoli me fillóól allégh kka e ffé me bawl llól bwulasiyool gobenno kkaal me senatorial district, e weewe schagh llól mwáliyeer Amerikkonu, Remeraalis me Refalúwasch. (1 CMC Tálil 9104(a)(1)).

ISISILONGOL AGHIYEGH: Afangaaló ischil mángemángúmw reel Mark A. Aguon, Samwool, Att: Proposed Amendments to the Rules and Regulations Governing the Group Health Insurance Program, reel address ye weiláng, fax me ngáre email reel address, fengál me kkapasal ye “Pomwol Lliwel kkaal reel Alléghúl ye elemeli Adminstrative Appeal Process”. Aghiyegh ebwe atottoolong llól eliigh (30) ráálil sáangi schagh igha raa atééw arong yeel. Óutu ghal soong, ów ischilong mááfiyámi. (1 CMC Tálil 9104(a)(2)).


Pomwol allégh kkaal ebwe allégh me fillóól mereel Mwiischil Trustees wóól _____, 2010.

Isáliyallong: 
MARK A. AGUON
Samwoolul, NMIRF


Rál

Mwir sáangi: 
ESTHER S. FLEMING
Sów Alillisil Sów Lemelem


5/12/10
Rál

Ammwel sáangi: 
ESTHER M. SAN NICOLAS
Commonwealth Register

5.12.10
Rál

Sáangi alléh ye 1 CMC Tálil 2153(e)(alughulugh mereel AG reel allégh kka ebwe akkaté ighila) me 1 CMC 9104(a)(3) (bwughi yaa alughulugh AG), pomwol allégh kka e appasch ikka raa takkal amweri fischi me allégheio mereel CNMI Sów Bwungul Allégh Lapalap me ebwe akkatééló, 1 cmc Tálil 2153(f) (akkatéé) alléh kkaal)

Rállil ye 12 llól maramal Ghúúw 2010.


EDWARD T. BUCKINGHAM
Sów Bwungul Allégh Lapalap

**PROPOSED AMENDMENTS TO THE RULES AND REGULATIONS
GOVERNING THE GROUP HEALTH INSURANCE PROGRAM**

Amendments to ARTICLE 2 – DEFINITIONS: Sections 2.13, 2.16, 2.58, 2.62 and 2.65:

2.13. “Dependent” means a Subscriber’s

- a. Spouse or Domestic Partner; and
- b. Eligible Child(ren).

2.16.5 “Domestic Partner” means an Employee’s or Retiree’s current partner where the Employee or Retiree and the partner satisfy all of the following:

- a. Both are at least eighteen (18) years of age and are mentally competent;
- b. They have cohabitated for two (2) or more years;
- c. They share the same regular and permanent residence, with the current intent to continue to do so indefinitely.
- d. They share a close personal and intimate relationship and are not related by blood closer than would bar marriage in the state where they legally reside.
- e. They assume responsibility for each other’s welfare and financial well-being.
- f. Neither is married to another;

2.58. “Retiree” means a former Employee who is receiving annuity payments through the Northern Mariana Islands Retirement Fund as a result of service, age or disability. The term “Retiree” does not include a Spouse, or former Spouse, or Domestic Partner of a Retiree receiving an annuity as a result of a domestic relations court order.

2.62. “Spouse” means an Employee’s or Retiree’s current

- a. ~~legal husband or wife from whom the Employee or Retiree is not legally separated, or~~
- b. ~~common-law husband or wife, provided the marriage is recognized as valid and lawful in the jurisdiction where it was made.~~

2.65. “Survivor” means the Spouse or Domestic Partner of a deceased Retiree who is receiving Survivor’s annuity benefits under the laws governing the NMI Retirement Fund and who has not remarried.

Amendments to ARTICLE 3 – ELIGIBILITY: Sections 3.03, 3.07 and 3.15:

- 3.03. Notice of Enrollment Rights.** If you are declining enrollment for yourself or your Dependents (including your Spouse or Domestic Partner) because of other health insurance coverage, you may in the future be able to enroll yourself or your Dependents in this Program, provided that you request enrollment within 30 days after your other coverage ends. In addition, if you have a new Dependent as a result of marriage, birth, adoption or placement for adoption, you may be able to enroll yourself and your Dependents, provided that you request enrollment within 30 days after the marriage, birth, adoption or placement for adoption.
- 3.07. Spouse or Domestic Partner Enrolled in this Program on Death of Retiree.** A Spouse or Domestic Partner, upon becoming a Survivor, is eligible to continue enrollment in the Program for himself or herself and the deceased Subscriber's Dependents, provided such Survivor and Dependents were enrolled in the Program at the time of the Subscriber's death.
- 3.15. Coverage of Spouses or Domestic Partners.** Eligibility of current Spouse or Domestic Partner only. No A Subscriber may enroll a Spouse or if not currently legally married, a Domestic Partner. Proof of marriage shall be by submission of a marriage certificate. Proof of Domestic Partnership shall by execution by both the Employee/Retiree and the Domestic Partner, before a Fund employee, or by notarized signatures of both the Employee/Retiree and the Domestic Partner, on an Affidavit of Domestic Partnership Form certifying satisfaction of all of the requirements contained in the definition of Domestic Partner at section 2.16.5.

Amendments to ARTICLE 4 – ENROLLMENT: Sections 4.01, 4.10 and 4.15:

4.01 Enrollment Options and Categories.

- A. Option for coverage available under the Plan is as follows:
1. 80/20 coverage. The Plan pays 80% of Eligible Charges, and the Enrollee pays 20%.
- B. Enrollment categories.
1. Available category and code:
 - a. Single, Enrollment Code No. 1
 - b. Couple, Enrollment Code No. 2
 - c. Family, Enrollment Code No. 3
 2. Category explanations:

- a. **“Single”** refers to the Subscriber only. Only one Enrollee may be covered under this category of the Plan.
- b. **“Couple”** refers to a Subscriber with one (1) Dependent. The Dependent may be a Spouse, Domestic Partner or eligible Child, but a maximum of two (2) total Enrollees (including the Subscriber) may be covered under this category of the Plan.
- c. **“Family”** refers to a Subscriber with two (2) or more Dependents. The Dependents may be a Spouse or Domestic Partner and eligible Children or all eligible Children (including the Subscriber) may be covered under this category of the Plan.

3. Category Examples:

Single	Employee only	1 total Enrollee
Couple	Employee + Spouse OR <u>Employee + Domestic Partner</u> OR Employee + eligible Child	2 total Enrollees
Family	<u>Employee + Spouse or Domestic Partner</u> + 1 or more eligible Children OR Employee + 2 or more eligible Children	No limit to the number of eligible Enrollees

4.10. Rules That Apply When New Spouse or Domestic Partner Acquired. An Employee or a Retiree enrolled in the Program who newly acquires a Spouse or Domestic Partner may apply to enroll such Spouse or Domestic Partner by filing an Enrollment Change Form within 30 days after the date of marriage in the case of a Spouse or after the date of satisfying the requirements for a partner to qualify as a Domestic Partner. Enrollment of the Spouse or Domestic Partner will be effective as of the first day of the pay period following approval of the application. If such Spouse or Domestic Partner is not enrolled when first eligible, the Employee or Retiree may not apply to enroll the Spouse or Domestic Partner in

the Program until an Open Season unless the Employee or Spouse or Domestic Partner is entitled to Special Enrollment under the Health Insurance Portability and Accountability Act of 1996. If an Employee is so entitled, then the Health Insurance Portability and Accountability Act of 1996's Special Enrollment rules will apply.

- 4.15. Medicare Part A / Mandatory Enrollment.** It is a condition of enrollment in the Program that if any Enrollee, including a Retiree, Spouse or Domestic Partner of a Retiree, or an Enrollee who has met Medicare's waiting period for End Stage Renal Disease (ESRD), is eligible for Medicare Part A at no cost, such Enrollee must enroll in Medicare Part A.

Amendments to ARTICLE 5 – BENEFITS: Section 5.04(6)(g):

- 5.04. Other Benefits.** Subject to the definitions, limitations, maximums and exclusions of the Program, Eligible Charges for the following Services, in or out of a Hospital, are Allowable Expenses:

...

6. Maternity Services

...

- g. Child of Non-Spouse, Non-Domestic Partner Dependent.** A newborn Child of a non-Spouse, non-Domestic Partner Dependent is not an Enrollee unless such Child meets the definition of Child and is enrolled by the Subscriber pursuant to Article 4.

Amendments to ARTICLE 8 – EXCLUSIONS: Section 8.01(G)(2)(h), (t1) and (r2):

- 8.01.** The limitations and exclusions provided under this Article shall be in addition to any limitations and exclusions provided elsewhere in this Plan.

...

- G.** The following charges and Services are not Covered Benefits under the Program. ***The fact that a Service may be Medically Necessary or that a Doctor may prescribe, recommend or approve a Service does not, of itself, make the charge for such Service an Allowable Expense under the Program, even though the Service is not specifically listed as an exclusion.***

- 1. Charges.**

...

- 2. Services.**

...

- h.** Any Service rendered by an immediate relative or member of the Enrollee's household. (The term "immediate relative"

refers to the Enrollee's Spouse, Domestic Partner, parent, Child or sibling whether by blood, marriage or adoption). This exclusion does not apply to the charges made by a Provider that employs such relative or household member.

...

t1. Maternity Services for non-Spouse, non-Domestic Partner Dependent.

...

r2. Services and supplies provided to a Dependent of a non-Spouse, non-Domestic Partner Dependent. Dependents of non-Spouse, non-Domestic Partner Dependents are not eligible for coverage. When a Dependent, other than a Spouse or Domestic Partner of the insured, has a Child, that Child is a Dependent of a non-Spouse, non-Domestic Partner Dependent and is not eligible to become covered under this Plan.

Amendments to ARTICLE 10 – PREMIUMS: Section 10.15:

10.15. The Chart below details the bi-weekly Contributions required from Subscribers and the Government, and the total Premium, beginning on the Effective Date of this Plan Document, which Effective Date is November 1, 2009. Beginning with the Plan Year that commences November 1, 2009, the Government Contribution and total Premium for each category and coverage shall be as follows (see next page).

~~Unless determined otherwise by actuarial study and recommendation, the Government Contribution to Premiums shall increase to fifty percent (50%) effective at the beginning of the Plan Year, commencing November 1, 2009. The Government Contribution to Premiums for Employees or Retirees enrolling under the Single, Couple not including a Domestic Partner, or Family not including a Domestic Partner will be fifty percent (50%). The Government Contribution to Premiums for Employees or Retirees enrolling under the Couple including a Domestic Partner or the Family including a Domestic Partner represent a contribution toward fifty percent (50%) of the cost for enrollment of the Employee or Retiree and dependents other than the Domestic Partner. The Employee or Retiree will be required to contribute one hundred percent (100%) of the Premium for the Domestic Partner. The Government shall pay no subsidized premium to any carrier not competitively selected as the exclusive carrier(s) for the Government Plan. The issuance of a Request for Proposals will be subject of an annual review process commencing in the third quarter of each Fiscal Year.~~

Contribution Rates
Rates Effective Pay Period Starting November 8, 2009

Type of Enrollment	Enrollment Code #	Contribution Distribution	Active Bi-Weekly	Retiree Semi-Monthly
Single	1	Government Contribution	\$ 64.72	\$ 70.11
		Subscriber Contribution	<u>\$ 64.72</u>	<u>\$ 70.11</u>
		Total Premium	<u>\$129.44</u>	<u>\$140.22</u>
Couple, not including a Domestic Partner	2	Government Contribution	\$132.68	\$143.73
		Subscriber Contribution	<u>\$132.68</u>	<u>\$143.73</u>
		Total Premium	<u>\$265.36</u>	<u>\$287.46</u>
Couple, including a Domestic Partner	2	Government Contribution	\$ 64.72	\$ 70.11
		Subscriber Contribution	<u>\$200.64</u>	<u>\$217.35</u>
		Total Premium	<u>\$265.36</u>	<u>\$287.46</u>
Family, not including a Domestic Partner	3	Government Contribution	\$207.10	\$224.36
		Subscriber Contribution	<u>\$207.10</u>	<u>\$224.36</u>
		Total Premium	<u>\$414.20</u>	<u>\$448.72</u>
Family, including a Domestic Partner	3	Government Contribution	\$142.38	\$154.25
		Subscriber Contribution	<u>\$271.82</u>	<u>\$294.47</u>
		Total Premium	<u>\$414.20</u>	<u>\$448.72</u>

Enrollees' premium rates may vary from time to time. In the event an increase in premiums is necessary, the Board of Trustees of the NMI Retirement Fund will promulgate this notice of the increase will be promulgated in the Commonwealth Register pursuant to the Administrative Procedures Act.

Amendments to ARTICLE 11 – CLAIMS AND PAYMENT FOR SERVICES: Sections 11.05(B) and 11.06(A):

11.05. Payment of Claims to Providers.

- ...
- B. A Subscriber or the Subscriber's enrolled Spouse or Domestic Partner may assign payment of his or her benefits, or those of the Subscriber's enrolled Children, to a Provider by signing a written statement authorizing the Administrator, or the Program's Third Party Administrator, to pay the Provider rather than the Subscriber.
- ...

11.06. Filing of Claims by Enrollees / Dependents.

- A. Claim Forms for reimbursement must be completed by the Subscriber or the Subscriber's enrolled Spouse or Domestic Partner and delivered to the Administrator.
- ...

Amendments to ARTICLE 13 – COORDINATION OF BENEFITS AND DOUBLE COVERAGE: Section 13.04(A):

13.04. Special Provisions Regarding Medicare and No-Fault Motor Vehicle Insurance Coverage.

- A. The Federal Medicare Program will be considered the primary plan unless the Enrollee is an active Employee covered under this Plan. Where an Employee or Dependent is covered by both Medicare and this Plan, applicable Federal statutes will determine which plan is primary. If the Enrollee reaches the eligible age or has a condition which makes him or her eligible for coverage under the Medicare Act, as amended (Title XVII of the Social Security Act of 1965), or is receiving Social Security income benefits, the Enrollee must enroll in all portions of the Medicare Program open to the Enrollee free of charge and is encourage to enroll in the other portions of the Medicare Program. The Enrollee must and sign and maintain in effect the necessary releases.
- ...

Amendments to ARTICLE 15 – CHANGING BENEFITS AND ENROLLMENT: Section 15.01:

- 15.01.** The benefit option under the Program is "80/20". The enrollment options under the Program are "single", "couple", or "family".

The following table summarizes some basic rules for changing enrollment options:

CHART ON CHANGING ENROLLMENT OPTIONS

Events which permit enrollment or change in enrollment	Changes permitted by Subscriber or prospective Subscriber					Time during which an application form must be filed with the Administrator
	From not enrolled to ENROLLED	From SINGLE to Couple	From SINGLE to Family	From Family to SINGLE	From Family to Couple	
Open Season	YES	YES	YES	YES	YES	November of each year or as otherwise specified by the Administrator.
Acquisition of Spouse, Domestic Partner or Child	NO (unless special enrollment permitted)	YES	YES	NO	NO	Within 30 days of acquisition (or according to HIPAA rules for special enrollment)
Loss of other coverage	NO (Unless special enrollment permitted)	YES	YES	N/A	N/A	According to HIPAA rules of special enrollment.
Divorce, legal separation, annulment, death of a Spouse or Termination of Domestic Partnership, death of Domestic Partner or Child, a Child's loss of Dependent Status or death of Child	NO (Unless special enrollment permitted)	NO (Unless special enrollment permitted)	NO (Unless special enrollment permitted)	YES	YES	Within 30 days of event (or according to HIPAA rules for special enrollment)
Change in status from Spouse or Domestic Partner to Survivor of former Retiree	YES	YES	YES	YES	YES	Within 30 days of (a) the date the Administrator approves the Survivor's application for survivor annuity benefits, or (b) the original effective date of this Plan Document.

The chart in 15.01 above is a summary of some basic rules for changing benefit or enrollment options and is not an all inclusive listing of all possible situations. Subscribers should not rely only on this chart, but must also review this entire Plan Document, including Article 3 on eligibility and Article 4 on enrollment to fully understand these rules.

Amendments to ARTICLE 19 – TERMINATION: Section 19.01(K) and (L):

19.01. Enrollment in the Program will terminate, subject to reconsideration and appeal as provided in Article 20:

- ...
- J. for a Spouse on the first day of the month following termination of the marriage, other than through death of the Subscriber;
- K. for a Domestic Partner on the first day of the month following termination of the Domestic Partnership or failure to meet any of the requirements to be a Domestic Partner, other than through death of the Subscriber;
- L. for a Child if he/she no longer meets the definition of "Child";
- LM. for an Enrollee if the Enrollee reaches the eligible age or has a condition which makes him or her eligible for coverage under the Medicare Act, as amended (Title XVII of the Social Security Act of 1965), or is receiving Social Security income benefits, but fails to enroll in all portions of the Medicare Program open to the Enrollee and refuses to sign and maintain in effect the necessary releases.

**Northern Mariana Islands Retirement Fund
Commonwealth of the Northern Mariana Islands**

Mark A. Aguon, Administrator

1st Floor, Honorable Lorenzo I. Deleon Guerrero Retirement Fund Building, Isa Drive, Capital Hill
P.O. Box 501247 CK, Saipan, MP 96950-1247
Tel. No. (670) 322-3863~10; Fax No. (670) 664-8080; E-mail: administrator01@nmiretirement.com

**PUBLIC NOTICE OF PROPOSED RULES AND REGULATIONS
WHICH ARE AMENDMENTS TO THE ADMINISTRATIVE RULES AND REGULATIONS OF THE
NORTHERN MARIANA ISLANDS RETIREMENT FUND**

INTENDED ACTION TO ADOPT THESE PROPOSED RULES AND REGULATIONS: The Northern Mariana Islands Retirement Fund ("NMIRF"), intends to adopt as permanent rules and regulations the attached Proposed Amendments to the Administrative Rules and Regulations Governing the Northern Mariana Islands Retirement Fund, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The Rules and Regulations would become effective 10 days after adoption and publication in the Commonwealth Register. (1 CMC § 9105(b)).

AUTHORITY: The Board of Trustees of the NMIRF is empowered by the Legislature to adopt rules and regulations for the administration and enforcement of the statute governing their activities. 1 CMC § 8315(f). See also Executive Order 94-3 (effective August 23, 1994, reorganizing the Executive branch).

THE TERMS AND SUBSTANCE: The Rules and Regulations provide guidelines for the Board to manage the government Retirement Program, as well as provide government employees and retirees information on how the Program functions.

Furthermore, the following citations, statutes and regulations are affected by these proposed amendments: Part 7, Section 7.03, codified at NMIAC § 110-10-510, and Section 7.04, codified at NMIAC § 110-10-515; Public Law 13-60; Public Law 15-70; Public Law 16-19; and the Rules and Regulations as published in the Commonwealth Register, Volume 27, No. 9, dated October 24, 2005, and in Volume 27, No. 11, dated December 30, 2005, and adopted as published in Volume 28, No. 3, dated March 30, 2006 (effective April 9, 2006); and as amended in Volume 29, No. 6, dated June 18, 2007, and adopted as published in Volume 29, No. 7, dated July 18, 2007 (effective July 28, 2007); and as amended in Volume 29, No. 7, dated July 18, 2007, and adopted as published in Volume 29, No. 8, dated August 17, 2007 (effective August 27, 2007); and as amended in Volume 29, No. 11, dated November 19, 2007, and adopted as published in Volume 29, No. 12, dated December 18, 2007 (effective December 28, 2007); and as amended in Volume 30, No. 3, dated March 25, 2008, and adopted as published in Volume 30, No. 5, dated May 27, 2008 (effective June 6, 2008); and as amended in Volume 30, No. 5, dated May 27, 2008, and adopted as published in Volume 30, No. 6, dated June 27, 2008 (effective July 7, 2008); Volume 30, No. 7, dated July 28, 2008,

and as adopted as published in Volume 30, No. 10, dated October 25, 2008 (effective November 4, 2008); Volume 30, No. 12, dated December 22, 2008, and adopted as published in Volume 31, No. 2, dated February 29, 2009 (effective March 7, 2009); and as further amended in Volume 31, No. 10, dated October 29, 2009, and adopted as published in Volume 31, No. 12, dated December 22, 2009 (effective January 1, 2010).

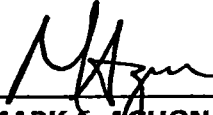
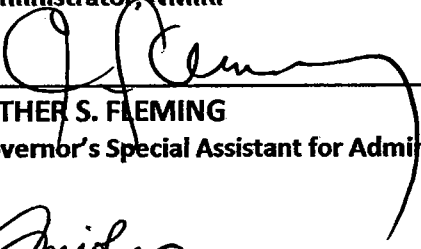

THE SUBJECTS AND ISSUES INVOLVED: These amended rules and regulations would:

1. Modify the administrative appeal process for a more comprehensible and efficient process.

DIRECTIONS FOR FILING AND PUBLICATION: These Proposed Rules and 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 Mark A. Aguon, Administrator, *Attn: Proposed Amendments to Rules and Regulations Governing the Administrative Appeal Process*, at the above address, fax or email address, with the subject line "Proposed Amendments to Rules and Regulations Governing the Administrative Appeal Process". 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 Rules and Regulations were duly approved and adopted by the Board of Trustees on March 31, 2010.

Submitted by:	 MARK A. AGUON Administrator, NMIRF	<u>4/16/10</u> Date
Received by:	 ESTHER S. FLEMING Governor's Special Assistant for Administration	<u>5/12/10</u> Date
Filed and Recorded by:	 ESTHER M. SAN NICOLAS Commonwealth Register	<u>5.14.10</u> 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 Rules and 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 this 12 day of May 2010.

for 
EDWARD T. BUCKINGHAM
Attorney General

Sangkattan Na Isla Marianas Fondon Ritiru
COMMONWEALTH GI SANGKATTAN NA ISLAN MARIANAS SIHA

Mark A. Aguon, Atministradot

Primet Bibienda, Honorâpbli Lorenzo I. Guerrero Guma' Fondon Ritiru, Isa Drive, Capital Hill
P.O. Box 501247 CK, Saipan, MP 96950-1247

Tel: No. (670) 322-3863-10; Fax No. (670) 664-8080; E-mail: administrator01@nmiretirement.com

**NOTISIAN PUPBLIKU POT I MANMAPROPONEN AREKLAMENTO YAN
REGULASION SIHA NI MANMA'AMENDA PARA I AREKLAMENTO YAN
REGULASION SIHA GI SANGKATTAN NA ISLAN MARIANAS FONDON RITIRU**

MA'INTENSIONA NA AKSION PARA U MA'ADÂPTA ESTE I MANMAPROPONE NA AREKLAMENTO YAN REGULASION SIHA: I Sangkattan na Islan Marianas Fondon Ritiru ("NMIRF"), ha intensiona na para u adâpta komu petmaniente i areklamento yan i regulasion siha ni mañechetton i Manmapropone na Amendasion para i Areklamento yan Regulasion siha ni Ginebebetna i Sangkattan na Islan Marianas Fondon Ritiru, sigun gi manera siha gi Âkton i Administrative Procedure, 1 CMC § 9104(a). I Areklamento yan i Regulasion siha para u ifektibu gi dies(10) diha siha despues di adâptasion yan publikasion gi halom i Rehistran Commonwealth. (1 CMC § 9105(b)).

ÂTURIDÂT: I Kuetpon i Trustees i NMIRF inâturisa ni Lehislatura na para u adâpta i areklamento yan i regulasion siha para i atministrasion yan i enforcement i statua ni ginibebebetna i aktibidât-ñiha siha. 1 CMC § 8315(f). Atan lokkue' i Etdin Eksekatibu 94-3 (ifektibu gi Agosto 23, 1994, ya mata'lon otganisa i râmas Eksekatibu).

I SUSTÂNSIAN I PALÂBRA SIHA: I Areklamento yan Regulasion siha ha pribeniyi giniha siha para i Kuetpo ni para u minaneha i gobetnamento na Progrâman Ritiru, asi komu mapribeniyi i emple'ao gobetnamento yan i ritirao siha imfetmasion gi taimanu i fungsion i Prugrâma siha.

Iitmâs, i sigiente na sitasion siha, estatua yan i regulasion siha maninafekta ginen este i manmapropone na amendasion siha: Pâtte 7, Seksiona 7.03, ni makodigu gi NMIAC § 110-10-510, yan Seksiona 7.04, ni makodigu gi NMIAC § 110-10-515; Lai Pupbliku 13-60; Lai Pupbliku 15-70; Lai Pupbliku 16-19; yan i Areklamento yan Regulasion siha ni mapupblika gi halom i Rehistran Commonwealth, Baluma 27, No. 9, ni mafecha gi Oktubri 24, 2005, yan gi halom i Baluma 27, No. 11, ni mafecha gi Disembre 30, 2005, yan ma'adâpta komu mapupblika gi halom i Baluma 28, No. 3, ni mafecha gi Mâtdo 30, 2006, (umifektibu gi Abrit 9, 2006); (umifektibu gi Abrit 9, 2006); yan komu ma'amenda gi Baluma 29, No. 6, ni mafecha gi Huniu 18, 2007, yan ma'adâpta komu mapupblika gi halom i Baluma 29, No. 7, ni mafecha gi Huliu 18, 2007, (umifektibu gi Huliu 28, 2007); yan ma'adâpta komu mapupblika gi Baluma 29, No. 7, ni mafecha gi Huliu 18, 2007, ma'adâpta komu mapupblika gi Baluma 29, No. 8, ni mafecha gi Agosto 17, 2007, (umifektibu gi Agosto 27, 2007); yan komu ma'amenda gi Baluma 29, N0. 11, ni mafecha gi Nubembre 19, 2007, yan ma'adâpta komu mapupblika gi Baluma 29, No. 12, ni mafecha gi Disembre 18, 2007 (umifektibu gi Disembre 28, 2007); yan komu ma'amenda gi Baluma 30, No. 3, ni mafecha gi Mâyü 27, 2008 (umifektibu Huniu 6, 2008); yan komu ma'amenda gi Baluma 30, No. 5., ni mafecha gi

Máyu 27, 2008, yan ma'adáp̄ta ya mapupblika gi halom i Baluma 30, No. 6 , ni mafecha gi Huniu 27, 2008 (umifektibu gi Huliú 7, 2008); gi Baluma 30, No. 7, ni mafecha gi Huliú 28, 2008, komu ma'adáp̄ta ya mapupblika gi Baluma 30, No. 10, ni mafecha gi Oktubri 25, 2008 (umifektibu gi Nubembre 4, 2008); Baluma 30, No. 12, ni mafecha gi Disembre 22, 2008, yan komu ma'adáp̄ta ya mapupblika gi Baluma 31, No. 2, ni mafecha gi Fibreru 29, 2009 (umifektibu gi Mátso 7, 2009); yan mäs mo'na ma'amenda gi Baluma 31, No. 10, ni mafecha gi Oktubri 29, 2009, yan ma'adáp̄ta komu mapupblika gi Baluma 31, No. 12, ni mafecha gi Disembre 22, 2009 (ifektibu gi Ineru 1, 2010).

