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



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## **COMMONWEALTH REGISTER**

VOLUME 31 NUMBER 6

**JUNE 22, 2009** 

## **COMMONWEALTH REGISTER**

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## COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial Governor

Eloy S. Inos
Lieutenant Governor

## EXTENSION OF EMERGENCY Volcanic of Anatahan

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

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

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

This Extension of Emergency 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prior to the end of the 30-day period, notify the Presiding Officers of the Legislature that the state of emergency has been revoked or further exteded for a like term, and giving reasons for extending the emergency.

Dated this 29th of April 2009.

BENIGNO R. FÍTIAL

-Governor

cc:

Lt. Governor (Fax: 664-2311) Senate President (Fax: 664-8803) House Speaker (Fax: 664-8900)

Mayor of the Northern Islands (Fax: 664-2710)

Executive Assistant for Carolinian Affairs (Fax: 235-5088)

Attorney General (Fax: 664-2349) Secretary Of Finance (Fax: 664-1115)

Commissioner of Public Safety (Fax: 664-9027)

Special Assistant for Management and Budget (Fax: 664-2272)

Special Assistant for Programs and Legislative Review (Fax: 664-2313

Press Secretary (Fax: 664-2290)

United States Coast Guard (236-2968)

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



## **Emergency Management Office**



## Office of the Governor commonwealth of the northern mariana islands

Henigno R. Fittal, Governor Eloy S. Incs, Lt. Governor Josephn P. Omer, DSA Mark S. Pangelinan, ADSA

## **MEMORAMDUM**

To:

Governor

05/29/09

From:

Deputy Special Assistant, EMO/OHS

Subject:

**Declaration of Emergency** 

The EMO seismic staff and USGS, once again in close consultation has informed me the status of Anatahan volcano that, No reports of eruptive activity or other unusual volcanic phenomena at Anatahan were received for the past week, seismicity has remained at background levels. The volcano appears to have entered a quiescent period but it is still possible for more active activity, including gas and ash emissions, to resume again at any time with little or no warning.

A Volcanic Alert Level: NORMAL and Aviation Color Code: GREEN still remains for Anatahan volcano.

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 10 nautical miles to 3 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 and that the findings suggest otherwise. The current Declaration of Emergency will expire on May 30, 2009.

Should you have any question or concern, please call our office at 322-9528/29.

Joaquin P. Omar

cc: Lt. Governor SAA Mayor, NI DPS USCG

## PUBLIC NOTICE OF EMERENCY REGULATIONS AND NOTICE OF INTENT TO ADOPT NEW CHILD CARE DEVELOPMENT FUND REGULATIONS

**EMERGENCY:** The Commonwealth of the Northern Mariana Islands. Department of Community & Cultural Affairs finds that under 1 CMC § 9104(b) the public interest requires the adoption of new Child Care Development Fund Regulations due to the transfer of the administration of this program from PSS to DCCA. The Department of Community & Cultural Affairs finds that the public interest mandates adoption of these regulations upon fewer than thirty (30) days notice, and that this regulation 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:** Due to the conditions imposed by the Federal granting agency for this program, the Department of Community & Cultural Affairs finds that adoption of these regulations upon fewer than thirty (30) days notice is necessary to comply with the conditions imposed by the Federal granting agency for this program. Furthermore the notice period would prevent application of the regulations during the period of the notice. Accordingly, the Department of Community & Cultural Affairs finds that in the interest of the public, it is necessary that these regulations are approved and adopted immediately.

INTENT TO ADOPT: It is the intent of the Department of Community & Cultural Affairs to adopt the emergency regulations for the Child Care Development Fund, as permanent, pursuant to 1 CMC § 9104(a)(1) and (2). Accordingly, interested parties may submit written comments on this emergency amendment to Melvin O

Faisao, Acting Secretary of the Department of Community and Cultural Affairs,

Caller Box 10007, Saipan MP 96950 or by fax to (670) 664-2590.

