

TITLE 20: DEPARTMENT OF COMMERCE

CHAPTER 20-30 COMMERCE RULES AND REGULATIONS

| | |
|------------------------|---|
| Subchapter 30.1 | Business License Regulations |
| Subchapter 30.2 | Foreign Investment Regulations |
| Subchapter 30.3 | Foreign Investment Regulations of 2004 |

SUBCHAPTER 20-30.1 BUSINESS LICENSE REGULATIONS

Subchapter Authority: 1 CMC § 2453(d); 1 CMC § 2454; PL 3-11 § 503 (formerly 4 CMC § 1503).

Subchapter History: Adopted 17 Com. Reg. 12729 (Jan. 15, 1995); Proposed 16 Com. Reg. 12560 (Nov. 15, 1994); Emergency and Proposed 16 Com. Reg. 12332 (Sept. 15, 1994) (effective for 120 days from Aug. 24, 1994).

Commission Comment: 1 CMC § 2451 originally created the Department of Commerce and Labor. 1 CMC § 2454 directs the Department to adopt rules and regulations regarding those matters over which it has jurisdiction.

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:

Section 103. Department of Commerce.

The Department of Commerce and Labor is redesignated the Department of Commerce.

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

PL 3-11, "The Revenue and Taxation Act of 1982" took effect, with some exceptions on June 1, 1982. Section 503 (formerly codified at 4 CMC § 1503) addressed business licensing in the Commonwealth and was the authority cited for the Business License Regulations issued by the Department of Commerce. PL 9-22 § 1 (effective retroactively January 1, 1995) repealed PL 3-11 § 503 in its entirety. See the comment to 4 CMC § 1101.

PL 9-22 § 3, formerly codified at 4 CMC § 5611, reauthorized the Secretary of the Department of Commerce to issue business licenses.

PL 11-73 (effective March 19, 1999) completely revised the Commonwealth code provisions regarding business licenses and transferred authority to issue business licenses to the Department of Finance. See 4 CMC §§ 5611-5614. PL 11-73 provided, in part:

Section 1. Short Title. This Act shall be referred to as the "Business Licensing Processing Act of 1998."

Section 2. Findings and Purpose. Tax compliance has long been a challenge in the CNMI, due to a lack of central control and sharing of data between various entities. A great deal of inconsistencies will be resolved by centralizing the issuance of business licenses with the agency which issues CNMI Tax Identification Numbers. Such issues that will be resolved include, but are not limited to the following: detecting non-filers of tax returns; ascertaining whether taxes have been paid prior to the issuance of a renewal of business license; allowing the Department of Finance to close down a business if taxes are not paid, or using the same as a deterrent for avoiding payment of taxes; allowing the Department of Finance to verify that a business is engaged in the activity stated on the license by comparing it to the activity stated on the tax return; and assuring that a business which imports good for sale has an active business license and all taxes have been paid before allowing importation of goods into the CNMI.

TITLE 20: DEPARTMENT OF COMMERCE

By allowing the Department of Finance, Division of Revenue and Taxation to issue a business license and at the same time issue the CNMI Taxpayer Identification Number, there will be a tracking mechanism established that will not only serve the Division of Revenue and Taxation, as the point of control, but the Division of Customs and the Department of Commerce as well. The integration of issuing business licenses into the Division of Revenue and Taxation is expected to result in collection of a significant amount of additional taxes that are not collected due to the lack of a single control point. This should provide the CNMI with much needed revenue without the need to raise taxes at this point in time.

It is therefore the purpose of this legislation to transfer the function of issuing business licenses from the Department of Commerce to the Department of Finance in order to strengthen the Department of Finance's efforts to enforce tax compliance. The day-to-day function of issuing licenses within the Department of Finance shall be handled by the Division of Revenue and Taxation.

PL 11-73 § 7, codified at 4 CMC § 5614, authorizes the Secretary of Finance to promulgate rules and regulations to carry out the intent of the act. In October of 1999, the Secretary of Finance promulgated Business License Regulations. See 21 Com. Reg. 16970 (Oct. 15, 1999); see also NMIAC title 70, subchapter 40.1. The Department of Commerce never formally repealed its Business License Regulations. This subchapter is, however, superceded by statute and later regulation.

[Superceded by PL 11-73, effective March 19, 1999.]

TITLE 20: DEPARTMENT OF COMMERCE

**CHAPTER 20-30
COMMERCE RULES AND REGULATIONS**

**SUBCHAPTER 20-30.2
FOREIGN INVESTMENT REGULATIONS**

| | | | | |
|---------------------------------------|---------------------------|----------------------|---------------------------------|---------|
| Part 001 | General Provisions | § 20-30.2-201 | Regular | Term |
| § 20-30.2-001 | Authority | Business Certificate | | |
| § 20-30.2-005 | Definitions | § 20-30.2-205 | Long Term Business | |
| § 20-30.2-010 | Purpose | Certificate | | |
| | | § 20-30.2-210 | Foreign Investment | |
| | | Certificate | | |
| Part 100 | Foreign Investment | | | |
| § 20-30.2-101 | Foreign Investment | | | |
| Policy | | Part 300 | Other Foreign Investment | |
| § 20-30.2-105 | Transfer of Authority | and Fees | | |
| § 20-30.2-110 | Certification | § 20-30.2-301 | Other | Foreign |
| § 20-30.2-115 | Foreign Investment | Investment | | |
| Review Committee | | § 20-30.2-305 | Fee Schedule | |
| § 20-30.2-120 | Classification | § 20-30.2-310 | Annual Registration | |
| | | § 20-30.2-315 | Extensions | and |
| | | Renewals | | |
| Part 200 Business Certificates | | Appendix A | Forms | |

Subchapter Authority: 1 CMC §§ 2453 and 2454.

Subchapter History: Amdts Adopted 31 Com. Reg. 29371 (Apr. 27, 2009); Amdts Proposed 31 Com. Reg. 29224 (Feb. 25, 2009); Amdts Proposed 26 Com. Reg. 22230 (Apr. 23, 2004); Amdts Adopted 18 Com. Reg. 14314 (Aug. 15, 1996); Amdts Proposed 18 Com. Reg. 14201 (July 15, 1996); Amdts Adopted 18 Com. Reg. 13925 (Jan. 15, 1996); Amdts Proposed 17 Com. Reg. 13871 (Dec. 15, 1995); Adopted 17 Com. Reg. 12729 (Jan. 15, 1995); Proposed 16 Com. Reg. 12560 (Nov. 15, 1994); Emergency and Proposed 16 Com. Reg. 12332 (Sept. 15, 1994) (effective for 120 days from Aug. 24, 1994); Certified 14 Com. Reg. 9179 (Apr. 15, 1992); Adopted 5 Com. Reg. 1782 (Jan. 31, 1983); Proposed 4 Com. Reg. 1679 (Nov. 22, 1982).

Commission Comment: 1 CMC § 2451 originally created the Department of Commerce and Labor. 1 CMC § 2454 directs the Department to adopt rules and regulations regarding those matters over which it has jurisdiction.

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:

Section 103. Department of Commerce.

The Department of Commerce and Labor is redesignated the Department of Commerce.

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

PL 10-44 (effective February 7, 1997), codified as amended at 4 CMC §§ 5901-5972, enacted the 1995 Foreign Investments Regulations, published as part II of the Commerce Rules and Regulations at 17 Com. Reg. 12729, 12736 (Jan. 15, 1995), and the amendments adopted at 18 Com. Reg. 14314 (Aug. 15, 1996) as statutory law.

PL 10-44 § 7 provided:

TITLE 20: DEPARTMENT OF COMMERCE

Section 7. Regulations Enacted as Statute.

(a) Except as provided by subsections (b), (c), and (d), the Department of Commerce's rules and regulations governing foreign investments in the Commonwealth, adopted January 13, 1995, in the Commonwealth Register, Volume 17, Number 1, beginning at page 5, as amended in the Commonwealth Register, Volume 18, Number 8, are hereby incorporated by reference and enacted as statutory law. The Commonwealth Law Revision Commission shall codify these rules and regulations in the appropriate Commonwealth Code statutory format.

(b) Section 1001, B., 3., a., entitled Evaluation Factors - New Enterprises, and Section 1001, B., 3., a., entitled Evaluation Factors - Existing Enterprises, are not incorporated by reference and are rescinded and reenacted to read:

“3. a. The amount of capital invested or to be invested by the Alien Investor, shall not be less than \$150,000.”

“4. a. The amount of capital invested or to be invested by the Alien Investor, shall not be less than \$150,000 in a public organization or not less than \$250,000, in a private investment.”

(c) Section 1001, A., 1., is not incorporated by reference and is rescinded and reenacted to read: “1. A holder of a long term business certificate entitles the Alien Investor to lawfully engage in business in the Commonwealth for a period of two (2) years; Provided, however, that the Alien Investor shall provide a security deposit in the sum of \$100,000 on deposit in a banking or trust institution approved by the Secretary of the Department of Finance. Exclusive authorized signature authority for the security deposit shall be the Secretary of the Department of Commerce. The security deposit may be withdrawn only upon dissolution of the business. Any funds remaining on deposit, after all applicable taxes are fully satisfied, shall be used to pay for any and all unpaid accounts with creditors in the Commonwealth. Any funds remaining in the account after taxes and creditors' claims have been satisfied shall be returned to the certificate holder.”

(d) Section 1101, A., 1., is not incorporated by reference and is rescinded and reenacted to read: “1. A certificate of Foreign Investment is a certificate issued to an alien who has met all the standards and conditions enumerated in this Part as proof of the holder's participation as an alien investor in an approved investment in the Commonwealth. The holder shall have the right to lawfully engage in business in the Commonwealth as long as the Alien Investor complies with the terms upon which the certificate was issued; Provided, however, that the Alien Investor shall provide a security deposit in the sum of \$100,000 on deposit in a banking or trust institution approved by the Secretary of the Department of Finance. Exclusive authorized signature authority for the security deposit shall be the Secretary of the Department of Commerce. The security deposit may be withdrawn only upon dissolution of the business. Any funds remaining on deposit, after all applicable taxes are fully satisfied, shall be used to pay for any and all unpaid accounts with creditors in the Commonwealth. Any funds remaining in the account after taxes and creditors' claims have been satisfied shall be returned to the certificate holder.”

The Department of Commerce never formally repealed or rescinded the Foreign Investments Regulations.

PL 10-44 § 7(a) cites “Volume 17, Number 1, beginning at page 5” in error. The Foreign Investments Regulations were adopted at volume 17, number 1, pages 12736-12751.

PL 10-44 did not incorporate by reference and enact as statutory law the January 1996 amendments to the Foreign Investments Regulations proposed on December 15, 1995 at 17 Com. Reg. 13781 and adopted on January 15, 1996 at 18 Com. Reg. 13295. These amendments are included in this subchapter as appropriate. The fact that they are not enacted as statutory law is noted in the comment to the affected sections.

Section 702 of the Consolidated Natural Resources Act of 2008 (PL 110-229, codified at 48 U.S.C. § 1806) removed 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. These regulations have not been amended, but portions of the regulations pertaining to immigration are superseded by 48 U.S.C. § 1806.

TITLE 20: DEPARTMENT OF COMMERCE

Part 001 - General Provisions

§ 20-30.2-001 Authority

This subchapter is promulgated pursuant to 1 CMC § 2454 which authorizes the Secretary of Commerce to promulgate regulations regarding those matters over which the Department of Commerce has jurisdiction. This subchapter is promulgated pursuant to 1 CMC § 2453 (a) thru (f), and 2454, 4 CMC § 1503 and 3 CMC § 4331(e) and (j).

Modified, 1 CMC § 3806(d).

History: Adopted 17 Com. Reg. 12729 (Jan. 15, 1995); Proposed 16 Com. Reg. 12560 (Nov. 15, 1994); Emergency and Proposed 16 Com. Reg. 12332 (Sept. 15, 1994) (effective for 120 days from Aug. 24, 1994).

Commission Comment: Foreign Investments Reg. § 101, codified in this section, is reprinted in the commission comment to 4 CMC § 5901; see the general comment to this subchapter. This section refers to former 4 CMC § 1503, repealed by PL 9-22 (effective retroactively January 1, 1995).

§ 20-30.2-005 Definitions

For the purposes of this subchapter, the following definitions shall apply:

- (a) “Alien” means a person who is not a citizen or national or permanent resident (green card holder) of the United States.
- (b) “Alien Investor” is an alien who has expressed a willingness to invest, has invested in or is in the process of investing in an enterprise in the Commonwealth of the Northern Mariana Islands (the “Commonwealth” or “CNMI”). An alien investor shall not be an excludable alien under section 4322 of the Commonwealth Entry and Deportation Act of 1983 [3 CMC § 4322], as amended [3 CMC §§ 4301, et seq.]. An alien investor does not include entities such as corporations, partnerships or other entities existing solely by virtue of the law.
- (c) “Approved investment” is an investment approved by the Foreign Investment Review Committee.
- (d) “Approved letter” means a letter issuable by the Secretary certifying the acceptance of an approved investment subject to the minimum investment criteria and standards set forth in § 20-30.2-201 for a regular term business certificate, § 20-30.2-205 for a long term business certificate and § 20-30.2-210 for a foreign investor certificate.
- (e) “Commerce certificate” means a certificate issued by the Secretary to an applicant whose application has been approved by the Foreign Investment Review Committee.
- (f) “Capital” means cash, equipment, inventory, other tangible property and cash equivalents, such as certificates of deposits, treasury bonds, or other instruments that can be readily converted into cash used or committed to be use in an enterprise in the form of equity or ownership interest.

TITLE 20: DEPARTMENT OF COMMERCE

(g) “Domestic corporation” means a corporation authorized by law to issue stock, organized under the laws of the Commonwealth of the Northern Mariana Islands.

(h) “Enterprise” means a commercial or business activity carried on for profit in the Commonwealth. This enterprise is limited to one corporation, branch, office, subsidiary or facility of a foreign corporation, a partnership, or association which is an approved investment.