SUHETO NI MASUMÁRIA YAN ASUNTO NI TINEKKA: Este i manma'amenda na areklamento yan regulasion siha para u:


1. U modify i apelan i administrative process para i mäs komprendiyon yan efficient na process.

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

PARA U MAPRIBENIYI OPIÑON SIHA: Na'hánao pat entrega i imfetmasion guatu gi as Mark A. Aguon, Atministradot, Attn: I Mapropone na Amendasion para i Areklamento yan Regulasion siha ni ginebebetna i apelan Administrative Process, gi sanhilo' na address, fax pat email address, yan i ráyan suheto "Mapropone na Amendasion para i Areklamento yan Regulasion siha ni Ginebebetna i Apelan Administrative Process". Todu imfetmasion debi na u fanhálorom gi halom trenta(30) diha siha ginen i fechan este na notisian publikasion. Pot fabot na'hálorom i imfetmasion, hinasso pat testamoñon kinentra siha. (1 CMC § 9104(a)(2)).

Este i manmapropone na Areklamento yan Regulasion siha manma'apreba yan manma'adáp̄ta ginen i Kuetpon i Trustees gi March 31, 2010.

Nina'hálorom as:


Mark A. Aguon
Atministradot, NMIRF

4/16/10
Fecha

Rinisibi as:


ESTHER S. FLEMING
Espisiât Na Ayudânte Para I Atministrasion

5/12/10
Fecha


Pine'lo Yan Rinekot as:


ESTHER M. SAN NICOLAS
Rehistran Commonwealth

5.12.10
Fecha

Sigun i 1 CMC § 2153(e) (I Abugâdu Henerât ha apreba i regulasion siha na para u macho' gue komu fotma) yan 1 CMC § 9104(a)(3) (ahentan inapreban Abugâdu Henerât) i manmapropone na Areklamento yan Regulasion siha ni mañechetton guini ni manmarebisa yan manma' apreba komu fotma yan suficiente ligât ginen i CNMI Abugâdu Henerât yan debi na u mapupblika, 1 CMC § 2153(f) (publikasion areklamento yan regulasion siha).

Mafecha guini gi diha 12, Mayo, 2010.


for EDWARD T. BUCKINGHAM
Abugâdu Henerât

**Northern Mariana Islands Retirement Fund Commonwealth Téél falúw kka
falúwasch Efáng Marianas**

Mark A. Aguon , Samwool

**Mmwal pwó. Awóólingil Lorenzo I. Deleon Guererro Retirement Fund Building,
Isa**

Drive, Capital Hill

P.O.Box 591247 CK, Seipel, MP 96950 – 1247

Tilifoon, No. (670)3223863-10; Fax No. (670)664-8080; E-mail:

Administrator01@nmiretirement.com

**ARONGOL TOULAP REEL POMWOL ALLÉGH KKA EBWE LLIWEL NGÁLI ALLÉGHÚL
ADMINISTRATIVE MELLÓL NORTHERN MARIANA ISLANDS
RETIREMENT FUND**

MÁNGEMÁNGIL IGHA EBWE FILLÓÓY POMWOL ALLÉGH KKAAL:

Northern Mariana Islands Retirement Fund (“NMIRF”), e tipeli bwe ebwe schéschéél fillóóy pomwol Lliwel kkaal ngáli Alléghúl Administrative iye e lemeli Northern Mariana Islands Retirement Fund, bwelle mwóghutul Administrative Procedure Act, 1 CMC Tálil 9104(a). Allégh kkaal ebwe kkamall llól seigh (10)ráálil mwiril fillóól me akkatéél llól Commonwealth Register, (1CMC Tálil 9105(b)).

BWÁNGIL: Mwiischil (Board) turstees mellól NMIRF nge e ngálleey bwángil Sów Fféerúl Allégh (Legislature) ebwe fillóóy allégh kkaal ngáli administrative me mwóghutáágheli aweewe kka eyoor, 1 CMC Tálil 8315(f). Amweri Tingóreyal Sów Lemelem 94-3 (schéschéél Eluwel 23, 1994, ssiwel mellól Executive branch).

AWEEWEL ME NGÚLÚWAL: Allégh kkaal nge e ayoorátá aweweel kkaal (guidelines) ngáli Mwisch (Board) igha ebwe ammwela Progrómaal government Retirement, ebwal ayoora schóóy angaangal llól gobenno me ammataf reer schóóy aséésé (retirees), ebwe faisúl mwóghutul Progróóma kkaal.

SÓBWÓLÓÓL: Tálil aweewe kkaal me allégh kka ebwe weires mereel pomwol lliwel kkaal: Peigh fisuuw(7), Talil 7.03, codified mellól NMIAC Tálil 110-10-510, me Tálil 7.04, codified llól NMIAC Tálil 110-10-515; Alléghúl Toulap 13-60; Alléghúl Toulap 15-70; Alléghúl Toulap 16-19; me Alléghúl kka ebwe akkatééló Commonwealth Register, Volume 27, No.9, ótol Sarobwel 24, 2005, mellól Volume 27, No. 11, ótol Tumwur 30, 2005, me fillóól igha e akkatééló Volume 28, No. 3, ótol Mááilap 30, 2006 (schéschéél wóól Séétá 9, 2006): me iye aa ssiwel mellól Volume 29, No.7 ótol Wuun 18, 2007 (schéschéél Wuun 28, 2007); me iye aa ssiwel mellól Volume 29, No. 7, ótol Wuun 18,2007, me fillóól igha e akkatééló llól Volume 29, No.8, ótol Eluwel 17,2007 (schéschéél Eluwel, 27,2007); me iye aa ssiwel mellól Volume 30, No.3, ótol Mááilap 25,2008, me fillóól igha e akkatééló Volume 30, No. 5, ótol Ghúúw 27, 2008 (schéschéél Alimaté 6, 2008); me iye aa ssiwel mellól Volume 30, No.5, ótol Ghúúw 27, 2008, me fillóól igha e akkatééló Volume 30, No.6, ótol Alimaté 27,2008 (schéschéél Wuun 7, 2008); Volume 30, No. 7, ótol Wuun 28, 2008, me fillóól igha e akkatééló llól Volume 30, No. 10, ótol Sarobwel 25, 2008 (schéschéél) Aremwoy 4, 2008); Volume 30, No.12, ótol Tumwur 22, 2008, me fillóól igha e akkatééló Volume 31, No.2, ótol Mááilap 29,2009 (schéschéél Mááilap 7,2009); me e sóbwósóbw yaal lliwel mellól Volume 31, No. 10, ótol Sarobwel 29, 2009 me fillóól igha e akkatééló llól Volume 31, No.12, ótol Tumwur 22, 2009 (schéschéél Schoow 1, 2010).

AWEWE ME ÓUTOL KKA E TÉÉTÁ: Ssiwel reel allégh kkaal ebwe:

1. Siweli yaal administrative appeal process bwele ebwe ghatch mweteló mmwal.

AFALAFAL REEL AMMWEL ME MILIKKA E TÉÉTA: Pomwol allégh kkaal ebwe akkatéeló llól Commonwealth Register mellól Tálil ye rekke pomwoli me fillóól allégh kka e ffé me bawl llól bwulasyool gobenno kkaal me senatorial district, e weewe schagh llól mwaliyeer Amerikkonu, Remeraalis me Refalúwasch. (1 CMC Tálil 9104(a)(1)).

ISISILONGOL AGHIYEGH: Afangaaló ischil mángemángúmw reel Mark A. Aguon, Samwool, Att: Proposed Amendments to Rules and Regulation Governing the Administrative Appeal Process, reel address ye weiláng, fax me ngáre email reel address, fengál me kkapasal ye “Pomwol Lliwel kkaal reel Alléghúl ye elemeli Administrative Appeal Process”. Aghiyegh ebwe atottoolong llól eliigh (30) rááilil sáangi schagh igha raa atéew arong yeel. Óutu ghal soong, ów ischilong mááfiyámi. (1 CMC Tálil 9104(a)(2)).

Pomwol allégh kkaal ebwe allégh me fillóól mereel Mwiischil Trustees wóól March 31, 2010.

Isáliyallong: _____

MARK A. AGUON
Samwoolul, NMIRF


4/16/10
Rál

Mwir sáangi:


ESTHER S. FLEMING
Sów Alíllisil Sów Lemelem

5/12/10
Rál

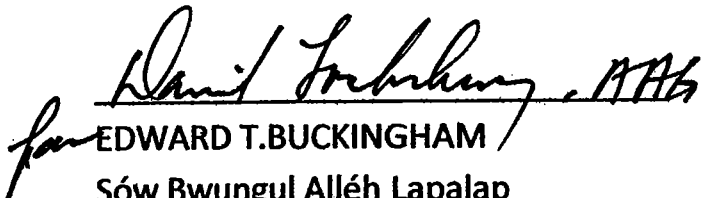
Ammwel sáangi:


ESTHER M. SAN NICOLAS
Commonwealth Register

5.12.10
Rál

Sáangi allégh ye 1 CMC Tálil 2153(e)(alughulugh mereel AG reel allégh kka ebwe akkaté ighila) me 1 CMC 9104(a)(3) (bwughi yaa alughulugh AG), pomwol allégh kka e appasch ikka raa takkal amweri fischi me allégheio mereel CNMI Sów Bwungul Allégh Lapalap me ebwe akkatééló, 1 cmc Tálil 2153(f) (akkatéél alléh kkaal)

Rállil ye 12 Ilól maramal Ghúúw 2010.


EDWARD T. BUCKINGHAM
Sów Bwungul Alléh Lapalap

**PROPOSED AMENDMENTS TO THE ADMINISTRATIVE RULES AND
REGULATIONS
GOVERNING THE NORTHERN MARIANA ISLANDS RETIREMENT FUND**

Amendments to PART 7– Appeals: Section 7.03 [Codified as NMIAC §§ 110-10-510] and Section 7.04 [Codified as NMIAC §§ 110-10-515]:

7.03 Hearing on Appeal. [NMIAC § 110-10-510]

- A. After reviewing the notice of appeal, the Board may then, at its discretion, in accordance with 1 CMC Section 9109, either: (1) preside at the taking of evidence; or (2) appoint a hearing officer to preside at the taking of the evidence. No hearing officer will be appointed where the aggrieved party in its notice of appeal does not dispute any factual findings of the Administrator, or raise any new factual issues. [NMIAC § 110-10-510(A)]
- B. In accordance with 1 CMC Section 9110, if a hearing officer is appointed, the hearing officer shall only issue a recommended decision in the case in accordance with the procedures outlined in 1 CMC Section 9109. The hearing officer shall then certify the entire record in the matter, along with the recommended decision to the Board of Trustees so that the Board of Trustees can issue its decision and order in the matter in accordance with the procedures outlined in 1 CMC Section 9110. The hearing officer shall provide the recommended decision to the Board of Trustees within ninety (90) days from the date the matter was referred to the hearing officer, or the hearing officer shall inform the Board, in writing, of the reason for any delay with an estimated date for delivery of the recommended decision. The recommended decision of the Hearing Officer shall be promptly served on the Board of Trustees. [NMIAC § 110-10-510(B)]
- C. At the next meeting of the Board of Trustees following receipt of the hearing officer's recommended decision, the Board of Trustees shall issue its decision on the matter. Any appeal of the Board's decision shall be made to the Commonwealth Superior Court in accordance with 1 CMC Section 9112(b). [NMIAC § 110-10-510(C)]
- ~~C.D.~~ In accordance with 1 CMC Section 9110, if the Board presides at the initial hearing, the Board shall decide the case in accordance with the procedures outlined in 1 CMC Section 9109. Any further appeal of the Board's decision shall be made to the Commonwealth Superior Court in accordance with 1 CMC Section 9112(b). [NMIAC § 110-10-510(~~C~~)(~~D~~)]
- ~~D.E.~~ For purposes of all administrative proceedings and appeals under this Part, service shall be accomplished by any reasonable means including personal service, registered mail and publication. [NMIAC § 110-10-510(~~D~~)(~~E~~)]

~~7.04 Appeal to the Board from a Decision of the Hearing Officer. [NMLAC § 110-10-515]~~

~~A. Any person aggrieved by a decision of the hearing officer may appeal the decision to the Board by filing a written notice of appeal within fifteen (15) days of the date of service upon the party of the hearing officer's decision. A failure to file a timely appeal will result in its dismissal. [NMLAC § 110-10-515(A)]~~

~~B. Any appeal to the Board from a party aggrieved by a decision of the hearing officer shall state the following in writing: [NMLAC § 110-10-515(B)]~~

~~1. the name of the party appealing; [NMLAC § 110-10-515(B)(1)]~~

~~2. a brief statement of any disputed factual matters in the decision of the hearing officer; and [NMLAC § 110-10-515(B)(2)]~~

~~3. a brief statement of any disputed legal issues in the decision of the hearing officer. [NMLAC § 110-10-515(B)(3)]~~

~~C. Subject to the Board's discretion, the Board may: [NMLAC § 110-10-515(C)]~~

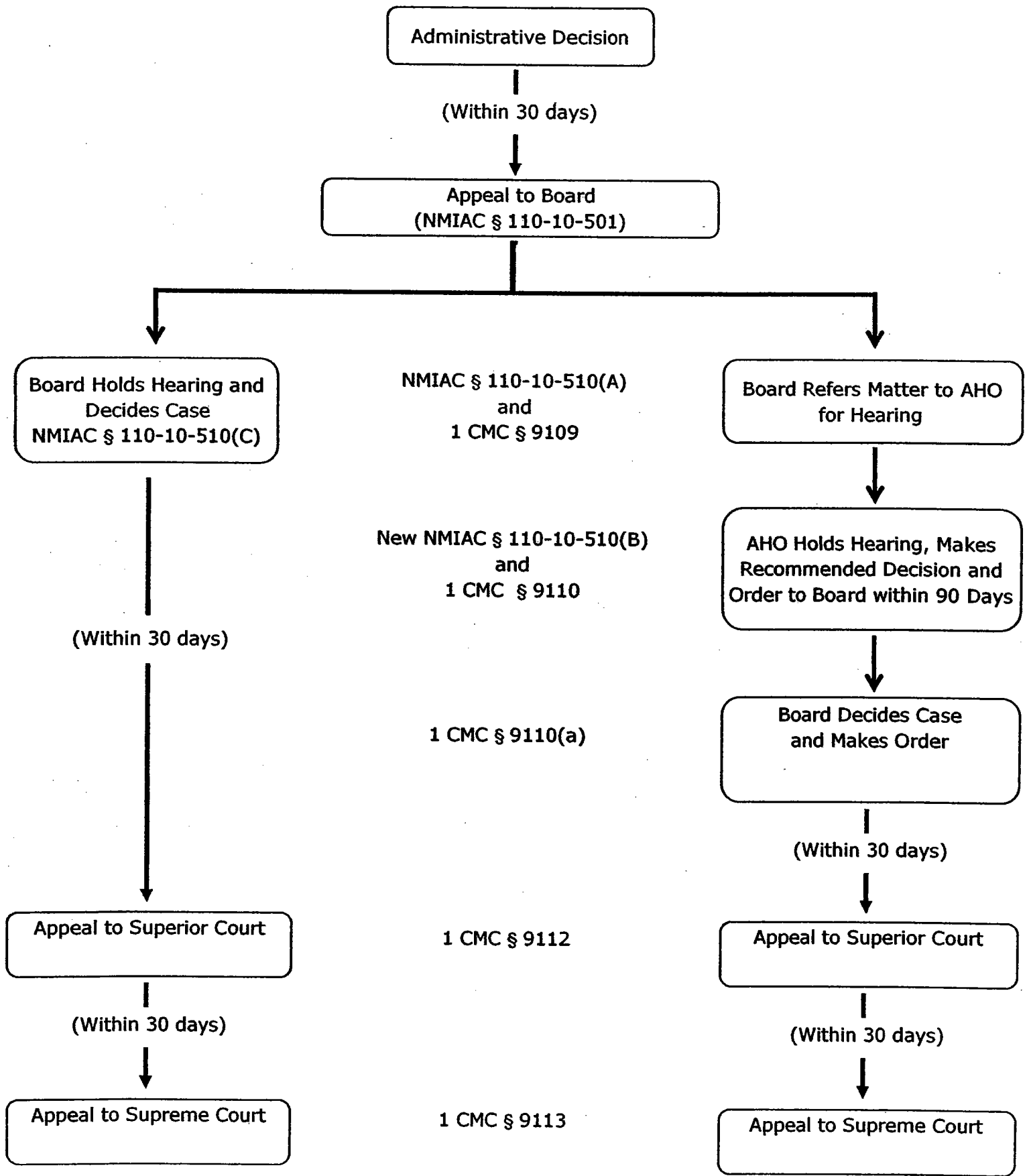
~~1. affirm the judgment of the hearing officer without further hearing; or [NMLAC § 110-10-515(C)(1)]~~

~~2. reverse the judgment of the hearing officer without further hearing; or [NMLAC § 110-10-515(C)(2)]~~

~~3. hold a further hearing limited to specified legal and factual issues [NMLAC § 110-10-515(C)(3)]~~

~~D. Any further appeal of the Board's decision shall be made to the Commonwealth Superior Court in accordance with 1 CMC Section 9112(b). [NMLAC § 110-10-515(D)]~~

Administrative Appeals New Process





COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS



STATE BOARD OF EDUCATION
PUBLIC SCHOOL SYSTEM
P.O. BOX 501370
SAIPAN, MP 96950

Lucia L. Blanco-Maratta
Chairperson

Marylou S. Ada
Vice-Chairperson

D. Tanya King
Secretary/Treasurer

Members
Herman T. Guerrero
Gabrin S. Deleon Guerrero

Non Public School Rep.

Francine R. Babauta
Student Representative

Teacher Representative

Commissioner of Education
Rita A. Sablan, Ed.D.
coe.ras@cnmipss.org

PUBLIC NOTICE OF PROPOSED RULES AND REGULATIONS WHICH ARE AMENDMENTS TO RULES AND REGULATIONS REGARDING THE APPLICANT'S RECORD RETENTION REGULATIONS OF THE PUBLIC SCHOOL SYSTEM

PROPOSED RULES AND REGULATIONS: The Commonwealth of the Northern Mariana Islands Public School System ("PSS") finds that:

INTENDED ACTION TO ADOPT THESE PROPOSED RULES AND REGULATIONS: The Commonwealth of the Northern Mariana Islands, Public School System ("PSS") 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 proposed amendments to PSS regulations are promulgated pursuant to the Board's authority as provided by Article XV of the CNMI Constitution, Public Law 6-10 and the CNMI Administrative Procedures Act.

THE TERMS AND SUBSTANCE: The proposed regulations reduce the amount of time required by PSS to retain documents submitted by applicants to the PSS.

THE SUBJECTS AND ISSUES INVOLVED: The Human Resources Office of the Public School System is constantly receiving documents from potential applicant to the Public School System. In an effort to reduce the amount of papers and files in the HRO, a reduction in the time required to retain documents is necessary. This amendment to this regulation allows for PSS to release documents submitted by employees not hired by PSS after a period of time. This amendment will allow HRO reduce the amount of papers in the office as well as requiring applicants who have not been hired the opportunity to update required documentation should they wish to re-apply to PSS at another time.

Board of Education
Telephone : (670) 237-3010
Fax : (670) 664-3711


www.cnmipss.org

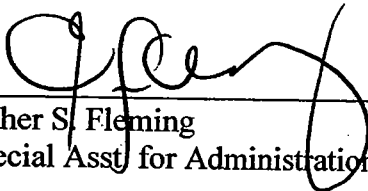
Commissioner of Education
Telephone : (670) 237-3001
Fax : (670) 664-3798


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: All interested persons may examine the proposed amendments and submit written comments, positions, or statements for or against the proposed amendments to the Chairperson, Board of Education, P.O. Box 1370 CK, Saipan, MP 96950, call 237-3010 or fax at 664-3711 within thirty (30) calendar days following the date of the publication in the Commonwealth Register of these amendments. (1 CMC § 9104(a)(2)).

These regulations were approved by the Board of Education on April 22, 2010.

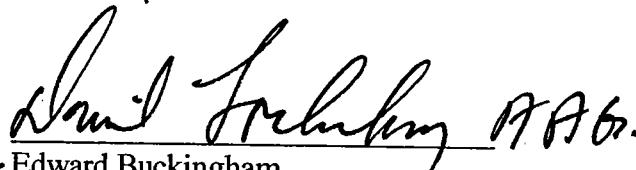
Submitted by:  5/12/10
Lucia L. Blanco-Maratita, Chairperson
Board of Education
Date

Received by:  5/12/10
Esther S. Fleming
Special Asst for Administration
Date

Filed and
Recorded by:  05.14.10
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 12 day of May, 2010.


Edward Buckingham
Attorney General

COMMONWEALTH GI SANGKATTAN NA ISLAN MARIANAS SIHA

STATE BOARD OF EDUCATION
SISTEMAN ESKUELAN PUPBLIKU
P.O. BOX 501370
SAIPAN. MP 96950

NOTISIAN PUPBLIKU POT I MANMAPROPONE NA AREKLAMENTO YAN REGULASION SIHA NI MANMA'AMENDA PARA I AREKLAMENTO YAN REGULASION SIHA SIGUN GI REGULASION NI PARA U GU'OT I REKOT I APLIKANTE GI SISTEMAN ESKUELAN PUPBLIKU

MAPROPONE NA AREKLAMENTO YAN REGULASION SIHA: I Commonwealth gi Sangkattan na Islan Marianas siha i Sistemán Eskuelan Púpblíku ("PSS") ha sodda' na:

MA'INTENSIONA NA AKSION PARA U MA'ADÁPTA ESTE SIHA I MANMAPROPONE NA AREKLAMENTO YAN REGULASION SIHA: I Commonwealth gi Sangkattan na Islan siha, I Sistemán Eskuelan Púpblíku ("PSS") ha intensiona na para u adápta komu petmanente na regulasion siha ni mañechetton i Mapropone na Regulasion siha. sigun gi manera gi Akton Administrative Procedure i CMC § 9104(a). I Regulasion siha para u ifektibu gi halom i dies (10) diha siha despues di i adáptasion yan publikasion gi halom i Rehistran Commonwealth. (I CMC § 9105(b)).

ÁTURIDÁT: I mapropone na amendasion siha gi PSS na regulasion siha manmácho'gue sigun gi áturidát i Kuetpo komu mapribeniya ginen i Attikulu XV gi Konstitusion i CNMI, Lai Púpblíku 6-10 yan i Ákton i CNMI Administrative Procedures.

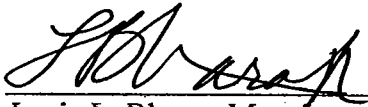
I SUSTÁNSIAN I PALÁBRA SIHA: I mapropone na regulasion siha maribáha i kantidán na tiempo ni madimánda ginen i PSS ni para u gu'ot i dokumento siha na manmasabmiti ni aplikante siha gi PSS.

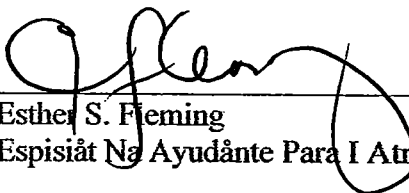
SUHETO NI MASUMÁRIA YAN ASUNTO NI TINEKKA: I Ofisinan i Human Resources gi Sistemán Eskuelan Púpblíku sesso manmanrisibi dokumento siha ginen i potential na aplikante gi Sistemán Eskuelan Púpblíku. Machachagi na para u maribáha i kantidán páppit yan i pine'lo siha gi halom HRO, i rinibáhan tiempo dinimánda na para u gu'ot i dokumento siha yanggin nesisário. Este na amendasion para este na regulasion ha sedi i PSS na para u sotta i dokumento na masabmiti ni emple'ao siha ni ti manma'emplea ni PSS despues di anácko' na tiempo. Este na amendasion para u sedi i HRO na u ribáha i kantidán páppit siha gi halom i ofisina komu ha dimámanda i aplikante siha ni ti manma'emplea gai opotunidát na para u update i dinimánda na dokumendasion yanggin manmalago' manmanaplika gi PSS otro biáhi ta'lo.