Submitted by: Acting Secretary Concurred by: Benigno R. Fitial Governor Filed and Recorded by: Esther M. San Nicolas

Persuant to 1 CMC § 2153(e) and 1 CMC 9104(a)(3), the emergency regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General's Office.

Dated this \_\_/2\_\_ day of June, 2009.

**Acting Attorney General** 

## **PUBLIC NOTICE** EMEGENCY ADOPTION OF NEW CHILD CARE DEVELOPMENT FUND REGULATIONS **EXHIBIT A**

This regulation is promulgated in accordance with the Administrative Procedure Act, 1 CMC § 9101 et.seq.

Citation of

**Statutory Authority:** 

The Department of Community & Cultural Affairs is

authorized to promulgate regulations pursuant to 1

CMC § 2534.

**Short Statement of** 

Goals and Objectives:

The adoption of these regulations will satisfy the

funding conditions imposed by the Federal granting

agency.

**Brief Summary of the** 

Proposed New Section: The proposed regulations will reflect the transfer of

the administration of the Child Care Development

Program from PSS to DCCA.

For Further

Information Contact:

Melvion O. Faisao, Acting Secretary for Department

of Community & Cultural Affairs, telephone (670) 664-

2576.

Citation of Related and/or Affected Statutes, Rules and Regulations.

and Orders:

The proposed regulations rescind Chapter 60-10 of

the Board of Education Regulations and creates a

new chapter of Regulations for the Dept. of

Community and Cultural Affairs under Chapter 55-50.

Dated this **2** day of June, 2009.

Submitted by:

O. Faisao

g Secretary – 💆 CA

## NEW REGULATIONS FOR THE CHILD CARE DEVELOPMENT FUND PROGRAM

## CHILD CARE DEVELOPMENT FUND Rules & Regulations

### GENERAL PROVISIONS

§ 55-50-001

Purpose

The purpose of these Administrative Rules is to provide guidance for determining eligibility requirements, benefit amounts, and method of determining child care payments for the child care program in compliance with the rules governing the administration and implementation of the Child Care and Development Fund block grant as authorized part of the Omnibus Reconciliation Act of 1990, Pub. L. No. 101-58, Section 5082 and as amended by PRWORA, Public Law 104-193 Section 9598

§ 55-50-005

Definitions

- (a) "Activity" means employment, education, or job training, vocational or employment training.
- (b) "After-School Care" means a child care program provided after the close of the regular school day during the academic year for children who are enrolled in public or private elementary schools.
- (c) "Applicant" means parent who applies to the Child Care Program for child care benefits
- (d) "Application" means the written action by which an individual applies on behalf of his/her family to receive child care services on a form prescribed by the Child Care Program. The application requests information on the total monthly family income, size of the family, ages of family members, employment status or education or training or a combination thereof of the parent applicant or applicants and requires attachments that evidence monthly family income, education, or training status, employment status, and proof, usually birth certificates or passports, or age and citizenship of the applicants.
- (e) "Before-School Care" means a child care program provided before the opening of the regular school day during the academic

year for children who are enrolled in public or private elementary schools.

- (f) "Budget Month" means the calendar month from which the Child Care Program shall use the child care payment form to calculate the reimbursable payment for the month.
- (g) "Center-Based Child Care Provider" means a provider licensed or otherwise authorized to provide child care services for fewer than 24 hours per day per child in a non-residential setting.
- (h) "Child" means any person who has not reached the age of thirteen.
- (i) "Child Care" means those situations in which a Child Care provider has agreed to assume the responsibility for the child's supervision, development, and guidance, apart from and in the absence of the child's parent, for any part of a 24-hour day.
- (j) "Child Care Program" means the CNMI Department of Community and Cultural Affairs that shall administer and implement the Child Care Development Fund (CCDF) activities and provide assistance in compliance with the requirements of federal regulations.
- (k) "Child Care Provider" means any person, 18 years and older, or an agency, or organization and their employees who provide direct care, supervision, and guidance to children apart from and in the absence of the child's parent (s). Child Care providers are regulated by the Child Care Licensing Program of the Department of Community and Cultural Affairs to provide child care or are legally exempt from licensure or registration by the same licensing program.
- (l) "Child Care Services" means the care given to an eligible child by an eligible child care provider.
- (m) "Educational Program" means a curriculum-based education program established by a school, agency or business for the purpose of the development of skills and/or academic study necessary for an occupation.
- (n) "Employed" means the parent or legal guardian is engaged in an activity in exchange for wages or salary for at least 30 hours per week.