(1) “New enterprise” means an enterprise existing or prospective which has been established by an alien investor for the purpose of doing business within the Commonwealth. This may include creation of a new business; purchase of an existing business which would undergo restructuring or reorganization resulting in a new commercial enterprise.

(2) “Existing enterprise” means a present or existing enterprise that is engaged in business in the Commonwealth and in which the alien investor previously had no ownership interest. Investments in existing businesses must result in increase in the net worth of the company and expansion of existing business.

(i) “Foreign corporation” means a corporation formed under the laws of a jurisdiction other than the Commonwealth of the Northern Mariana Islands.

(j) “Foreign investment” means a direct investment or investments by an alien investor or foreign corporation that is incorporated outside the United States in a business entity, existing or proposed in the Commonwealth.

(k) “Foreign national” means an alien.

(l) “Immediate family” means a legally recognized spouse, and a child under the age of twenty-one years, whether natural or adopted before the age of eighteen years, and a stepchild if the marriage that created the stepchild relationship took place before the child’s eighteenth birthday, and, in the case of a citizen, the parents, whether natural or adoptive of the citizen, provided that no alien shall derive immediate relative status from a child who is under the age of twenty-one years.

(m) “Public organization” means a Commonwealth public corporation or agency of the Commonwealth government.

(n) “Secretary” means the Secretary of the Department of Commerce.

Modified, 1 CMC § 3806(c), (d), (f), (g).

History: Amdts Adopted 31 Com. Reg. 29371 (Apr. 27, 2009); Amdts Proposed 31 Com. Reg. 29224 (Feb. 25, 2009); Adopted 17 Com. Reg. 12729 (Jan. 15, 1995); Proposed 16 Com. Reg. 12560 (Nov. 15, 1994); Emergency and Proposed 16 Com. Reg. 12332 (Sept. 15, 1994) (effective for 120 days from Aug. 24, 1994); Certified 14 Com. Reg. 9179 (Apr. 15, 1992); Adopted 5 Com. Reg. 1782 (Jan. 31, 1983); Proposed 4 Com. Reg. 1679 (Nov. 22, 1982).

Commission Comment: Foreign Investments Reg. § 201 is codified at 4 CMC § 5901; see the general comment to this subchapter. In subsection (d), the commission changed “criterias” to “criteria” to correct a manifest error. The 2009 amendments applied to subsections (a) and (l). The Commission changed the semicolons at the ends of subsections (a) and (l) to periods, and struck the numbers “18” and “21” from subsection (l) pursuant to 1 CMC § 3806(e) and (g).

TITLE 20: DEPARTMENT OF COMMERCE

§ 20-30.2-010 Purpose

To provide for standards and criteria for the issuance of commerce certificates to aliens who invest in business entities in the Commonwealth; to transfer the processing, approval, issuance and renewal of regular term business entry permits from the Department of Labor and Immigration to the Department of Commerce; to transfer the processing, approval, issuance and renewal of long term business entry permits from the Department of Labor and Immigration to the Department of Commerce; these transfers are accomplished through the Secretary of Labor and Immigration's repeal and the Secretary of Commerce's adoption of applicable provisions of the Immigration's rules and regulations; to amend the foreign investor certificate program; to establish a Foreign Investment Review Committee and for other purposes.

Modified, 1 CMC § 3806(f), (g).

History: Adopted 17 Com. Reg. 12729 (Jan. 15, 1995); Proposed 16 Com. Reg. 12560 (Nov. 15, 1994); Emergency and Proposed 16 Com. Reg. 12332 (Sept. 15, 1994) (effective for 120 days from Aug. 24, 1994); Certified 14 Com. Reg. 9179 (Apr. 15, 1992).

Commission Comment: Foreign Investments Reg. § 301, codified in this section, is reprinted in the commission comment to 4 CMC § 5901; see the general comment to this subchapter. The commission corrected the plural form of "criteria."

Part 100 - Foreign Investment

§ 20-30.2-101 Foreign Investment Policy

The Secretary makes the following declarations:

- (a) It is declared that all investments in the Commonwealth by foreign nationals shall fall under the classification of foreign investment;
- (b) It is declared that all investments by foreign nationals in existing enterprises shall fall under the foreign investment classification;
- (c) It is declared that all investments by foreign nationals or foreign corporations, proposed or actual, in new enterprises which are not engaged in business, but are proposed to engage shall fall under the classification of foreign investment;
- (d) It is declared that if an investment in a proposed or existing enterprise cannot be categorized as falling under foreign investment, the Secretary must make findings and determine whether such an investment should be classified as a foreign investment or an investment by United States citizens; and
- (e) This subchapter should provide foreign investors a sense of direction and guideline to proceed onto the next phases of investor classifications from short term business entry permit holder to regular term business certificate or two year term business certificate and ideally to the

TITLE 20: DEPARTMENT OF COMMERCE

foreign investor certificate classification. Holders of a one year term business entry permits are encouraged to apply for the two year business certificate.

Modified, 1 CMC § 3806(d), (g).

History: Adopted 17 Com. Reg. 12729 (Jan. 15, 1995); Proposed 16 Com. Reg. 12560 (Nov. 15, 1994); Emergency and Proposed 16 Com. Reg. 12332 (Sept. 15, 1994) (effective for 120 days from Aug. 24, 1994); Certified 14 Com. Reg. 9179 (Apr. 15, 1992).

Commission Comment: Foreign Investments Reg. § 401 is codified at 4 CMC § 5902; see the general comment to this subchapter. In subsection (c), the commission changed the final period to a semicolon, and in subsection (d), the commission changed the final comma to a semicolon to ensure consistent punctuation in the section.

§ 20-30.2-105 Transfer of Authority

The responsibilities for the processing, approval, issuance, and renewal of regular term business certificates and authorizing entry permits under § 5-40.3-240(a) of the Immigration Rules and Regulations, long term business certificates and authorizing entry permits under § 5-40.3-240(n) of the Immigration Rules and Regulations, foreign investor certificates and authorizing entry permits under § 5-40.3-240(g) of the Immigration Rules and Regulations, and retiree investor certificates and authorizing entry permits under § 5-40.3-240(o) and the authority for extensions and renewals of these authorizations for entry permits and the annual registration of these classes of aliens have been transferred to the Department of Commerce. Issuance of entry permits remains the responsibility of the Director of Immigration.

Modified, 1 CMC § 3806(d), (g).

History: Amdts Adopted 31 Com. Reg. 29371 (Apr. 27, 2009); Amdts Proposed 31 Com. Reg. 29224 (Feb. 25, 2009); Adopted 17 Com. Reg. 12729 (Jan. 15, 1995); Proposed 16 Com. Reg. 12560 (Nov. 15, 1994); Emergency and Proposed 16 Com. Reg. 12332 (Sept. 15, 1994) (effective for 120 days from Aug. 24, 1994); Certified 14 Com. Reg. 9179 (Apr. 15, 1992).

Commission Comment: Foreign Investments Reg. § 501 is codified at 4 CMC § 5903; see the general comment to this subchapter. The commission moved the final period inside the closing quotation mark to correct a manifest error. The Immigration Rules and Regulations referred to in this section were implemented by the Office of the Attorney General, Division of Immigration pursuant to Executive Order 03-01 (effective May 9, 2003). They were repealed by 32 Com. Reg. 30094 (Apr. 27, 2010). See the general commission comment to NMIAC, title 5, subchapter 40.1.

§ 20-30.2-110 Certification

The Secretary or his or her designee shall provide to the Director of Immigration an authorization for entry, certifying that an alien has met the requirements for a commerce certificate, before an entry permit is processed by the Division of Immigration. The certification by the Secretary shall be consistent with the recommendation by the Foreign Investment Review Committee. No entry permit shall be issued by the Director of Immigration without an authorization for entry from the Secretary.

Modified, 1 CMC § 3806(f).

TITLE 20: DEPARTMENT OF COMMERCE

History: Amdts Adopted 31 Com. Reg. 29371 (Apr. 27, 2009); Amdts Proposed 31 Com. Reg. 29224 (Feb. 25, 2009); Adopted 17 Com. Reg. 12729 (Jan. 15, 1995); Proposed 16 Com. Reg. 12560 (Nov. 15, 1994); Emergency and Proposed 16 Com. Reg. 12332 (Sept. 15, 1994) (effective for 120 days from Aug. 24, 1994); Certified 14 Com. Reg. 9179 (Apr. 15, 1992).

Commission Comment: Foreign Investments Reg. § 601 is codified at 4 CMC § 5904; see the general comment to this subchapter. 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. See the general commission comment to NMIAC, title 5, subchapter 40.1.

§ 20-30.2-115 Foreign Investment Review Committee

There is hereby created a Foreign Investment Review Committee (hereafter “review committee”) composed of the Secretary or his or her designee and the Attorney General or his or her designee and any other person(s) whom the Secretary deems appropriate. The Attorney General’s presence on the review committee is limited to ensuring that the activities of the review committee are in compliance with the laws of the Commonwealth.

(a) Duties. The review committee shall review all applications for or renewals of regular term business certificates, long term business certificates, and foreign investor certificates. The standard of review are set forth in § 20-30.2-201 for a regular term business certificate, § 20-30.2-205 for a long term business certificate, and § 20-30.2-210 for a foreign investor certificate. The review committee through the Secretary shall regularly consult with the Governor regarding the Commonwealth’s policies with respect to foreign investments.

(b) Procedures. The review committee shall establish in writing standard operating procedures for the review of all applications for a commerce certificate and other applications assigned to it by the Secretary. The review committee shall communicate its findings and decision in writing regarding each application for a commerce certificate to the Secretary no later than 30 calendar days from the date the application form is filed with the Department of Commerce. The Secretary shall notify the applicant of the decision of the review committee within 5 working days of receipt of the decision of the review committee. The Secretary shall issue an approved letter to an applicant whose application has been approved. An application which has been received the Department of Commerce and has not received an approval or denial on the 91st day after its receipt shall be deemed approved with conditions stipulated for completeness.

(c) Appeal. The applicant whose permit has been disapproved shall have up to seven working days in which to appeal the decision of the review committee. The request for appeal shall be made in writing and presented to the Secretary. The Secretary shall comply with the requirements of the Administrative Procedure Act [1 CMC §§ 9101, et seq.] regarding the appeals process. Appeals received after the seven days shall be denied.

(d) Authority to Request for Documents, Interviews, and Public Hearings. The review committee shall have the authority to request the applicant to provide documents to substantiate representations made in the application for a commerce certificate through correspondences or interviews. The Review committee may request and hold public hearings from time to time on the type of investments needed in the Commonwealth.

TITLE 20: DEPARTMENT OF COMMERCE

Modified, 1 CMC § 3806(e), (f), (g).

History: Adopted 17 Com. Reg. 12729 (Jan. 15, 1995); Proposed 16 Com. Reg. 12560 (Nov. 15, 1994); Emergency and Proposed 16 Com. Reg. 12332 (Sept. 15, 1994) (effective for 120 days from Aug. 24, 1994); Certified 14 Com. Reg. 9179 (Apr. 15, 1992).

Commission Comment: Foreign Investments Reg. § 701 is codified at 4 CMC §§ 5911-5915; see the general comment to this subchapter. In subsection (c), the commission changed “Procedures” to “Procedure” to correct a manifest error.

§ 20-30.2-120 Classification

The review committee may classify an alien who owns an interest in a foreign corporation that incorporates in the Commonwealth as an alien investor if the alien satisfactorily establishes his or her ownership interest in the foreign corporation and meets the requisite criteria and standards of the commerce certificate applied for. The review committee may review, upon request and submission of sufficient documentation, the status of an alien not owning any interest in a Commonwealth corporation, and who is requesting issuance of either a 90 day business certificate and visa or a 2 year term business certificate and visa. The review committee may qualify such alien for any of the two business entry certificates. This exclusion shall only be limited to applicants from existing enterprises and corporations whose investments have been approved by the review committee and in which applicant will engage in a managerial or policymaking capacity and consistent with CNMI laws.

Modified, 1 CMC § 3806(f), (g).

History: Adopted 17 Com. Reg. 12729 (Jan. 15, 1995); Proposed 16 Com. Reg. 12560 (Nov. 15, 1994); Emergency and Proposed 16 Com. Reg. 12332 (Sept. 15, 1994) (effective for 120 days from Aug. 24, 1994); Certified 14 Com. Reg. 9179 (Apr. 15, 1992).

Commission Comment: Foreign Investments Reg. § 801 is codified at 4 CMC § 5916; see the general comment to this subchapter. The commission changed “criterias” to “criteria” to correct a manifest error.

Part 200 - Business Certificates

§ 20-30.2-201 Regular Term Business Certificate

(a) Conditions.

(1) A holder of a regular term business certificate entitles the alien investor to lawfully engage in business in the Commonwealth for not more than ninety days within a 12 month period.

(2) The application fee for a regular term business certificate shall be paid to the CNMI Treasurer prior to filing an application for a regular term business certificate with the Secretary.

(3) All applications for a regular term business certificate must be made only after the applicant has lawfully entered the Commonwealth. Only a holder of a short term business entry permit is allowed to apply for a regular term business entry certificate.

(4) Applicants for a regular term business certificate must file the application with the Secretary at least 10 days prior to the expiration of the applicant’s immigration permit.

TITLE 20: DEPARTMENT OF COMMERCE

Applications received with less than 10 days from expiration of applicant's short term business entry permit shall be denied.

(b) **Standard of Review.** The standard of review of the regular term business certificate shall be determined by the Secretary. The criteria, requirements, and basis of approval shall be contained in standard operating procedures held at the Office of the Secretary.

(c) **Application Process.** Applicants for a regular term business certificate shall file with the Department of Commerce a completed application form approved by the Secretary, to include a police clearance valid for the previous ninety days from the date of application for the regular term business certificate. The procedures for the review of regular term business certificates are set forth in § 20-30.2-115.

Modified, 1 CMC § 3806(c), (e), (g).