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

PARA U MAPRIBENIYI OPIÑON SIHA: Todu maninteresao na petsona siha siña ma'eksamina i mapropone na amendasion siha yan u masabmiti tinige' imfetmasion, posision, pat testimonio para pat kinentran i mapropone na amendasion siha guatu gi Kabiseyu, Kuetpon Edukasion, P.O. Box 1370 CK, Saipan, MP 96950, ágang 237-3010 pat fax gi 664-3711 gi halom trenta(30)diha siha gi kalendário tinattitiyi ni fechan pubplikasion gi halom i Rehistran i Commonwealth nu este na amendasion siha. (1 CMC § 9104(a)(2)).

Este na regulasion siha manmapropone ginen i Kuetpon Edukasion gi Abril 22, 2010.

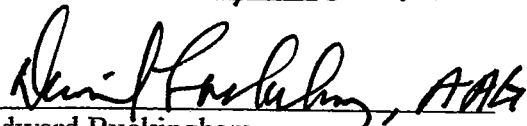
Nina'hálom as:  5/12/10
Lucia L. Blanco-Marafita Fecha
Kuetpon Edukasion

Rinisibi as:  5/12/10
Esther S. Fleming Fecha
Espisiát Na Ayudánte Para I Atministrasion

Pine'lo Yan
Rinekot as:  5.14.10
ESTHER M. SAN NICOLAS Fecha
Rehistran Commonwealth

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 mañechetton guini ni manmarebisa yan manma'apreba komu fotma yan suficiente ligát ginen i CNMI Abugádu Henerát yan debi na u mapupblika, 1 CMC § 2153(f) (pubplikasion areklamento yan regulasion siha)).

Mafecha gi diha 12 gi Mäyu, 2010


Edward Buckingham
Acting Abugádu Henerát

COMMONWEALTH TÉÉL FALÚW KKA FALÚWASCH EFÁNG MARIANAS

STATE BOARD OF EDUCATION
ALLÉGHÚL GAKKOOL TOULAP
P.O. BOX 501370
SEIPEL, MP 96950

**ARONGOL TOULAP REEL POMWOL ALLÉGH IKKA EBWE LLIWEL
NGÁLI ALLÉGH KKAAL BWELLE AMMWELIL SCHÉÉL TINGÓR (
APPLICANT'S RECORD) MELLÓL ALLÉGHÚL GAKKOOL TOULAP**

POMWOL ALLÉGH KKAAL: Alléghúl Gakkool Toulap mellól Commonwealth Téél falúw kka falúwasch Efáng Marianas ("PSS") e schuungi bwe:

MÁNGEMÁNGIL IGHA EBWE FILLÓÓY POMWOL ALLÉGH KKAAL: Alleghúl Gakkool Toulap ("PSS") mellól Commonwealth Téél falúw kka falúwasch Efáng Marianas e mángi ebwe ipighil fillóóy allégh kka e appasch, bwelle reel mwóghutul Administrative Procedure Act, 1 CMC Talil 9104(a). Allégh kkaal ebwe kkamalló llól seigh (10) ráálil mwiril schagh yaar fillóóy me atéew llól Commonwealth Register. (1CMC Tálil 9105(b)).

BWÁNGIL: Pomwol allégh ngáli alléghúl PSS ebwe akkaté bwelle bwángil mwiisch iye e toowow mellól Article XV llól CNMI Allégh Lapalap, Alléghúl Toulap ye 6-10 me CNMI Administrative Procedure Act.

ÓUTOL ME AWEEWEL: Pomwol allégh kkaal ebwe fischelitiw ótol schéél tingór (applicants) kka ekke atottoolong llól PSS.


KKAPASAL ME MILIKKA E TÉÉTÁ: Bwulasiyool Human Resources mellól Alléghúl Gakkool Toulap nge aa lool me bweibwogh dokkomento mereer schóóy applicant ngáli Alléghúl Gakkool Toulap. Emmwel rebwe fischeli llapal tilighi me dokkomento kkaal (files) ngáli HRO, ngare re fischeli ótol bweibwoghok dokkomento kkaal. Ssiwel reel allegh yeel nge ebwe mmwelil bwe PSS ebwe atottoowow dokkomentool kka schóóy angaang kka PSS ese umwuur mwirilool. Ssiwel yeel nge ebwe mmwelil bwe HRO ebwe fischeli llapal tilighi kkaal mellól bwulasiyool me bwal tingoreer applicant ikka resáál umwuur rebwe angaang bwe rebwe amasawa (update) gathúw dokkomento ngare re mángi rebwe apply sefáálong llól PSS inamwo ileet.

AFALAFAL REEL AMMWELIL ME AKKATÉÉL: Pomwol allégh kkaal ebwe akkatééló Commonwealth Register llól Tálil ye rekke pomwoli me fillóól allégh kka e ffé. (1 CMC Talil 9102(a)(1) me appaschetá llól civic center kkaal me llól bwulsiyool

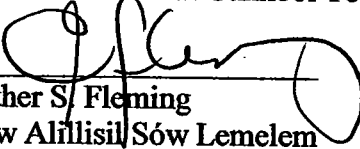
gobenno kkaal me bwal llól senatorial district, e weewe schagh llól mwáliyeeer Amerikkónu, Refalúwasch me Remeraalis. (1 CMC Talil 9104(a)(1)).

ISISILONGOL AGHIYEGH: Inaamwo iyo nge emmwel ebwe amweri pomwol lliwel kkaal me ischilong mááfiyeeer reel Samwoolul, Mwiischil Gakkool Toulap, P.O. Box 1370 CK, Seipél, MP 96950, faingi 237-3010 me ngáre fax reel 664-3711 llól eliigh (30) ráálil yaal akkatééló llól Commonwealth Register reel lliwel kkaal. (1 CMC Tálil 9104(a)(2)).

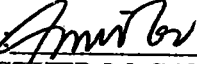
Allégh kkaal nge aa allégheló mereel Mwiischil Imwal Gakkool Toulap ótol Séétá (April) 22, 2010.

Issaliyallong: 
Lucia L. Blanco-Maratita, Samwool
Mwiischil Imwal Gakkool Toulap

5/12/10
Rál

Mwir sáangi: 
Esther S. Fleming
Sów Alílisil Sów Lemelem

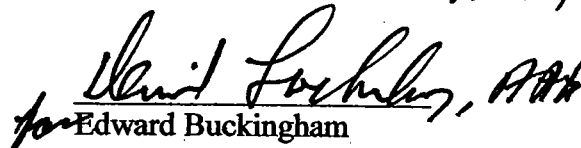
5/12/10
Rál

Ammwel sáangi: 
ESTHER M. SAN NICOLAS
Commonwealth Register

5.14.10
Rál

Sáangi allégh ye 1 CMC Tálil 2153(e) (alúghúlúgh mereel AG reel allégh kka ebwe akkaté ighila) me 1 CMC Tálil 9104(a)(3) (bweibwogh alughulugh mereel AG) reel pomwol allégh kka e appasch ikka raa takkal amweri fischi me allégheló mereel CNMI Sów Bwungul Allégh Lapalap me ebwe akkatééló (1 CMC Talil 2153(f) (akkatéél allégh kkaal)).

Ráallil ye 12 llól maramal MAY, 2010.


Edward Buckingham
Sów Bwungul Allégh Lapalap

60-30.3-114 Eligibility List

- (a) Every person who applies for a vacancy during the open competitive announcement period and who meets the minimum qualifications shall be listed on an eligibility list for that position. The Human Resources Officer shall list qualified applicants in no particular order.

- (b) The eligibility list shall be maintained for 180 days. Names may be removed by the Human Resources Officer only if the applicant voluntarily withdraws, is found to not be qualified, is disqualified due to false statements or fraud in the application, or the applicant fails to respond within ten calendar days to an offer for employment.

60-30.2-112 The Decision

(a)(1) The Human Resources Officer shall create an applicant file for each job recommendation letter it receives from a PSS recruiter. The file shall contain, at the minimum, the recommendation letter, job application, resume, certified copy of the teaching certificate (if applicable), transcript (if applicable), criminal conviction clearance and any correspondence with the applicant.

(2) In the event that an applicant is not hired, the applicants file shall be retained by the Human Resources Officer for a minimum period of 180 days before it is destroyed. In the event that an applicant is hired, the applicants file shall be retained by the Human Resources Officer for a minimum period of two years after the final date of employment.

60-30.3-138 The Applicant File

- (a) The Human Resources Officer shall create an applicant file for each job recommendation letter it receives from a PSS interviewer. The file shall contain, at the minimum, the recommendation letter, job application, transcript (if applicable), criminal conviction clearance and any correspondence with the applicant.

- (b) In the event that an applicant is not hired, the applicants file shall be retained by the Human Resources Officer for a minimum period of 180 days before it is destroyed. In the event that an applicant is hired, the applicants file shall be retained by the Human Resources Officer for a minimum period of two years after the final date of employment.



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lt. Governor

1 **EXECUTIVE ORDER 2010-01**

2
3
4 **DECLARATION OF A STATE OF DISASTER EMERGENCY:**

5 COMMONWEALTH UTILITIES CORPORATION'S
6 IMMINENT GENERATION AND OTHER FAILURE AND THE NEED TO
7 PROVIDE IMMEDIATE RELIABLE POWER, WATER AND WASTEWATER
8 SERVICES

9
10 **CONTINUATION #18**

11
12 I, BENIGNO R. FITIAL, pursuant to the authority vested in me as Governor of the
13 Commonwealth of the Northern Mariana Islands by Article III, Section 10 of the Commonwealth
14 Constitution and 3 CMC § 5121 of the Commonwealth Disaster Relief Act of 1979, do hereby
15 declare a State of Disaster Emergency for the Commonwealth of the Northern Mariana Islands
16 due to the inability of the Commonwealth Utilities Corporation (CUC) to provide critical power
17 generation service to the CNMI and the extreme, immediate and imminent threat such condition
18 poses to the Commonwealth of the Northern Mariana Islands.

19
20 This Executive Order is intended to, and does, continue in effect portions of the Governor's
21 preceding disaster emergency declarations on this matter, EO 2009-01 through -09, and 11-13,
22 except as specifically modified. As more fully stated below, this Executive Order shall expire on
23 the 31st day following the date of my signature. The following findings and conclusions further
24 support continuation of the Declaration and issuance of directives.

1 **FINDINGS**

2
3 I find that:

4
5 1. All findings and conclusions of EO 2009-01 through -09, and 11-13 are incorporated by
6 reference, except as specifically varied in this Executive Order.

7
8 **MANPOWER CRISIS DUE TO RESTRICTIVE LEGISLATION**

9
10 2. **Summary.** A shortage of manpower forced by legislation limiting skilled foreign workers
11 has continued to place CUC operations at risk. Presently CNMI law (PL 16-14) prohibits CUC
12 from hiring any more non-US technical workers than the 19 skilled professionals recently with
13 CUC. CUC has repeatedly asked the Legislature for relief from this statute regulating the
14 Government's workforce, to no avail. Further, errors in wording in the CUC enabling legislation
15 recently re-enacted, PL 16-17, as amended, would bar the Executive Director from day-to-day
16 management of the corporation, effectively shutting CUC down. This EO eliminates these
17 problems while it is in effect.

18
19 3. **Background.** CUC has substantially minimized the risk of losing the services of its owned
20 generating capacity, which losses created intermittent blackouts on portions of its system. It
21 therefore allowed the Aggreko year-long temporary power contract to terminate, as provided in
22 the agreement, effective September 12, 2009. This saves CUC customers at least \$6 million per
23 year in fees. But it still presents risks, as the strategy requires proper operation and maintenance
24 of CUC's owned engines by CUC's technical staff, and the timely securing of materials and
25 supplies.

26
27 4. CUC bears a substantial obligation to deliver highly technical work on time to the satisfaction
28 of the US District Court and the US EPA, pursuant to two consent, or "stipulated", orders. The
29 first requires the upgrade and smooth functioning in virtually all aspects of CUC's water and
30 wastewater divisions. The second requires CUC to properly eliminate over 400,000 gallons of
31 used oil and to institute measures to avoid uncontrolled buildup of such inventories. Failure to
32 meet the requirements of the federal court orders could subject CUC and the CNMI to
33 substantial fines and charges, and, in the extreme, to a federal takeover of their finances.
34 Presently CUC is "accruing" substantial fines. Most of the fines have not been levied; but they
35 could be. The EPA has, however, levied one fine, in the amount of \$29,000.

36
37 5. CUC is thoroughly regulated by the Commonwealth Public Utilities Commission ("CPUC").
38 The regulator has plenary power over CUC rates, charges, fees, operations and capital
39 investments. CUC's failure to timely and competently meet CPUC orders and other
40 requirements can result in severe rate discipline, and fines and other penalties. The Commission

1 recently required CUC to meet certain requirements, including the filing of a technically
2 complex rate case by the end of January 2010, or face fines of \$500 per day.
3

4 6. CUC is the sole electricity supplier to the Government of the CNMI, including all public
5 safety activities, the schools, and the only hospital. CUC also supplies electricity to most of the
6 CNMI's businesses and homes. While some businesses and agencies own backup generators,
7 they are not generally organized to use the backups as permanent power sources; and the diesel
8 oil purchased to run these generators is substantially more expensive than that used for CUC
9 power.
10

11 7. Without CUC electricity:
12

- 13 a. most CNMI economic activity would come to a halt, the courts would soon close,
14 much refrigeration and air conditioning would end, and the airports and ports
15 would be forced to rely on emergency generation and the limited, expensive oil
16 supply for it;
17
- 18 b. the CNMI's health and safety would immediately be at risk, since traffic signals
19 and street lighting would cease to function, emergency, fire and police facilities
20 and their communications systems, and the Hospital and island clinics would have
21 to rely on limited oil supplies for emergency generation and then cease
22 functioning, much refrigeration of food and medicines would end, as would air
23 conditioning for the elderly and medically fragile;
24
- 25 c. the public schools and the Northern Marianas College would close. Other
26 educational institutions would close as their backup oil supplies for emergency
27 generators were exhausted; and
28
- 29 d. water and sewage treatment would soon end. One of CUC's largest electric
30 customers is the combined CUC Water and Wastewater Divisions. CUC is the
31 sole supplier of electricity for these systems. CUC's water system relies on
32 electricity to maintain the system pressure needed to avoid the backflow of
33 pathogens, to chlorinate, and to pump, store and distribute water supplies. CUC's
34 wastewater system requires electricity to collect, pump, process, treat and
35 discharge sewage. The lack of electricity could result in sewage overflows,
36 contamination of land and water and rendering unsafe the CNMI's beaches,
37 which are also principal tourist destinations.
38
39

Staffing CUC with the technical experts to permit continued electric service

8. CUC continues to maintain and rehabilitate its owned power plants. CUC tries to maintain and rehabilitate the operating units to adequately meet load. CUC has secured federal funds to buy many needed parts to avoid outages. CUC began the needed overhaul of PP #1 unit DE-5 in September. In October four other units began required overhaul, which will take 12 months.

9. In November, the following work started: The critical replacement of the PP #1 anchor bolts, in order to stop the shifting and vibration that has ruined the plant; and foundation repairs to Engines 1 and 8. Shortly thereafter the replacement of turbochargers and oil-water separators is to begin. All of this work is essential.

10. This work has been successful. Power Plant 1 Engines 1, 2, 3, 5, 6, 7 are available. Engine 8's critical foundation repair and anchor bolt replacement have been completed. The major engine overhaul is under way.

11. In effect, CUC management, with generous federal financial assistance, has brought its generation back from the brink of system failure. There are adequate reserves. If maintained properly, the system can provide the CNMI's citizens and residents with adequate power.

12. Adequate technical staff is essential to this work. A major challenge to carrying out this rehabilitation has been finding the trained technicians needed to carry out these rehabilitation projects, and maintain and run the equipment. The technicians must be ready for service when needed and their services must be affordable. Any significant reduction in CUC's present technical workforce could seriously compromise CUC's ability to generate and distribute power.

13. With respect to CUC's lines, equipment used by CUC's Transmission and Distribution unit ("T & D"), including many vehicles, is dilapidated and bordering on being unsafe. There is an insufficient number of skilled workers to operate T & D. The linemen must be trained to, and skillful in, meeting US standards. The critical upcoming projects in T & D include the replacement of the antiquated, rundown and unsafe vehicle fleet; the redesign of T & D using national Rural Utility Service standards; the replacement/installation of insulators, transformers, overcurrent protection, sectionalizers and the installation of efficient LED street lighting.

14. For example, Saipan's early-September brush with Typhoon Choi-Wan 15W that passed to the north of Saipan, and typhoon Melor, which passed just north of Saipan in October, underscored the extreme vulnerability of CUC's power transmission and distribution (T & D) system. In September, over 150 calls of no- power and line faults were fielded by crews when, for a storm of this size, there should have been no more than a score. In October, fortunately, the CUC power system avoided a direct hit from a supertyphoon. Fortunately, the typhoon season

1 appears to have ended with no direct hits on the CNMI and our power distribution system.
2 Accelerating improvements to the T & D system ,with proper staff under an Emergency Order,
3 would allow CUC to "harden" the system in anticipation of a bigger storm event. The
4 alternative, in a more serious storm, is CUC's inability to recover in any reasonable time period.
5

6 15. Further, utility industry safety margins for isolated, island systems typically require a
7 reserve equal to the capacity of the two largest generating units; in CUC's case this would be
8 another 15 MW of load, equivalent to the departed Aggreko temporary units. Meeting this
9 reserve requirement means CUC must have an adequate repair and maintenance staff.
10

11 16. The Legislature, through 3 CMC § 4972(5), as amended by PL 16-14 (Aug. 27, 2008), has
12 limited CUC's ability to hire technical staff; allowing up to 19 foreign workers only. The CUC
13 Act, as subsequently re-enacted by PL 16-17 (Oct 1, 2008), provides that CUC shall hire such
14 persons as are necessary for operations, *except as otherwise limited by other law.* 4 CMC §
15 8123(h).
16

17 17. PMIC at PP #4 and Telesource on Tinian, as Independent Power Producers (IPPs), are not
18 subject to the Legislature's limitation on foreign workers.
19

20 18. There are not enough technical specialists at CUC to get the power generation work done,
21 particularly specialists with experience in the type of engines that CUC uses. CUC believes that
22 the vast majority of skill sets must come from non-US personnel.
23

24 19. CUC has tried to hire diesel mechanics in the CNMI, but has been unsuccessful in finding
25 all the qualified candidates. In the summer of 2009 CUC identified 16 potential new staff after
26 interviews – 7 mechanics, 1 welder, 1 machinist, and 7 operators. Two of the operator
27 candidates were US citizens.
28

29 20. CUC has hired some local staff recently thanks to the aggressive steps of CUC HR, the
30 Executive Director and Directive 10.
31

32 21. CUC has completed the hiring of the skilled trade technicians needed on Saipan for power
33 plant operations and maintenance. For Rota, CUC has announced the need for a
34 mechanic-operator and an electrical operator. As more units begin working after the
35 rehabilitations are largely complete, CUC will need more staff to operate and maintain them.
36 For the immediate future, CUC needs to maintain its complement of skilled workers.
37

38 22. The impact of an inadequate workforce would be three-fold:
39

- 1 a. First, there would be a direct negative effect on the existing consumers. There
2 would be brownouts, or area blackouts, with the above-mentioned loss of service.
3
4 b. Second, the power plants would again degrade, producing more of these outages.
5
6 c. Third, there would be an indirect effect, increasing rates over the longer term,
7 because small consumers would have to shoulder more of the fixed costs of the
8 CUC system. First, there would be loss of large customers. By contrast, if the
9 hotels were to become part of the system, they could help pay CUC fixed costs,
10 which would lower everyone else's rates. The hotels need reliable, 24/7 power.
11 But with unreliable power, CUC would be unable to convince large commercial
12 customers, particularly the hotels, to join, or rejoin, its system. Second, would
13 come additional expenses. If CUC fails to meet federal court deadlines for the
14 stipulated orders, the Court could appoint a federal receiver and its consulting
15 team – with all expenses charged to CUC customers. Thus, the indirect effect of
16 an inadequate workforce would be to boost rates.
17

18 23. Rota's status today is precarious and financially un-sustainable. Rota has suffered blackouts
19 from inadequate generator maintenance. The power plant's other facilities and the island's
20 distribution system similarly need the attentions of additional manpower. The Rota power plant
21 needs additional generating sets to come on line, as there are only 1.5 dependable sets in the
22 plant. The third of two feeders is powered by a private resort at a cost of \$200,000/month to
23 CUC. The revenues from the customers on this feeder fall far below this cost. CUC has
24 negotiated with a Mainland supplier for a new generating set, with funding from the US
25 Department of the Interior. The present alternative for Rota is akin to Saipan's recent Aggreko
26 situation – purchasing higher cost, reliable power from the Rota Resort.
27

28 24. Since EO 2009-8 in August, and the suspension of the harmful legislative employment
29 restriction, CUC has taken steps to hire the expertise to operate and maintain the Saipan and
30 Rota power generation facilities. CUC needs to be able to hire the workers it needs when it
31 needs them. Otherwise, if CUC had to discharge these workers its staffing levels would return to
32 those which overworked its limited staff. For example, over pay period numbers 2 through 11 of
33 the year 2009, CUC accumulated 18,053 hours of overtime from technical employees who each
34 worked 40 or more hours of overtime in a pay period. This condition is extreme, and a repeat
35 can result in inefficiencies and poor work quality. It can lead to dangerous mistakes, producing
36 injury or death.
37

38 25. CUC has repeatedly asked the Legislature to lift the restrictions on foreign workers. The
39 Legislature has failed to act on the CUC request. Without relief, this inaction will effectively set

1 the stage for loss of service and higher rates. Among other things it will thereby reverse the \$6
2 million-per-year benefit of terminating the Aggreko temporary power contract.

3
4 26. CUC has demonstrated that the required workers are available as nonresident workers, and
5 cost-effectively so. Thus, continued relief from the legislative prohibition of hiring foreign
6 national workers is necessary to ensure the delivery of uninterrupted power services to the
7 people of the Commonwealth.

8
9
10 **Complying with the federal court order on disposal of used oil**

11
12 27. CUC has taken concrete steps to address the storage and disposal of used oil, consonant
13 with the federal court's Stip Order 2. Federal court Stipulated Order 2 relates to the used oil
14 from the engines for four facilities (Power Plants 1, 3, 4 and Rota) and all CUC transformers.
15 *USA v. CUC & CNMI*, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) ("Stip Order 2"). With an
16 adequate complement of trained technical employees, CUC has believed that it can meet these
17 requirements.

18
19 28. A September inspection by the US Coast Guard (USCG) has resulted in the imposition of
20 another cost that was unanticipated even with Stip Order 2. The USCG now requires additional
21 and more stringent measures to contain or eliminate the possibility of any oil reaching the ocean
22 from Power Plants 1, 2 and the power plant in Rota. Further, as of October, CUC has faced the
23 following staffing needs in this area: It critically needs the resources to inspect and redesign the
24 entire fuel storage, pumping and handling system in order to meet the more stringent
25 requirements of today. The clean fuel storage tanks at Lower Base were originally designed for
26 another application. The fuel line from the oil company's terminal is in danger of rupturing
27 during a transfer; the pumping rate has to be reduced to prevent this. All of this requires trained
28 staff.

29
30 29. Serious deficiencies in the waste oil handling system at Lower Base have come to light in
31 the past months and are being addressed by both CUC and EPA. One deficiency is that the oily
32 water separators are not functioning as such because of the excessive amount of oil (as opposed
33 to water) entering the system. As a result, oil was spilling onto the ground rather than being
34 separated and skimmed off properly. Power Plant #1 has been sealed off to prevent any waste
35 oil from leaving the plant and flowing into the oily water separators. To prevent oil from
36 accumulating uncontained in the plant itself, emergency measures have been taken to store waste
37 oil and to fabricate above-ground tanks. The oily water separators, pipes, holding tanks, and
38 baffles are being cleaned out so that the entire system can be carefully inspected and
39 re-engineered. All of the additional work is expensive. Regardless of who does the work
40 initially, CUC staff, EPA contractors, or a combination thereof, CUC requires skilled, trained

1 workers for the clean-up. Failure to correct this situation could harm the nearby environment,
2 CUC's ability to generate electricity properly, and the assurances given pursuant to Stip Order 2.
3 CUC has begun the process to hire an Oil Technical Manager.
4
5

6 **Complying with the federal court order on managing the water and wastewater systems**

7

8 30. As long as the Water and Wastewater Divisions can hire competent staff and receive power
9 from the Power Division, they can function.

