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

COMMONWEALTH REGISTER
VOLUME 26
NUMBER 06

JUNE 24, 2004

COMMONWEALTH REGISTER

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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

JUN 0 7 2004

Juan N. Babauta
Governor

Diego T. Benavente
Lieutenant Governor

DECLARATION OF EMERGENCY

Volcanic Eruption on Anatahan

I, DIEGO T. BENAVENTE, by the authority vested in me as Acting Governor pursuant to Article III, Section 10 of the Commonwealth Constitution and 3 CMC §5121, and in accordance with the recommendations of the Emergency Management Office, Commonwealth of the Northern Mariana Islands and US Geological Survey (attached hereto and incorporated herein by this reference) hereby declare another 30-day extension of the May 13, 2003 Declaration of Emergency for the island of Anatahan and the declaration that the island of Anatahan as unsafe for human habitation and further do hereby restrict all travel to said island with the exception of scientific expeditions. Therefore, the provisions of the May 13, 2003 Declaration of Emergency remain in effect maintaining the off-limits zone from 30 nautical miles to 10 nautical miles.

This Declaration shall become effective upon signature by the Governor and shall remain in effect for thirty (30) days unless the Governor shall, prior to the end of the 30-day period, notify the Presiding Officers of the Legislature that the state of emergency has been extended for a like term. The Governor shall give reason for extending the emergency.

DIEGO T. BENAVENTE
Acting Governor

CC: Governor (F: 664-2211)
Senate President (F: 322-0519)
House Speaker (F: 664-8900)
Mayor of the Northern Islands (F: 233-6466)
Director of Emergency Management (F: 322-7743)
Commissioner of Public Safety (F: 664-9027)
Attorney General (F: 664-2349)
Secretary of Finance (F: 664-1115)
Special Assistant of Management and Budget (F: 664-2272)
Special Assistant for Programs and Legislative Review

Emergency Management Office
OFFICE OF THE GOVERNOR
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Juan N. Babauta, Governor
Diego T. Benavente, Lt. Governor

Rudolfo M. Pua, Director
Mark S. Pangelinan Dep., Director

MEMORANDUM

JUN 07 2004

TO : GOVERNOR

FROM : Director

SUBJECT : Declaration of Emergency

The EMO seismic staff and USGS, once again with close consultation has informed me that the moderate eruption that began on April 24 is continuing. Steam and ash are like rising to a few thousand feet. Seismic activity since April 24 persists at a high level and consists of discrete explosion signals recorded by the seismographs at EMO. Over the last few days, the explosions have become less frequent but more energetic, possibly throwing material some hundred of yards out of the crater.

Therefore, we are once again respectfully soliciting your assistance in extending the **Declaration of Emergency** for the island of Anatahan for another thirty (30) days and to maintain the **off limits zone from 30 nautical miles to 10 nautical miles** around Anatahan until further notice. Under these conditions, restriction of entry to the said island should continue until a thorough scientific study is done ant that the findings suggest otherwise. The current **Declaration of Emergency** will expire on June 07, 2004.

Attach is the latest update for your information and should you have any question or concern, please call me at 322-9528/29.

Sincerely,

Rudolfo M. Pua

Attachment

Xc: Lt. Governor
SAA
Mayor, NI

Northern Mariana Islands Volcanic Activity

Activity Update

The first historical eruption of Anatahan Volcano began suddenly on the evening of May 10. An eruption column as high as 10 km resulted in a far-reaching eruption cloud to the west. No one was directly threatened by the initial activity, because residents had long before evacuated the small volcanic island (9 km long and 3 km wide). Thus far, the eruption has consisted of a nearly continuous small eruption column (less than 5 km) punctuated by stronger explosive activity. In early June, a small lava flow erupted in the volcano's east crater, but was mostly destroyed by subsequent explosive activity.

Anatahan Volcano Update for June 7, 2004

Submitted Monday, June 7, 2004 at 1100 local Anatahan time

The current episode of volcanic activity began on March 30, 2004, with a significant increase in seismic activity. Lava was noted in the crater on April 15 and may still be extruding. The most energetic phase of seismicity began on April 24, when a light ash cloud was produced to less than 6,000 ft (2,000 m) and lasted a day or so. Seismic activity peaked on April 28, then decreased slowly to about 40 percent of that peak value by May 29. That seismicity consisted of discrete signals produced by explosions every one to a few minutes that threw material some hundreds of meters out of the crater and steam and ash to a few thousand feet. On May 30 and 31, the seismicity level surged to double its value of the previous few days on the strength of small explosions every few tens of seconds and increased tremor. After a two-day-long decrease, the seismicity level rose again to the level of May 30 and 31. The eruption could become more explosive at any time with little or no warning.

The Emergency Management Office, Office of the Governor, CNMI, has placed Anatahan Island off-limits until further notice and concludes that, although the volcano is not currently dangerous to most aircraft within the CNMI airspace, conditions may change rapidly. Aircraft should pass upwind of Anatahan or farther than 30 km downwind from the island and exercise due caution within 30-50 km of Anatahan.

Contact persons:

Juan Takai Camacho, Geophysical Seismic Technician, EMO Saipan; tel: (670) 322-9528, fax: (670) 322-7743, email: jtcamacho@cnmiemo.gov.mp Ramon Chong, Geophysical Instrument Specialist, EMO Saipan; tel: (670) 322-9528, fax: (670) 322-7743, email: rcchongemo@hotmail.com Frank Trusdell, Geologist, USGS; tel: (808) 967-8812, fax: (808) 967 8890, email: trusdell@usgs.gov

CIVIL SERVICE COMMISSION

NOTICE OF EMERGENCY RULE
SUSPENSION OF FINANCIAL AUSTERITY MEASURES
NURSES AT THE DEPARTMENT OF PUBLIC HEALTH

Statutory Authority:	1 CMC §8117 and Personnel Service System Rules and Regulations Part XII.A
Short Statement of Goals and Objectives:	Partial suspension of austerity measures
Brief summary of the Rule:	The reinstatement of Personnel Service System Rules and Regulations Part IV.B5, B6, B7, B8, B12 & B15 in respect to mandatory salary increases for nursing classes of employees in the Department of Public Health.
For Further Information Contact:	Norbert S. Sablan, Executive Director Civil Service Commission 1211 Capitol Hill Capitol Hill Road Saipan, CNMI Phone 322-4363 Fax 322-3327
Citation of Related and Affected Statutes & Regulations:	Personnel Service System Rules and Regulations Part IV.B5, B6, B7, B8, B12 & B15.
Need for Emergency Adoption:	Yes. Governors letter May 5, 2004

Date: June 2 , 2004

Submitted by: _____
Francisco DLG Camacho, Chairman
Civil Service Commission

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
CIVIL SERVICE COMMISSION

NOTICE OF EMERGENCY RULE
PARTIAL SUSPENSION OF FINANCIAL AUSTERITY MEASURES
NURSING CLASSES OF EMPLOYEES IN THE
DEPARTMENT OF PUBLIC HEALTH

On May 5, 2004, the Governor issued a letter advising the Civil Service Commission that there is a need to suspend financial austerity measures in respect to nursing classes of employees in the Department of Public Health.

Under the authority of 1 CMC §8117, and Personnel Service System Rules and Regulations, Part XII.A the Civil Service Commission hereby notifies the general public that the provisions of the Personnel Service System Rules and Regulations Part IV.B5, B6, B7, B8, B12 & B15 relating to mandatory salary increases are reinstated in respect to nursing classes of employees in the Department of Public Health, consisting of employees in Class Titles:

Associate Director of Nursing	Graduate Nurse
Hospital Nursing Supervisor	Hemodialysis Technician
Manager, Nursing Unit	Nursing Assistant
Head Nurse	Community Health Nurse Coordinator
Nurse Midwife I and II	Nursing Staff Program Developer
Staff Nurse I and II	Public Health Nurse Statistician
Licensed Practical Nurse	Public Health Nurse Supervisor

The reinstatement of Personnel Service System Rules and Regulations Part IV.B5, B6, B7, B8, B12 & B15 is respect to mandatory salary increases will not entitle employees to retroactive salary adjustments for salary increases not granted during the pendency of prior austerity measures.

This rule is made and filed pursuant to 1 CMC §9102. Since this is a rule that is a statement of general applicability that implements, interprets, or prescribes law or policy, the provisions of 1 CMC §9104 relating to the adoption of regulations does not apply.

Civil Service Commission
P.O. Box 5150 CHRB
1211Capitol Hill Road.
Saipan, MP 96950

Facsimile: (670) 322-3327

Date: June 2, 2004

Submitted by: _____
Francisco DLG Camacho
Chairman

Date: 6/8/04

Approved By: DIEGO T. BENAVENTE
~~Juan N. Babauta~~
Acting Governor

Date: 6/10/04

Received by:
Thomas A. Tebuteb
Special Assistant for Administration

Date: 6/10/04

Filed by:
Bernadita B. Dela Cruz
Commonwealth Registrar

Pursuant to 1 CMC §2153, as amended by PL10-50, the following rules and regulations have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General's Office.

Dated: 6/10/04

By
Pamela S. Brown
Attorney General

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
CIVIL SERVICE COMMISSION

RULE
PARTIAL SUSPENSION OF FINANCIAL AUSTERITY MEASURES NURSING CLASSES OF EMPLOYEES IN THE DEPARTMENT OF PUBLIC HEALTH

The provisions of the Personnel Service System Rules and Regulations that require increases in employees' salaries due to permanent or temporary promotions, acting or detail assignments, reallocation or reclassification of positions, and step increases based on attendance at workshops or other training programs, Personnel Service System Rules and Regulations Part IV.B5, B6, B7, B8, B12 & B15, are reinstated in respect to nursing classes of employees in the Department of Public Health, consisting of employees in Class Titles:

Associate Director of Nursing	Graduate Nurse
Hospital Nursing Supervisor	Hemodialysis Technician
Manager, Nursing Unit	Nursing Assistant
Head Nurse	Community Health Nurse Coordinator
Nurse Midwife I and II	Nursing Staff Program Developer
Staff Nurse I and II	Public Health Nurse Statistician
Licensed Practical Nurse	Public Health Nurse Supervisor

The reinstatement of Personnel Service System Rules and Regulations Part IV.B5, B6, B7, B8, B12 & B15 is respect to mandatory salary increases will not entitle employees to retroactive salary adjustments for salary increases not granted during the pendency of prior austerity measures

Dated: June , 2004

Francisco DLG Camacho, Chairman
Civil Service Commission

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Juan N. Babauta
Governor

Diego T. Benavente
Lieutenant Governor

MAY 0 5 2004

Mr. Francisco DLG Camacho
Chairman
Civil Service Commission
P.O. Box 5150 CHRB
Saipan, MP 96950

Dear Chairman Camacho:

The Commonwealth Government recently ended its contracts with the manpower agencies that were recruiting and employing nurses to work at the Commonwealth Health Center. Consequently, the Department of Public Health directly hired many of those nurses who had been employed by the manpower established nurse salary scale at the salary level appropriate for their type of degree, licensure status, and years of experience. This salary placement process was the same as was applied to other nurses who had increases due to the implementation of Part XII of the Personnel Service System Rules and Regulations (PSSR&R) and the suspension of within-grade increases, the locally hired civil service nurses are now being paid at a lower level than newly hired nurses with equivalent credentials and experience.

In order to correct this disparity and avoid the appearance of discrimination against any of our distinct groups of employees, all nursing employees must be adjusted to the appropriate salary level that is consistent with the established salary scale for nurses. This is necessary to eliminate a potentially discriminatory situation and to prevent staffing and retention difficulties in the nursing job classes that threaten the Government's ability to provide vital services to the citizens of the Commonwealth. Efforts to resolve these difficulties have shown that a need exists to lift the salary increase restriction for all nursing classes.

I request your assistance in ensuring that these vital services continue without interruption. Please prepare an Emergency Amendment to Part XII of the PSSR&R that lifts the restrictions in this Part for all nursing classes of employees in the Department of Public Health, from Nurse Assistants to the Associate Director of Nurses. This action should mirror the previous actions taken to lift these restrictions for federally funded positions and the correction of classes of employees.

Your attention to this matter is requested.

JUAN N. BABAUTA

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

PUBLIC NOTICE OF EMERGENCY REGULATIONS AND NOTICE OF INTENT TO ADOPT REGULATIONS AMENDING THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS DEPARTMENT OF FINANCE DIVISION OF PROCUREMENT AND SUPPLY PROCUREMENT REGULATIONS

EMERGENCY: The Commonwealth of the Northern Mariana Islands ("CNMI") Office of the Attorney General and the Department of Finance, find that under 1 CMC § 9104(b), the public interest requires the amendment of the CNMI Procurement Regulations ("Regulations"), published in the Commonwealth Register, Vol. 23 No. 5 (May 24, 2001); and Vol. 22 No. 8 (August 18, 2000). These Regulations establish procedures for regulation and control of procurement of the Commonwealth of the Northern Mariana Islands under the authority given to the Secretary of Finance under 1 CMC § 2553(j).

Experience with these Regulations show that a procedure is necessary for the resolution of disputes between the Official with Expenditure Authority, CNMI Proc. Reg. § 1-201(13); 2-104(9), and the Secretary of the Department of Public Works or his designee. CNMI Proc. Reg. § 2-104(9).

The Office of the Attorney General ands the Department of Finance further find that the public interest mandates adoption of these regulations upon fewer than thirty (30) days notice, and that these regulations shall become effective immediately upon filing with the Commonwealth Registrar, subject to the approval of the Attorney General and the concurrence of the governor, and shall remain effective for 120 days.

REASONS FOR EMERGENCY: The Office of the Attorney General and the Department of Finance further find that the adoption of these regulations upon fewer than thirty (30) days notice is necessary because the Department of Public Works need process for resolution of disputes with Expenditure Authority concerning construction projects. Furthermore, these disputes have disrupted related construction schedules; affect existing and future construction funding; and delay meeting critical public needs which these projects are designed to address. Therefore, the Office of the Attorney General and the Department of Finance find that in the interest of the public these regulations be adopted immediately.

INTENT TO ADOPT: It is the intent of the Office of the Attorney General and the Department of Finance to adopt these emergency regulations as permanent, pursuant to 1 CMC § 910(a)(1) and (2). Accordingly, interested persons may submit written comments on these emergency regulations to James R. Stump, Assistant Attorney General, CNMI Office of Attorney General, Caller Box 100007, Saipan, MP 96950 or by fax to (670) 664-2349.

Submitted by: _____ 6/16/04
FERMIN M. ATALIG Date
Secretary of Finance

Concurred by: _____ 6/18/04
JUAN N. BABAUTA Date
Governor

Received by: _____ 6/18/04
THOMAS A. TEBUTEB Date
Special Assistant for Administration

Received by: _____ 6.15.04
BERNADITA B. DE LA CRUZ Date
Commonwealth Register

Pursuant to 1 CMC §2153, as amended by Public Law 10-50, the emergency rules and regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General's Office.

Dated this 15th day of June 2004.

_____
PAMELA BROWN
Attorney General

PUBLIC NOTICE OF EMERGENCY REGULATIONS AND NOTICE OF INTENT TO AMEND THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS DEPARTMENT OF FINANCE – DIVISION OF PROCUREMENT AND SUPPLY: PROCUREMENT REGULATIONS

These regulations are promulgated in accordance with the Administrative Procedure Act, 1 CMC § 9101, et seq. The Department of Finance is amending the Commonwealth of the Northern Mariana Islands Procurement Regulations ("Procurement Regulations") to provide a process for resolution of disputes between the Department of Public Works and the Expenditure Authority that may occur during construction projects.

Citation of Statutory Authority: The Department of Finance is authorized to promulgate regulations for the control of procurement in the in the Commonwealth of the Northern Mariana Islands ("CNMI") pursuant to the CNMI Constitution art. X § 8 and 1 CMC § 2553(j)

Short Statement of Goals and Objectives: The proposed additions to the Department of Finance Procurement Regulations will provide a process for resolution of disputes that arise between the Department f Public Works and the Expenditure Authority that may arise in construction projects.

Brief Summary of the Proposed New Section: This emergency amendment is promulgated to:

1. Amend Department of Finance Procurement Regulations to provide a dispute resolution process to be used in disputes between the Expenditure Authority and the Department of Public Works

2. Facilitate completion of construction projects

For Further Information Contact: James R. Stump, Assistant Attorney General, of the Office of the Attorney General, telephone (670) 664-2329 or facsimile (670) 234-2349.

Citation of Related and/or Affected Statutes, Rules and Regulations, and Orders: The proposed amendments affect the Department of Finance Procurement Regulations
Articles 1-6; 8 May 24, 2001 Commonwealth Register Vol. 23 No. 5
Article 7 August 18, 2000 Commonwealth Register Vol. 22 No. 8

Dated this 16 day of June 2004.

Submitted by:

FERMIN M. ATALIG
Secretary of Finance

PROPOSED AMENDMENTS TO TITLE VIII OF DEPARTMENT OF COMMERCE RULES AND REGULATIONS

The Department of Finance – Procurement Regulations are hereby amended to add the following:

Section 2-104(9).

a In instances of dispute between the Secretary of Public Works and the agency with expenditure authority involving projects in which the Secretary of Public Works ("DPW") assumes responsibility for supervision, inspection, and administration of government contracts, the dispute shall be submitted to the Director of Procurement and Supply ("P&S") for resolution ("Dispute Resolution Process").

b Purpose of the Dispute Resolution Process is to resolve difference between DPW and the expenditure authority and to avoid interference with timely project completion. Determinations by the P&S must be consistent with the assignment of responsibility and authority to DPW for supervision, inspection, and administration of government contracts and authority of agency with expenditure authority.

c Disputes may only be submitted to P&S by either the Secretary of Public Works or the chief administrative officer of the agency with expenditure authority. Upon the filing of a dispute, the P&S shall make a determination as to the information required from parties, structure of proceedings, and timetable of the dispute resolution process. Determination by P&S will be made as expeditiously as possible so as not to delay the project timetable.

d This process shall be the sole and exclusive method for dispute resolution between DPW and agency with expenditure authority concerning construction contracts. The determination of P&S as to the item submitted for review shall be final and binding on both DPW and the agency with expenditure authority.

PUBLIC NOTICE OF EMERGENCY REGULATIONS AND NOTICE OF INTENT TO REPEAL REGULATIONS AMENDING THE MECHANISM FOR THE REALLOCATION OF NONRESIDENT WORKERS IN THE GARMENT INDUSTRY, AND TO ESTABLISH A GARMENT LABOR POOL

EMERGENCY: The Commonwealth of the Northern Mariana Islands, Office of the Attorney General and the Department of Labor, find that under 1 CMC § 9104(b), the public interest requires the repeal of the Proposed Emergency Regulations Establishing a Mechanism for the Reallocation of Garment Worker Positions, published in the Commonwealth Register, Vol. 25, No. 9, October 15, 2003, page 21418, and proposed for adoption as Amended in Volume 26, No 2, Feb. 23, 2004 page 21789. These regulations established a mechanism for garment manufacturers to reallocate worker positions in the garment industry under authority given to the Secretary of Labor pursuant to P.L. 12-11. Experience with these prior regulations showed that a different mechanism is necessary that will allow greater flexibility for employers through the concept of a Garment Labor Pool, and that regulations should also be promulgated to allow for manufacturers to consensually transfer employees and/or job positions between themselves to maximize efficiency in the labor market. The Office of the Attorney General and the Department of Labor further find that the public interest mandates adoption of these regulations upon fewer than thirty (30) days notice, and that these regulations shall become effective immediately after filing with the Registrar of Corporations, subject to the approval of the Attorney General and the concurrence of the Governor, and shall remain effective for 120 days.

REASONS FOR EMERGENCY: The Office of the Attorney General and the Department of Labor further find that the adoption of these regulations upon fewer than thirty (30) days notice is necessary because garment manufacturers need to start poising themselves to remain viable and competitive with the anticipated elimination of quotas by operation of the World Trade Organization Agreement on Textiles and Clothing (ATC) 1995-2004. Because manufacturers must begin the process of establishing a stable workforce and securing orders in advance of the Jan. 1, 2005 quota elimination, the Office of the Attorney General and the Department of Labor find that in the interest of the public and the industry that these regulations be approved and adopted immediately.

INTENT TO ADOPT: It is the intent of the Office of the Attorney General and the Department of Labor to adopt these emergency as permanent, pursuant to 1 CMC § 9104(a)(1) and (2). Accordingly, interested persons may submit written comments on these emergency regulations to Kevin A. Lynch., Assistant Attorney General, CNMI Department of Labor, Second Floor, Afetnas Square Building, San Antonio, Saipan MP 96950 or by fax to (670) 236-0992.

Submitted by: _____ 6/11/04
JOAQUIN A. TENORIO Date
Secretary of Labor

_____ 6/11/04
PAMELA BROWN Date
Attorney General

Concurred by: _____ 6/11/04
DIEGO T. BENAVENTE Date
Acting Governor

Received by: _____ 6/11/04
THOMAS A. TEBUTEB Date
Special Assistant for Administration

Filed and Recorded by: _____ 6-11-04
BERNADITA B. DE LA CRUZ Date
Commonwealth Register

Pursuant to 1 CMC §2153, as amended by Public Law 10-50, the emergency rules and regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General's Office.

Dated this 11th day of June, 2004.

_____
PAMELA BROWN.
Attorney General

PUBLIC NOTICE OF EMERGENCY REGULATIONS AND NOTICE OF INTENT TO REPEAL REGULATIONS AMENDING THE MECHANISM FOR THE REALLOCATION OF NONRESIDENT WORKERS IN THE GARMENT INDUSTRY, AND TO ESTABLISH A GARMENT LABOR POOL

This amendment is promulgated in accordance with the Administrative Procedure Act, 1 CMC § 9101, et seq. The Office of the Attorney General and the Department of Labor are repealing the Proposed Emergency Regulations Establishing a Mechanism for the Reallocation of Garment Worker Positions, published in the Commonwealth Register, Vol. 25, No. 9, October 15, 2003, page 21418, and proposed for adoption as Amended in Volume 26, No 2, Feb. 23, 2004 page 21789. The Department further proposes a new set of Regulations to Establish a Garment Labor Pool and to allow for transfer of nonresident worker positions beterrn garment manufacturers.

Citation of

Statutory Authority: The Office of Attorney General is authorized to promulgate regulations for entry and deportation of aliens in the Commonwealth of the Northern Marianas pursuant to Executive Order 03-01 and 3 CMC § 4312(d). The Department of Labor is authorized to promulgate regulations under P.L. 11-76 as amended by P.L. 12-11 for establishing a mechanism for the reallocation of Garment workers among manufacturers

Short Statement of

Goals and Objectives: The emergency regulations repeal the regulations establishing a mechanism for the reallocation of worker positions among garment manufacturers and substitute a new set of regulations establishing a Garment Labor Pool and allowing for worker quota adjustments between employers within the garment industry.

Brief Summary of the

Proposed New Section: These emergency amendments are promulgated to:

(1) Repeal previous regulations that are no longer responsive to the needs of the garment industry because of the changing economic environment;

(2) Maximize efficiencies in the use of nonresident workers in the garment industry;

(3) Provide a means for manufacturers to tailor the size of their workforce to their economic circumstances.

For Further Information Contact: Kevin A. Lynch, Assistant Attorney General, Office of the Attorney General, telephone (670) 236-0910 or facsimile (670) 236-0992.

Citation of Related and/or Affected Statutes, Rules and Regulations, and Orders: The emergency regulations amend the regulations governing allocation of nonresident worker positions within the garment industry published in the Commonwealth Register Vol. 25, No. 9, page 21418 (Oct. 15, 2003) and proposed for adoption as Amended in Volume 26, No 2, Feb. 23, 2004 page 21789.

Dated this 11th day of June 2004.

Submitted by:

PAMELA BROWN
Attorney General

JOAQUIN A. TENORIO
Secretary of Labor

NOTISIAN PUPBLIKU POT ENSIGIDAS NA REGULASION SIHA YAN NOTISIAN INTENSION PARA U MADIROGA I REGULASION SIHA NI AMEMENDA I MANERA NI PARA U RISUTTA I MADESIGNAN I MA'APROPOSITU POT I MANMACHO'CHO'CHU' NA PETSONA GINEN OTTRO TÅNO' GI INDUSTRIAN BESTIDURA YAN PARA U ESTABLESI GRUPON HOTNALERUN INDUSTRIA

Ensigidas: I Commonwealth I Sankattan Siha Na Islas Marianas, gi Ofisinan i Abugådo Heneråt yan i Dipåttamenton i Hotnaleru, masodda' na papa i 1 CMC Seksiona 9104 (b), i enteres pupbliku manisisita i dinirogan i man maproponen Ensigidas Na Regulasion Siha Ni A Estableblesi i Manera Ni Para U Risutta I Madesignan i Ma'apropositu Pot I Manmacho'cho'chu' Na Pettsona Siha Gi Fakterian Bestidura Na Pusision Siha, ni mapupblisa gi Rehistran i Commonwealth, Baluma 25, Numiru 09, gi Oktubre 15, 2003 gi påhina 21418, yan mapropone para u ma'adopta ni man ma'amenda gi Baluma 26, Numiru 2, gi Febreru 23, 2004 gi påhina 21789. Este na regulasion siha Estableblesi i Manera Ni Para U Risutta I Madesignan i Ma'apropositu Pot I Manmacho'cho'chu' Na Pettsona Siha Gi Fakterian Bestidura Na Pusision Siha papa i aturidåt ni ma'entrega i Sekritårion i Hotnaleru sigun i Lai Pupbliku 12-11. I ma'ekspiriensia ni este na regulasion gi mapus umannok na manisisita ottro na areklamento ni para u sedi i la'maolek na kinalamten para i empleao ginen i Grupon Hotnalerun Bestidura , ya u ma'establesi lokkue regulasion siha pot para u sedi i fakteria para u trasfera i empleao siha yan/pat pusision siha gi entalo'-niha para u la'maolek i metkaon cho'chu'. I Ofisinan i Abugådo Heneråt yan i Dipåttamenton i Hotnaleru masodda' na i enteres pupbliku magågågao para u ma'adopta este na regulasion siha gi menos di trenta (30) diha siha na notisia, ya este na regulasion siha debi di u efektibu ensigidas despues di mapolu' gi Rehistran i Koporasion suhetu para u ma'aprueba gi Abugådo Heneråt yan i kinonfotmen i Gubietno, ya debi di u efektitibu para siento bente (120) diha siha.

Rason Para Ensigidas: I Ofisinan i Abugådo Heneråt yan i Dipåttamenton i Hotnaleru masodda' mås na i ma'adoptan este na regulasion siha gi menos di trenta (30) diha siha na notisia nisisårio pot rason i Fakterian i Bestidura manisisita para u tutuhon u na'annok maisa siha na siña mana maolek mås i bisnis-niha yan u fan kompitensia ni i madiseseha mona anai malaknos i kuota siha ginen i operasion i World Trade Organization Agreement on Textiles and Clothing (ACT) GI 1995-2004. Pot rason i fakteria siha debi di u matutuhon i manehan i ma'establesi maolek na cho'chu' yan asigurao na otden siha gi kontåt tiempo åntes di Ineru 1, 2005 linaknos i kuota, i Ofisinan i Abugådo Heneråt yan i Dipåttamenton i Hotnaleru masodda' na i enteres pupbliku yan i fakteria na u fan ma'aprueba yan adopta este na regulasion siha ensigidas.

Intension Para U Ma'adopta: I intension i Ofisinan i Abugådo Heneråt yan i Dipåttamenton i Hotnaleru na para u adopta este na ensigidas para u petmanente, sigun i 1 CMC Seksiona 9104 (a) (1) yan (2). Tinatitiye' ni, i enteres pupbliku siña u mana halom tinige' opinion siha pot este ensigidas na regulasion siha para as Kevin A. Lynch, Segundon i Abugådo Heneråt, gi Ofisinan i Abugådo Heneråt gi CNMI, gi Dipåttamenton i Hotnaleru, gi mina dos na bibienda, gi Afetna Square Building, gi San Antonio, giya Saipan MP 96950 pat fax para (670) 236-0992.

Kada'da' Na Mensåhen i Mapropone Ni Nuebu Na Seksiona:

Este ensigidas na amendasion man ma'establesi para:

(1) Diroga i hagas na regulasion siha ti manisisita para i nisisidåt i industrian bestidura pot rason i tinilaikan i uriyan i ekonomia.

(2) Mana mås efektibu i inisan i taotao hiyong ni manmacho'cho'chu' gi industrian bestidura.

(3) Probeniyi manera para i fakteria siha pot para u asiste i mine'dong i kinalamten i che'cho' siha sigun i kapasidåt i ekonomia.

Para Mås Infotmasion Ågan:

Si Kevin A. Lynch, Segundon i Abugådo Heneråt, gi Ofisinan i Abugådo Heneråt, tilifon (670) 236-0910 pat facsimile (670) 236-0992.

Sitasion i Man Achule' yan/pat Inafekta Na Lai, Areklament, Regulasion, yan Otden Siha:

I ensigidas na regulasion siha a amenda i regulasion ni ginibebietna i Manera Ni Para U Risutta i Madesignan i Mapropositu Na Pusision Manmacho'cho'chu' na Taotao Hiyong entre i Industrian Bestidura mapupblisa gi Rehistran i Commonwealth Baluma 25, Numiru 09, gi Oktubre 15, 2003 gi påhina 21418, yan mapropone para u ma'adopta ni man ma'amenda gi Baluma 26, Numiru 2, gi Febreru 23, 2004 gi påhina 21789.

Mafecha este mina onse na diha gi Junio, 2004.

Ninahalom:

Joaquin A. Tenorio
Sekritårion i Hotnaleru

Pamela Brown
Abugådo Heneråt

NOTISIAN PUPBLIKU POT ENSIGIDAS NA REGULASION SIHA YAN NOTISIAN INTENSION PARA U MADIROGA I REGULASION SIHA NI AMEMENDA I MANERA NI PARA U RISUTTA I MADESIGNAN I MA'APROPOSITU POT I MANMACHO'CHO'CHU' NA PETSONA GINEN OTTRO TÅNO' GI INDUSTRIAN BESTIDURA YAN PARA U ESTABLESI GRUPON HOTNALERUN INDUSTRIA

Este na amendasion ma'establesi ni tinatitiye' i Akton Areklamenton Atministrasion, lai 1 CMC Seksiona 9101, et.seq. i Ofisinan i Abugådo Heneråt yan i Dipåttamenton i Hotnaleru man madiroroga I man mapropone Ensigidas Na Regulasion Siha Ni A Estableblesi i Manera Ni Para U Risutta I Madesignan i Ma'apropositu Pot I Manmacho'cho'chu' Na Petsona Siha Gi Fakterian Bestidura Na Pusision Siha, ni mapupblisa gi Rehistran i Commonwealth, Baluma 25, Numiru 09, gi Oktubre 15, 2003 gi påhina 21418, yan mapropone para u ma'adopta ni man ma'amenda gi Baluma 26, Numiru 2, gi Febreru 23, 2004 gi påhina 21789. I Dipåttamento mås a propone nuebu na grupon regulasion siha para u establesi Grupon Hotnalerun Bestidura yan para u sedi para i transferan pusision cho'chu' i Taotao Hiyong gi entalo' todu i Fakterian Bestidura

Sitasion i Aturidåt i Lai: I Ofisinan i Abugådo Heneråt ma'aturisa para u establesi regulasion siha para i entråda yan dipottasion i Taotao Hiyong gi halom i Commonwealth I Sankattan Siha Na Islas Marianas sigun i Otden Eksekatibu 03-01 yan 3 CMC Seksiona 4312 (d). I Dipåttamenton i Hotnaleru ma'aturisa para u establesi regulasion siha papa i Lai Pupbliku 11-76 ni ma'amenda ginen i Lai Pupbliku 12-11 para i ma'establesin i Manera Ni Para U Risutta I Madesignan i Ma'apropositu Pot I Manmacho'cho'chu' Na Petsona Siha Gi Fakterian Bestidura Na Pusision entre i fakteria siha ya u kuentåye' i nuebu na grupon regulasion siha ni a estableblesi i Grupon Hotnalerun Bestidura yan para u sedi i tinilaikan kuota ni manmacho'cho'chu' gi entalo'todu i Fakterian Bestidura.

Kada'da' Na Finihon Diniseha yan Minalagu: I Ensigidas Na Regulasion madiroga i regulasion Ni A Estableblesi i Manera Ni Para U Risutta I Madesignan i Ma'apropositu Pot I Pusision i Manmacho'cho'chu' Na Petsona Siha Entre i Fakterian Bestidura ya u kuentåye' i nuebu na grupon regulasion siha ni a estableblesi i Grupon Hotnalerun Bestidura yan para u sedi i tinilaikan kuota ni manmacho'cho'chu' gi entalo' todu i Fakterian Bestidura.

Ninahalom: _____ 6/21/04
Joaquin A. Tenorio
Sekritårion i Hotnaleru

_____ _____
Pamela Brown
Abugådo Heneråt

Kinonfotme as: _____ 6/23/04
JUAN N. BABAUTA
Governor

Marisibe' as: _____ 6/24/04
Thomas A. Tebuteb
Espesiåt Na Ayudånte Para Atministrasion

Pine'lo yan Rinikot as: _____ 6.24.04
Bernie B. Dela Cruz
Rehistran i Commonwealth

Sigun i Lai 1 CMC Seksiona 2153, ni inamenda ginen i Lai Pupbliku 10-50, i ensigidas na areklamento yan regulasion siha ni man che'che'ton este na momento esta man maribisa yan aprueba pot para u fotma yan ligåt sufisiente ginen i Ofisinan i Abugådo Heneråt gi CNMI.

Mafecha este mina onse na diha gi Junio, 2004.

_____
Pamela Brown
Abugådo Heneråt

ARONGOL TOULAP REEL GHITIPWOTCH KKAAL ME ARONGOL REEL MÁNGEMÁNGIL EBWE FFÉÉR SEFÁL ALLÉGH KKAAL REEL EBWE LLIWELI MWÓGHÚTÚL ASSEFÁLIL SCHÓÓL ANGAANG KKA ARAMASAL LÚGHÚL MELLÓL GARMENT INDUSTRY, ME AKKATÉÉL MWIISCHIL SCHÓÓL ANGAANGAL GARMENT

GHITIPWOTCH: Commonwealth Téél Falúwasch Marianas, Bwulasiyool Sów Bwungúl Allégh me Depattamentool Labor, re schungi bwe faal 1 CMC tálil 9104 (b), bwe tipeer toulap bwe ebwe ffééér sefál Pomwol ghitipwotchul allégh kkaal iye e akkaté mwóghútúl assefálil Garment Workers Positions, ye e akkatééwow mellól Commonwealth Register, Vol 26 No. 9, Sarobwel 15, 2003, peigh 21418, me pomwol ebwe fillóóy iye aa lliwel mellól Volume 26 No 2, Mááischigh. 23, 2004 peigh 21789. Allégh kkaal nge e akkaté mwóghútúl garment manufactures igha ebwe assefál schóól angaang mellól garment industry llól bwángil Samwoolul Labor bwelle reel P.L. 12-11. Ghuley sángi reel fasúl allégh kkaal ye ekke bwáári mwóghut kka e kkofesáng ye e welepakk igha ebwe yoor mwóghutufisch ngálii employer sángi aghiyeghil mwiischil schóól angaangal Garment, me igha allégh kkaal ebwal akkatééwow reel ebwe mmwelil manufactures ebwe alléghúw fáraghil employee me /ngáre job positions leefileer igha ebwe alapaaló ghatchúl labor market. Bwulasiyool Sów Bwungúl Allégh Lapalap me Depattamentool Labor ebwal schungi bwe llól tipeer toulap bwe rebwe fillóóy allégh kkaal llól eliigh (30) ráálil yaal arong, me allégh kkaal ebwe schééschéél isiisiló llól Registrar of Corporations, kkapasal igha ebwe alúghúlúghúló mereel Sów Bwungul Allégh Lapalap me Sów Lemelem, nge ebwe allégh llól ebwughúw ruweigh (120) ráálil.

BWULÚL GHITIPWOTCH: Bwulasiyool Sów Bwungúl Allégh Lapalap me Depattamentool Labor re schungi bwe fillóól allégh kkaal llól eliigh (30) ráálil yaal arong nge e ghi welepakk bwelle garment manufacturers ebwele bweletá alúghúlúghúl me aingiingil reel ebwe akkayúúweló appelúghúlúgh sángi mwóghútúl World Trade Organization Agreement reel Textiles me mwungóógh (ATC) 1995-2004. Bwelle igha manufacturers ebwe bweletá yaal akkaté workforce me alléghúw tittingór mmwal llól Mááischigh. 1, 2005 appelúghúlúghúl akkayúúló, Bwulasiyool Sów Bwungúl Allégh Lapalap me Depattamentool Labor re schungi bwe tipeer toulap me industry igha allégh kkaal ebwe alúghúlúghúló me kkeyil fillóóy.

AGHIYEGHIL EBWE FILLÓÓY: Aghiyeghil Bwulasiyool Sów Bwungúl Allégh Lapalap me Depattamentool Labor igha ebwe fillooy ghitipwotchul yeel bwe ebwe schééschéél allégheló, bwelle reel 1 CMC tálil 9104 (a) (1) me (2) . schééschéél, schóókka re aghiyeghi nge emmwel rebwe ischilong reel ghitipwotchul allégh kkaal nge Kevin A. Lynch, Sów alillisil Sów Bwungúl Allégh Lapalap, CNMI Depattamentool Labor, aruwowal pwó, Ghafetiya Building, San Antonio, Seipél MP 969650 me ngáre reel (670) 236-0992.

Isáliyallong: _____ 6/23/04
JOAQUIN A. TENORIO Rál
Samwoolul Labor

_____ _____
PAMELA BROWN Rál
Sów Bwungúl Allégh Lapalap

Alúghúlúgh sángi: JUAN N. BABAUTA 6/23/04
~~DIEGO T. BENAVENTE~~ Rál
~~Acting~~ hgaal Sow Lemelem

Mwir sángi: _____ _____
THOMAS A. TEBUTEB Rál
Sáw alillisil Sów Lemelem

Aisis sángi: _____ 6/24/04
BERNADITA B. DELA CRUZ Rál
Commonwealth Register

Sángi allégh ye 1 CMC talil 2153, iye aa lliwel mereel Alléghúl Toulap 10-50, alégh kka e appasch nge raa takkal amweri fischiiy me alúghúlúghúló mereel CNMI Bwulasiyool Sów Bwungúl Allégh Lapalap.

Rállil _____llól Alimaté, 2004.