History: Amdts Adopted 18 Com. Reg. 14314 (Aug. 15, 1996); Amdts Proposed 18 Com. Reg. 14201 (July 15, 1996); Adopted 17 Com. Reg. 12729 (Jan. 15, 1995); Proposed 16 Com. Reg. 12560 (Nov. 15, 1994); Emergency and Proposed 16 Com. Reg. 12332 (Sept. 15, 1994).

Commission Comment: Foreign Investments Reg. § 901 is codified at 4 CMC §§ 5931-5933; see the general comment to this subchapter. In subsection (b), the commission changed "criterias" to "criteria" to correct a manifest error.

§ 20-30.2-205 Long Term Business Certificate

(a) **Conditions.**

(1) [Rescinded by PL 10-44].

(2) The application fee shall be paid to the CNMI Treasurer prior to filing an application for a long term business certificate with the Secretary.

(3) Holders of a short term business entry permit or a regular term business certificate are eligible to apply for a long term business certificate.

(4) Applicants for this certificate must file an application with the Secretary ten days prior to the expiration of the applicant's entry permit or visa. Applications received with less than 10 days from expiration of applicant's commerce certificate and entry visa shall be denied.

(b) **Standard of Review.**

(1) **Approved Investment - General Standard.** An approved investment is one which the review committee finds that the alien has invested or is actively in the process of investing a significant amount of capital in a bona fide enterprise which benefits the Commonwealth. A certificate holder shall not deviate from an approved investment.

(2) The review committee shall determine the criteria for approval of the application for a long term business certificate, which may include, but are not limited to, the following:

(i) The representations made by the alien in his or her application and representations made through interviews by members of the review committee;

(ii) The length of time for which the long term business certificate may be granted before it shall be subject to reconsideration for renewal;

(iii) The types and scope of business activities in which the alien may engage;

TITLE 20: DEPARTMENT OF COMMERCE

- (iv) The creation and guarantees of employment preferences for Commonwealth residents; and,
- (v) Such other conditions as the review committee deems appropriate.
- (3) Evaluation Factors - New Enterprises. In determining whether a proposed investment in a new enterprise is an approved investment, the review committee shall consider the following:
 - (i) [Rescinded by PL 10-44.]
 - (ii) The type of enterprise proposed by the alien investor;
 - (iii) The reputation and business experience of the alien investor;
 - (iv) The number and type of employment opportunities to be created for Commonwealth residents by the enterprise;
 - (v) The number of alien workers to be employed by the enterprise;
 - (vi) The demand for the type of enterprise and existing competition;
 - (vii) The island or islands on which the enterprise will be located;
 - (viii) The extent to which the enterprise will reduce imports and increase exports;
 - (ix) The extent of which the enterprise will increase the availability of goods and services at competitive prices to Commonwealth residents;
 - (x) The extent to which the enterprise will support or enhance existing industries in the Commonwealth;
 - (xi) The extent to which the enterprise will develop the resources of the Commonwealth;
 - (xii) The extent of any equity participation in the enterprise by Commonwealth residents;
 - (xiii) Whether the enterprise will be a substantial, on going business, as distinct from a marginal enterprise established solely for the purpose of earning a living for the alien and his family; and
 - (xiv) The extent to which the enterprise will contribute to the overall economic well-being of the Commonwealth without adversely affecting existing social, cultural, and ethnic conditions in the Commonwealth.
- (4) Evaluation Factors - Existing Enterprises. In determining whether a proposed investment in a new* enterprise is an approved investment, the review committee shall consider the following:
 - (i) [Rescinded by PL 10-44.]
 - (ii) The type of business engaged in by the existing enterprise;
 - (iii) The size and financial integrity of the existing enterprise;
 - (iv) The ownership of the existing enterprise; and
 - (v) The nature and extent of the alien investor's participation in the management of the existing enterprise;
 - (vi) The number of resident employees shall not be less than 20% of total employees of the existing enterprise.

*So in original; see the comment to this section.

(c) Application Process.

- (1) The applicant shall file an application for a long term business certificate with the Secretary. The application will not be accepted without the necessary supporting documents and shall become the property of the Secretary once submitted. All documents shall be filed* out under penalty of perjury.
- (2) The following documents shall be attached to a completed application form:
 - (i) Certified copy of birth certificate;

TITLE 20: DEPARTMENT OF COMMERCE

- (ii) Any document deemed necessary by the Secretary to substantiate the applicants immigration entry classification;
 - (iii) One and one-quarter inch frontal photograph in either black and white or color; and,
 - (iv) Evidence that capital has been invested may include bank statements showing amounts deposited in CNMI business accounts, invoices, receipts or contracts for assets purchased, stock purchase transaction records, loan or other borrowing agreements, land leases, financial statements, business gross tax receipts, and any other agreements supporting application;
 - (v) Evidence that applicant has invested or is actively in the process of investing amount required. These may include evidence of assets which have been purchased for use in the enterprise, evidence of property transferred from abroad for use in the enterprise, evidence of monies transferred or committed to be transferred to the new or existing enterprise in exchange for shares of stock, any loan or mortgage, promissory note, security agreement or other evidence of borrowing which is secured by assets of applicant;
 - (vi) Business plan/proposal incorporating evaluation factors for new enterprises;
 - (vii) Articles on incorporation, by-laws, partnership agreements, joint venture agreements, corporate minutes and annual reports, affidavits, declarations or certifications of paid-in capital;
 - (viii) Current business license(s);
 - (ix) Foreign business registration records, recent tax returns of any kind, evidence of other sources of capital;
 - (x) Listing of all resident and nonresident employees;
 - (xi) Listing of all holders of business certificates for the business establishment;
 - (xii) Listing of all corporations held by applicants;
 - (xiii) Any other documents required by the Secretary;
 - (xiv) A police clearance valid for the previous two years from the date of application for the long term business certificate.
- (3) Applicants for a long term business certificate shall file with the Department of Commerce a completed application form approved by the Secretary. The procedures for the review of an application for a long term business certificates are set forth in § 20-30.2-115.

*So in original, probably should be "filled."

- (d) Renewal of a long term business certificate (two year term and one year term business permits/certificate).
- (1) The holder of a long term business certificate has no absolute right to renewal of the certificate. An application for renewal will be denied when the review committee finds:
- (i) That the application has remained incomplete for at least 30 days since submission; or
 - (ii) Applicant obtained business entry permit illegally, or that applicant should not have been granted a permit in the initial application; or
 - (iii) Applicant violated any provision of this subchapter; or
 - (iv) Applicant has not maintained an approved investment in continuing compliance with standards of issuance of business certificates; or
 - (v) Applicant committed fraud or misrepresentation in any material assertion in the application for the initial or renewal of application; or
 - (vi) Applicant has been subjected to adjudication of bankruptcy regarding the approved investment.
- (2) An alien may apply for a renewal by submitting an application for a renewal with the Secretary at least 90 days prior to the expiration of the alien investor's previously issued long

TITLE 20: DEPARTMENT OF COMMERCE

term business entry permit. Applications received after the expiration of the entry visa and commerce certificate shall be denied.

(3) The applicant shall be afforded the 90 day business certificate opportunity to take steps necessary to liquidate, transfer, or dispose of assets of an approved investment following termination or non-renewal of application.

(4) The long term business certificate may be renewed if the review committee finds that the alien's investment continues to be in compliance with the standards set forth in this subchapter. Holders of long term business entry permits with investments of less than the required amount must meet requirement within two years after the final adoption of this subchapter.

Modified, 1 CMC § 3806(c), (d), (e), (f), (g).

History: Amdts Adopted 18 Com. Reg. 14314 (Aug. 15, 1996); Amdts Proposed 18 Com. Reg. 14201 (July 15, 1996); Amdts Adopted 18 Com. Reg. 13925 (Jan. 15, 1996); Amdts Proposed 17 Com. Reg. 13871 (Dec. 15, 1995); Adopted 17 Com. Reg. 12729 (Jan. 15, 1995); Proposed 16 Com. Reg. 12560 (Nov. 15, 1994); Emergency and Proposed 16 Com. Reg. 12332 (Sept. 15, 1994) (effective for 120 days from Aug. 24, 1994); Certified 14 Com. Reg. 9179 (Apr. 15, 1992).

Commission Comment: Foreign Investment Reg. § 1001 is codified, as amended by PL 10-44 § 7, PL 12-11 (effective Aug. 3, 2000), and PL 13-51 (effective Apr. 21, 2003), at 4 CMC §§ 5941-5944; see the general comment to this subchapter. PL 10-44 § 7(b) and (c) rescinded and reenacted Foreign Investment Reg. §§ 1001A.1., 1001B.3.a., and 1001B.4.a. as follows:

(b) Section 1001, B., 3., a., entitled Evaluation Factors - New Enterprises, and Section 1001, B., 3., a., entitled Evaluation Factors - Existing Enterprises, are not incorporated by reference and are rescinded and reenacted to read:

“3. a. The amount of capital invested or to be invested by the Alien Investor, shall not be less than \$150,000.”

“4. a. The amount of capital invested or to be invested by the Alien Investor, shall not be less than \$150,000 in a public organization or not less than \$250,000, in a private investment.”

(c) Section 1001, A., 1., is not incorporated by reference and is rescinded and reenacted to read:

“1. A holder of a long term business certificate entitles the Alien Investor to lawfully engage in business in the Commonwealth for a period of two (2) years; Provided, however, that the Alien Investor shall provide a security deposit in the sum of \$100,000 on deposit in a banking or trust institution approved by the Secretary of the Department of Finance. Exclusive authorized signature authority for the security deposit shall be the Secretary of the Department of Commerce. The security deposit may be withdrawn only upon dissolution of the business. Any funds remaining on deposit, after all applicable taxes are fully satisfied, shall be used to pay for any and all unpaid accounts with creditors in the Commonwealth. Any funds remaining in the account after taxes and creditors' claims have been satisfied shall be returned to the certificate holder.”

Sections 1001A.1., 1001B.3.a., and 1001B.4.a. are redesignated as subsections (a)(1), (b)(3)(i), and (b)(4)(i) respectively.

PL 12-11 (effective Aug. 3, 2000) and PL 13-51 (effective Apr. 21, 2003) further amended former section 1001(a), codified at 4 CMC § 5941.

Subsection (b) originally contained two subsections designated (b)(3). The January 1996 amendments redesignated “Evaluation Factors - Existing Enterprises” as subsection (b)(4). See 17 Com. Reg. at 13873 (Dec. 15, 1995). The original paragraphs of subsection (d) were not designated. The commission designated subsections (d)(1) through (d)(4).

TITLE 20: DEPARTMENT OF COMMERCE

The January 1996 amendments amended subsections (b)(3)(i) and (b)(4)(i). PL 10-44 did not enact the January 1996 amendments as statutory law and subsections (b)(3)(i) and (b)(4)(i) were rescinded and reenacted by PL 10-44 § 7(b).

The starred language in subsection (b)(4) was erroneously changed by the January 1996 amendments and probably should read “an existing enterprise.” Compare 17 Com. Reg. at 12741 (Jan. 15, 1995) and 17 Com. Reg. at 13873 (Dec. 15, 1995).

The August 1996 amendments added new subsection (c)(2)(xiv).

In subsection (b)(2), the commission changed “criterias” to “criteria.” In subsection (b)(3)(xiv), the commission changed the final semicolon to a period. In subsections (c)(1)(i) through (c)(1)(xiv), the commission changed the final punctuation to a semi-colon as necessary to maintain consistency. In subsection (c)(2)(viii), the commission inserted the final semicolon.

§ 20-30.2-210 Foreign Investment Certificate

(a) Conditions.

(1) [Rescinded by PL 10-44.]

(2) The application fee for a foreign investor certificate shall be paid to the CNMI Treasurer prior to filing an application for this certificate with the Secretary.

(3) All applications for a foreign investor certificate must be made only after the applicant has lawfully entered the Commonwealth. Holders of a short term business entry permit, a regular term business certificate, or a long term business certificate shall be eligible to apply for a foreign investor certificate.

(b) Standard of Review. An approved investment for the purposes of this section means an investment approved by the Secretary, which approval shall be subject to the following standards:

(1) Minimum Amount of Investment. The amount of the “approved investment” shall be \$100,000 per person in an aggregate “Approved Investment” in excess of \$2,000,000; or, \$250,000 by an individual in a single “approved investment.”

(2) Approved Investment Standards. In reviewing the acceptability of an approved investment for purposes of determining issuance or denial of a certificate of foreign investment, the Secretary shall consider:

(i) The relative need for or desirability of the type of enterprise described by the applicant;

(ii) Whether or not the proposed enterprise is in compliance with local and/or federal laws;

(iii) The number and description of employment positions created by the enterprise or which will be created for qualified Commonwealth residents and the extent to which non-residents personnel are or will be utilized at the outset of the applicant’s enterprise, the quality and projected performance of a resident employee training program, if any;

(iv) The effect which the enterprise will have upon the ecology of the Commonwealth including its pollutant or non-pollutant status, its potential impact on the fresh water table, and the likelihood of creating waste products that would be detrimental to the environment;

(v) The personal integrity and business reputation of the alien investor and any associate investors involved in the enterprise;

(vi) To the extent that such factor can be determined, the likelihood that the enterprise will continue its operation in the Commonwealth for a substantial period of time;

TITLE 20: DEPARTMENT OF COMMERCE

- (vii) The extent to which contractors, subcontractors, labor and materials and other supplies available locally have been or will be utilized in the establishment, construction and operation of the enterprise;
 - (viii) The extent to which the enterprise will impact upon power and water resources in the Commonwealth, whether or not the enterprise includes water catchments, separate power plant, separate water wells, other independent water or power resource; and if not, the amounts of water and power necessary for establishment, construction, and operation of the enterprise;
 - (ix) The likelihood that the enterprise has not been organized in good faith or with a permanent character or that the issuance of a certificate of foreign investment will be misused;
 - (x) Nothing in these standards shall preclude the foreign investor from investing in an ongoing enterprise.
- (c) Application Process.
- (1) Issuance of Certificates of Foreign Investment.
 - (i) The alien investor shall submit an application for an approved investment subject to the standards and criteria outlined in this section. The applicant shall provide all information and supporting documents as deemed necessary by the Secretary.
 - (ii) The review committee shall review the application for an approved investment and, in the event that the proposal complies with the standards and criteria outlined in this section, it shall communicate its decision to the Secretary in writing. The Secretary shall inform the applicant of the decision of the review committee. If the application is approved, the Secretary shall issue an approval letter to the applicant. The approval letter shall not be evidence of a certificate of foreign investment as referenced in subsection (a)(1) [rescinded by PL 10-44]. The approval letter shall be issued or denied within a time period not to exceed forty-five days from the date of application.
 - (iii) After receiving an approval letter regarding a proposed approved investment, the alien investor shall secure the necessary financial backing to proceed with the approved investment.
 - (iv) After obtaining necessary financial backing to finance the approved investment, the alien investor shall supply documentary proof of such backing to the Secretary for his review and approval. This documentation shall be sufficient to convince the Secretary that the alien investor has sufficient backing to initiate the approved investment within one hundred and eighty days following the issuance of a certificate of foreign investment. This documentation may include cash deposits, letters of credit, or any other evidence of financial ability acceptable to the Secretary.
 - (v) Upon receipt and approval of documentation proving financial ability of the alien investor, the Secretary shall issue a certificate of foreign investment. Issuance or denial of the certificate of foreign investment shall be effected by the Secretary within a time period not to exceed thirty days after the receipt of the financial backing documentation.
 - (vi) In the event the Secretary denies issuance of either an approval letter or a certificate of foreign investment to any applicant, the Secretary shall deliver the reasons for denial in writing to the applicant within the time periods specified in subsections (ii) and (v).
 - (2) Certification. After the issuance of an approval letter to the applicant, the Secretary shall certify to the Director of the Immigration Service that the applicant is eligible for a foreign investor visa.