- (o) "English as a Second Language" (ESL) means the condition where the child and/or the parent (see definition on "parent" have limited English proficiency.
- (p) "Family Child Care Provider" means an individual who provides child care services to 5 or more children for fewer than 24 hours per day per child, as the sole caregiver, in a private residence other than the child's residence.
- (q) "Family" means one or more adults and their minor children, if any, related by blood, marriage, adoption or judicial decree, who resides in the same household. Related adults other than spouses or unrelated adults residing together shall each be considered a separate family.
- (r) "Federal Poverty Index (FPI) Guidelines" means the official Federal statistical definition of poverty which is issued yearly in the Federal Register by the Secretary of the Child Care Program of the Health and Human Services under the authority of 42 U.S.C. 8621, OBRA of 1981. It is a simplification of the U.S. Census Bureau's poverty threshold, which is issued for administrative purposes.
- (s) "Full-Time Care" means child care provided for 30 hours or more per week. This does not apply to before-school care, after-school care, and intercession care.
- (t) "Gross Income" means any benefit in cash which is received by the individual as a result of current or past labor or services, business activities, interest in real or personal property or as a contribution from persons, organizations, or assistance agencies.
- (u) "Group Home Child Care Provider" means two or more individuals who provide child care services to 5 or more children for fewer than 24 hours per day per child, in a private residence other than the child's residence.
- (v) "Guardian" means a Court appointed Legal Guardian of the person of the minor child.
- (w) "In Home Care Provider" means any individual who is not employed and is providing assistance in the home of the child(ren).

- (x) "Intercession Care" means child care provided at breaks during the academic year for children who are enrolled in public or private elementary schools, including summer care and holidays.
- (y) "Job Training, Vocational or Employment Training" means an organized training program (including community college and university education) established by an institution, agency or business for the purpose of the development of occupation.
- (z) "License-Exempt Care" means child care to less than 5 children which is exempt from licensure pursuant to CNMI Law and the current state plan and is registered by the Child Care Program.
- (aa) "Licensing Agency" means the department within the CNMI Government that approves or disapprove child care licensing in accordance with CNMI law and the Day Care Rules and Regulations, specifically the Department of Community and Cultural Affairs (DCCA).
- (bb) "Parent" means a birth, foster or adoptive parent, guardian, a person acting in the place of a parent, step-parent, or relative who is related to the child by blood, marriage, or adoption, who resides with and is legally responsible for the care, education, and financial support of a child. That designation may remain even when the child or parent is temporarily absent from the home as long as the parent continues to maintain responsibility for the care, education, and financial support of the child. In cases of split custody, it is the parent with whom the child resides with more than 50% of the time. In cases where each parent has custody of the child for an equal amount of time, then both parent's must jointly qualify for the program.
- (cc) "Part-Time Care" means child care provided for less than 30 hours per week. This excludes before-school, after-school care and intercession care.
- (dd) "Payment Month" means the calendar month in which the Child Care Program shall issue the child care payment.
- (ee) "Physician" means an individual licensed by the CNMI for the practice of medicine.
- (ff) "Registered" means children, parent, parents, and service providers who are registered with the DCCA Child Care Program and who benefit from the DCCA Child Care Program.