_____
PAMELA BROWN
Sów Bwungúl Allégh Lapalap

ARONGOL TOULAP REEL GHITIPWOTCHUL ALLÉGH KKAAL ME ARONGOL IGHA RE MÁNGI REBWE FÉÉR SEFÁL ALLÉGH KKAAL YE EBWE LLIWELI MWÓGHUTUL ASSEFÁLIL SCHÓÓL ANGAANG KKA ARAMASAL LÚGHÚL MELLÓL GARMENT INDUSTRY, ME EBWE AKKATÉÉL MWIISCHIL SCHÓÓL ANGAANGAL GARMENT

Lliwel kkaal nge ebwe akkatééwow bwelle reel Adminstrative Procedure Act, 1 CMC talil 9101, et seq. Bwulasiyool Sów Bwungúl Allégh Lapalap me Depattementool Labor ekke fféér sefál Pomwol ghitipwothul allégh kkaal ye ekke akkaté mwógútúl assefálil Garment Worker Position, ye e akkatéélló llól Commonwealth Register, Vol. 25, No. 9, Sarebwel 15, 2003 peigh 21418, me pomwol filló yeel igha e ssiwel llól Volume 26, No 2, Mááischigh, 23 2004 peigh 21789. Depattamento ebwal sóbweey yaal pomwoli allégh kka e ffé reel ebwe akkaté mwiischil schóól angaangal Garment me ebwe mmwelil amweta aramasal lúghúl kka rekke angaang ngáli garment manufacturers ye e ghatch.

Akkatéél bwángil: Bwulasiyool Sów Bwungúl Allégh nge eyoor bwángil ebwe akkaté allégh kkaal reel atotoolong me assefálil aramasal lúghúl mellól Commonwealth Teel Falúwasch Marianas bwelle akkúléyal Sów Lemelem 03-01 me 3 CMC tálil 4312 (d) . Depattamentool Labor nge mweiti ngáli allégh elo faal Alléghúl Toulap 11-76 iye e lliwel mereel Alléghúl Toulap 12-11 reel mwóghútúl akkaté ngáli assefálil Garment Workers mellól manufacturers kkaal

Aweweel kkapasal allégh: Alléghúl ghitipwotch kkaal ebwe fféér sefál allégh kka e akkaté mwóghútúl ngáli assefálil schóól angaang mellól garment manufacturers me alusu allégh kka e ffé ye e akkaté mwiischil schóól angaangal Garment me atiwa appelúghúlúghúúr schóól angaang leefileer employers mellól garment industry kkaal.

Tálil ye Aweweel ngáli pomwol e ffé: Ghitipwotchul lliwel kkaal e akkatééwow reel:

(1) fféér sefál fasúl allégh ikka ese fil ngáli garment industry bwelle lliwelil economic environment;

(2) aghatchú mwóghútúl aramasal lúghúl kka rekke angaang mellól garment industry;

(3) ayoora ngúlúwal manufacturers ngáliir tailor llapal yaar angaang ngáli economic circumstances.

Akkatéél bwángil akkááw allégh: Ghitipwotchul allégh kkaal e ssiweli allégh kka e lemeli assefálil schóól angaang kka aramasal lúghúl mellól garment industry ye ekkaté mellól Commonwealth Register Vol. 25, No. 9, peigh 21418 (Sarobwel. 15, 2003) me pomwol reel fillóóy igha aa ssiwel mellól Volume 26, No 2, Mááischigh. 23, 2004 peigh 2178.

Ráálil 11th llól Alimaté 2004.

Isáliyallong:

PAMELA BROWN
Sów Bwungúl Allégh Lapalap

JOAQUIN A. TENORIO
Samwoolul Labor

AMENDMENTS TO REALLOCATION REGULATIONS
ESTABLISHING THE GARMENT LABOR POOL

I. GARMENT LABOR POOL. There is hereby established a garment labor pool administered by the Department of Labor which shall consist of all unused or unfilled non-immigrant alien garment worker positions within the quota of the various manufacturers, as described below. The purpose of the pool is to maximize use of available nonresident worker positions within the garment industry by reallocating positions from manufacturers who have had positions unfilled for 60 days or more to manufacturers needing additional workers.

a. The pool consists of replaceable positions over 60 days old created by the verified departure of a nonresident worker from the Commonwealth. Departure is shown by surrender/cancellation of the LIIDS card of the worker being replaced or by the officially accomplished transfer of a worker from the garment industry to a non-garment position, or by any other means acceptable to the Secretary of Labor. The Department shall give notice to the affected employer before removing positions and placing them in the pool.
b. The pool shall also consist of any positions among the manufacturers that have been unfilled from April 1, 2004 through September 1, 2004. "Unfilled" means a worker has either departed or been lawfully transferred as above, and no complete application has been submitted to the Department to replace that worker within 60 days of departure or transfer, or any positions that have not previously been occupied by an employee.
c. The pool shall also consist of employee positions affected by:
    1. The filing of a petition for bankruptcy of the employer under Chapter 7 of the Bankruptcy Code;
    2. A reduction in force by the employer;
    3. Positions of an employer who has been adjudicated as not making payment of wages and/or salaries for a period of 90 days or more;
    4. An employer whose Garment Manufacturing License has been revoked.
    5. An employer who has been temporarily or permanently barred from employing nonresident workers.
d. It is the intention of these Regulations that there be no monetary value that attaches to a worker position, and that the recovery of a position to the pool under (a) through (c) above does not entitle the employer losing the position to any compensation.
e. The garment industry and pool shall be operated in a manner to ensure that the total number of nonresident garment workers does not exceed 15,727 persons.
f. The procedure for requesting and approving or denying applications for additional garment workers is as follows:
    1. A prospective employer shall be a garment manufacturer licensed in the CNMI.
    2. The employer requesting additional workers shall apply in writing to the Director of Labor for additional workers. The request must specify the

number of workers requested. A statement of the user fees paid by the employer for the previous year shall be submitted with the request.

3. The request must be signed by a person having authority to bind the company to the employment of nonresident workers.
4. By making the request the prospective employer certifies that if the request is granted, the employer will make a good faith effort to promptly fill the positions granted. If no application is filed with the Department within 60 days of the request being granted the worker position shall revert back to the garment worker pool.
5. If there are special circumstances of which the Director should be aware concerning the request, the applicant should state them in the request. For example: changes in manpower requirements due to expansion, unusually high orders, changes in product line, or similar business-related factors.

g. After receiving the request, the Director of Labor or his designee shall review the request and determine if the request should be granted. The Director or his designee may consider these factors in responding to the request:
   1. The extent to which an employer has previously hired workers on Temporary Work Authorization;
   2. The number of employee positions requested;
   3. Whether the employer has previously requested a reduction in hours or has failed to utilize their quota under Schedule A;
   4. The employer's compliance with Commonwealth and Federal labor statutes and regulations, including laws and regulations regarding the percentage of resident workers required to be employed;
   5. The extent to which the employer has been a responsible member of the CNMI labor community by timely payment of wages and taxes, compliance with laws and regulations intended to preserve and protect the environment, and the extent to which the employer has promoted the health and safety of its employees, and has contributed to the economy of the Commonwealth;
   6. Potential financial hardship to the employer or other equitable factors weighing in favor of or against granting the request;
   7. Whether the employer has the financial resources to provide for the additional workers including factory space and living quarters;
   8. The distribution of workers throughout the industry;

h. The Director shall review requests for positions from the labor pool on the 15th day of January, March, May, July, September, and November. If there are applications for more positions than there are available in the pool, the Director may release positions to employers in proportion to the numbers of positions requested. *See illustration below*. The Director shall notify each applicant in writing of the action taken on the request.

i. An applicant may appeal an adverse decision denying a request to the Secretary of Labor.

j. A worker position granted to an employer from the pool is removed from the pool. The worker may be replaced by the employer upon departure or transfer. A position that goes into the pool due to being vacant for 60 days may not be

replaced by the company losing the position except pursuant to these regulations by applying for employees from the pool.

k. These regulations do not affect renewals of existing contracts or the usual replacement of departing or transferring workers.

l. Following the grant of additional workers from the pool the employer must follow all applicable requirements for the hiring of nonresident workers including the job vacancy announcement.

m. As required by the Nonresident Workers Act and the Moratorium on the Hiring of Nonresident Workers, the employer must first attempt to fill any available position with a resident worker who is qualified and available for the position. If such a resident worker is not available, the transferring company must attempt to hire a qualified nonresident worker who is presently within the Commonwealth. If such a nonresident worker is not available, the company may hire a nonresident worker from outside the Commonwealth.

n. On June 1 and December 1 of each year each employer shall report to the Department of Labor the number of nonresident workers employed. Failure to submit the required report shall result in the suspension of the processing of any of the employer's labor-related documents by the Department until the report is filed with the Department.

II. TRANSFERS OF POSITIONS WITHIN THE GARMENT INDUSTRY. Employers in the garment industry may voluntarily agree to transfer employee positions between themselves as follows:

a. The transferring employer and receiving employer shall notify the Department of the intention to transfer employees from one business to another, shall state the number of workers to be transferred, shall describe where the workers are to be employed, and any special arrangements such as housing, food, and transportation.

b. The Department shall be provided a list of the employees intended to be transferred that contains the name, LIIDS number, and an acceptance of the transfer by each affected worker.

c. No transfer shall be permitted to an employer in arrears in paying wages within the previous calendar year. All wages and/or salaries to transferring employees must be paid in full before a transfer will be allowed.

d. When a transfer occurs pursuant to this subsection, the transferring employer loses a worker position and the receiving employer gains a position. Positions acquired under Sections I or II may not be transferred to another employer for one calendar year. Workers occupying positions transferred under Subsections I or II may not be laid off or terminated due to a reduction in force or similar elimination of workers for one calendar year.

e. The Department of Labor procedures and fees regarding consensual transfers shall be applied to transfers under this section.

Illustration:

For example, there are 200 available positions in the pool. The following companies request additional workers:

Co. A =	150 workers
Co. B =	60 workers
Co. C =	10 workers
Co. D =	30 workers
Total =	250 workers

Calculate the percentage of the total request (250 workers requested) attributable to each company:

Co. A =	60%	(150 / 250)
Co. B =	24%	(60 / 250)
Co. C =	4%	(10 / 250)
Co. D =	12%	(30 / 250)
Total =	100%	

Multiply the percentage by the number of available workers in the pool to get the *pro rata* number for each requesting employer:

Co. A =	200 x 60% =	120 workers
Co. B =	200 x 24% =	48 workers
Co. C =	200 x 4% =	8 workers
Co. D =	200 x 12% =	24 workers
Total =		200 workers

Commonwealth of the Northern Mariana Islands
MARIANAS PUBLIC LANDS AUTHORITY

PUBLIC NOTICE OF EMERGENCY ADOPTION
PROPOSED HOUSING PARTNERSHIP REGULATIONS

EMERGENCY ADOPTION AND IMMEDIATE EFFECT: The Commonwealth of the Northern Marianas Islands, Marianas Public Lands Authority (M PLA) finds that pursuant to 1 CMC 9104(b), the public interest requires the adoption of the attached regulations upon fewer than 30 days' notice and that pursuant to 1 CMC 9105(b)(2) the public interest requires the effective date of today, May 26, 2004.

Because of the above findings and the filing directed below, these regulations shall become effective immediately. (1 CMC 9105(b)(2)).

AUTHORITY: Marianas Public Lands Authority (MPLA) is requires to adopt rules and regulations regarding those matters over which MPLA has jurisdiction and over matters related to the implementation of the Village Homesteading Act. (2 CMC 4331 *et seq*). See Executive Order 94-3 (effective August 23, 1994, reorganizing the Executive Branch).

SUMMARY: These regulations will establish procedures by which residential housing developments may established under the Village Homesteading Act.

REASON FOR EMERGENCY ADOPTION: The Northern Marianas Housing Corporation currently has over three hundred (300) applications pending for housing loans and there exists a pressing need to expediently resolve these and pending applications and to provide safe, desirable and affordable housing to the Community in an expedient manner.
These regulations establish procedures by which NMHC and MPLA may address this need by facilitating housing developments under the Village Homesteading Act.

DIRECTIONS FOR FILING AND PUBLICATION: This regulation shall be filed with the Commonwealth Registrar, and copies hand delivered to the Office of the Governor. (1 CMC 9106(b)(2). This notice and findings shall be filed with the regulation and the Marianas Public Lands Authority shall take appropriate measures to make this emergency regulation known to the persons who may be affected by them (1 CMC 9105(b)(2)), including publication in the next edition of the Commonwealth Register.

Submitted by:

HENRY HOFSCHNEIDER
Marianas Public Lands Authority

5/28/2004
Date

Concurred by:

JUAN N. BABAUTA
Governor

5/28/04
Date

Filed and Recorded by:

BERNADITA B. DELA CRUZ
Commonwealth Register

5/28/04
Date

Pursuant to 1 CMC 2153(e), and 1 CMC 9104(a)(3), the emergency regulations attached hereto has been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published.

Dated the 28th day of May, 2004

PAMELA S. BROWN
Attorney General

Commonwealth of the Northern Marianas Islands
Housing Partnership Regulations

Part A- General Provisions

Section 1-101 Purposes.

(1) ***Interpretation.*** **These regulations shall be construed and applied to achieve the goals of the Village Homesteading Act.**

(2) ***Purposes and Policies.*** **The underlying purposes and policies of these regulations are:**

(a) to provide safe, decent sanitary and affordable dwellings for eligible Commonwealth residents.

Section 1-102 Authority.

These regulations are promulgated under the authority of 2 CMC 4338 which gives the Marianas Public Land Corporation(*now* MPLA) the duty to adopt rules and regulations implementing the provisions of 2 CMC 4331, The Village Homesteading Act. *See* Executive Order 94-3 (effective August 23, 1994, reorganizing the Executive Branch).

Section 1-103 Supplementary General Principles of Law Applicability.

Unless displaced by the particular provisions of these regulations, the principles of law and equity including, but not limited to common law of fraud, conflicts of interest, waste, false pretenses, and public purpose shall supplement these regulations. The regulations governing procurements promulgated by the CNMI Division of Procurement and Supply shall not apply.

Section 1-104 Requirement of Good Faith.

These regulations require all parties to act in good faith.

Section 1-105 Severability.

If any provision of these regulations or any application thereof to any person or circumstances is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or application of these regulations which can be given effect without the invalid provision or application, and to this end, the provisions of these regulations are declared to be severable.

Part B - Definitions

Section 1-201 Definitions

As used in these regulations, unless the context otherwise requires, the following meanings apply:

1. ***Attorney General*** **means the Attorney General of the Commonwealth of the Northern Mariana Islands.**

2. ***Contract*** **means all types of agreements**

3. ***Contractor*** **means a person, firm, or corporation contracted to perform construction activity associated with the development. For purpose of these regulations, the term "contractor" shall include all subcontractors who are under separate contract or agreement with the contractor for performance of a part of the work at the site.**

4. ***Construction*** **means the process of building, altering, repairing, improving or demolishing of a public structure or building or public improvements.**

5. ***Developer*** **or *Investor* means any person, individual, firm, partnership, association, corporation, estate, trust, or any other group or combination acting as a unit who directs the undertaking or proposes to undertake development activities.**

6. *Government or Commonwealth* means the Government of the Commonwealth of the Northern Mariana Islands which includes the executive, legislative and judicial branches. It also includes government agencies, political subdivisions, public corporations and agencies of local government, all collectively referred to herein as Public Agencies.

6. *Governor* means the Governor of the Commonwealth of the Northern Mariana Islands.

7. *Homestead* shall be construed in a manner consistent with the intent expressed in 2 CMC 4331 *et seq*.

***8. Housing Development or Housing* means any work or undertaking, whether new construction, improvement, rehabilitation, or acquisition of existing buildings or units which is designed for the primary purpose of providing residential housing.**

9. *Person* means an individual, sole proprietorship, partnership, joint venture, corporation, other unincorporated association or a private legal entity.

10. *"Persons and families of low and moderate income"* mean persons and families, irrespective of race, creed, national origin or sex, determined by the agency to require assistance on account of personal or family income being not sufficient to afford adequate housing.

Part C- Housing Development Partnership Administration

Section 2-101 Housing Development Partnership

(1) Northern Marianas Housing Corporation (NMHC) is hereby authorized to contract with developers, project coordinators, construction managers and others, as necessary and appropriate, to finance, purchase, acquire and develop affordable housing.

(2) Housing shall be constructed on land lots designated by the Village Homesteading Act, 2 CMC 4331 *et seq* homesteads for eligible Commonwealth residents

(3) At least thirty (30) days prior to purchasing, acquiring or developing any residential housing pursuant to this section, NMHC shall publish a notice in a newspaper of general circulation in the Commonwealth. Such notice (i) shall state that NMHC intends to purchase, acquire, construct or rehabilitate a residential housing development or developments. NMHC shall solicit proposals from interested parties for such purchase, acquisition, construction or rehabilitation *or* (ii) shall identify the residential housing development or developments to be purchased, acquired or developed and shall request

comments from the general public with respect to such proposed purchase, acquisition, or development.

(4) Under a partnership agreement for a specific project or development, NMHC and the builder must agree to:

(a) the type, style, and number of houses to be built under the partnership
(b) the features and design of houses so as to be financially assessable to low and moderate income buyers;
(c) any other term that the department determines appropriate.

(5) NMHC must consider the following topics in relation to a proposed housing development:

(a) developer market study if made;
(b) the proposed location;
(c) the performance history of the developer is available;
(d) the financial feasibility of the project;
(e) the appropriateness of the development's size and configuration in relation to the housing needs of the community;
(f) the availability of adequate public facilities and services;
(g) the anticipated impact on local school districts;
(h) zoning and other land use considerations; and
(i) any other topics that NMHC determines to be appropriate

(6) NMHC may not enter into a partnership agreement for a specific project with a developer unless the developer agrees to issue standard warranties for materials and labor to the first owner-occupant of a home purchased under this program.

(7) Notwithstanding any other provision of this chapter, NMHC may not finance a housing development undertaken by a developer under this chapter, unless NMHC first determines that:

(a) the housing development is necessary to provide needed decent, safe, and sanitary housing at rentals or prices that individuals or families of low and very low income or families of moderate income can afford;
(b) the developer undertaking the proposed housing development will supply well-planned and well-designed housing for individuals or families of low and very low income or families of moderate income;
(c) the developer is financially responsible;
(d) the developer is not, or will not enter into a contract for the proposed housing development with a developer or investor that:
(i) is on any debarred list maintained by the Division of Procurement and Supply or

any debarred list of the United States Department of Housing and Urban Development;

(ii)breached a contract with a public agency; or

(iii) misrepresented to a subcontractor the extent to which the developer has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the developer's participation in contracts with the agency and the amount of financial assistance awarded to the developer by the agency;

(iv) the financing of the housing development is a public purpose and will provide a public benefit; and

(v) the housing development will be undertaken within the authority granted by this chapter to NMHC and MPLA.

(8) Developers, investors and others selected by NMHC to provide services for the Government under the program shall be independent contractors and shall not be deemed agents or employees of the Government. Such persons shall provide evidence of adequate personal liability, fire, casualty and other appropriate insurance to protect the interests of the Government, as such interests may appear. Developers and contractors shall also be required to provide performance and completion guarantees or other forms of performance and completion assurances established pursuant to written rules and regulations to minimize risks to the Government in the event of their failure to adequately perform under their construction agreements.

(9) NMHC shall market the homes built under the program to individuals and families who qualify for housing assistance under department programs in the same manner in which private housing development project are marketed to the general public.

(10) NMHC shall adopt rules to achieve occupancy by individuals with special needs in accordance with any requirements imposed by applicable laws.

PUBLIC NOTICE

REVISION OF PROPOSED IMMIGRATION RULES AND REGULATIONS IMPLEMENTING PUBLIC LAW 13-61 AND EXTENSION OF PERIOD FOR PUBLIC COMMENT

The Commonwealth of the Northern Mariana Islands, Office of the Attorney General hereby notifies the general public that the Proposed Adoption of Immigration Rules and Regulations Implementing Public Law 13-61 by Establishing a Procedural Mechanism for Persons, published in the Commonwealth Register, Vol. 26, No. 5, May 24, 2004 at pages 22504 to 22526, is hereby revised as indicated, and the period within which the public may submit written comments is hereby extended for a period of thirty (30) days after publication of this notice in the Commonwealth Register. The revisions proposed herein are made pursuant to written comments submitted by United States Citizenship and Immigration Services and the United States Department of Homeland Security. Written comments on the revised proposed regulations should be sent to Pamela Brown, Attorney General, Office of the Attorney General, Second Floor, Juan A. Sablan Memorial Bldg, Capitol Hill, Saipan MP 96950 or by fax to (670) 664-2349.

Submitted by: _____ 6/24/04
PAMELA BROWN Date
A Acting Attorney General

Received by: _____ 6/24/04
THOMAS A. TEBUTEB Date
Special Assistant for Administration

Filed and Recorded by: _____ 6/24/04
BERNADITA B. DE LA CRUZ Date
Corporate Register

Pursuant to 1CMC §2153, as amended by Public Law 10-50, the rules and regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General's Office.

Dated this 24th day of June 2004.

_____
PAMELA BROWN
Acting Attorney General

REVISED PUBLIC NOTICE

PROPOSED ADOPTION OF IMMIGRATION RULES AND REGULATIONS IMPLEMENTING PUBLIC LAW 13-61 BY ESTABLISHING A PROCEDURAL MECHANISM FOR PERSONS REQUESTING PROTECTION FROM REFOULEMENT

The following proposed rules and regulations are promulgated in accordance with the Commonwealth Administrative Procedure Act, 1 CMC § 9101, *et seq.* The Office of the Attorney General is adopting these rules and regulations to establish a procedural mechanism for persons requesting protection from *refoulement*, the involuntary return of a person to a country where they would likely face persecution and/or torture, under section 4301, *et seq.* of the Commonwealth Entry and Deportation Act, as amended by Public Law 13-61, 3 CMC § 4344(d). Section 4344(d) of title 3 of the Commonwealth of the Northern Mariana Islands Code implements the nonrefoulement obligations set forth in article 33 of the 1951 United Nations Convention relating to the Status of Refugees, as incorporated into the 1967 United Nations Protocol relating to the status of Refugees ("Refugee Protocol"),[1] and article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT").[2]

The implementation of such a procedural mechanism is in conformance with a Memorandum of Agreement ("MOA") between the Commonwealth of the Northern Mariana Islands ("Commonwealth") and the United States Department of Interior, Office of Insular Affairs. The MOA contemplates that the Commonwealth will implement certain *nonrefoulement* protections in its immigration laws, consistent with the Covenant to Establish a Commonwealth of the Northern Mariana Island in Political Union with the United States of America ("Covenant").

Citation of Statutory Authority: The Office of Attorney General is authorized to promulgate these regulations pursuant to section 4312(d) of the Commonwealth Entry and Deportation Act, and 3 CMC § 4344(d), as amended by Public Law 13-61.

Short Statement of Goals and Objectives: These rules and regulations are promulgated to:

1. Implement certain international conventions and treaties to which the United States of America is a signatory as set forth in Section 102 of the Covenant. Specifically, the United Nations Convention Relating to the Status of Refugees and the

[1] Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150. Articles 2 to 34 of the Convention are incorporated by the Protocol Relating to the Status of Refugees, January 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 (signed by U.S. on November 1, 1968).

[2] United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, December 10, 1984, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85 (signed by U.S. on April 18, 1988).

United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The implementation of such treaties and conventions is necessary because the provisions set forth in United States laws and regulations that implement the aforementioned treaties in the United States do not apply within the Commonwealth.

2. To reaffirm that the Commonwealth retains exclusive jurisdiction over matters related to local immigration pursuant to the Covenant and that the public policy of the Commonwealth, set forth at 3 CMC § 4301(b), is that "[n]o alien may seek or obtain entry into the Commonwealth as a matter of right" and that "[e]ntry to the Commonwealth is a privilege extended to aliens only upon such terms and conditions as may be prescribed by law."

Brief Summary of the Proposed Regulations: The proposed regulations establish a procedural mechanism implementing international treaties and conventions related to the status and treatment of persons fearing persecution or torture in the designated country of removal. Accordingly, the proposed regulations define who may seek protection under such treaties and conventions; establish a hearing office to review the request of a person seeking protection from *refoulement* and decide whether such protection will be granted or denied; and establish the manner in which a person who has been denied protection may appeal an adverse decision to the Attorney General. The decision of the Attorney General, as provided by statute and as permitted by the provisions of the applicable treaties and conventions, shall be final and non-reviewable.

Citation of Related and/or Affected Statutes, Rules and Regulations, and Orders: The proposed amendments affect deportation and exclusion from the Commonwealth; specifically 3 CMC §§ 4341 and 4344.

For Further Information Contact: Pamela Brown, Attorney General. Telephone (670) 664-2341 or Facsimile (670) 664-2349.

Dated this 24th day of June 2004

Submitted by:

CLYDE LEMONS JR.
Acting Attorney General

Received by:

THOMAS A. TEBUTEB
Special Assistant for Administration

Date: 6/24/04

Filed and Recorded by:

BERNADITA B. DE LA CRUZ
Corporate Register

Date: 6/24/04

Pursuant to 1 CMC §2153, as amended by Public Law 10-50, the rules and regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General's Office.

Dated this 24th day of June 2004.

CLYDE LEMONS JR.
Acting Attorney General

NOTISIAN PUPBLIKU

MAKURIHEN I MAPROPONE NA AREKLAMENTO YAN REGULASION IMIGRASION NI A IMPLIMEMENTA I LAI PUPBLIKU 13-61 YAN I MA'EKSTIENDEN I TIEMPON I OPINION PUPBLIKU

I Commonwealth I Sankattan Siha Na Islas Marianas, gi Ofisinan i Abugådo Heneråt este na momento a notifiika i pupbliku heneråt na i Ma propone Na Adoptasion i Areklamento yan Regulasion Imigrasion Ni A Implimementa i Lai Pupbliku 13-61 ginen a estableblesi i Manera Ni Para U Risutta I Madesignan I Mapropositu Pot Petsona Siha, mapupblisa gi Rehistran i Commonwealth, Baluma 26, Numiru 5, gi Måyu 24, 2004 gi påhinan 22504 esta 22526, pågu na momento maribisa ni ma'endikeha, ya i tiempo i anai i pupbliku siña munahalom tinige' opinion este na momento ma'ekstiende para (30) diha siha depues i pupblikasion este na notisia gi Rehistran i Commonwealth. I makurihen i mapropone gi este na notisia man mafatinas sigun i tinige' opinion ni mana halom gi Suidånun Estådos Unidos yan Setbisiun Imigrasion yan i Dipåttamenton i Homeland Security gi Estådos Unidos. Tinige' opinion pot i makurihen i mapropone na regulasion siha debi di u mana hanågue si Pamela Brown, i Abugådo Heneråt, gi Ofisinan i Abugådo Heneråt, gi Segundo na bibienda, gi Juan A. Sablan Memorial Building, gi Capitol Hill, giya Saipan MP 96950 pat facsimile para (670) 664-2349.

Ninahalom as: _____ _____
Pamela Brown — Fecha
Abugådo Heneråt

Marisibe' as: _____ 6/24/04
Thomas A. Tebuteb — Fecha
Espesiåt Na Ayudånte Para i Atministrasion

Pine'lo yan
Rinikot as: _____ 6/24/04
Bernadita B. Dela Cruz — Fecha
Rehistran i Koporasion

Sigun i Lai 1 CMC Seksiona 2153, ni inamenda ginen i Lai Pupbliku10-50, i areklamento yan regulasion siha ni man che'che'ton este na momento man maribisa yan aprueba pot para u fotma yan ligåt sufisiente ginen i Ofisinan i Abugådo Heneråt i CNMI.

Mafecha este mina _____ na diha gi Junio, 2004.

_____
Pamela Brown
Abugådo Heneråt

ARONGOL TOULAP

FFEERSEFAL REEL POMWOL ALLEGHUL IMMIGRATION YE EBWE AYOORA ALLÉGHÚL TOULAP 13-61 ME SÓBWEEY AGHIYEGHIIR TOULAP

Commonwealth Téél Falúwasch Marianas, Bwulasiyool Sów Bwungúl Allégh Lapalap ekke arongaar toulap bwe pomwol fillóól Alléghúl Immigration ye ebwe ayooralong Alléghúl Toulap 13-61 reel ebwe akkatéélong lameer aramas, akkatéélong llól Commonwealth Register, Vol. 26, No. 5, Ghúúw 24, 2004 llól peigh 22504 mwete ngáli 22526, lliwel kkaal ekke bwáári, me otol igha aramas ebwe ischilong mángemángil ebwe sóbwósóbwóló llól ótol eliigh(30) ráálil mwiril yaal arongowow mellól Commonwealth Register. Mwóghutul lliwel reel pomwol yeel ebwe ffééríó sángi aghiyegh ye e tooto mereel United States Citizenship me alillisil Immigration fengal me United State Department of Homeland Security. Mángemáng reel pomwol ssiwel kkaal nge ebwe akkafangeló reel Pamela Brown, Sów Bwungúl Allégh, Bwulasiyool Sów Bwungúl Allégh Lapalap, Aruwowal pwó, Juan A. Sablan Memorial Bldg, Capitol Hill, Seipél MP 96950 me ngáre fax reel (670) 664-2349.

Isáliyallong: _____ _____
PAMELA BROWN Rál
Sów Bwungúl Allégh Lapalap

Mwir sángi: _____ 6/24/04
THOMAS A. TEBUTEB Rál
Sów Alillisil Sów Lemelem

Aisis sángi: _____ 6/24/04
BERNADITA B. DELA CRUZ Rál
Corporate Register

Sángi allégh ye 1 CMC iye aa lliwel mereel Alléghúl Toulap 10-50, allégh kka e appasch nge raa takkal amweri fischiiy me alúghúlúghúló mereel CNMI Bwulasiyool Sów Bwungúl Allégh Lapalap.

Ráálil ye_____llól June 2004

PAMELA BROWN
Sów Bwungúl Allégh Lapalap

PUBLIC NOTICE

PROPOSED ADOPTION OF IMMIGRATION RULES AND REGULATIONS IMPLEMENTING PUBLIC LAW 13-61 BY ESTABLISHING A PROCEDURAL MECHANASIM FOR PERSONS REQUESTING PROTECTION FROM REFOULEMENT

The Office of the Attorney General notifies the general public of its intention to adopt new regulations establishing a procedural mechanism for persons requesting protection from refoulement. The regulations, which follow, are promulgated pursuant to the Attorney General's authority as set forth in 3 CMC §4312(d) and 3 CMC §4344(d).

REGULATIONS IMPLEMENTING PUBLIC LAW 13-61 BY ESTABLISHING A PROCEDURAL MECHANISM FOR PERSONS REQUESTING PROTECTION FROM REFOULEMENT

I. **Applicability.** The following regulations are intended to implement the protections contemplated in the Memorandum of Agreement ("MOA") entered between the Commonwealth of the Northern Mariana Islands ("Commonwealth") and the United States Department of Interior, Office of Insular Affairs, executed on September 12, 2003, as well as Public Law 13-61. These regulations provide procedures for determining whether an alien subject to removal is eligible for protection under 3 CMC § 4344(d), which implements the nonrefoulement obligations set forth in article 33 of the 1951 United Nations Convention relating to the Status of Refugees, as incorporated into the 1967 United Nations Protocol relating to the status of Refugees ("Refugee Protocol"),[1] and article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT").[2] As used herein, protection from *refoulement* pursuant to the Refugee Protocol will be referred to as "Refugee Protection," protection from *refoulement* pursuant to the CAT will be referred to as "CAT Protection." Collectively, both protections will be referred to as "*Nonrefoulement* Protection."

A. **Eligible Applicants.** These procedures shall apply in situations wherein a foreign national (as used herein, the term "foreign national" refers to persons defined as "aliens" elsewhere in Commonwealth law and regulations) has been ordered deported by the Commonwealth Superior Court pursuant to 3 CMC § 4341, or has been denied entry at a Commonwealth port of entry ("POE"), pursuant to 3 CMC § 4331 *et seq.*, and prior to removal from the Commonwealth the individual expresses fear of persecution or torture in the designated country of removal.

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[1] United Nations Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150. Articles 2 to 34 of the Convention are incorporated by the Protocol Relating to the Status of Refugees, January 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 (signed by U.S. on November 1, 1968).

[2] [2] United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, December 10, 1984, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85 (signed by U.S. on April 18, 1988).

B. **No Affirmative Applications.** A foreign national shall not be entitled under any circumstances to submit an application, claim, civil action or other assertion of entitlement to the protection of the Refugee Protocol and/or CAT unless that individual has been ordered deported by a court of competent jurisdiction or has been denied entry to the Commonwealth, at a POE or otherwise.

II. Procedural Mechanism.

A. **Refugee Protection Office.** Pursuant to the obligations of the Attorney General as set forth in Public Law 13-61, there is hereby created an Office for Refugee Protection ("ORP") within the Office of the Attorney General ("OAG"). The Attorney General shall staff the ORP with full-time or part-time personnel as necessary in order to perform the duties set forth in these regulations, and to otherwise implement Public Law 13-61.

B. **Exclusion.** Any foreign national attempting to enter the Commonwealth who is determined to be excludable pursuant to 3 CMC § 4322, and who expresses fear of persecution or torture in the designated country of removal, will be afforded a Protection Hearing conducted by the ORP, unless it is determined by the Attorney General or her designee that the expression of fear is manifestly unfounded in view of the applicable nonrefoulement standards set forth herein.

C. **Deportation.** Any foreign nationals against whom a deportation order has been entered by the Superior Court pursuant to 3 CMC § 4341, and who expresses fear of persecution or torture in the designated country of removal, will be afforded a Protection Hearing conducted by the ORP, unless it is determined by the Attorney General or her designee that the expression of fear is manifestly unfounded in view of the applicable nonrefoulement standards set forth herein.

D. **Determinations of Manifestly Unfounded Claims.** Interviews to determine whether a claim is manifestly unfounded shall be recorded electronically. The basis for finding that a claim is manifestly unfounded shall be detailed in a report written by the interviewer. For purposes of this section, "manifestly unfounded" shall mean that the claim is clearly fraudulent or not related to the criteria for the granting of *Nonrefoulement* Protection.

E. **Advisements.**

1. **Right to Protection.** A foreign national who has been ordered deported by the Commonwealth Superior Court or who has been excluded at the POE shall be advised that he or she may obtain a Protection Hearing if he or she has a fear of persecution or torture in the designated country of removal. This advisement will be given (i) in writing by way of a pre-printed form, and/or (ii) verbally, either by the Attorney General or her designee. Verbal advisements shall be duly recorded, electronically or with a written acknowledgement from the foreign national. All reasonable

efforts will be made to ensure that the foreign national understands the substance of this advisement, including without limitation translation of the advisement into an appropriate language, and providing assistance for those with reading difficulties.

2. **Other Rights and Obligations.** Unless the Attorney General or her designee has determined that the claim is manifestly unfounded, the OAG shall (i) provide the foreign national with appropriate application forms and instructions on how to fill out the forms; (ii) advise the foreign national of the right to representation at their own expense; and (iii) provide the foreign national with contact information for the CNMI Bar Association and other organizations which have indicated availability to assist foreign nationals in Protection Hearings.

F. Application.

1. **Initial Application.** Upon receiving the application form and instructions, the foreign national shall have three (3) business days to file the completed application and any supporting documents with the ORP, at which time the foreign national shall have formally entered Protection Hearing proceedings. The initial application must: (i) give the applicant's true identity; (ii) list all immediate relatives seeking derivative status under section III.A; and (iii) state the basis for seeking *Nonrefoulement* Protection. Failure to meet these requirements may be grounds for denying a claim.

2. **Amended Application.** The application may be amended once, provided it is submitted with any supporting documents to the ORP not less than ten (10) business days prior to the scheduled date of the Protection Hearing. Failure to submit the initial or amended application by the date due may be grounds for denying a claim. Supporting evidence submitted less than ten (10) business days prior to the Protection Hearing may only be admitted by leave of the APJ.

3. **Government**. Any documents or other evidence submitted by the OAG shall be submitted not less five (5) business days prior to the scheduled date of the Protection Hearing. Evidence submitted less than five (5) business days prior to the Protection Hearing may only be admitted by leave of the APJ.

4. **Scheduling of Protection Hearing.** On the same day that the foreign national submits his or her initial application, or as soon as possible thereafter, the Attorney General or her designee shall set a date for the Protection Hearing, allowing a reasonable amount of time for the foreign national to amend the application as needed to fully and fairly present his or her case. The OAG shall immediately notify the applicant of the date

of the Protection Hearing. The date of the Protection Hearing may be extended for good cause, in the discretion of the Attorney General or her designee.

G. Detention.

1. **Excluded Persons.** If appropriate, and pending a determination on the applicant's request for *Nonrefoulement* Protection, the Attorney General or her designee may decide to detain the foreign national or may allow their temporary admission, in her discretion and under such conditions as will ensure the person's availability for further proceedings. For purposes of Commonwealth immigration laws, applicants granted parole under this provision shall be considered to be temporarily admitted to the Commonwealth consistent with 3 CMC § 4337.

2. **Deported Persons.** The decision to detain applicants who have been ordered deported but who are awaiting a determination on the applicant's request for *Nonrefoulement* Protection shall be in the discretion of the Attorney General or her designee, under such conditions as will ensure the person's appearance for further proceedings, or as determined by the Superior Court in accordance with the Commonwealth Entry and Deportation Act, 3 CMC § 4301 *et seq*.

H. Fingerprinting and background security checks. The Division of Immigration ("DOI") shall obtain each applicant's name, photograph, date of birth, fingerprints and other information that DOI deems relevant in order to perform a background security check or to otherwise adjudicate the application for protection and administer the immigration laws.

1. **Excluded Persons.** In the case of a foreign national excluded at a POE, such individual shall not be released from the custody of the DOI until this information has been obtained to the satisfaction of the DOI, unless so ordered by a court of competent jurisdiction.

2. **Cooperation Required.** Failure to cooperate with the DOI in providing identity and other background information, or to comply with all instructions of the DOI or the OAG relating to the collection of this information, shall be grounds for denial of the protections described herein, and for arrest and removal from the Commonwealth consistent with Commonwealth immigration law. The Attorney General or her designee may waive any of these requirements under exceptional circumstances, for humanitarian reasons.

3. **Conditional Grants.** In the event that an individual is deemed to qualify for *Nonrefoulement* Protection but a background check has not yet been completed to the satisfaction of the OAG, the Administrative Protection

Judge may conditionally grant protection pending completion of the background check. Any such conditional grant of protection shall be temporary and for no specific duration of time. The OAG may re-assess a conditional grant of protection, and/or issue a final determination as to the protection requested, at any time.

I. Administrative Protection Judge.

1. **Appointment.** The term "Administrative Protection Judge" ("APJ") means an attorney who has received specialized training in conducting Protection Hearings, and who the Attorney General appoints as an administrative judge under the authority the Office of the Attorney General. An APJ shall be subject to such supervision and shall perform such duties as the Attorney General shall prescribe. The Attorney General delegates to the APJ the authority under 3 CMC § 4344(d) and these regulations to conduct Protection Hearings and to decide whether *Nonrefoulement* Protection is mandated in a particular case.