10
11 31. The U.S. Department of Justice ("DoJ"), Environment and Natural Resources Division, has
12 sued CUC in federal court to come into compliance with critical water and sewage treatment
13 requirements. *USA v. CUC & CNMI*, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) ("Stip Order
14 1"). See also http://www.usdoj.gov/enrd/Consent_Decrees.html. In July 2008 CUC, the CNMI
15 and (in September 2008) the U.S. Environmental Protection Agency ("EPA") stipulated to this
16 first of two orders lodged with the U.S. District Court on the date the Complaint was filed. This
17 order requires CUC to implement a series of improvements to its water and wastewater systems
18 that respond to years of neglect, for which it presently lacks the funds and the complete technical
19 capability.
20

21 32. Sewage collection piping failures are continuing at an accelerated rate. The Wastewater
22 Division must respond to acid damage in the asbestos cement piping system, the product of over
23 30 years of anaerobic conditions in sewers. This has caused significant damage to cement and
24 metal infrastructure, so that key pipe systems have collapsed. December 18 saw the sixth failure
25 in six months. Failures will continue until 10 miles of sewer pipe are replaced. But replacement
26 involves complex excavations, avoiding electric, phone and water utilities, blocking traffic,
27 stopping the infiltration of seawater (which damages treatment plant facilities), and pumping
28 sewage around blocked and excavated areas. The Division has already far exceeded its repair
29 budget.
30

31 33. The Division also needs serviceable vehicles to move its workers to and from job sites.
32 Presently six vehicles are in such bad shape that they are dangerous. The resulting reduced
33 vehicle problem raises costs and hurts service, as staff and materials cannot be brought to job
34 sites on time.
35

36 34. Sewage lift Station failures continue, with most pumping stations having only one of two
37 required pumps installed. CUC has issued a contract to purchase 30 additional pumps, however
38 the lead time between issuance of the contract and pump arrival is over six months, so that CUC
39 is still approximately two months out from pump arrival.
40

1 35. CUC Engineer staff shortages continue to hamper CUC's ability to anticipate and fix
2 technical problems. While CUC's Water/Wastewater Division employs four engineers, the poor
3 condition of the CUC sanitation assets requires at least two more engineers. But, significant
4 engineering resources are already focused on addressing EPA Stip Order 1 issues. These issues
5 include staffing plans, pre-treatment programs, materials management programs, customer
6 inventory, and cross-connection control programs. Recruitment and retention of engineering
7 staff to meet these challenges is difficult.

8
9 36. CUC must be able to hire the staff to perform the required technical functions. The Water
10 and Wastewater Divisions cannot carry out their missions without adequate staff. These staff are
11 essential to producing clean, safe water supplies and removal of stormwater and sewage in a
12 safe, timely manner. While the bulk of CUC employees are drawn from local and US
13 populations, the Division management estimates that at least six trained technicians will be
14 required – three experienced Level 3 wastewater treatment operators, two Level 3 wastewater
15 collections operators, and an instrumentation /low voltage controls specialist. An experienced
16 Water/Wastewater Division operations manager will also be required.

17
18 37. CUC also requires a constant supply of electricity to run its water and wastewater treatment
19 systems. CUC has very limited on-site emergency generation capability, and for only portions
20 of these systems.

21
22 38. Meanwhile CUC continues to pay for power, chlorine, lab testing costs, and repairing
23 collapsing sewer lines. CUC has hired a consulting team to assist it in achieving full cost
24 recovery for the water and wastewater systems through the processes of the CNMI Public
25 Utilities Commission. Their rate case presentation will be filed by the end of January.

26
27
28 **Meeting US District Court and CNMI Public Utilities Commission requirements to**
29 **produce timely, accurate financial reports**

30
31 39. The federal Stip Orders require CUC to produce and carry out an Interim Financial Plan,
32 beginning in September, 2009. The "IFP" must develop over time, becoming more than
33 "interim". CUC cannot do this unless it has a staff of trained accounting and other financial
34 experts who can gather data, put the data in the required form and generate the IFP and its later
35 versions.

36
37 40. Further, CUC is comprehensively regulated by the Commonwealth Public Utilities
38 Commission ("CPUC"). The CPUC is charged by statute to oversee carefully CUC's operations
39 and capital expenditures, and to develop rates that fully pay the costs of safely operating CUC's
40 water and wastewater systems.

1
2 41. In recent electric and water/wastewater orders, of September 3, 2009, the CPUC addressed
3 CUC's inability to deliver complete on-time financial reports, requiring CUC, in effect, to
4 enhance its staff capability to provide critical regulatory information. (Docket No.'s 09-1 and
5 09-2.) The Commission will be revisiting CUC rates, fees, charges and operations in an order
6 stemming from recent regulatory sessions in March 2010.

7
8 42. CUC cannot upgrade its financial and accounting operations unless it has a staff of trained
9 accounting and other financial experts who can gather data, put the data in the required form and
10 generate the required reports and filings with the CPUC, as well as provide the CPUC consulting
11 staff with the data required for their oversight. CUC has obligated itself to provide an updated,
12 compliant Interim Financial Plan and an organizational evaluation, both pursuant to Stip Order 1,
13 to the US District Court. It has also begun the process to hire a Chief Financial Officer.

14
15 43. CUC last year lost 2 senior accountants plus a related specialist. The IT and billing
16 department in August was reduced by one staffer, having advertised for a replacement for 4
17 weeks to no avail. While it appeared that CUC might have to look to employing foreign
18 technical specialists, CUC hired back 2 former accountants in September and brought a third
19 person aboard in October. All are US citizens. Nonetheless, CUC must have the flexibility to
20 hire competent professionals as needed. CUC is still short-staffed, and needs an accounting
21 assistant, an accounting specialist and a Chief Financial Officer.

22
23 44. To summarize: Without properly trained technical staff CUC's ability to supply power is at
24 risk. So is its ability to manage the rest of its systems, including its finances and accounting.
25 CUC's services could not be adequately staffed without August's lifting of the artificial
26 legislative regulation of CUC's workforce, in EO 2009-08, Directive #10, suspending the
27 limitations on CUC hiring foreign workers. It is obvious that the hiring authority must be
28 continued.

29
30 45. There is no indication that any of the above manpower situation will be resolved in the next
31 month without continuing in effect this EO and Directive #10.

32
33 **MANAGEMENT CRISIS IN ABSENCE OF A PROPER BOARD/CEO STRUCTURE**

34
35 46. **Summary.** CUC is a \$70 million-per-year business, critical to the CNMI's economy and
36 the public health. Yet, the recently-renewed statute organizing it places the Board of Directors
37 in the position of day-to-day management of the corporation, and requires a complex mix of
38 technical, geographic and other qualifications for Board membership. There is no Board because
39

1 it has been impossible to meet these criteria. Without the Board, or its equivalent, CUC cannot
2 take a critical step toward solvency and the ability to borrow to finance its work.
3
4

5 **Forestalling corporate paralysis**
6

7 47. A critical concern is that the CUC Act's constricted scope of authority for the Executive
8 Director, and the complementary daily management by a host of Board volunteers, would
9 paralyze the corporation. This is particularly worrisome in light of the above-listed tasks before
10 CUC.
11

12 48. A careful reading of the CUC Act, PL 16-17, as amended, particularly its sections 4 CMC
13 §§ 8131 (Bd qualifications), 8134 (Bd approval of all "allocations" of money and property), and
14 1 CMC § 8247 (limited daily reimbursement of \$60.00); 4 CMC §§ 8132 (E.D. described), 8133
15 (limited E.D. functions listed), and 8134 (Bd approval of all "allocations" of money and
16 property), demonstrates that the Executive Director is to be left with little more to do than
17 provide reports to a Board of volunteers who are nonetheless to run CUC, a complex \$70
18 million/year corporation, on a day-to-day basis. This includes such decision-making as
19 purchasing materials and supplies, signing paychecks and other checks, hiring staff, assigning
20 work crews, connecting customers, deciding on making repairs, collecting debts, complying with
21 the details of federal and CPUC regulatory requirements, making and funding long-term
22 technical power and water/wastewater plans, overseeing filings with the CPUC, including rate
23 cases, and insuring that, on a day-to-day basis, the power and water flow and the sewage is
24 treated.
25

26 49. Permitting CUC to be managed this way would plunge the CNMI into economic chaos and
27 a public health care crisis, as corporate activity and the Hospital's operations ground to a halt –
28 with or without a Board in place. The complex technical problems listed above simply cannot be
29 managed on a day-to-day basis by a group of non-expert volunteers.
30

31 50. No private or public utility company in the United States runs this way – with a group of
32 volunteers managing a \$70-million corporation's day-to-day operations. No other legislature in
33 the United States has mandated this form of corporate management for a public utility.
34

35 51. I can only conclude that the legislation's extraordinary structure for CUC is the result of a
36 drafting error, and the People, through their elected representatives, wish their utility company to
37 continue to supply them with essential services at a reasonable cost, meeting industry standards.
38
39

1 **Fixing CUC's technical insolvency**

2
3 52. CUC has been unable to borrow money to run its operations since the inception of this State
4 of Disaster Emergency due to (a) its poor financial condition and (b) the existence on its books
5 of a liability to the Commonwealth Development Authority ("CDA") of approximately \$115
6 million. This situation may be corrected if the Executive Director is recognized to have the
7 authority to correct it.

8
9 53. Meanwhile, billings and collections are substantially below the levels required to prudently
10 manage CUC's current operations and provide for system repairs, replacements and upgrades.
11 For example, billings alone for water and wastewater are less than 70% of requirements to run
12 those two systems.

13
14 54. The booked CDA obligation has rendered CUC nominally insolvent. While CUC is deemed
15 insolvent, CUC cannot borrow money. But CUC must be able to borrow money to bridge the
16 gap between (a) the need to spend money on essential goods and services to provide electricity,
17 water and sewage service, and (b) the lagged collection of already-determined-insufficient
18 revenues from the sale of those services.

19
20 55. The CPUC, in its September 3 electric order, Docket No. 09-1, approved a CUC-CDA
21 settlement converting the CDA debt to preferred stock. But the deal requires CUC's Board to
22 agree to it.

23
24 56. There is no Board. CUC has functioned without a Board of Directors, because it has had to.
25 While CUC's enabling act, reenacted as PL 16-17, as amended, authorizes a Board, there is no
26 CUC Board yet because, while the staff of the Governor's Office have diligently tried to find
27 Board volunteers who meet the complex statutory qualifications, they have been unable to do so.
28 Nonetheless, CUC must continue to function, including borrowing money.

29
30 57. EO 2009-08's Directive # 9 provides the required authority to the Executive Director. It
31 also permits him to continue to run CUC, carefully manage cash to pay tens of millions of
32 dollars annually for fuel oil and purchased power, and do all the things necessary to providing
33 power, water and wastewater services, until the remaining members of a properly constituted
34 Board can be identified, confirmed, and convened for business.

1 **Providing the basis for proper CPUC oversight**

2
3 58. The broad and comprehensive statutory scheme of utility regulation in the Public Utility Act,
4 4 CMC §§ 8401-84, provides that the utility regulator, the CPUC, will carefully examine CUC
5 activities, particularly financial activities.

6
7 59. This extensive oversight satisfies the policy need for a body of arms-length, well-informed
8 citizens to watchdog the activities of this, the Commonwealth's key resource. Thus, the statute's
9 error-infused creation of a volunteer Board which would run the corporation on a day-to-day
10 basis, becomes much less important than satisfying CPUC requirements.

11
12 60. What becomes very important is CUC's capability to provide the CPUC with accurate and
13 timely financial and accounting information. But such reporting is not possible without a
14 competent, trained staff of accounting and financial experts at CUC, and a properly-empowered
15 Executive Director to lead them.

16
17
18 **CRISIS FROM THE LACK OF LEGISLATIVE ACTION**

19
20 61. There is no Legislative relief coming. For months CUC has repeatedly asked the
21 Legislature for such relief, including submission of draft legislation in July. The Legislature has
22 declined to respond. There is no alternative to providing this relief other than an order from the
23 Governor. Inaction will produce a disaster in which CUC is unable to provide its critical
24 community services. Directives # 9 and #10 were designed to avert this crisis. (The other
25 Directives, #1 through #8, are no longer relevant, and were discontinued.)

26
27 62. This Declaration is necessary to protect the health and safety of our children, our senior
28 citizens, businesses and all other CNMI residents and visitors.

29
30
31 **CONCLUSION AND ORDER**

32
33 Therefore, I hereby invoke my authority under Article III, § 10, of the Commonwealth
34 Constitution and 3 CMC § 5121(f) to take all necessary measures to address the imminent threat
35 facing the Commonwealth of the Northern Mariana Islands.

36
37 Exercise of the Constitutional and statutory authority invoked herein will be effectuated by the
38 issuance of Executive Directives setting forth the measures to be taken to address the State of
39 Disaster Emergency pursuant to 3 CMC § 5121(f), which states:
40

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

3
4 (1) Suspend the provisions of any regulatory statute prescribing the procedures
5 for conduct of the Commonwealth's business, or the orders, rules, or regulations
6 of any Commonwealth activity or agency, if strict compliance with the provision
7 of any such statute, order, rule or regulation would in any way prevent, hinder, or
8 delay necessary action in coping with the emergency;

9
10 (2) Utilize all available resources of the Commonwealth as reasonably necessary
11 to cope with the disaster emergency of the Commonwealth;

12
13 (3) Transfer the direction, personnel, or functions of the Commonwealth
14 departments and agencies or units thereof for the purpose of performing or
15 facilitating emergency services;

16
17 3 CMC § 5121(f)(1)-(3).

18
19 By today's disaster emergency declaration, I intend to enable CUC to continue to provide
20 necessary service to the people of the Commonwealth.

21
22 This Declaration of a State of Disaster Emergency shall take effect immediately and all
23 memoranda, directives and other measures taken in accordance with this Declaration shall
24 remain in effect for thirty (30) days from the date of this Executive Order unless I, prior to the
25 end of the thirty (30)-day period, notify the Presiding Officers of the Legislature that the state of
26 emergency has been lifted or has been extended for an additional period of thirty (30) days. 1
27 CMC § 7403(a); 3 CMC § 5121(c).

28
29 A comprehensive report on the exercise of my constitutional authority shall be transmitted to the
30 presiding officers of the Legislature as soon as practicable in accordance with 1 CMC § 7403(a).

31
32
33 **DIRECTIVES**

34
35 I direct the following:

36
37 Directive 1: Deleted.

38
39 Directive 2: Deleted.

EO 2010-01
Declaration of Disaster Emergency: CUC Continuation 18

1 Directive 3: Deleted.

2
3 Directive 4: Deleted.

4
5 Directive 5: Deleted.

6
7 Directive 6: Deleted.

8
9 Directive 7: Deleted.

10
11 Directive 8: Deleted.

12
13 Directive 9: The Executive Director of CUC shall have all the powers of the CUC Board,
14 thereby enabling him to carry out all critical business of CUC, pending the earlier of either (1)
15 the confirmation and convening of an operating CUC Board, or (2) the termination of the
16 authority of this order. In particular, the Executive Director shall have full power and authority
17 to agree to swap CDA debt and related obligations for preferred stock and related features and
18 rights.

19
20 Directive 10: The following strike-out-formatted language of the quoted provision of the
21 following statute regulating government employment is, as indicated, suspended immediately:

22
23 (b) Transition exemptions for government employment. . . . (5) Commonwealth
24 Utilities Corporation. Engineers, and professional employees in technical or trade
25 areas may be exempted and CUC may contract with manpower services or
26 directly hire power plant mechanics and utility technicians who may be
27 exempted; ~~provided that direct or manpower hire of foreign national workers shall~~
28 ~~not exceed nineteen (19) employees. This exemption shall expire on September~~
29 ~~30, 2010, and no contract may provide to the contrary.~~

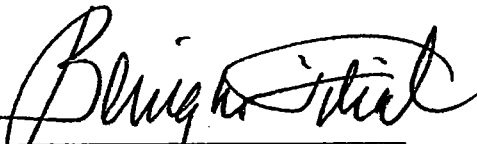
30
31 3 CMC § 4972(b)(5), as most recently amended by PL 16-14. (Underlining in original; ~~strikeout~~
32 ~~is deliberately added~~) That is, the following language is suspended: “~~provided that direct or~~
33 ~~manpower hire of foreign national workers shall not exceed nineteen (19) employees. This~~
34 ~~exemption shall expire on September 30, 2010, and no contract may provide to the contrary.~~”
35

EO 2010-01

Declaration of Disaster Emergency: CUC Continuation 18

1 The effect of the suspension shall be that CUC shall have the complete power, without regard to
2 citizenship or otherwise lawful immigration status, to hire engineers, professional employees in
3 technical or trade areas, power plant mechanics and utility technicians, either directly or
4 indirectly. These professional employees may include, but shall not be limited to, sanitarians,
5 engineers, accountants, financial experts, information technology specialists, mechanics,
6 electricians, well-drillers, pipefitters, plumbers, wastewater treatment facilities operators, and
7 other trades technicians.
8
9

10 Done this 23rd day of January, 2010.
11

12
13
14 
15 _____
16 BENIGNO R. FITIAL,
17 Governor

0 EO 2010-01 CUC Dis Decl (23Jan10).wpd



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lt. Governor

1 **EXECUTIVE ORDER 2010-02**
2
3

4 **DECLARATION OF A STATE OF DISASTER EMERGENCY:**

5 COMMONWEALTH UTILITIES CORPORATION'S
6 IMMINENT GENERATION AND OTHER FAILURE AND THE NEED TO
7 PROVIDE IMMEDIATE RELIABLE POWER, WATER AND WASTEWATER
8 SERVICES
9

10 **CONTINUATION #19**
11

12 I, ELOY S. INOS, pursuant to the authority vested in me as Acting Governor of the
13 Commonwealth of the Northern Mariana Islands by Article III, Section 10 of the Commonwealth
14 Constitution and 3 CMC § 5121 of the Commonwealth Disaster Relief Act of 1979, do hereby
15 declare a State of Disaster Emergency for the Commonwealth of the Northern Mariana Islands
16 due to the inability of the Commonwealth Utilities Corporation (CUC) to provide critical power
17 generation service to the CNMI and the extreme, immediate and imminent threat such condition
18 poses to the Commonwealth of the Northern Mariana Islands.
19

20 This Executive Order is intended to, and does, continue in effect portions of the Governor's
21 preceding disaster emergency declarations on this matter, EO 2009-01 through -09, and 11-13,
22 and EO 2010-01, except as specifically modified. As more fully stated below, this Executive
23 Order shall expire on the 31st day following the date of my signature. The following findings
24 and conclusions further support continuation of the Declaration and issuance of directives.

1 **FINDINGS**

2
3 I find that:

4
5 1. All findings and conclusions of EO 2009-01 through -09, and 11-13, and EO 2010-01 are
6 incorporated by reference, except as specifically varied in this Executive Order.

7
8 **MANPOWER CRISIS DUE TO RESTRICTIVE LEGISLATION**

9
10 2. **Summary.** A shortage of manpower forced by legislation limiting skilled foreign workers
11 has continued to place CUC operations at risk. Incipient failures in the CUC water, wastewater
12 and power transmission and distribution networks have underscored the importance of having in
13 place a well-funded and functioning preventive maintenance program. Skilled workers and a
14 responsive support system are key to the success of the operations, particularly of preventive
15 maintenance. Presently CNMI law (PL 16-14) prohibits CUC from hiring any more non-US
16 technical workers than the 19 skilled professionals recently with CUC. CUC has repeatedly
17 asked the Legislature for relief from this statute regulating the Government's workforce, to no
18 avail. Further, errors in wording in the CUC enabling legislation recently re-enacted, PL 16-17,
19 as amended, would bar the Executive Director from day-to-day management of the corporation,
20 effectively shutting CUC down. This EO eliminates these problems while it is in effect.

21
22 3. **Background.** CUC has substantially minimized the risk of losing the services of its owned
23 generating capacity, which losses created intermittent blackouts on portions of its system. It
24 therefore allowed the Aggreko year-long temporary power contract to terminate, as provided in
25 the agreement, effective September 12, 2009. This saves CUC customers at least \$6 million per
26 year in fees. But it still presents risks, as the strategy requires proper operation and maintenance
27 of CUC's owned engines by CUC's technical staff, and the timely securing of materials and
28 supplies.

29
30 4. CUC bears a substantial obligation to deliver highly technical work on time to the satisfaction
31 of the US District Court and the US EPA, pursuant to two consent, or "stipulated", orders. The
32 first requires the upgrade and smooth functioning in virtually all aspects of CUC's water and
33 wastewater divisions. The second requires CUC to properly eliminate over 400,000 gallons of
34 used oil and to institute measures to avoid uncontrolled buildup of such inventories. Failure to
35 meet the requirements of the federal court orders could subject CUC and the CNMI to
36 substantial fines and charges, and, in the extreme, to a federal takeover of their finances.
37 Presently CUC is "accruing" substantial fines. Most of the fines have not been levied; but they
38 could be. The EPA has, however, levied one fine, in the amount of \$29,000.

1 5. CUC is thoroughly regulated by the Commonwealth Public Utilities Commission (“CPUC”).
2 The regulator has plenary power over CUC rates, charges, fees, operations and capital
3 investments. CUC’s failure to timely and competently meet CPUC orders and other
4 requirements can result in severe rate discipline, and fines and other penalties. The Commission
5 recently required CUC to meet certain requirements, including the filing of a technically
6 complex rate case by the end of January 2010, or face fines of \$500 per day.

7
8 6. CUC is the sole electricity supplier to the Government of the CNMI, including all public
9 safety activities, the schools, and the only hospital. CUC also supplies electricity to most of the
10 CNMI’s businesses and homes. While some businesses and agencies own backup generators,
11 they are not generally organized to use the backups as permanent power sources; and the diesel
12 oil purchased to run these generators is substantially more expensive than that used for CUC
13 power.

14
15 7. Without CUC electricity:

- 16
17 a. most CNMI economic activity would come to a halt, the courts would soon close,
18 much refrigeration and air conditioning would end, and the airports and ports
19 would be forced to rely on emergency generation and the limited, expensive oil
20 supply for it;
21
22 b. the CNMI’s health and safety would immediately be at risk, since traffic signals
23 and street lighting would cease to function, emergency, fire and police facilities
24 and their communications systems, and the Hospital and island clinics would have
25 to rely on limited oil supplies for emergency generation and then cease
26 functioning, much refrigeration of food and medicines would end, as would air
27 conditioning for the elderly and medically fragile;
28
29 c. the public schools and the Northern Marianas College would close. Other
30 educational institutions would close as their backup oil supplies for emergency
31 generators were exhausted; and
32
33 d. water and sewage treatment would soon end. One of CUC’s largest electric
34 customers is the combined CUC Water and Wastewater Divisions. CUC is the
35 sole supplier of electricity for these systems. CUC’s water system relies on
36 electricity to maintain the system pressure needed to avoid the backflow of
37 pathogens, to chlorinate, and to pump, store and distribute water supplies. CUC’s
38 wastewater system requires electricity to collect, pump, process, treat and
39 discharge sewage. The lack of electricity could result in sewage overflows,

1 contamination of land and water and rendering unsafe the CNMI's beaches,
2 which are also principal tourist destinations.
3
4

5 **Staffing CUC with the technical experts to permit continued electric service**
6

7 8. CUC continues to maintain and rehabilitate its owned power plants. CUC tries to maintain
8 and rehabilitate the operating units to adequately meet load. CUC has secured federal funds to
9 buy many needed parts to avoid outages. CUC began the needed overhaul of PP #1 unit DE-5 in
10 September. In October four other units began required overhaul, which will take 12 months.
11

12 9. In November, the following work started: The critical replacement of the PP #1 anchor
13 bolts, in order to stop the shifting and vibration that has ruined the plant; and foundation repairs
14 to Engines 1 and 8. Shortly thereafter the replacement of turbochargers and oil-water separators
15 is to begin. All of this work is essential.
16

17 10. This work has been successful. Power Plant 1 Engines 1, 2, 3, 5, 6, 7 are available. Engine
18 8's critical foundation repair and anchor bolt replacement have been completed. The major
19 engine overhaul is under way.
20

21 11. In effect, CUC management, with generous federal financial assistance, has brought its
22 generation back from the brink of system failure. There are adequate reserves. If maintained
23 properly, the system can provide the CNMI's citizens and residents with adequate power.
24

25 12. Adequate technical staff is essential to this work. A major challenge to carrying out this
26 rehabilitation has been finding the trained technicians needed to carry out these rehabilitation
27 projects, and maintain and run the equipment. The technicians must be ready for service when
28 needed and their services must be affordable. Any significant reduction in CUC's present
29 technical workforce could seriously compromise CUC's ability to generate and distribute power.
30

31 13. With respect to CUC's lines, equipment used by CUC's Transmission and Distribution unit
32 ("T & D"), including many vehicles, is dilapidated and bordering on being unsafe. There is an
33 insufficient number of skilled workers to operate T & D. The linemen must be trained to, and
34 skillful in, meeting US standards. The critical upcoming projects in T & D include the
35 replacement of the antiquated, rundown and unsafe vehicle fleet; the redesign of T & D using
36 national Rural Utility Service standards; the replacement/installation of insulators, transformers,
37 overcurrent protection, sectionalizers and the installation of efficient LED street lighting.
38

39 14. For example, Saipan's early-September brush with Typhoon Choi-Wan 15W that passed to
40 the north of Saipan, and typhoon Melor, which passed just north of Saipan in October,

1 underscoring the extreme vulnerability of CUC's power transmission and distribution (T & D)
2 system. In September, over 150 calls of no- power and line faults were fielded by crews when,
3 for a storm of this size, there should have been no more than a score. In October, fortunately, the
4 CUC power system avoided a direct hit from a supertyphoon. Fortunately, the typhoon season
5 appears to have ended with no direct hits on the CNMI and our power distribution system.
6 Accelerating improvements to the T & D system, with proper staff under an Emergency Order,
7 would allow CUC to "harden" the system in anticipation of a bigger storm event. The
8 alternative, in a more serious storm, is CUC's inability to recover in any reasonable time period.

9
10 15. Further, utility industry safety margins for isolated, island systems typically require a
11 reserve equal to the capacity of the two largest generating units; in CUC's case this would be
12 another 15 MW of load, equivalent to the departed Aggreko temporary units. Meeting this
13 reserve requirement means CUC must have an adequate repair and maintenance staff.

14
15 16. The Legislature, through 3 CMC § 4972(5), as amended by PL 16-14 (Aug. 27, 2008), has
16 limited CUC's ability to hire technical staff, allowing up to 19 foreign workers only. The CUC
17 Act, as subsequently re-enacted by PL 16-17 (Oct 1, 2008), provides that CUC shall hire such
18 persons as are necessary for operations, *except as otherwise limited by other law.* 4 CMC §
19 8123(h).