- (gg) "Relative" means related by blood, marriage, or adoption.
- (hh) "Relative Care" means child care provided by legal grandparents, great-grandparents, great aunts, 1<sup>st</sup> and 2<sup>nd</sup> cousins, aunts, uncles, and siblings living in a separate residence who are at least 18 years old. Relative child care providers caring for 5 or more children must be licensed.
- (ii) "Sliding Fee Scale" means a system of cost sharing by a family based on income and size of the family in accordance with 45 CFR Subpart 98.42.
- (jj) "School Age" means the chronological age of children enrolled in elementary and junior high school below the age of 13.
- (kk) "Special Needs Child" means a child who is physically or mentally incapable of caring for himself or herself as determined by a health care provider and a Public School System certified psychologist.
- (ll) "State Plan" means the official document submitted to the federal government by the Child Care Program describing the administration of child care services in the CNMI under the Child Care and Development Fund

(mm)"Very Low Income" means income that is at or below the 85% of State Median Income Guideline as referenced on attachment #1 of the State Plan effective up to 2005

## § 55-50-010 Confidentiality

Family income data, employment records and other family and child records and monthly data reported to the federal government on families receiving subsidized child care services shall remain confidential and saved in locked data files (This applies to both computerized and paper files).

§ 55-50-015 Geographical Location

All child care is made available to eligible clients on a CNMI-wide basis.

§ 55-50-020 Scope

Child care services, irrespective of setting, must include:

- (a) Supervision to assure the child's safety, comfort, and health;
- (b) Personal care as appropriate to the child's age and developmental maturity;
- (c) Educational and recreational activities appropriate to the child's age, developmental stage, and degree of physical or mental ability;
- (d) Health and nutritional services which may include breakfast, lunch, dinner, and snacks; health and nutritional education to the child, as well as to the parents or parents; monitoring of health problems; and where appropriate, arranging for medical or psychological screening and consultation.

Part 100- Application to Child Care Program

§ 55-50-101 Application Process

- (a) Requests for child care services shall be submitted in writing on a form prescribed by the Child Care Program.
- (b) The form shall be dated and signed under penalty of perjury that all the information requested by the Child Care Program to establish eligibility for child care services, as stated on the form, is accurate.
- (c) The form shall be signed by the parent. Applicants are required to submit copies of documents including but not limited to an employment verification stating hours and hourly rate, paycheck stubs with business name, hours worked and hourly rate, birth certificates, school and/or training documents, 10-40 tax, notarized affidavit of living arrangement, employment contract (if applicable) for verification. It is the responsibility of the applicant to provide the necessary documentation for verification.

- (d) Applicants shall provide verification of the cost of the selected child care arrangement.
- (e) The date of application shall be the date the signed form and all supporting documents are received by the Child Care Program.
- (f) The date of eligibility shall be determined by the Child Care Program once all required documentation is received and verified and the Child Care Program determines that the family is eligible for subsidized care.
- (g) It is the responsibility of the applicant to provide the necessary documentation for the eligibility determination.
- (h) For applicants determined eligible, child care subsidized payments shall be initiated or arranged as soon as possible, but not later than 30 days from receipt of the payment invoice from the service provider; which is signed by the parent and the provider. Child Care services shall be denied when the applicant does not complete the process of application/determination of eligibility, including but not limited to verification, or withdraws the application or is otherwise ineligible.

## § 55-50-105 Priority Applications

The following sets forth the priorities for serving eligible children:

- (a) Families with very low income
- (b) Low income families with special needs children
- (c) Homeless families with children

## § 55-50-110 Notice of Application Disposition

- (a) The Child Care Program shall notify applicants about the applicant's eligibility for child care service within fifteen (15) days after submission of a complete application with all required attachments.
- (b) Applicants determined not eligible shall be sent a written notice that contains a statement of the action taken, the reason for the action, the specific rules supporting the action, and the

right to appeal the action of the Child Care Program through established administrative appeal procedures.

