

TITLE 5: OFFICE OF THE ATTORNEY GENERAL

CHAPTER 5-40 DIVISION OF IMMIGRATION

[Repealed.]

Subchapter Authority: 3 CMC §§ 4311-4312; 3 CMC § 4344(d); Executive Order 03-01 (effective May 9, 2003).

Subchapter History: Repealed PL 17-1 (Mar. 22, 2010), 32 Com. Reg. 30094 (Apr. 19, 2010); Amdts Adopted 31 Com. Reg. 29921 (Oct. 6, 2009); Amdts Proposed 31 Com. Reg. 29813 (Aug. 27, 2009); Amdts Adopted 30 Com. Reg. 29100 (Dec. 22, 2008); Amdts Proposed 30 Com. Reg. 28801 (Oct. 25, 2008); Amdts Proposed 29 Com. Reg. 27080 (Oct. 17, 2007);++ Amdts Proposed 29 Com. Reg. 26728 (Sept. 17, 2007);++ Amdts Proposed 29 Com. Reg. 26570 (June 18, 2007);++ Amdts Adopted 29 Com. Reg. 26416 (Jan. 16, 2007); Amdts Proposed 27 Com. Reg. 25323 (Dec. 30, 2005); Amdts Adopted 28 Com. Reg. 26410 (Dec. 29, 2006); Amdts Emergency and Proposed 28 Com. Reg. 25997 (Aug. 24, 2006) (effective for 120 days from Aug. 1, 2006); Amdts Emergency and Proposed 28 Com. Reg. 25922 (July 21, 2006) (effective for 120 days from June 27, 2006); Amdts Withdrawn 27 Com. Reg. 25489 (Dec. 30, 2005); Amdts Proposed 27 Com. Reg. 25211 (Nov. 25, 2005); Amdts Adopted 27 Com. Reg. 25147 (Oct. 24, 2005); Amdts Proposed 27 Com. Reg. 24873 (Sept. 22, 2005); Amdts Emergency 27 Com. Reg. 24534 (June 20, 2005) (effective for 120 days from May 31, 2005); Amdts Adopted 27 Com. Reg. 24036 (Feb. 17, 2005) (repealing and repromulgating Comprehensive Immigration Regulations); Amdts Proposed 27 Com. Reg. 23879 (Jan. 17, 2005); Amdts Proposed 26 Com. Reg. 23699+ (Dec. 17, 2004);** Amdts Emergency and Proposed 26 Com. Reg. 22825 (Sept. 24, 2004) (effective for 120 days from Sept. 9, 2004);** Amdts Emergency and Proposed 26 Com. Reg. 22833 (July 26, 2004) (effective for 120 days from June 29, 2004);** Amdts Adopted 26 Com. Reg. 22855 (Sept. 24, 2004); Amdts Proposed 26 Com. Reg. 22645 (June 24, 2004); Amdts Proposed 26 Com. Reg. 22504 (May 24, 2004); Amdts Adopted 26 Com. Reg. 22865 (July 26, 2004); Amdts Proposed 26 Com. Reg. 21580 (Jan. 22, 2004); Amdts Emergency and Proposed 26 Com. Reg. 22486 (May 24, 2004) (effective for 120 days from May 18, 2004);** Amdts Adopted 26 Com. Reg. 22482 (Apr. 23, 2004); Amdts Proposed 26 Com. Reg. 22110 (Mar. 23, 2004); Amdts Proposed 26 Com. Reg. 21561 (Jan. 22, 2004); Amdts Adopted 26 Com. Reg. 22190 (Mar. 23, 2004); Amdts Proposed 26 Com. Reg. 21591 (Jan. 22, 2004); Amdts Adopted 26 Com. Reg. 22170 (Mar. 23, 2004); Amdts Emergency and Proposed 26 Com. Reg. 21523 (Jan. 22, 2004) (effective for 120 days from Jan. 14, 2004); Amdts Adopted 26 Com. Reg. 21709 (Jan. 22, 2004); Amdts Emergency and Proposed 25 Com. Reg. 20718 (Aug. 22, 2003) (effective for 120 days from Aug. 18, 2003);* Amdts Adopted 25 Com. Reg. 21469 (Nov. 17, 2003); Amdts Proposed 25 Com. Reg. 20649 (July 15, 2003); Amdts Adopted 25 Com. Reg. 21444 (Oct. 15, 2003); Amdts Proposed 25 Com. Reg. 20677 (July 15, 2003); Amdts Emergency and Proposed 24 Com. Reg. 19246 (June 17, 2002) (effective for 120 days from May 29, 2002);* Amdts Adopted 18 Com. Reg. 14206 (July 15, 1996); Amdts Proposed 16 Com. Reg. 12234 (July 15, 1994); Amdts Emergency and Proposed 18 Com. Reg. 14145 (May 15, 1996) (effective for 120 days from May 15, 1996);* Amdts Proposed 17 Com. Reg. 13034 (Mar. 15, 1995);* Amdts Proposed 17 Com. Reg. 13028 (Mar. 15, 1995);* Amdts Adopted 17 Com. Reg. 13040 (Mar. 15, 1995); Amdts Proposed 16 Com. Reg. 12585 (Nov. 15, 1994); Amdts Emergency and Proposed 16 Com. Reg. 12455 (Oct. 15, 1994) (effective for 120 days from Sept. 28, 1994);* Amdts Emergency 16 Com. Reg. 11768 (Mar. 15, 1994) (effective for 120 days from Mar. 7, 1994); Amdts Proposed 15 Com. Reg. 10654 (June 15, 1993);* Amdts Proposed 15 Com. Reg. 10645 (May 15, 1993); Amdts Proposed 15 Com. Reg. 10472 (Feb. 15, 1993);* Amdts Emergency 14 Com. Reg. 9761 (Oct. 15, 1992) (effective for 120 days from Oct. 9, 1992); Amdts Adopted 14 Com. Reg. 9668 (Sept. 15, 1992); Amdts Proposed 14 Com. Reg. 9514 (July 15, 1992); Amdts Proposed 14 Com. Reg. 8929 (Feb. 15, 1992);* Amdts Emergency and Proposed 13 Com. Reg. 8509 (Nov. 15, 1991) (effective for 120 days from Nov. 15, 1991);* Amdts Adopted 12 Com. Reg. 7203 (July 15, 1990); Amdts Proposed 11 Com. Reg. 6457 (Sept. 15, 1989); Amdts Emergency 8 Com. Reg. 4826 (Dec. 16, 1986) (effective for 120 days from Dec. 10, 1986); Amdts Emergency 8 Com. Reg. 4824 (Dec. 16, 1986) (effective for 120 days from Dec. 1, 1986); Amdts Adopted 8 Com. Reg. 4687 (Oct. 22, 1986); Amdts Proposed 8 Com. Reg. 4576 (Sept. 15, 1986); Adopted 7 Com. Reg. 3774 (July 22, 1985); Proposed 7 Com. Reg. 3623-24 and 3627 (May 21, 1985); Adopted 7 Com. Reg. 3584 (May 21, 1985) (Immigration Registration Regulations); Proposed 7 Com. Reg. 3441 (Feb. 15, 1985); Emergency 7 Com. Reg. 3377 (Jan. 15, 1985) (effective for 120 days from Jan. 10, 1985).