TITLE 20: DEPARTMENT OF COMMERCE

(d) Duration of Certificate of Foreign Investment. The duration of the certificate of foreign investment shall be perpetual; provided that the approved investment continues to comply with the standards of issuance.

(e) Annual Report. The holder of a certificate of foreign investment must submit to the Secretary an annual report of investment activities in the Commonwealth on or before January 1 of each year. The report shall contain the information necessary for the Secretary to determine whether or not the certificate holder is under continuing compliance with the standards of issuance. This report shall be accompanied with an annual financial audit report performed by an independent certified public accountant.

(f) Fees. An application for a certificate of foreign investment shall be accompanied by a non-refundable fee of \$10,000.00 for the processing of the application.

(g) Revocation of Certificate of Foreign Investment.

(1) The Secretary, after permitting the certificate holder (or his authorized representative) to appear before him, in person, and finding, upon a preponderance of the evidence reviewed by him, that the alien investor has:

(i) Not maintained an approved investment in continuing compliance with the standards of issuance of a certificate of foreign investment; and/or

(ii) Committed fraud or misrepresentation in any material assertion in the application for the approval letter, the certificate of foreign investment, or the annual report required pursuant to subsection (e) herein; and/or

(iii) Been subjected to an adjudication of bankruptcy regarding the alien investment; and/or

(iv) Failed to comply with any conditions or obligations stated in the certificate of foreign investment, after having been afforded by the Secretary reasonable period within which to correct such failure; provided, however, that should the alien investment fail for reasons beyond the control of the alien investor, the Secretary shall provide reasonable time to the alien investor within which to refinance the approved investment, or secure participation in an alternative approved investment;

(v) Been subjected to a finding by the Attorney General that the corporate parent for the enterprise, if any, has been dissolved; and/or

(vi) Violated any provision of this subchapter.

(2) The Secretary shall either take steps to secure correction of any insufficiency or non-compliance, or revoke the certificate of foreign investment, the alien investor shall be afforded a six-month grace period following termination or revocation of his certificate, in order to take steps necessary to liquidate, transfer or otherwise dispose of assets connected with the alien investor's approved investment activity. The Secretary shall inform the Secretary of Labor and Immigration in writing of his decision to revoke and/or deny renewal of the certificate of foreign investment, and compute the six month's grace period date commencing from the date of denial and/or revocation. The alien investor's foreign investment visa (and any visas held by members of his immediate family) shall be valid up to and including the final day of the six-month grace period following termination of the certificate of foreign investment.

Modified, 1 CMC § 3806(d), (e), (f), (g).

TITLE 20: DEPARTMENT OF COMMERCE

History: Adopted 17 Com. Reg. 12729 (Jan. 15, 1995); Proposed 16 Com. Reg. 12560 (Nov. 15, 1994); Emergency and Proposed 16 Com. Reg. 12332 (Sept. 15, 1994) (effective for 120 days from Aug. 24, 1994); Certified 14 Com. Reg. 9179 (Apr. 15, 1992); Adopted 5 Com. Reg. 1782 (Jan. 31, 1983); Proposed 4 Com. Reg. 1679 (Nov. 22, 1982). Commission Comment: Foreign Investment Reg. § 1101 is codified, as amended by PL 10-44 § 7, and PL 12-11 (effective Aug. 3, 2000), at 4 CMC §§ 5951-5957; see the general comment to this subchapter.

PL 10-44 § 7(d) rescinded and reenacted Foreign Investment Reg. § 1101A.1., as follows:

(d) Section 1101, A., 1., is not incorporated by reference and is rescinded and reenacted to read:

“1. A certificate of Foreign Investment is a certificate issued to an alien who has met all the standards and conditions enumerated in this Part as proof of the holder’s participation as an alien investor in an approved investment in the Commonwealth. The holder shall have the right to lawfully engage in business in the Commonwealth as long as the Alien Investor complies with the terms upon which the certificate was issued; Provided, however, that the Alien Investor shall provide a security deposit in the sum of \$100,000 on deposit in a banking or trust institution approved by the Secretary of the Department of Finance. Exclusive authorized signature authority for the security deposit shall be the Secretary of the Department of Commerce. The security deposit may be withdrawn only upon dissolution of the business. Any funds remaining on deposit, after all applicable taxes are fully satisfied, shall be used to pay for any and all unpaid accounts with creditors in the Commonwealth. Any funds remaining in the account after taxes and creditors’ claims have been satisfied shall be returned to the certificate holder.”

Section 1101A.1. is redesignated as subsection (a)(1) of this section. PL 12-11 (effective Aug. 3, 2000) further amended former subsection 1101(a)(1), codified at 4 CMC § 5951.

The last paragraph of subsection (g) was not designated. The commission designated it subsection (g)(2).

The cross-references in subsections (c)(1)(ii), (c)(1)(vi) and (g)(1)(ii) were not correct. See 17 Com. Reg. at 12744-45 (Jan. 15, 1995) (incorrectly citing subsections (1)(a), (2)(b) and (e), and section 4, respectively). The commission corrected the cross-references to applicable sections.

In subsection (b)(1), the commission moved the final period inside the closing quotation mark. In subsections (b)(2)(iv) and (g)(1)(iv), the commission changed the final period to a semicolon.

Part 300 - Other Foreign Investment and Fees

§ 20-30.2-301 Other Foreign Investment

Nothing in this subchapter shall preclude foreign investment in the Commonwealth; however, any other manner of foreign investment shall not entitle the alien investor to a commerce certificate.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 17 Com. Reg. 12729 (Jan. 15, 1995); Proposed 16 Com. Reg. 12560 (Nov. 15, 1994); Emergency and Proposed 16 Com. Reg. 12332 (Sept. 15, 1994) (effective for 120 days from Aug. 24, 1994); Certified 14 Com. Reg. 9179 (Apr. 15, 1992); Adopted 5 Com. Reg. 1782 (Jan. 31, 1983); Proposed 4 Com. Reg. 1679 (Nov. 22, 1982).

Commission Comment: Foreign Investments Reg. § 1201 is codified at 4 CMC § 5971; see the general comment to this subchapter.

§ 20-30.2-305 Fee Schedule

TITLE 20: DEPARTMENT OF COMMERCE

All fees collected under this section shall be deposited with the CNMI Treasury and are non-refundable.

| | | |
|-----|--|--|
| (a) | Regular-term business certificate | \$200 |
| (b) | Long-term business certificate | \$1,000 |
| (c) | Foreign investment certificate | \$10,000 |
| (d) | Immediate relative certificate | \$2,500 |
| (e) | Annual registration | \$100 |
| (f) | Penalty for violation of this subchapter | \$100 per day the violation is not resolved and \$100 per violation |

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 31 Com. Reg. 29371 (Apr. 27, 2009); Amdts Proposed 31 Com. Reg. 29224 (Feb. 25, 2009); Adopted 17 Com. Reg. 12729 (Jan. 15, 1995); Proposed 16 Com. Reg. 12560 (Nov. 15, 1994); Emergency and Proposed 16 Com. Reg. 12332 (Sept. 15, 1994) (effective for 120 days from Aug. 24, 1994).

Commission Comment: Foreign Investments Reg. § 1301 is codified at 4 CMC § 5972; see the general comment to this subchapter.

§ 20-30.2-310 Annual Registration

Each holder of a long term business entry permit, a foreign investor entry permit, or a permit issued to an immediate relative of a long term business permit holder or a foreign investor permit holder must register annually with the Department, provide a current address and contact information, and reaffirm the accuracy of the representations made to the Department upon which the entry permit was authorized by the Department.

History: Adopted 31 Com. Reg. 29371 (Apr. 27, 2009); Proposed 31 Com. Reg. 29224 (Feb. 25, 2009).

§ 20-30.2-315 Extensions and Renewals

Applications for extensions and renewals of long term business entry permits, foreign investor permits, and immediate relative permits shall be made to the Secretary and shall be reviewed under the same standards as applications for initial commerce certificates.

History: Adopted 31 Com. Reg. 29371 (Apr. 27, 2009); Proposed 31 Com. Reg. 29224 (Feb. 25, 2009).

TITLE 20: DEPARTMENT OF COMMERCE

Appendix A Forms

FOREIGN INVESTMENT REVIEW COMMITTEE

DATE SUBMITTED: _____

* THE FOLLOWING DOCUMENTS WERE SUBMITTED TO THE FOREIGN INVESTMENT REVIEW COMMITTEE IN ORDER TO CONSIDER APPLICATION.

CHECK LIST

_____ Documents to support financial backing

_____ Description of proposed project or line of business

_____ Evidence of character and business reputation of all involved investors

_____ Immigration status of involved investors and family members Principal:

_____ Copy of Certificate of Incorporation

_____ Fees paid

Receipt no. _____

History: Adopted 17 Com. Reg. 12729 (Jan. 15, 1995); Proposed 16 Com. Reg. 12560 (Nov. 15, 1994); Emergency and Proposed 16 Com. Reg. 12332 (Sept. 15, 1994).

Commission Comment: This form was published following section 1301 of the Foreign Investment Regulations at 17 Com. Reg. 12729, 12747 (Jan. 15, 1995) and is reprinted in the comments to 4 CMC § 5913.

TITLE 20: DEPARTMENT OF COMMERCE

FOREIGN INVESTMENT REVIEW COMMITTEE

* Application for Foreign Investment Certificate for _____ has been:

Approved

Denied

Review Committee Date

Review Committee Date

Review Committee Date

Review Committee Date

Review Committee Date

Review Committee Date

COMMENTS:

History: Adopted 17 Com. Reg. 12729 (Jan. 15, 1995); Proposed 16 Com. Reg. 12560 (Nov. 15, 1994); Emergency and Proposed 16 Com. Reg. 12332 (Sept. 15, 1994).

Commission Comment: This form was published following section 1301 of the Foreign Investment Regulations at 17 Com. Reg. 12729, 12748 (Jan. 15, 1995) and is reprinted in the comments to 4 CMC § 5913.

TITLE 20: DEPARTMENT OF COMMERCE

LONG TERM BUSINESS ENTRY CERTIFICATE (2 YRS)

*The following documents are to be submitted before the review committee in order to consider application.

CHECK LIST

- ___ COMPLETED LTBEAC APPLICATION
- ___ PHOTO
- ___ MARRIAGE CERTIFICATE
- ___ CURRENT POLICE CLEARANCE
- ___ HEALTH CERTIFICATE
- ___ COPY OF PASSPORT
- ___ BIRTH CERTIFICATE
- ___ BGRT QUARTERLY
- ___ WITHHOLDING EMPLOYEE TAX
- ___ BUSINESS LICENSE OF EXISTING BUSINESS
- ___ BY-LAWS
- ___ ARTICLES OF INCORPORATION
- ___ CORPORATE CHARTER
- ___ AFFIDAVIT/CERTIFICATION/DECLARATION OF PAID IN CAPITAL
- ___ BUSINESS FINANCIAL STATEMENT
- ___ LEASE AGREEMENT PRIVATE/PUBLIC
- ___ SKETCH OF LOCATION
- ___ LIST OF DEPENDENTS
- ___ INVENTORY OF ASSETS
- ___ FILING FEE PAID RECEIPT NO. _____

A. IS APPLICANT ON ISLAND ___ OFF ISLAND ___

B. TYPE OF PERMIT _____ NO. _____

C. ANY AMENDMENTS TO BUSINESS(LIST) _____

D. APPLICATION SUBMITTED BY INCORPORATOR ___ AGENT(NAME) _____

E. SOCIAL SECURITY NUMBER OF INCORPORATOR:
PREVIOUS # _____ NEW # _____

DOCUMENTS REVIEWED BY: _____

STATUS: ___ RECOMMENDED FOR APPROVAL
 ___ RECOMMENDED FOR DENIAL
 ___ PENDING

COMMENTS: _____

TITLE 20: DEPARTMENT OF COMMERCE

History: Adopted 17 Com. Reg. 12729 (Jan. 15, 1995); Proposed 16 Com. Reg. 12560 (Nov. 15, 1994); Emergency and Proposed 16 Com. Reg. 12332 (Sept. 15, 1994).

Commission Comment: This form was published following section 1301 of the Foreign Investment Regulations at 17 Com. Reg. 12729, 12749 (Jan. 15, 1995) and is reprinted in the comments to 4 CMC § 5943.