Part 200- Eligibility

§ 55-50-201 Eligibility Requirements for Child Care Services

Depending upon availability of funds, children who qualify for child care payments shall meet the following requirements:

- (a) Reside with the parent who is working, attending a job training or an educational program and who has a monthly CNMI gross income that does not exceed Federal Poverty Income Guideline (FPIG) for a family of the same size; and
- (b) Be under the age of 13; and
- (c) All parents shall be eligible for child care under this subchapter provided the parents meet the following conditions:
  - Have a monthly gross income that does not exceed the Federal Poverty Income Guideline (FPIG) for a family of the same size; and
  - 2. Residency: The family must be living in the CNMI with the intention of making the CNMI their home permanently. Acceptable documentation includes, but is not limited to, utility payment receipts, house rental/mortgage receipts, etc.
  - 3. Citizenship: Only the citizenship and immigration status of the child, who is the primary beneficiary of the child care service, is required for eligibility purposes. The child must be a U.S. citizen or a qualified alien, as defined in Personal Responsibility Work Opportunity Act (PRWORA), to be eligible for childcare assistance. Acceptable documentation includes, but is not limited to, birth certificate or passport.
  - 4. Gainfully employed 30 hours per week or scheduled to start work in 2 weeks; or
  - 5. Need child care for up to 30 calendar days during a break in employment, if employment is scheduled to resume within 30 calendar days; or

- 6. Are enrolled in a job training and educational program (for at least 30 hours per week) or attending an education program on a full time basis (12 hours per semester for the college and five classes per day for the PSS); or
- 6. For parents who are in the final semester of a program and who need less than 12 credits to graduate, they will be considered to be attending full-time for that final semester if in fact they are taking all the credits needed to graduate.
- 7. Are a two-parent family household where one parent is in an approved activity (working, attending job training or an educational-program) and the other parent is determined to have a disability which prevents the parents from providing care for their own children. In such cases, proof of disability and inability to provide child care shall be verified by the written report of a physician, psychologist, psychiatrist, or a territory-licensed care provider. The written report shall be reviewed every two months, and is valid when one parent is participating in an approved activity.
- 8. Eligibility may be re-established for periods not to exceed 6 months.
- 9. Participation in a mandatory orientation
- (d) Child care providers shall meet the following conditions in order that child care payments may be authorized:
  - 1. Is 18 years old or older;
  - Afford parents unlimited access to their children, including written records concerning their children, during normal hours of provider operation and whenever the children are in the care of the provider;
  - 3. Is a licensed or license-exempt child care provider, including in-home care providers.
  - 4. License-exempt providers shall be registered with the Child Care Program and shall submit a written statement to the Child Care Program that shall attest to their:
    - A. Willingness to provide care;

- B. Rate that will be charged and assurance that the provider premises are safe from hazards.
- C. Address and telephone number;
- D. Complete health and safety check list
- E. Police clearance
- 5. Have no known history of child abuse or neglect, physical or psychological/psychiatric problems or criminal convictions that may adversely affect or interfere with the care of children.
- 6. Provide consent to conduct a child abuse record check and criminal history record check. A child care provider must not have criminal history that poses a risk to children; these include but are not limited to:
  - A. Violent felonies in which an individual threatens to cause, attempts to cause or causes serious bodily injury;
  - B. Sexually violent offenses as defined by CNMI law or other similar offenses in other jurisdictions;
  - C. Criminal sex offense against a minor as defined by CNMI law or other similar offenses in other jurisdictions;
  - D. Child abuse or neglect as defined by CNMI law or similar offenses in other jurisdictions;
  - E. Violations of the CNMI Minor Children Firearms Control Act or similar offenses in other jurisdictions;
  - F. Distribution of a controlled substance to persons under 18 as defined by CNMI law or similar offenses in other jurisdictions; and
  - G. All other criminal histories will be evaluated based on the nature and severity of the incident; the identity of the victim; the length of time since the incident; whether any specific pattern of criminal behavior exists; and specific efforts the individual has made towards rehabilitation.
- 7. Is free of tuberculosis as indicated by a skin test or chest x-ray completed within the last 24 months;