2. **Protection Consultant.** Pursuant to the MOA, the APJ will work with the "Protection Consultant" in conducting Protection Hearings and making protection determinations under 3 CMC § 4344(d) during the first two years that these regulations are effective. During that period, the Attorney General may delegate to one or more representatives of the Protection Consultant the full authority of an APJ to conduct Protection Hearings and make protection eligibility determinations in accordance with these regulations, regardless whether the representative of the Protection Consultant is an attorney.

3. **Certification.** The APJ shall have the right to certify a case to the Attorney General for her review and disposition.

J. Protection Hearing.

1. **Right to Counsel.** The applicant has a right to counsel or other form of representation at no expense to the government. Any attorney or representative appearing at any proceeding under these regulations shall file a notice of appearance. Service of process, notice or any other documents upon the individual filing a notice of appearance herein shall be deemed service upon the applicant provided the applicant has duly acknowledged the notice of appearance.

2. **Appearance.** The applicant must bring to the Protection Hearing any immediate relative then present in the Commonwealth to whom he/she would like any protection to apply derivatively under section III.A of these regulations, unless the applicant demonstrates good cause for the failure to appear. The APJ may question immediate relatives seeking derivative

status. Such questioning may take place outside the presence of the applicant.

3. **Interpreters.** An applicant who is unable to proceed with the hearing in English, Chamorro or Carolinian will be provided a qualified interpreter. The applicant may also provide his or her own interpreter, however, the decision to allow the applicant to proceed with his or her own interpreter, as opposed to the appointed interpreter, shall be in the exclusive control of the APJ.

   a. *General qualifications.* An interpreter must be at least eighteen (18) years of age, and may not be the applicant's representative or attorney of record, a witness testifying on the applicant's behalf, a relative of the applicant, a person having a financial or other personal interest in the outcome of the applicant's case, or an employee or representative of the country or countries concerning which the applicant has expressed a fear of return.

   b. *Specific qualifications.* In addition to the general qualifications, before allowing an interpreter to provide interpreting services to an applicant during a Protection Hearing, the APJ must find the interpreter qualified pursuant to the requirements set forth by the ORP.

   c. *Interpreter's Oath.* Before allowing an interpreter to provide interpreting services in a Protection Hearing, the APJ shall administer an oath to the interpreter establishing that the interpreter (i) will translate fully and accurately to the best of their ability; (ii) will keep confidential all information (including the identity of the applicant) obtained during the Protection Hearing; and (iii) meets the qualifications set forth for interpreters as set forth by the ORP.

4. **Record.** The Protection Hearing will be recorded so that a record of the proceeding will be preserved. The only recording equipment permitted in the proceeding will be the equipment used by the APJ to create the official record. No other photographic, video, electronic, or similar recording device will be permitted to record any part of the proceeding. The ORP shall, in the event of an appeal, make a copy of the recording available to the applicant.

5. **Confidentiality of Proceedings.** The Protection Hearing shall not be open to the public, unless (a) the applicant states for the record or submits a written statement waiving a closed hearing, and (b) the OAG does not oppose the waiver.

6. **Oath.** Testimony of witnesses appearing at the hearing shall be under oath or affirmation, declaring, under penalty of perjury under 6 CMC § 3306, that he or she will testify truthfully.

7. **Evidence.** The Commonwealth Rules of Evidence do not apply in a Protection Hearing, but may be cited by either party as persuasive authority with respect to the procedure to be employed by the APJ and/or the weight that the APJ should attach to certain evidence. The APJ may make any procedural decisions necessary for the fair and orderly discharge of these proceedings, including but not limited to the exclusion of irrelevant and/or repetitious testimony or documentary evidence. The APJ, at her discretion, may allow telephonic or video testimony of witnesses who cannot reasonably attend, provided the requesting party bears the expense of providing such testimony. If the APJ denies the admission of such testimony, or any other evidence, she shall give the reason for the disallowance on the record. Nothing in this section is intended to limit the authority of the APJ to properly control the scope of evidence admissible in the Protection Hearing.

8. **Procedure.** The APJ conducting the Protection Hearing will (i) verify the applicant's identity and ask him or her basic biographical questions; (ii) ask the applicant about the reasons he or she is requesting protection; (iii) ask the applicant questions to determine whether he or she meets the legal requirements for protection and whether any grounds for mandatory denial exist; and (iv) may conduct any other examination of any witness as may be appropriate in the APJ's discretion.

9. **Opportunity to Present Evidence.**

   a. *Applicant.* The applicant shall have the fair opportunity to present the applicant's full case, including the right to present all relevant documentary evidence timely submitted, in any form, as well as oral testimony of witnesses or of the applicant, including expert evidence concerning country conditions. Any foreign language document offered by a party in a proceeding shall be accompanied by an English language translation, printed legibly or typed, and a certification signed by the translator. Such certification must include a statement that the translator is competent to translate the document, and that the translation is true and accurate to the best of the translator's abilities.

   b. *Government.* An assistant attorney general appearing on behalf of the Commonwealth government (hereinafter, in this context, the "Government") shall have the right to appear and to present evidence, to call and cross-examine witnesses, and to cross-examine the individual applicant.

c. *Reliance on information compiled by other sources.* In deciding whether an applicant has established eligibility for the *Nonrefoulement* Protections described herein, the APJ may rely on material provided by the United States Citizenship and Immigration Services, Department of State, or other credible sources, such as international organizations, private voluntary agencies, news organizations, or academic institutions.

d. *Limitations.* Nothing in this section shall be construed to entitle the applicant to conduct discovery directed toward the records, officers, agents or employees of the OAG or DOI, or the United States Citizenship and Immigration Services, Department of Justice, Department of State, or the Department of Homeland Security. Persons may seek documents available through an Open Government Act request pursuant to 1 CMC § 9901 *et seq.*

K. Confidentiality.

1. **Right of Privacy.** In most cases arising under these regulations, an individual's right of privacy as guaranteed by the law and Constitution of the Commonwealth will be clearly invoked. Further, in many cases, safety and protection of an applicant will require that information obtained in connection with such an application must remain confidential. Accordingly, all information contained in or pertaining to any application for protection under these regulations that reasonably indicates or infers that the particular individual has requested protection shall not be disclosed without written consent of the applicant, except as permitted by this section or at the discretion of the Attorney General.

2. **Limitations.** This section shall not apply to any disclosure to:

a. Any Commonwealth or United States government (federal or state) official or contractor having a need to examine information in connection with:

i. The adjudication of applications for protection under these regulations;

ii. The defense or prosecution of any legal action arising from or relating to the adjudication of, or failure to adjudicate, an application for protection under these regulations;

iii. The defense or prosecution of any legal action of which an application for protection under these regulations is a part; or

iv. Any Commonwealth or United States government (federal or state) law enforcement activity concerning any criminal or civil matter; or

b. Any Commonwealth, or Federal, State, or local court in the United States concerning any legal action:

i. Arising from the adjudication of, or failure to adjudicate, an application for protection under these regulations; or

ii. Arising from the proceedings of which an application for protection under these regulations is a part.

L. **Decision.** A written decision shall be made within a reasonable time after the Protection Hearing. Prior to concluding the hearing, the APJ shall give written notice to the applicant of the date and time that they are to appear to receive the decision, and if the applicant is not in detention, he or she shall be required to return to ORP to receive the decision. If the ORP has decided that the applicant is not eligible for protection, the applicant shall have an opportunity to appeal the decision to the Attorney General under section P of these regulations within fifteen (15) business days from the date on which the applicant is served personally or by mail. The Government may likewise appeal the decision within that fifteen-day period. If there is no appeal, the ORP's decision shall become final and not subject to further judicial or administrative review. In the case of a denial, the applicant shall be removed from the Commonwealth according to applicable law.

M. **Substantive law.** The following substantive law shall be applied at the Protection Hearing. U.S. law and the law of other jurisdictions applying the treaty protections set forth above may be consulted as persuasive authority, but are not binding on the decision-maker.

1. **Refugee Protection:** The burden of proof is on the applicant for Refugee Protection under these regulations to establish that his or her life or freedom would be threatened in the proposed country of removal on account of race, religion, nationality, membership in a particular social group, or political opinion. The testimony of the applicant, if credible, may be sufficient to sustain the burden of proof without corroboration. The evidence shall be evaluated as follows:

a. *Past threat to life or freedom.*

i. If the applicant is determined to have suffered past persecution in the proposed country of removal on account of race, religion, nationality, membership in a particular social group, or political opinion, it shall be presumed that

the applicant's life or freedom would be threatened in the future in any country of removal on the basis of the original claim. This presumption may be rebutted if the APJ finds by a preponderance of the evidence that:

(1.) There has been a fundamental change in circumstances such that the applicant's life or freedom would not be threatened on account of any of the five grounds mentioned in this paragraph upon the applicant's removal to that country; or

(2.) The applicant could avoid a future threat to his or her life or freedom by relocating to another part of the proposed country of removal and, under all the circumstances, it would be reasonable to expect the applicant to do so.

ii. In cases in which the applicant has established past persecution, the Government shall bear the burden of establishing by a preponderance of the evidence the requirements of paragraphs (a)(i)(1) or (a)(i)(2) of this subsection.

iii. If the applicant's fear of future threat to life or freedom is unrelated to the past persecution, the applicant bears the burden of establishing that it is more likely than not that he or she would suffer such harm.

b. *Future threat to life or freedom.* An applicant who has not suffered past persecution may demonstrate that his or her life or freedom would be threatened in the future in a country if he or she can establish that it is more likely than not that he or she would be persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion upon removal to that country. Such an applicant cannot demonstrate that his or her life or freedom would be threatened if the APJ finds that the applicant could avoid a future threat to his or her life or freedom by relocating to another part of the proposed country of removal and, under all the circumstances, it would be reasonable to expect the applicant to do so. In evaluating whether it is more likely than not that the applicant's life or freedom would be threatened in a particular country on account of race, religion, nationality, membership in a particular social group, or political opinion, the APJ shall not require the applicant to provide evidence that he or she would be singled out individually for such persecution if:

i. The applicant establishes that in that country there is a pattern or practice of persecution of a group of persons similarly situated to the applicant on account of race, religion, nationality, membership in a particular social group, or political opinion; and

ii. The applicant establishes his or her own inclusion in and identification with such group of persons such that it is more likely than not that his or her life or freedom would be threatened upon return to that country.

c. *Reasonableness of internal relocation.* For purposes of determinations under paragraphs (1)(a) and (1)(b) of this section, adjudicators should consider, among other things, whether the applicant would face other serious harm in the place of suggested relocation; any ongoing civil strife within the country; administrative, economic, or judicial infrastructure; geographical limitations; and social and cultural constraints, such as age, gender, health, and social and familial ties. These factors may or may not be relevant, depending on all the circumstances of the case, and are not necessarily determinative of whether it would be reasonable for the applicant to relocate.

i. In cases in which the applicant has not established past persecution, the applicant shall bear the burden of establishing that it would not be reasonable for him or her to relocate, unless the persecutor is a government or is government-sponsored.

ii. In cases in which the persecutor is a government or is government-sponsored, or the applicant has established persecution in the past, it shall be presumed that internal relocation would not be reasonable, unless the Government establishes by a preponderance of the evidence that under all the circumstances it would be reasonable for the applicant to relocate.

2. **CAT Protection:** The burden of proof is on the applicant for CAT Protection to establish that it is more likely than not that he or she would be tortured if removed to the proposed country of removal. The testimony of the applicant, if credible, may be sufficient to sustain the burden of proof without corroboration.

a. *"Torture" defined.*

i. Torture is defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or her or a third person information or a confession, punishing him or her for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

ii. Torture is an extreme form of cruel and inhuman treatment and does not include lesser forms of cruel, inhuman or degrading treatment or punishment that do not amount to torture.

iii. Torture does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. Lawful sanctions include judicially imposed sanctions and other enforcement actions authorized by law, including the death penalty, but do not include sanctions that defeat the object and purpose of the Convention Against Torture to prohibit torture.

iv. In order to constitute torture, mental pain or suffering must be prolonged mental harm caused by or resulting from:

(1.) The intentional infliction or threatened infliction of severe physical pain or suffering;
(2.) The administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality;
(3.) The threat of imminent death; or
(4.) The threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the sense or personality.

v. In order to constitute torture, an act must be specifically intended to inflict severe physical or mental pain or suffering. An act that results in unanticipated or unintended severity of pain and suffering is not torture.

vi. In order to constitute torture an act must be directed against a person in the offender's custody or physical control.

vii. Acquiescence of a public official requires that the public official, prior to the activity constituting torture, have awareness of such activity and thereafter breach his or her legal responsibility to intervene to prevent such activity.

viii. Noncompliance with applicable legal procedural standards does not *per se* constitute torture.

b. *Consideration of Evidence.* In assessing whether it is more likely than not that an applicant would be tortured in the proposed country of removal, all evidence relevant to the possibility of future torture shall be considered, including, but not limited to:

i. Evidence of past torture inflicted upon the applicant.
ii. Evidence that the applicant could relocate to a part of the country of removal where he or she is not likely to be tortured;
iii. Evidence of gross, flagrant or mass violations of human rights within the country of removal, where applicable; and
iv. Other relevant information regarding conditions in the country of removal.

c. *Order of Review.* In considering an application for CAT Protection, the APJ shall first determine whether the foreign national is more likely than not to be tortured in the country of removal. If the APJ determines that the foreign national is more likely than not to be tortured in the country of removal, the foreign national is entitled to CAT Protection. An foreign national entitled to such protection shall be granted all privileges provided for such individuals under Commonwealth law, unless the foreign national is subject to mandatory denial of protection under section (M)(2) of these regulations. If an foreign national entitled to CAT Protection is subject to mandatory denial under section (M)(2), the foreign national's removal shall be deferred under Section (M)(2)(b)(ii).

N. Approval or denial of application.

1. **General.** Subject to paragraph (2) of this section, an application for Refugee Protection or CAT protection shall be granted if the applicant's eligibility is established pursuant to sections (L)(1) or (L)(2) of these regulations.

2. **Mandatory denials.**

a. *Scope.* An application for Refugee Protection or CAT Protection shall be denied if:

i. The applicant ordered, incited, assisted or participated in the persecution of others on account of race, religion, nationality, membership in a particular social group, or political opinion;

ii. The applicant has been convicted of a particularly serious crime;

iii. There are reasonable grounds to believe the applicant has committed a serious nonpolitical crime outside the Commonwealth;

iv. There are reasonable grounds to believe that the individual is a danger to the safety or security of the Commonwealth or the United States. Such grounds shall include but not be limited to persons who have engaged in terrorist activity, as that term is defined by 8 USC 1182(a)(3)(B)(iv).

If the evidence indicates the applicability of one or more grounds for denial of withholding enumerated in this subsection, the applicant shall have the burden of proving by a preponderance of the evidence that such grounds do not apply.

b. *Effect of Mandatory Denial.*

i. *Refugee Protection.* An applicant who qualifies for Refugee Protection but is denied such protection as the result of a Mandatory Denial pursuant to paragraph (2) of this section shall be removed forthwith pursuant to Commonwealth exclusion and deportation law, unless the applicant also qualifies for CAT Protection, in which case removal will be pursuant to paragraph (2)(b)(ii) of this section.

ii. *CAT Protection.* An applicant who qualifies for CAT Protection but is denied such protection as the result of a Mandatory Denial pursuant to paragraph (2) of this section shall be granted deferral of removal to the country where he or she is more likely than not to be tortured.

(1.) *Effect.* Deferral of removal under this subsection:

(a.) Does not confer upon the foreign national any lawful immigration status in the Commonwealth;
(b.) Will not necessarily result in the foreign national being released from the custody of the OAG;
(c.) Is effective only until terminated; and
(d.) Is subject to review and termination if the APJ or the Attorney General determines that it is not likely that the foreign national would be tortured in the country to which removal has been deferred, or if the foreign national requests that deferral be terminated.

(2.) *Termination.*

(a.) At any time during the pendency of deferral of removal under this subsection, the Government may move the APJ to conduct a hearing to determine whether deferral should be terminated. The APJ shall provide notice to the foreign national and the Government of such hearing, and shall allow both parties an opportunity to submit supplemental evidence for use in the determination of whether it is more likely than not that the foreign national will be subject to torture in the country of removal.
(b.) The standards set forth in Section (L)(2), including those relating to burden and standard of proof, shall apply to such a proceeding. The APJ shall make a *de novo* determination based on the record in the initial proceeding and any new evidence provided as to whether it is more likely than not that the foreign national will be tortured in the country of removal.

(c.) At any time while removal is deferred, the foreign national may request in writing that such deferral be terminated. The APJ shall honor such request if it appears, based on the written submission or based on a hearing conducted by the APJ for this purpose, that the request is knowing and voluntary.

O. Removal to third country. Nothing in these regulations shall prevent the OAG from removing a foreign national to a third country, other than a country to which the foreign national has established the requisite fear of persecution and/or torture.

P. Appeals. Either the applicant or the Government may appeal ORP's decision to the Attorney General or her designee within fifteen (15) business days of service upon the applicant. If no appeal is made to the Attorney General within this time, the ORP's decision shall become final and unreviewable administratively or judicially.

1. **Notice of Appeal.** An appeal pursuant to this section is taken by filing of a written notice with the Office of the Attorney General, which is signed by the appealing party or his or her counsel, and which states the relief requested. The appealing party, or his or her counsel or representative, may also include a concise statement of the grounds for the appeal.

2. **Certification of record.** Upon timely receipt of a notice of appeal, the OPR shall promptly certify and transmit to the Attorney General the entire record, including the original recording of proceedings, if any.

3. **Form of Appeal.** The appeal and all attachments must be in English, Carolinian or Chamorro, or accompanied by a certified English translation.

4. **Procedure for Review.** Upon review, the Attorney General may, at her discretion, take any of the following actions: (1) restrict review to the existing record; (2) permit or request legal briefs or supplement the record with new evidence; (3) hear oral argument; or (4) hear the matter *de novo*, in which case the hearing shall be conducted pursuant to section II.I. through section II.M. of these regulations.

5. **Decision.** Upon completion of review, the Attorney General shall affirm, reverse, or modify the findings, order, or decision of the APJ in writing within ten (10) business days, or as soon thereafter as reasonably practical. The Attorney General may remand under appropriate instructions all or part of the matter to the APJ for further proceedings, *e.g.*, the taking of additional evidence and the making of new or modified findings by reason of the additional evidence.

6. **Finality.** The decision of the Attorney General shall be final and unreviewable, not subject to further judicial or administrative review. A case may only be reopened upon a motion from the Government, and due to a fundamental change of circumstances that substantially alters the nature of the claim.

Q. Reconsideration of grant of protection. A grant of protection is for an indefinite period, but does not bestow upon an applicant a right to remain permanently in Commonwealth. ORP may reopen a case, either sua sponte or upon motion from the Government, and re-evaluate a grant of *Nonrefoulement* Protection. Such re-evaluation may be performed either on a systematic, periodic basis (*i.e.*, every two years, etc.), or in a specific instance if country conditions have changed in a way that affects the likelihood that the grantee will be persecuted and/or tortured, if another country is identified in which the applicant can reside free from persecution or torture, if the applicant has committed certain crimes or engaged in other activity that triggers a "mandatory denial" set forth in section (M)(2) above, if the ORP determines that the applicant engaged in fraud in connection with his application, or if the ORP determines that there are serious reasons for believing that the foreign national no longer requires protection under 3 CMC § 4344(d).

1. **Procedure.** Except with respect to conditional grants of protection pursuant to section (G)(3) of these regulations, the OAG will not terminate *Nonrefoulement* Protection pursuant to this section unless the individual has been provided notice, in person or by mail to last known address, as well as the opportunity for a hearing, at which an APJ re-examines the claim for protection and renders a de novo determination as to the individual's qualification for such protection.

2. **Appeals.** A foreign national or the Government may file an appeal to the Attorney General of any decision under this section, pursuant to section P of these regulations, within fifteen (15) business days of service of the decision upon the applicant. If no appeal is made to the Attorney General within this time, the ORP's decision shall become final and unreviewable administratively or judicially.

3. **Effect of Termination of Protection.** In the event that an order terminating *Nonrefoulement* Protection is issued by the ORP, and no appeal is taken or the termination order is affirmed on appeal, the individual whose protection is terminated shall be required to depart the Commonwealth forthwith pursuant to Commonwealth immigration laws.

R. Employment authorization. Applicants requesting protection do not have a right to work in Commonwealth and shall not be given the opportunity to apply for employment authorization at the time they request protection. They may,

however, request temporary work authorization ("TWA") before a decision is made on their case if ninety (90) calendar days have passed since the initial request for protection and no final decision has been made, or if they have been granted a conditional grant of protection pursuant to section (G)(3) above. The TWA application process shall be governed by the Department of Labor's Special Circumstances Temporary Work Authorizations regulations.

S. **Right to Travel.** Applicants (along with any potential derivative family members; see Sub-Part III of this section) must obtain advance permission before leaving the Commonwealth if they wish to return. Failure to obtain such permission creates a presumption that the applicant has abandoned his or her request with ORP, and he or she may not be permitted to return to Commonwealth. If an applicant obtains permission to depart and returns to his or her country of feared persecution and/or torture, he or she shall be presumed to have abandoned his or her request, unless he or she can show compelling reasons for the return.

III. Implications After Protection Is Granted

A. **Derivative protection for immediate family.** Immediate family members of an applicant whose request for Refugee Protection or CAT Protection is granted ("Grantee"[1]) will automatically receive protection, provided that the family member is present in Commonwealth and was included on the initial application. This includes the Grantee's spouse and unmarried children under twenty-one (21) years of age as of the date of the formal request for protection. Common-law marriages shall qualify, provided that such unions are legally recognized in the applicant's country of origin. A Grantee must establish a qualifying relationship to any immediate family member by a preponderance of the evidence. Family members outside the Commonwealth are not entitled to derivative protection.

B. **Work authorization.** A Grantee may be granted a temporary work authorization, which shall be renewable on an annual basis upon a finding of continuing refugee status by the Attorney General. For purposes of this paragraph, a Grantee shall not be considered a nonresident worker as defined pursuant to the Nonresident Workers Act but shall be granted an entry permit pursuant to §706(P) of the Immigration Rules and Regulations.

C. **Right to travel.** Grantees (along with any derivative family members) must obtain advance written permission from the DOI before leaving Commonwealth in order to return. Failure to obtain such permission creates a presumption that the Grantee has abandoned his or her protection in Commonwealth, and he or she may not be permitted to return. If a Grantee obtains permission to depart and returns to his or her country of feared persecution and/or torture, he or she shall be

[1] "Grantee" shall not refer to individuals granted deferral of removal pursuant to Section (M)(2)(b)(ii) above. In light of the temporary nature of such deferral or removal, implications will be handled on a case-by-case basis.

presumed to have abandoned his or her protection in Commonwealth, unless he/she can show compelling reasons for the return.

PUBLIC NOTICE

PROPOSED AMENDMENTS TO THE REGULATIONS OF THE COMMONWEALTH ELECTION COMMISSION

Pursuant to the authority granted the Commonwealth Election Commission by § 6105 of Public Law 12-18, as amended, to promulgate rules and regulations governing elections in the Commonwealth, the Commonwealth Election Commission, acting through its Chairman and on its behalf is proposing these amendments to the regulations which will provide the requirement that political parties could only be recognized commonwealth-wide and to apply these standard to political parties presently recognized.

The proposed amendments to the regulations may be inspected at, and copies obtained from, the Commonwealth Election Commission's offices at 1313 Anatahan Drive, Capitol Hill, Saipan. These proposed amendments to the regulations are also published in the Commonwealth Register. The Commonwealth Election Commission is soliciting comments on these proposes amendments to the regulations from the general public.

Anyone interested in commenting on these proposed amendments to the regulations may do so in writing to the Commonwealth Election Commission, P.O. Box 500470, Saipan, MP, 96950-0470. Written comments may also be delivered to the Commonwealth Election Commission's offices or faxed to (670) 664-8689. All comments must be in writing and must be received in 30 days from the date this notice is published in the Commonwealth Register.

The Commonwealth Election Commission intends to adopt these amendments to the regulations.

Certified by: _____ June 14, 2004
MIGUEL M. SABLAN — Date
Chairman
Commonwealth Election Commission

Filed by: _____ 6-14-04
Bernadita B. Dela Cruz — Date
Commonwealth Registrar

Received by: _____ 6/14/04
Thomas A. Tebuteb — Date
Special Assistant for Administration
Executive Offices of the Governor

Pursuant to 1 CMC § 2153, as amended by P.L. 10-50, the rules and regulations attached hereto have been reviewed and approved by the CNMI Attorney General.

Attorney General

6/14/04
6/14/04
Date

NUTISIAN PUPBLIKU

MAPROPONE SIHA NA AMENDASION GI REGULASION I KUMISION ELEKSION I COMMONWEALTH

Sigun atrugidat ni man entrega i Kumision Eleksion i Commonwealth gi papa seksiona 6105, Lai Pupbliku 12-18, kontodu amendasion siha, para u famatina areklamento yan regulasion put eleksion siha gi halom Commonwealth, I Kumision Eleksion i Commonwealth entre i Chairman yan enkuenta di guiya ha propopone este na amendasion para i regulasion i para u na' guaha kondison gi para u fan ma rekoknisia kabalis, osino henerat, giya commonwealth pattidan politika yan para uma applika este na areklo guato gi ayu siha i gi presente na tiempo esta man ma rekoknisa.

I mapropopone siha na regulasion sina manma inspekta, yan guaha lokku' kopis gi Ofisinan Kumision Eleksion i Commonwealth gi 1313 Anatahan Drive, Capitol Hill, Saipan. Este i manmanpropopone siha an areklamento yan amendasion para i regulasion manmapublika gi Rehistran Commonwealth. I Kumision Eleksion i Commonwealth ha sosoyu komento put priniponen amendasion i regulasion ginen publiku henerat.

Hayi malago' mamatinas komento put I mapropone siha na regulasion sina ha' macho'gue gi tinige' ya ma adres guato para Commonwealth Election Commission, P. O. Box 500470, Saipan, MP, 96950-0470. I manmatuge' siha na komento sina lokku' machule' guato gi Ofisinan Kumision Eleksion i Commonwealth osino ma fax guato gi (670) 664-8689. To komento debi di u fanma risibi gi halom trenta (30) dias despues di mapublika esta na nutisia gi Rehistran Commonwealth.

I Kumision Eleksion i Commonwealth ha intensiona para u adapta este siha na amendasion para i regulasion.

Sinettefika as: _____ June 14, 2004
MIGUEL M. SABLAN — Fecha
Kabesiyu
Kumision Eleksion i Commonwealth

Pine'lo as: _____ 6.14.04
Bernadita B. Dela Cruz — Fecha
Commonwealth Registar

_____ 6/14/04
Rinisibi as: Thomas A. Tebuteb — Fecha
Special Assistant for Administration
Ofisinan Gobietno

Sigun 1 CMC papa seksiona 2153 ni inamenda ni Lai Pupbliku 10-50, I areklamento yan regulasion ni chechetton guine esta manmaribisa yan apreba ginen Ofisinan Abugadon Heherat giyi CNMI.

Ma fecha gi mina' _____ na dia, _____, 2004.

Abugadon Heherat

_____

PROPOSED AMENDMENTS TO SECTION 2.8 OF THE REGULATIONS
OF THE COMMONWEALTH ELECTION COMMISSION

Section 2.8 of the Commonwealth Election Commission's Regulations published in the Commonwealth Register Volume 23, Number 3, on March 22, 2001, page 17929, is hereby amended to read as follows:

2.8 Certification. Parties could only be allowed to be recognized commonwealth-wide. Any party presently recognized with a status less than commonwealth-wide is automatically deemed to have commonwealth-wide recognition status. If it appears to the satisfaction of the Commission, on the recommendation of the commission staff that a new political party has met the above requirements, then the Commission shall certify that a new political party has been formed within the Commonwealth and shall be allowed a place on the ballot with candidates for any offices it seeks, provided each candidate meets the statutory requirements for inclusion on the ballot as a candidate. A new political party must be certified prior to its submission of nomination papers for its candidates.

After submitted the documents for the formation of a new political party to the commission for formal certification, if the commission fails to act within 30 days of that submission then the new political party shall be considered certified. The decision for the certification of a new political party shall occur at a formal publicly noticed meeting of the Commission.

After a general or special election a new political party must meet the requirements of 1 CMC §6003(o)(3) in order to be a recognized political party and maintain a position on future ballots published by the Commission pursuant to law.

PUBLIC NOTICE

DEPARTMENT OF LABOR
REPUBLICATION OF PROPOSED AMENDMENTS TO THE ALIEN LABOR RULES AND REGULATIONS

The Department of Labor published proposed amendments to the Alien Labor Rules and Regulations in the Commonwealth Register, vol. 26, number 4, page 022364 (April 23, 2004). Since that publication, in response to comments received from the public and private sectors, the proposed Rules and Regulations have been amended to incorporate some of these suggestions. Because of the significance of these changes it is appropriate to republish the Proposed amendments, allowing additional time for public comment. The Secretary of Labor hereby notifies the general public of proposed regulations. These regulations significantly amend the current Alien Labor Rules and Regulations to bring them into conformity with existing law. They also address areas that were not addressed in the previous regulations and clarify and standardize procedures at the Department of Labor for the hiring of resident and nonresident workers.

It is the intent of the Department of Labor to adopt the proposed amendments to the regulations as permanent, pursuant to the Administrative Procedures Act 1 CMC §9104(a)(1) and (2). The publication of these regulations in the Commonwealth Register provides notice and opportunity for the public to comment. All interested persons may submit comments on the proposed regulations to Dr. Joaquin A. Tenorio, Secretary of Labor, Afetna Square Building, San Antonio, Saipan, MP 96950 or by fax to (670) 236-0992 during the thirty-day period immediately following publication of the proposed amendments.

Submitted by:

Dr. Joaquin A. Tenorio
Secretary of Labor

6/16/04
Date

Received by:

Thomas A. Tebuteb
Special Assistant for Administration

6/18/04
Date

Filed and Recorded by:

Bernadita B. Dela Cruz
Commonwealth Registrar

6·18·04
Date

Pursuant to 1 CMC §2153 as amended by P.L. 10-50, the Rules and Regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General's Office.

Clyde Lemons, Jr.
Acting Attorney General

6/14/04
Date

PUBLIC NOTICE

REPUBLICATION OF PROPOSED AMENDMENTS TO THE
ALIEN LABOR RULES AND REGULATIONS

These amendments are promulgated in accordance with the Administrative Procedure Act, 1 CMC § 9101, et seq. The Department of Labor is adopting rules and regulations amending the Alien Labor Rules and Regulations.

Citation of Statutory Authority: The Secretary of Labor is authorized to promulgate regulations pertaining to the employment of nonresident workers pursuant to 3 CMC 4424(a)(1).

Short Statement of Goals and Objectives: This is a comprehensive set of regulations addressing the employment of resident and nonresident workers and the procedures followed by the Commonwealth Department of Labor. This republication allows for additional time for public comment on recent modifications to the proposed regulations, which were first published April 23, 2004.

Brief Summary of the Proposed Regulations: These regulations are promulgated to:

(1) Clarify and supplement the present regulations regarding the employment of resident and nonresident workers.

(2) Amend various fee provisions relating to the employment of nonresident workers.

(3) Provide a set of procedural rules applicable to the Administrative Hearing Office.

(4) Make the regulations applied by the Department of Labor consistent with the current state of statutory law.

Citation of Related and/or Affected Statutes, Rules and Regulations: Alien Labor Rules and Regulations formerly adopted in the Commonwealth Register Vol. 10, No. 4, April 15, 1988, pp. 510-528 and amendments thereto, and Proposed Regulations published in Vol. 26, No. 4, April 23, 2004, p. 022364.

For Further

Information Contact: Kevin A. Lynch, Assistant Attorney General, Chief Legal Counsel, CNMI Department of Labor, telephone (670) 236-0910 or facsimile (670) 236-0992.

Dated this 16th day of June 2004.

Submitted by:

DR. JOAQUIN A. TENORIO
Secretary of Labor

NOTISIAN PUPBLIKU

DIPÅTTAMENTON I HOTNALERU
MATALUN MAPUPBLISA I MAPROPONE NA AMENDASION SIHA PARA I AREKLAMENTO YAN REGULASION HOTNALERUN TAOTAO-HIYONG

I Dipåttamenton i Hotnaleru mapupblisa i mapropone na amendasion siha para i Areklamento yan Regulasion Hotnalerun Taotao-Hiyong gi Rehistran i Commonwealth, Baluma 26, Numiru 4, påhina 022364 gi Abrit 23, 2004. Desde eyu na pupblikasion, gi ineppe' para i opinion siha ni marisibe' ginen i ahensian pribet yan pupbliku,i man mapropone na Areklamento yan Regulasion esta man ma'amenda para u mana fan halom palu na diniseha. Pot rason i signifikåtmente na tinilaika propiu para u mapupblisan dinuebu i man mapropone na amendasion, a sesedi mås tiempo para i opinion pupbliku. I Sekritårion i Hotnaleru este na momento a notifikika i pupbliku henerât pot i mapropone na regulasion siha. Este na regulasion siha signifikåtmente a amemenda i prisente na Areklamento yan Regulasion Hotnalerun Taotao-Hiyong ni para u konfotma ni eksisiste na Lai. Lokkue mamensiona punto siha ni ti mamensiona gi mapus na regulasion ya a klarifika yan a na la'maolek i areklamento siha gi Dipåttamenton i Hotnaleru para i emplehan i Hotnalerun residente yan Taotao-Hiyong.

I intension i Dipåttamenton i Hotnaleru para u adopta i mapropone na amendasion siha para petmanente na regulasion siha, sigun i Akton i Areklameton i Atministrasion 1 CMC Seksiona 9104 (a) (1) yan (2). I pupblikasion este na regulasion siha gi Rehistran i Commonwealth maprobeniyi notisia yan opotunidåt para i opinion pupbliku. Todu i man enteresao na petsona siña munahalom opinion pot i mapropone na regulasion siha para as Dokto Joaquin A. Tenorio, Sekritårion i Hotnaleru, gi Afetna Square Building, gi San Antonio, giya Saipan, MP 96950 pat fax para (670) 236-0992 durånten i trenta (30) diha siha na tiempo ensigidas tinatitiye' i pupblikasion este man mapropone na amendasion.

Ninahalom: _____ 6/23/04
Dokto Joaquin A. Tenorio — Fecha
Sekritårion i Hotnaleru

Marisibe' as: _____ 6/14/04
Thomas A. Tebuteb — Fecha
Espesiåt Na Ayudånte Para I Atministrasion

Pine'lo yan
Rinikot as: _____
Bernadita B. Dela Cruz
Rehistran i Commonwealth

6/24/04
Fecha

Sigun i Lai 1 CMC Seksiona 2153, ni inamenda ginen i Lai Pupbliku 10-50, i areklamento yan regulasion siha ni man che'che'ton este na momento man maribisa yan aprueba pot para u fotma yan ligåt sufisiente ginen i Ofisinan i Abugådo Heneråt i CNMI.

_____
Clyde Lemons, Jr.
Acting Para i Abugådo Heneråt

_____
Fecha

NOTISIAN PUPBLIKU

MATALUN MAPUPBLISA I MAPROPONE NA AMENDASION SIHA PARA I AREKLAMENTO YAN REGULASION HOTNALERUN TAOTAO-HIYONG

Este na amendasion siha man ma'establesi ni kinonfotme yan i Akton i Areklamenton Atministrasion 1 CMC Seksiona 9101, et.seq. I Dipåttamenton i Hotnaleru a adodopta i areklamento yan regulasion siha ni amemenda i Areklamento yan Regulasion Hotnalerun Taotao-Hiyong.

Sitasion i Aturidåt i Lai: I Sekritårion i Hotnaleru ma'aturisa para u establesi i regulasion siha pot i ma'emplehan i Hotnalerun Taotao-Hiyong sigun i Lai 3 CMC Seksiona 4424 (a) (1).

Kada'da' Na Finihon Diniseha yan Minalagu: Gof konprendiyon este na grupon regulasion siha ni amensiosiona i ma'emplehan Hotnalerun residente yan Taotao-Hiyong yan i areklamento ni tinattitiye' ni Dipåttamenton i Hotnalerun i Commonwealth. Este matalun pupblisa a sesedi mås tiempo para opinion pupbliku pot i nuebu na tinilaikan i mapropone na regulasion siha, ni mapupblisa gi Abrit 23, 2004.

Kada'da' Na Mensåhe Pot I Mapropone Na Regulasion siha: Este na regulasion siha man ma'establesi para:

(1) Klarifika yan na la'metgot i prisente na regulasion siha ni tineteka i ma'emplehan i Hotnalerun residente yan Taotao- Hiyong.

(2) Ma'amenda difirientes klåsen probension åpas ni tineteka i ma'emplehan i Hotnalerun Taotao-Hiyong.

(3) Probeniyi grupon manehan areklamento ni aplikåtble para i Ofisinan i Inekungok Atministrasion.

(4) Mafatinas i regulasion siha ni ma'aplika ginen i Dipåttamenton i Hotnaleru ni kinensisiste ni prisente na estaon Aturidåt i Lai.

Sitasion i Man Achule'
yan/pat Inafekta Na
Lai, Areklamento,
Regulasion, yan Otden
Siha: I Areklamento yan Regulasion Taotao-Hiyong ni man ma'adopta gi halacha gi Rehistran i Commonwealth Baluma 10, Numiru 4, gi Abrit 15, 1988 gi påhinan 510-528 yan amendasion guihe na momento, yan Mapropone Na Regulasion siha ni mapupblisa gi Baluma 26, Numiru 4, gi Abrit 23, 2004, påhina 022364.

Para Mås
Infotmasion Ågan: Si Kevin A. Lynch, Ayudånten i Abugådo Heneråt, Atkåtden i Konsehelun Ligåt gi Dipåttamenton i Hotnalerun i CNMI, tilifon (670) 236-0910 pat facsimile (670) 236-0992.

Mafecha esti mina dies i sais na diha gi Junio, 2004.

Ninahalom:

Dokto Joaquin A. Tenorio
Sekritårion i Hotnaleru

ARONGOL TOULAP

DEPATTAMENTOOL LABOR
AKKATÉ SEFÁL REEL POMWOL LLIWEL KKAAL NGÁLI ALLÉGHÚL ALIEN LABOR

Depattamentool Labor e akkaté pomwol lliwel kkaal ngáli Alléghúl Alien Labor llól Commonwealth Register, vol. 26, numoro 4, peigh 022364 (Seeta 23, 2004). Sángi schagh yaal akkatééwow, bwelle palawalil aghiyegh ye re bwughil mereel toulapeer aramas me private sectors, pomwol allégh kkaal iye aa lliwel bwe ebwe schulong llól aghiyegh kkaal. Bwulúl reel ssiwel kkaal bwelle ebwe fil yaal akkaté sefál pomwol lliwel kkaal, ebwe ayoora ótol aghiyegh. Samwoolul Labor ekke arongaar toulap reel pomwol allégh kkaal.Schééschéél allégh kkaal nge ebwe lliweli alléghúl Alien Labor kkewe fasúl bwelle ebwe aghutchúwuló alléghúl ighila. Ebwal ghal atotoolong igha ese toolong iye reel fasúl allégh me affata, alléghúw mwóghútúl mereel Depattamentool Labor reel umumwul aramasal faleey me schóól angaang kka aramasal lúghúl.