TITLE 20: DEPARTMENT OF COMMERCE

FOREIGN INVESTMENT APPLICATION REQUIREMENTS

* Detailed information on required documents

A. DOCUMENTS TO SUPPORT FINANCIAL BACKING

1. Corporation authorizes Department of Commerce to do bank inquiry or verification.
2. Bank statements, financial statements, bank references submitted.
3. Does corporation have any loan commitments if so, please provide pertinent documents.

B. DESCRIPTION OF PROPOSED PROJECT OR LINE OF BUSINESS

1. Should provide a feasibility study or analysis
2. What type of work force, training program
3. Overall economic impact and environmental impact

C. EVIDENCE OF CHARACTER AND BUSINESS REPUTATION OF ALL INVOLVED INVESTORS

1. Letters of recommendation
2. Affiliations with other corporations
3. Police clearance

D. IMMIGRATION STATUS OF INVOLVED INVESTORS AND FAMILY MEMBERS

1. Number of Family members

E. COPY OF CERTIFICATION ON INCORPORATION

1. Proof or copy of Certification of Incorporation

History: Adopted 17 Com. Reg. 12729 (Jan. 15, 1995); Proposed 16 Com. Reg. 12560 (Nov. 15, 1994); Emergency and Proposed 16 Com. Reg. 12332 (Sept. 15, 1994).

Commission Comment: This form was published following section 1301 of the Foreign Investment Regulations at 17 Com. Reg. 12729, 12750 (Jan. 15, 1995) and is reprinted in the comments to 4 CMC § 5953.

TITLE 20: DEPARTMENT OF COMMERCE

CRITERIA ON APPROVING 90 DAY BUSINESS ENTRY CERTIFICATES

1. The 90 day entry permit sets out the initial stage in the foreign investment process. Due diligence is therefore necessary in the review process. This is a vital stage in the guidance and regulation of foreign investment. Below is a listing of business activities by priority as set forth by the Secretary of Commerce:

- A. Hotels/Motels
- B. Manufacturing
- C. Air Transportation/Transportation Services/Shipping
- D. Construction
- E. Banking/Finance
- F. Agriculture/Fishing
- G. Professional Service
- H. Retail/Wholesale Trade
- I. Restaurants and Bars
- J. All others

2. Business activity to be engaged in must be disclosed. A proposal or a business plan must be submitted incorporating evaluation factors for “new enterprises” A thru M.

3. Amount of capital invested or to be invested. Financial statements of principals, including companies owned or affiliated with principals.

4. Investment or financing schemes. Bank references, business background/experiences and references must be submitted. Commitment letters from financiers/banks to fund the project.

5. With investments of less than \$50,000, equity participation with U.S. citizens are encouraged.

6. Number of employees expected to be hired immediately. Training programs, management incentives and other employee benefits.

7. Expected duration of stays of applicants in the CNMI to tend to business.

8. Criteria in evaluating new enterprises under the Long Term Business Entry Permits program must be incorporated at this stage and not until a business is already opened and operating.*

*So in original.

History: Adopted 17 Com. Reg. 12729 (Jan. 15, 1995); Proposed 16 Com. Reg. 12560 (Nov. 15, 1994); Emergency and Proposed 16 Com. Reg. 12332 (Sept. 15, 1994).

Commission Comment: This form was published following § 1301 of the Foreign Investment Regulations at 17 Com. Reg. 12729, 12751 (Jan. 15, 1995) and is reprinted in the comments to 4 CMC § 5932. The commission changed “criterias” to “criteria” in the title and in number 8. In number 5, the commission changed “participations” to “participation.”

TITLE 20: DEPARTMENT OF COMMERCE

CHAPTER 20-30 COMMERCE RULES AND REGULATIONS

SUBCHAPTER 20-30.3 FOREIGN INVESTMENT REGULATIONS OF 2004

Part 001 **General Provisions**
[Reserved]

Part 100 **Disclosure of Tax Return**
Information
§ 20-30.3-101 Confidentiality and
Disclosure

Subchapter Authority: 1 CMC § 2454; 4 CMC §§ 5901-5972; 4 CMC § 1701(d).

Subchapter History: Adopted 26 Com. Reg. 22578 (May 24, 2004); Proposed 26 Com. Reg. 22230 (Apr. 23, 2004).

Commission Comment: 1 CMC § 2451 originally created the Department of Commerce and Labor. 1 CMC § 2454 directs the Department to adopt rules and regulations regarding those matters over which it has jurisdiction.

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:

Section 103. Department of Commerce.

The Department of Commerce and Labor is redesignated the Department of Commerce.

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

PL 10-44 (effective February 7, 1997), codified as amended at 4 CMC §§ 5901-5972, enacted the 1995 Foreign Investment Regulations, published as part II of the Commerce Rules and Regulations at 17 Com. Reg. 12729, 12736 (Jan. 15, 1995), and the amendments adopted at 18 Com. Reg. 14314 (Aug. 15, 1996), as statutory law.

The Department of Commerce never formally repealed or rescinded the 1995 Foreign Investment Regulations and the commission codified them in NMIAC, title 20, subchapter 30.2.

In 2004, the Department of Commerce promulgated new Foreign Investment Regulations pursuant to the statutory version of the 1995 Foreign Investment Regulations, 4 CMC §§ 5901-5972. The 2004 Foreign Investment Regulations are codified in this subchapter.

Section 702 of the Consolidated Natural Resources Act of 2008 (PL 110-229, codified at 48 U.S.C. § 1806) removed 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. These regulations have not been amended, but portions of the regulations pertaining to immigration are superseded by 48 U.S.C. § 1806.

Part 001 - **General Provisions**
[Reserved.]

Part 100 - **Disclosure of Tax Return Information**

§ 20-30.3-101 Confidentiality and Disclosure

TITLE 20: DEPARTMENT OF COMMERCE

Tax returns and tax return information furnished by applicants for an initial or a renewal of a certification from the Department of Commerce for the long term business certificate or the foreign investment certificate shall be kept confidential, and no officer or employee of the Department of Commerce shall disclose any return or return information obtained by him in any manner in connection with his services as such an officer or employee or otherwise. For purposes of this subsection, the term “officer or employee” includes a former officer or employee. Nothing in this section shall prohibit a Department of Commerce officer or employee from releasing tax returns and tax return information pursuant to a valid court order from a court of competent jurisdiction.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 26 Com. Reg. 22578 (May 24, 2004); Proposed 26 Com. Reg. 22230 (Apr. 23, 2004).

**CHAPTER 20-30
COMMERCE RULES AND REGULATIONS**

**SUBCHAPTER 20-30.4
RETIREE INVESTMENT**

Part 001 General Provisions

§ 20-30.4-101 Definitions

Part 100 Eligibility of Retirees

§ 20-30.4-101 Applications

§ 20-30.4-105 Qualified Retiree

§ 20-30.4-110 Certification and
Authorization for Entry

§ 20-30.4-115 Term

**Part 200 Eligibility of Immediate
Relatives of Retirees**

§ 20-30.4-201 Credentials of Immediate
Relatives of Retiree Investor

§ 20-30.4-205 Financial Support

§ 20-30.4-210 Certificate

Part 300 Other Provisions

§ 20-30.4-301 Employment

§ 20-30.4-305 Annual Registration

§ 20-30.4-310 Fees

History: Adopted 31 Com. Reg. 29371 (Apr. 27, 2009); Proposed 31 Com. Reg. 29224 (Feb. 25, 2009).

Commission Comment: Section 702 of the Consolidated Natural Resources Act of 2008 (PL 110-229, codified at 48 U.S.C. § 1806) removed 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. These regulations have not been amended, but portions of the regulations pertaining to immigration are superseded by 48 U.S.C. § 1806.

Part 001 - General Provisions

§ 20-30.4-001 Definitions

For the purposes of this subchapter, the following definitions shall apply:

(a) "Alien" means a person who is not a citizen or national or permanent resident (green card holder) of the United States;

(b) "Immediate relative" means a legally recognized spouse, and a child under the age of twenty-one years, whether natural or adopted before the age of eighteen years, and a stepchild if the marriage that created the stepchild relationship took place before the child's eighteenth birthday, and, in the case of a citizen, the parents, whether natural or adoptive of the citizen, provided that no alien shall derive immediate relative status from a child who is under the age of twenty-one years;

(c) "Residential dwelling investment" means an investment of \$75,000 or more in a dwelling place to be occupied by a retiree investor and his or her immediate relatives.

(d) "Retiree investor" means an alien who is 55 years of age or older and who has made or within 90 days will have made a residential dwelling investment in the Commonwealth.

TITLE 20: DEPARTMENT OF COMMERCE

History: Adopted 31 Com. Reg. 29371 (Apr. 27, 2009); Proposed 31 Com. Reg. 29224 (Feb. 25, 2009).

Commission Comment: The Commission corrected the semicolons at the ends of subsections (a) and (b) to periods pursuant to 1 CMC § 3806(g). The Commission struck the numbers “18” and “21” from subsection (b) pursuant to 1 CMC § 3806(e).

Part 100 Eligibility of Retirees

§ 20-30.4-101 Applications

- (a) The immigration class for retiree investors is 240(o). See regulations issued by the Division of Immigration, § 5-40.3-240(o).
- (b) Applications for entry permits shall be made on forms provided by the Secretary and signed by the applicant. Information on and supporting documentation for an application is submitted under penalty of perjury.
- (c) Applications shall be accompanied by the fee required under § 20-30.4-310.
- (d) Applications for a two-year permit will be accepted, at the discretion of the Secretary, upon the Secretary’s finding that a two-year permit is in the interests of the Commonwealth.
- (e) Applications shall not be accepted from aliens present in the Commonwealth whose presence is permitted solely because they have a pending labor, immigration or legal matter. However, once said matter is decided, settled, or dismissed, the alien may apply for an entry permit, renewal or change of status if the alien prevailed in the matter.

History: Adopted 31 Com. Reg. 29371 (Apr. 27, 2009); Proposed 31 Com. Reg. 29224 (Feb. 25, 2009).

Commission Comment: The Commission redesignated subsections (1) through (5) as subsections (a) through (e) pursuant to 1 CMC § 3806(a). The Division of Immigration section referenced in subsection (a) is no longer in effect. See 32 Com. Reg. 30094 (Apr. 19, 2010).

§ 20-30.4-105 Qualified Retiree

An alien applying for a retiree entry permit is qualified if the following requirements are met:

- (a) The retiree shall provide the biographical information required by the Secretary. A form is provided for this purpose by the Department.
- (b) The retiree is age 55 years or older at the time the retiree enters the Commonwealth under a Retiree Investor Entry Permit. The retiree shall provide a copy of a birth certificate or other documentation as to age acceptable to the Secretary.
- (c) The retiree shall provide documentation as required by the Secretary including a copy of a valid passport, a color photo, and, a police clearance reflecting the applicant’s criminal record

TITLE 20: DEPARTMENT OF COMMERCE

(d) The retiree shall provide documentation satisfactory to the Secretary demonstrating that a residential dwelling investment has been made or will be made within 90 days of the date of grant of the application.

(e) The retiree shall provide documentation satisfactory to the Secretary demonstrating that sufficient funds are or will be available from identified and reliable financial sources to defray living, medical, and other expenses for the retiree while resident in the Commonwealth.

History: Adopted 31 Com. Reg. 29371 (Apr. 27, 2009); Proposed 31 Com. Reg. 29224 (Feb. 25, 2009).

§ 20-30.4-110 Certification and Authorization for Entry

The Secretary or his or her designee shall provide to the Director of Immigration an authorization for entry, certifying that an alien has met the requirements for a retiree investment certificate, before an entry permit is processed by the Division of Immigration. The certification by the Secretary shall be consistent with the recommendation by the Foreign Investment Review Committee. No entry permit shall be issued by the Director of Immigration without an authorization for entry from the Secretary.

History: Adopted 31 Com. Reg. 29371 (Apr. 27, 2009); Proposed 31 Com. Reg. 29224 (Feb. 25, 2009).

§ 20-30.4-115 Term

The certification and entry permit for a qualified retiree investor shall have a term that is co-extensive with the continuing qualification of the retiree investor.

History: Adopted 31 Com. Reg. 29371 (Apr. 27, 2009); Proposed 31 Com. Reg. 29224 (Feb. 25, 2009).

Part 200 - Eligibility of Immediate Relatives of Retirees

§ 20-30.4-201 Credentials of Immediate Relatives of Retiree Investor

(a) A parent or step-parent of a retiree investor shall produce birth certificates or adoption certifications to demonstrate the relationship.

(b) A spouse to whom a retiree investor is legally married shall produce marriage certificates or records to demonstrate the relationship.

(c) A child who is the natural or adopted son or daughter of a retiree investor, shall produce birth certificates or adoption records to demonstrate the relationship.

History: Adopted 31 Com. Reg. 29371 (Apr. 27, 2009); Proposed 31 Com. Reg. 29224 (Feb. 25, 2009).

Commission Comment: The Commission corrected the section number to § 20-30.4-201 pursuant to 1 CMC § 3806(a).

§ 20-30.4-205 Financial Support

TITLE 20: DEPARTMENT OF COMMERCE

The retiree or the immediate relative shall provide documentation satisfactory to the Secretary demonstrating that sufficient funds are or will be available from identified and reliable financial sources to defray living, medical, and other expenses for the immediate relative while resident in the Commonwealth.

History: Adopted 31 Com. Reg. 29371 (Apr. 27, 2009); Proposed 31 Com. Reg. 29224 (Feb. 25, 2009).

§ 20-30.4-210 Certificate

An immediate relative of the holder of a Retiree Investor Entry Permit may be issued an immediate relative certificate and authorization for an entry permit for the same duration as the holder of the Retiree Entry Permit, provided that the immediate relative is not an excludable alien.

History: Adopted 31 Com. Reg. 29371 (Apr. 27, 2009); Proposed 31 Com. Reg. 29224 (Feb. 25, 2009).

Commission Comment: The Commission redesignated this section as 20-30.4-210 pursuant to 1 CMC § 3806(a).