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+Due to a pagination error in the Commonwealth Register, pages 23099-23698 do not exist.

++As of August 31, 2007, a notice of adoption had not been published.

**As of December 2004, notices of adoption for the December 2004, September 2004, July 2004 and May 2004 emergency and proposed amendments had not been published.

*Notices of adoption for the August 2003, June 2002, May 1996, March 1995, October 1994, March 1994, June 1993, February 1993, February 1992 and November 1991 proposed amendments were never published.

Commission Comment:

History of Immigration Authority in the CNMI:

PL 1-8, tit. 1, ch. 3, §§ 5 and 6 (effective Aug. 10, 1978) originally created an Office of Immigration and Naturalization within the Office of the Attorney General, responsible for the day-to-day supervision and administration of matters involving immigration, emigration and naturalization. See 1 CMC §§ 2171-2172 (1999).

Title 3, division 4 of the Commonwealth Code contains the Commonwealth immigration laws. PL 3-105 (effective May 13, 1984), the “Commonwealth Entry and Deportation Act of 1983,” codified as amended at 3 CMC §§ 4301-4382, repealed Trust Territory Code title 53, ch. 2 (former tit. 3, div. 4, ch. 3 of the Commonwealth Code, 3 CMC §§ 4301, et seq.) and all rules and regulations promulgated pursuant thereto. See PL 3-105 § 29; see also the commission comment to 3 CMC § 4301.

3 CMC § 4311 makes the Immigration Officer, renamed the Chief of Immigration, established pursuant to 1 CMC § 2172, responsible for the administration of the act, the patrol of Commonwealth borders, and the entry of all persons into the Commonwealth. 3 CMC § 4312 grants the Attorney General overall supervision of the Office of Immigration and authorizes the Attorney General to promulgate rules and regulations necessary to enforce the act.

PL 9-5 § 15 (effective July 22, 1994), the “Immigration Enforcement Act of 1994,” changed the name of the Immigration and Naturalization Office to the Immigration Office. See the commission comment to 1 CMC § 2171.

Executive Order 94-3 (effective August 23, 1994) reorganized the Commonwealth government executive branch, changed agency names and official titles and effected numerous other revisions. According to Executive Order 94-3 §§ 103 and 301:

Section 103. Department of Commerce.

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

...

Section 301. Department of Labor and Immigration.

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

...

(c) Immigration.

(1) The Office of Immigration and Naturalization is re-designated the Immigration Service and is transferred to the Department of Labor and Immigration as a division of that department. The Immigration Service shall have at its head a Director of Immigration, who shall have all the powers assigned by law to the Immigration and Naturalization Officer, except any power transferred pursuant to Section 201 of this plan. The position of Immigration and Naturalization Officer is abolished.

(2) All functions of the Attorney General relating to immigration and naturalization, are transferred to the Secretary of Labor and Immigration except:

(A) any function transferred pursuant to Section 201 of this plan,

(B) the hearing of immigration appeals as provided in 3 CMC § 4336(d), and

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(C) the constitutional function of legal representation.

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

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

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

(a) The Director of Immigration shall:

- (1) have powers and duties set forth in 3 CMC § 4311;
- (2) enforce, under the supervision of the Attorney General, 3 CMC §§ 4121 et seq., the Commonwealth Entry and Deportation Act, as amended; and
- (3) perform any function regarding immigration and naturalization matters including passport matter transferred pursuant to Executive Order 94-3, § 201 to the Special Assistant for Administration.

(b) The Attorney General shall:

- (1) supervise the Director of Immigration and overall functions of the Division;
- (2) enforce the provisions of the Commonwealth Entry and Deportation Act, as amended and may prosecute all violations thereof;
- (3) promulgate rules and regulations as may from time to time be useful or required in enforcing the Commonwealth Entry and Deportation Act, as amended;
- (4) obtain warrants for the arrest of, or order continued detention of, aliens pending exclusion or deportation proceedings;
- (5) review the detention of persons arrested pursuant to 3 CMC § 4334 and, if deemed appropriate, order the continued detention or release of such persons; and
- (6) prepare the annual report required pursuant to 3 CMC § 4348.

(c) The Labor and Immigration Identification Data System Office within the Division of Immigration, Department of Labor and Immigration is transferred to the Office of the Governor for organizational purposes but shall continue to provide critical resource data to the Department of Labor and the Division of Immigration.

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

See 1 CMC §§ 2171-2173 (2004).

PL 13-61 (effective Jan. 8, 2004) amends 3 CMC § 4344(d) to require the Attorney General to promulgate regulations that implement nonrefoulement obligations under certain international treaties to protect individuals who would be tortured if removed to the country of origin. PL 13-61 is the authority for part 900 of this subchapter. PL 14-6 (effective May 28, 2004) amends 3 CMC § 4332(b)(1) to extend tourist visas for visitors to the CNMI to 90 days. PL 14-6 § 3 authorizes the Attorney General to promulgate regulations to implement the act.

The Labor and Immigration Identification System Office was transferred to the Office of the Attorney General, Division of Immigration “for organizational purposes” pursuant to Executive Order 2007-09. 29 Com. Reg. 26699 (Aug. 17, 2007). Section 101 of EO 2007-09 requires that the Labor and Immigration Identification System Office “continue to provide critical resource data to the Department of Labor.” 29 Com. Reg. 26699 (Aug. 17, 2007). EO 07-09 was signed on August 1, 2007 (effective 60 days after submission to the legislature unless specifically modified or disapproved by a majority of the members of each house of the legislature). 29 Com. Reg. 26700 (Aug. 17, 2007). As of August 31, 2007, EO 07-09 had not been modified or disapproved by the legislature.