Aghiyeghil Depattamentool Labor nge ebwe fillóóy pomwol lliwel kkaal ngáli allégh kkaal bwe ebwe schééschéél alléghelo, sángi Administrative Procedure Act 1 CMC talil 9104 (a) (1) me (2) . Ammatafal allégh kkaal mellól Commonwealth Register nge ebwe ayoora arongorong me bwangiir toulap reel aghiyeghil. Schóókka eyoor mángemángiir reel pomwol allégh nge emmwel rebwe ischilong reel Dr. Joaquin A. Tenorio, Samwoolul Labor, Ghafeetia Building, San Antonio, Seipél, MP 96950 me ngáre fax reel (670) 236-0992 ótol eliigh (30) ráálil mwiril yaal akkatééwow pomwol lliwel kkaal.

Isaliyallong: _____ 6/23/04
Dr. Joaquin A. Tenorio — Rál
Samwoolul Labor

Mwir sángi: _____ 6/24/04
Thomas A. Tebuteb — Rál
Sów Alillisil Sów Lemelem

Aisis sángi: _____ 6/24/04
Bernadita B. Dela Cruz — Rál
Commonwealth Registrar

Sángi allégh ye 1 CMC talil 2153 iye aa lliwel mereel Alléghúl Toulap 10-50, allégh kkaal nge raa takkal amweri fischiiy me alúghúlúghúló mereel CNMI Bwulasiyool Sów Bwungúl Allégh Lapalap

_____ _____
Clyde Lemons, Jr, — Rál
Acting ngáli Sów Bwungúl Allégh Lapalap

ARONGOL TOULAP

AKKATÉ SEFÁL REEL POMWOL LLIWEL KKAAL NGÁLI ALLÉGHÚL ALIEN LABOR

Lliwel kkaal nge e akkatééwow bwelle reel Administrative Procedure Act, 1 CMC talil 9101, et seq. Depattamentool Labor ebwe fillóóy allégh kkaal ye ebwe ssiweli Alléghúl Alien Labor.

Akkatéél bwángil: Samwoolul Labor nge eyoor bwángil reel ebwe akkatééwow allégh kkaal bwelle reel yaar angaang aramasal lúghúl sángi allégh ye 3 CMC 4424(a)(1).

Aweweel Kkapasal allegh: E toolong alongal allégh kkaal ye ekke bwáári yaal angaang aramasal faleey me school angaang kka aramasal lúghúl me mwóghut ye tooto mereel Commonwealth Depattamentool Labor. Akkaté yeel nge ebwe ayoora ótol aghiyegh̃iir toulap reel lliwelil pomwol allégh kkaal, iye aa fasúl akkatééwow ótol Séeta 23, 2004.

Aweweel pomwol allégh: Allégh kkaal ikka aa akkatééwow reel:

(1) Affata me isisilong allégh kka ighila bwelle yaal angaang aramasal faleey me school angaang kka aramasal lúghúl.

(2) lliweli tafal alléghúl óbwos kkaal ye e ghil yaal angaang aramasal lughul

(3) Ayoora alléghúl mwóghut ye ebwe fil ngáli Administrative Hearing Office.

(4) Fféér allégh kka ebwe fil ngáli Depattamentool Labor ye ebwe ghol ngáli state of statutory law.

Akkatéél bwángil akkáaw allégh: Alléghúl Alien Labor aa schééschéél fillóóy mellól Commonwealth Register Vol. 10, No. 4, Séétá 15, 1988, pp. 510-528 me lliwel kkaal, me Pomwol Allégh kka e akkatééwow llól Vol. 26, No. 4, peigh. 022364.

Reel ammataf faingi: Kevin A. Lynch, Sów Alillisil Sów Bwungúl Allégh Lapalap, Chief Legal Counsel, CNMI Depattamentool Labor, tilifoon (670) 236-0910 me facsimile (670) 236-0992.

Ráálil ye_____llól _____2004

Isaliyallong:

DR. JOAQUIN A. TENORIO
Samwoolul Labor

ALIEN LABOR RULES AND REGULATIONS
TABLE OF CHANGES FROM PUBLISHED DRAFT
June 14, 2004

Preface

Since the publication of the Alien Labor Rules and Regulations (as amended) in May 2004, many valuable comments were received from government officials, employers and the general public. Some of the suggestions have resulted in substantial changes to the Rules and Regulations as initially published. Those changes have been incorporated into a new draft, titled "Alien Labor R and R – 2004 publication with 6-14-04 amendments." A description of the changes appears below.

PAGE	SECTION	CHANGE
1	II.A.1.a	Grammatical changes
	II.A.1.b	Reworded for clarity
2	II.A.1.c	Reworded for clarity and to reflect that the law requires employers to seek qualified and available nonresident workers before bringing a worker from abroad.
2	II.A.1.d	Reworded for clarity, and incorporate a portion of II.A.2.g to keep associated topics together and avoid redundancy regarding an employer's justification for rejecting an applicant referred by the Division.
2	II.A.1.f	Reworded for clarity
2	II.A.1.g	Reworded for clarity
3	II.A.2.a	Reworded for clarity
3	II.A.2.b	Reworded for clarity
3	II.A.2.c	Reworded for clarity
3	II.A.2.d	Reworded for clarity
3	II.A.2.e	Reworded for clarity
4	II.A.2.f	Reworded for clarity
4	II.A.2.g	Deleted because it was incorporated into II.A.1.d.
4	II.A.3.a	Added Bona-fide Occupational and Educational Job Qualification (BOEJQ).
4	II.A.3.b	Rewritten to avoid redundancy
4	II.A.3.c	Rewritten for clarity. Previous II.A.3.e added to keep associated topics together.
4	II.A.3.d	Rewritten for clarity
4	II.A.3.e	Deleted after incorporation into II.A.3.c.
4	II.A.3.e	Renumbered, language clarified.
5	II.A.3.f	Incorporates part of former II.A.3.g.
5	II.A.3.g	Deleted. The first sentence was incorporated into II.A.3.g. The second sentence was deleted as redundant.
5	II.A.4.c	Rewritten to clarify
5	II.A.4.d	Amended to include the Bona-fide Occupational and

		Educational Job Qualification
7	II.B.3.e	Added transfer provision for employee if check for application fees is dishonored
8	II.B.4	Added subsection (a) to allow for a late fee instead of administrative hearing where a deficient application has been corrected
12	II.D	References to a Barred/blacklist are changed to Barred List
12	II.D.1	Rewritten for clarity
15	II.D.14	Simplified
16	II.D.15	Reworded provision concerning transfer rights of employees involved in labor, agency and compliance cases
17	II.E.5	Deleted the words "in the household" and corrected grammar
17	II.F	Added "A person meeting the criteria in P.L 14-8. shall be considered to be a resident worker for purposes of these Rules and Regulations.
19	II.G.5	Clarified application of the regulation to consensual transfers, and gave the Director of Labor discretion to allow replacements where it would be manifestly unfair to prohibit them.
21	II.H.5.a	Corrected reference to II.H.7.h
23	II.H.7.b	Added "exemption for a particular project"
27	II.I	Changed number to 16 hours
29-33	II.K.	Section replaced with Garment Labor Pool emergency regulations published in June 2004, but retained K.5-8, renumbered as 3.a-d
32-33	III	Exchanged sections B. and H. for continuity
34	III.I	Added: "This regulation incorporates all safety and health standards that are found in the workplace. The U.S. Department of Labor's Occupational Safety and Health regulations as published and amended in the Code of Federal Regulations are recognized as the minimum standards required of every employer in the CNMI."
39	IV.B.2	Corrected reference to IV.B.6
41	IV.B.7	New section concerning replacements
45	VI	Deleted because same material covered in II.K Subsequent sections renumbered
54	IX.E.5	Added "The mediator shall schedule a date for a hearing on the complaint."
55	IX.E.8	New section regarding dismissals at mediation
55	IX.E.9	New section regarding the procedure for issuance of a Memorandum to seek Temporary Employment.
87	XIV.A	Reworded for clarity
87	XIV.B	Reworded for clarity
87	XIV.F	Deleted reallocation fee. Subsequent sections renumbered

88	XVII	Reorganized
88	XVII.A	Amended to include Administrative Hearing Officer and mediator as persons who may issue a Memorandum
89	XVII.B.1	Amended to be consistent with section IX.E.9
89	XVII.B.3	Added "Chapter 7" to bankruptcy
92	XVII.C.4	Deleted phrase concerning inability to find work
93	XVII.B.	Modified the procedure regarding who issues A Memorandum to Seek Temporary Employment
94	XVII.B.3.d	Deleted requirement of submitting BGRT and Quarterly Tax Withholding to hire a person on a TWA

ALIEN LABOR RULES AND REGULATIONS
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ALIEN LABOR RULES AND REGULATIONS

SECTION I. AUTHORITY AND PURPOSE.

A. Authority. The Department of Labor ("DOL"), or its successor agency, pursuant to its powers, duties, and authority under the Nonresident Workers Act, as amended, Minimum Wage and Hour Act, as amended, and Public Law Nos. 11-6, 11-66, 11-76, 12-11, and 12-58, as amended, does hereby promulgate and issue these rules and regulations that shall govern the hiring of nonresident workers in the Commonwealth of the Northern Mariana Islands.

B. Purpose. The purposes of these rules and regulations are to set forth the necessary procedures and requirements regarding the hiring of nonresident workers and placement and training of resident workers and to provide for a system and procedures for adjudicating any complaints regarding violations of the Nonresident Workers Act, as amended, the Minimum Wage and Hour Act, as amended, and Public Law Nos. 11-6, 11-66, 11-76, 12-11, and 12-58, as amended.

SECTION II. APPLICATION PROCEDURES. Permission to hire nonresident workers in the CNMI may be granted by the Director of the Division of Labor or his designee after the submission of the following documents and information:

A. Pre-application Procedures.

1. Preference to Resident Workers

a. An employer who intends to hire a Nonresident Worker to fill a vacant position must report the job vacancy to the Division of Employment Services and Training for review. Job position descriptions shall be defined by the Bona-fide Occupational and Educational Job Qualification (BOEJQ), by the Dictionary of Occupational Titles (DOT) or the O-NET.

b. The Division of Employment Services and Training will evaluate whether the employer is financially able to hire a nonresident worker and will certify the result. An employer must be determined to be financially solvent to be entitled to employ a nonresident worker. The determination of solvency is based upon the actual annual expenses of the employer in hiring a nonresident worker. Expenses include a guaranteed basic minimum wage and the ability to pay the

worker for hours worked, room and board, food, medical expenses, health insurance when applicable, transportation and other employer expenses.

c. The Division of Employment Services and Training shall maintain a listing of qualified and available resident workers seeking employment, and of nonresident workers presently within the Commonwealth who may lawfully seek employment. The Division has five (5) working days to determine whether there is a resident worker available and qualified for the vacancy, or whether there is a suitable nonresident worker. When there is no qualified and available resident or nonresident worker found, a job vacancy announcement (JVA) is released for fifteen (15) days for publication through a newspaper, radio, television or on-line advertising. All benefits to be provided to a worker must also be included in the JVA.

d. The employer must submit the publicized job vacancy announcement to the Division of Employment Services and Training for review and certification no later than sixty (60) days from the last date of publication. This submission must contain a statement from the company performing the publishing that indicates the beginning and ending dates of the fifteen (15) day publication. The employer must also submit a declaration under the penalty of perjury reporting the number of resident workers who responded to the announcement, any action taken on the applications by the employer, and a justification for the action taken. In the event that job candidates referred by the Division are rejected for employment he Director may evaluate the justification for the rejection before allowing the Job Vacancy Announcement to be released. If the JVA is submitted to the Division after sixty days have elapsed from the last date of publication the position must be readvertised.

e. Job vacancy announcements can only be certified upon the employer's showing that he or she has made a good faith attempt to first hire resident workers, or secondly nonresident workers that are already within the Commonwealth.

f. An employer requesting a waiver of the JVA is required to certify that the job vacancy has been posted at the Office of

Vocational Rehabilitation, Workforce Investment Agency, Adult Development Institute (PSS) and the Northern Marianas College. No waiver shall be approved without these certifications.

g. A job vacancy announcement will be put on pending status whenever a referral or placement of a worker is made by the Division.

2. Referrals

a. First Referral. Resident and on-island nonresident workers may register at the Division of Employment Services and Training for assistance in finding jobs offered by private sector employers. Workers must submit all necessary supporting documents with their job applications, i.e. police clearance, diploma, proof of citizenship, LIIDS permit number where applicable, college degree, employment certification from previous employers, and any other documents that may be deemed necessary.

b. Job Vacancy Publication/Posting. All matching of positions and job skills shall be based upon the General Education Requirements, Specific Vocational Preparation, Data, People and Things skills set established in the Dictionary of Occupational Titles.

c. A worker is determined to be available and qualified for the job vacancy if the worker, by education, training, experience, or a combination thereof, can perform, or is capable of performing, the duties involved with not more than six (6) months on-the-job training, and is willing to accept the job offer. Other characteristics that the employer may consider when determining if a worker is qualified include, but are not limited to, the stability of the worker's employment history and the worker's criminal history. The worker's prior involvement in a labor dispute shall not be considered.

d. The Division must make all job referrals and placements within five (5) workdays after receiving the JVA submitted by the employer. If no available and qualified applicant is found within that period, the JVA will be certified and released to the employer for submission with the application to hire a nonresident worker.

e. If an employer does not report back to the Division within fourteen (14) days that the applicants referred to the employer are not available and qualified, the JVA will not be certified and it will be deemed conclusive that the employer has either hired the referral or the employer will not fill the job vacancy. The Director of Labor will be informed of such for his appropriate action.

f. If the Employer fails to hire an available and qualified worker or fails to fill a job vacancy the employer shall not be allowed to hire a nonresident worker to fill the vacant position for a period of one year.

3. Compliance Monitoring and Enforcement.

a. All Job Vacancy Announcement job qualifications shall be based upon the Bona-fide Occupational and Educational Job Qualification (BOEJQ), DOT and O-Net. No arbitrary qualifications shall be imposed.

b. All employers may be required to justify their proposed job qualifications.

c. A resident worker may file a complaint with the Division for possible violations of the preferential hiring of resident workers and minimum wage requirements. If a suspected labor violation is discovered, it shall be reported to the Director of Employment Services and the case shall be referred to the Director of Labor. Within thirty (30) days upon receipt of any complaint, a determination shall be prepared and finalized for appropriate action

d. All written submissions to the Director will be reviewed to ensure the accuracy of their contents. If they are inaccurate, employers are contacted for immediate correction. If the correction is not made within 15 days the JVA will not be certified.

e. An employer shall give job preference to a resident worker who is available and qualified to fill the job position. To qualify for the preference, a resident worker should register with the division, or may apply directly to the company in response to a job advertisement.

f. It is the employer's continuing responsibility to recruit and provide necessary training to resident workers for as long as they employ nonresident workers. If a resident worker filled a job in which training is needed, employers will be required to submit their proposed training process to the director for compliance monitoring. On the job training must be designed to provide knowledge or skills essential to the full and satisfactory performance of the duties and responsibilities of the job.

4. Other Employment Services.

a. The Director of Employment Services and Training is tasked to certify job positions under the requirements of Public Law 11-6 Exemptions. Upon receipt of the employer's written request from the Governor's office, no later than five (5) work days all certifications must be completed and sent to Governor's office for review and final dispositions.

b. Employers may submit a written request to the Director for a waiver of the Job Vacancy Announcement pursuant to 3 CMC §4432. The Director shall consider whether the request is in the best interest of the Commonwealth and shall make certain that the request complies with the requirements of the Nonresident Workers Act of 1983, as amended.

c. Employers may also request an exemption from the of the Resident Workforce Compliance requirements of 3 CMC §§4436(a) and (b). Employers shall be required to demonstrate a continuing effort to recruit resident workers to fill their needs. An employer must provide a written commitment to increase their percentage of resident workers by at least 2% within the next 12 month period, with the goal of attaining the goal of having at least 20% resident workers. If an extension is needed after an approved waiver has expired, employers must submit supporting documents showing the number of resident workers hired, terminated, resigned, reasons and dates of events.

d. The Director also is tasked to certify job positions and annual salaries pursuant to the requirements of 3 CMC §

4437(i), Immediate Relatives Certification. Job position certifications are based upon Managerial, Professional and Technical positions defined by the Bona-fide Occupational and Educational Job Qualification (BOEJQ), Dictionary of Occupational Titles or the O-NET. The employee must be paid a salary of $20,000 per annum, excluding in-kind benefits.

e. Whenever possible, the Director must decide upon all requests made by employers within five (5) work days. A written determination shall be sent to employers informing them of the status of their request.

B. Initial Application.

1. Required Documents. Upon a finding by the Division of Employment Services that a resident worker is not available to fill a job vacancy and, upon compliance with Section II.A. above, a prospective employer or employee may file an application for employment of a nonresident worker by submitting to the Division of Labor the following:

a. Unless waived pursuant to paragraph A.1.d. above, the Job Vacancy Announcement and sworn affidavit that the employer complied with Section II.A.2.b. (publication or posting of the JVA). The affidavit must include dated copies of fifteen (15) consecutive days of help wanted ads for the job vacancy in a local weekly newspaper or a radio/TV certification, or state that the employer posted such vacancies in at least three approved public places in the Commonwealth for fifteen consecutive days (while listing the places). The employer must state in the sworn affidavit if the employer maintains a business office and, if so, that the vacancy was posted in a conspicuous location in an area frequented by employees for fifteen (15) consecutive days. For each vacancy announcement the employer posts, the employer shall state in the sworn affidavit where the vacancies were posted, the dates the vacancies were posted, and it must attach the vacancy that was publicly posted. The last day of the ad or the posting must be no more than sixty (60) days prior to filing.

b. Copy of a valid business license, when requested.

c. Employer's Application and Nonresident Employment Agreement (hereinafter "Agreement")

2. Review of Employer's Agreement. The Director or his designee shall review and take appropriate action on the Agreement within seven (7) working days of its receipt. If the employer submits the Agreement with the documents required as part of the Employer's Application and Nonresident Worker Employment Agreement, the Director or his designee shall consider both sets of documents at the same time in compliance with Section II.B.4.

3. Submission, Review of Other Required Documents. Upon approval of an Employer's Application and Nonresident Employment Agreement, the employer shall submit a Nonresident Worker Application, which must include the following:

a. Employment Contract.

b. Nonresident Workers Sworn Affidavit with birth certificate and color photo attached.

c. Statement of Compliance with 3 CMC § 4436(a) if needed.

d. Living quarters or housing inspection clearance and, if applicable, worksite inspection clearance issued by the Health and Safety Office of the Division of Labor.

e. Payment of a nonrefundable, nontransferable application fee. The application will be denied or the LIIDS card revoked if a check tendered as payment to the Department is dishonored by the financial institution to which it was presented for payment. An affected employee shall be eligible for transfer relief in the event a check for application fees is dishonored.

f. If the application is to fill a position within the garment industry, the employer must submit all additional documentation required by the Prescreen Checklist – New Labor Permits – Garment, which may include a map to the location, bank certification, copy of the lease agreement, etc.

g. A sworn affidavit by the prospective employer that all of the obligations of the prospective employer and employee related to the application are included in the Employment

Contract; including, but not limited to, the application fee, transportation costs, recruitment costs, or other costs associated with the nonresident worker's employment; as well as an indication of which party agrees to undertake what obligations. This sworn affidavit does not change a prospective employer's obligation to pay the application fee and repatriation costs.

h. A statement waiving rights to confidentiality concerning records in the possession of other government agencies, such as the Department of Finance and the Department of Commerce, including records held by the Division of Revenue and Taxation, for the Department of Labor to use for enforcement purposes. Such records shall be made available to the Department of Labor upon request for the purposes of administering the labor laws.

4. Action by the Director or his Designee. The Director or his designee shall have thirty (30) calendar days to approve, deny, or modify the Nonresident Worker's Application for a LIIDS card and employment contract provided all required documents are submitted and all necessary information is provided. Deficiencies in the documents or any modification of the employment contract shall extend the period in which the Director must take action. Deficiencies in the application or supporting documents shall be corrected within ten (10) days. If the deficiency is not corrected within ten (10) days the application shall be denied.

a. An application that has been denied may be appealed by the employer or employee. At the request of the employer or the Director of Labor or his designee, applications pending in the Administrative Hearing Office due to an appeal of a Denial Case may be assessed a penalty of five (5) dollars per day from the date the deficiency notice is received up to the date the deficiency is corrected in lieu of proceeding with an administrative hearing, provided the denial is not mandatory by law.

5. Employer's Bond. After receiving notice from the Director or his designee that the application for a LIIDS card and the employment contract have been approved, the employer shall deliver within thirty (30) days to the Director a bond, written third-party guaranty, deposit of funds into an approved escrow account, or combination thereof (the "Bond"). The Director or his designee may accept the Bond at the same time the Director or his designee accepts the other application documents, provided, however, that the Director

shall reject any bond or written third-party guaranty from any provider found by the Insurance Commissioner or the Director to be financially unsound or incapable of performing on outstanding bonds or guaranties. The Director may also reject any bond from a guarantor whom has an outstanding liability to the Department.

a. The minimum amount of the Bond shall be equal to the cost of one-way transportation between the point of hire as specified in the employment contract and the place of employment within the Commonwealth, six (6) months wages as specified in the contract of employment, at least $10,000 for medical expenses, and at least $5000 for the following specific medical costs: medical referral, embalming, and transportation of the body back to the country of origin in the event of death. The Director may, in the exercise of his discretion, increase the amount of the bond required by an employer based on that employer's history of compliance and the nature of the employer's business. The financial assurances of the Bond are to be in addition to, not a substitute for, any other financial guarantees currently required or which may be required in the future by law or regulation.

b. The written terms and conditions of all bonds, guarantees, or escrow deposits shall specify the following:

   i. That the Bond shall be subject to demand and execution where authorized by a court order, or Secretarial order, or administrative hearing order in accordance with subsections c. and d;

   ii. That the Bond shall be held liable for any unpaid wages, liquidated damages, repatriation costs, or medical costs up to its full value;

   iii. That the Bond shall provide coverage for the term of the contract and shall be subject to demand and execution for a period no shorter that the period of employment specified in the employment contract plus the statutory period for filing a claim for unpaid wages (as codified under 4 CMC §9246), plus 30 days;

   iv. That upon receipt of a "Notice of Potential Claim" issued by the Director of the Division of Labor or

his designee, the period for filing a claim shall be tolled; and

v. That no changes in the terms and conditions of the Bond shall be effective unless and until it is approved in writing by the Director of the Division of Labor or his designee. No change in the terms and conditions of a bond shall be permitted unless they are described specifically in a letter request to the Director that details the proposed changes. No change will be enforceable in the absence of a specific letter request that has been approved.

c. The Director of Labor shall take the following steps before ordering a bonding company to satisfy the judgment or an employer.

i. Within ten (10) days of receipt of, or within five (5) days of determining that the Department of Labor has administrative jurisdiction over a complaint, whichever is later, alleging an unlawful termination or breach of contract or the failure to pay wages required under CNMI Nonresident Worker Act or the wage and hour statutes and regulations of the Commonwealth or the Employment Contract, the Director of the Division of Labor or his designee shall transmit a "Notice of Potential Claim" to the bonding company, third-party guarantor, or administrator of the approved escrow account ("Bond Provider").

ii. Within ten (10) business days of receipt of a "Notice of Potential Claim", the Bond Provider will provide written evidence to the Director of Labor that sufficient funds are available and have been reserved to satisfy the bond, guarantee, or escrow account deposit made in connection with the employment of a complaining nonresident worker.

iii. Within thirty (30) after payment is ordered based on any final order of a court or Administrative Hearing Officer for unpaid wages and/or the costs of repatriation, medical expenses, or liquidated damages in favor of the nonresident worker, in the absence of written evidence of payment by an

employer, the Director of the Division of Labor or his designee shall transmit a "Notice of Claim" to the Bond Provider.

iv. The Bond provider shall make payment of the Bond necessary to satisfy any final order of a court or Administrative Hearing Officer for unpaid wages and/or the costs of repatriation, medical expenses, or liquidated damages in favor of the nonresident worker within 10 business days of the receipt of a "Notice of Claim".

v. Within ten (10) days of the deposit of the bond, guarantee, or escrow with the Director of Labor, the Director of Labor shall remit to the employee or authorized service provider any amounts deposited in favor of the party.

vi. Actual written notice must be given to the Director of Labor upon any attempt to cancel a Bond. Bond providers canceling Bonds without written permission from the Director or his designee shall be liable for any claims made against the Bond.

d. In matters in which the employer's obligations secured by a Bond are at issue, but the Department of Labor is not a party, such as an action arising under Federal law, the employee may provide notice to the Bond provider instead of the Director of Labor using the procedures described above in Section II.B.5.c. The Bond provider shall have the same obligation responding to the employee or their representative as they have with respect to the Director of Labor.

e. Any employer whose Bond is cancelled without written authorization from the Division of Labor at any time prior to the expiration of an employee's employment contract covered by the Bond will be subject to sanctions provided for in the Nonresident Worker's Act and immediate cancellation of all permits issued to that employer. Any nonresident worker whose permit is cancelled under this subparagraph shall be given expiration transfer relief pursuant to Section IV herein.

6. Issuance of LIIDS card. Upon certification by the Director or his designee that the Bond is acceptable, the Director or his designee shall issue a LIIDS card and forward it to the Attorney General's Office, Division of Immigration, within five (5) working days.

C. Renewal of LIIDS card.

1. Procedures and Requirement. The Employer shall submit the following for a renewal of a LIIDS card:

a. Payment of a nonrefundable, nontransferable application fee;

b. Application for Renewal of LIIDS card, which includes a statement that the employer paid the employee named on the LIIDS card all the wages and salary owed under the contract being renewed;

c. Proof of physical examination executed within thirty (30) days of the application of renewal showing a freedom of communicable disease;

e. Police Clearance executed within thirty (30) days of the application of renewal showing the employee has not been convicted of a crime carrying a penalty of one year or more in prison; and

f. Evidence of a passport valid for the duration of the renewal, or an affidavit by the worker stating that he or she knows of no reason why his or her passport will not be renewed if it expires during the contract.

g. A sworn affidavit by the prospective employer that all of the obligations of the prospective employer and employee related to the application are included in the Employment Contract; including, but not limited to, the application fee, transportation costs, recruitment costs, or other costs associated with the nonresident worker's employment; as well as an indication of which party agrees to undertake what obligations. This sworn affidavit does not change a prospective employer's obligation to pay the application fee and repatriation costs.

D. Other Provisions and Requirements.

1. Upon payment of application fee, an application shall be accepted for filing regardless of whether it is timely or complete.

   a. When an application is not complete or in compliance with all legal requirements, the employer applicant and the employee shall be notified in writing to correct the deficiency. Failure to correct within the time prescribed in the notice shall be a basis for denial of the application.

   b. If upon facial review, it is determined that the application is untimely, the employer applicant and the nonresident worker shall be notified in writing, within ten (10) days of the filing of the application of the denial of the application and appropriate review procedures.

   c. Notice of a denial shall be provided pursuant to Section X.C.3. If a denial is appealed to the Administrative Hearing Office, it is a Denial Case.

2. There is imposed a penalty fee for failure to timely submit a renewal application. The period begins the day following the expiration of the labor identification certificate or LIIDS card.

   a. For the first 30 calendar days the application is late the fee shall be $5.00 per day until a renewal application is filed.

   b. Applications filed more than 30 calendar days following expiration of the contract or expiration of the transfer period shall be denied.

   c. If the late period is 30 calendar days or less, at the request of the employer or the Director of Labor or his designee, applications currently pending in the Administrative Hearing Office due to denial as untimely may be assessed the penalty fee in lieu of proceeding with an administrative hearing.

   d. Upon payment of the penalty fee the Director or his designee may proceed with the processing of the application without the need for a hearing.

3. When an application is pending, the Director or his designee shall provide all information regarding the application to the employee, including providing a copy of any deficiency notice upon request. In order to expedite processing efforts, the Director or his designee

shall not provide any information to either the employer or employee within the first fifteen (15) days that the application is pending, unless it is pursuant to Section II.D.1 or an employer or employee wishes to know if an application has been filed on their behalf.

4. The LIIDS card shall be issued for a period not to exceed one year, provided that the Director may, at his discretion, authorize the issuance of a card for more than one year, unless otherwise prohibited by law. Regardless of the length of the contract period, the nonresident worker must annually provide a police clearance and proof of physical examination showing freedom of communicable disease.

5. An employer whose contract with a nonresident worker is to take effect upon the worker's departure from the point of hire may have the expiration date of the LIIDS card extended to a date one year from the date of arrival in the Commonwealth. The date shall be extended by the Director or his designee upon presentation by the employer of (1) an approved employment contract and Agreement, (2) the LIIDS card, (3) Immigration Arrival and Departure Form, and (4) agreement of the employee to the extension.

6. In the case of renewals, the period may be extended one year from the expiration of the prior LIIDS card.

7. The employer or employee shall return the LIIDS card to the Division upon its expiration or state in an affidavit why it cannot be returned. The card may be cancelled by the Division for refusal by the employer or employee to comply with the labor laws, rules, or regulations of the Commonwealth.

8. Nonresident workers may enter the Commonwealth to work only if they have a valid LIIDS card, entry permit, and certificate of freedom from communicable disease. The certificate of freedom from communicable disease must be executed and validated not more than thirty (30) days preceding the date of entry into the Commonwealth by a physician licensed to practice medicine in the country of origin.

9. If after ninety (90) days from the date of issuance of the authorization for entry but less than one hundred and eighty (180) days from the date of issuance, the employee has not yet entered the Commonwealth, the employer may petition the Secretary of Labor for permission to enter. This petition shall include an

updated police clearance, an updated health certification, and a $100.00 late fee, and will be granted at the discretion of the Secretary. A nonresident worker will not be permitted entry into the Commonwealth after one hundred and eighty (180) days from the date of issuance of the authorization for entry without reapplying for a new employment application.

10. Within ten (10) days after authorized entry into the Commonwealth for employment, the nonresident worker shall present himself or herself, together with all accompanying family members, to the Department of Public Health and Environmental Services for a physical examination. The cost of physical examinations shall be borne by the employer.

11. Pending applications of any employers who are determined by the Director of Labor or his designee to be unable to meet forecasted financial obligations to employees shall be denied. After notice to the applicant the Director or his designee may suspend the processing of an application or applications pending investigation where it appears that fraud, misrepresentation, or the potential for violation of the labor laws is present in the application process.

12. If an application for renewal is denied for any reason, written notice of the denial setting forth the basis of the denial and available review procedures shall be served on the employer and the nonresident worker pursuant to Section X.C.3.

13. The Secretary or his designee shall maintain a Barred List containing the names of all employers who are barred from hiring nonresident workers. The names of employers shall be placed on the Barred List based on the findings of an Administrative Hearing Officer or the Secretary, when deciding an appeal, that the employer has violated or breached the Nonresident Workers Act, as amended, Minimum Wage and Hour Act, as amended, Public Laws 11-6, 11-66, 11-76, 12-11, and 12-58, as amended, or the terms of any employment-related document filed with the Division of Labor. The Secretary shall make the Barred List available to the public. The Department of Labor will deny issuance of a LIIDS card to an employer whose name appears on the Barred List.

14. An employer named in the Barred List may petition the Secretary not more than once every six months for review of whether the employer's name should remain on the list. The burden is on the employer to demonstrate by proof beyond a reasonable doubt that remedial efforts have been implemented to correct the cause of the

reason for being placed on the Barred List and that the employer will otherwise follow all laws and regulations regarding the employment of nonresident workers. However, no petition will be entertained from an employer who becomes listed on the Barred List as a result of a final order of the hearing office or a court.

15. If a compliance case (which is case brought by the Compliance Section), labor or agency case has been opened regarding any employer, the Director may refuse to approve applications from the employer during the pendency of the case. For workers under a Temporary Work Authorization (TWA), if the contract of the employee expires during this period, the employee's time to transfer will be tolled until the termination of the case. For workers not granted a TWA the contract expires upon its expiration date, and the right to renew or seek expiration transfer occurs as if no case existed. Applications will not be approved for a Barred employer for the business under investigation or any other business.

16. Reduction in hours. An employer or employee may request a reduction/increase of hours to be worked by a nonresident worker by making a written request to the Director of Labor that contains the following:

a. The hours presently worked;
b. The proposed number of hours to be worked;
c. The name and LIIDS number of all affected employees;
d. The reason for the reduction/increase;
e. The duration of the reduction/increase;
f. Contract amendment signed by both parties (employer and employee) that reflects the proposed change;
g. Proof that the employee has been informed that he or she has the right not to sign the contract amendment and to continue to work under the terms of his or her present contract and that he or she knowingly and willingly waived those rights, subject to DOL's approval, prior to signing the amendment.

The Director shall review the request and inform the parties of the decision on the request. The Director may grant the request for good cause after consultation with the employer and affected employee or employees.

E. Minimum Financial Requirements For Non-Business Employers.

1. Non-business employers are defined as those persons who may employ nonresident workers but do not have to obtain a business license. Nonresident workers employed by non-business employers include, but are not limited to, the following job classifications: farmers for subsistence farming and domestic helpers.

2. Non-business employers must submit a houseworker and farmworker affidavit, signed under penalty of perjury, and submit it as part of their application. Non-business employers must state in the affidavit that they do not receive assistance from the Nutrition Assistance Program, Security Supplemental Income from the Social Security Administration, Government Subsidies in the form of public utilities from the Commonwealth Utilities Corporation, or low income housing from the Mariana Islands Housing Authority.

3. Non-business employers must meet the following minimum financial guidelines:

   No. of persons in household Gross Monthly Income

1	.....	$ 1,583.00
2	.....	$ 1,833.00
3	.....	$ 2,033.00
4	.....	$ 2,183.00
5	.....	$ 2,333.00

   For every additional person living in the household, add another $150 to the minimum amount required.

4. Any non-business employers failing to meet the financial minimum guidelines stated in these regulations shall be denied approval of any permit applications submitted to the Division of Labor.

5. Any person who wishes to have their income considered for purposes of meeting financial guidelines must execute the nonresident worker's employment agreement and become a co-employer of record or execute a sworn affidavit assuming joint and several liability of any claims brought about by the nonresident worker arising from the period of the employment.

F. Employment of Immediate Relatives of Aliens.

An immediate relative of a nonresident worker who enters the Commonwealth pursuant to 3 CMC § 4437(i) shall be allowed to work pursuant to the procedures set forth in these regulations. Once employed pursuant to these regulations, an immediate relative shall be required to abandon his/her immediate relative status entry documents including any LIIDS card issued in accordance therewith and shall be treated as a nonresident worker, with all due process protections of a nonresident worker. The former immediate relative shall not be required to exit and reenter the Commonwealth to effectuate a change of status. A person meeting the criteria in P.L. 14-8 [3 CMC § 4303(m) and 3 CMC 4412(i)] shall be considered to be a resident worker for purposes of these Rules and Regulations.

G. Hiring of Replacement Workers under Public Law 11-6, as amended.

1. "Replacement Worker" refers to potential nonresident workers who are not currently residing within the CNMI. An employee in possession of a valid Temporary Work Authorization (TWA) or an employee who transfers to an employer either consensually during the contractual period, through an administrative order, or as an expiration transfer is not a "Replacement Worker."

2. Prior to submission of an application for a replacement worker, but after complying with Section II.A., an employer must check with the Division of Employment Services to determine if there is a nonresident worker already lawfully in the Commonwealth, seeking employment, and eligible and qualified for the position. The Division of Employment Services shall maintain a list of nonresident workers who are lawfully in the Commonwealth and seeking employment, as categorized by job classification and other skills. All nonresident workers on the list will be considered eligible for unskilled positions. An employer must make a good-faith effort to contact any individual deemed eligible and qualified for the position and determine if that individual meets the employer's needs. If a match on the Employment Services list is found, the burden is on the employer to inform Employment Services if the employee is not eligible and qualified for the position or cannot be located. Once the employer provides this information to Employment Services, Employment Services will certify that the employer may hire a replacement worker.

3. To submit an application for a replacement worker, the employer must submit the original LIIDS card and a verification of departure of, or a copy of the official transfer documents for the employee who is being replaced. Under exceptional circumstances and upon

approval by the Secretary or his/her designee, a sworn affidavit explaining the absence of the original LIIDS card with a copy of the LIIDS card attached will be accepted by the Processing Section in lieu of the original card. Under no circumstances shall a sworn affidavit or other sworn statement about the whereabouts of an employee who is being replaced be substituted for verification of departure by the Attorney General's Office, Division of Immigration, air carrier, or official transfer document.

4. An employer may only employ one replacement worker for each worker that departs or transfers and only for the same job category, as provided in P.L. 11-51, as the worker to be replaced. For the purposes of this paragraph, the term "position" shall mean a position within a business owned by the employer for whom the departing employee performed services pursuant to an approved Nonresident Workers Contract. The Director may deny an application for a replacement worker for any nonresident worker who has departed or transferred due to the employer's failure to pay wages due at least biweekly, the employer's failure to pay the applicable minimum wage, or who the employer has allowed to work in the absence of a valid contract of employment approved by the Division of Labor, based on a finding of the Administrative Hearing Office or the Secretary.

5. In no event shall the Director or his designee approve a replacement worker for an employer seeking such a replacement on the basis of an official consensual transfer if the employer has been granted more than one consensual transfer per annum for each twenty-five (25) employees and such employer is replacing for a vacancy created by a consensual transfer of the employee who vacated the position. For example, if an employer has one hundred (100) employees, the employer may be granted a replacement pursuant to loss of an employee due to consensual transfer if the employer consented to no more than four (4) consensual transfers in any one-year period. If an employer has less than twenty-five (25) employees, the employer may be granted a replacement worker due to an official transfer if the employer consented to no more than one (1) consensual transfer in any one-year period. This restriction does not apply to consensual transfers pursuant to a settlement agreement in a labor matter. The Director of Labor may offer relief in appropriate circumstances where application of this regulation would be manifestly unfair under the circumstances.

H. Employment by Multiple Employers.

1. The employer whose Agreement is approved pursuant to Section II.B.4. shall be deemed a nonresident worker's "Primary Employer." All other employers of a nonresident worker shall be deemed "Secondary Employer(s)" except for workers employed pursuant to a Temporary Work Authorization. All DOL Rules and Regulations apply to secondary employers as if they were primary employers except to the extent the application of such rules would be inconsistent with this subsection.

2. Any employer who wishes to hire nonresident workers who are working under an approved Agreement for a primary employer must comply with Sections II.A.1. and 2. and B.1. as if they were potential primary employers.