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- 8. Have a child care facility or home with an installed smoke detector, unobstructed emergency exits, and an emergency exit plan; and
- 9. Shall attend training and technical assistance activities as a condition of receipt of funds to enhance their personal growth and professional development in order to improve the quality of child care services. Effective May 1, 2009 all child care service providers must annually participate in at least 20 hours of training and technical assistance as approved by the Child Care Program. This may include workshops, seminars, conference, etc. on health and safety, nutrition, first aid, child abuse and detection, and caring for children with special needs as scheduled and approved by the Child Care Program.
- (e) Child care providers shall not be one of the following:
  - 1. Parents, biological or legal;
  - 2. Step-parent living in the household;
  - 3. Legal guardians;
  - 4. Providers who are not in compliance with territory regulatory requirements;
  - 5. Individuals under the age of 18 years; and
  - 6. Other individuals determined by the licensing agency and/or the Child Care Program to pose a risk to the health and safety of a child.
- (f) The Child Care Program shall:
  - 1. Verify that the children and parents meet the eligibility requirements as described in these regulations;
  - 2. Determine that the provider selected by the parent is appropriate following the regulations of the licensing agency and the Child Care Program; and
  - 3. Review eligibility no less frequently than every 6 months.
- § 55-50-205 Income considered in eligibility determination
  - (a) Monthly gross income shall be used to determine eligibility
  - (b) Monthly gross income means non-excluded monthly sums of income received from sources such as but not limited to:

1. "Gross income" means any benefit in cash which is received by the individual as a result of current or past labor or services (before deductions), business activities, interest in real or personal property or as a contribution from persons, organizations, or assistance agencies, such as:

A. Wages and

B. Salary

## § 55-50-210 Excluded monthly income

The following types of income received in any given month shall be excluded from consideration in determining income eligibility for child care payments;

- (a) Money received from the sale of property such as stocks, bonds, a house, or a car unless the person was engaged in the business of selling the property, in which case, the net proceeds would be counted as self employed income;
- (b) Withdrawals of bank deposits;
- (c) Loans;
- (d) Gifts, including in-kind gifts such as free room and board, when the gift is not a form of compensation in lieu of wages or salary;
- (e) Monies received in the form of a nonrecurring lump sum payment including, but not limited to, the following:
  - 1. Income tax refunds, rebates, credits;
  - 2. Retroactive lump sum social security, SSI, or unemployment compensation benefits;
  - 3. Retroactive annual adjustment payments in the veteran administration's (VA) disability pensions;
  - 4. Lump sum inheritance or insurance payments;
- (f) Refunds of security deposits on rental property or utilities;
- (g) Earnings of minor children who are members of the household and are students at least half-time shall be excluded even during temporary interruptions in school attendance due to semester or vacation breaks, provided the minors' enrollment will resume following the break;

- (h) Capital gains
- (i) Loans, grants, and scholarships obtained and used under conditions that prohibit use for current living expenses;
- (j) Any grant or loan to any undergraduate student for educational purposes made or insured under any program administered by the United States Secretary of Education;
- (k) Home produce utilized for home consumption;
- (l) The value of coupon allotment under the Food Stamp Act of 1977, as amended;
- (m) The value of USDA donated or surplus foods;
- (n) The value of supplemental food assistance under the Child Nutrition Act of 1966 (42 U.S.C. § 1771-1789) and the special food service program for children under the National School Lunch Act, as amended;
- (o)Benefits received from the special supplemental food program for women, infants, and children (WIC) (Pub. L. No. 92-443);
- (p) Allowances and payments to participants in programs, other than on-the-job training, under the Work Investment Act (WIA) of 1998 (20 U.S.C. § 9201);
- (q)The earned income of individuals participating in on-the-job training program under the Job Training Partnership Act (JTPA) of 1982 (25 U.S.C. § 640d 640d-28) who are between 18 and 19 years of age and under the parental control of another household member;
- (r) Earned income tax credit (EITC) payments received either as a lump sum or recurring payments under section 3507 of the Internal Revenue Code of 1986;
- (s) Financial assistance provided by a program funded in whole or in part under title IV of the Higher Education Act in accordance with Pub. L. No. 99-498
- (t) Payments or allowances under any federal or local laws for the purpose of energy assistance;