Part 300 Other Provisions

§ 20-30.4-301 Employment

The holder of a Retiree Investor Entry Permit or an immediate relative may be employed for less than 20 hours a week in the Commonwealth.

History: Adopted 31 Com. Reg. 29371 (Apr. 27, 2009); Proposed 31 Com. Reg. 29224 (Feb. 25, 2009).

§ 20-30.4-305 Annual Registration

Each holder of a Retiree Investor Permit and all immediate relatives of a Retiree Investor Permit shall register annually with the Department.

History: Adopted 31 Com. Reg. 29371 (Apr. 27, 2009); Proposed 31 Com. Reg. 29224 (Feb. 25, 2009).

§ 20-30.4-310 Fees

The following fees shall apply:

- | | |
|------------------------------------|-----------|
| (a) Retiree Investor Certificate | \$1000.00 |
| (b) Immediate Relative Certificate | \$500.00 |
| (c) Annual registration | \$100.00 |

History: Adopted 31 Com. Reg. 29371 (Apr. 27, 2009); Proposed 31 Com. Reg. 29224 (Feb. 25, 2009).

TITLE 20: DEPARTMENT OF COMMERCE

**CHAPTER 20-30
COMMERCE RULES AND REGULATIONS**

**SUBCHAPTER 30-30.5
FOREIGN STUDENTS**

Part 001 General Provisions

- § 20-30.5-001 Purpose
- § 20-30.5-005 Definitions
- § 20-30.5-010 Service of Process
- § 20-30.5-015 Fees

Part 100 Eligibility of Students

- § 20-30.5-101 Academic Students from Abroad
- § 20-30.5-105 Vocational Students from Abroad
- § 20-30.5-110 Minor Children of Aliens Legally in the Commonwealth
- § 20-30.5-115 Transfers
- § 20-30.5-120 Employment

Part 200 Eligibility of Immediate Relatives of Students

- § 20-30.5-201 Credentials of Immediate Relatives of Foreign Students
- § 20-30.5-205 Entry Permits for Immediate Relatives of Foreign Students

Part 300 Issuance and Revocation of Permits

- § 20-30.5-301 Issuance of Permits
- § 20-30.5-305 Extension and Renewal of Permits
- § 20-30.5-310 Denial of Permits
- § 20-30.5-315 Revocation of Permits

Part 400 Eligibility of Educational Institutions

- § 20-30.5-401 Issuance of Certification
- § 20-30.5-405 Denial of Certification
- § 20-30.5-410 Revocation of Certification
- § 20-30.5-415 Record-Keeping Requirements
- § 20-30.5-420 Inspections

Part 500 Appeals

- § 20-30.5-501 Commencing an Appeal
- § 20-30.5-505 Hearings on Appeal
- § 20-30.5-510 Judicial Review

History: Adopted 31 Com. Reg. 29371 (Apr. 27, 2009); Proposed 31 Com. Reg. 29224 (Feb. 25, 2009).

Commission Comment: Section 702 of the Consolidated Natural Resources Act of 2008 (PL 110-229, codified at 48 U.S.C. § 1806) removed 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. These regulations have not been amended, but portions of the regulations pertaining to immigration are superseded by 48 U.S.C. § 1806.

Part 001 - General Provisions

§ 20-30.5-001 Purpose

- (a) Replacement. The regulations in this subchapter shall replace in their entirety those immigration regulations with respect to foreign students previously adopted.

TITLE 20: DEPARTMENT OF COMMERCE

(b) Separation of functions. These regulations shall separate the functions relating to the entry and exit of foreign students from other immigration functions.

(c) Implementation of immigration regulations as applied to foreign students.

(1) These regulations implement the regulations issued by the Division of Immigration, § 5-40.3-240(h), pertaining to foreign students, which provides as follows:

An alien who presents a certificate of admission to an educational institution or school established by Commonwealth law or licensed to operate by the Department of Commerce and who meets the other applicable immigration requirements in these regulations may be issued a Foreign Student Entry Permit. An alien who is a holder of this class of entry permit may enter and remain in the Commonwealth as long as the alien is qualified to study and is a full-time student in the Commonwealth, and the educational institution or school remains qualified under Commonwealth law or a certification issued by the Department of Commerce.

This class of entry permit does not include enrollees or students in preschool or kindergarten programs.

A holder of this class of entry permit may not work or be employed in the Commonwealth except for participation in an on-campus work-study program intended to defray the cost of tuition or living expenses; work for a licensed business not more than 10 hours a week in the student's field of study; or participation in paid activities constituting academic research or training in the student's field of study.

(2) These regulations also implement § 5-40.3-255 of the regulations issued by the Division of Immigration which provides as follows:

The annual registration for foreign students (entry permit class 240 (h))... is the responsibility of the Department of Commerce.

(3) These regulations also implement § 5-40.3-260 of the regulations issued by the Division of Immigration which provides as follows:

Entry permits may be renewed or extended only pursuant to the provisions of these Regulations.... [R]enewals or extensions for foreign students.... are the responsibility of the Department of Commerce. A one-time extension of up to six months may be made available for persons holding valid permits who are eligible for a two-year permit upon payment of the entry permit fee and qualification pursuant to these regulations.

History: Adopted 31 Com. Reg. 29371 (Apr. 27, 2009); Proposed 31 Com. Reg. 29224 (Feb. 25, 2009).

Commission Comment: The Division of Immigration regulations referenced here were repealed in 32 Com. Reg. 30094 (Apr. 19, 2010).

§ 20-30.5-005 Definitions

For the purposes of this subchapter, the following definitions shall apply:

TITLE 20: DEPARTMENT OF COMMERCE

- (a) "Alien" means a person who is not a citizen or national or permanent resident (green card holder) of the United States;
- (b) "Class" means one of the nonimmigrant alien entry classes defined in the regulations issued by the Division of Immigration, § 5-40.3-240, Entry Permit Classes;
- (c) "Commonwealth" means the Commonwealth of the Northern Mariana Islands;
- (d) "Department" means the Department of Commerce of the Commonwealth of the Northern Mariana Islands;
- (e) "Director of Immigration" means the Director of Immigration, who is the official in charge of the Division of Immigration, and who is responsible to the Attorney General;
- (f) "Division of Immigration" means the Division of Immigration which is responsible for all Commonwealth immigration functions, including all entry and exit of vessels and aircraft and all entry, exit, repatriation, and deportation of persons;
- (g) "Educational institution" means an academic or vocational school that has an established course of study leading to a degree or certificate of completion and includes the Northern Marianas College and other post-secondary schools, elementary and secondary schools, language schools, religious schools, vocational schools, sports schools, and professional training programs;
- (h) "Entry" means entry into the Commonwealth by air or by sea at an authorized port of entry;
- (i) "Entry permit" means documentation authorizing the entry into and the continued presence of a nonimmigrant alien in the Commonwealth. The entry permit is issued for purposes of providing entry to and exit from the Commonwealth for qualified persons, as long as the person remains qualified under the particular requirements applicable to each class of entry permit as provided in the regulations issued by the Division of Immigration, Part 5-40.3-230;
- (j) "Exit" means exit from the Commonwealth by air or by sea;
- (k) "Foreign Student Entry Permit" means an entry permit issued by the Division of Immigration after certification by the Secretary of Commerce that the foreign student and the educational institution the foreign student intends to attend are qualified under these regulations;
- (l) "Immediate relative" means a legally recognized spouse, a dependent child under the age of twenty-one (21) years, whether natural or adopted before the age of eighteen (18) years, a stepchild if the marriage that created the stepchild relationship took place before the child's eighteenth birthday, a disabled dependent child of any age whether natural or adopted before the age of eighteen (18) years, a parent, whether natural or adoptive, if the adoption took place before the child's eighteenth birthday;

TITLE 20: DEPARTMENT OF COMMERCE

- (m) “Nonimmigrant” means an alien who enters the Commonwealth pursuant to an entry permit issued by the Division of Immigration while having a domicile or citizenship or nationality in a foreign country that the alien has no intention of abandoning, so indicated by any response made by the alien in applying for entry to the Commonwealth or so indicated by the entry class of the permit issued by the Division of Immigration;
- (n) “Passport” means a travel document issued by the country of citizenship or nationality of a person that shows the bearer’s origin, identity and nationality;
- (o) “Regulation” means a regulation promulgated by the Secretary of Commerce pursuant to law and in compliance with 1 CMC § 9901 et seq.;
- (p) “Secretary” means the Secretary of Commerce of the Commonwealth of the Northern Mariana Islands.

History: Adopted 31 Com. Reg. 29371 (Apr. 27, 2009); Proposed 31 Com. Reg. 29224 (Feb. 25, 2009).

Commission Comment: The Division of Immigration was eliminated by PL 17-1 (Mar. 22, 2010). The Division of Immigration regulations referenced here were repealed in 32 Com. Reg. 30094 (Apr. 19, 2010). The Commission corrected the spelling of “vessels” in subsection (f) pursuant to 1 CMC § 3806(g).

§ 20-30.5-010 Service of Process

- (a) Service on the Department. Service of process on or service of any notice to the Department or its officials or employees is effective only if made upon the Secretary by personal service or by U.S. mail addressed to the Secretary at the Department.
- (b) Service by the Department.
- (1) Service on an educational institution: Service of process or service of any notice may be made by the Department by personal service on or service by U.S. mail addressed to the person who is the institution’s agent for the service of process, the person who signed the application, or any of the officers, directors, or managers (including principals) of the institution.
- (2) Service on an individual: Service of process or service of any notice may be made by the Department by personal service on or service by U.S. mail addressed to the individual. Service by U.S. mail may be addressed to the individual at the address in the files of the Department and is effective upon deposit in the U.S. mail..
- (3) Service by publication: Service or process or service of any notice may be made by the Department for any purpose, at the discretion of the Secretary, by publication by publishing a suitable notice once in each of two successive weeks in an English-language newspaper of daily (weekday) general circulation in the Commonwealth and is effective upon first publication.

History: Adopted 31 Com. Reg. 29371 (Apr. 27, 2009); Proposed 31 Com. Reg. 29224 (Feb. 25, 2009).

§ 20-30.5-015 Fees

- (a) Application fee. Each applicant for a Foreign Student Entry Permit shall pay an application fee of \$250.00 at the time of application.

TITLE 20: DEPARTMENT OF COMMERCE

- (b) Renewal fee. Each applicant for renewal of a Foreign Student Entry permit shall pay a renewal fee of \$100.00 at the time of renewal.
- (c) Annual registration fee. Each holder of a Foreign Student Entry Permit shall pay an annual registration fee of \$25.00 at the time of registration.
- (d) Sponsor fee. The sponsor of an alien applying for a Foreign Student Entry Permit shall pay a sponsor fee of \$100 to cover the costs of examination of the qualifications of the sponsor.
- (e) Certification fee. An educational institution seeking certification to enroll foreign students shall pay a fee of \$250.00 at the time of application for certification.
- (f) Appeal fee. A person filing an appeal with the Secretary shall pay an appeal fee of \$50.00 at the time of filing of the notice of appeal.
- (g) Payment of fees. Fees shall be paid by check or money order made out to the Commonwealth Treasury. Fees are non-refundable. Checks may be made out to the Commonwealth Treasury.

History: Adopted 31 Com. Reg. 29371 (Apr. 27, 2009); Proposed 31 Com. Reg. 29224 (Feb. 25, 2009).

Commission Comment: The Commission inserted a period at the end of subsection (f) pursuant to 1 CMC § 3806(g).

Part 100 Eligibility of Students

§ 20-30.5-101 Academic Students from Abroad

- (a) Applications for Foreign Student Entry Permit.
 - (1) The immigration class for foreign students is 240(h). See regulations issued by the Division of Immigration, § 5-40.3-240(h).
 - (2) Applications for entry permits shall be made on forms provided by the Secretary and signed by the applicant. If the student is a minor under the age of eighteen (18) years, the application shall also be signed by the parent or legal guardian of the minor. Information and supporting documentation for an application is submitted under penalty of perjury.
 - (3) Applications shall be for full-time study by the applicant at a qualified educational institution within the Commonwealth. Applications shall be signed by a responsible official of the educational institution that has admitted the student, affirming the admission and intent to comply with all applicable regulations.
 - (4) Applications shall be accompanied by the fee required under § 20-30.5-015(a)
 - (5) Applications shall be signed by the sponsor of the foreign student and shall be accompanied by the receipt for payment of the sponsor fee required under § 20-30.5-015(d)
 - (6) Applications for a two-year permit will be accepted, at the discretion of the Secretary, upon the Secretary's finding that a two-year permit is in the interests of the Commonwealth.
 - (7) Applications shall not be accepted from aliens present in the Commonwealth whose presence is permitted solely because they have a pending labor, immigration or legal matter.

TITLE 20: DEPARTMENT OF COMMERCE

However, once said matter is decided, settled, or dismissed, the alien may apply for an entry permit, renewal or change of status if the alien prevailed in the matter.

(b) Qualified student. An alien applying for a foreign student entry permit is qualified if the following requirements are met:

(1) The applicant shall provide the biographical information required by the Secretary. A form is provided for this purpose by the Department.

(2) The applicant may be of any age, but shall not be below the sufficient age to qualify for elementary school. Applications are not accepted for kindergarten or pre-kindergarten education. If the alien is under the age of eighteen (18) years, the applicant shall have a parent or legal guardian who resides in the Commonwealth. An alien parent who seeks to reside in the Commonwealth for this purpose is required to qualify for an Immediate Relative Entry Permit pursuant to § 20-30.5-205 and remain in the Commonwealth while the alien student is in the Commonwealth.

(3) The applicant shall have academic qualifications sufficient for the type of program for which the student seeks to enroll in the Commonwealth. Transcripts, degrees, and other evidence of academic qualifications shall be submitted in support of the application.

(4) The applicant shall provide documentation as required by the Secretary including a copy of a valid passport, a color photo, an original or certified copy of a birth certificate, and, if the alien is over the age of eighteen (18), a police clearance reflecting the applicant's criminal record.