20
21 17. PMIC at PP #4 and Telesource on Tinian, as Independent Power Producers (IPPs), are not
22 subject to the Legislature's limitation on foreign workers.

23
24 18. There are not enough technical specialists at CUC to get the power generation work done,
25 particularly specialists with experience in the type of engines that CUC uses. CUC believes that
26 the vast majority of skill sets must come from non-US personnel.

27
28 19. CUC has tried to hire diesel mechanics in the CNMI, but has been unsuccessful in finding
29 all the qualified candidates. In the summer of 2009 CUC identified 16 potential new staff after
30 interviews – 7 mechanics, 1 welder, 1 machinist, and 7 operators. Two of the operator
31 candidates were US citizens.

32
33 20. CUC has hired some local staff recently thanks to the aggressive steps of CUC HR, the
34 Executive Director and Directive 10.

35
36 21. CUC has completed the hiring of the skilled trade technicians needed on Saipan for power
37 plant operations and maintenance. For Rota, CUC has announced the need for a
38 mechanic-operator and an electrical operator. As more units begin working after the
39 rehabilitations are largely complete, CUC will need more staff to operate and maintain them.
40 For the immediate future, CUC needs to maintain its complement of skilled workers.

1
2 22. The impact of an inadequate workforce would be three-fold:
3

- 4 a. First, there would be a direct negative effect on the existing consumers. There
5 would be brownouts, or area blackouts, with the above-mentioned loss of service.
6
7 b. Second, the power plants would again degrade, producing more of these outages.
8
9 c. Third, there would be an indirect effect, increasing rates over the longer term,
10 because small consumers would have to shoulder more of the fixed costs of the
11 CUC system. First, there would be loss of large customers. By contrast, if the
12 hotels were to become part of the system, they could help pay CUC fixed costs,
13 which would lower everyone else's rates. The hotels need reliable, 24/7 power.
14 But with unreliable power, CUC would be unable to convince large commercial
15 customers, particularly the hotels, to join, or rejoin, its system. Second, would
16 come additional expenses. If CUC fails to meet federal court deadlines for the
17 stipulated orders, the Court could appoint a federal receiver and its consulting
18 team – with all expenses charged to CUC customers. Thus, the indirect effect of
19 an inadequate workforce would be to boost rates.
20

21 23. Rota's status today is precarious and financially un-sustainable. Rota has suffered blackouts
22 from inadequate generator maintenance. The power plant's other facilities and the island's
23 distribution system similarly need the attentions of additional manpower. The Rota power plant
24 needs additional generating sets to come on line, as there are only 1.5 dependable sets in the
25 plant. The third of two feeders is powered by a private resort at a cost of \$200,000/month to
26 CUC. The revenues from the customers on this feeder fall far below this cost. CUC has
27 negotiated with a Mainland supplier for a new generating set, with funding from the US
28 Department of the Interior. The present alternative for Rota is akin to Saipan's recent Aggreko
29 situation – purchasing higher cost, reliable power from the Rota Resort.
30

31 24. Since E0 2009-8 in August, and the suspension of the harmful legislative employment
32 restriction, CUC has taken steps to hire the expertise to operate and maintain the Saipan and
33 Rota power generation facilities. CUC needs to be able to hire the workers it needs when it
34 needs them. Otherwise, if CUC had to discharge these workers its staffing levels would return to
35 those which overworked its limited staff. For example, over pay period numbers 2 through 11 of
36 the year 2009, CUC accumulated 18,053 hours of overtime from technical employees who each
37 worked 40 or more hours of overtime in a pay period. This condition is extreme, and a repeat
38 can result in inefficiencies and poor work quality. It can lead to dangerous mistakes, producing
39 injury or death.
40

1 25. CUC has repeatedly asked the Legislature to lift the restrictions on foreign workers. The
2 Legislature has failed to act on the CUC request. Without relief, this inaction will effectively set
3 the stage for loss of service and higher rates. Among other things it will thereby reverse the \$6
4 million-per-year benefit of terminating the Aggreko temporary power contract.

5
6 26. CUC points out that the power distribution system is highly vulnerable because, like the
7 sewer system, so much of the maintenance and replacement was deferred for one reason or
8 another over the past 20 years. Since 1995, 26 villages on Saipan were identified as needing
9 major improvements to the power lines; only five have seen those improvements. Power T & D
10 fails in bits and pieces. One of the big pieces that failed in February 2010 was one of 12
11 termination cables on the Kiya Substation (Transformer One). A power outage to the southern
12 parts of Saipan lasted from one to five hours. CUC management states that the excellent
13 response from the crews in both Power Generation and Power T & D demonstrated the
14 importance of having skilled workers. The top two engineers were non-residents. Without this
15 EO in place, given present statutes, it is unlikely CUC would be able to secure the services of
16 such valuable individuals.

17
18 27. The extended dry season this year (see below) means that vegetation must be cleared away
19 from the lines early and often. Brush fires can damage the power lines, telephone facilities, and
20 television cables. Meanwhile, CUC crews must replace failing insulator bolts and failing
21 switches in order to avoid distribution-related power outages.

22
23 28. CUC has demonstrated that the required workers are available as nonresident workers, and
24 cost-effectively so. Thus, continued relief from the legislative prohibition of hiring foreign
25 national workers is necessary to ensure the delivery of uninterrupted power services to the
26 people of the Commonwealth.

27 28 29 **Complying with the federal court order on disposal of used oil**

30
31 29. CUC has taken concrete steps to address the storage and disposal of used oil, consonant
32 with the federal court's Stip Order 2. Federal court Stipulated Order 2 relates to the used oil
33 from the engines for four facilities (Power Plants 1, 3, 4 and Rota) and all CUC transformers.
34 *USA v. CUC & CNMI*, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) ("Stip Order 2"). With an
35 adequate complement of trained technical employees, CUC has believed that it can meet these
36 requirements.

37
38 30. A September inspection by the US Coast Guard (USCG) has resulted in the imposition of
39 another cost that was unanticipated even with Stip Order 2. The USCG now requires additional
40 and more stringent measures to contain or eliminate the possibility of any oil reaching the ocean

1 from Power Plants 1, 2 and the power plant in Rota. Further, as of October, CUC has faced the
2 following staffing needs in this area: It critically needs the resources to inspect and redesign the
3 entire fuel storage, pumping and handling system in order to meet the more stringent
4 requirements of today. The clean fuel storage tanks at Lower Base were originally designed for
5 another application. The fuel line from the oil company's terminal is in danger of rupturing
6 during a transfer; the pumping rate has to be reduced to prevent this. All of this requires trained
7 staff.

8
9 31. Serious deficiencies in the waste oil handling system at Lower Base have come to light in
10 the past months and are being addressed by both CUC and EPA. One deficiency is that the oily
11 water separators are not functioning as such because of the excessive amount of oil (as opposed
12 to water) entering the system. As a result, oil was spilling onto the ground rather than being
13 separated and skimmed off properly. Power Plant #1 has been sealed off to prevent any waste
14 oil from leaving the plant and flowing into the oily water separators. To prevent oil from
15 accumulating uncontained in the plant itself, emergency measures have been taken to store waste
16 oil and to fabricate above-ground tanks. The oily water separators, pipes, holding tanks, and
17 baffles are being cleaned out so that the entire system can be carefully inspected and
18 re-engineered. All of the additional work is expensive. Regardless of who does the work
19 initially, CUC staff, EPA contractors, or a combination thereof, CUC requires skilled, trained
20 workers for the clean-up. Failure to correct this situation could harm the nearby environment,
21 CUC's ability to generate electricity properly, and the assurances given pursuant to Stip Order 2.
22 CUC has begun the process to hire an Oil Technical Manager.

23
24 32. Incinerators play a crucial role in helping CUC meet Stip Order 2. The two incinerators at
25 Lower Base (Power Plants 1 and 2) are now operating, and burning about 1000 gallons of used
26 oil per day. This is double the rate from January. This EO has permitted Power Generation the
27 flexibility of hiring skilled non-residents to not only repair and overhaul the generating sets, but
28 fix such important auxiliary equipment as the incinerators.

29
30 33. Nonetheless, the EPA on February 18, 2010, filed a status report with the US District Court
31 for the Mariana Islands which is highly critical of the progress in CUC's efforts to comply with
32 Stip Order 2's requirements to solve the used oil situation.

33 34 35 **Complying with the federal court order on managing the water and wastewater systems**

36
37 34. As long as the Water and Wastewater Divisions can hire competent staff and receive power
38 from the Power Division, they can function.

39

1 35. The U.S. Department of Justice (“DoJ”), Environment and Natural Resources Division, has
2 sued CUC in federal court to come into compliance with critical water and sewage treatment
3 requirements. *USA v. CUC & CNMI*, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) (“Stip Order
4 1”). *See also* http://www.usdoj.gov/enrd/Consent_Decrees.html. In July 2008 CUC, the CNMI
5 and (in September 2008) the U.S. Environmental Protection Agency (“EPA”) stipulated to this
6 first of two orders lodged with the U.S. District Court on the date the Complaint was filed. This
7 order requires CUC to implement a series of improvements to its water and wastewater systems
8 that respond to years of neglect, for which it presently lacks the funds and the complete technical
9 capability.

10
11 36. Sewage collection piping failures are continuing at an accelerated rate. The Wastewater
12 Division must respond to acid damage in the asbestos cement piping system, the product of over
13 30 years of anaerobic conditions in sewers. This has caused significant damage to cement and
14 metal infrastructure, so that key pipe systems have collapsed. December 18 saw the sixth failure
15 in six months. Failures will continue until 10 miles of sewer pipe are replaced. But replacement
16 involves complex excavations, avoiding electric, phone and water utilities, blocking traffic,
17 stopping the infiltration of seawater (which damages treatment plant facilities), and pumping
18 sewage around blocked and excavated areas. The Division has already far exceeded its repair
19 budget.

20
21 37. A sewer collapse occurred again in Chalan Kanoa this past month. This was the result of
22 pipe thinning. The cost to repair the affected section is about \$90,000. Without this EO, says
23 CUC, procurement would be even more difficult than it already is, with the contract to replace
24 the sewer section taking months rather than days to consummate.

25
26 38. The Sadog Tasi Wastewater Treatment Plant is being prepared by CUC wastewater crews
27 in anticipation of a rehabilitation contract already awarded. Such preliminary work has to be
28 conducted within strict parameters by properly trained technicians to prevent contamination of
29 the environment.

30
31 39. The Division also needs serviceable vehicles to move its workers to and from job sites.
32 Presently six vehicles are in such bad shape that they are dangerous. The resulting reduced
33 vehicle problem raises costs and hurts service, as staff and materials cannot be brought to job
34 sites on time.

35
36 40. Sewage lift Station failures continue, with most pumping stations having only one of two
37 required pumps installed. CUC has issued a contract to purchase 30 additional pumps, however
38 the lead time between issuance of the contract and pump arrival is over six months, so that CUC
39 is still approximately two months out from pump arrival.
40

1 41. CUC Engineer staff shortages continue to hamper CUC's ability to anticipate and fix
2 technical problems. While CUC's Water/Wastewater Division employs four engineers, the poor
3 condition of the CUC sanitation assets requires at least two more engineers. But, significant
4 engineering resources are already focused on addressing EPA Stip Order 1 issues. These issues
5 include staffing plans, pre-treatment programs, materials management programs, customer
6 inventory, and cross-connection control programs. Recruitment and retention of engineering
7 staff to meet these challenges is difficult.

8
9 42. Incipient failures include the failure of 98 submersible pumps in the water system over a
10 period of twelve months. Higher grade stainless steel grates have to be specified that are resistant
11 to pitting. The pitting causes the grates to fail and consequently the pump motors. CUC will
12 need to purchase higher quality equipment, rather than the cheap units that fail prematurely.

13
14 43. CUC must be able to hire the staff to perform the required technical functions. The Water
15 and Wastewater Divisions cannot carry out their missions without adequate staff. These staff are
16 essential to producing clean, safe water supplies and removal of stormwater and sewage in a
17 safe, timely manner. While the bulk of CUC employees are drawn from local and US
18 populations, the Division management estimates that at least six trained technicians will be
19 required – three experienced Level 3 wastewater treatment operators, two Level 3 wastewater
20 collections operators, and an instrumentation /low voltage controls specialist. An experienced
21 Water/Wastewater Division operations manager will also be required.

22
23 44. There are special reasons why the water system must be adequately staffed and maintained
24 this year. This is an El Nino year. According to the Pacific ENSO bulletin forecast, February 1,
25 2010, the CNMI dry season will bring below normal rainfalls and will extend to June 2010.

26 CUC must now go into an emergency mode, conserving water, accelerating water line
27 replacements, and locating and repairing leaks. There will be greater danger of fires this
28 coming year, but less water available to fight them.

29
30 45. CUC also requires a constant supply of electricity to run its water and wastewater treatment
31 systems. CUC has very limited on-site emergency generation capability, and for only portions
32 of these systems.

33
34 46. Meanwhile CUC continues to pay for power, chlorine, lab testing costs, and repairing
35 collapsing sewer lines. CUC has hired a consulting team to assist it in achieving full cost
36 recovery for the water and wastewater systems through the processes of the CNMI Public
37 Utilities Commission ("CPUC"). CUC filed a wastewater rate increase request, complete with
38 hundreds of pages of written expert witness testimony and technical support on January 31,
39 2010. The case is in the prehearing, discovery phase. The Commission is scheduled to address
40 the filing in April.

1
2
3 47. Nonetheless, the EPA on February 18, 2010, filed a status report with the US District Court
4 for the Mariana Islands which is highly critical of the progress in CUC's efforts to comply with
5 Stip Order 2's requirements to solve the water and wastewater situations.
6

7
8 **Meeting US District Court and CNMI Public Utilities Commission requirements to**
9 **produce timely, accurate financial reports**
10

11 48. The federal Stip Orders require CUC to produce and carry out an Interim Financial Plan,
12 beginning in September, 2009. The "IFP" must develop over time, becoming more than
13 "interim". CUC cannot do this unless it has a staff of trained accounting and other financial
14 experts who can gather data, put the data in the required form and generate the IFP and its later
15 versions.
16

17 49. Further, CUC is comprehensively regulated by the Commonwealth Public Utilities
18 Commission ("CPUC"). The CPUC is charged by statute to oversee carefully CUC's operations
19 and capital expenditures, and to develop rates that fully pay the costs of safely operating CUC's
20 water and wastewater systems.
21

22 50. In electric and water/wastewater orders, of September 3 and November 20, 2009, the CPUC
23 addressed CUC's inability to deliver complete on-time financial reports, requiring CUC, in
24 effect, to enhance its staff capability to provide critical regulatory information. (Docket No.'s
25 09-1 and 09-2.) The Commission will be revisiting CUC rates, fees, charges and operations
26 during this year.
27

28 51. CUC cannot upgrade its financial and accounting operations unless it has a staff of trained
29 accounting and other financial experts who can gather data, put the data in the required form and
30 generate the required reports and filings with the CPUC, as well as provide the CPUC consulting
31 staff with the data required for their oversight. CUC has obligated itself to provide an updated,
32 compliant Interim Financial Plan and an organizational evaluation, both pursuant to Stip Order 1,
33 to the US District Court.
34

35 52. CUC last year lost 2 senior accountants plus a related specialist. The IT and billing
36 department in August was reduced by one staffer, having advertised for a replacement for 4
37 weeks to no avail. While it appeared that CUC might have to look to employing foreign
38 technical specialists, CUC hired back 2 former accountants in September and brought a third
39 person aboard in October. All are US citizens. Nonetheless, CUC must have the flexibility to
40 hire competent professionals as needed. CUC is still short-staffed, and needs an accounting

1 assistant, and an accounting specialist. On February 17, 2010, CUC's new Chief Financial
2 Officer reported for duty.

3
4 53. Nonetheless, the EPA on February 18, 2010, filed a status report with the US District Court
5 for the Mariana Islands which is highly critical of the progress in CUC's efforts to comply with
6 Stip Order 2's requirements to provide timely and complete financial and other operating reports
7 and plans.

8
9 54. To summarize: Without properly trained technical staff CUC's ability to supply power is at
10 risk. So is its ability to manage the rest of its systems, including its finances and accounting.
11 CUC's services could not be adequately staffed without August's lifting of the artificial
12 legislative regulation of CUC's workforce, in EO 2009-08, Directive #10, suspending the
13 limitations on CUC hiring foreign workers. It is obvious that the hiring authority must be
14 continued.

15
16 55. There is no indication that any of the above manpower situation will be resolved in the next
17 month without continuing in effect this EO and Directive #10.

18
19
20 **MANAGEMENT CRISIS IN ABSENCE OF A PROPER BOARD/CEO STRUCTURE**

21
22 56. **Summary.** CUC is a \$70 million-per-year business, critical to the CNMI's economy and
23 the public health. Yet, the recently-renewed statute organizing it places the Board of Directors
24 in the position of day-to-day management of the corporation, and requires a complex mix of
25 technical, geographic and other qualifications for Board membership. There is no Board because
26 it has been impossible to meet these criteria. Without the Board, or its equivalent, CUC cannot
27 take a critical step toward solvency and the ability to borrow to finance its work.

28
29
30 **Forestalling corporate paralysis**

31
32 57. A critical concern is that the CUC Act's constricted scope of authority for the Executive
33 Director, and the complementary daily management by a host of Board volunteers, would
34 paralyze the corporation. This is particularly worrisome in light of the above-listed tasks before
35 CUC.

36
37 58. A careful reading of the CUC Act, PL 16-17, as amended, particularly its sections 4 CMC
38 §§ 8131 (Bd qualifications), 8134 (Bd approval of all "allocations" of money and property), and
39 1 CMC § 8247 (limited daily reimbursement of \$60.00); 4 CMC §§ 8132 (E.D. described), 8133
40 (limited E.D. functions listed), and 8134 (Bd approval of all "allocations" of money and

1 property), demonstrates that the Executive Director is to be left with little more to do than
2 provide reports to a Board of volunteers who are nonetheless to run CUC, a complex \$70
3 million/year corporation, on a day-to-day basis. This includes such decision-making as
4 purchasing materials and supplies, signing paychecks and other checks, hiring staff, assigning
5 work crews, connecting customers, deciding on making repairs, collecting debts, complying with
6 the details of federal and CPUC regulatory requirements, making and funding long-term
7 technical power and water/wastewater plans, overseeing filings with the CPUC, including rate
8 cases, and insuring that, on a day-to-day basis, the power and water flow and the sewage is
9 treated.

10
11 59. Permitting CUC to be managed this way would plunge the CNMI into economic chaos and
12 a public health care crisis, as corporate activity and the Hospital's operations ground to a halt –
13 with or without a Board in place. The complex technical problems listed above simply cannot be
14 managed on a day-to-day basis by a group of non-expert volunteers.

15
16 60. No private or public utility company in the United States runs this way – with a group of
17 volunteers managing a \$70-million corporation's day-to-day operations. No other legislature in
18 the United States has mandated this form of corporate management for a public utility.

19
20 61. I can only conclude that the legislation's extraordinary structure for CUC is the result of a
21 drafting error, and the People, through their elected representatives, wish their utility company to
22 continue to supply them with essential services at a reasonable cost, meeting industry standards.

23
24
25 **Fixing CUC's technical insolvency**

26
27 62. CUC has been unable to borrow money to run its operations since the inception of this State
28 of Disaster Emergency due to (a) its poor financial condition and (b) the existence on its books
29 of a liability to the Commonwealth Development Authority ("CDA") of approximately \$115
30 million. This situation may be corrected if the Executive Director is recognized to have the
31 authority to correct it.

32
33 63. Meanwhile, billings and collections are substantially below the levels required to prudently
34 manage CUC's current operations and provide for system repairs, replacements and upgrades.
35 For example, billings alone for water and wastewater are less than 70% of requirements to run
36 those two systems.

37
38 64. The booked CDA obligation has rendered CUC nominally insolvent. While CUC is deemed
39 insolvent, CUC cannot borrow money. But CUC must be able to borrow money to bridge the
40 gap between (a) the need to spend money on essential goods and services to provide electricity,

1 water and sewage service, and (b) the lagged collection of already-determined-insufficient
2 revenues from the sale of those services.

3
4 65. The CPUC, in its September 3 electric order, Docket No. 09-1, approved a CUC-CDA
5 settlement converting the CDA debt to preferred stock. But the deal requires CUC's Board to
6 agree to it.

7
8 66. There is no Board. CUC has functioned without a Board of Directors, because it has had to.
9 While CUC's enabling act, reenacted as PL 16-17, as amended, authorizes a Board, there is no
10 CUC Board yet because, while the staff of the Governor's Office have diligently tried to find
11 Board volunteers who meet the complex statutory qualifications, they have been unable to do so.
12 Nonetheless, CUC must continue to function, including borrowing money.

13
14 67. EO 2009-08's Directive # 9 provides the required authority to the Executive Director. It
15 also permits him to continue to run CUC, carefully manage cash to pay tens of millions of
16 dollars annually for fuel oil and purchased power, and do all the things necessary to providing
17 power, water and wastewater services, until the remaining members of a properly constituted
18 Board can be identified, confirmed, and convened for business. In February 2010 the Executive
19 Director delivered to CDA management the stock certificates required for the debt-equity
20 conversion.

21
22
23 **Providing the basis for proper CPUC oversight**

24
25 68. The broad and comprehensive statutory scheme of utility regulation in the Public Utility Act,
26 4 CMC §§ 8401-84, provides that the utility regulator, the CPUC, will carefully examine CUC
27 activities, particularly financial activities.

28
29 69. This extensive oversight satisfies the policy need for a body of arms-length, well-informed
30 citizens to watchdog the activities of this, the Commonwealth's key resource. Thus, the statute's
31 error-infused creation of a volunteer Board which would run the corporation on a day-to-day
32 basis, becomes much less important than satisfying CPUC requirements.

33
34 70. What becomes very important is CUC's capability to provide the CPUC with accurate and
35 timely financial and accounting information. But such reporting is not possible without a
36 competent, trained staff of accounting and financial experts at CUC, and a properly-empowered
37 Executive Director to lead them.

1 **CRISIS FROM THE LACK OF LEGISLATIVE ACTION**

2
3 71. There is no Legislative relief coming. For months CUC has repeatedly asked the
4 Legislature for such relief, including submission of draft legislation in July. The Legislature has
5 declined to respond. There is no alternative to providing this relief other than an order from the
6 Governor. Inaction will produce a disaster in which CUC is unable to provide its critical
7 community services. Directives # 9 and #10 were designed to avert this crisis. (The other
8 Directives, #1 through #8, are no longer relevant, and were discontinued.)
9

10 72. This Declaration is necessary to protect the health and safety of our children, our senior
11 citizens, businesses and all other CNMI residents and visitors.
12
13

14 **CONCLUSION AND ORDER**

15
16 Therefore, I hereby invoke my authority under Article III, § 10, of the Commonwealth
17 Constitution and 3 CMC § 5121(f) to take all necessary measures to address the imminent threat
18 facing the Commonwealth of the Northern Mariana Islands.
19

20 Exercise of the Constitutional and statutory authority invoked herein will be effectuated by the
21 issuance of Executive Directives setting forth the measures to be taken to address the State of
22 Disaster Emergency pursuant to 3 CMC § 5121(f), which states:
23

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

26
27 (1) Suspend the provisions of any regulatory statute prescribing the procedures
28 for conduct of the Commonwealth's business, or the orders, rules, or regulations
29 of any Commonwealth activity or agency, if strict compliance with the provision
30 of any such statute, order, rule or regulation would in any way prevent, hinder, or
31 delay necessary action in coping with the emergency;
32

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

35
36 (3) Transfer the direction, personnel, or functions of the Commonwealth
37 departments and agencies or units thereof for the purpose of performing or
38 facilitating emergency services;
39

40 3 CMC § 5121(f)(1)-(3).

1 By today's disaster emergency declaration, I intend to enable CUC to continue to provide
2 necessary service to the people of the Commonwealth.

3
4 This Declaration of a State of Disaster Emergency shall take effect immediately and all
5 memoranda, directives and other measures taken in accordance with this Declaration shall
6 remain in effect for thirty (30) days from the date of this Executive Order unless I, prior to the
7 end of the thirty (30)-day period, notify the Presiding Officers of the Legislature that the state of
8 emergency has been lifted or has been extended for an additional period of thirty (30) days. 1
9 CMC § 7403(a); 3 CMC § 5121(c).

10
11 A comprehensive report on the exercise of my constitutional authority shall be transmitted to the
12 presiding officers of the Legislature as soon as practicable in accordance with 1 CMC § 7403(a).

13
14
15 **DIRECTIVES**

16
17 I direct the following:

18
19 Directive 1: Deleted.

20
21 Directive 2: Deleted.

22
23 Directive 3: Deleted.

24
25 Directive 4: Deleted.

26
27 Directive 5: Deleted.

28
29 Directive 6: Deleted.

30
31 Directive 7: Deleted.

32
33 Directive 8: Deleted.

34
35 Directive 9: The Executive Director of CUC shall have all the powers of the CUC Board,
36 thereby enabling him to carry out all critical business of CUC, pending the earlier of either (1)
37 the confirmation and convening of an operating CUC Board, or (2) the termination of the
38 authority of this order. In particular, the Executive Director shall have full power and authority
39 to agree to swap CDA debt and related obligations for preferred stock and related features and
40 rights.