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History of Immigration Rules and Regulations:

In 1981, the Immigration and Naturalization Office, Office of the Attorney General, first issued Immigration and Naturalization Regulations pursuant to the authority of Trust Territory Code tit. 53, ch. 2 (formerly codified at 3 CMC §§ 4301, et seq.). The history of the 1981 Immigration and Naturalization Regulations is as follows:

Amdts Adopted 5 Com. Reg. 2456 (Aug. 31, 1983); Amdts Emergency and Proposed 5 Com. Reg. 1775 (Jan. 31, 1983) (effective for 120 days from Jan. 27, 1983); Adopted 5 Com. Reg. 1778 (Jan. 31, 1983) (Foreign Investor Visa Rules and Regulations); Proposed 4 Com. Reg. 1690 (Nov. 22, 1982); Amdts Adopted 4 Com. Reg. 1532 (July 15, 1982); Amdts Proposed 4 Com. Reg. 1458 (May 24, 1982); Adopted 3 Com. Reg. 1002 (Feb. 23, 1981); Proposed 2 Com. Reg. 898 (Nov. 17, 1980).*

*The text of the proposed regulations was not published with the November 1980 notice of proposed regulations.

PL 3-105 § 29, effective May 13, 1984, repealed title 53, chapter 2 of the Trust Territory Code, formerly codified at 3 CMC §§ 4301, et seq., and the regulations promulgated thereunder.

On May 11, 1984, the Office of the Attorney General (AGO), promulgated the 1981 Immigration and Naturalization Regulations, as amended, as emergency regulations effective for 90 days, pursuant to the authority of PL 3-105. See 6 Com. Reg. 2792 (May 15, 1984) (effective 90 days from May 11, 1984). On August 23, 1984, the AGO re-promulgated the 1981 regulations, as amended, as emergency regulations effective for 120 days. See 6 Com. Reg. 3171 (Sept. 15, 1984) (effective for 120 days from Aug. 23, 1984). Finally, on May 20, 1985, the AGO promulgated, pursuant to PL 3-105, the 1981 regulations as amended as emergency regulations effective for 120 days or until the 1985 Comprehensive Immigration Regulations took effect. See 7 Com. Reg. 3625 (May 21, 1985) (effective May 20, 1985 to August 1, 1985).

The 1985 Comprehensive Immigration Regulations took effect August 1, 1985. The Attorney General promulgated the 1985 Immigration Regulations and subsequent amendments pursuant to the authority of PL 3-105. Beginning with the October 1994 proposed amendments, the Department of Labor and Immigration continued to amend the 1985 Immigration Regulations pursuant to Executive Order 94-3. Beginning with the July 2003 proposed amendments, the Attorney General continued to amend the 1985 Immigration Regulations pursuant to Executive Order 03-01.

On February 17, 2005, the Office of the Attorney General promulgated new Comprehensive Immigration Regulations that repealed and replaced the 1985 Immigration Regulations. In August 2006 and January 2007, amendments to the 2005 Comprehensive Immigration Regulations were adopted.

In December 2008, the Office of the Attorney General repealed subchapters 5-40.1 through 5-40.3 and promulgated new Immigration Rules and Regulations, which are codified, as may be amended, in this subchapter. The structure and the content of the 2008 Immigration Rules and Regulations are significantly different than the 2005 Comprehensive Immigration Regulations, as amended in 2007. Accordingly, previous history is cited only in the chapter history and is not cited in the individual sections.

Section 702 of the Consolidated Natural Resources Act of 2008 (PL 110-229, codified at 48 U.S.C. § 1806) amended the Covenant to remove the CNMI's authority to create and manage its own immigration laws. On March 22, 2010, the Governor signed PL 17-1, removing all references to immigration and deportation functions from the Commonwealth Code. The administrative regulations pertaining to immigration were repealed on March 22, 2010, through 32 Com. Reg. 30094 (Apr. 19, 2010).