(5) The applicant shall provide proof that sufficient funds are or will be available from an identified and reliable financial source to defray educational, living, and medical expenses for the applicant during the period of anticipated study. Proof may be offered in the form of a letter from the person who will be responsible for supporting the applicant while in the Commonwealth stating the commitment to be financially responsible for the applicant, salary statements or bank statements showing financial ability to support the applicant, proof of student loans or grants, proof of medical insurance, or other information that establishes proof of the necessary financial capability.

(c) Qualified educational institution.

(1) An applicant for a foreign student entry permit shall have applied and been admitted to a qualified educational institution in the Commonwealth. A qualified educational institution is one that has been licensed by the Secretary of Commerce or established by Commonwealth law and that meets the requirements of § 20-30.5-401 of these regulations.

(2) An official of a qualified educational institution shall sign the application for a Foreign Student Entry Permit certifying admission to the institution, payment by the foreign student or suitable arrangements for payment of tuition and fees for the school year immediately following admission, and the capability and intention of the institution to comply with these regulations in connection with the foreign student's presence in the Commonwealth.

(d) Qualified sponsor. An applicant for a foreign student entry permit shall have a qualified sponsor who is an individual person who meets the applicable statutory and regulatory requirements. The qualified sponsor must sign the application for a Foreign Student Entry Permit.

TITLE 20: DEPARTMENT OF COMMERCE

(1) A sponsor of a foreign student has obligations and responsibilities that continue throughout the time the foreign student is within the Commonwealth. A sponsor has responsibility for providing adequate living quarters, living expenses, medical care, tuition, and all other expenses for the foreign student. Each person seeking to sponsor a foreign student must maintain residence within the Commonwealth, provided however, this requirement does not apply to a sponsor who is out of the Commonwealth on orders from any branch of the military service of the United States or a National Guard of any State, or Reserve Unit, but who entered the service from the Commonwealth and who intends to return to the Commonwealth upon completion of the tour of duty. Sponsors living outside the Commonwealth do not qualify.

(2) A sponsor of a foreign student may be an official or affiliate of a qualified educational institution. In all cases, an individual person must be responsible for the well-being of the foreign student while in the Commonwealth, however the qualified educational institution's financial capability and student boarding arrangements may be offered in support of the sponsor's qualifications.

(3) The Secretary may refuse to allow a person to be a sponsor if that person fails to comply with Commonwealth immigration laws, sponsors a person who violates those laws, or otherwise fails to meet and maintain the qualifications of a sponsor as stated by law or these regulations. The burden is at all times on the sponsor to prove eligibility and qualifications to become or continue being a sponsor.

(4) The Secretary may refuse to allow a person to be a sponsor if that person has been barred from employing foreign national workers in the Commonwealth.

(5) The Secretary may refuse to allow a person who is not a parent of the applicant to act as a sponsor if that person fails to demonstrate sufficient income to ensure that all expenses of the applicant (together with any other aliens sponsored) will be paid and the applicant does not become a burden on the public services of the Commonwealth. To be eligible as a non-parent sponsor of an alien applying for a Foreign Student Entry Permit, the sponsor must demonstrate income over the immediately preceding four months at a rate that will provide a gross annual income of at least \$20,000.00 or the sponsor must demonstrate an average bank balance of \$3,000 for the immediately preceding three months. The Secretary may waive this income requirement in the interests of the Commonwealth.

(6) The Secretary may refuse to allow a parent to be a sponsor of a child who is an alien applying to be a foreign student if the parent-sponsor fails to demonstrate income over the immediately preceding four months at a rate that will provide a gross annual income totaling 40 hours per week for 52 weeks at the prevailing minimum wage. The Secretary may waive this income requirement in the interests of the Commonwealth.

(e) Health certificate. An alien applying for a Foreign Student Entry Permit shall be in good health.

(1) A foreign student entering the Commonwealth, or a person entering the Commonwealth as a member of the immediate family of a foreign student, shall have in his or her possession a certificate of freedom from communicable disease. This certificate shall have been executed not more than thirty (30) days prior to the date of entry into the Commonwealth in a jurisdiction and by an authority on the approved list established pursuant to 3 CMC § 4802.

TITLE 20: DEPARTMENT OF COMMERCE

(2) The Secretary may require a foreign student admitted to the Commonwealth, or a person admitted to the Commonwealth as a member of the immediate family of a foreign student, to undergo a physical examination in the Commonwealth performed by any medical physician licensed to practice general medicine in the Commonwealth by the Commonwealth Medical Professional Licensing Board within ten (10) business days after entry into the Commonwealth. The cost of a physical examination of a foreign student shall be paid by the foreign student.

(3) A person subject to physical examination pursuant to subsection (b) of this section shall surrender his or her certificate of freedom from communicable disease to the examining physician or other designated person at the time of the examination. Within ten (10) business days after the examination, the examining physician shall transmit the certificate to the Secretary together with a finding as to whether there is any medical reason that the person should not be permitted to remain in the Commonwealth. This finding shall be based on the medical probability that any disease, whether or not communicable, or any disability or any other medical condition would result in significant danger to the health of the inhabitants of the Commonwealth or the need for prolonged medical care or treatment while in the Commonwealth.

(4) Upon receiving notice that there is a medical reason that any foreign student or member of the immediate family of a foreign student should not be permitted to remain in the Commonwealth, the Secretary shall notify the educational institution and the foreign student, or immediate family member, and the affected person shall immediately surrender his or her entry permit to the Secretary for appropriate action. The Secretary shall transmit a copy of all relevant documents to the Commonwealth immigration authority, and the foreign student or family member shall be repatriated. Repatriation shall take place at the earliest date on which it is medically safe for the affected person to travel.

(f) Other entry requirements. An alien seeking to enter the Commonwealth as a foreign student must meet the basic entry requirements set out in the regulations issued by the Immigration Division, see NMI Administrative Code § 5-40.3-200, including a valid passport, documentation if a minor child is traveling to the Commonwealth unaccompanied by a parent, a landing card, and examination by an immigration inspector upon entry.

History: Adopted 31 Com. Reg. 29371 (Apr. 27, 2009); Proposed 31 Com. Reg. 29224 (Feb. 25, 2009).

Commission Comment: The Commission added a period at the end of subsection (b)(4) pursuant to 1 CMC § 3806(g). The Commission corrected capitalization and punctuation in the titles of subsections (a) through (e) pursuant to 1 CMC § 3806(f) and (g). The Division of Immigration was eliminated by PL 17-1 (Mar. 22, 2010). The Division of Immigration regulations referenced here were repealed in 32 Com. Reg. 30094 (Apr. 19, 2010).

§ 20-30.5-105 Vocational Students from Abroad

[RESERVED]

History: Adopted 31 Com. Reg. 29371 (Apr. 27, 2009); Proposed 31 Com. Reg. 29224 (Feb. 25, 2009).

§ 20-30.5-110 Minor Children of Aliens Legally in the Commonwealth

(a) Status. An alien minor under the age of eighteen (18) who is the child of an alien parent residing legally in the Commonwealth as the holder of a permit under immigration classes

TITLE 20: DEPARTMENT OF COMMERCE

240(f) (diplomat), 240(g)(foreign investor), 240(k) (foreign worker), 240(1) (religious leader), 240(m) (missionary), 240(n) (long-term business person), 240(o) (retiree investor), 240(t) (FAS citizen), may be granted an entry permit as a foreign student.

(b) Medical insurance. The alien parent who sponsors the alien minor must provide evidence of medical insurance for the alien minor or financial security acceptable to the Secretary sufficient to cover \$3,000 in medical expenses.

(c) Cash bond. The alien parent who sponsors the alien minor must post a cash bond in the amount of \$750 with the Commonwealth Treasury. The Attorney General shall have the right to reimbursement from the cash bond for any expense incurred by the Commonwealth as a result of the presence of the minor alien or for the repatriation of the minor alien if necessary. Unless forfeited pursuant to these regulations, a cash bond shall expire upon satisfactory final departure of the alien minor or upon other regularization of the alien minor's immigration status. Any amounts outstanding shall be returned to the alien parent within thirty (30) days.

(d) Affidavit. The alien parent who sponsors the alien minor must provide a sworn affidavit with respect to the living arrangements for the alien minor and the financial capability to meet the living costs, tuition, and other expenses of the alien minor.

(e) Term. The Foreign Student Entry Permit granted to an alien minor who is the child of an alien parent lawfully in the Commonwealth shall be valid while the parent holds legal immigration status in the Commonwealth and for a period after the expiration of the parent's legal status not to exceed thirty (30) days after the end of the school year in which the parent's legal status expired.

History: Adopted 31 Com. Reg. 29371 (Apr. 27, 2009); Proposed 31 Com. Reg. 29224 (Feb. 25, 2009).

§ 20-30.5-115 Transfers

(a) Transfer to a qualified educational institution. A student attending a qualified educational institution under a Foreign Student Entry Permit may transfer to another qualified educational institution without exiting the Commonwealth by filing with the Secretary the documentation of admission.

(b) Transfer in the event of disqualification. In the event that the certification of the educational institution to enroll foreign students is revoked by the Secretary, the holder of a Foreign Student Entry Permit shall have thirty (30) days to enroll in another qualified educational institution or otherwise regularize his or her immigration status to an appropriate classification.

History: Adopted 31 Com. Reg. 29371 (Apr. 27, 2009); Proposed 31 Com. Reg. 29224 (Feb. 25, 2009).

§ 20-30.5-120 Employment

(a) General. Nothing in these regulations shall authorize the holder of a Foreign Student Entry Permit to be employed in the Commonwealth except as provided in these regulations.

TITLE 20: DEPARTMENT OF COMMERCE

- (b) Permitted employment.
- (1) Work study programs. The holder of a Foreign Student Entry Permit may work in an on-campus work/study program sponsored and regulated by the educational institution attended by the student and intended to defray the cost of tuition or living expenses.
- (2) Internships. The holder of a Foreign Student Entry Permit may work in an internship program in the private sector in the student's field of study not more than 20 hours a week.
- (3) Academic research and training. The holder of a Foreign Student Entry Permit may work in paid activities focused on academic research or training provided that the activity must be related to the student's primary field of education.
- (4) Part-time employment. The holder of a Foreign Student Entry permit may work part-time in the private sector not more than 10 hours a week in a job registered with the Department of Labor as a part-time job.

History: Adopted 31 Com. Reg. 29371 (Apr. 27, 2009); Proposed 31 Com. Reg. 29224 (Feb. 25, 2009).

Commission Comment: The Commission added a period after the phrase "Permitted employment" in subsection (b) and corrected the colons after the first sentences in subsections (b)(1) through (b)(4) to periods pursuant to 1 CMC § 3806(g).

Part 200 - Eligibility of Immediate Relatives of Foreign Students

§ 20-30.5-201 Credentials of Immediate Relatives of Foreign Students

- (a) A parent or step-parent of a foreign student shall produce birth certificates or adoption certifications to demonstrate the relationship.
- (b) A spouse to whom a foreign student is legally married shall produce marriage certificates or records to demonstrate the relationship.
- (c) A minor child who is the natural or adopted son or daughter of a foreign student, who is under the age of eighteen (18) years and a dependent of the foreign student shall produce birth certificates or adoption records to demonstrate the relationship.
- (d) A dependent child of any age who is the natural or adopted son or daughter of a foreign student and who is disabled and by reason of disability is a dependent of the foreign student shall produce birth certificates or adoption records to demonstrate the relationship and medical certification as to the disability.

History: Adopted 31 Com. Reg. 29371 (Apr. 27, 2009); Proposed 31 Com. Reg. 29224 (Feb. 25, 2009).

Commission Comment: The Commission redesignated subsections (d) through (g) as subsections (a) through (d) pursuant to 1 CMC § 3806(a).

§ 20-30.5-205 Entry Permits for Immediate Relatives of Foreign Students

- (a) Entry permit. Immediate relatives of persons granted a Foreign Student Entry Permit may be granted an entry permit as an Immediate Relative of an Alien by the Director of Immigration, upon the recommendation of the Secretary.

TITLE 20: DEPARTMENT OF COMMERCE

(b) Requirements.

(1) A parent who seeks entry as an immediate relative of a student must post a cash bond in the amount of twice the cost of return travel to the point of origin at the time of application. If the parent is the sponsor of the foreign student, the parent must meet the requirements set out in § 20-30.5-101(d).

(2) A foreign student who seeks entry for a spouse or child must post a cash bond in the amount of twice the cost of return travel to the point of origin at the time of application, medical insurance or a substitute acceptable to the Secretary to ensure that the dependent of the foreign student does not become a burden on the Commonwealth, and proof that sufficient funds are available from an identified and reliable source to defray living expenses for the dependent during the term of the student's Foreign Student Entry Permit.

(c) Term. The entry permit of the immediate relative shall remain valid only while the Foreign Student Entry Permit upon which the immediate relative's permit is based remains valid.

History: Adopted 31 Com. Reg. 29371 (Apr. 27, 2009); Proposed 31 Com. Reg. 29224 (Feb. 25, 2009).

Commission Comment: The Commission added a period at the end of subsection (b) pursuant to 1 CMC § 3806(g). The position of Director of Immigration was eliminated by PL 17-1 (Mar. 22, 2010).

Part 300 - Issuance and Revocation of Entry Permits

§ 20-30.5-301 Issuance of Permits

(a) Entry permit required. Every foreign student admitted to the Commonwealth for purposes of study at a qualified educational institution must have an entry permit issued by the Commonwealth immigration authority. The entry permit is issued when the Commonwealth immigration authority receives notification from the Secretary that a foreign student is qualified to study in the Commonwealth and other immigration requirements are satisfied. The entry permit is delivered to the foreign student after the student arrives in the Commonwealth when the student registers with the Department. The entry permit remains valid so long as the foreign student is engaged in study under an approved program at a qualified educational institution and registers annually with the Department.

(b) Term. The term of an entry permit is one year. An entry permit may be issued for a two year term at the discretion of the Secretary and the payment of the required fee.

History: Adopted 31 Com. Reg. 29371 (Apr. 27, 2009); Proposed 31 Com. Reg. 29224 (Feb. 25, 2009).