EO 2010-02
Declaration of Disaster Emergency: CUC Continuation 19

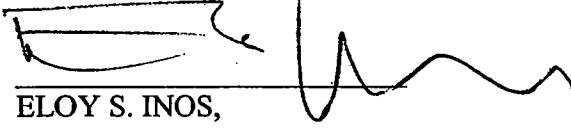
1 Directive 10: The following strike-out-formatted language of the quoted provision of the
2 following statute regulating government employment is, as indicated, suspended immediately:
3

4 (b) Transition exemptions for government employment. . . . (5) Commonwealth
5 Utilities Corporation. Engineers, and professional employees in technical or trade
6 areas may be exempted and CUC may contract with manpower services or
7 directly hire power plant mechanics and utility technicians who may be
8 exempted; ~~provided that direct or manpower hire of foreign national workers shall~~
9 ~~not exceed nineteen (19) employees. This exemption shall expire on September~~
10 ~~30, 2010, and no contract may provide to the contrary.~~
11

12 3 CMC § 4972(b)(5), as most recently amended by PL 16-14. (Underlining in original; ~~strikeout~~
13 ~~is deliberately added~~) That is, the following language is suspended: “~~provided that direct or~~
14 ~~manpower hire of foreign national workers shall not exceed nineteen (19) employees. This~~
15 ~~exemption shall expire on September 30, 2010, and no contract may provide to the contrary.~~”
16

17 The effect of the suspension shall be that CUC shall have the complete power, without regard to
18 citizenship or otherwise lawful immigration status, to hire engineers, professional employees in
19 technical or trade areas, power plant mechanics and utility technicians, either directly or
20 indirectly. These professional employees may include, but shall not be limited to, sanitarians,
21 engineers, accountants, financial experts, information technology specialists, mechanics,
22 electricians, well-drillers, pipefitters, plumbers, wastewater treatment facilities operators, and
23 other trades technicians.
24

25
26 Done this 22nd day of February, 2010.

27
28
29
30 

31
32 ELOY S. INOS,
33 Acting Governor

0 EO 2010-02 CUC Dis Decl (22Feb10).wpd



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lt. Governor

1 **EXECUTIVE ORDER 2010-03**

2
3
4 **DECLARATION OF A STATE OF DISASTER EMERGENCY:**

5 COMMONWEALTH UTILITIES CORPORATION'S
6 IMMINENT GENERATION AND OTHER FAILURE AND THE NEED TO
7 PROVIDE IMMEDIATE RELIABLE POWER, WATER AND WASTEWATER
8 SERVICES

9
10 **CONTINUATION #20**

11
12 I, BENIGNO R. FITIAL, pursuant to the authority vested in me as Governor of the
13 Commonwealth of the Northern Mariana Islands by Article III, Section 10 of the Commonwealth
14 Constitution and 3 CMC § 5121 of the Commonwealth Disaster Relief Act of 1979, do hereby
15 declare a State of Disaster Emergency for the Commonwealth of the Northern Mariana Islands
16 due to the inability of the Commonwealth Utilities Corporation (CUC) to provide critical power
17 generation service to the CNMI and the extreme, immediate and imminent threat such condition
18 poses to the Commonwealth of the Northern Mariana Islands.

19
20 This Executive Order is intended to, and does, continue in effect portions of the Governor's
21 preceding disaster emergency declarations on this matter, EO 2009-01 through -09, and 11-13,
22 and EO 2010-01, except as specifically modified. As more fully stated below, this Executive
23 Order shall expire on the 31st day following the date of my signature. The following findings
24 and conclusions further support continuation of the Declaration and issuance of directives.

1 **FINDINGS**

2
3 I find that:

4
5 1. All findings and conclusions of EO 2009-01 through -09, and 11-13, and EO 2010-01
6 through -02 are incorporated by reference, except as specifically varied in this Executive Order.
7

8 **MANPOWER CRISIS DUE TO RESTRICTIVE LEGISLATION**

9
10 2. **Summary.** A shortage of manpower forced by legislation limiting skilled foreign workers
11 has continued to place CUC operations at risk. Incipient failures in the CUC water, wastewater
12 and power transmission and distribution networks have underscored the importance of having in
13 place a well-funded and functioning preventive maintenance program. Skilled workers and a
14 responsive support system are key to the success of the operations, particularly of preventive
15 maintenance. Presently CNMI law (PL 16-14) prohibits CUC from hiring any more non-US
16 technical workers than the 19 skilled professionals recently with CUC. CUC has repeatedly
17 asked the Legislature for relief from this statute regulating the Government's workforce, to no
18 avail. Further, errors in wording in the CUC enabling legislation recently re-enacted, PL 16-17,
19 as amended, would bar the Executive Director from day-to-day management of the corporation,
20 effectively shutting CUC down. This EO eliminates these problems while it is in effect.
21

22 3. **Background.** CUC has substantially minimized the risk of losing the services of its owned
23 generating capacity, which losses created intermittent blackouts on portions of its system. It
24 therefore allowed the Aggreko year-long temporary power contract to terminate, as provided in
25 the agreement, effective September 12, 2009. This saves CUC customers at least \$6 million per
26 year in fees. But it still presents risks, as the strategy requires proper operation and maintenance
27 of CUC's owned engines by CUC's technical staff, and the timely securing of materials and
28 supplies.
29

30 4. CUC bears a substantial obligation to deliver highly technical work on time to the satisfaction
31 of the US District Court and the US EPA, pursuant to two consent, or "stipulated", orders.
32

- 33 a. The first requires the upgrade and smooth functioning in virtually all aspects of CUC's
34 water and wastewater divisions. The second requires CUC to properly eliminate
35 over 400,000 gallons of used oil and to institute measures to avoid uncontrolled
36 buildup of such inventories. Failure to meet the requirements of the federal court
37 orders could subject CUC and the CNMI to substantial fines and charges, and, in
38 the extreme, to a federal takeover of their finances. Presently CUC is "accruing"
39 substantial fines. Most of the fines have not been levied; but they could be. The
40 EPA has, however, levied one fine, in the amount of \$29,000.

1
2 b. On February 24, 2010, the US District Court entered an additional stipulated order. It
3 provided, among other things, that a professionally-developed Interim Financial
4 Plan (“IFP”) would be provided to the US EPA within 30 days, by March 26,
5 2010. This additional stipulation requires CUC to meet a number of deadlines,
6 each involving the application of technical expertise. CUC will then have the task
7 of implementing the IFP and meeting these deadlines. Failure to meet these
8 requirements would subject CUC to the described sanctions.

9
10 c. Of concern to CUC are the tight deadlines for Stipulated Order 2 (Oil Management)
11 projects that are funded by a \$4.05 million CIP grant awarded in February, 2010,
12 by the US Department of the Interior’s Office of Insular Affairs. The funding is
13 to assist CUC is disposing of the used waste oil discussed in this Executive Order.
14 Failure to meet the deadlines could subject CUC to additional EPA sanctions.

15
16 d. The coordination of the approvals from the various agencies calls for a responsive
17 procurement system at CUC, including the trained technical staff to implement
18 the system.

19
20 5. CUC is thoroughly regulated by the Commonwealth Public Utilities Commission (“CPUC”).
21 The regulator has plenary power over CUC rates, charges, fees, operations and capital
22 investments. CUC’s failure to timely and competently meet CPUC orders and other
23 requirements can result in severe rate discipline, and fines and other penalties. The Commission
24 recently required CUC to meet certain requirements, including the filing of a technically
25 complex rate case by the end of January 2010, or face fines of \$500 per day.

26
27 6. CUC is the sole electricity supplier to the Government of the CNMI, including all public
28 safety activities, the schools, and the only hospital. CUC also supplies electricity to most of the
29 CNMI’s businesses and homes. While some businesses and agencies own backup generators,
30 they are not generally organized to use the backups as permanent power sources; and the diesel
31 oil purchased to run these generators is substantially more expensive than that used for CUC
32 power.

33
34 7. Without CUC electricity:

35
36 a. most CNMI economic activity would come to a halt, the courts would soon close,
37 much refrigeration and air conditioning would end, and the airports and ports
38 would be forced to rely on emergency generation and the limited, expensive oil
39 supply for it;
40

- 1 b. the CNMI's health and safety would immediately be at risk, since traffic signals
2 and street lighting would cease to function, emergency, fire and police facilities
3 and their communications systems, and the Hospital and island clinics would have
4 to rely on limited oil supplies for emergency generation and then cease
5 functioning, much refrigeration of food and medicines would end, as would air
6 conditioning for the elderly and medically fragile;
7
8 c. the public schools and the Northern Marianas College would close. Other
9 educational institutions would close as their backup oil supplies for emergency
10 generators were exhausted; and
11
12 d. water and sewage treatment would soon end. One of CUC's largest electric
13 customers is the combined CUC Water and Wastewater Divisions. CUC is the
14 sole supplier of electricity for these systems. CUC's water system relies on
15 electricity to maintain the system pressure needed to avoid the backflow of
16 pathogens, to chlorinate, and to pump, store and to distribute water supplies.
17 CUC's wastewater system requires electricity to collect, pump, process, treat and
18 discharge sewage. The lack of electricity could result in sewage overflows,
19 contamination of land and water and rendering unsafe the CNMI's beaches,
20 which are also principal tourist destinations.
21
22

23 **Staffing CUC with the technical experts to permit continued electric service**
24

- 25 8. CUC continues to maintain and rehabilitate its owned power plants. CUC tries to maintain
26 and rehabilitate the operating units to adequately meet load. CUC has secured federal funds to
27 buy many needed parts to avoid outages. CUC began the needed overhaul of PP #1 unit DE-5 in
28 September. In October four other units began required overhaul, which will take 12 months.
29
30 9. In November, the following work started: The critical replacement of the PP #1 anchor
31 bolts, in order to stop the shifting and vibration that has ruined the plant; and foundation repairs
32 to Engines 1 and 8. Shortly thereafter the replacement of turbochargers and oil-water separators
33 began. All of this work is essential.
34
35 10. This work has been successful. Power Plant 1 Engines 1, 2, 3, 5, 6, 7 are available. Engine
36 8's critical foundation repair and anchor bolt replacement have been completed. The major
37 engine overhaul is under way.
38

1 11. In effect, CUC management, with generous federal financial assistance, has brought its
2 generation back from the brink of system failure. There are adequate reserves. If maintained
3 properly, the system can provide the CNMI's citizens and residents with adequate power.
4

5 12. Adequate technical staff is essential to this work. A major challenge to carrying out this
6 rehabilitation has been finding the trained technicians needed to carry out these rehabilitation
7 projects, and maintain and run the equipment. The technicians must be ready for service when
8 needed and their services must be affordable. Any significant reduction in CUC's present
9 technical workforce could seriously compromise CUC's ability to generate and distribute power.
10

11 13. With respect to CUC's lines, equipment used by CUC's Transmission and Distribution unit
12 ("T & D"), including many vehicles, is dilapidated and bordering on being unsafe. There is an
13 insufficient number of skilled workers to operate T & D. The linemen must be trained to, and
14 skillful in, meeting US standards. The critical upcoming projects in T & D include the
15 replacement of the antiquated, rundown and unsafe vehicle fleet; the redesign of T & D using
16 national Rural Utility Service standards; the replacement/installation of insulators, transformers,
17 overcurrent protection, sectionalizers and the installation of efficient LED street lighting.
18

19 14. For example, Saipan's early-September brush with Typhoon Choi-Wan 15W that passed to
20 the north of Saipan, and typhoon Melor, which passed just north of Saipan in October,
21 underscored the extreme vulnerability of CUC's power transmission and distribution (T & D)
22 system. In September, over 150 calls of no- power and line faults were fielded by crews when,
23 for a storm of this size, there should have been no more than a score. In October, fortunately, the
24 CUC power system avoided a direct hit from a supertyphoon. Fortunately, the typhoon season
25 appears to have ended with no direct hits on the CNMI and our power distribution system.
26 Accelerating improvements to the T & D system, with proper staff under an Emergency Order,
27 would allow CUC to "harden" the system in anticipation of a bigger storm event. The
28 alternative, in a more serious storm, is CUC's inability to recover in any reasonable time period.
29

30 15. Further, utility industry safety margins for isolated, island systems typically require a
31 reserve equal to the capacity of the two largest generating units; in CUC's case this would be
32 another 15 MW of load, equivalent to the departed Aggreko temporary units. Meeting this
33 reserve requirement means CUC must have an adequate repair and maintenance staff.
34

35 16. The Legislature, through 3 CMC § 4972(5), as amended by PL 16-14 (Aug. 27, 2008), has
36 limited CUC's ability to hire technical staff, allowing up to 19 foreign workers only. The CUC
37 Act, as subsequently re-enacted by PL 16-17 (Oct 1, 2008), provides that CUC shall hire such
38 persons as are necessary for operations, *except as otherwise limited by other law.* 4 CMC §
39 8123(h).
40

1 17. PMIC at PP #4 and Telesource on Tinian, as Independent Power Producers (IPPs), are not
2 subject to the Legislature's limitation on foreign workers.

3
4 18. There are not enough technical specialists at CUC to get the power generation work done,
5 particularly specialists with experience in the type of engines that CUC uses. CUC believes that
6 the vast majority of skill sets must come from non-US personnel.

7
8 19. CUC has tried to hire diesel mechanics in the CNMI, but has been unsuccessful in finding
9 all the qualified candidates. In the summer of 2009 CUC identified 16 potential new staff after
10 interviews – 7 mechanics, 1 welder, 1 machinist, and 7 operators. Two of the operator
11 candidates were US citizens.

12
13 20. CUC has hired some local staff in time thanks to the aggressive steps of CUC HR, the
14 Executive Director and Directive 10.

15
16 21. CUC has completed the hiring of the skilled trade technicians needed on Saipan for power
17 plant operations and maintenance. For Rota, CUC announced the need for a mechanic-operator
18 and an electrical operator. As more units begin working after the rehabilitations are largely
19 complete, CUC will need more staff to operate and maintain them. For the immediate future,
20 CUC needs to maintain its complement of skilled workers.

21
22 22. The impact of an inadequate workforce would be three-fold:

- 23
24 a. First, there would be a direct negative effect on the existing consumers. There
25 would be brownouts, or area blackouts, with the above-mentioned loss of service.
26
27 b. Second, the power plants would again degrade, producing more of these outages.
28
29 c. Third, there would be an indirect effect, increasing rates over the longer term,
30 because small consumers would have to shoulder more of the fixed costs of the
31 CUC system. First, there would be loss of large customers. By contrast, if the
32 hotels were to become part of the system, they could help pay CUC fixed costs,
33 which would lower everyone else's rates. The hotels need reliable, 24/7 power.
34 But with unreliable power, CUC would be unable to convince large commercial
35 customers, particularly the hotels, to join, or rejoin, its system. Second, would
36 come additional expenses. If CUC fails to meet federal court deadlines for the
37 stipulated orders, the Court could appoint a federal receiver and its consulting
38 team – with all expenses charged to CUC customers. Thus, the indirect effect of
39 an inadequate workforce would be to boost rates.
40

1 23. Rota's status today is precarious and financially un-sustainable. Rota has suffered blackouts
2 from inadequate generator maintenance. The power plant's other facilities and the island's
3 distribution system similarly need the attentions of additional manpower. The Rota power plant
4 needs additional generating sets to come on line, as there are only 1.5 dependable sets in the
5 plant. The third of two feeders is powered by a private resort at a cost of \$200,000/month to
6 CUC. The revenues from the customers on this feeder fall far below this cost. CUC has
7 negotiated with a Mainland supplier for a new generating set, with funding from the US
8 Department of the Interior. The present alternative for Rota is akin to Saipan's recent Aggreko
9 situation – purchasing higher cost, reliable power from the Rota Resort.

10
11 24. Since EO 2009-8 in August, and the suspension of the harmful legislative employment
12 restriction, CUC has taken steps to hire the expertise to operate and maintain the Saipan and
13 Rota power generation facilities. CUC needs to be able to hire the workers it needs when it
14 needs them. Otherwise, if CUC had to discharge these workers, its staffing levels would return
15 to those which overworked its limited staff. For example, over pay period numbers 2 through 11
16 of the year 2009, CUC accumulated 18,053 hours of overtime from technical employees who
17 each worked 40 or more hours of overtime in a pay period. This condition is extreme, and a
18 repeat can result in inefficiencies and poor work quality. It can lead to dangerous mistakes,
19 producing injury or death.

20
21 25. CUC has repeatedly asked the Legislature to lift the restrictions on foreign workers. The
22 Legislature has failed to act on the CUC request. Without relief, this inaction will effectively set
23 the stage for loss of service and higher rates. Among other things it will thereby reverse the \$6
24 million-per-year benefit of terminating the Aggreko temporary power contract.

25
26 26. CUC points out that the power distribution system is highly vulnerable because, like the
27 sewer system, so much of the maintenance and replacement was deferred for one reason or
28 another over the past 20 years. Since 1995, 26 villages on Saipan were identified as needing
29 major improvements to the power lines; only five have seen those improvements. Power T & D
30 fails in bits and pieces. One of the big pieces that failed in February 2010 was one of 12
31 termination cables on the Kiya Substation (Transformer One). A power outage to the southern
32 parts of Saipan lasted from one to five hours. CUC management states that the excellent
33 response from the crews in both Power Generation and Power T & D demonstrated the
34 importance of having skilled workers. The top two engineers were non-residents. Without this
35 EO in place, given present statutes, it is unlikely CUC would be able to secure the services of
36 such valuable individuals.

37
38 27. The extended dry season this year (see below) means that vegetation must be cleared away
39 from the lines early and often. Brush fires can damage the power lines, telephone facilities, and

1 television cables. Meanwhile, CUC crews must replace failing insulator bolts and failing
2 switches in order to avoid distribution-related power outages.

3
4 28. CUC has demonstrated that the required workers are available as nonresident workers, and
5 cost-effectively so. Thus, continued relief from the legislative prohibition of hiring foreign
6 national workers is necessary to ensure the delivery of uninterrupted power services to the
7 people of the Commonwealth.

8 9 10 **Complying with the federal court order on disposal of used oil**

11
12 29. CUC has taken concrete steps to address the storage and disposal of used oil, consonant
13 with the federal court's Stip Order 2. Federal court Stipulated Order 2 relates to the used oil
14 from the engines for four facilities (Power Plants 1, 3, 4 and Rota) and all CUC transformers.
15 *USA v. CUC & CNMI*, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) ("Stip Order 2"). With an
16 adequate complement of trained technical employees, complemented by expert contractors, CUC
17 believes that it can meet these requirements.

18
19 30. A September inspection by the US Coast Guard (USCG) has resulted in the imposition of
20 another cost that was unanticipated even with Stip Order 2. The USCG now requires additional
21 and more stringent measures to contain or eliminate the possibility of any oil reaching the ocean
22 from Power Plants 1, 2 and the power plant on Rota. Further, as of October, CUC has faced the
23 following staffing needs in this area: It critically needs the resources to inspect and redesign the
24 entire fuel storage, pumping and handling system in order to meet the more stringent
25 requirements of today. The clean fuel storage tanks at Lower Base were originally designed for
26 another application. The fuel line from the oil company's terminal is in danger of rupturing
27 during a transfer; the pumping rate has to be reduced to prevent this. All of this requires trained
28 CUC staff.

29
30 31. Serious deficiencies in the waste oil handling system at Lower Base have come to light in
31 the past months and are being addressed by both CUC and EPA. One deficiency is that the oily
32 water separators are not functioning as such because of the excessive amount of oil (as opposed
33 to water) entering the system. As a result, oil was spilling onto the ground rather than being
34 separated and skimmed off properly. Power Plant #1 has been sealed off to prevent any waste
35 oil from leaving the plant and flowing into the oily water separators. To prevent oil from
36 accumulating uncontained in the plant itself, emergency measures have been taken to store waste
37 oil and to fabricate above-ground tanks. The oily water separators, pipes, holding tanks, and
38 baffles are being cleaned out so that the entire system can be carefully inspected and
39 re-engineered. All of the additional work is expensive. Regardless of who does the work
40 initially, CUC staff, EPA contractors, or a combination thereof, CUC requires skilled, trained

1 workers for the clean-up. Failure to correct this situation could harm the nearby environment,
2 CUC's ability to generate electricity properly, and the assurances given pursuant to Stip Order 2.
3 CUC has begun the process to hire an Oil Technical Manager.
4

5 32. Incinerators play a crucial role in helping CUC meet Stip Order 2. The two incinerators at
6 Lower Base (Power Plants 1 and 2) are now operating, and burning about 1000 gallons of used
7 oil per day. This is double the rate from January. This EO has permitted Power Generation the
8 flexibility of hiring skilled non-residents to not only repair and overhaul the generating sets, but
9 fix such important auxiliary equipment as the incinerators.

10
11 33. Nonetheless, the EPA on February 18, 2010, filed a status report with the US District Court
12 for the Mariana Islands which is highly critical of the progress in CUC's efforts to comply with
13 Stip Order 2's requirements to solve the used oil situation.
14

15
16 **Complying with the federal court order on managing the water and wastewater systems**
17

18 34. As long as the Water and Wastewater Divisions can hire competent staff and receive power
19 from the Power Division, they can function.
20

21 35. The U.S. Department of Justice ("DoJ"), Environment and Natural Resources Division, has
22 sued CUC in federal court to come into compliance with critical water and sewage treatment
23 requirements. *USA v. CUC & CNMI*, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) ("Stip Order
24 1"). See also http://www.usdoj.gov/enrd/Consent_Decrees.html. In July 2008 CUC, the CNMI
25 and (in September 2008) the U.S. Environmental Protection Agency ("EPA") stipulated to this
26 first of two orders lodged with the U.S. District Court on the date the Complaint was filed. This
27 order requires CUC to implement a series of improvements to its water and wastewater systems
28 that respond to years of neglect, for which it presently lacks the funds and the complete technical
29 capability.
30

31 36. Sewage collection piping failures are continuing at an accelerated rate. The Wastewater
32 Division must respond to acid damage in the asbestos cement piping system, the product of over
33 30 years of anaerobic conditions in sewers. This has caused significant damage to cement and
34 metal infrastructure, so that key pipe systems have collapsed. December 18 saw the sixth failure
35 in six months. Failures will continue until 10 miles of sewer pipe are replaced. But replacement
36 involves complex excavations, avoiding electric, phone and water utilities, blocking traffic,
37 stopping the infiltration of seawater (which damages treatment plant facilities), and pumping
38 sewage around blocked and excavated areas. The Division has already far exceeded its repair
39 budget.
40

1 37. A sewer collapse occurred again in Chalan Kanoa in February. This was the result of pipe
2 thinning. The cost to repair the affected section is about \$90,000, as CUC must typically replace
3 the 200-foot run between manholes. In March the sewer (collection) line running down As
4 Terlaje has sprung a leak and is flowing intermittently on the swale alongside the main road.
5 CUC, as of this writing, is investigating, hoping that they will find only a minor leak that can be
6 repaired at minimal cost – under \$5,000. Without this EO, says CUC, procurement for such
7 repair work would be even more difficult than it already is, with the contract to replace sewer
8 section taking months rather than days to consummate.

9
10 38. The Sadog Tasi Wastewater Treatment Plant is being prepared by CUC wastewater crews
11 in anticipation of a rehabilitation contract already awarded. Such preliminary work has to be
12 conducted within strict parameters by properly trained technicians to prevent contamination of
13 the environment.

14
15 39. The Division also needs serviceable vehicles to move its workers to and from job sites.
16 Presently six vehicles are in such bad shape that they are dangerous. The resulting reduced
17 vehicle problem raises costs and hurts service, as staff and materials cannot be brought to job
18 sites on time.

19
20 40. Sewage lift station failures continue, with most pumping stations having only one of two
21 required pumps installed. CUC has issued a contract to purchase 30 additional pumps, however
22 the lead time between issuance of the contract and pump arrival is over six months, so that CUC
23 is still approximately a month out from pump arrival.

24
25 41. CUC engineer staff shortages continue to hamper CUC's ability to anticipate and fix
26 technical problems. While CUC's Water/Wastewater Division employs four engineers, the poor
27 condition of the CUC sanitation assets requires at least two more engineers. But, significant
28 engineering resources are already focused on addressing EPA Stip Order issues. These issues
29 include staffing plans, pre-treatment programs, materials management programs, customer
30 inventory, and cross-connection control programs. Recruitment and retention of engineering
31 staff to meet these challenges is difficult.

32
33 42. Incipient failures include the failure of 98 submersible pumps in the water system over a
34 period of twelve months. Higher grade stainless steel grates have to be specified that are resistant
35 to pitting. The pitting causes the grates to fail and consequently the pump motors. CUC will
36 need to purchase higher quality equipment, rather than the cheap units that fail prematurely.

37
38 43. CUC must be able to hire the staff to perform the required technical functions. The Water
39 and Wastewater Divisions cannot carry out their missions without adequate staff. These staff are
40 essential to producing clean, safe water supplies and removal of stormwater and sewage in a

1 safe, timely manner. While the bulk of CUC employees are drawn from local and US
2 populations, the Division management estimates that at least six trained technicians will be
3 required – three experienced Level 3 wastewater treatment operators, two Level 3 wastewater
4 collections operators, and an instrumentation /low voltage controls specialist. An experienced
5 Water/Wastewater Division operations manager will also be required.
6

7 44. There are special reasons why the water system must be adequately staffed and maintained
8 this year. This is an El Nino year. According to the Pacific ENSO bulletin forecast, February 1,
9 2010, the CNMI dry season will bring below normal rainfalls and will extend to June 2010.