3. Upon approval of the Employer's Secondary Application and Nonresident Employment Agreement, the potential secondary employer shall submit a Nonresident Worker's Secondary Application that must include:

   a. Secondary Employer Employment Contract.

   b. Nonresident Worker's Sworn affidavit and color photo.

   c. Payment of nonrefundable, nontransferable application fee.

   d. A two (2) year work certification form (experience) if the Secondary Employer is applying to hire the employee in a different job category than the category listed in the employee's approved contract with the primary employer.

   e. Primary Employer Permission Form, if necessary.

   f. A copy of the nonresident worker's entry permit, which must be valid.

   g. Memorandum of Understanding, if applicable.

   h. Copy of employer's valid business license, if applicable.

   i. If applicable, living quarters or housing inspection clearance and worksite inspection clearance issued by the Division of Labor Health and Safety Office.

   j. A sworn affidavit by the prospective employer that all of the obligations of the prospective employer and employee

related to the application are included in the Employment Contract; including, but not limited to, the application fee, transportation costs, recruitment costs, or other costs associated with the nonresident worker's employment; as well as an indication of which party agrees to undertake what obligations. This sworn affidavit does not change a prospective employer's obligation to pay the application fee and repatriation costs.

4. The Director or his designee shall act on the Secondary Employer's Agreement in compliance with Section II.B.2. and the Nonresident Worker's Secondary Application in compliance with Section II.B.4.

5. After receiving notice from the Director or his designee that the application for a LIIDS card and employment contract have been approved, the employer shall comply with Section II.B.5, except Section II.B.5.a. shall be modified as follows:

   a. If the Approval of Secondary Employment is for a period of six (6) months or more, the minimum amount of the Bond shall be equal to the cost of six (6) months wages based on the Maximum Hours, defined in Section II.H.7.h., as specified in the contract of employment.

   b. If the Approval of Secondary Employment is for a period of less than six (6) months, the minimum amount of the Bond shall be equal to the cost of salary for the full term of the employment based on the Maximum Hours, defined in Section II.H.7.i., as specified in the contract of employment.

   c. The required Bond shall be increased to reflect any pro-rata share of obligations of the Primary Employer that the Secondary Employer assumes pursuant to Section II.H.7.k., including payment of medical expenses or repatriation benefits.

      Example. If the Primary Employer has posted a Bond in the amount of $20,000.00 with $15,000 being posted for medical expenses and repatriation benefits and the Secondary Employer assumes fifty (50) percent of these obligations, then the Secondary Employer will have to post a Bond for $7,500.

d. The Primary Employer will not be granted permission from the Division of Labor to decrease the Bond they previously posted based on the posting of another bond by a Secondary Employer.

e. In no event, shall the total amount of the Bonds posted by the primary employer and all secondary employers be less than the amount originally posted by the primary employer plus the amount posted by each secondary employer that reflects the cost of six (6) months salary for each secondary employer.

f. In addition, Section II.B.5 shall be modified in that the Bond may only be used for the payment, in whole or part, of the obligations guaranteed by the secondary employer with the Bond that becomes due under an order issued by an Administrative Hearing Officer or the Secretary that has not been appealed or under a final order of a court.

6. Renewal of Approval of Secondary Employment. The secondary employer shall submit:

a. Payment of a nonrefundable, nontransferable application fee.

b. Application for Renewal of LIIDS card for Secondary Employment.

c. Proof of Employee's Payroll, Employer's Quarterly Withholding Returns and Business Gross Revenue Tax Returns [four quarters], if requested.

d. Copy of employer's valid business license, if applicable.

e. A sworn affidavit by the prospective employer that all of the obligations of the prospective employer and employee related to the application are included in the Employment Contract; including, but not limited to, the application fee, transportation costs, recruitment costs, or other costs associated with the nonresident worker's employment; as well as an indication of which party agrees to undertake what obligations. This sworn affidavit does not change a prospective employer's obligation to pay the application fee and repatriation costs.

f. Documents evidencing compliance Sections II.A.2. and B.1. as if they were primary employers.

g. A copy of the LIIDS card, which must be valid.

7. Other Provisions and Requirements.

a. The Director or his designee shall comply with Section II.D.1. with respect to Nonresident Worker's Secondary Application as if it was the Nonresident Worker's Application submitted by the primary employer, except that, if the Nonresident Worker's Secondary Application is approved, the Director or his designee will grant an Approval of Secondary Employment to the nonresident worker instead of a labor identification certification and employment contract.

b. The Department of Labor shall not authorize any nonresident worker to work pursuant to Section II.H. if they are working in the Commonwealth pursuant to 3 CMC § 4440, exemption for a particular project.

c. The nonresident worker must carry all valid Approvals of Secondary Employment on their person at all times when working.

d. The Approval of Secondary Employment shall be issued for a period not to exceed one year, provided that the Director may, at his discretion, authorize the issuance of LIIDS cards for more than one year or less than one year. In no event shall the Director issue an Approval of Secondary Employment for a period that exceeds the period for which the nonresident worker received a LIIDS card based on the Nonresident Worker's Application submitted by the primary employer. The Director may issue an Approval of Secondary Employment for a period less than the period for which the nonresident worker received a LIIDS card based on the Nonresident Worker's Application submitted by the primary employer.

e. The Approval of Secondary Employment will be deemed to have started on the date that the nonresident worker's Employment Contract with their primary employer began. In no event, however, shall the secondary employer owe the nonresident worker wages for any periods for which the

nonresident worker did not actually perform services or labor for the secondary employer.

f. The Approval of Secondary Employment will be deemed void fifteen days after the termination of the employee's employment with the Primary Employer unless the employee secures employment with a new Primary Employer or with a Temporary Work Authorization ("TWA"). The Approval of Secondary Employment shall not terminate if the employee has a basis to be legally in the Commonwealth (such as a new approved contract with a Primary Employer or TWA employer), but the Approval of Secondary Employment cannot be the legal basis. In such circumstances as the employee secures a new basis of primary employment, the Approval of Secondary Employment will terminate upon its stated expiration date or the end of the TWA period or the end of the contract with the primary employer, whichever is earlier.

g. If the Division of Labor approves a contract amendment signed by the parties to the contract (employer and nonresident worker) to reduce the hours of an employee, the employer who is the subject of such an amended contract may not take advantage of this provision to hire workers under secondary contracts during the period that such an approval is in effect. The nonresident worker who is the subject of an amended contact for an increase or reduction of hours may take advantage of this provision and work under secondary contracts.

h. The Director or his designee may approve a Secondary Employer Employment Contract for less than full-time employment. In such a case, the Secondary Employer Employment Contract must state on a weekly basis the maximum number of hours the secondary employer anticipates that they may require the services of the nonresident worker ("Maximum Hours"). The secondary employer does not have to guarantee any minimum number of hours that they will require the services of a nonresident worker in the Secondary Employer Employment Contract. The Secondary Employer is not liable for any wages for hours that the nonresident worker does not actually perform any service or labor, unless the Secondary Employer Employment Contract specifically states that they are so liable. If the nonresident worker works more hours than the

Maximum Hours, the nonresident worker and secondary employer shall do so in violation of 3 CMC § 4437(e) to the extent they exceeded the Maximum Hours. If the Secondary Employer Employment Contract is for full-time employment (i.e., forty (40) hours per week) and contains a provision regarding overtime, the nonresident worker may work more than forty (40) hours in a week without violating 3 CMC § 4437(e).

Examples. (1) If a nonresident worker has an approved Secondary Employer Employment Contract that lists their Maximum Hours as twenty (20) hours per week and they work ten (10) hours in a week for the Secondary Employer, the Secondary Employer must pay the nonresident worker only for ten (10) hours of work. The Secondary Employer will owe the nonresident worker for twenty (20) hours of work only if the Secondary Employer Employment Contract guarantees payment for that amount regardless of the number of hours actually worked.
(2) If a nonresident worker has an approved Secondary Employer Contract that lists their Maximum Hours as twenty (20) hours per week and they work twenty-two (22) hours in a single week, the nonresident worker and secondary employer have violated 3 CMC § 4437(e).
(3) If a nonresident worker has an approved Secondary Employer Contract for full-time employment and they work forty-five (45) hours in a single week, the nonresident worker and secondary employer have not violated 3 CMC § 4437(e).

i. The Primary and Secondary Employers may enter into a Memorandum of Understanding, which may address any division of responsibilities of the employers. Subjects that the Memorandum of Understanding may address include the division of responsibility for medical, board, lodging, and repatriation expenses of the nonresident worker, scheduling agreements, or any other matters they choose to address regarding the nonresident worker and the Secondary Employer Employment Contract. The parties may not agree to terms that would violate any law or regulation. If the secondary employer undertakes obligations for medical, board, lodging, or repatriation benefits, the Memorandum of Understanding must indicate that the primary employer will re-assume all obligations in the event the secondary employer's contract terminates

prematurely. The primary employer may still hold the secondary employer liable for breach of contract in such circumstances. The nonresident worker who is the subject of the Memorandum of Understanding must agree to its terms and sign it. Note: If the employers do not enter into a Memorandum of Understanding, then any dispute that arises between them where the employee is not a party cannot be adjudicated by the Department of Labor.

j. The Memorandum of Understanding must specify that all medical bills are to be sent to the primary employer and that the secondary employer will submit their share of all medical expenses to the primary employer within thirty (30) days of the primary employer forwarding a bill to them. In the absence of an approved Memorandum of Understanding, the same payment arrangement will be in place.

k. In the absence of an approved Memorandum of Understanding to the contrary:

i. The issuance of an Approval of Secondary Employment shall not change or in any way impact the primary employer's obligations for a nonresident worker's wages or board, lodging, or repatriation expenses or any other obligations of the primary employer, with the exception of the medical expense obligations. For medical expenses, the secondary employer shall be for the expenses addressed in Section II.H.7.1.ii and, for non-work related medical expenses, the secondary employer shall be proportionally liable based on the percentage of hours the employee can work for the secondary employer. To calculate the proportion, each secondary employer's hours are the Maximum Hours in that employer's contract. The primary employer's hours are equal to forty (40) hours. Each employer's share of the medical expenses is calculated by dividing the hours of that individual employer by the total number of hours for all employers for that employee.

ii. The primary employer shall remain liable for all medical expenses incurred by the nonresident worker except those incurred as a result of injury, illness, or other condition requiring medical care

suffered within the scope of employment of the secondary employer. The secondary employer will be liable for all medical expenses incurred as a result of injury or illness the employee suffers within the scope of their employment.

l. Nonresident workers have no right to secure work from other employers during the first year of employment unless the primary employer unless the primary employer employs nonresident workers working under approved contracts for reduced hours. The primary employer after the first year of employment shall sign the Primary Employer Permission Form and grant its workers permission to work for one or more other employers, if requested, unless the primary employer provides a valid business reason why the employee should not be allowed to accept such employment. However, if an employee is working for an employer who is operating under an approved reduced work schedule, that employee may secure secondary employment regardless of the objection of the employer. Valid business reasons include, but are not limited to, scheduling conflicts that may be created with the second employers; protection of trade secrets, such as if an employee wanted to work for a competitor; or productivity issues. The Director of Labor may review the statement of reasons and determine whether an application for Secondary employment should be approved. If employee makes a written request to work for a Secondary Employer to their Primary Employer and the Primary Employer does not deny the request within twenty (20) days, the Primary Employer's consent is presumed. The decision of the Director may be reviewed as in any application denial case.

m. An employer may not require a payment from a nonresident worker in exchange for permission to engage in secondary employment or for renewal of that privilege.

n. For the purposes of 3 CMC § 4436(a), nonresident workers working under Secondary Employer Employment Contracts for less than full-time employment, and resident workers employer part-time shall be deemed full-time employees for purposes of calculating the requirement that twenty (20) percent of the employer's full-time work force in the Commonwealth be comprised of resident workers.

I. Casual Employment.

A person may employ a nonresident worker for up to eight (16) hours in a thirty-day (30) period to provide services. To secure approval for such employment, (1) the potential employer must pay a nonrefundable, nontransferable application fee and (2) the employer and employee must file a Joint Casual Employment Sheet, signed by both parties, which contains the following information:

1. The name and LIIDS number of the employee;
2. The place to be worked;
3. The tasks to be performed;
4. The work hours;
5. The compensation to be paid;
6. A statement signed under penalty of perjury that the employer will be liable for all expenses arising out of the employment including medical expenses.

J. Temporary Transfers Within The Garment, Hotel, And Construction Industries.

1. Workers in the hotel and construction industries may transfer temporarily between employers during the contract period within the same industry subject to the following conditions:

   a. A request for transfer must be made in writing and must contain,
      i. The name and principal place of business of the employer;

      ii. A copy of the employee's current, valid LIIDS card;

      iii. The name, principal place of business of the prospective employer, and the proposed work location of the transferring employee;

      iv. A statement of the employee's proposed job classification;

      v. A statement of the reason for the transfer;

      vi. A statement that the original employer remains liable for all obligations under the contract and employer's agreement.

b. A temporary transfer may be for a time period not longer than six (6) months.

c. A request for temporary transfer must be approved by the Director of Labor or his designee.

d. The temporary transfer is effective upon approval of the transfer request and payment of the transfer fee of $100.00.

e. Should the employee's permit expire during the transfer period, it shall be subject to renewal by the original employer as provided by law, and the temporary transfer may be continued through the end of the temporary transfer time period approved by the Director or his designee.

3. Workers in the Garment industry may transfer between employers in the same industry subject to the following conditions:

a. The transfer must be a consensual transfer as provided for by these regulations;
b. The employer receiving the employee shall become liable for all obligations under the contract and employer's agreement.
c. The transferring employer shall not be eligible for a replacement worker to replace an employee transferred under this section.

4. Except as permitted by the Department of Labor in connection with a labor complaint, no transfer shall be permitted under this section for a nonresident worker in breach of his or her employment for failure or refusal to provide the services required by the contract. No transfer shall be permitted under this section for a nonresident worker who has filed a frivolous complaint with the Department of Labor.

K. Special Rules Regarding Reallocation of Workers in the Garment Industry:

1. GARMENT LABOR POOL. There is hereby established a garment labor pool administered by the Department of Labor which shall consist of all unused or unfilled non-immigrant alien garment worker positions within the quota of the various manufacturers, as described below. The purpose of the pool is to maximize use of available nonresident worker positions within the garment industry by reallocating positions from manufacturers who have had positions unfilled for 60 days or more to manufacturers needing additional workers.

a. The pool consists of replaceable positions over 60 days old created by the verified departure of a nonresident worker from the Commonwealth. Departure is shown by surrender/cancellation of the LIIDS card of the worker being replaced or by the officially accomplished transfer of a worker from the garment industry to a non-garment position, or by any other means acceptable to the Secretary of Labor. The Department shall give notice to the affected employer before removing positions and placing them in the pool.
b. The pool shall also consist of any positions among the manufacturers that have been unfilled from April 1, 2004 through September 1, 2004. "Unfilled" means a worker has either departed or been lawfully transferred as above, and no complete application has been submitted to the Department to replace that worker within 60 days of departure or transfer, or any positions that have not previously been occupied by an employee.
c. The pool shall also consist of employee positions affected by:
    1. The filing of a petition for bankruptcy of the employer under Chapter 7 of the Bankruptcy Code;
    2. A reduction in force by the employer;
    3. Positions of an employer who has been adjudicated as not making payment of wages and/or salaries for a period of 90 days or more;
    4. An employer whose Garment Manufacturing License has been revoked.
    5. An employer who has been temporarily or permanently barred from employing nonresident workers.
d. It is the intention of these Regulations that there be no monetary value that attaches to a worker position, and that the recovery of a position to the pool under (a) through (c) above does not entitle the employer losing the position to any compensation.
e. The garment industry and pool shall be operated in a manner to ensure that the total number of nonresident garment workers does not exceed 15,727 persons.
f. The procedure for requesting and approving or denying applications for additional garment workers is as follows:
    1. A prospective employer shall be a garment manufacturer licensed in the CNMI.
    2. The employer requesting additional workers shall apply in writing to the Director of Labor for additional workers. The request must specify the number of workers requested. A statement of the user fees paid by the employer for the previous year shall be submitted with the request.
    3. The request must be signed by a person having authority to bind the company to the employment of nonresident workers.
    4. By making the request the prospective employer certifies that if the request is granted, the employer will make a good faith effort to promptly fill the positions granted. If no application is filed with the Department within 60 days of the request being granted the worker position shall revert back to the garment worker pool.
    5. If there are special circumstances of which the Director should be aware concerning the request, the applicant should state them in the request. For

example: changes in manpower requirements due to expansion, unusually high orders, changes in product line, or similar business-related factors.

g. After receiving the request, the Director of Labor or his designee shall review the request and determine if the request should be granted. The Director or his designee may consider these factors in responding to the request:
   1. The extent to which an employer has previously hired workers on Temporary Work Authorization;
   2. The number of employee positions requested;
   3. Whether the employer has previously requested a reduction in hours or has failed to utilize their quota under Schedule A;
   4. The employer's compliance with Commonwealth and Federal labor statutes and regulations, including laws and regulations regarding the percentage of resident workers required to be employed;
   5. The extent to which the employer has been a responsible member of the CNMI labor community by timely payment of wages and taxes, compliance with laws and regulations intended to preserve and protect the environment, and the extent to which the employer has promoted the health and safety of its employees, and has contributed to the economy of the Commonwealth;
   6. Potential financial hardship to the employer or other equitable factors weighing in favor of or against granting the request;
   7. Whether the employer has the financial resources to provide for the additional workers including factory space and living quarters;
   8. The distribution of workers throughout the industry;

h. The Director shall review requests for positions from the labor pool on the 15th day of January, March, May, July, September, and November. If there are applications for more positions than there are available in the pool, the Director may release positions to employers in proportion to the numbers of positions requested. *See illustration below.* The Director shall notify each applicant in writing of the action taken on the request.

i. An applicant may appeal an adverse decision denying a request to the Secretary of Labor.

j. A worker position granted to an employer from the pool is removed from the pool. The worker may be replaced by the employer upon departure or transfer. A position that goes into the pool due to being vacant for 60 days may not be replaced by the company losing the position except pursuant to these regulations by applying for employees from the pool.

k. These regulations do not affect renewals of existing contracts or the usual replacement of departing or transferring workers.

l. Following the grant of additional workers from the pool the employer must follow all applicable requirements for the hiring of nonresident workers including the job vacancy announcement.

m. As required by the Nonresident Workers Act and the Moratorium on the Hiring of Nonresident Workers, the employer must first attempt to fill any available position with a resident worker who is qualified and available for the position. If

such a resident worker is not available, the transferring company must attempt to hire a qualified nonresident worker who is presently within the Commonwealth. If such a nonresident worker is not available, the company may hire a nonresident worker from outside the Commonwealth.

n. On June 1 and December 1 of each year each employer shall report to the Department of Labor the number of nonresident workers employed. Failure to submit the required report shall result in the suspension of the processing of any of the employer's labor-related documents by the Department until the report is filed with the Department.

2. TRANSFERS OF POSITIONS WITHIN THE GARMENT INDUSTRY. Employers in the garment industry may voluntarily agree to transfer employee positions between themselves as follows:

a. The transferring employer and receiving employer shall notify the Department of the intention to transfer employees from one business to another, shall state the number of workers to be transferred, shall describe where the workers are to be employed, and any special arrangements such as housing, food, and transportation.

b. The Department shall be provided a list of the employees intended to be transferred that contains the name, LIIDS number, and an acceptance of the transfer by each affected worker.

c. No transfer shall be permitted to an employer in arrears in paying wages within the previous calendar year. All wages and/or salaries to transferring employees must be paid in full before a transfer will be allowed.

d. When a transfer occurs pursuant to this subsection, the transferring employer loses a worker position and the receiving employer gains a position. Positions acquired under Sections I or II may not be transferred to another employer for one calendar year. Workers occupying positions transferred under Subsections I or II may not be laid off or terminated due to a reduction in force or similar elimination of workers for one calendar year.

e. The Department of Labor procedures and fees regarding consensual transfers shall be applied to transfers under this section.

Illustration:

For example, there are 200 available positions in the pool. The following companies request additional workers:

Co. A = 150 workers
Co. B = 60 workers
Co. C = 10 workers
Co. D = 30 workers
Total = 250 workers

Calculate the percentage of the total request (250 workers requested) attributable to each company:

Co. A =	60%	(150 / 250)
Co. B =	24%	(60 / 250)
Co. C =	4%	(10 / 250)
Co. D =	12%	(30 / 250)
Total =	100%	

Multiply the percentage by the number of available workers in the pool to get the *pro rata* number for each requesting employer:

Co. A =	200 x 60% =	120 workers
Co. B =	200 x 24% =	48 workers
Co. C =	200 x 4% =	8 workers
Co. D =	200 x 12% =	24 workers
Total =		200 workers

3. Workers not to be assessed fees or costs:

a. A nonresident worker may not be assessed any fee or cost of any kind by any person relating to a reallocation or transfer to the receiving employer. The attempt to collect or the collection of a fee or other consideration from a nonresident worker constitutes a violation of the Nonresident Workers Act and may subject the violator to the penalties therein. An employer may offer an incentive to an employee to accept employment if such incentive is included in the employer's agreement and the approved employment contract.

b. On June 1 and December 1 of each year each employer shall report to the Department of Labor the number of nonresident workers employed. Failure to submit the required report shall result in a sanction of one thousand dollars ($1000.00) for each seven (7) days the report is late. Failure to submit the report within fourteen (14) days may result in a suspension of the processing of any of the employer's labor-related documents by the Department plus the sanction until the report is filed with the Department.

c. Upon receipt of the reports required by Section 5 above which were submitted on June 1, 2004 and every six (6) months thereafter, the Secretary of Labor and the Attorney General shall review the placement of nonresident workers in the garment industry to determine whether to reinstate an nonresident worker allocation system similar to that previously adopted in Schedule A of the Moratorium on Nonresident Alien Worker Hiring, 3 CMC §4601 *et seq.*

d. The Division of Immigration, the Department of Labor and the LIIDS Section of the Office of the Governor shall monitor the number of workers in the garment industry no less than once every fourteen days to ensure that the

total number of nonresident workers in the industry does not exceed 15,727. This monitoring may be accomplished in any manner that will give an accurate total of the number of workers.

SECTION III. CONDITIONS OF EMPLOYMENT.

A. Possession of LIIDS card. Nonresident employees shall keep their LIIDS card on their person at all times during working hours. Failure to do so may constitute violation of these regulations.

B. Nonrenewal of Employment Contract. An employer shall provide written notice of the employer's intent to renew or not renew an employment contract to a nonresident worker thirty (30) days before the end of the contract term. Such written notice and proof of service must also be filed by the employer with the Division of Labor.

C. Maximum Food and Housing Deductions. The maximum deduction to be made from the wages of a nonresident worker for food and housing shall be $100.00 per month for food and $100.00 per month for housing, provided: the nonresident worker voluntarily elects to accept food and housing provided by the employer; in writing, in the official language of the point of recruitment, and with the option to withdraw from employer-provided food and housing upon one month's advance written notice to the employer. Food and housing deductions that do not comply with the provisions of this regulation shall be presumed to be unlawful deductions. No deductions for food and housing shall be made from the wages of nonresident workers earning less than the applicable minimum wage.

D. Acceptance of Housing. If a nonresident worker accepts housing benefits, the employer shall not require him or her to remain in the housing during non-working hours or take or threaten to take any adverse action against the employee for refusing to remain in the housing during non-working hours.

E. Return of LIIDS card. Just prior to a nonresident worker's departure from the Commonwealth, the worker's LIIDS card shall be turned over to the employer who shall return it to the Division within ten (10) days of the worker's departure. An employer failing to secure a LIIDS card prior to the worker's departure shall give written notice to the Division of the worker's name and LIIDS card number within ten days of the worker's departure.

F. Notice of Termination for Cause. If a nonresident worker is terminated by an employer for cause before the end of the worker's contract, the employer shall give written notice to the worker and to the Division at

least ten (10) days prior to the worker's expected termination date. The notice shall state the name and LIIDS card number of the worker, the reasons for termination, and the expected date of departure from the Commonwealth. A copy of the termination letter and proof of service on the employee of the same must be attached to the notice.

G. Review of Termination Notice. Upon receipt of a written termination notice, the Director or his designee shall immediately review the reasons for termination. If the Director finds that there is a question as to whether the employer has complied with relevant contractual provisions in terminating the worker or if the terminated worker files a grievance with the Division regarding the termination, the Director shall immediately initiate an investigation as set forth in Section VII.

H. Workplace Conditions. Every employer shall furnish and ensure the use of such safety devices and safeguards (such as machine guarding, electrical protection, scaffolding, safe walking-working surfaces, means of egress in case of emergencies or fire, ventilation, noise exposure protection, personal protective equipment for eyes, face, head, and feet, fire protection, and sanitation) and shall adopt and use such means and practices as are reasonably adequate to render safe the employment and place of employment of all employees. The employer shall not require the worker to work hours that are excessive so as to be damaging to the worker's mental or physical health. The employer shall provide an adequate supply of drinking water and sufficient and sanitary toilet facilities at the worksite or reasonable access thereto.
This regulation incorporates all safety and health standards that are found in the workplace. The U.S. Department of Labor's Occupational Safety and Health regulations as published and amended in the Code of Federal Regulations are recognized as the minimum standards required of every employer in the CNMI.

I. Living Conditions. Nonagricultural employers shall be responsible for meeting the following conditions where the employer provides housing to workers, where the employer controls the occupancy of the housing, or where the workers use the facilities of the housing in common.

1. Site of Housing.

a. Grounds around worker housing shall be adequately drained to prevent flooding, collection of wastewater, and mosquito breeding.

b. Grounds around worker housing shall be maintained in a clean and sanitary condition, free of rubbish, debris, waste

paper, garbage, and other refuse. Occupants of worker housing are responsible for assisting in this maintenance responsibility to the degree that they generate such refuse.

c. Whenever worker housing is closed between projects or on a permanent basis, the employer shall insure that all garbage, waste, and other refuse that would cause a nuisance is collected and disposed of and that the grounds and housing are left in clean and sanitary condition.

2. Shelter.

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

b. Employers shall provide access to the site of worker housing at reasonable times, with or without advance notice, for periodic inspections by government inspectors, to ensure compliance with these regulations.

c. Each room for sleeping purposes shall contain at least 50 square feet of floor space for each occupant. At least a 7-foot ceiling shall be provided.

d. Separate bedding, which may include bunks, shall be provided for each occupant:

i. Spacing of single bedding shall not be closer than 36" both side-to-side and end-to-end.

ii. Elevation of single bedding shall be at least 12" from the floor.

e. Where workers cook, live, and sleep in a single room, a minimum of 100 square feet per person shall be provided.

f. Natural ventilation consisting of operable windows shall be provided, the area of which shall not be less than ¼ the floor area of the living quarters. In lieu of natural ventilation, mechanical ventilation may be provided. Mechanical ventilation shall provide at least 15 cubic feet of fresh air per person per minute.

g. All exterior openings shall be screened with at least 16-mesh per inch material.

h. Each room in the housing shall be provided with adequate lighting.

i. An adequate and convenient water supply shall be provided for drinking, cooking, bathing, and laundry purposes.

3. Toilet Facilities.

a. The number of sit-down toilets to be provided shall be no less than one per fifteen (15) persons. Where there are ten (10) or more persons of different sexes using the toilet facility, separate toilet facilities, appropriately identified, shall be provided for each sex.

b. Toilet facilities shall be located within 200 feet of the sleeping quarters. No toilet facility shall be located in a room used for other than toilet purposes.

c. Natural ventilation consisting of operable windows or other openings shall be provided, the area of which shall not be less than 1/10 of the floor area of the toilet facility. In lieu of natural ventilation, mechanical ventilation capable of exhausting at least 2 cubic feet per minute per foot of floor area may be provided.

d. All outside openings shall be screened with at least 16-mesh per inch material.

e. Toilet facilities shall be of sanitary and easily cleanable construction and shall be maintained in sanitary condition by the individual using the facilities or by the employer.

f. Toilet facilities shall have adequate lighting.

g. An adequate supply of toilet paper shall be assured by the employer.

h. Access to toilet facilities shall not intrude upon sleeping quarters.

4. Laundry, Hand-washing, and Bathing Facilities.

a. Sanitary laundry, hand-washing, and bathing facilities shall be provided in the following ratio:

i. One laundry tray or tub for every fifteen (15) or less persons or an equivalent laundry alternative.

ii. One hand-wash basin per family or per six (6) or less persons.

iii. One showerhead for every ten (10) or less persons.

b. Facilities shall be of sanitary and easily cleanable construction and shall be maintained in sanitary condition by the individuals using the facilities, or by the employer. Floors shall be of a smooth, but not slippery surface.

5. Sewage and Refuse Disposal.

a. Where public sewers are available, all sewer lines and floor and sink drains from toilet, laundry, hand-washing, bathing, or kitchen facilities shall be connected thereto. Septic tanks shall be installed or constructed where public sewers are not available.

b. Where public sewers are not available, facility wastewater shall be treated or disposed using an on-site wastewater treatment system meeting all applicable Commonwealth regulations, including the Department of Environmental Quality's wastewater treatment and disposal regulations.

c. Garbage shall be stored in disposable or cleanable containers that are secured from flies, rodents, other vermin, and water. Containers shall be kept clean. Containers shall be emptied not less than twice a week. Refuse shall be disposed of only in Commonwealth-approved solid waste landfills. Burning trash is prohibited.

6. Food Storage, Kitchen, and Eating Facilities.

a. Cooking facilities are to be provided wherever workers are provided common living quarters.

b. Cooking facilities shall be in an enclosed and screened shelter.

c. Food shall be stored safe from contamination by water, dirt, poisonous substances, rats, flies, or other vermin.

d. Refrigeration facilities shall be provided for storage of perishable food.

e. Facilities shall be adequate for insuring sanitary maintenance of eating and cooking utensils.

7. Health Measures.

a. Adequate first aid supplies shall be available at the living site for the emergency treatment of injured persons.

b. The employer shall report to the Division of Health Services the name and address of any nonresident worker known to have or suspected of having a communicable disease.

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

d. The employer shall provide adequate access to medical services of the employee's choosing as well as transportation thereto if the employee's condition appears to be serious.

J. Record Maintenance. The employer shall keep the following records for presentation upon demand by the Director or his designee:

1. The name, address, age, legal residence, citizenship, point of hire, work permit expiration date, job classification, and wage rate of each nonresident employee.

2. Payroll showing the number of hours worked each day, each week, the compensation earned, and deductions made for each nonresident and resident employee. If time cards are utilized, these shall be maintained for a period of four (4) years.

3. The number of employment related accidents involving workers, the name of any injured worker, the type of injuries, the treatment,

the outcome of treatment, the worker's subsequent employment status, and the amount of time lost from work.

4. The number of illnesses of nonresident workers, the names of such workers, the types of illnesses, the treatment, the outcome of treatment, the worker's subsequent employment status, the amount of time lost from work, and whether hospitalization was required.

5. Employers must maintain records in subsection J. for a period of three (3) years.

SECTION IV. TRANSFERS.

Nonresident workers may transfer from one employer to another provided that no qualified resident worker is available to fill the position to be filled by the transferring worker. Provided, further, an employer must comply with all applicable provisions of 3 CMC Section 4411, *et seq.*, and Sections II.A. and II.B. of these regulations. Job classifications and wage rates may be changed through the transfer process. Written notice of a denial of an application for employment pursuant to transfer procedures shall be served on both the applicant employer and the nonresident worker in accordance with Section X.C.3. The written notice of denial shall state the basis for denial and available review procedures.

A. Transfers after the initial contract period.

1. When a nonresident worker's initial or renewal contract expires, he or she may cease to work for that employer and seek new employment with a new employer without the necessity of exiting the Commonwealth. In such a case, no reimbursement or indemnification is required of the former employer by the new employer. The Division of Labor shall strictly enforce the requirement of thirty (30) days notice by the employer to renew or not to renew the contract of a nonresident worker. Such notice shall be in writing and a copy filed with the Division of Labor. If a notice not to renew is timely served upon the employee, the employee shall have fifteen (15) days after the end of the contract term to secure new employment. If the employer fails to serve timely notice not to renew upon the employee, then the employee shall have a total of forty-five (45) days after the end of the contract term to secure new employment. The forty-five (45) days runs from the date of expiration of the previous contract to the date of submission of a completed application. If at the end of such period the nonresident worker has not secured new employment, he or she must depart the Commonwealth or be subject to deportation as provided by law. The employee must give the employer thirty

(30) days notice of intent not to renew the contract. If the employee fails to give thirty (30) days notice the employee has only fifteen (15) days following expiration of the contract to secure a new employer.

2. When an application is filed and then is discovered to have deficiencies, the Division of Labor shall notify the employer applicant and, if the whereabouts are known, the employee shall be notified in writing to correct the deficiency. Notice shall be provided pursuant to Section X.C.3. The employer and employee will have twenty (20) days to rectify the deficiencies. Failure to correct the deficiencies within the prescribed period shall result in denial of the application. The application can only be resubmitted or a new application with a different employer processed if the initial 45-day period has not yet run.

3. Neither the prospective employer nor the employee needs to reimburse the original employer for recruitment or hiring costs.

4. An employer must comply with Sections II.A. and II.B. of these regulations to employ a transferring nonresident worker.

B. Consensual Transfers.

1. The Director or his designee may grant consensual transfers during the contract period with the permission of all parties provided the application is filed at least ten (10) days before the expiration of a contract.

2. The new employer shall assume all legal responsibilities for the transferred employee and, if the transfer occurs during the initial contract period, and subject to IV.B.6. below, the new employer shall reimburse the former employer for all actual costs associated with the recruitment and hiring of the nonresident worker. No reimbursement shall be provided the former employer if the consensual transfer results from a finding that the former employer failed to pay the applicable minimum wage, failed to pay wages at least biweekly, or allowed the nonresident worker to work without a valid employment contract approved by the Division of Labor.

3. The new employer must provide the Director of Labor or his designee with the following documentation:

   a. three (3) copies of the consensual transfer form;
   b. a copy of the employee's LIIDS card;

c. a copy of the new employer's valid business license, if applicable;
d. a two (2) year work certification form (experience) if the employee is changing job categories;
e. a bond;
f. evidence of compliance with Section II.A.2. and B.1;
g. a nonrefundable, nontransferable application fee;
h. any additional documentation deemed necessary by the Director of Labor or his or her designee;
i. A sworn affidavit by the prospective employer that all of the obligations of the prospective employer and employee related to the application are included in the Employment Contract; including, but not limited to, the application fee, transportation costs, recruitment costs, or other costs associated with the nonresident worker's employment; and
j. Any other information required by the Prescreen Transfer/ Consensual/Administrative/Expiration Transfer Requirements.

4. After the Director of Labor or his designee receives the documentation described above, he or she shall set an appointment for an interview with the current employer, the prospective employer, and the employee. The current employer shall provide evidence that the employer has fully paid all the wages of the employee as of the date of the appointment.

5. The consensual transfer must be approved by the Director of Labor or his or her designee prior to submission of the new application for a work and entry permit. The completed application must be submitted within forty-five (45) days from the date of approval by the Director of Labor or his or her designee. However, as soon as the consensual transfer is approved by the Director of Labor or his designee, the accepting employer becomes responsible for all costs associated with the nonresident worker, including but not limited to medical and repatriation costs.

6. For transfers during the initial contract period, the original employer may have his or her recruitment and hiring costs reimbursed by the prospective employer. The right of reimbursement belongs to the original employer; therefore the original employer may waive reimbursement during the initial contract period if he or she chooses.

7. When a worker is brought into the Commonwealth pursuant to an exemption granted by the Governor, that worker may be replaced

by another worker from outside the Commonwealth only by the last employer. (For example, Person A brings in a worker pursuant to an exemption, and later transfers the worker to Person B. A may not refill the position from outside the Commonwealth unless a new exemption is granted. B may replace the worker only by another worker lawfully residing in the Commonwealth or by another overseas worker upon the verified departure of the employee from the Commonwealth.)

C. Administrative Hearing Transfers. Grounds for the granting of transfer relief by the Hearing Officer upon the conclusion of an Administrative Hearing include, but are not limited to:

1. The employer has abandoned his employees and fled the jurisdiction of the Commonwealth;

2. The employer has been declared insolvent or has filed a petition for relief under applicable bankruptcy laws;

3. The employer's business establishment has been destroyed by natural disaster, fire, or other force majeur;

4. The relief available upon the conclusion of a 3 CMC §4444(a)(2)-(3) Administrative Hearing provided that the employer's fault concerning the matters which gave rise to the filing of the labor complaint outweighs the fault of the employee; or

5. The employee has prevailed in his/her complaint resolved by a court of competent jurisdiction; has entered into a settlement agreement with the employer in which the employer agrees that the employee should be transferred and the court of competent jurisdiction has accepted the settlement agreement; or is involved in a settlement agreement in a federal enforcement action wherein the employee is found to be not equally in the wrong concerning the matters which gave rise to the filing of the labor suit or enforcement action, as the case may be. If, upon review of the documentation presented by the nonresident worker when seeking a transfer under this subparagraph, the Hearing Officer finds that he/she is satisfied that the employee is not equally at fault, the Hearing Officer may waive a hearing and issue a written transfer order on the basis of the record presented.

The Hearing Officer may waive the requirements set forth in Sections II.A. and II.B. of these regulations if found to be in the public interest.

D. Other Transfer Relief. The Director of Labor or his designee may provide transfer relief to a nonresident worker:

1. When the employer is involved in a bona fide merger, acquisition, reorganization, or incorporation; or

2. If the Secretary reallocates quota numbers in compliance with Public Law 11-76 §§ 2(b) and (c), as amended, and the regulations.

E. Conditional Transfer. Expiration and Administrative transfer employees may be conditionally employed by their prospective employers during the review process of timely filed applications. The conditional grant of transfer shall be granted after the prospective employer entering an Agreement with the Director of Labor in which it assumes all liability for the transferring employee including but not limited to medical costs, repatriation costs, and other costs associated with employing a nonresident worker pursuant to Commonwealth law and a determination by the Director that the employer is not on an employer that appears on either the Barred List maintained by the Division of Labor or by the Department of Finance. Provided further that prior to the grant of conditional transfer, the employer timely must submit the following documentation:

1. a fully executed employment contract;
2. a notarized acceptance of liability/conditional transfer form accepting liability for all medical costs and repatriation costs;
3. a Nonresident Worker's Sworn affidavit;
4. a Employer's Agreement;
5. a Surety Bond;
6. a 706(K) LIIDS card;
7. a certificate of employment;
8. a copy of a valid business license, if applicable;
9. an updated business establishment/living quarters inspection certification; and
10. application payment fee.

An employer seeking conditional grant of transfer is subject to the following conditions:

1. The employer shall not allow a nonresident worker to work prior to the written approval of the conditional grant of transfer by the Director.

2. An employer who satisfies the initial conditions in paragraph 1 above shall correct any deficiencies identified during the review

process and comply with all other standard requirements of law, regulations, policies and procedures. Applications not corrected after issuance of a deficiency notice shall be denied with written notice to both the employer and the conditionally transferred nonresident worker pursuant to Section X.C.3.