Commission Comment: The Commonwealth immigration authority was eliminated by PL 17-1 (Mar. 22, 2010).

§ 20-30.5-305 Extension and Renewal of Permits

(a) Extension and renewal of permits. Entry permits may be extended or renewed upon annual registration with the Department on or prior to the date of expiration of the entry permit so long as the requirements with respect to the qualified student, qualified educational institution, and qualified sponsor continue to be met.

TITLE 20: DEPARTMENT OF COMMERCE

(b) Limitation. The term of an extension or renewal may not exceed the length of time required to complete the degree or training program plus a reasonable time for participation in graduation ceremonies and arrangements for repatriation.

History: Adopted 31 Com. Reg. 29371 (Apr. 27, 2009); Proposed 31 Com. Reg. 29224 (Feb. 25, 2009).

Commission Comment: The Commission added a period to the end of subsection (a) pursuant to 1 CMC § 3806(g).

§ 20-30.5-310 Denial of Application

(a) Written denial. The denial of an application for a Foreign Student Entry Permit shall be in writing, shall state the grounds for the denial with specificity, and shall be signed by the Secretary. The denial shall be served on the applicant within 60 days of the date of receipt of the application. The denial shall be transmitted to the Director of Immigration.

(b) Grounds for denial. The grounds for denial of an application are:

- (1) Failure to meet qualifications;
- (2) Failure to be admitted to a qualified educational institution;
- (3) Failure to provide a qualified sponsor;
- (4) A false statement made on an application or in supporting documentation;
- (5) The entry of the student is not in the interest of the Commonwealth.

(c) Notice of right to appeal. Each denial of an application shall contain a notice of the right to appeal and a reference to the section of these regulations governing appeals.

History: Adopted 31 Com. Reg. 29371 (Apr. 27, 2009); Proposed 31 Com. Reg. 29224 (Feb. 25, 2009).

Commission Comment: The position of Director of Immigration was eliminated by PL 17-1 (Mar. 22, 2010). The Commission added a period after the phrase "Grounds for denial" in subsection (b) pursuant to 1 CMC § 3806(g).

§ 20-30.5-315 Revocation of Permits

(a) Written revocation. The revocation of a Foreign Student Entry Permit shall be in writing, shall state the grounds for revocation with specificity, and shall be signed by the Secretary. The revocation shall be served on the foreign student and shall become effective upon service. The revocation shall be transmitted to the Director of Immigration.

(b) Grounds for revocation. The grounds for revocation of a Foreign Student Entry Permit are:

- (1) Any ground on which the application could have been denied;
- (2) Any material change in circumstances affecting the qualification of the foreign student, the student's sponsor, or the educational institution attended by the student;
- (3) Any false statement made to the Department or knowing violation of a requirement for foreign student status;
- (4) Conviction of a crime;
- (5) The sponsor is no longer qualified;

TITLE 20: DEPARTMENT OF COMMERCE

(6) Failure to maintain status as a full-time student as that status is defined by the qualified educational institution for the program in which the foreign student is enrolled and approved by the Secretary at the time of the issuance of the entry permit;

(7) Employment not permitted by these regulations.

(c) Notice of right to appeal. Each denial of an application* shall contain a notice of the right to appeal and a reference to the section of these regulations governing appeals.

* So in original.

History: Adopted 31 Com. Reg. 29371 (Apr. 27, 2009); Proposed 31 Com. Reg. 29224 (Feb. 25, 2009).

Commission Comment: The position of Director of Immigration was eliminated by PL 17-1 (Mar. 22, 2010). The Commission added a period after the phrase "Grounds for revocation" in subsection (b) pursuant to 1 CMC § 3806(g).

Part 400 - Eligibility of Educational Institutions

§ 20-30.5-401 Issuance of Certification

(a) Requirement of certification. Each educational institution that enrolls a student who is a holder of a Foreign Student Entry Permit must be certified by the Secretary before such enrollment. The certification reflects only the institution's authorization to accept foreign students who are present in the Commonwealth or seeking entry to the Commonwealth under a Foreign Student Entry Permit. The approval or denial of certification by the Secretary has no effect on the institution's accreditation by the Board of Regents or other academic or vocational accrediting authority.

(b) Application for certification. Each educational institution seeking certification by the Secretary shall file a letter application that includes the following information:

(1) The name and address of the educational institution;

(2) The name and title of the person authorized to apply for certification;

(3) The number of years the educational institution has operated in the Commonwealth;

(4) The affiliations, if any that the educational institution has with educational entities in the Commonwealth, and any accreditation by accrediting authorities within the Commonwealth;

(5) The affiliations, if any, that the educational institution has with educational entities outside the Commonwealth, and any accreditations by accrediting authorities outside the Commonwealth;

(6) The total number of students enrolled in each of the past five years;

(7) The total number of faculty members and administrators employed in each of the past five years;

(8) The curriculum or program of study offered by the institution and the degrees or certifications of completion awarded by the institution, attaching supporting documentation of catalogs, bulletins, websites or other announcements as to the curriculum or program of study offered;

(9) The size of the physical facilities occupied by the educational institution;

(10) The health facilities or capabilities provided by the institution for the protection of students;

TITLE 20: DEPARTMENT OF COMMERCE

- (11) Copies of the advertising directed at students during the past year;
- (12) The institution's legal status as a corporation, LLC, partnership, or individual proprietorship attaching supporting documentation with respect to legal status such as articles of incorporation and business license;
- (13) The institution's tax status as for-profit or non-profit;
- (14) A copy of audited financial statements prepared by a U.S. Certified Public Accountant within the prior 12 months;
- (15) The name and address of the person who is the institution's agent for the service of process.

(c) Foreign Student Education Oversight Panel. Upon receipt of an application for certification as a qualified educational institution, the Secretary shall convene and chair an oversight panel comprised of at least one representative from each of the following: the Northern Marianas College, the Department of Commerce, the Saipan Chamber of Commerce, the Public School System, and the community at large. The oversight panel will advise the Secretary with respect to the issuance of a certification for the applying educational institution. The Secretary may waive the convening of an oversight panel if the educational institution is in good standing with a nationally recognized accrediting body. The Secretary may also convene an oversight panel for an annual review of each qualified educational institution to assure that the requirements for certification continue to be met or for a special review of a qualifying educational institution that loses its accreditation by a nationally recognized accrediting body.

(d) Statements made under penalty of perjury. Statements made in an application for certification are representations to the Commonwealth government that are made under penalty of perjury.

(e) Issuance of certification. The Secretary's certification will be evidenced by a document naming the educational institution. Certifications remain in effect until revoked by the Secretary.

(f) Conditional certification. The Secretary may issue conditional certifications where it is in the interest of the Commonwealth to do so. Any conditions on certification must be evidenced on the certification document.

(g) Change of circumstance. Any material change in any of the facts presented to the Secretary in the application for certification must be reported to the Secretary within 90 days of the occurrence of the change. Changes in enrollment must be reported annually in January of each year.

History: Adopted 31 Com. Reg. 29371 (Apr. 27, 2009); Proposed 31 Com. Reg. 29224 (Feb. 25, 2009).

Commission Comment: The Commission added a period after the phrase "Application for certification" in subsection (b) and changed the period at the end of subsection (b)(13) to a semicolon pursuant to 1 CMC § 3806(g).

§ 20-30.5-405 Denial of Certification

(a) Denial in writing. The denial of a certification shall be in writing, shall state the grounds for revocation with specificity, and shall be signed by the Secretary. The denial shall be served on the educational institution and shall become effective upon service.

TITLE 20: DEPARTMENT OF COMMERCE

- (b) Grounds for denial of certification. The grounds for denial of certification are:
- (1) Any failure to meet the requirements for the qualification of the educational institution;
 - (2) Any false statement made to the Department;
 - (3) False or materially misleading statements in advertising directed at students.
- (c) Notice of right to appeal. Each denial of an application shall contain a notice of the right to appeal and a reference to the section of these regulations governing appeals.

History: Adopted 31 Com. Reg. 29371 (Apr. 27, 2009); Proposed 31 Com. Reg. 29224 (Feb. 25, 2009).

Commission Comment: The position of Director of Immigration was eliminated by PL 17-1 (Mar. 22, 2010). The Commission added a period after the phrase "Grounds for denial of certification" in subsection (b) pursuant to 1 CMC § 3806(g).

§ 20-30.5-410 Revocation of Certification

- (a) Revocation of certification. The Secretary may revoke the certification of an educational institution by written notice at any time, such revocation to become effective 30 days after service of the notice on the educational institution.
- (b) Grounds for revocation. The Secretary shall state each of the grounds for revocation of certification in the written notice issued with respect to the revocation. The grounds are:
- (1) A false statement of a material fact made in any application or supplementary documentation provided to the Department;
 - (2) A change in circumstance with respect to any material qualification of the institution or a foreign student not reported to the Department in a timely manner;
 - (3) Unhealthful or unsafe conditions at the physical facilities used by the institution or other conditions substantially detrimental to the well-being of students enrolled at the institution;
 - (4) Failure to keep records as required;
 - (5) Failure to comply with a request for inspection;
 - (6) False or misleading statements or representations in advertising;
 - (7) A material failure to comply with the Department's regulations;
 - (8) Change of ownership without prior approval of the Secretary;
 - (9) Insolvency or lack of sufficient financial resources to support reasonable operations of the educational institution;
 - (10) Cessation of the business.

History: Adopted 31 Com. Reg. 29371 (Apr. 27, 2009); Proposed 31 Com. Reg. 29224 (Feb. 25, 2009).

Commission Comment: The Commission added a period after the phrase "Grounds for revocation" in subsection (b) pursuant to 1 CMC § 3806(g).

§ 20-30.5-415 Record-Keeping and Reporting

- (a) Records with respect to foreign students. The educational institution shall maintain the following records during a foreign student's enrollment and for at least two years after termination of the student's enrollment:

TITLE 20: DEPARTMENT OF COMMERCE

- (1) Photocopy of the foreign student's passport;
 - (2) Photocopy of the foreign student's entry permit;
 - (3) A current address and description of the place where the student physically resides;
 - (4) Date of first enrollment as a student;
 - (5) Degree program and field of study;
 - (6) Academic status in each term while enrolled and credits or courses completed;
 - (7) Payment of tuition and fees;
 - (8) Date of termination of enrollment as a student.
- (b) Availability. All records maintained by the educational institution with respect to any foreign student shall be made available to the Secretary upon request.
- (c) Reporting. The educational institution shall report to the Department of Commerce as follows:
- (1) Report on completion: The institution shall report within 30 days when a foreign student who has been accepted by the institution has completed the course of study for which the student was accepted. The institution shall report, in each such case, whether the student will no longer be attending the institution.
 - (2) Report on enrollment: The institution shall report at the beginning of each term or session whether each foreign student who has been accepted by the institution (and as to whom no report on completion has been submitted) is still enrolled and whether the student is enrolled as a full-time or part-time status.
 - (3) Report on status: The institution shall report within 30 days when a foreign student who has been accepted by the institution and is still enrolled has failed to complete a program of study within the time typically required to complete that program, and the reason for any extension of time granted by the institution to complete the program.

History: Adopted 31 Com. Reg. 29371 (Apr. 27, 2009); Proposed 31 Com. Reg. 29224 (Feb. 25, 2009).

Commission Comment: The Commission added a period after the phrase "with respect to foreign students" in subsection (a) and after the word "reporting" in subsection (c) pursuant to 1 CMC § 3806(g).

§ 20-30.5-420 Inspections

The Secretary or a duly authorized agent may inspect the physical premises of the educational institution and its records at any time during normal business hours upon reasonable notice to the institution.

History: Adopted 31 Com. Reg. 29371 (Apr. 27, 2009); Proposed 31 Com. Reg. 29224 (Feb. 25, 2009).

Part 500 - Appeals

§ 20-30.5-501 Commencing an Appeal

- (a) Commencing an appeal. An appeal is commenced by filing a notice of appeal on the standard form provided by the Department and payment of the fee required in §20-30.5-015(f) of

TITLE 20: DEPARTMENT OF COMMERCE

these regulations. A notice of appeal must be filed within fifteen (15) days of service of the decision on the party who is appealing.

(b) Content of notice. The notice of appeal shall state the reasons for the appeal and shall be supported by a statement of facts and supporting documentation setting forth the grounds for contesting the decision.

History: Adopted 31 Com. Reg. 29371 (Apr. 27, 2009); Proposed 31 Com. Reg. 29224 (Feb. 25, 2009).

§ 20-30.5-505 Hearings on Appeal

(a) Hearing officer. The Secretary shall appoint a hearing officer to decide the appeal and prepare an opinion. The hearing officer may decide the appeal on the written submissions of the appellant and the government which shall be made on a schedule prescribed by the hearing officer. The hearing officer may order a hearing on the record, however no hearing or oral argument on an appeal is required. The hearing officer shall notify the appellant of the time and place for any hearing on the appeal and shall not schedule the hearing with less than fifteen (15) days notice or change a hearing date with less than fifteen (15) days notice.

(b) Proceedings. In a review on appeal, the hearing officer may restrict review to the existing record, supplement the record with new evidence, or hear the matter de novo pursuant to 1 CMC §§ 9109 and 9110. Upon completion of review, the hearing officer shall affirm, reverse, or modify the findings, decision, or order of the Department. The hearing officer's decision shall constitute final agency action for purposes of judicial review.

History: Adopted 31 Com. Reg. 29371 (Apr. 27, 2009); Proposed 31 Com. Reg. 29224 (Feb. 25, 2009).

§ 20-30.5-510 Judicial Review

Judicial review of a final agency action is authorized after exhaustion of all administrative remedies and shall be initiated within thirty (30) days of the final action. Judicial review shall be pursuant to 1 CMC § 9112. Appeal from a final action by the agency shall be directly to the Commonwealth Superior Court.

History: Adopted 31 Com. Reg. 29371 (Apr. 27, 2009); Proposed 31 Com. Reg. 29224 (Feb. 25, 2009).