10 CUC must now go into an emergency mode, conserving water, accelerating water line
11 replacements, and locating and repairing leaks. There will be greater danger of fires this
12 coming year, but less water available to fight them.
13

14 45. CUC also requires a constant supply of electricity to run its water and wastewater treatment
15 systems. CUC has very limited on-site emergency generation capability, and for only portions
16 of these systems.
17

18 46. Meanwhile CUC continues to pay for power, chlorine, lab testing costs, and repairing
19 collapsing sewer lines. CUC has hired a consulting team to assist it in achieving full cost
20 recovery for the water and wastewater systems through the processes of the CNMI Public
21 Utilities Commission (“CPUC”). CUC filed a wastewater rate increase request, complete with
22 hundreds of pages of written expert witness testimony and technical support on January 31,
23 2010. The case is in the prehearing, discovery phase. The Commission is scheduled to address
24 the filing in May.
25

26 47. Nonetheless, the EPA on February 18, 2010, filed a status report with the US District Court
27 for the Mariana Islands which is highly critical of the progress in CUC’s efforts to comply with
28 Stip Order 2’s requirements to solve the water and wastewater situations. A hearing before the
29 Court resulted in the additional stipulated order addressed elsewhere in this Executive Order.
30
31

32 **Meeting US District Court and CNMI Public Utilities Commission requirements to**
33 **produce timely, accurate financial reports**
34

35 48. The federal Stip Orders require CUC to produce and carry out an Interim Financial Plan,
36 beginning in September, 2009. The “IFP” must develop over time, becoming more than
37 “interim”. CUC cannot do this unless it has a staff of trained accounting and other financial
38 experts who can gather data, put the data in the required form and generate the IFP and its later
39 versions.
40

1 49. Further, CUC is comprehensively regulated by the Commonwealth Public Utilities
2 Commission ("CPUC"). The CPUC is charged by statute to oversee carefully CUC's operations
3 and capital expenditures, and to develop rates that fully pay the costs of safely operating CUC's
4 water and wastewater systems.

5
6 50. In electric and water/wastewater orders, of September 3 and November 20, 2009, the CPUC
7 addressed CUC's inability to deliver complete on-time financial reports, requiring CUC, in
8 effect, to enhance its staff capability to provide critical regulatory information. (Docket No.'s
9 09-1 and 09-2.) The Commission will be revisiting CUC rates, fees, charges and operations
10 during this year.

11
12 51. CUC cannot upgrade its financial and accounting operations unless it has a staff of trained
13 accounting and other financial experts who can gather data, put the data in the required form and
14 generate the required reports and filings with the CPUC, as well as provide the CPUC consulting
15 staff with the data required for their oversight. CUC has obligated itself to provide an updated,
16 compliant Interim Financial Plan and an organizational evaluation, both pursuant to Stip Order 1,
17 to the US District Court, and most recently, according to the February 24, 2010, additional
18 stipulated order.

19
20 52. CUC's procurement system is lengthy and complex. A relic of other decades, with their
21 own challenges, it requires extensive experience in specifications and procurement process, and
22 often must be coordinated with the CNMI's separate procurement procedures, adding months to
23 processes that must respond to the immediate challenges outlined in this Executive Order.

24
25 53. CUC last year lost 2 senior accountants plus a related specialist. The IT and billing
26 department in August was reduced by one staffer, having advertised for a replacement for 4
27 weeks to no avail. While it appeared that CUC might have to look to employing foreign
28 technical specialists, CUC hired back 2 former accountants in September and brought a third
29 person aboard in October. All are US citizens. Nonetheless, CUC must have the flexibility to
30 hire competent professionals as needed. CUC is still short-staffed, and needs an accounting
31 assistant, and an accounting specialist. On February 17, 2010, CUC's new Chief Financial
32 Officer reported for duty.

33
34 54. Nonetheless, the EPA on February 18, 2010, filed a status report with the US District Court
35 for the Mariana Islands which was highly critical of the progress in CUC's efforts to comply
36 with Stip Order 2's requirements to provide timely and complete financial and other operating
37 reports and plans.

38
39 55. To summarize: Without properly trained technical staff CUC's ability to supply power is at
40 risk. So is its ability to manage the rest of its systems, including its complex procurement, its

1 finances and accounting. CUC's services could not be adequately staffed without August's
2 lifting of the artificial legislative regulation of CUC's workforce, in EO 2009-08, Directive #10,
3 suspending the limitations on CUC hiring foreign workers. It is obvious that the hiring authority
4 must be continued.

5
6 56. There is no indication that any of the above manpower situation will be resolved in the next
7 month without continuing in effect this EO and Directive #10.
8
9

10 **MANAGEMENT CRISIS IN ABSENCE OF A PROPER BOARD/CEO STRUCTURE**

11
12 57. **Summary.** CUC is a \$70 million-per-year business, critical to the CNMI's economy and
13 the public health. Yet, the recently-renewed statute organizing it places the Board of Directors
14 in the position of day-to-day management of the corporation, and requires a complex mix of
15 technical, geographic and other qualifications for Board membership. There is no Board because
16 it has been impossible to meet these criteria. Without the Board, or its equivalent, CUC cannot
17 take a critical step toward solvency and the ability to borrow to finance its work.
18

19
20 **Forestalling corporate paralysis**

21
22 58. A critical concern is that the CUC Act's constricted scope of authority for the Executive
23 Director, and the complementary daily management by a host of Board volunteers, would
24 paralyze the corporation. This is particularly worrisome in light of the above-listed tasks before
25 CUC.
26

27 59. A careful reading of the CUC Act, PL 16-17, as amended, particularly its sections 4 CMC
28 §§ 8131 (Bd qualifications), 8134 (Bd approval of all "allocations" of money and property), and
29 1 CMC § 8247 (limited daily reimbursement of \$60.00); 4 CMC §§ 8132 (E.D. described), 8133
30 (limited E.D. functions listed), and 8134 (Bd approval of all "allocations" of money and
31 property), demonstrates that the Executive Director is to be left with little more to do than
32 provide reports to a Board of volunteers who are nonetheless to run CUC, a complex \$70
33 million/year corporation, on a day-to-day basis. This includes such decision-making as
34 purchasing materials and supplies, signing paychecks and other checks, hiring staff, assigning
35 work crews, connecting customers, deciding on making repairs, collecting debts, complying with
36 the details of federal and CPUC regulatory requirements, making and funding long-term
37 technical power and water/wastewater plans, overseeing filings with the CPUC, including rate
38 cases, and insuring that, on a day-to-day basis, the power and water flow and the sewage is
39 treated.
40

1 60. Permitting CUC to be managed this way would plunge the CNMI into economic chaos and
2 a public health care crisis, as corporate activity and the Hospital's operations ground to a halt –
3 with or without a Board in place. The complex technical problems listed above simply cannot be
4 managed on a day-to-day basis by a group of non-expert volunteers.

5
6 61. No private or public utility company in the United States runs this way – with a group of
7 volunteers managing a \$70-million corporation's day-to-day operations. No other legislature in
8 the United States has mandated this form of corporate management for a public utility.

9
10 62. CUC has applied for and become eligible for millions of dollars of US ARRA grants,
11 which can substantially benefit the CNMI's infrastructure and create jobs. But developing the
12 grant requests and implementing the grants requires management attention and expertise, part of
13 a professionally-run business organization. CUC has just placed three of five ARRA grants out
14 for bid, so that these benefits can start flowing.

15
16 63. I can only conclude that the legislation's extraordinary structure for CUC is the result of a
17 drafting error, and the People, through their elected representatives, wish their utility company to
18 continue to supply them with essential services at a reasonable cost, meeting industry standards.

19
20
21 **Fixing CUC's technical insolvency**

22
23 64. CUC has been unable to borrow money to run its operations since the inception of this State
24 of Disaster Emergency due to (a) its poor financial condition and (b) the existence on its books
25 of a liability to the Commonwealth Development Authority ("CDA") of approximately \$115
26 million. This situation may be corrected if the Executive Director is recognized to have the
27 authority to correct it.

28
29 65. Meanwhile, billings and collections are substantially below the levels required to prudently
30 manage CUC's current operations and provide for system repairs, replacements and upgrades.
31 For example, billings alone for water and wastewater are less than 70% of requirements to run
32 those two systems.

33
34 66. The booked CDA obligation has rendered CUC nominally insolvent. While CUC is deemed
35 insolvent, CUC cannot borrow money. But CUC must be able to borrow money to bridge the
36 gap between (a) the need to spend money on essential goods and services to provide electricity,
37 water and sewage service, and (b) the lagged collection of already-determined-insufficient
38 revenues from the sale of those services.

1 67. The CPUC, in its September 3 electric order, Docket No. 09-1, approved a CUC-CDA
2 settlement converting the CDA debt to preferred stock. But the deal requires CUC's Board to
3 agree to it.
4

5 68. There is no Board. CUC has functioned without a Board of Directors, because it has had to.
6 While CUC's enabling act, reenacted as PL 16-17, as amended, authorizes a Board, there is no
7 CUC Board yet because, while the staff of the Governor's Office have diligently tried to find
8 Board volunteers who meet the complex statutory qualifications, they have been unable to do so.
9 Nonetheless, CUC must continue to function, including borrowing money.

10
11 69. EO 2009-08's Directive # 9 provides the required authority to the Executive Director. It
12 also permits him to continue to run CUC, carefully manage cash to pay tens of millions of
13 dollars annually for fuel oil and purchased power, and do all the things necessary to providing
14 power, water and wastewater services, until the remaining members of a properly constituted
15 Board can be identified, confirmed, and convened for business. In February 2010 the Executive
16 Director delivered to CDA management the stock certificates required for the debt-equity
17 conversion. As of this writing, CUC awaits receipt of the release and satisfaction of judgment
18 which the CPUC has required that CDA provide.
19

20
21 **Providing the basis for proper CPUC oversight**

22
23 70. The broad and comprehensive statutory scheme of utility regulation in the Public Utility Act,
24 4 CMC §§ 8401-84, provides that the utility regulator, the CPUC, will carefully examine CUC
25 activities, particularly financial activities.
26

27 71. This extensive oversight satisfies the policy need for a body of arms-length, well-informed
28 citizens to watchdog the activities of this, the Commonwealth's key resource. Thus, the statute's
29 error-infused creation of a volunteer Board which would run the corporation on a day-to-day
30 basis, becomes much less important than satisfying CPUC requirements.
31

32 72. What becomes very important is CUC's capability to provide the CPUC with accurate and
33 timely financial and accounting information. But such reporting is not possible without a
34 competent, trained staff of accounting and financial experts at CUC, and a properly-empowered
35 Executive Director to lead them.
36
37

1 **CRISIS FROM THE LACK OF LEGISLATIVE ACTION**

2
3 73. There is no Legislative relief coming. For months CUC has repeatedly asked the
4 Legislature for such relief, including submission of draft legislation in July. The Legislature has
5 declined to respond. There is no alternative to providing this relief other than an order from the
6 Governor. Inaction will produce a disaster in which CUC is unable to provide its critical
7 community services. Directives # 9 and #10 were designed to avert this crisis. (The other
8 Directives, #1 through #8, are no longer relevant, and were discontinued.)

9
10 74. This Declaration is necessary to protect the health and safety of our children, our senior
11 citizens, businesses and all other CNMI residents and visitors.

12
13
14 **CONCLUSION AND ORDER**

15
16 Therefore, I hereby invoke my authority under Article III, § 10, of the Commonwealth
17 Constitution and 3 CMC § 5121(f) to take all necessary measures to address the imminent threat
18 facing the Commonwealth of the Northern Mariana Islands.

19
20 Exercise of the Constitutional and statutory authority invoked herein will be effectuated by the
21 issuance of Executive Directives setting forth the measures to be taken to address the State of
22 Disaster Emergency pursuant to 3 CMC § 5121(f), which states:

23
24 (f) In addition to any other powers conferred upon the Governor by law, the Governor
25 may, during a state of disaster emergency:

26
27 (1) Suspend the provisions of any regulatory statute prescribing the procedures
28 for conduct of the Commonwealth's business, or the orders, rules, or regulations
29 of any Commonwealth activity or agency, if strict compliance with the provision
30 of any such statute, order, rule or regulation would in any way prevent, hinder, or
31 delay necessary action in coping with the emergency;

32
33 (2) Utilize all available resources of the Commonwealth as reasonably necessary
34 to cope with the disaster emergency of the Commonwealth;

35
36 (3) Transfer the direction, personnel, or functions of the Commonwealth
37 departments and agencies or units thereof for the purpose of performing or
38 facilitating emergency services;

39
40 3 CMC § 5121(f)(1)-(3).

1 By today's disaster emergency declaration, I intend to enable CUC to continue to provide
2 necessary service to the people of the Commonwealth.

3
4 This Declaration of a State of Disaster Emergency shall take effect immediately and all
5 memoranda, directives and other measures taken in accordance with this Declaration shall
6 remain in effect for thirty (30) days from the date of this Executive Order unless I, prior to the
7 end of the thirty (30)-day period, notify the Presiding Officers of the Legislature that the state of
8 emergency has been lifted or has been extended for an additional period of thirty (30) days. 1
9 CMC § 7403(a); 3 CMC § 5121(c).

10
11 A comprehensive report on the exercise of my constitutional authority shall be transmitted to the
12 presiding officers of the Legislature as soon as practicable in accordance with 1 CMC § 7403(a).

13
14
15 **DIRECTIVES**

16 I direct the following:

17
18 Directive 1: Deleted.

19
20
21 Directive 2: Deleted.

22
23 Directive 3: Deleted.

24
25 Directive 4: Deleted.

26
27 Directive 5: Deleted.

28
29 Directive 6: Deleted.

30
31 Directive 7: Deleted.

32
33 Directive 8: Deleted.

34
35 Directive 9: The Executive Director of CUC shall have all the powers of the CUC Board,
36 thereby enabling him to carry out all critical business of CUC, pending the earlier of either (1)
37 the confirmation and convening of an operating CUC Board, or (2) the termination of the
38 authority of this order. In particular, the Executive Director shall have full power and authority
39 to agree to swap CDA debt and related obligations for preferred stock and related features and
40 rights.

1 Directive 10: The following strike-out-formatted language of the quoted provision of the
2 following statute regulating government employment is, as indicated, suspended immediately:

3
4 (b) Transition exemptions for government employment. . . . (5) Commonwealth
5 Utilities Corporation. Engineers, and professional employees in technical or trade
6 areas may be exempted and CUC may contract with manpower services or
7 directly hire power plant mechanics and utility technicians who may be
8 exempted; ~~provided that direct or manpower hire of foreign national workers shall~~
9 ~~not exceed nineteen (19) employees. This exemption shall expire on September~~
10 ~~30, 2010, and no contract may provide to the contrary.~~

11
12 3 CMC § 4972(b)(5), as most recently amended by PL 16-14. (Underlining in original; strikeout
13 is deliberately added) That is, the following language is suspended: “provided that direct or
14 manpower hire of foreign national workers shall not exceed nineteen (19) employees. This
15 exemption shall expire on September 30, 2010, and no contract may provide to the contrary.”

16
17 The effect of the suspension shall be that CUC shall have the complete power, without regard to
18 citizenship or otherwise lawful immigration status, to hire engineers, professional employees in
19 technical or trade areas, power plant mechanics and utility technicians, either directly or
20 indirectly. These professional employees may include, but shall not be limited to, sanitarians,
21 engineers, accountants, financial experts, information technology specialists, mechanics,
22 electricians, well-drillers, pipefitters, plumbers, wastewater treatment facilities operators, and
23 other trades technicians.

24
25
26 Done this 24th day of March, 2010.

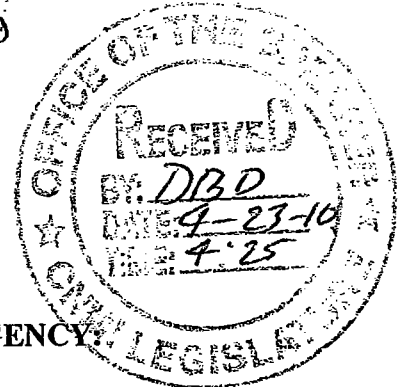
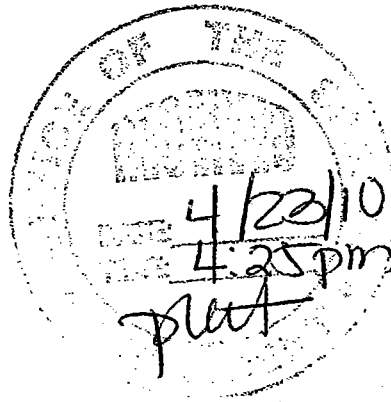
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32 BENIGNO R. FITIAL,
33 Governor



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lt. Governor



EXECUTIVE ORDER 2010-04

DECLARATION OF A STATE OF DISASTER EMERGENCY:
COMMONWEALTH UTILITIES CORPORATION'S
IMMINENT GENERATION AND OTHER FAILURE AND THE NEED TO
PROVIDE IMMEDIATE RELIABLE POWER, WATER AND WASTEWATER
SERVICES

CONTINUATION #21

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

This Executive Order is intended to, and does, continue in effect portions of the Governor's preceding disaster emergency declarations on this matter, EO 2009-01 through -09, and 11-13, and EO 2010-03, except as specifically modified. As more fully stated below, this Executive

Order shall expire on the 31st day following the date of my signature. The following findings and conclusions further support continuation of the Declaration and issuance of directives.

FINDINGS

I find that:

1. All findings and conclusions of EO 2009-01 through -09, and 11-13, and EO 2010-01 through -03 are incorporated by reference, except as specifically varied in this Executive Order.

MANPOWER CRISIS DUE TO RESTRICTIVE LEGISLATION

2. **Summary.** A shortage of manpower forced by legislation limiting skilled foreign workers has continued to place CUC operations at risk. Incipient failures in the CUC water, wastewater and power transmission and distribution networks have underscored the importance of having in place a well-funded and functioning preventive maintenance program. Skilled workers and a responsive support system are key to the success of the operations, particularly of preventive maintenance. Presently CNMI law (PL 16-14) prohibits CUC from hiring any more non-US technical workers than the 19 skilled professionals recently with CUC. CUC has repeatedly asked the Legislature for relief from this statute regulating the Government's workforce, to no avail. Further, errors in wording in the CUC enabling legislation recently re-enacted, PL 16-17, as amended, would bar the Executive Director from day-to-day management of the corporation, effectively shutting CUC down. This EO eliminates these problems while it is in effect.

3. **Background.** CUC has substantially minimized the risk of losing the services of its owned generating capacity, which losses created intermittent blackouts on portions of its system. It therefore allowed the Aggreko year-long temporary power contract to terminate, as provided in the agreement, effective September 12, 2009. This saves CUC customers at least \$6 million per year in fees. But it still presents risks, as the strategy requires proper operation and maintenance of CUC's owned engines by CUC's technical staff, and the timely securing of materials and supplies.

4. CUC bears a substantial obligation to deliver highly technical work on time to the satisfaction of the US District Court and the US EPA, pursuant to two consent, or "stipulated", orders.

- a. The first requires the upgrade and smooth functioning in virtually all aspects of CUC's water and wastewater divisions. The second requires CUC to properly eliminate over 400,000 gallons of used oil and to institute measures to avoid uncontrolled buildup of such inventories. Failure to meet the requirements of the federal court orders could subject CUC and the CNMI to substantial fines

and charges, and, in the extreme, to a federal takeover of their finances. Presently CUC is “accruing” substantial fines. Most of the fines have not been levied; but they could be. The EPA has, however, levied one fine, in the amount of \$29,000.

- b. On February 24, 2010, the US District Court entered an additional stipulated order. It provided, among other things, that a professionally-developed Interim Financial Plan (“IFP”) would be provided to the US EPA within 30 days, by March 26, 2010. This additional stipulation requires CUC to meet a number of deadlines, each involving the application of technical expertise. CUC has timely filed the IFP. It now has the task of implementing the IFP and meeting these deadlines. Failure to meet these requirements would subject CUC to the described sanctions.
- c. Of concern to CUC are the tight deadlines for Stipulated Order 2 (Oil Management) projects that are funded by a \$4.05 million CIP grant awarded in February, 2010, by the US Department of the Interior’s Office of Insular Affairs. The funding is to assist CUC is disposing of the used waste oil discussed in this Executive Order. Failure to meet the deadlines could subject CUC to additional EPA sanctions.
- d. The coordination of the approvals from the various agencies calls for a responsive procurement system at CUC, including the trained technical staff to implement the system.

5. CUC is thoroughly regulated by the Commonwealth Public Utilities Commission (“CPUC”). The regulator has plenary power over CUC rates, charges, fees, operations and capital investments. CUC’s failure to timely and competently meet CPUC orders and other requirements can result in severe rate discipline, and fines and other penalties. For example, the Commission recently required CUC to meet certain requirements, including the filing of a technically complex rate case (Docket No. 10-01) by the end of January 2010, or face fines of \$500 per day.

6. CUC is the sole electricity supplier to the Government of the CNMI, including all public safety activities, the schools, and the only hospital. CUC also supplies electricity to most of the CNMI’s businesses and homes. While some businesses and agencies own backup generators, they are not generally organized to use the backups as permanent power sources; and the diesel oil purchased to run these generators is substantially more expensive than that used for CUC power.

7. Without CUC electricity:

- a. most CNMI economic activity would come to a halt, the courts would soon close, much refrigeration and air conditioning would end, and the airports and ports would be forced to rely on emergency generation and the limited, expensive oil supply for it;
- b. the CNMI's health and safety would immediately be at risk, since traffic signals and street lighting would cease to function, emergency, fire and police facilities and their communications systems, and the Hospital and island clinics would have to rely on limited oil supplies for emergency generation and then cease functioning, much refrigeration of food and medicines would end, as would air conditioning for the elderly and medically fragile;
- c. the public schools and the Northern Marianas College would close. Other educational institutions would close as their backup oil supplies for emergency generators were exhausted; and
- d. water and sewage treatment would soon end. One of CUC's largest electric customers is the combined CUC Water and Wastewater Divisions. CUC is the sole supplier of electricity for these systems. CUC's water system relies on electricity to maintain the system pressure needed to avoid the backflow of pathogens, to chlorinate, and to pump, store and to distribute water supplies. CUC's wastewater system requires electricity to collect, pump, process, treat and discharge sewage. The lack of electricity could result in sewage overflows, contamination of land and water and rendering unsafe the CNMI's beaches, which are also principal tourist destinations.

Staffing CUC with the technical experts to permit continued electric service

8. CUC continues to maintain and rehabilitate its owned power plants. CUC tries to maintain and rehabilitate the operating units to adequately meet load. CUC has secured federal funds to buy many needed parts to avoid outages. CUC began the needed overhaul of PP #1 unit DE-5 in September. In October four other units began required overhaul, which will take 12 months.

9. In November, the following work started: The critical replacement of the PP #1 anchor bolts, in order to stop the shifting and vibration that has ruined the plant; and foundation repairs to Engines 1 and 8. Shortly thereafter the replacement of turbochargers and oil-water separators began. All of this work is essential.

10. This work has been successful. Power Plant 1 Engines 1, 2, 3, 5, 6, 7 are available. Engine 8's critical foundation repair and anchor bolt replacement have been completed. The major engine overhaul is under way.

11. In effect, CUC management, with generous federal financial assistance, has brought its generation back from the brink of system failure. There are adequate reserves. If maintained properly, the system can provide the CNMI's citizens and residents with adequate power.

12. Adequate technical staff is essential to this work. A major challenge to carrying out this rehabilitation has been finding the trained technicians needed to carry out these rehabilitation projects, and maintain and run the equipment. The technicians must be ready for service when needed and their services must be affordable. Any significant reduction in CUC's present technical workforce could seriously compromise CUC's ability to generate and distribute power.

13. With respect to CUC's lines, equipment used by CUC's Transmission and Distribution unit ("T & D"), including many vehicles, is dilapidated and bordering on being unsafe. There is an insufficient number of skilled workers to operate T & D. The linemen must be trained to, and skillful in, meeting US standards. The critical upcoming projects in T & D include the replacement of the antiquated, rundown and unsafe vehicle fleet; the redesign of T & D using national Rural Utility Service standards; the replacement/installation of insulators, transformers, overcurrent protection, sectionalizers and the installation of efficient LED street lighting.

14. For example, Saipan's early-September brush with Typhoon Choi-Wan 15W that passed to the north of Saipan, and typhoon Melor, which passed just north of Saipan in October, underscored the extreme vulnerability of CUC's power transmission and distribution (T & D) system. In September, over 150 calls of no-power and line faults were fielded by crews when, for a storm of this size, there should have been no more than a score. In October, fortunately, the CUC power system avoided a direct hit from a supertyphoon. Fortunately, the typhoon season ended with no direct hits on the CNMI and our power distribution system. Accelerating improvements to the T & D system, with proper staff under an Emergency Order, would allow CUC to "harden" the system in anticipation of a bigger storm event. The alternative, in a more serious storm, is CUC's inability to recover in any reasonable time period. The year 2010 will see a new typhoon season.

15. Further, utility industry safety margins for isolated, island systems typically require a reserve equal to the capacity of the two largest generating units; in CUC's case this would be another 15 MW of load, equivalent to the departed Aggreko temporary units. Meeting this reserve requirement means CUC must have an adequate repair and maintenance staff.

16. The Legislature, through 3 CMC § 4972(5), as amended by PL 16-14 (Aug. 27, 2008), has limited CUC's ability to hire technical staff; allowing up to 19 foreign workers only. The CUC Act, as subsequently re-enacted by PL 16-17 (Oct 1, 2008), provides that CUC shall hire such persons as are necessary for operations, *except as otherwise limited by other law*. 4 CMC § 8123(h).

17. PMIC at PP #4 and Telesource on Tinian, as Independent Power Producers (IPPs), are not subject to the Legislature's limitation on foreign workers.

18. There are not enough technical specialists at CUC to get the power generation work done, particularly specialists with experience in the type of engines that CUC uses. CUC believes that the vast majority of skill sets must come from non-US personnel.