The date of approval by the Director of the conditional grant of transfer shall be considered the officially accomplished transfer date for purposes of identifying when liability is assumed by the new employer. The date of final approval of the conditional transfer shall be considered the official transfer date for identifying when an employee may be replaced by the former employer.

If an application is denied after conditional transfer was granted, the affected nonresident worker shall be granted additional time to secure new employment; provided, however, in no instance shall the additional time exceed forty-five (45) days from the date of service of the denial on the nonresident worker pursuant to Section X.C.3. A "final denial" means a notice of denial from the Division of Labor, unless the employer or the nonresident worker appeals the denial to the Secretary, or seeks judicial review, in which case "final denial" means a final decision from the Secretary or final order from a court of competent jurisdiction denying the conditional transfer. In the event of an appeal to the Secretary, or subsequent judicial review, the nonresident worker may continue his or her conditional employment, pursuant to this section.

SECTION V. EXEMPTION TO PUBLIC LAW 11-6, AS AMENDED.

A. Only the Governor may approve an exemption under 3 CMC § 4601(d) and (e). Any request for these exemptions shall be put in writing and forwarded, with supporting documentation to substantiate the exemption criteria, to the Office of the Governor for review.

B. For an exemption under 3 CMC § 4601(d), Major New Developments, proper financial records must be included with the request for an exemption to be considered under the specific dollar amounts set forth in the subsection. If the documentation is unsatisfactory or insufficient, the Governor or his/her designee may request additional supporting documentation or may deny the request. Note that meeting the exemption criteria set forth in this paragraph does not automatically entitle the employer to the exemption, the discretion lies with the Governor.

C. For an exemption under 3 CMC § 4601(e), Critical Services, only those positions that are professional in nature to be filled by individuals with extensive training in traditional educational institutions, technical training

certification courses or on-job experience in the field shall be considered. An exemption under 3 CMC § 4601(e), Critical Services, shall never be granted for unskilled or semi skilled positions. It shall be the requesting employer's burden to satisfy the proper documentation the following mandatory criteria:

1. justifying need in request letter;
2. educational/training level requiring college degrees or verified professional/technical certification for the position applied for;
3. minimum compensation of $1,200 per month;
4. number of positions requested;
5. detailed job description for each position requested;
6. certification from Employment Services Division that request is for a skilled or professional position;
7. a copy of a valid business license of the employer, if applicable;
8. Statement of Compliance with local preference percentage;
9. Listing of all nonresident workers issued entry permits during the past four years; and
10. Job Vacancy Announcement at the $1,200 per month compensation amount with certification of unavailability of qualified candidates from Employment Services.

In addition, a requesting employer must satisfy the following standards in order to be considered for an exemption:

1. Verification of employer's good standing from Division of Labor Processing Section, Enforcement Section, and Compliance Section;
2. Verification of employer's good standing from Division of Immigration;
3. Verification of employer status with Employer's Barred List; and
4. Clearance of employer by Department of Finance.

If the documentation is unsatisfactory or insufficient, the Governor or his/her designee may request additional supporting documentation or may deny the request. Note that meeting the exemption criteria set forth in this paragraph does not automatically entitle the employer to the exemption; the discretion lies with the Governor.

If the documentation is satisfactory and the Governor and the request is approved, the employer may then submit an application to the Division of Labor pursuant to Sections II.A. and II.B for normal processing. The employer must include the approval received under this section with their application.

SECTION VI. SECURITY GUARD AND MANPOWER HIRING RESTRICTIONS.

Notwithstanding any provisions herein for hiring new, replacement, or transfer nonresident workers, the following conditions shall be strictly applied to security guard and manpower companies and service providers:

A. Security guard and manpower companies and service providers cannot hire any employees (including replacements under Public Law 11-6, as amended) from outside of the Commonwealth.

B. All security guard and manpower companies and service providers must be screened pursuant to the Memorandum of Understanding between the Department of Labor and the Department of Commerce prior to filing applications for renewal of employees or to have employees transferred to them. There shall be no waiver of the Job Vacancy Announcement for any security guard, manpower, or service provider employees.

C. If the security guard or manpower company or service provider is deemed unfit to hire nonresident workers by the Department of Commerce, then the employee shall be either allowed to transfer to a qualified second party employer (the one at which the employee performed services), otherwise transfer pursuant to Section V herein, or be repatriated at the expense of the security guard or manpower company or service provider, if qualified, pursuant to Public Law 11-66.

D. If the security guard or manpower company or service provider is deemed unfit to hire nonresident employees by the Department of Commerce, the Secretary will request that the Department of Commerce hold a hearing to determine whether the employer's business license should be revoked.

E. If the security guard or manpower company or service provider is deemed fit to hire nonresident employees by the Department of Commerce, then the employer shall file the following:

1. A timely, complete labor application;

2. Timecards and canceled paycheck stubs (or signed receipts for cash) for the entire period (not to exceed one year) that the employee worked for the employer;

3. A sworn affidavit signed by both the employer and employee affirming that the employee did not pay for the processing costs,

fees, or health screening, and that he/she got paid by the employer for the last year or whatever period the employee worked for that employer; and

4. A cash bond in the amount of six months wages and one-way airfare to the employee's place of origin and $9000 for potential medical expenses or a $9000 cash bond for medical expenses. If the employer has been in operation more than two years and has employed nonresident workers for more than two years without suffering an adverse order (including a settlement in which the employer admits wrongdoing) issued by the Administrative Hearing Office, the Director may allow the employer to comply with the bonding requirements of Section II.B.5.

Failure to provide any of the above (given the usual 10 days to correct deficiencies) will result in denial of the application.

F. A written notice of denial of an application setting forth available review procedures shall be served on the employer and nonresident worker pursuant to Section X.C.3.

SECTION VII. COMPLAINT.

A. Filing of Complaint. Any employer or nonresident worker may file a complaint with the Division of Labor regarding the violation of any provision of the Nonresident Workers Act, as amended, the Minimum Wage and Hour Act, as amended, Public Laws 11-6 and 12-11, the rules and regulations promulgated pursuant to the laws of the Commonwealth, or breach of any provision of the employer's agreement, employment contract, or other document filed with the Division of Labor as part of a labor application after the violation or breach has occurred. Such an action is called a labor case. An employer shall not retaliate against an employee for filing a complaint.

B. Form of Complaint. The complaint shall be in writing in English or, if written in another language, with accompanying English translation and signed by the complainant or his counsel and shall contain the following:

1. The caption setting forth the name of the Division of Labor;

2. The names and addresses of the parties;

3. A short description of the nature of the complaint; and

4. The relief requested or demanded.

The complaint may be handwritten, printed, or typed. The failure of the complaint to conform to any standard, regulation, or department policy or rule is not a valid ground for refusal of the complaint so long as it is legible and contains the information listed above. Provided, further, a question of timeliness in filing of the complaint shall not be grounds for refusal of the complaint which must be accepted.

C. Filing Fee. The complaint shall be accompanied with a filing fee of twenty dollars ($20.00). Indigent complainants may file in forma pauperis, and shall be exempt from the filing fee. In determining whether or not a complainant is indigent, the Director or his designee may consider:

1. Any cash the complainant has on hand;
2. Any funds on deposit with a bank or financial institution;
3. Wages earned during the preceding six months;
4. An allegation complainant was denied work;
5. An allegation complainant has been out of work for at least one month;
6. An allegation complainant has not been paid pursuant to statute;
7. Significant available assets that can be readily sold in order to pay the filing fee;
8. Any other sources of income;
9. Any legal dependents the complainant provides support for; and
10. Any outstanding debts or obligation the complainant has.

D. Parties.

1. The term *party*, whenever used in these rules, shall include any natural person, corporation, association, firm, partnership, trustee, receiver, agency, public or private organization, or governmental agency. A party who seeks relief or other affirmative action shall be designated as *complainant*. A party against whom relief or other affirmative action is sought in any proceeding shall be designated as a *respondent*.

2. Either party may be represented by counsel, at the party's own expense. A party appearing *pro se* may be assisted by any person (regardless of whether that individual is an attorney) during any stage of the filing process, mediation, adjudication, or other hearing. A person assisting a *pro se* party may be present at any proceeding at which the party being assisted is entitled to attend. All parties must file written notice with the Administrative Hearing Office of their authorized counsel or representative. Individuals

who are deportable or have been barred for past conduct may not serve as representatives.

3. Any person not employed by a government agency as a translator or interpreter, if participating in the translation or interpretation of any document, must indicate on the face of the document the capacity in which they are assisting, and sign a declaration under penalty of perjury that they have accurately translated or interpreted the complaint to the best of their ability and have not included any statements beyond those made by the complainant. The Hearing Office may refuse to allow a person to participate in cases in the Department as a translator, interpreter, or assistant if credible evidence suggests that the person is not sufficiently competent to act as translator or interpreter or the person has acted in any way to mislead the department or falsify information presented to the Department.

E. Service of Complaint. Immediately upon filing and no later than five (5) days after the filing of the complaint, the Division of Labor shall serve a copy of the complaint to the respondent, unless the complainant is represented by counsel. If the complainant is represented by counsel, the counsel shall cause service to be made on the respondent within five (5) days of the filing of the complaint. Within two (2) business days of the service of the complaint, the entity or individual who served the complaint shall file with the Division of Labor a sworn affidavit of service or other proof of such service. Failure to file a sworn affidavit or proof of service shall not affect the validity of the service.

1. Service of any pleading, notice, or order may be made anywhere within the territorial limits of the Commonwealth of the Northern Mariana Islands.

2. Service of all pleadings, papers, notices, orders, and process, required by statute or regulation to be served upon any party to a labor dispute or grievance proceeding, may be made in the following manner:

a. By delivery of the requisite number of copies of any pleadings, papers, notices, orders, and process to the party personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the pleadings, papers, notices, orders, or process, to an agent authorized by appointment or by law to receive service of process; or

b. By mailing the requisite number of copies of any pleadings, papers, notices, orders, or process (by first-class mail, postage prepaid), (a) to a complainant at the address provided by him on the Notice to Complainant form, and (b) to a respondent at the address provided by him on the Employment Contract, unless a party has notified the Division of Labor, in writing, of a change of address, in which case service shall be made to the address last provided by a party. It is the responsibility of the parties to notify the Division of Labor, in writing, of any change of address; or

c. Where a party is represented by an attorney, service may be made upon the attorney in lieu of service upon the party, by delivering or mailing, (first-class, postage prepaid) any pleadings, papers, notices, orders, or process, to the attorney or office of the attorney.

3. Service by delivery is made by hand-delivering the document to the attorney, representative, or to the party, or leaving it at his office with his clerk or other person in charge thereof; or, if the office is closed or the person to be served has no office, leaving is at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

4. If service cannot be accomplished by any of the methods set forth herein, such service may be accomplished by publication in accordance with procedures set forth by the Director of Labor.

F. The respondent, in writing, within twenty (20) calendar days upon receiving the complaint, may file a response to the complaint with the Division of Labor. If such a response is filed, it must be served on the complainant or his counsel or representative pursuant to Section VII.E. The failure of respondent to file a response shall not be deemed a default.

G. All persons appearing on behalf of a party must file a Notice of Appearance containing their name, address and telephone number. The filing of a complaint or responsive pleading by an attorney licensed to practice law in the Commonwealth shall be deemed to be a Notice of Appearance.

SECTION IX. INVESTIGATION AND ENFORCEMENT.

A. Investigation.

1. Upon receipt of any complaint, the Director or his designee shall immediately conduct a preliminary investigation/intake the Director deems appropriate. At the conclusion of the intake, the Director or his designee shall refer the complainant to the Administrative Hearing Office to schedule a mediation session.

2. Upon notification from the Administrative Hearing Office of an unsuccessful mediation, the Director or his/her designee shall assign the complaint to a case investigator to determine whether there has been a violation of the Nonresident Workers Act, the Minimum Wage and Hour Act, P.L. 11-6 and 12-11, the Department of Labor's rules and regulations promulgated pursuant to the laws of the Commonwealth or a breach of any provision of the agreement or contract entered into by the employer or nonresident worker, any other document filed with the Division of Labor as part of a labor application, of conditions or practices, or housing standards of the nonresident worker. The results of any investigation conducted in response to the filing of a complaint, and any interview, documentary or other evidence, or non-privileged information of any sort gathered or received in the course of an investigation conducted in response to the filing of a complaint, shall be available to the parties when the Determination of Violation is issued to the Administrative Hearing Office. The Administrative Hearing Office shall not release any information to any individual who is not a party or who is not listed as an authorized counsel or representative of a party. Before any information regarding the Determination of Violation or the case is released to either party or their counsel or representative, the individual receiving the information must sign an appropriate nondisclosure agreement.

3. If a Determination of Violation is issued by the Director of Labor after completion of the investigation of a labor complaint, the caption on the Determination of Violation and request for a hearing to be scheduled by the Administrative Hearing Office shall be amended to add the Division of Labor as a party-complainant in the labor case. The Determination of Violation shall be served pursuant to the procedures set forth in Section V.C.4. of these rules. The Director, at his/her discretion, may refer any case in which the Division of Labor is a party to the Assistant Attorney General for Labor.

4. If no determination is issued within 180 days following an unsuccessful mediation, any party may petition the Hearing Office for a hearing on the merits of the complaint. For good cause shown, the Hearing Officer may grant the petition and schedule a hearing or take other action consistent with a fair presentation and adjudication of the case. This subsection shall not apply to investigations pending on the effective date of these regulations.

B. Compliance Monitoring. The Director or his designee shall conduct inspections as he deems appropriate and necessary to monitor compliance with the Nonresident Workers Act, the Minimum Wage and Hour Act, P.L. 11-6 and 12-11, the Department of Labor's rules and regulations promulgated pursuant to the laws of the Commonwealth or a breach of any provision of the agreement or contract entered into by the employer or nonresident worker, any other document filed with the Division of Labor as part of a labor application, of conditions or practices, or housing standards of the nonresident worker. The results of any investigation conducted by the Director or his designee as part of compliance monitoring need not be shared or made available to any party unless and until a compliance case is opened.

C. Entry. In connection with any compliance monitoring or investigation of a complaint, the Director or his designee shall have the authority to enter and inspect any worksite or housing of any nonresident worker, question or interview any employer, nonresident worker, or any person, review or check any documents or records, including making a copy of such documents or records, relative to the employment status of the nonresident worker to determine whether there has been a violation of any provision of the Nonresident Workers Act, the Minimum Wage and Hour Act, P.L. 11-6 and 12-11, the Department of Labor's rules and regulations promulgated pursuant to the laws of the Commonwealth or a breach of any provision of the agreement or contract entered into by the employer or nonresident worker, any other document filed with the Division of Labor as part of a labor application, of conditions or practices, or housing standards of the nonresident worker. Entry and access shall be at reasonable times, and the Director or his designee shall give advance notice of the desire to enter and inspect, unless the Director, in his discretion, determines that giving advance notice is likely to impede or compromise the Division of Labor's investigation. Failure of an employer to provide requested documents or records upon reasonable notice shall be a basis for excluding presentation of such documents or records at any subsequent administrative hearing into the subject of the investigation.

D. Inspection or Investigation Ruling. If upon inspection for compliance monitoring or investigation of a complaint, the Director finds a violation

of any provision of the Nonresident Workers Act, the Minimum Wage and Hour Act, the Department of Labor's rules and regulations promulgated pursuant to the laws of the Commonwealth, a breach of any provision of any document filed to employ a nonresident worker, of conditions or practices, or housing conditions of the nonresident worker, the Director shall, within thirty (30) days:

1. Warning. Issue a warning to the responsible party to correct the violation or breach. If the responsible party does not comply with the warning to correct the violation within ten (10) days, the Director shall immediately issue a Notice of Violation and conduct a hearing or issue a Notice of Violation and conduct a hearing pursuant to 1 CMC § 9109.

2. Notice of Violation. Upon issuance of a Notice of Violation by the Director of Labor in a case where a complaint has been filed with the Division of Labor, the caption on the case shall be amended to reflect the Director of Labor as the complainant. In any hearing or other proceeding subsequent to the issuance of the Notice of Violation, the Division of Labor's legal counsel shall represent the Division of Labor and the Director.

3. Determination of No Violation. If no violation is found, the Director shall issue a Determination of No Violation. In the Determination of No Violation, the Director shall state the basis of the complaint and the reasons why the investigation resulted in a finding that the respondent could not be found to have committed any violation of the Nonresident Workers Act, Minimum Wage & Hour Act, P.L. 11-6, as amended, or a breach of the employment contract. The Determination of No Violation shall also advise the parties of available procedures to petition for a hearing on the matter in the Administrative Hearing Office. The parties shall be notified in writing pursuant to Section X.C.3.

E. Mediation. Upon completion of the preliminary investigation/intake but in no case later than five (5) days from the date of the filing of the complaint, the results of such investigation, and any interview, documentary or other evidence, or information of any sort relied upon by the Director or his designee in reaching those results, shall be provided to the Administrative Hearing Office, and shall be available to both the complainant and the respondent. Upon review of the preliminary investigative/intake report, if a mediation date has not already been set, the Hearing Officer (mediator) or mediator assigned to the case shall schedule the case for mediation.

1. Appointment of neutral mediator. If the Administrative Hearing Officer assigned to the case deems it in the best interest of the parties, he/she may appoint a single neutral mediator, who shall hear and determine the case promptly. No person shall serve as a neutral Hearing Officer (mediator) in any mediation in which that person has any financial or personal interest in the result of the mediation. Administrative Hearing Officers may serve as mediators. Prior to accepting an appointment, the prospective mediator shall disclose any circumstance likely to prevent a prompt hearing or to create a presumption of bias. Upon receipt of such information, the Administrative Hearing Office shall immediately replace that mediator and communicate the information to the parties. The Administrative Hearing Office is authorized to substitute another mediator if an appointed mediator is unable to serve promptly. If the parties seek to waive otherwise disqualifying conflicts, they may do so. Any such waiver must be in writing and must be signed by all parties.

2. Date, time, and place of mediation. The Hearing Officer (mediator) shall fix the date, time, and place of the mediation, notice of which must be given to the parties at least twenty-four (24) hours in advance. Such notice may be given orally, by mail, by facsimile, or by any such method as the mediator deems appropriate.

3. Proceedings. The proceedings shall be conducted in whatever manner will most expeditiously and fairly allow for the mediation of the matter. Normally, the mediation shall be completed within one (1) day. There need not be a stenographic record of the proceedings. The parties may, if they desire, file pre-mediation statements.

4. Agreement of parties. If the parties come to an agreement, the agreement, including any award, shall be in writing and shall be prepared by the Hearing Officer (mediator) no later than seven (7) days after the final mediation session, unless another schedule is agreed to by the parties. The Hearing Officer (mediator) shall transmit the agreement to all the parties for their signature, and the parties shall have three (3) days to sign and return the agreement to the Hearing Officer (mediator). The Hearing Officer (mediator) shall promptly transmit copies of the signed agreement to all the parties. If there is an award as part of the agreement, the payer shall remit any such award according to the terms of the agreement, and the payee shall inform the Hearing Officer (mediator) when said award has been completely transmitted to the payee. In no event shall a complaint be dismissed prior to a determination by the Hearing Officer (mediator) that the award has been paid in full.

If an agreement is reached, the Hearing Officer (mediator) shall inform the Administrative Hearing Office and the Director of Labor through the case investigator that an agreement has been reached and request that any investigation be suspended pursuant to the agreement. Upon full compliance with the terms of the agreement, the Administrative Hearing Office shall dismiss the complaint and transmit a copy of the dismissal to the Hearing Officer (mediator), and the Hearing Officer (mediator) shall promptly transmit a copy of the dismissal to all the parties and the Division of Labor. Upon final dismissal, the Hearing Office shall transmit a copy of the agreement for compliance monitoring to the case investigator and to the Director of Labor.

5. Nonagreement of parties. If the parties do not come to an agreement, the Administrative Hearing Office shall inform the case investigator of this fact, and the case investigator shall complete the investigation pursuant to this Section. The mediator shall schedule a date for a hearing on the complaint.

6. Post-Mediation disclosures. At the conclusion of a mediation that results in a failure of the parties to settle their dispute, the mediator may on oral motion require a party to produce for inspection by the Department and/or opposing counsel records relevant to the allegations in the complaint, such as payroll records, the employment contract, or any other document that will assist in reaching a prompt resolution of the issues. If any party besides the Department makes a motion under this subsection, the representative of the Department may supplement the request by adding other items. Such production must be made to all parties to the dispute within thirty (30) days of the order. The mediator will not rule on the relevance of the request.

7. Confidentiality of mediation discussions. Evidence regarding statements or conduct in the mediation discussions is considered settlement material and is inadmissible in the instant proceeding, except by stipulation of the parties. Documents disclosed in the settlement process may not be used in litigation unless obtained through appropriate discovery or subpoena, if available, or provided by the case investigator for purposes of the mediation.

8. Dismissal at Mediation. The mediator may dismiss a complaint at mediation if the alleged violation is barred by a statute of limitations or any other valid lawful reason.

9. Memorandum to Seek Temporary Employment. A Memorandum to Seek Temporary Employment may be granted by the mediator following a mediation at which no agreement is reached. As a prerequisite to granting a memorandum, the employee must have made a good faith effort to settle the complaint with the employer. No memorandum will be granted in the absence of a good faith effort to settle except in circumstances where such an effort may be excused due to criminal conduct or abuse by an employer or where circumstances would make this requirement futile. When considering a request for a memorandum the mediator shall consider whether the memorandum is justified. Factors justifying the granting of a memorandum include:
   a. Nonpayment of wages for 30 days or more;
   b. Physical abuse of the employee at the place of employment or at a location under the employer's control;
   c. A material breach of the employment contract;
   d. Continued employment would cause a substantial risk of physical injury to the employee.

   The granting of a Memorandum is intended to occur only in exceptional circumstances. An employee receiving a Memorandum must register with the Division of Employment Services for referral for vacant job positions.

F. Recusal. No Administrative Hearing Officer (mediator) shall preside over a mediation session, adjudication, or other substantive hearing, if the Hearing Officer's (mediator) impartiality might reasonably be called into question. If the Hearing Officer (mediator) believes his or her impartiality might reasonably be called into question for any reason, the Hearing Officer (mediator) must be recused. If any party to the proceeding believes the Hearing Officer's impartiality might reasonably be called into question, the party may request the Hearing Officer's recusal. Any challenge must be in writing by sworn affidavit. The Hearing Officer should only consider the contents of sworn affidavit when deciding this request. If the Hearing Officer (mediator) refuses the request that he or she be recused, the Hearing Officer (mediator) shall state the reasons for denying the request in writing. Should the party wish to contest the denial of the party's request that the Hearing Officer (mediator) be recused, the Director or his designee shall review the Hearing Officer's written reasons for denying the request and the moving party's sworn affidavit, and shall either affirm the Hearing Officer's (mediator) denial, or order the Hearing Officer (mediator) recused.

No investigator, or other official, shall conduct any investigation or take any action in a case where his or her impartiality might reasonably be

called into question. If the investigator or other official feels his impartiality might reasonably be called into question, he or she shall immediately inform his or her direct supervisor. If the supervisor agrees that the investigator's or other official's impartiality might reasonably be called into question, the supervisor shall designate another person to conduct the investigation or take the action. If the supervisor does not agree that the investigator or other official's impartiality might reasonably be called into question, the supervisor shall inform the Director of his findings, and the Director shall either designate another person to conduct the investigation or other necessary actions, or shall inform the investigator or other official that he may remain on the case and perform some or all of his or her normal duties, as the Director prescribes.

SECTION X. ADMINISTRATIVE HEARING PROCESS RULES OF PRACTICE

A. Scope Rules of Practice.

1. General application. Pursuant to the Administrative Procedure Act of the Commonwealth Code, these rules of practice are generally applicable to adjudicative proceedings before the Division of Labor (the "Division") of the Department of the Labor ("DOL") of the Commonwealth of the Northern Mariana Islands ("CNMI") in all actions pursued by the Director of Labor and/or other litigants. Such proceedings shall be conducted expeditiously, and the parties shall make every effort at each stage of a proceeding to avoid delay. To the extent that these rules may be inconsistent with a rule of special application as provided by statute, executive order, or regulation, the latter are controlling.

2. Waiver, modification, or suspension. Upon notice to all parties, the Administrative Hearing Officer may, with respect to matters pending before him or her, modify or waive any rule herein upon a determination that no party will be prejudiced and that the ends of justice will be served thereby.

3. Pro se litigants. In applying these rules of procedure to adjudicative proceedings, the Administrative Hearing Officer shall give added accommodation to parties proceeding *pro se* to ensure that no party is prejudiced and that the ends of justice will be served. Specifically, the Administrative Hearing office will take all steps necessary to fully develop the record, including the record adverse to DOL, and advise the parties as to all proceedings. Subject to Section VII.D.2. *pro se* litigants shall be permitted to choose any person to assist or represent them in any proceeding before the Hearing Officer and in no circumstances shall a *pro se*

litigant be denied such assistance on the basis that the person chosen to assist him/her is not admitted to practice law.

B. Definitions.

1. *Adjudicative proceeding* means a judicial-type proceeding leading to the issuance of a final order;

2. *Administrative Hearing Officer* means the person designated by the Secretary of Labor to adjudicate a proceeding;

3. *Complaint* means any document initiating an adjudicative proceeding, whether designated a complaint, appeal, or an order for proceeding or otherwise;

4. *Hearing* means that part of a proceeding that involves the submission of evidence, either by oral presentation or written submission

5. *Order* means the whole or any part of a final procedural or substantive disposition of a matter by the Administrative Hearing Officer in a matter other than rulemaking;

6. *Party* includes a person or agency named or admitted as a party to a proceeding;

7. *Person* includes an individual, partnership, corporation, association, exchange, or other entity or organization;

8. *Pleading* means complaint, motion, petition, response or opposition to motion, brief and sworn affidavit in support thereof, and any supplement or amendment thereto, or any other filing or request for an action by the Administrative Hearing Office or agency;

9. *Respondent* means a party to an adjudicative proceeding against whom findings may be made or who may be required to provide relief or take remedial action;

10. *Secretary* means the Secretary of DOL and includes any administrator or other official thereunder for purposes of appeal of recommended or final decisions of Administrative Hearing Officers;

11. *Complainant* means a person who is seeking relief from any act or omission in violation of a statute, executive order, employment contract or regulation;

12. *Petition or motion* means a written request, made by a person or party, for some affirmative action;

13. *Consent agreement* means any written document containing a specified proposed remedy or other relief acceptable to all parties.

C. Service and filing of pleadings.

1. Generally. Except as otherwise provided in this part, copies of all pleadings shall be served on all parties of record. All documents should clearly designate the docket number, if any, and short title of the matter. Each document filed shall be clear and legible.

2. How made; by parties. All pleadings shall be filed with the Administrative Hearing Office, except that notices of deposition, depositions, interrogatories, requests for admissions, and answers and responses thereto, shall not be so filed unless the Administrative Hearing Officer so orders, the document is being offered into evidence, the pleading is submitted in support of a motion or a response to a motion, filing is required by a specialized rule, or there is some other compelling reason for its submission. Service by a party shall be made upon a party or his or her attorney, if any. Service of any document upon any party may be made by personal delivery or by mailing a copy to the last known address. The person serving the document shall certify to the manner and date of service.

3. By the Administrative Hearing Office. Service of notices, orders, decisions, and all other documents, except complaints, shall be made by hand-delivery. If this methods fails, service may be provided by publication or any other means likely to provide notice to the party.

4. Form of pleadings. Every pleading shall contain a caption setting forth the name of the agency under which the proceeding is instituted, the title of the proceeding, the docket number (if any) assigned by the Administrative Hearing Office, and a designation of the type of pleading or paper. The pleading or papers shall be signed and shall contain the address and telephone number of the party or person representing the party. Although there are no formal specifications for documents, they should be typewritten when possible on standard size (8 1/2 x 11) paper. Provided, however, that no pleading shall be refused or stricken for failure to comply with this paragraph.

D. Time computations.

1. Generally. In computing any period of time under these rules or in an order issued hereunder, the time begins with the day following the act, event, or default, and includes the last day of the period,

unless it is a Saturday, Sunday, or legal holiday observed by the CNMI Government in which case the time period includes the next business day. When the period of time prescribed is seven (7) days or less, intermediate Saturdays, Sundays, and holidays shall be excluded from the computation.

2. Date of entry of orders. In computing any period of time involving the date of the entry of an order, the date of entry or issuance shall be the date the order is served by the Administrative Hearing Office on all the parties.

3. Computation of time for delivery by mail.

   a. Documents are not deemed filed until received by the Administrative Hearing Office. However, when documents are served by mail, five (5) days shall be added to the prescribed period.

   b. Service of all documents is deemed effected at the time of mailing.

   c. Whenever a party has the right or is required to take some action within a prescribed period after the service of a pleading, notice, or other document upon said party, and the pleading, notice, or document is served upon said party by mail, five (5) days shall be added to the prescribed period.

E. Default. Except for good cause shown, failure of a party to appear at a hearing after timely being served notice to appear shall be deemed to constitute a waiver of his or her right to pursue or contest the allegations in the complaint. If a party defaults, the Administrative Hearing Officer may enter an initial or final decision containing such findings, appropriate conclusions, and order.

F. Signature required. Every pleading filed pursuant to these rules shall be signed by the party filing it or by at least one attorney or authorized representative (if any), in his or her individual name, representing such party. The signature constitutes a certificate by the signer that he or she has read the pleading; that to the best of his or her knowledge, information, and belief there are good grounds to support it; and that it is not filed for delay.

G. Amendments and supplemental pleadings. If and whenever a determination of a controversy on the merits will be facilitated thereby and

it is in the public interest, the Administrative Hearing Officer has the discretion to allow appropriate amendments to pleadings.

H. Motions and requests.

1. Generally. Any application for an order or any other request may be made by motion, which, unless made during a hearing or trial, shall be made in writing; shall state with particularity the grounds therefore; and shall set forth the relief or order sought. Motions or requests made during the course of any hearing or appearance before an Administrative Hearing Officer shall be stated orally and made part of the transcript, if any. Whether made orally or in writing, all parties shall be given reasonable opportunity to state an objection to the motion or request.

2. Responses/oppositions to motions. Within ten (10) days after a motion is served, or within such other period as the Administrative Hearing Officer may fix, any party to the proceeding may file a response in support or in opposition to the motion, accompanied by such sworn affidavits or other evidence, as he or she desires to rely upon. Unless the Administrative Hearing Officer provides otherwise, no reply to a response or any further responsive document shall be filed.

3. Oral arguments or briefs. No oral argument will be heard on motions unless the Administrative Hearing Officer otherwise directs. Written memoranda or briefs may be filed with motions or responses to motions, stating the points and authorities relied upon in support of the position taken.

I. Prehearing conferences.

1. Purpose and scope. Upon motion of a party or upon the Administrative Hearing Officer's own motion, the Administrative Hearing Officer may direct the parties and/or their counsel, if any, to participate in a conference at any reasonable time, prior to or during the course of the hearing, when the Administrative Hearing Officer finds that the proceeding would be expedited by such a conference. The Administrative Hearing Officer may discuss any topic that may facilitate the resolution of the matter, including settlement at such a conference. These conferences shall be conducted in the most expeditious and effective manner, including by telephonic communication, correspondence, or in-person. Reasonable notice of the time, place, and manner of the conference shall be given.

2. Order. Actions taken as a result of a conference shall be reduced to a written order, unless the Administrative Hearing Officer concludes that a stenographic report shall suffice, or, if the conference takes place within seven (7) days of the beginning of the hearing, the Administrative Hearing Officer may elect only to make a statement on the record at the hearing summarizing the actions taken.

J. Consent order or settlement.

1. Generally. At any time after the commencement of a proceeding, the parties jointly may move to defer the hearing and suspend all proceedings for a reasonable time to permit negotiation of a settlement or an agreement containing findings and an order disposing of the whole or any part of the proceeding. The allowance of such deferment and the duration thereof shall be within the discretion of the Administrative Hearing Officer to determine after consideration of such factors as the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of the parties reaching an agreement that will result in a just disposition of the issues involved.

2. Settlement Discussions. If the parties believe it may facilitate settlement discussions, the Administrative Hearing Officer may mediate these discussions.

3. Confidentiality of settlement discussions. All discussions between the parties during settlement negotiations shall be off-the-record. No evidence regarding statements or conduct in the proceedings under this section is admissible in the instant proceeding or any subsequent administrative proceeding before a government agency or court, except by stipulation of the parties or for a prosecution for perjury. Documents disclosed in the settlement process may not be used in litigation unless obtained through appropriate discovery or subpoena or other sources separate from the settlement discussions.

4. Report of the settlement. If a settlement is reached, the parties shall report such settlement to the Administrative Hearing Officer in writing within seven (7) working days. The report shall include a copy of the settlement agreement and/or proposed consent order. If a settlement is not reached, the parties shall report this to the Administrative Hearing Officer without further elaboration.

5. Disposition. In the event an agreement containing consent findings and an order is submitted within the time allowed therefore, the Administrative Hearing Officer, within thirty (30) days thereafter, shall, if satisfied with its form and substance, accept such agreement by issuing a decision based upon the agreed findings.

K. Consolidation.

When two or more hearings are to be held, and the same or substantially similar evidence is relevant and material to the matters at issue at each such hearing, the Administrative Hearing Officer may, upon motion by any party or *sua sponte*, order that a consolidated hearing be conducted. Where consolidated hearings are held, (1) a single record of the proceedings may be made, (2) the evidence introduced in one matter may be considered as introduced in the others, and (3) a separate or joint decision shall be made, at the discretion of the Administrative Hearing Officer, as appropriate.

L. Discovery.

1. Methods. The Administrative Hearing Officer may allow parties to engage in discovery when it is in the interest of justice. Appropriate methods of discovery that a party may request include: depositions upon oral examination or written questions; written interrogatories; production of documents or other evidence for inspection and other purposes; and requests for admission. A party that wishes to make use of one of these discovery mechanisms must file a motion pursuant to Section X.H. that specifies the discovery requested and the reason it is needed. A party need not respond to any discovery a party serves without the permission of the Administrative Hearing Officer.

2. Scope of discovery.

a. The parties may request to seek discovery regarding any matter not privileged that is relevant to the subject matter involved in the proceeding, including (a) the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and (b) the identity and location of persons having knowledge of any discoverable matter.

b. If discovery is permitted, it is not ground for objection that information sought will not be admissible at the hearing if

the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

c. If permitted, a party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (1) of this section and prepared in anticipation of or for the hearing by or for another party's representative (including his or her attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his or her case and that he or she is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the Administrative Hearing Officer shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the proceeding.

3. Protective orders. Upon motion by a party or the person from whom discovery is sought, and for good cause shown, the Administrative Hearing Officer may make any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.

4. Motion to compel discovery. If a party and/or deponent fails to respond to a permitted discovery request within thirty (30) days of its request, the discovering party may move the Administrative Hearing Officer for an order compelling a response or inspection in accordance with the request.

5. Subpoenas.

a. Except as provided in subparagraph (b) of this section, upon the request of a party, the Administrative Hearing Officer may issue subpoenas as authorized by statute or law upon written application of a party requiring attendance of non-party witnesses and production of relevant papers, books, documents, or tangible things in their possession and under their control. All subpoenas issued by the Administrative Hearing Officer shall provide a reasonable time to respond.

b. Motion to quash or limit subpoena. Within ten (10) days of receipt of a subpoena but no later than the date of the

hearing, the person against whom it is directed may file a motion to quash or limit the subpoena, setting forth the reasons why the subpoena should be withdrawn or why it should be limited in scope. Any such motion shall be answered within ten (10) days of service, and shall be ruled on immediately thereafter. The order shall specify the date, if any, for compliance with the specifications of the subpoena.

c. Failure to comply. Upon the failure of any person to comply with an order to testify or a subpoena, the party adversely affected by such failure to comply may, where authorized by statute or by law, apply to the appropriate judicial entity for enforcement of the order or subpoena.

M. Notice of hearing.

1. Generally. Except when hearings are scheduled by a Determination, the Administrative Hearing Officer to whom the matter is referred shall notify the parties by mail of a day, time, and place set for hearing thereon or for a prehearing conference, or both. No date earlier than fifteen (15) days after the date of such notice shall be set for such hearing or conference, except by agreement of the parties. Service of such notice shall be made by regular, first-class mail, unless under the circumstances it appears to the Administrative Hearing Officer that certified mail, mailgram, telephone, or any combination of these or other methods should be used instead.

2. Change of date, time, and place. The Administrative Hearing Officer assigned to the case may change the time, date, and place of the hearing, or temporarily adjourn a hearing, on his or her own motion or for good cause shown by a party. The parties shall be given not less than ten (10) days notice of the new hearing date, unless they agree to such change without such notice.

3. Place of hearing. Unless otherwise required by statute or regulation, due regard shall be given to the convenience of the parties and the witnesses in selecting a place for the hearing.

4. Continuances.

a. When granted. Continuances will only be granted in cases of prior judicial commitments or undue hardship, or a showing of other good cause.

b. Time limit for requesting. Except for good cause arising thereafter, requests for continuances must be filed within five (5) days prior to the date set for hearing.

c. How filed. Motions for continuances shall be in writing. Copies shall be served on all parties. Any motions for continuances made within ten (10) days of the date of the scheduled proceeding shall, in addition to the written request, be telephonically conveyed to the Administrative Hearing Officer or a member of his or her staff and to all other parties. Motions for continuances, based on reasons not reasonably ascertainable prior thereto, may also be made on the record at calendar calls, prehearing conferences, or hearings.

d. Ruling. Time permitting, the Administrative Hearing Officer shall issue a written order in advance of the scheduled proceeding date that either allows or denies the request. Otherwise the ruling may be made orally by telephonic communication to the party requesting it who shall be responsible for telephonically notifying all other parties. Oral orders shall be confirmed in writing.

N. Authority of Administrative Hearing Officer.

1. General powers. In any proceeding under this part, the Administrative Hearing Officer shall have all powers necessary to the conduct of fair and impartial hearings, including, but not limited to, the following:

a. Conduct formal hearings in accordance with the provisions of this part;
b. Administer oaths and examine witnesses;
c. Reject the use of any individual as a translator based on the ability or trustworthiness of the individual's translation or other appropriate reason;
d. Compel the production of documents and appearance of witnesses in control of the parties;
e. Compel the appearance of witnesses by the issuance of subpoenas as authorized by statute or law;
f. Issue decisions and orders;
g. Exercise, for the purpose of the hearing and in regulating the conduct of the proceeding, such powers vested in the Secretary as are necessary and appropriate; and

h. Take all other necessary action to enable him or her to discharge the duties of the office.

2. Enforcement. If any person in proceedings before an adjudication officer disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered to do so, any pertinent book, paper, or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take the oath as a witness, or after having taken the oath refuses to be examined according to law, the Administrative Hearing Officer responsible for the adjudication, where authorized by statute or law, may implement appropriate remedies.