19. CUC has tried to hire diesel mechanics in the CNMI, but has been unsuccessful in finding all the qualified candidates. In the summer of 2009 CUC identified 16 potential new staff after interviews – 7 mechanics, 1 welder, 1 machinist, and 7 operators. Two of the operator candidates were US citizens.

20. CUC has hired some local staff in time thanks to the aggressive steps of CUC HR, the Executive Director and Directive 10.

21. CUC has completed the hiring of the skilled trade technicians needed on Saipan for power plant operations and maintenance. For Rota, CUC announced the need for a mechanic-operator and an electrical operator. As more units begin working after the rehabilitations are largely complete, CUC will need more staff to operate and maintain them. For the immediate future, CUC needs to maintain its complement of skilled workers.

22. The impact of an inadequate workforce would be four-fold:

- a. First, there would be a direct negative effect on the existing consumers. There would be brownouts, or area blackouts, with the above-mentioned loss of service.

- b. Second, the power plants would again degrade, producing more of these outages.
- c. Third, there would be an indirect effect, increasing rates over the longer term, because small consumers would have to shoulder more of the fixed costs of the CUC system. First, there would be loss of large customers. By contrast, if the hotels were to become part of the system, they could help pay CUC fixed costs, which would lower everyone else's rates. The hotels need reliable, 24/7 power. But with unreliable power, CUC would be unable to convince large commercial customers, particularly the hotels, to join, or rejoin, its system. Second, would come additional expenses. If CUC fails to meet federal court deadlines for the stipulated orders, the Court could appoint a federal receiver and its consulting team – with all expenses charged to CUC customers. Thus, the indirect effect of an inadequate workforce would be to boost rates.
- d. Fourth, with the recovery of the world economy, advise CUC experts, oil prices can be expected to rise. If CUC's generators become less efficient, because technical staff are unavailable to maintain CUC's engines' efficiency, that much more oil would be needed to generate a given amount of electricity. The price rise will thereby harm CUC's customers and electricity-dependent services with higher rates.

23. Rota's status today is precarious and financially un-sustainable. Rota has suffered blackouts from inadequate generator maintenance. The power plant's other facilities and the island's distribution system similarly need the attentions of additional manpower. The Rota power plant needs additional generating sets to come on line, as there are only 1.5 dependable sets in the plant. The third of two feeders is powered by a private resort at a cost of \$200,000/month to CUC. The revenues from the customers on this feeder fall far below this cost. CUC has negotiated with a Mainland supplier for a new generating set, with funding from the US Department of the Interior. The present alternative for Rota is akin to Saipan's recent Aggreko situation – purchasing higher cost, reliable power from the Rota Resort.

24. Since EO 2009-8 in August, and the suspension of the harmful legislative employment restriction, CUC has taken steps to hire the expertise to operate and maintain the Saipan and Rota power generation facilities. CUC needs to be able to hire the workers it needs when it needs them. Otherwise, if CUC had to discharge these workers, its staffing levels would return to those which overworked its limited staff. For example, over pay period numbers 2 through 11 of the year 2009, CUC accumulated 18,053 hours of overtime from technical employees who each worked 40 or more hours of overtime in a pay period. This condition is extreme, and a repeat

can result in inefficiencies and poor work quality. It can lead to dangerous mistakes, producing injury or death.

25. CUC has repeatedly asked the Legislature to lift the restrictions on foreign workers. The Legislature has failed to act on the CUC request. Without relief, this inaction will effectively set the stage for loss of service and higher rates. Among other things it will thereby reverse the \$6 million-per-year benefit of terminating the Aggreko temporary power contract.

26. CUC points out that the power distribution system is highly vulnerable because, like the sewer system, so much of the maintenance and replacement was deferred for one reason or another over the past 20 years. Since 1995, 26 villages on Saipan were identified as needing major improvements to the power lines; only five have seen those improvements. Power T & D fails in bits and pieces. One of the big pieces that failed in February 2010 was one of 12 termination cables on the Kiya Substation (Transformer One). A power outage to the southern parts of Saipan lasted from one to five hours. CUC management states that the excellent response from the crews in both Power Generation and Power T & D demonstrated the importance of having skilled workers. The top two engineers were non-residents. Without this EO in place, given present statutes, it is unlikely CUC would be able to secure the services of such valuable individuals.

27. The extended dry season this year (see below) means that vegetation must be cleared away from the lines early and often. Brush fires can damage the power lines, telephone facilities, and television cables. Meanwhile, CUC crews must replace failing insulator bolts and failing switches in order to avoid distribution-related power outages.

28. CUC has demonstrated that the required workers are available as nonresident workers, and cost-effectively so. Thus, continued relief from the legislative prohibition of hiring foreign national workers is necessary to ensure the delivery of uninterrupted power services to the people of the Commonwealth.

Complying with the federal court order on disposal of used oil

29. CUC has taken concrete steps to address the storage and disposal of used oil, consonant with the federal court's Stip Order 2. Federal court Stipulated Order 2 relates to the used oil from the engines for four facilities (Power Plants 1, 3, 4 and Rota) and all CUC transformers. *USA v. CUC & CNMI*, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) ("Stip Order 2"). With an adequate complement of trained technical employees, complemented by expert contractors, CUC believes that it can meet these requirements.

30. A September inspection by the US Coast Guard (USCG) has resulted in the imposition of another cost that was unanticipated even with Stip Order 2. The USCG now requires additional and more stringent measures to contain or eliminate the possibility of any oil reaching the ocean from Power Plants 1, 2 and the power plant on Rota. Further, as of October, CUC has faced the following staffing needs in this area: It critically needs the resources to inspect and redesign the entire fuel storage, pumping and handling system in order to meet the more stringent requirements of today. The clean fuel storage tanks at Lower Base were originally designed for another application. The fuel line from the oil company's terminal is in danger of rupturing during a transfer; the pumping rate has to be reduced to prevent this. All of this requires trained CUC staff.

31. Serious deficiencies in the waste oil handling system at Lower Base have come to light in the past months and are being addressed by both CUC and EPA. One deficiency is that the oily water separators are not functioning as such because of the excessive amount of oil (as opposed to water) entering the system. As a result, oil was spilling onto the ground rather than being separated and skimmed off properly. Power Plant #1 has been sealed off to prevent any waste oil from leaving the plant and flowing into the oily water separators. To prevent oil from accumulating uncontained in the plant itself, emergency measures have been taken to store waste oil and to fabricate above-ground tanks. The oily water separators, pipes, holding tanks, and baffles are being cleaned out so that the entire system can be carefully inspected and re-engineered. All of the additional work is expensive. Regardless of who does the work initially, CUC staff, EPA contractors, or a combination thereof, CUC requires skilled, trained workers for the clean-up. Failure to correct this situation could harm the nearby environment, CUC's ability to generate electricity properly, and the assurances given pursuant to Stip Order 2. CUC has begun the process to hire an Oil Technical Manager.

32. Incinerators play a crucial role in helping CUC meet Stip Order 2. The two incinerators at Lower Base (Power Plants 1 and 2) are now operating, and burning about 1000 gallons of used oil per day. This is double the rate from January. This EO has permitted Power Generation the flexibility of hiring skilled non-residents to not only repair and overhaul the generating sets, but fix such important auxiliary equipment as the incinerators.

33. Nonetheless, the EPA on February 18, 2010, filed a status report with the US District Court for the Mariana Islands which is highly critical of the progress in CUC's efforts to comply with Stip Order 2's requirements to solve the used oil situation. Since that report CUC has contracted with the GRESCO firm to remove waste oil from Tank 104. The EPA has strongly urged CUC to accelerate the removal, bringing the "empty" date forward from October 2010 to

June 2010. EPA has also required CUC to purchase and install special double-walled "iso" tanks for use in the project.

Complying with the federal court order on managing the water and wastewater systems

34. As long as the Water and Wastewater Divisions can hire competent staff and receive power from the Power Division, they can function.

35. The U.S. Department of Justice ("DoJ"), Environment and Natural Resources Division, has sued CUC in federal court to come into compliance with critical water and sewage treatment requirements. *USA v. CUC & CNMI*, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) ("Stip Order 1"). See also http://www.usdoj.gov/enrd/Consent_Decrees.html. In July 2008 CUC, the CNMI and (in September 2008) the U.S. Environmental Protection Agency ("EPA") stipulated to this first of two orders lodged with the U.S. District Court on the date the Complaint was filed. This order requires CUC to implement a series of improvements to its water and wastewater systems that respond to years of neglect, for which it presently lacks the funds and the complete technical capability.

36. Sewage collection piping failures are continuing at an accelerated rate. The Wastewater Division must respond to acid damage in the asbestos cement piping system, the product of over 30 years of anaerobic conditions in sewers. This has caused significant damage to cement and metal infrastructure, so that key pipe systems have collapsed. December 18 saw the sixth failure in six months. Failures will continue until 10 miles of sewer pipe are replaced. But replacement involves complex excavations, avoiding electric, phone and water utilities, blocking traffic, stopping the infiltration of seawater (which damages treatment plant facilities), and pumping sewage around blocked and excavated areas. The Division has already far exceeded its repair budget.

37. A sewer collapse occurred again in Chalan Kanoa in February. This was the result of pipe thinning. The cost to repair the affected section is about \$90,000, as CUC must typically replace the 200-foot run between manholes. In March the sewer (collection) line running down As Terlaje sprang a leak, and flowed intermittently on the swale alongside the main road. CUC investigated and undertook repairs. Without this EO, says CUC, procurement for such repair work would be even more difficult than it already is, with the contract to replace sewer section taking months rather than days to consummate.

38. The Sadog Tasi Wastewater Treatment Plant is being prepared by CUC wastewater crews in anticipation of a rehabilitation contract already awarded. Such preliminary work has to

be conducted within strict parameters by properly trained technicians to prevent contamination of the environment.

39. The Division also needs serviceable vehicles to move its workers to and from job sites. Presently six vehicles are in such bad shape that they are dangerous. The resulting reduced vehicle problem raises costs and hurts service, as staff and materials cannot be brought to job sites on time.

40. Sewage lift station failures continue, with most pumping stations having only one of two required pumps installed. CUC has issued a contract to purchase 30 additional pumps, however the lead time between issuance of the contract and pump arrival is over six months, so that CUC still awaits the ordered pumps.

41. CUC engineer staff shortages continue to hamper CUC's ability to anticipate and fix technical problems. While CUC's Water/Wastewater Division employs four engineers, the poor condition of the CUC sanitation assets requires at least two more engineers. But, significant engineering resources are already focused on addressing EPA Stip Order issues. These issues include staffing plans, pre-treatment programs, materials management programs, customer inventory, and cross-connection control programs. Recruitment and retention of engineering staff to meet these challenges is difficult.

42. Incipient failures include the failure of 98 submersible pumps in the water system over a period of twelve months. Higher grade stainless steel grates have to be specified that are resistant to pitting. The pitting causes the grates to fail and consequently the pump motors. CUC will need to purchase higher quality equipment, rather than the cheap units that fail prematurely.

43. CUC must be able to hire the staff to perform the required technical functions. The Water and Wastewater Divisions cannot carry out their missions without adequate staff. These staff are essential to producing clean, safe water supplies and removal of stormwater and sewage in a safe, timely manner. While the bulk of CUC employees are drawn from local and US populations, the Division management estimates that at least six trained technicians will be required – three experienced Level 3 wastewater treatment operators, two Level 3 wastewater collections operators, and an instrumentation /low voltage controls specialist. An experienced Water/Wastewater Division operations manager will be required. CUC has also announced a vacancy of the position for Deputy Director for Water and Wastewater. Seven candidates will be reviewed and evaluated by a team which includes the Executive Director.

44. There are special reasons why the water system must be adequately staffed and maintained this year. This is an El Nino year. According to the Pacific ENSO bulletin forecast, February 1, 2010, the CNMI dry season will bring below normal rainfalls and will extend to June 2010. CUC must now go into an emergency mode, conserving water, accelerating water line replacements, and locating and repairing leaks. There will be greater danger of fires this coming year, but less water available to fight them.

45. CUC also requires a constant supply of electricity to run its water and wastewater treatment systems. CUC has very limited on-site emergency generation capability, and for only portions of these systems.

46. Meanwhile CUC continues to pay for power, chlorine, lab testing costs, and repairing collapsing sewer lines. CUC has hired a consulting team to assist it in achieving full cost recovery for the water and wastewater systems through the processes of the CNMI Public Utilities Commission ("CPUC"). CUC filed a wastewater rate increase request, complete with hundreds of pages of written expert witness testimony and technical support on January 31, 2010. The case is in the prehearing, discovery phase. The Commission is scheduled to address the filing in May.

47. Nonetheless, the EPA on February 18, 2010, filed a status report with the US District Court for the Mariana Islands which is highly critical of the progress in CUC's efforts to comply with Stip Order 2's requirements to solve the water and wastewater situations. A hearing before the Court resulted in the additional stipulated order addressed elsewhere in this Executive Order.

Meeting US District Court and CNMI Public Utilities Commission requirements to produce timely, accurate financial reports

48. The federal Stip Orders require CUC to produce and carry out an Interim Financial Plan, beginning in September, 2009. The "IFP" must develop over time, becoming more than "interim". CUC cannot do this unless it has a staff of trained accounting and other financial experts who can gather data, put the data in the required form and generate the IFP and its later versions.

49. Further, CUC is comprehensively regulated by the Commonwealth Public Utilities Commission ("CPUC"). The CPUC is charged by statute to oversee carefully CUC's operations and capital expenditures, and to develop rates that fully pay the costs of safely operating CUC's water and wastewater systems.

50. In electric and water/wastewater orders, of September 3 and November 20, 2009, the CPUC addressed CUC's inability to deliver complete on-time financial reports, requiring CUC, in effect, to enhance its staff capability to provide critical regulatory information. (Docket No.'s 09-1 and 09-2.) The Commission will be revisiting CUC rates, fees, charges and operations during this year, including in the current rate case, Docket No. 10-01. CUC's Executive Director is a lead witness in the case, having filed written testimony (on January 31, 2010) and supplemental testimony (on April 1, 2010).

51. CUC cannot upgrade its financial and accounting operations unless it has a staff of trained accounting and other financial experts who can gather data, put the data in the required form and generate the required reports and filings with the CPUC, as well as provide the CPUC consulting staff with the data required for their oversight. CUC has obligated itself to provide an updated, compliant Interim Financial Plan and an organizational evaluation, both pursuant to Stip Order 1, to the US District Court, and most recently, according to the February 24, 2010, additional stipulated order.

52. CUC's procurement system is lengthy and complex. A relic of other decades, with their own challenges, it requires extensive experience in specifications and procurement process, and often must be coordinated with the CNMI's separate procurement procedures, adding months to processes that must respond to the immediate challenges outlined in this Executive Order.

53. CUC last year lost 2 senior accountants plus a related specialist. The IT and billing department in August was reduced by one staffer, having advertised for a replacement for 4 weeks to no avail. While it appeared that CUC might have to look to employing foreign technical specialists, CUC hired back 2 former accountants in September and brought a third person aboard in October. All are US citizens. Nonetheless, CUC must have the flexibility to hire competent professionals as needed. CUC is still short-staffed, and needs an accounting assistant, and an accounting specialist. On February 17, 2010, CUC's new Chief Financial Officer reported for duty.

54. Nonetheless, the EPA on February 18, 2010, filed a status report with the US District Court for the Mariana Islands which was highly critical of the progress in CUC's efforts to comply with Stip Order 2's requirements to provide timely and complete financial and other operating reports and plans.

55. To summarize: Without properly trained technical staff CUC's ability to supply power is at risk. So is its ability to manage the rest of its systems, including its complex procurement, its finances and accounting. CUC's services could not be adequately staffed without August's lifting of the artificial legislative regulation of CUC's workforce, in EO 2009-08, Directive #10,

suspending the limitations on CUC hiring foreign workers. It is obvious that the hiring authority must be continued.

56. There is no indication that any of the above manpower situation will be resolved in the next month without continuing in effect this EO and Directive #10.

MANAGEMENT CRISIS IN ABSENCE OF A PROPER BOARD/CEO STRUCTURE

57. **Summary.** CUC is a \$70 million-per-year business, critical to the CNMI's economy and the public health. Yet, the recently-renewed statute organizing it places the Board of Directors in the position of day-to-day management of the corporation, and requires a complex mix of technical, geographic and other qualifications for Board membership. There is no Board because it has been impossible to meet these criteria. Without the Board, or its equivalent, CUC cannot take a critical step toward solvency and the ability to borrow to finance its work.

Forestalling corporate paralysis

58. A critical concern is that the CUC Act's constricted scope of authority for the Executive Director, and the complementary daily management by a host of Board volunteers, would paralyze the corporation. This is particularly worrisome in light of the above-listed tasks before CUC.

59. A careful reading of the CUC Act, PL 16-17, as amended, particularly its sections 4 CMC §§ 8131 (Bd qualifications), 8134 (Bd approval of all "allocations" of money and property), and 1 CMC § 8247 (limited daily reimbursement of \$60.00); 4 CMC §§ 8132 (E.D. described), 8133 (limited E.D. functions listed), and 8134 (Bd approval of all "allocations" of money and property), demonstrates that the Executive Director is to be left with little more to do than provide reports to a Board of volunteers who are nonetheless to run CUC, a complex \$70 million/year corporation, on a day-to-day basis. This includes such decision-making as purchasing materials and supplies, signing paychecks and other checks, hiring staff, assigning work crews, connecting customers, deciding on making repairs, collecting debts, complying with the details of federal and CPUC regulatory requirements, making and funding long-term technical power and water/wastewater plans, overseeing filings with the CPUC, including rate cases, and insuring that, on a day-to-day basis, the power and water flow and the sewage is treated.

60. Permitting CUC to be managed this way would plunge the CNMI into economic chaos and a public health care crisis, as corporate activity and the Hospital's operations ground to a halt – with or without a Board in place. The complex technical problems listed above simply cannot be managed on a day-to-day basis by a group of non-expert volunteers. For example, the Executive Director must be available to renegotiate CUC's fuel oil contract this month, and insure that supplies reach Tinian and Rota, as well as Saipan. Also, as a key witness in CPUC Docket 10-01 the Executive Director must be enabled to testify in favor of the requested rate increase in order to fully present the required evidence.

61. No private or public utility company in the United States runs this way – with a group of volunteers managing a \$70-million corporation's day-to-day operations. No other legislature in the United States has mandated this form of corporate management for a public utility.

62. CUC has applied for and become eligible for millions of dollars of US ARRA grants, which can substantially benefit the CNMI's infrastructure and create jobs. CUC has been awarded \$11 million in grants from the EPA. But developing the grant requests and implementing the grants requires management attention and expertise, part of a professionally-run business organization. CUC has placed three of five ARRA grants out for bid, so that these benefits can start flowing. CUC must evaluate its needs, and hire and contract for the needed technical specialists to manage the grant-funded projects. This requires a corporate structure capable of making and sustaining important decisions.

63. I can only conclude that the legislation's extraordinary structure for CUC is the result of a drafting error, and the People, through their elected representatives, wish their utility company to continue to supply them with essential services at a reasonable cost, meeting industry standards.

Fixing CUC's technical insolvency

64. CUC has been unable to borrow money to run its operations since the inception of this State of Disaster Emergency due to (a) its poor financial condition and (b) the existence on its books of a liability to the Commonwealth Development Authority ("CDA") of approximately \$115 million. This situation may be corrected if the Executive Director is recognized to have the authority to correct it.

65. Meanwhile, billings and collections are substantially below the levels required to prudently manage CUC's current operations and provide for system repairs, replacements and upgrades. For example, billings alone for water and wastewater are less than 70% of requirements to run those two systems.

66. The booked CDA obligation has rendered CUC nominally insolvent. While CUC is deemed insolvent, CUC cannot borrow money. But CUC must be able to borrow money to bridge the gap between (a) the need to spend money on essential goods and services to provide electricity, water and sewage service, and (b) the lagged collection of already-determined-insufficient revenues from the sale of those services.

67. The CPUC, in its September 3 electric order, Docket No. 09-1, approved a CUC-CDA settlement converting the CDA debt to preferred stock. But the deal requires CUC's Board to agree to it.

68. There is no Board. CUC has functioned without a Board of Directors, because it has had to. While CUC's enabling act, reenacted as PL 16-17, as amended, authorizes a Board, there is no CUC Board yet because, while the staff of the Governor's Office have diligently tried to find Board volunteers who meet the complex statutory qualifications, they have been unable to do so. Nonetheless, CUC must continue to function, including borrowing money.

69. EO 2009-08's Directive # 9 provides the required authority to the Executive Director. It also permits him to continue to run CUC, carefully manage cash to pay tens of millions of dollars annually for fuel oil and purchased power, and do all the things necessary to providing power, water and wastewater services, until the remaining members of a properly constituted Board can be identified, confirmed, and convened for business. In February 2010 the Executive Director delivered to CDA management the stock certificates required for the debt-equity conversion. CUC has just received the fully executed copy of the Stipulated Notice of Dismissal (with prejudice) in CDA v. CUC, Superior Court Civil Action No. 01-0248D (4/21/2010), which the CPUC has required that CDA provide to make effective the conversion of the CDA debt to preferred equity. Soon, CUC must be able to demonstrate to the financial community that it is properly managed, so that it can borrow and pay back long term capital.

Providing the basis for proper CPUC oversight

70. The broad and comprehensive statutory scheme of utility regulation in the Public Utility Act, 4 CMC §§ 8401-84, provides that the utility regulator, the CPUC, will carefully examine CUC activities, particularly financial activities.

71. This extensive oversight satisfies the policy need for a body of arms-length, well-informed citizens to watchdog the activities of this, the Commonwealth's key resource.

Thus, the statute's error-infused creation of a volunteer Board which would run the corporation on a day-to-day basis, becomes much less important than satisfying CPUC requirements.

72. What becomes very important is CUC's capability to provide the CPUC with accurate and timely financial and accounting information. But such reporting is not possible without a competent, trained staff of accounting and financial experts at CUC, and a properly-empowered Executive Director to lead them.

CRISIS FROM THE LACK OF LEGISLATIVE ACTION

73. There is no Legislative relief coming. For months CUC has repeatedly asked the Legislature for such relief, including submission of draft legislation in July. The Legislature has declined to respond. There is no alternative to providing this relief other than an order from the Governor. Inaction will produce a disaster in which CUC is unable to provide its critical community services. Directives # 9 and #10 were designed to avert this crisis. (The other Directives, #1 through #8, are no longer relevant, and were discontinued.)

74. This Declaration is necessary to protect the health and safety of our children, our senior citizens, businesses and all other CNMI residents and visitors.

CONCLUSION AND ORDER

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

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

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

(1) Suspend the provisions of any regulatory statute prescribing the procedures for conduct of the Commonwealth's business, or the orders, rules, or regulations of any Commonwealth activity or agency, if strict compliance with the provision

Declaration of Disaster Emergency: CUC Continuation 21

of any such statute, order, rule or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency;

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

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

3 CMC § 5121(f)(1)-(3).

By today's disaster emergency declaration, I intend to enable CUC to continue to provide necessary service to the people of the Commonwealth.

This Declaration of a State of Disaster Emergency shall take effect immediately and all memoranda, directives and other measures taken in accordance with this Declaration shall remain in effect for thirty (30) days from the date of this Executive Order unless I, prior to the end of the thirty (30)-day period, notify the Presiding Officers of the Legislature that the state of emergency has been lifted or has been extended for an additional period of thirty (30) days. 1 CMC § 7403(a); 3 CMC § 5121(c).

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

DIRECTIVES

I direct the following:

Directive 1: Deleted.

Directive 2: Deleted.

Directive 3: Deleted.

Directive 4: Deleted.

Directive 5: Deleted.

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Directive 6: Deleted.

Directive 7: Deleted.

Directive 8: Deleted.

Directive 9: The Executive Director of CUC shall have all the powers of the CUC Board, thereby enabling him to carry out all critical business of CUC, pending the earlier of either (1) the confirmation and convening of an operating CUC Board, or (2) the termination of the authority of this order. In particular, the Executive Director shall have full power and authority to agree to swap CDA debt and related obligations for preferred stock and related features and rights.

Directive 10: The following strike-out-formatted language of the quoted provision of the following statute regulating government employment is, as indicated, suspended immediately:

(b) Transition exemptions for government employment. . . . (5) Commonwealth Utilities Corporation. Engineers, and professional employees in technical or trade areas may be exempted and CUC may contract with manpower services or directly hire power plant mechanics and utility technicians who may be exempted; ~~provided that direct or manpower hire of foreign national workers shall not exceed nineteen (19) employees. This exemption shall expire on September 30, 2010, and no contract may provide to the contrary.~~

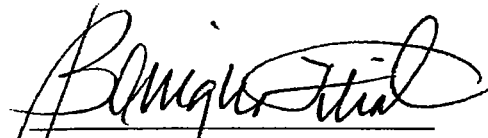
3 CMC § 4972(b)(5), as most recently amended by PL 16-14. (Underlining in original; strikeout is deliberately added) That is, the following language is suspended: “provided that direct or manpower hire of foreign national workers shall not exceed nineteen (19) employees. This exemption shall expire on September 30, 2010, and no contract may provide to the contrary.”

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The effect of the suspension shall be that CUC shall have the complete power, without regard to citizenship or otherwise lawful immigration status, to hire engineers, professional employees in technical or trade areas, power plant mechanics and utility technicians, either directly or indirectly. These professional employees may include, but shall not be limited to, sanitarians, engineers, accountants, financial experts, information technology specialists, mechanics, electricians, well-drillers, pipefitters, plumbers, wastewater treatment facilities operators, and other trades technicians.

Done this 23rd day of April, 2010.



BENIGNO R. FITIAL
Governor