3. Unavailability of Administrative Hearing Officer. In the event the Administrative Hearing Officer designated to conduct the hearing becomes unavailable, the Administrative Hearing Office may designate another Administrative Hearing Officer for the purpose of further hearing or other appropriate action.

4. Disqualification.

a. When an Administrative Hearing Officer deems himself or herself disqualified to preside in a particular proceeding, he or she shall withdraw therefrom by notice on the record directed to the Secretary and shall state the reasons for the withdrawal.

b. Whenever any party shall deem the Administrative Hearing Officer for any reason to be disqualified to preside, or to continue to preside, in a particular proceeding, that party shall file with the Administrative Hearing Officer a motion to recuse. The motion shall be supported by a sworn affidavit setting forth the alleged grounds for disqualification. The Administrative Hearing Officer shall rule upon the motion, considering only the contents of the sworn affidavit.

c. In the event of disqualification or recusal of an Administrative Hearing Officer as provided in paragraph (a) or (b) of this section, the Secretary shall refer the matter to another Administrative Hearing Officer for further proceedings.

d. The Administrative Hearing Office shall be guided by 1 CMC § 3308 and the Code of Judicial Conduct for the Commonwealth Judiciary and Procedure for Filing Grievances Involving Members of the Judiciary when making their decisions regarding ethics.

e. Separation of functions. No officer, employee, or agent of the CNMI, United States, state, territory, or commonwealth engaged in the performance of investigative or prosecutorial functions in connection with any proceeding shall, in that proceeding or a factually related proceeding, participate or advise in the decision of the Administrative Hearing Officer, except as a witness or counsel in the proceedings.

5. In camera and protective orders.

f. Privileges. Upon application of any person, the Administrative Hearing Officer may limit discovery or introduction of evidence or issue such protective or other orders as in his or her judgment may be consistent with the objective of protecting privileged communications.

g. Classified or sensitive matter.

i. Without limiting the discretion of the Administrative Hearing Officer to give effect to any other applicable privilege, it shall be proper for the Administrative Hearing Officer to limit discovery or introduction of evidence or to issue such protective or other orders as in his or her judgment may be consistent with the objective of preventing undue disclosure of classified or sensitive matter. Where the Administrative Hearing Officer determines that information in documents containing sensitive matter should be made available to a respondent, he or she may direct the party to prepare an unclassified or nonsensitive summary or extract of the original. The summary or extract may be admitted as evidence in the record.

ii. If the Administrative Hearing Officer determines that this procedure is inadequate and that classified or otherwise sensitive matter must form part of the record in order to avoid prejudice to a party, he or

she may advise the parties and provide opportunity for arrangements to permit a party or a representative to have access to such matter. Such arrangements may include obtaining security clearances or giving counsel for a party access to sensitive information and documents subject to assurances against further disclosure.

O. Expedition. Hearings shall proceed with all reasonable speed, insofar as practicable and with due regard to the convenience of the parties.

P. Representation.

1. Appearances. Any party shall have the right to appear at a hearing in person, by counsel, or by other authorized representative, to examine and cross-examine witnesses, and to introduce into the record documentary or other relevant evidence, except that the participation of any intervener shall be limited to the extent prescribed by the Administrative Hearing Officer.

2. Each attorney or other representative shall file a notice of appearance. Such notice shall indicate the name of the case or controversy, the docket number if assigned, and the party on whose behalf the appearance is made. Under no circumstances shall a representative of a party be denied an appearance on the basis that he/she is not admitted to practice law or not a graduate from a school of law. The Administrative Hearing Officer may allow a party's attorney or representative to act as a translator, if needed.

Q. Rights of parties. Every party shall have the right of timely notice and all other rights essential to a fair hearing, including, but not limited to, the rights to present evidence, to conduct such cross-examination as may be necessary for a full and complete disclosure of the facts, and to be heard by objection, motion, and argument.

R. Rights of participants. Every participant shall have the right to make a written or oral statement of position. At the discretion of the Administrative Hearing Officer, participants may file proposed findings of fact, conclusions of law, and a post-hearing brief.

S. Rights of witnesses. Any person compelled to testify in a proceeding in response to a subpoena may be accompanied, represented, and advised by counsel or other representative, and may purchase a transcript (if any) of his or her testimony.

T. Standards of conduct.

1. All persons appearing in proceedings before an Administrative Hearing Officer are expected to act with integrity and in an ethical manner.

2. The Administrative Hearing Officer may exclude parties, participants, and their representatives for refusal to comply with directions, continued use of dilatory tactics, refusal to adhere to reasonable standards of orderly and ethical conduct, failure to act in good faith, or violation of the prohibition against ex parte communications. The Administrative Hearing Officer shall state in the record the cause for suspending or barring an attorney or other representative from participation in a particular proceeding. Any attorney or other representative so suspended or barred may appeal their suspension to the Secretary, but no proceeding shall be delayed or suspended pending disposition of the appeal, provided, however, that the Administrative Hearing Officer shall suspend the proceeding for a reasonable time for the purpose of enabling the party to obtain another attorney or representative.

3. The Administrative Hearing Officer may apply the Commonwealth Disciplinary Rules and Procedures for guidance when issuing decisions regarding ethics.

U. *Ex-parte* communications.

1. The Administrative Hearing Officer shall not consult any person, including employees of the Department of Labor, or party or representative of a person or party on any fact in issue or question of law unless upon notice and opportunity for all parties to participate or learn the results of such communication and respond prior to the decision. Communications by the Administrative Hearing Office, the assigned Administrative Hearing Officer, or any party for the sole purpose of scheduling hearings or requesting extensions of time are not considered *ex-parte* communications, except that all other parties shall be notified of such request by the requesting party and be given an opportunity to respond thereto.

2. In the interest of judicial independence, neither the Secretary nor his or her subordinates shall discuss any case with the Administrative Hearing Officer before whom it is pending. If such a discussion takes place, the Administrative Hearing Officer shall as soon as practical inform the parties of the nature and substance of the communication. Nothing in this subsection is meant to

proscribe or require disclosure of communications within the Administrative Hearing Office.

3. Sanctions. A party or participant who makes or attempts to make a prohibited *ex-parte* communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions, including, but not limited to, exclusion from the proceedings and adverse ruling on the issue which is the subject of the prohibited communication.

V. Waiver of right to appear and failure to participate or to appear.

1. Waiver of right to appear. If all parties waive their right to appear before the Administrative Hearing Officer or to present evidence or argument personally or by representative, it shall not be necessary for the Administrative Hearing Officer to give notice of and conduct an oral hearing. A waiver of the right to appear and present evidence and allegations as to facts and law shall be made in writing and filed with the Administrative Hearing Officer. Where such a waiver has been filed by all parties and they do not appear before the Administrative Hearing Officer personally or by representative, the Administrative Hearing Officer shall make a record of the relevant written evidence submitted by the parties, together with any pleadings or motions they may submit with respect to the issues in the case. Such documents shall be considered as all of the evidence in the case, and the decision shall be based on them.

2. Dismissal: Abandonment by party. A pleading may be dismissed upon its abandonment or settlement by the party or parties who filed it. A party shall be deemed to have abandoned a request for hearing if neither the party nor his or her representative appears at the time and place fixed for the hearing and either (1) prior to the time for hearing such party does not show good cause as to why neither he or she nor his or her representative can appear, or (2) within ten (10) days after the mailing of a notice to him or her by the Administrative Hearing Officer to show cause, such party does not show good cause for such failure to appear and fails to notify the Administrative Hearing Officer prior to the time fixed for hearing that he or she cannot appear. A default decision may be entered against any party failing, without good cause, to appear at a hearing.

W. Formal hearings.

1. Public. Hearings shall be open to the public. However, in unusual circumstances, the Administrative Hearing Officer may order a hearing or any part thereof closed, where to do so would be in the best interests of the parties, a witness, the public, or other affected persons. Any order closing the hearing shall set forth the reasons for the decision. Any objections thereto shall be made a part of the record.

2. Jurisdiction. The Administrative Hearing Officer shall have jurisdiction to decide all issues of fact and related issues of law.

3. Amendments to conform to the evidence. When issues not raised a pleading, prehearing stipulation, or prehearing order are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence may be made on motion of any party at any time; but failure to so amend does not affect the result of the hearing of these issues. The Administrative Hearing Officer may grant a continuance to enable the objecting party to meet such evidence.

X. Official notice.

Official notice may be taken of any material fact, not appearing in evidence in the record, which is among the traditional matters of judicial notice, provided, however, that the parties shall be given adequate notice, at the hearing or by reference in the Administrative Hearing Officer's decision, of the matters so noticed, and shall be given adequate opportunity to show the contrary.

Y. Exhibits.

1. Identification. All exhibits offered in evidence shall be numbered and marked with a designation identifying the party by whom the exhibit is offered.

2. Exchange of exhibits. When written exhibits are offered in evidence, one copy must be furnished to each of the parties at the hearing, and one copy to the Administrative Hearing Officer, unless the parties previously have been furnished with copies or the Administrative Hearing Officer directs otherwise. If the Administrative Hearing Officer has not fixed a time for the

exchange of exhibits, the parties shall exchange copies of exhibits at the earliest practicable time, preferably before the hearing, or at the latest at the commencement of the hearing.

3. Records in other proceedings. In case any portion of the record in any other proceeding or civil or criminal action is offered in evidence, a true copy of such portion shall be presented for the record in the form of an exhibit unless the Administrative Hearing Officer directs otherwise.

4. Designation of parts of documents. Where relevant and material matter offered in evidence is embraced in a document containing other matter not material or relevant and not intended to be put in evidence, the participant offering the same shall plainly designate the matter so offered, segregating and excluding insofar as practicable the immaterial or irrelevant parts. If other matter in such document is in such bulk or extent as would necessarily encumber the record, such document will not be received in evidence, but may be marked for identification, and if properly authenticated, the relevant and material parts thereof may be read into the record, or if the Administrative Hearing Officer so directs, a true copy of such matter in proper form shall be received in evidence as an exhibit, and copies shall be delivered by the participant offering the same to the other parties or their attorneys appearing at the hearing, who shall be afforded an opportunity to examine the entire document and to offer in evidence in like manner other material and relevant portions thereof.

5. Authenticity. The authenticity of all documents submitted as proposed exhibits in advance of the hearing shall be presumed unless written objection thereto is filed prior to the hearing, except that a party will be permitted to challenge such authenticity at a later time upon a clear showing of good cause for failure to have filed such written objection. The lack of authenticity of any document shall not prevent the admission of such document into evidence. The Administrative Hearing Officer may consider the authenticity of a document when deciding what, if any, weight the document should be given.

6. Stipulations. The parties may by stipulation in writing at any stage of the proceeding, or orally made at hearing, agree upon any pertinent facts in the proceeding. Stipulations may be received in evidence at a hearing or prior thereto, and when received in evidence, shall be binding on the parties thereto.

Z. Record of hearings.

1. All hearings may be mechanically or stenographically reported. Transcripts (if any) may be obtained by the parties and the public from the official reporter at rates not to exceed the applicable rates fixed by the contract with the reporter.

2. Corrections. Corrections to the official transcript will be permitted upon motion. Motions for correction must be submitted within ten (10) days of the receipt of the transcript unless additional time is permitted by the Administrative Hearing Officer. Corrections of the official transcript will be permitted only when errors of substance are involved and only upon approval of the Administrative Hearing Officer.

AA. Closing the record.

1. When there is a hearing, the record shall be closed at the conclusion of the hearing unless the Administrative Hearing Officer directs otherwise.

2. If any party waives a hearing, the record shall be closed on the date set by the Administrative Hearing Officer as the final date for the receipt of submissions of the parties to the matter.

3. Once the record is closed, no additional evidence shall be accepted into the record except upon a showing that new and material evidence has become available which was not readily available prior to the closing of the record.

4. Receipt of documents after hearing. Documents submitted for the record after the close of the hearing will not be received in evidence except upon ruling of the Administrative Hearing Officer. Such documents when submitted shall be accompanied by proof that copies have been served upon all parties, who shall have an opportunity to comment thereon. Copies shall be received not later than twenty (20) days after the close of the hearing except for good cause shown, and not less than ten (10) days prior to the date set for filing briefs if post-hearing briefs are permitted. Exhibit numbers should be assigned by counsel or the party.

5. Restricted access. On his or her own motion, or on the motion of any party, the Administrative Hearing Officer may direct that there be a restricted access portion of the record to contain any material in the record to which public access is restricted by law or by the

terms of a protective order entered in the proceedings. This portion of the record shall be placed in a separate file and clearly marked to avoid improper disclosure and to identify it as a portion of the official record in the proceedings.

BB. Decision of the Administrative Hearing Officer.

Within ten (10) days of the closing of the record under Section X.AA., the Administrative Hearing Officer shall make his or her decision. The decision of the Administrative Hearing Officer shall include findings of fact and conclusions of law, with reasons therefore, upon each material issue of fact or law presented on the record. The decision of the Administrative Hearing Officer shall be based upon the whole record. It shall be supported by reliable and probative evidence. Such decision shall be in accordance with the statute and rules and regulations conferring jurisdiction. The Administrative Hearing Office shall provide a copy of all decisions in which an award is made to the Wage and Hour Section of the Department of Labor.

CC. Motion for reconsideration.

1. If a party chooses, they may file a motion for reconsideration or reargument. All such motions shall be served within fifteen (15) days after the docketing of the Administrative Hearing Officer's decision. There shall be served with the motion a memorandum setting forth concisely the matters or controlling decisions that a party believes the Administrative Hearing Officer has overlooked or misapprehended. Such motions are not to contain merely a restatement of arguments already presented or be filed for the purpose of delay. A response, if any, may be filed no later than five (5) days after the filing of the motion. No oral argument shall be heard unless the Administrative Hearing Officer directs that the matter shall be reargued orally. No sworn affidavits shall be filed by any party unless directed by the Administrative Hearing Officer. A motion for reconsideration may be granted for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for into evidence at the hearing held in the matter; (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party or another or that otherwise has materially affected the proceedings; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have

prospective application; or (6) any other reason justifying relief from the operation of the judgment. Nothing in this paragraph shall prevent a hearing officer from *sua sponte* correcting an error in an administrative order *nunc pro tunc* prior to the time the record is certified for appeal.

2. A properly served and filed motion for reconsideration tolls the time limit for filing a notice of appeal. The time to file an appeal begins to run again the date after a decision is docketed on the motion for reconsideration.

3. After a decision is docketed on a motion for reconsideration, no further motions or filings may be made with the Administrative Hearing Office, except, if the parties chooses, to file a notice of appeal or a motion permitted by Section X.DD.

DD. Collection of Administrative Orders/Awards.

1. Each and every administrative order, including settlement agreements, shall include a schedule of payment for all awards, if any, to the prevailing party. The final payment date shall be stated in each administrative award and settlement agreement. Each administrative award and settlement agreement shall provide notice to the payor that failure to make a payment in compliance with the payment schedule shall result in the referral of the matter for collection actions.

2. In the event that any payment is not received within 30 days of the due date set forth in an administrative order or settlement agreement, the party entitled to payment may file a motion with the Administrative Hearing Office requesting an Order to Show Cause. The motion must include a verified sworn affidavit in which the moving party lists the amount originally due, the amount and date of all payments, the amount currently outstanding, and any collection efforts made by the party. Upon a proper request, the Administrative Hearing Office shall issue an Order to Show Cause for the defaulting party to appear and explain why payment has not been made. Unless good cause is shown, the Administrative Hearing Officer may sanction the defaulting party by an amount equal to the amount of any outstanding payment.

3. In the event that any payment is not received within ninety (90) days of the due date set forth in administrative order or settlement agreement, the Administrative Hearing Office shall be immediately

refer the matter to the Office of the Secretary for initiation of a collection action.

SECTION XI. RULES OF EVIDENCE FOR ADMINISTRATIVE HEARING PROCEEDINGS

A. Scope of rules.

1. General application. These rules of evidence are generally applicable to adjudicative proceedings before the Administrative Hearing Office in all actions pursued by the Director of Labor and/or other litigants. These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined. To the extent that these rules may be inconsistent with a rule of special application as provided by statute, executive order, or regulation, the latter are controlling.

2. Admissible Evidence. The parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the Administrative Hearing Officer may deem necessary to an understanding and determination of the dispute. Conformity to the formal rules of evidence, including the CNMI Rules of Evidence, shall not be necessary.

3. Waiver, modification, or suspension. Upon notice to all parties, the Administrative Hearing Officer may, with respect to matters pending before him or her, modify or waive any rule herein upon a determination that no party will be prejudiced and that the ends of justice will be served thereby.

4. *Pro se* litigants. In applying these rules of evidence to adjudicative proceedings, the Administrative Hearing Officer shall give added accommodation to parties proceeding on a *pro se* basis to ensure that no party is prejudiced and that the ends of justice will be served.

B. Judicial Notice. In the appropriate case, the Administrative Hearing Officer may take judicial notice of adjudicative facts that are not subject to reasonable dispute.

C. Relevance. The Administrative Hearing Officer shall decide the relevance and materiality of the evidence offered. Evidence that is cumulative, immaterial, or irrelevant may be excluded.

D. Privilege. Except as otherwise required by law, the privilege of a witness, person, government, or political subdivision thereof shall be governed by the principles of the common law as they may be interpreted by the courts of the Commonwealth and United States in light of reason and experience.

E. Administrative Hearing Officer's control of evidence. The Administrative Hearing Officer may make rulings on evidentiary issues and on issues pertaining to the management of the introduction of evidence during an adjudicative proceeding with respect to matters involving witnesses, opinions and expert testimony, hearsay, authentication and identification, and the contents of writings, recordings, and photographs.

SECTION XII. APPEALS/ADMINISTRATIVE REVIEW.

A. Administrative review. Within fifteen (15) days of issuance, any person or party affected by findings, orders, or decisions of the Administrative Hearing Officer may appeal to the Secretary by written notice filed with the Administrative Hearing Office. If no appeal is made to the Secretary within this time, such findings, orders, or decisions shall be unreviewable administratively or judicially.

1. An appeal to the Secretary is commenced by filing a Notice of Appeal. The Notice of Appeal should contain the following:

   a. The Case caption as it appeared in the Administrative Hearing Office;
   b. A designation of the parties and their role in the appeal. The party bringing the appeal is the Appellant. The party responding to the appeal is the Appellee;
   c. A statement of the issues the Appellant asks the Secretary to review;
   d. A concise statement of the relief requested.

B. Certification of official record. Upon timely receipt of either a notice or a petition, the Administrative Hearing Office shall promptly certify and file with the reviewing authority a full, true, and correct copy of the entire record, including the transcript of proceedings, if any, or summary of testimony, if one exists.

C. Scope of rules.

1. General application. This subpart contains the rules of practice of the Secretary when he or she is exercising jurisdiction over appeals from final orders of the Administrative Hearing Office. The

Secretary has jurisdiction to hear and decide in his or her discretion appeals concerning questions of law and fact from final orders of the Administrative Hearing Office. In exercising his or her discretion to hear and decide appeals, the Secretary shall consider, among other things, timeliness, the nature of the relief sought, matters of undue hardship or injustice, or the public interest. In considering the matters within the scope of his or her jurisdiction, the Secretary shall act as the authorized representative of DOL. To the extent that these rules may be inconsistent with a rule of special application as provided by statute, executive order, or regulation, the latter are controlling.

2. Waiver, modification, or suspension. Upon notice to all parties, the Secretary may, with respect to matters pending before him or her, modify or waive any rule herein upon a determination that no party will be prejudiced and that the ends of justice will be served thereby.

3. Pro se litigants. In applying these rules of procedure to adjudicative proceedings, the Secretary shall give added accommodation to parties proceeding on a *pro se* basis to ensure that no party is prejudiced and that the ends of justice will be served thereby. Specifically, the Secretary will take all steps necessary to fully develop the record, if further inquiry into the existing record is ordered, and advise the parties as to all proceedings.

D. Definitions. The definitions used in Section X are applicable to this Section.

E. Service and filing of documents.

1. Generally. Except as otherwise provided in this part, copies of all documents shall be served on all parties of record. All documents besides the certified records should clearly designate the docket number, if any, and short title of the matter. Each document filed shall be clear and legible. The certified record will be made publicly available to the parties upon request.

2. How made; by parties. For all documents filed with the Secretary, service by a party is required to be made upon all other parties or their respective attorneys or representatives, if any. Service of any document upon any party may be made by personal delivery or by mailing a copy to the last known address. The person serving the document shall certify to the manner and date of service.

3. By the Secretary. Service of notices, orders, decisions, and all other documents shall be made by regular mail to the last known address.

4. Form of pleadings. Every pleading shall contain a caption setting forth the name of the agency under which the proceeding is instituted, the title of the proceeding, the docket number (if any) assigned by the Administrative Hearing Office, and a designation of the type of pleading or paper. The pleading or papers shall be signed and shall contain the address and telephone number of the party or person representing the party. Although there are no formal specifications for documents, they should be typewritten when possible on standard size (8 1/2 x 11) paper.

F. Time computations.

1. Generally. In computing any period of time under these rules or in an order issued hereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the CNMI Government in which case the time period includes the next business day. When the period of time prescribed is seven (7) days or less, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation.

2. Date of entry of orders. In computing any period of time involving the date of the entry of an order, the date of entry shall be the date the order is served by the Secretary.

3. Computation of time for delivery by mail.

a. Documents are not deemed filed until received by the Secretary. However, when documents are filed by mail, five (5) days shall be added to the prescribed period.

b. Service of all documents is deemed effected at the time of mailing.

c. Whenever a party has the right or is required to take some action within a prescribed period after the service of a pleading, notice, or other document upon said party, and the pleading, notice, or document is served upon said party by mail, five (5) days shall be added to the prescribed period.

4. Signature required. Every notice of appeal, pleading, motion, or other filing filed pursuant to these rules shall be signed by the party filing it or by at least one attorney (if any), in his or her individual name, representing such party. The signature constitutes a certificate by the signer that he or she has read the notice of appeal, pleading, motion, or other filing; that to the best of his or her knowledge, information, and belief there are good grounds to support it; and that it is not interposed for delay.

G. Motions.

1. Generally. Any application for an order or any other request shall be made by motion, which, unless made during a hearing, shall be made in writing. All motions shall be accepted for filing unless good cause is established to preclude such submission. All motions shall state with particularity the grounds for the motion and the relief or order sought. Motions made during the course of any hearing before the Secretary shall be stated orally and made part of the transcript, if any. Whether made orally or in writing, all parties shall be given reasonable opportunity to state an objection to the motion.

2. Responses/oppositions to motions. Within ten (10) days after a motion is served, or within such other period as the Secretary may fix, any party to the proceeding may file a response in support or in opposition to the motion, accompanied by such sworn affidavits or other evidence as he or she desires to rely upon. Unless the Secretary provides otherwise, no reply to a response or any further responsive document shall be filed.

H. Oral arguments on briefs.

1. Generally. No oral argument will be heard on motions unless the Secretary otherwise directs. Written memoranda or briefs may be filed with motions or responses to motions, stating the points and authorities relied upon in support of the position taken.

2. Notice of hearing. The Secretary shall notify the parties by mail of a day, time, and place set for any hearing thereon. No date earlier than fifteen (15) days after the date of such notice shall be set for such hearing, except by agreement of the parties. Service of such notice shall be made by regular, first-class mail, unless under the circumstances it appears to the Secretary that certified mail, mailgram, telephone, or any combination of these or other methods should be used instead.

3. Change of date, time, and place. The Secretary may change the time, date, and place of the hearing, or temporarily adjourn a hearing, on his or her own motion or for good cause shown by a party. The parties shall be given not less than ten (10) days notice of the new hearing date, unless they agree to such change without such notice.

4. Place of hearing. Unless otherwise required by statute or regulation, due regard shall be given to the convenience of the parties and the witnesses in selecting a place for the hearing.

I. Parties, how designated.

1. The term *party*, whenever used in these rules, shall include any natural person, corporation, association, firm, partnership, trustee, receiver, agency, public or private organization, or governmental agency. A party who seeks relief or other affirmative action shall be designated as *appellant*, as appropriate. A party against whom relief or other affirmative action is sought in any proceeding shall be designated as *appellee* or *respondent*, as appropriate.

2. Other persons or organizations may participate as parties

   a. if the Secretary determines that the final decision could directly and adversely affect them or the class they represent,

   b. if they may contribute materially to the disposition of the proceeding or facilitate its resolution, and

   c. if their interest is not adequately represented by existing parties.

3. A person or organization wishing to participate as a party under this section shall submit a petition to the Secretary within fifteen (15) days after the person or organization has knowledge or should have known of the proceeding. The petition shall be filed with the Secretary and served on each person or organization that has been made a party at the time of filing. Such petition shall concisely state:

   a. petitioner's interest in the proceeding,

b. how his or her participation as a party will contribute materially to the disposition of the proceeding,

c. who will appear for petitioner,

d. the issues on which petitioner wishes to participate, and

e. whether petitioner intends to present witnesses.

4. If objections to the petition are filed, the Secretary shall determine whether petitioners have the requisite interest to be a party in the proceedings, as defined in this section, and shall permit or deny participation accordingly. The Secretary shall give each such petitioner and each party written notice of the decision on the petition.

J. Consolidation.

Upon his own initiative or upon motion of any interested person or party, the Secretary may consolidate any proceedings or concurrently consider two or more appeals that involve substantially the same persons or parties, or issues which are the same or closely related, if he finds that such consolidation or concurrent review will contribute to a proper dispatch of its business and to the ends of justice, and it will not unduly delay consideration of any such appeals.

L. Continuances.

1. When granted. Continuances will only by granted in cases of prior judicial commitments or undue hardship, or a showing of other good cause.

2. Time limit for requesting. Except for good cause arising thereafter, requests for continuances must be filed within fourteen (14) days prior to the date set for hearing.

3. How filed. Motions for continuances shall be in writing. Copies shall be served on all parties. Any motions for continuances made within ten (10) days of the date of the scheduled proceeding shall, in addition to the written request, be telephonically conveyed to the Secretary or a member of his or her staff and to all other parties.

M. Simplification of issues. With respect to any proceeding before it, the Secretary may, upon its own initiative or upon request of any interested person or party, direct the interested persons or parties to appear before the

Secretary or its designee at a specified time and place in order to simplify the issues presented or to take up any other matters which may tend to expedite or facilitate the disposition of the proceeding.

N. Administrative review by the Secretary.

1. Within fifteen (15) days of issuance, any person or party affected by findings, orders, or decisions of the Administrative Hearing Office may appeal to the Secretary by written notice to all parties. If no appeal is made to the Secretary within fifteen (15) days, the original findings, orders, or decisions shall be unreviewable administratively or judicially.

2. Upon review, the Secretary may, at his or her discretion, take any of the following actions: (1) restrict review to the existing record; (2) supplement the record with new evidence; (3) hear oral argument; or (4) hear the matter *de novo*, in which case the hearing shall be conducted pursuant to 1 CMC §§ 9109 and 9110.

3. Upon completion of review, the Secretary shall affirm, reverse, or modify the findings, order, or decision of the Administrative Hearing Office in writing within ten (10) days. The Secretary may remand under appropriate instructions all or part of the matter to the Administrative Hearing Office for further proceedings, *e.g.*, the taking of additional evidence and the making of new or modified findings by reason of the additional evidence.

4. The Secretary's decision shall constitute final agency action for purposes of judicial review.

O. Fact-finding.

1. Generally. The Secretary will normally not consider any facts outside of the record established at the hearing before the Administrative Hearing Office.

2. Judicial notice. In an appropriate case, the Secretary may take judicial notice of an adjudicative fact that is not subject to reasonable dispute.

3. Remand for fact-finding. If an issue concerning an unresolved material fact may affect the Secretary's resolution of the case, a party may request, or the Secretary may *sua sponte* order, a remand to the Administrative Hearing Office. In doing so, the Secretary may retain jurisdiction over the case. If the case is remanded and

the Secretary does not retain jurisdiction, the parties may appeal again for administrative review once a final decision has been taken by the Administrative Hearing Office.

4. Remand for other reasons. The Secretary may also remand a matter for other reasons he deems appropriate.

5. Stipulation by the parties. If an issue concerning an unresolved material fact may affect the Secretary's resolution of the case, the parties may stipulate to a factual matter, subject to the Secretary's approval.

6. Other means. Where it is impracticable to remand a case to the Administrative Hearing Office, the Secretary may conduct fact-finding or conduct a *de novo* proceeding to develop relevant facts.

P. Representation.

If the Secretary allows oral argument, any party shall have the right to appear in person, by counsel, or by other representative, except that the participation of any intervener shall be limited to the extent prescribed by the Secretary. Each attorney or other representative shall file a notice of appearance. Such notice shall indicate the name of the case or controversy, the docket number if assigned, and the party on whose behalf the appearance is made.

Q. Standards of conduct.

1. All persons appearing in proceedings before the Secretary are expected to act with integrity and in an ethical manner.

2. The Secretary may exclude parties, participants, and their representatives for refusal to comply with directions, continued use of dilatory tactics, refusal to adhere to reasonable standards of orderly and ethical conduct, failure to act in good faith, or violation of the prohibition against *ex parte* communications. Any decision by the Secretary to suspend or bar an attorney or other representative shall constitute a final agency action and, as such, may be appealed, but no proceeding shall be delayed or suspended pending disposition of the appeal, provided, however, that the Administrative Hearing Officer shall suspend the proceeding for a reasonable time for the purpose of enabling the party to obtain another attorney or representative.

3. The Secretary may use the Commonwealth Disciplinary Rules and Procedures for guidance when issuing a decision regarding any ethical matters.

R. Stay or injunction pending appeal.

In the notice of appeal (either from an order of the Administrative Hearing Officer or from the Secretary's order), a party may make an application for a stay of the Secretary's order or for an injunction maintaining the *status quo* of the parties pending appeal. The party making a request for stay or injunction must file a sworn affidavit that states how they will suffer immediate and irreparable injury, loss, or damage if their request is not granted; why they are likely to succeed on the merits of their appeal; and why the balance of equities favors granting a stay or injunction.

S. Motion for reconsideration.

A notice of motion for reconsideration or reargument shall be served within ten (10) days after the docketing of the Secretary's decision. There shall be served with the notice of motion a memorandum setting forth concisely the matters or controlling decisions that a party believes the Secretary has overlooked or misapprehended. Such motions are not to contain merely a restatement of arguments already presented. A response, if any, may be filed no later than five (5) days after the filing of the motion. No oral argument shall be heard unless the Secretary directs that the matter shall be reargued orally. No sworn affidavits shall be filed by any party unless directed by the Secretary. A motion for reconsideration may be granted for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for into evidence, if there is a hearing de novo; (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

SECTION XIII. EXPEDITED PROCEEDINGS.

The Division of Immigration may request and the Administrative Hearing Office, in its discretion, may order that any pending labor matter involving a party who is currently in deportation proceedings in the Commonwealth Superior Court be heard and decided on an expedited basis. The Division of Labor shall not refer any individual to the Office of the Attorney General's Division of Immigration if

that individual has a pending labor matter before the Administrative Hearing Office or a pending labor matter addressed by the Administrative Hearing Office that has been appealed to the Secretary or the courts.

SECTION XIV. FEE SCHEDULE.

A. An application for a new or renewal LIIDS card (including transfer relief (1) at the conclusion of an Administrative Hearing based on an alleged violation of the Commonwealth labor law, or (2) resulting from a merger, acquisition, reorganization, or incorporation of a business entity) must include a nonrefundable, nontransferable fee as follows:

One Year	$ 250.00
Transfer Relief	$ 250.00
Two Years	$ 500.00

plus an Immigration fee of $25.00 per year per application or renewal.

B. An application for a new or renewal Secondary Employment Agreement must include a nonrefundable, nontransferable fee based on the following schedule:

$30.00 for every thirty (30) day period up to a maximum of $250.00 per year and $500.00 for two years.

C. Penalty fee for failure to submit a complete renewal application for the period beginning the day following the expiration of the LIIDS card and transfer period following termination of the Employment Contract, if any:

1. The first through thirtieth day: $ 5.00 per day;

2. Applications filed more than 30 calendar days following expiration of the contract or expiration of the transfer period shall be denied.

D. Duplicate LIIDS card: $ 40.00

E. Exemption Relief from P.L. 11-6, as amended: $200.00

F. Temporary Work Authorization: Initial $ 75.00
Renewal $ 25.00

G. Filing fee of labor grievance or complaint: $ 20.00

H. Filing fee of labor appeal: $ 25.00

I. Copying costs - for a copy of any documents in the custody of the Department of Commerce and Labor: $ 0.50 per page

J. Transcript of labor hearing - $ 1.50 per page for the original and $ 0.75 per page for each copy on 8 ½" by 11" paper.

K. Expedited Processing of applications and renewals, as set forth in Section II.H.9.b.1.G (all employers, not just garment employers may use this service): $150.00

L. Contract amendment requests $25.00 per contract

M. Casual Employment $20.00 per contract

SECTION XV. FORMS AND NOTICES.

The Director or his designee may, at any time, amend, modify, alter, or substitute any of the forms and notices under these rules and regulations or waive the application thereof, when it is determined by the Director that such waiver is necessary.

SECTION XVI. SHORT-TERM EXTENSION OF LIIDS CARD.

One short-term extension of a LIIDS card may be issued for a period not to exceed one-hundred and eighty (180) days from the expiration of the current LIIDS card. To acquire a short-term extension, the employer must submit at least five (5) days prior to the expiration of the card, a letter requesting such extension, accompanied by the original LIIDS card and a nonrefundable, nontransferable application fee of twenty-five dollars ($25.00) per month or fraction thereof.

SECTION XVII. TEMPORARY WORK AUTHORIZATION PERMIT.

A. Procedure for issuance of memorandum to seek temporary work.

1. If the nonresident worker has filed a labor complaint with the Division of Labor or if the nonresident worker is involved in a compliance agency case with the Division, the nonresident worker may request a memorandum to seek temporary employment from the hearing office as stated in section IX.E.9.

B. Guidelines to issue a temporary work authorization permit.

A temporary work authorization permit may be issued by Director of Labor or his designee to any nonresident worker who has a valid

memorandum to seek temporary work or who falls under one of the following categories:

1. Upon a showing by the nonresident worker that they have filed a labor complaint, have a memorandum granted pursuant to section IX.E.9 and have registered with the Division of Employment Services; or

2. Upon a showing that the employer has abandoned its worker; abandonment for the purposes of this section is defined as one or more of the following:

    a. the employer has failed or is unable to provide adequate housing; or

    b. the employer has failed to provide full-time work for its workers as specified in the employment contract; or

    c. the employer has failed to repatriate its workers as specified in the employment contract; or

    d. the employer has closed business or has ceased operation and has failed to repatriate its workers; or

    e. the employer has failed to pay the employee's wages for a month or more; or

    f. the employer has refused to permit the employee to continue working and that the employee was not equally in the wrong on any matters that gave rise to the filing of the complaint.

3. Upon a showing that the employer has been declared insolvent by a court; or has filed for Chapter 7 bankruptcy relief; or

4. Upon a showing that the employer's business establishment has been destroyed by natural disaster, fire, or *force majeur*; or

5. Upon a showing that the employer has surrendered his business license to the Department of Commerce; or

6. Upon a showing that the employee is a party in an action in a court of competent jurisdiction or a federal or Commonwealth enforcement agency, including but not limited to labor matters and criminal matters or a witness in an action in which the agency or

instrumentality of the United States or Commonwealth is a party and such entity requests that the individual be issued a temporary work authorization permit; or

7. Upon a showing that there is an imminent danger to the health and safety of the employee and the employer is unable to cure the defect or remove all the health and safety risks immediately or within a reasonable time depending on the seriousness of the risk; or

8. Upon a showing that illegal deductions from wages were made and that the employer refuses to take immediate corrective action; or

9. Upon a showing that the issuance of such Temporary Work Permit is equitable and in the best interests of the parties.

10. The employer who will hire the nonresident worker under a new Temporary Work Authorization Permit must appear at the Division of Labor with the nonresident worker and must submit the following documents:

    a. Application for Temporary Work Authorization;

    b. Copy of a valid business license, if applicable;

    c. Living Quarters Clearance or a waiver from the employee;

    e. Surety Bond for the period of the Temporary Work Authorization (to be submitted after request is approved);

    f. Employment contract with prospective employer (original);

    g. Employers Agreement (copy);

    h. Police Clearance (original);

    i. Directional map to business facility for new businesses;

11. The employer who will renew the nonresident worker under a Temporary Work Permit must submit the following documents:

    a. Application for Temporary Work Authorization;

b. Copy of the Bi-weekly pay slips/check stub, showing earning and deductions;

c. Proof of payment to the Department of Revenue and Taxation of the required tax deduction (monthly tax form 500); and

d. Surety Bond over the renewal period.

12. Upon submission of the required documents, the Director of Labor or his designee will review the application, and may issue a Temporary Work Authorization Permit within fifteen (15) days of submission of the application.

13. The Temporary Work Authorization Permit may be valid for a period of up to ninety (90) days, as determined by the scheduled administrative hearing date and other circumstances deemed by the Director as necessary to be accommodated.

C. Conditions for approval of temporary work permit.

1. No Temporary Work Permit will be issued to an employer who is listed on the Barred List;

2. All conditions set forth in the original employment contract must remain the same, e.g., job classification, salary, housing, food. On a case-by-case basis, the Director of Labor may modify the employment contract for the purposes of issuance of the Temporary Work Permit:

a. That no positions are available in the job classification set forth in the original employment contract; and

i. The employee qualifies for the new job classification; and

ii. The job duties under the new job classification are closely related to the duties under the original job classification as defined by the Dictionary of Occupational Titles.

3. The employer must assume all liabilities for the nonresident worker for the effective period of the Temporary Work Permit, except costs for repatriation. These liabilities include, but are not limited to:

a. Reasonable or approved housing expenses;

b. Food expenses, if applicable; and

c. Medical expenses.

4. Nonresident workers eligible for a Temporary Work Authorization Permit, must register with the Division of Employment Services for job placement. Nonresident workers eligible for Temporary Work Authorization will be given secondary preference in hiring where the Division of Employment Services determines that no resident workers are available to fill the job vacancies.

D. Temporary stay authorization pending labor matter.

The Director of Labor or his or her designee shall issue a nonresident worker a Temporary Stay Authorization ("TSA"), provided that the nonresident worker's LIIDS card expires or will expire during litigation of a labor matter and the nonresident worker is otherwise legally within the CNMI. A nonresident worker shall apply for such authorization sixty (60) days prior to the expiration of his or her LIIDS card if the nonresident worker cannot secure a memorandum to seek temporary employment or a Temporary Work Authorization Permit. If the pending litigation is initiated less than sixty (60) days before the expiration of the LIIDS card, it must be filed as soon as the nonresident worker knows or should have known that the litigation has been initiated. TSA shall be valid for thirty (30) days and it shall be renewed upon a showing that the nonresident worker's matter is still pending. It shall be issued by the Director of Labor or his or her designee upon the request of the nonresident worker. Such TSA shall be rescinded upon completion of the pending litigation, including the exhaustion of any additional administrative and/or judicial review. A TSA does not permit the nonresident worker to perform any services or labor in the Commonwealth.

E. Issuance of Special Circumstance Temporary Work Authorizations.

In addition to other circumstances described by statute or regulation, the Director of Labor or his designee may issue a memorandum authorizing a nonresident who is within the Commonwealth to seek temporary employment under the following circumstances:

~~1.~~ Upon a request by any Federal enforcement agency including but not limited to the National Labor Relations Board, Equal

Employment Opportunity Commission, U.S. Department of Labor and U.S. Department of Justice.

2. Upon a request by any Commonwealth enforcement agency including but not limited to the Department of Public Safety, Office of the Attorney General, the Division of Immigration, or the Office of the Governor.

3. A memorandum may be issued to a nonresident worker seeking relief through private lawsuits involving labor claims upon presentation of a letter from the attorney of record identifying the worker as a party in a pending law suit and identifying the court in which the case is pending and the case number of the court action.

4. The memorandum shall permit the person to seek temporary employment while within the Commonwealth. Upon securing employment the person must present him- or herself to the Department of Labor for issuance of a Temporary Work Authorization (TWA). The TWA shall be valid for a period not to exceed 90 days and shall be renewable every 90 days until the justification for the request has been accomplished.. The Department of Labor may require that the applicant meet the usual application requirements set forth by statute, regulation or Department policy for a TWA (such as the appropriate health certificate, etc.) before approving the application. The Director of Labor or his designee may waive any application requirements deemed to be inappropriate under the circumstances of the application or that would defeat the purpose for the person's continued presence in the Commonwealth.

5. At the time of renewal of a TWA issued under this regulation the requesting agency or attorney shall certify to the Department of Labor that the need continues to exist for the person to remain in the Commonwealth.

6. The request for a memorandum shall be in writing and shall contain the following information:

   a. The name, date of birth, nationality and entry permit and passport number of the person for whom the memorandum is requested;
   b. The purpose for the person's continuing presence in the Commonwealth;
   c. The name and business address of the requesting agency or attorney;

d. A statement of the anticipated length of time the nonresident will remain in the Commonwealth or of the anticipated date when the person's presence will no longer be necessary;

e. An acknowledgement that the requesting agency or attorney is required to notify the Department of Labor and Division of Immigration Services within 7 (seven) days following the conclusion of the proceedings or other reason justifying the nonresident's presence in the Commonwealth.

7. Information received by the Department of Labor in connection with the request for memorandum and any subsequently received documents shall be confidential and shall be subject to release only to the Director of Labor or his designee, the person or agency requesting the memorandum or TWA, a law enforcement officer including an officer of the CNMI Immigration Service, or upon court order.

8. The employer shall assume all responsibilities concerning the temporary worker as if the employer had initially hired the person as a full-time nonresident worker from within the Commonwealth except that the TWA employer shall not be liable for the purchase of a repatriation airline ticket. Nothing in these regulations shall exempt an employer from the other requirements of the Nonresident Workers Act or the Alien Labor Rules and Regulations.

9. A person receiving relief under these regulations does not acquire any vested right to continued employment in the Commonwealth or the right to remain within the Commonwealth or to transfer to another employer when the justification for the issuance of the TWA has ended. An employer seeking to hire a worker previously employed under a TWA pursuant to this regulation may do so only after complying in full with the laws and regulations regarding the initial hiring of nonresident workers.

10. Temporary Work Authorization allowed pursuant to this regulation does not modify the person's entry permit nor shall the TWA be deemed to be a "nonresident worker certificate" as that term is used in the Commonwealth Entry and Deportation Act, 3 CMC § 4301 *et seq.* or the Nonresident Workers Act. 3 CMC § 4411 *et seq.* or any other statutes, or regulations promulgated by the Secretary of Labor pursuant to 3 CMC § 4424(a)(1).

SECTION XVIII. DECLARATION IN LIEU OF SWORN AFFIDAVIT.

Pursuant to 7 CMC § 3305, wherever under these rules an individual is required to submit a sworn affidavit, that individual, if signing such a document within the Commonwealth, may submit a declaration containing the following language instead:

I declare under penalty of perjury that the foregoing is true and correct. Executed on [date] in _____, Commonwealth of the Northern Mariana Islands.

_____
Signature

NOTE: If the document is required to be notarized and it is signed outside of the Commonwealth, a notarized affidavit must still be submitted. Declarations may only be used instead of notarized affidavits if the document is signed in the Commonwealth. See 7 CMC § 3305.

SECTION XIX. DELEGATION OF AUTHORITY.

The Secretary of the Department of Labor hereby delegates his authority under the Nonresident Workers Act, as amended, the Minimum Wage and Hour Act, as amended, Public Law Nos. 11-6, 11-66, 11-76, 12-11 and 12-58, as amended, to the Director of Employment Services, Director of Labor, and the Administrative Hearing Officers. Written delegation of authority previously issued shall remain in force and effect until rescinded, altered, or modified as circumstances require.

SECTION XX. SEVERABILITY.

If any provision of these rules and regulations, or the application of such rules and regulations to any person or circumstance shall be held invalid by a court or competent jurisdiction, the remainder of such rules and regulations, or the application of such regulations to person or circumstance other than those to which it is held invalid, shall not be affected thereby.

SECTION XXI. EFFECTIVE DATE

These rules are effective thirty (30) days after their date of publication and shall not apply retroactively to proceedings before DIVISION OF LABOR that were commenced before such date.

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

The Saipan Higher Education Financial Assistance Board for the Saipan Higher Education Financial Assistance Program hereby notifies the general public of its intention to adopt new regulations regarding the Saipan Higher Education Financial Assistance Act. The regulations are promulgated pursuant to the Board's authority in Saipan Local Law 13-21. The regulations outline the requirements and procedures for obtaining educational assistance, the types of assistance available and the qualification requirements.

All interested persons may examine the proposed regulations and submit written comments to the Chairperson, Saipan Higher Education Financial Assistance Program at the Saipan Mayor's Office, PO Box 501457, Saipan, MP 96950 or by facsimile at 234-1190 within 30 calendar days following publication of this notice in the Commonwealth Register.

Dated this 3rd day of June, 2004 at Saipan, Northern Mariana Islands.

Saipan Higher Education Financial Assistance Board

By: _____
Chairperson of the Board

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

By: _____ 6/10/04
Pamela Brown Date
Attorney General

Filed by: _____ 6/10/04
Bernadita Dela Cruz Date
Commonwealth Registrar

Rec'd by: _____ 6/11/04
Thomas Tebuteb Date
Special Assistant for Administration

The Municipality of Saipan

Office of the Mayor of Saipan

Proposed Rules and Regulations for the Saipan Higher Education Financial Assistance Program

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

Statement of Goals and Objectives: To implement the provisions of Saipan Local Law 13-21 for qualified residents of Saipan beginning Fall, 2004.

Brief Summary of the Rules: The rules and regulations will establish qualification requirements for the three basic types of supplementary financial assistance for residents of Saipan.

For Further Information, Contact: Saipan Mayor Juan Borja Tudela at telephone 235-7444 or 234-6208; fax 234-1190; e-mail: **jbtmayor@vzpacifica.net**

Citation of Related and / or Affected Statutes, Regulations and Orders: SLL 13-21, PL7-31, PL 10-58 as amended by PL 11-34 and EAP Grants from the CNMI Scholarship Office.

Submitted By: Juan B. Tudela
Mayor ~~Juan~~ Borja Tudela

May 26, 2004
Date

NOTISIAN PUPBLIKU
MAN MAPRPONE NA AREKLAMENTO YAN REGULASION SIHA PARA I PROGRAMAN ASISTIMENTON SALÅPE' PARA LA'TAKILO' NA EDUKASION GIYA SAIPAN

I Kuetpon i Asistimenton Salåpe' Para La'takilo' Na Edukasion Giya Saipan para i Programan Asistimenton Salåpe' Para La'takilo' Na Edukasion Giya Saipan ha notisia i pupbliku heneråt pot i intension ni para u ma'adopta nuebu na regulasion siha ni tineteka pot i Akton Asistimenton Salåpe' Para La'takilo' Na Edukasion Giya Saipan . I regulasion siha man ma'establesi sigun i aturidåt i Kuetpo gi halom i Lukåt na Lai Saipan 13-21. I regulasion siha ha na annok i nisisidåt yan manera siha pot asunton asistimenton edukasion, hafa na asistimento guaha yan kualifikasion i nisisidåt siha.

Todu i man interesao na petsona siha siña ma'eksamina i man mapropone na regulasion siha ya hu nahalom tinige' mensåhe para i Kabiseyon i Progråman Asistimenton Salåpe' Para La'takilo' Na Edukasion Giya Saipan gi Ofisinan i Atkåtden Saipan, P O Box 501457, Saipan MP 96950 osino facsimile 234 - 1190 gi halom trenta (30) diha siha tinatiye ni mapupblikan este na notisia gi halom Rehistran Commonwealth.

Ma fecha gi mina 14th na diha gi June , 2004, giya Saipan, Sankattan Siha na Islas Marianas.

Kuetpon i Asistimenton Salåpe' Para La'takilo' Na Edukasion Giya Saipan

Ginen as: _____
Kabiseyon i Kuetpo

Sigun i Lai CMC Seksiona 2153 ni ma'amenda ginen i Lai Pupbliku 10-50 i areklamento yan regulasion siha ni man che'che'ton esta man maribisa yan ma'aprueba pot para u fotma sufisiente yan ligatmente ginen i Ofisinan I Abugao Hinerat i CNMI.

Ginen as: _____ _____
Pamela Brown
Abugado Heneråt

Pinelo as: _____ 6.10.04
Bernadita Dela Cruz Fecha
Rehistran i Commonwealth

Marisibe' as: _____ 6/11/04
Thomas Tebuteb Fecha
Espesiåt Na Ayudånte Para I Atministrasion

ARONGOL TOULAP
POMWOL ALLÉGH ME AMMWELIL PROGRÓMAAL ALILLIS REEL
SALAAPIAL IMWAL RÁGHEFISCH YE E LLANG MELLÓL SEIPÉL

Mwiischil Salaapial Alillis reel Imwal Rághefisch ye e Llang mellól Seipél, reel progrómaal alillisil salaapi ekke arongaar toulap igha e aghiyeghi bwe ebwe fillóóy allégh kka e ffé bwelle alléghúl salaapi reel alillisil imwal rághefisch ye e llang mellól Seipél.
Allégh kkaal ikka e akkatéélló bwelle reel bwángil mwiisch mellól Allégh Toulap, Seipél 13-21. Mwóghútúl me yááyál ngáli igha ubwe bwughi alillisil abwungubwung, tappal alillis kka eyoor me yááyál ngáli milikka e fil.

Schóókka re tipeli nge emmwel rebwe amweri fischiiy pomwol allegh kkaal me ischilong mángemáng reel Chairman, Progómaal alillis reel salaapial imwal rághefisch ye e llang mellól Seipél mereel Bwulasiyool Maghalaay, PO Box 501457,Seipél MP 96950 me ngáre facsmile reel 234-1190 llól eliigh (30) ráálil mwiril yaal akkateewow arong yeel mellól Commonwealth Register.

Rál ye 11th llól June ,2004 me Seipél, Téél Falúw Kka Falúwasch Marianas.

Salaapial alillis reel mwiischil imwal rághefisch ye e llang mellól Seipél.

Sángi:
Chairmanil mwiisch

Sángi allégh ye 1 CMC talil 2153, ye aa lliwel mereel Alléghúl Toulap 10-50, pomwol allégh kkaal reel Progomaal alillisil salaapi reel imwal rághefisch ye e llang mellól Seipél, Kkopia kka e appasch, nge raa takkal amweri fischiiy me alúghúlúghúló mereel Bwulasiyool Sów Bwúngúl Allégh Lapalap.

Sángi
Pamela Brown
Sów Bwúngúl Allégh Lapalap

Rál

Aisis sángi
Bernadita Dela Cruz
Commonwealth Register

Rál 6-10-04

Mwir sangi
Thomas Tebuteb
Sów Alillisil Sów Lemelem

Rál 6/11/04

PROPOSED RULES & REGULATIONS
SAIPAN HIGHER EDUCATION FINANCIAL ASSISTANCE PROGRAM
(SHEFA)

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SECTION ONE

Statutory Authority: The Saipan Higher Education Financial Assistance Act of 2003 was signed into law on February 3, 2004, as Saipan Local Law (SLL) 13-21, which established the Saipan Higher Education Financial Assistance for the Municipality of Saipan in the Office of the Mayor of Saipan for administrative purposes, and to be administered by the Board of Saipan Higher Education Financial Assistance, hereinafter referred to SHEFA.

SECTION TWO

Mission of SHEFA: The mission of the Saipan Higher Education Financial Assistance (SHEFA) under the Municipality of Saipan, Office of the Mayor is to invest in the limited human capital resources of qualified residents of Saipan (inclusive of the Northern Islands) through a supplementary financial assistance, upon availability of funds pursuant to Saipan Local Law 13-21, for purposes of pursuing post-secondary education on Saipan or abroad, and in recognition of the need for educated citizenry and workforce on Saipan, with the broad expectation of SHEFA and assurance from all applicants and recipients of SHEFA financial assistance to return to Saipan upon a successful completion of a higher education with the necessary and sufficient knowledge, skill, attitude and work ethic in order to provide services on Saipan in the private sector, government, nongovernmental (NGO) organization as well as not-for-profit organization.

SECTION THREE

Priority for Financial Assistance: Qualified residents of the Municipality of Saipan who have been accepted or enrolled in any US accredited institution of higher education and meet all requirements as new or returning student are ranked in the order of priority to receive supplementary financial assistance as follows. 1. undergraduate level in the identified priority fields of study. 2. graduate level in the identified priority of fields of study. 3. advanced degree level in the identified priority of fields of study. 4. all other residents of Saipan who qualify as new or returning students.

SECTION FOUR

Funding Source & Budget Authority: Pursuant to Saipan Local Law 13-21, Section 5 on page four (4) of the Act, the funding for this program is sourced from fees collected from the local license fees for poker and pachinko machines under Saipan Local Law 13-8, as continuously appropriated by SLL 13-21. Other funding sources authorized by this Act in Section 5(d) on page three (3) is to receive and accept from

any individual, association or corporation, gifts, grants and donations of money for the purpose of providing higher education financial assistance to be established in a separate special account by the Secretary of Finance to implement the purposes of the Act.

SECTION FIVE

Office of the Mayor of Saipan: The Saipan Higher Education Financial Assistance is established by SLL 13-21 in the Office of the Mayor of Saipan, and vested the Mayor of Saipan with the authority to appoint members of the board therein, subject to confirmation by the Saipan and Northern Islands Legislative Delegation (SNILD). In addition, the Office of the Mayor of Saipan is required by law to provide the board with administrative, personnel and logistical support subject to the limits of resource availability.

SECTION SIX

Saipan Higher Education Financial Assistance Board (SHEFA): The SHEFA board is established pursuant to SLL 13-21 whose members are appointed by the Mayor of Saipan subject to confirmation by the Saipan and Northern Islands Legislative Delegation. The Mayor may remove any member of the board on account of gross neglect of duty, conviction of a felony, or mental or physical incapacity. The duties and power of the board are specifically delineated in Section 5 and Section 8 of this Act.

SECTION SEVEN

Classification of Recipients: Undergraduate Degree, Graduate Degree and Advanced Degree: SHEFA recognizes three types of degree categories, namely, undergraduate degree (associate degree and bachelor's degree); graduate degree (masters degree); and advanced degree (degree higher than a masters degree, e.g., J.D., Medical Doctor, PH.D, ED.D, etc.)

SECTION EIGHT

Types of Financial Assistance

1. ***Grant-in-Aid*** is a type of financial assistance available to a student from Saipan pursuing post-secondary education in U.S. accredited colleges or universities. If a grant recipient does not return to Saipan after completion of his or her studies, the grant automatically becomes a loan and the grant recipient must repay the SHEFA

fund plus interest in accordance with the terms and conditions of attached Promissory Note / Memorandum of Agreement.

2. ***Scholarship*** is a type of financial assistance that is available to a student from Saipan pursuing post-secondary education based on *financial need*, academic achievement and other established criteria. A second type of assistance under the scholarship program is one in which a student pursues a field of study that has been identified by SHEFA as a *priority field of study** for the island of Saipan, and having met other established criteria. The third type of scholarship is based on *academic performance* at the end of every semester or quarter. The fourth type of scholarship is a *Career Prep Scholar* credit voucher valued at $200 per voucher for a maximum of two vouchers per recipient. This voucher is for use by the recipient in obtaining career guidance and counseling or in participating in career or job fairs or any other type of training in career planning and preparation. The voucher is non-cash, and will be used toward the cancellation of any loan(s) granted to the recipient by SHEFA. Scholarship recipients must work on Saipan either in the private or public sector for as long a period as the duration of the scholarship. If a scholarship recipient does not return to Saipan after completion of his or her studies, the scholarship automatically becomes a loan and the recipient must repay the SHEFA fund plus interest in accordance with the terms and conditions of the attached Promissory Note / Memorandum of Agreement.

3. ***Student Loan*** is a type of financial assistance divided into three components. One is based on *financial need* on criteria established by the SHEFA board. *Loan on demand or demand loan* is the second type of loan based upon the time of submission, receipt and acceptance of application to SHEFA. The third and final type of assistance under this loan program is referred to as merit loan. A *merit loan* is strictly to enable a resident from Saipan enrolled in any accredited U.S. institutions of higher education to "challenge" up to two courses on campus in order to: (a) accelerate degree/program completion, or (b) fulfill a graduation requirement. These challenges must be taken on campus only, unless otherwise authorized and approved first in writing by SHEFA. If a loan recipient does not return to Saipan after completion of his/her studies, he/she must repay the SHEFA fund plus interest in accordance with the terms and conditions of the attached Promissory Note / Memorandum of Agreement.

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

during the term or life of the agreement, and after completion of his/her studies, or non-enrollment from school or termination from the institution of record.

* ***Priority Field of Study*** **for Saipan** includes Accounting; Nursing; Teaching/Specialized Special Education/Early Childhood Ed./Library Science/Counseling/Bilingual Ed.; Business Management and Administration; Hospitality, & Information Technology, including technical or specialized trades such as journalism, management information, computer programming and other fields of study sanctioned by the board in accordance with the administrative procedures act.

SECTION NINE

Qualification Requirements: Section 7 of SLL 13-21 reads: "No **person** other than residents of the Municipality of Saipan as defined under section 2 of this Act shall be eligible for or receive assistance from the Saipan Higher Education Financial Assistance Fund." A resident in section 2 is a person who is a United States citizen or a United States permanent resident, who has resided in the Municipality of Saipan for at least a year before applying for financial assistance administered by the Board and who is attending or has been accepted for enrollment at an institution of higher education in the CNMI or outside the CNMI. Proof of resident by a parent residing in the Municipality of Saipan for the requisite period, or other acceptable evidence of residency of the applicant or recipient of SHEFA financial assistance such as the Saipan Municipal Identification Card, CNMI Driver's License, etc. must be submitted to the SHEFA office.

SECTION TEN

Eligibility for SHEFA Fund Financial Assistance: All applicants must meet the requirements in section nine and the following additional requirements. A student/applicant must: 1. graduate from high school with a high school diploma or high school equivalent diploma. 2. have cumulative high school grade point average (GPA) of at least 2.5 upon graduation. 3. be accepted or enrolled on fulltime status as determined by the institution (excluding remedial preparatory or non-credit courses) in a US accredited college or university. Exception to fulltime enrollment status of certified disabled applicants will be granted on a case-by-case basis. 4. if awarded financial assistance, must sign a promissory note / memorandum of agreement enabling all financial assistance received from the SHEFA fund subject to debt conversion and debt convertible, and future assistance contingent on funds availability pursuant to law. 5. meet all conditions for continuing assistance from SHEFA as provided in section eleven of these rules and regulations. 6. eligibility for SHEFA assistance for the undergraduate degree is for a maximum of four academic years, with a provision for one additional academic year for specialized majors and / or content-area certification by the institution, not including summer for Bachelor's Degree (BA/BS) and two academic years not including summer for an Associate Degree (AA/AS). For a graduate degree (MS/MS) eligibility for assistance is for two

academic years not including summer; and for an advanced degree it is for three academic years not including summer, with a provision for one additional academic year for dissertation and defense; medical degree training requirements; or J.D. academic work or related residency training requirement. 7. provide all required documents and documentation of eligibility as provided for in section twelve of these rules and regulations. 8. maintain at least the minimum cumulative grade point average as a condition for continuing assistance pursuant to section eleven herein. 9. no fulltime employee of the CNMI government and / or on education and training leave status is eligible for financial assistance from the SHEFA fund.

SECTION ELEVEN

Conditions for Continuing Assistance: Any new applicant and recipient of SHEFA financial assistance must qualify and be eligible for the assistance as provided for in section eight (8) of these rules and regulations at all times and must adhere to all other rules and regulations herein, including the provisions of the promissory note / memorandum of agreement incorporated herein as a necessary and sufficient condition to receiving and continuing to receive financial assistance from the SHEFA board pursuant to law subject to availability of funds.

SECTION TWELVE

Application Policy & Procedure: Required Documents / Deadlines: All new and continuing applicants for SHEFA financial assistance are required to submit the following documents as a condition for consideration for assistance. These are: 1. original and completed application form indicating whether for new or renewal. 2. latest sealed official transcript from high school or institution of higher education mailed directly to the SHEFA Office or an unofficial copy faxed directly to the office by the school or college / university. 3. letter of acceptance or proof of admission or enrollment. 4. proof of citizenship (e.g., Saipan Municipal Identification Card, United States Passport, birth certificate, or CNMI drivers license). 5. proof of residency on Saipan as indicated by an annual tax return or other acceptable evidence such as a Saipan Municipal Identification Card or a CNMI driver's license. In addition, all application forms for new or continuing SHEFA assistance must be filed together with the required documents indicated herein on July 1st unless the date falls on a weekend in which case the deadline is the first Monday of the following week for the Fall Semester/Quarter and December 1st for the Spring Semester/Quarter annually unless the date falls on a weekend in which case the deadline is the first Monday of the following week. Failure to submit a completed application form and the requisite supporting documents to the SHEFA Office on the deadline will be cause for not considering the application until the next financial assistance cycle.

SECTION THIRTEEN

Truth-in-Lending Policy and Confidentiality: The information provided to SHEFA for purposes of determining qualification and eligibility is considered confidential,

and will only be released upon written authorization from the applicant/recipient. All information contained in the completed application or renewal form, qualification and eligibility documents, person(s) used as reference(s), letter of acceptance, enrollment documents from institution of record, grade reports and transcripts, and other forms of supporting documents are considered true and complete to the best of the applicant/recipient's knowledge, and the applicant further agrees to provide proof of information stated in the application or renewal form or supporting documents submitted to SHEFA. Falsification of information and any document(s) submitted by the applicant or recipient of SHEFA assistance may result in the immediate discontinuation of financial assistance and automatic suspension and / or disqualification for any future financial assistance. Therefore, every applicant for SHEFA financial assistance and every recipient of SHEFA financial assistance is required to authorize SHEFA to request and obtain any and all information necessary and sufficient from relevant agencies or institutions of higher education related to the application or renewal of application for financial assistance from SHEFA. Financial assistance from the SHEFA fund is contingent on availability of funds as provided in Saipan Local Law 13-21.

SECTION FOURTEEN

Appeal Policy & Procedure: Any qualified and eligible applicant and recipient of SHEFA financial assistance may address and present any grievance in writing first to the SHEFA administrator with a copy directly to the SHEFA board. If the applicant or recipient of SHEFA financial assistance is not satisfied with the written official response from the SHEFA administration, then the applicant and recipient may appeal the decision of the SHEFA administration directly to the Chairperson of the SHEFA Board within ten (10) working days of issuance of a decision by the SHEFA administration. The appeal to the SHEFA Board shall be in accordance with the administrative procedure act, 1 CMC §9101. To this end, all decisions made by and entered into record by the board shall be final agency decision and order on the administrative level of appeal or review process and procedure.

SECTION FIFTEEN

Availability of Supplementary Financial Assistance: Effective Date: The Rules and Regulations governing the administration of the SHEFA financial assistance shall take effect upon its publication and adoption in accordance with the administrative procedure act.

SECTION SIXTEEN

Promissory Note / Memorandum of Agreement: Repayment: Incorporated below is the SHEFA Promissory Note / Memorandum of Agreement stipulating repayment of

any type of financial assistance received by the signator(s) of the agreement subject to the conditions herein specified as part of the SHEFA rules and regulations.

THIS PROMISSORY NOTE/ MEMORANDUM OF AGREEMENT made and entered into this _____ day of _____, 20_____, by and between the Board of SHEFA for the Municipality of Saipan within the Office of the Mayor of Saipan and _____, and / or with his/her parent,_____ , if below 18 years, hereinafter referred to as the "Debtor" at address: _____(postal address) residing in _____ _____(village) of SAIPAN.

WITNESSETH

WHEREAS, Saipan Local Law (SLL) 13-21 established the Saipan Higher Education Financial Assistance within the Office of the Mayor of Saipan to be governed by the Saipan Higher Education Financial Assistance Board (SHEFA);

WHEREAS, the SHEFA Board, in administering the SHEFA fund, will enter into a legally binding and enforceable Promissory Note / Memorandum of Agreement with a qualified and eligible resident of Saipan together with a parent, if recipient of SHEFA financial assistance is below 18 years, prior to the disbursement of any SHEFA fund. In entering into a mutually binding promissory note / memorandum of understanding, the SHEFA board becomes the "Lender" of record for SHEFA fund and the recipient of SHEFA financial assistance together with the parent, if recipient is below 18 years, become severally and collectively the "Debtor" of any and all type and amount of SHEFA financial assistance received and acknowledged herein pursuant to Section Eight (8) of the SHEFA rules and regulations including: 1. Grant-in-Aid. 2. Scholarship. and 3. Loan.

WHEREAS, the Saipan Higher Education Financial Assistance (SHEFA) is established as a supplementary financial assistance to eligible residents of the Municipality of Saipan, inclusive of the Northern Islands who desire to pursue post-secondary education at a U.S. accredited institution of higher learning on Saipan or abroad on the condition that a recipient of SHEFA fund shall return to Saipan pursuant to SHEFA rules and regulations for purposes of employment, and to provide services to the private or public sector or both, in recognition of the need for educated citizenry and workforce on Saipan.

NOW, THEREFORE, in consideration of SHEFA financial assistance including grant-in-aid, scholarship and loan which recipient /debtor received and acknowledged by signing this promissory note / memorandum of understanding between the Debtor AND the Lender, the Debtor agrees, covenants and represents as follows:

1. The Debtor is admitted or enrolled in _____ (name of institution), a U.S. accredited, recognized post-secondary educational institution

in pursuit of a _____ (type of degree or certificate) in the

field of _____ (field of study).

2. The Debtor shall utilize all financial assistance for educational expenses directly related or incidental to attendance and continued attendance at said institution and shall carry a full-time load of credits and maintain the minimum or higher grade point average (GPA) in accordance with SHEFA rules and regulations.

3. The Debtor shall complete the required credits at each academic term for the financial assistance received (mark one):

i. Undergraduate Full-Time:	Twelve (12) or more credits
ii. Graduate Full-Time:	Defined by the institution
iii. Advanced Full-Time:	Defined by the institution

4. The Debtor shall maintain at the end of each academic term the required cumulative grade point average as it applies below by marking the appropriate category:

i. Undergraduate:	2.5 Cumulative GPA Full-Time
ii. Performance-Based Scholarship	3.5 GPA Full-Time
iii. Graduate:	3.0 GPA Full-Time
iv. Advanced:	3.0 GPA Full-Time

5. The Debtor shall submit a copy of his/her grade report promptly after the conclusion of each academic term directly to the SHEFA Office. The grade report submittal will determine the eligibility for continued assistance on every subsequent term. At the end of each academic year, however, an *official transcript* must be sent directly from the school to the SHEFA Office.

6. The Debtor understand and accept the following maximum duration of eligibility for financial assistance from the SHEFA fund:

2 Academic Years	-	Associate Degree
4 Academic Years	-	Bachelors' Degree*
2 Academic Years	-	Graduate Degree
3 Academic Years	-	Advanced Degree**

**maximum of five (5) academic years for specialized majors and / or certification by the institution of higher education of record.*

***maximum of four (4) academic years for dissertation, medical degree requirement, or specialized J.D. training requirement.*

7. The Debtor hereby declares that he/she is not pursuing an academic program that leads to a religious studies degree.

8. The Debtor agree to return to Saipan within three (3) months after the completion of his/her degree plan or termination of or non-enrollment from the institution of record, and provide services by working on Saipan for any employer—whether in the private or public sector or both. The Debtor further agrees to perform services in the private or public sector or both on Saipan for a period equal to the period for which the Debtor received financial assistance under Section 8(1) and/or (2) of these rules and regulations from the Lender. The Debtor agrees to pay back twenty-five (25%) of the total amount of loan received under Section 8(3) of these rules and regulations and a minimum of three (3) years service to either in the private or public sector or both on Saipan. If the recipient of SHEFA financial assistance does not return back to Saipan after completion of his/her studies, or non-enrollment from school or termination from the institution of record, he / she must repay the entire debt back on all SHEFA funds received under Sections 8(1), (2), (3) of these rules and regulations with interest in accordance with this Promissory Note / Memorandum of Agreement.

9. The Debtor understand and agree that failure to comply with any part of sections 1-8 of this Promissory Note / Memorandum of Agreement and the SHEFA rules and regulations will constitute a material breach of the promissory note / memorandum of agreement and a default, and will require the Debtor to pay the entire award received. If such a default occurs, the Debtor must repay their entire debt to the Lender with equal monthly payments within (6) years of the default. The Debtor may repay according to any of the following repayment options as shown below.

Total Debt for repayment	Per Month 12 months	Per Month 24 months	Per Month 36 months	Per Month 48 months	Per Month 60 months	Per Month 72 months
$1,000 - $4,999	$84 - $417	$42 - $209	$28 - $139	$121 - $104	$17 - $84	$14 - $70
$5,000 - $9,999	$417 - $834	$209 - $417	$139 - $278	$104 - $209	$84 - $167	$70 - $139
$10,000 - $14,999	$834 - $1,250	$417 - $625	$278 - $417	$209 - $313	$167 - $250	$139 - $209
$15,000 - $19,999	$1,250 - $1,667	$625 - $834	$417 - $556	$313 - $417	$250 - $334	$209 - $278
$20,000 - $24,999	$1,667 - $2,084	$834 - $1,042	$556 - $694	$417 - $521	$334 - $417	$278 - $348
$25,000 - $29,999	$2,084 - $2,500	$1,042 - $1,250	$694 - $834	$521 - $625	$417 - $500	$348 - $417

$30,000 - $34,999	$2,500-$2,917	$1,250 - $1,459	$834 - $973	$625 - $730	$500 - $584	$417 - $487
$35,000 - $40,999	$2,917 - $3,334	$1,459 - $1,667	$973 - $1,111	$730 - $834	$584 - $667	$487 - $556

The Debtor must inform the Lender of which repayment schedule he or she has accepted within thirty (30) days of the default. If the Debtor does not select a repayment schedule within thirty (30) days, the Debtor will be deemed to have selected the "Per Month 72 Months" repayment schedule listed above. The Debtor(s)'s first monthly payment shall be due on the first of the month following the default, but at least thirty (30) days after the default. All subsequent payments will be due on the first of each following month until the Debtor repay the entire debt to the Lender. Note: The Debtor may pay the balance in full at any time within the schedule plan.

10. If the Debtor fail to pay any monthly payment, or of any part of any monthly payment, ("Payment Default") then the whole principal sum shall become immediately due and payable at the option of the Lender, without notice, and interest shall accrue at the rate of five percent (5%) per annum on the total amount outstanding. Interest shall accrue until Debtor fully cures the Payment Default by paying all past due monthly payments and all accrued interest. Payments received shall be applied first to the accrued interest and then the balance thereof to the principal.

11. Military Deferral. The time for the Debtor to comply with the requirements of Section 8, above, shall be extended upon request if the Debtor enlist in the armed forces of the United States of America. Specifically, the Debtor's obligation to comply with the requirements of Section 8 shall be deferred, upon request, until the Debtor's service in the armed forces ends. The Debtor may take advantage of this deferral for a maximum of three years after the termination or completion of his/her degree play or non-enrollment from an institution of higher education of record. Once the Debtor's service in the armed forces ends or three years passes from the termination or completion of his/her degree plan or non-enrollment from institution of higher education of record, whichever event occurs first, the Debtor shall have to comply with the requirements of Section 8. All deferrals granted under this section are not valid unless approved in writing by SHEFA. The Debtor must renew his or her deferral annually.

12. In the event of commencement of suit to enforce payment of this Promissory Note / Memorandum of Agreement, the undersigned agree(s) to pay to the Lender for attorney's fees as the Court in the Commonwealth of the Northern Mariana Islands may deem reasonable.

13. The recipient of SHEFA financial assistance together with the parent, if applicant is below 18 years, fully understand and agree that compliance with the provisions in this Promissory Note / Memorandum of Agreement and all provisions of the SHEFA rules and regulations shall constitute a condition for any and all financial assistance herein by SHEFA and hereby acknowledged and attested to by both the recipient and parent, if recipient is below 18 years.

14. The parties agree that the courts of the Commonwealth of the Northern Mariana Islands (Superior Court and Supreme Court) shall have exclusive jurisdiction over any Action involving this Promissory Note/Memorandum of Agreement.

This Agreement shall be interpreted using the laws of the Commonwealth of the Northern Mariana Islands.

IN WITNESS WHEREOF, the recipient (Debtor) and / or parent, if recipient is below 18 years, have hereunto set his / her or their hand(s) on the date first above written.

_____ _____
Print Recipient Name / Signature Date

_____ _____
Print Parent Name / Signature, if Recipient is below 18 yrs. Date

NOTARY PUBLIC:

On this ____ day _____of 20___, before me appeared _____ and _____(recipient parent, if recipient is below 18 years), who executed the agreement contained herein, and duly acknowledge to me that he/she and parent, if recipient is below 18 years, executed the same freely and voluntarily for the uses and purposes therein mentioned.

_____ **My Commission expires:** _____
Notary Public (Print & Sign)

For SHEFA:

Chairman, Board of SHEFA **Date**

For the Municipality of Saipan:

MAYOR JUAN BORJA TUDELA **Date**

SECTION SEVENTEEN

Career Counseling and Guidance & College Life Orientation: All new applicants to the SHEFA fund must undergo a career orientation, assessment, and counseling and guidance as a condition to receiving any financial assistance at the outset. SHEFA will coordinate the career sessions with participating government agencies, including the schools on Saipan. An orientation to college life is also a prerequisite to receiving SHEFA assistance. Both the career counseling and college life orientation must be undertaken on island prior to check disbursement, unless authorized in advanced to do so in writing by SHEFA at a location or institution acceptable to SHEFA.

SECTION EIGHTEEN

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

SECTION NINETEEN

SHEFA APPLICATION FORM: Incorporated as part of the rules and regulations governing the SHEFA financial assistance is the SHEFA Application Form for both new applicants and on-going applicants. No application, either new or on-going application for SHEFA financial assistance, will be considered or reviewed by SHEFA unless such application is completed and accompanied by all required supporting documents indicated on the application form.

SECTION TWENTY

Welcome HOME: Your Expected Return to Saipan: Within three (3) months of a successful completion or thirty (30) days of termination or non-enrollment from the institution of record, whichever event occurs first, the recipient of financial assistance from the SHEFA fund is required to return to Saipan for employment and / or to provide services in the private or public sector, in recognition of the need for educated citizenry and workforce on Saipan.

Commonwealth of the Northern Mariana Islands
Department of Public Works
Juan S. Reyes, Secretary
Caller Box 10007, Gualo Rai, Saipan, MP 96950
(2nd Floor Joeten Commercial Building)
tel: 670. 235.9714 fax: 670.235.6346

PUBLIC NOTICE OF CERTIFICATION AND ADOPTION OF REGULATIONS WHICH ARE AMENDMENTS TO THE REGULATIONS OF THE DEPARTMENT OF PUBLIC WORKS

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER
Volume 26, Number 02 of February 23, 2004
Volume 26, Number 04 of April 23, 2004

New **Paragraph 6 (Regulations for Public Rights-of-Way and Related Facilities)**

Please take notice that I, Juan S. Reyes, Secretary of Public Works, hereby adopt as permanent, the referenced Proposed Regulations. I also certify by signature below that, as published, such adopted regulations are a true, complete and correct copy of the referenced Proposed Regulations, and that they are being adopted without modification or amendment. I further request and direct that this Notice be published in the Commonwealth Register.

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

The prior publications were:

Supplement to Prior Publication in the Commonwealth Register, Volume 26, Number 04 of April 23, 2004 (p. 22293)

Notice of Emergency Regulations, and text of Emergency and Proposed Regulations: Com. Reg. Vol. 26, No. 01 (Jan. 22, 2004), pp. 021535-37 (Notice) and 021538-60 (Text of regulations). The regulations are 23 pages long.

Notice of Proposed Regulations: Com. Reg. Vol. 26, No. 02 (Feb. 23, 2004), pp. 021865-76.

Comments and agency concise statement. Pursuant to 1 CMC sec. 9104(a)(2), the agency has considered fully all written and oral submissions respecting the proposed regulations. Upon this adoption of the regulations, the agency, if requested to do so by

an interested person, either prior to adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption. Please see the following pages for this agency's concise statement in response to filed comments.

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

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 24th day of May, 2004, at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:

JUAN S. REYES
Secretary of Public Works

6-24-04
Date

Filed and
Recorded by:

BERNADITA B. DE LA CRUZ
Commonwealth Register

6.24.04
Date

0 DPW Notice of Adoption Permanent in May.wpd

Commonwealth of the Northern Mariana Islands
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PUBLIC NOTICE
ORDER OF THE ATTORNEY GENERAL

Immigration Regulation Section 804: Excluded Locations

The following list of Excluded Locations is issued pursuant to Emergency Immigration Regulation § 804:

- Afghanistan
- Algeria
- Bahrain
- Bangladesh*
- Cuba
- Egypt
- Eritrea
- Indonesia
- Iran
- Iraq
- Jordan
- Kuwait
- Lebanon
- Libya
- Morocco
- Myanmar
- North Korea
- Oman
- Pakistan
- Qatar
- Saudi Arabia
- Somalia
- Sri Lanka*
- Sudan
- Syria
- Tunisia
- United Arab Emirates
- Yemen

Locations marked with a "*" are hereby designated as having caused undue delays or having refused to accept the return of nationals, citizens, subjects or residents, and therefore, such persons seeking a preliminary waiver will require a letter guaranteeing an expedited return pursuant to Immigration Regulation § 804(C)(1)(ii).

Please note, the Fujian Province of the People's Republic of China has been removed from the list and is no longer an Excluded Location.

Dated this 14th day of June 2004.

PAMELA BROWN
Attorney General