- (u) Assistance payments received as a result of a declared federal major disaster or emergency form the federal emergency management agency (FEMA), and other comparable disaster assistance provided by any state or local government agency, and disaster assistance organizations;
- (v) Payments made from the Agent Orange Settlement Fund or any other fund established in connection with settling liability claims concerning the chemical Agent Orange (Pub. L. No. 101-201);
- (w) Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4636);
- (x) Payments received under the Radiation Exposure Compensation Act (Pub. L. No. 101-426) to compensate individuals for injuries or deaths resulting from the exposure to radiation from nuclear testing or uranium mining;
- (y) Payments to individuals participating in the Senior Community Service Employment Program (SCSEP) funded under title V of the Older American Act of 1965 (Pub. L. No. 100-175);
- (z) Payments to volunteers derived from the volunteer's participation in the following program authorized by the Domestic Volunteer Service Act of 1973 (42 U.S.C. §§ 5011, 4951-4958):
  - 1. Foster grandparent program;
  - 2. Senior companion program; and
  - 3. Volunteers in service to America (VISTA) and AmeriCorps program.
- (aa) Military re-enlistment bonus;
- (bb) Any other payments make in accordance with territory and federal laws that preclude the payments from being counted as income.

#### § 55-50-215 Treatment of Income

- (a) All non-excluded income available to the family within a given month shall be considered.
- Eligibility determination based on income status (b) shall be supported by documentation.
- (c) Failure to provide necessary information to verify amount or source of income shall disqualify the family.

Part 300-

Child Care Payment

§ 55-50-301

COMMONWEALTH REGISTER

Method of computing childcare payment

- (a) The family shall provide verification of the child care provider and the child care to the program.
- (b) The Child Care Program will compute the monthly projected cost of the care based on:
  - 1. Need for child care;
  - 2. The type of care provided;
  - The child's age; 3.
  - 4. Whether the care is full day or partial day care service;
  - 5. The child's attendance;
  - б. The parent's work attendance;
  - 7. The parent's share of the cost of child care in accordance with the Sliding Fee Scale as set forth in the current state plan.
- (c) The projected child care payment rate shall be calculated by:
  - 1. Counting the number of employment, education, or job, or vocational or employment training hours to the engaged in by the parent for the month;
  - 2. Comparing the parent's employment, education or job, or vocational or employment training hours including commuting time with the need for child care hours and
  - 3. Using the child care rate table to identify the type of child care for each qualifying child and the payment rate for that type of child care (see attachments 1 and 3)
  - 4. The child care amount to be paid each month of eligibility shall be the child care rate on the child care rate table as referenced in attachment #1, minus the copayment amount or as identified in attachment #3.

**JUNE 22, 2009** 

(d) Eligibility for child care subsidized payment shall be suspended for any month the total monthly income exceeds the income criteria for the size of the family.

## § 55-50-305 Child Care Payments

- (a) The payment rate shall be established by the current State Plan. As an example see attached "Payment Rate" which is effective until Sept. 30, 2009.
- (b) Child care payments shall be an expense that is reimbursed to the child care provider.
- (c) The parent's co-payment shall be established by the current Sliding Fee Scale as set forth in the current State Plan. As an example see attached "Sliding Fee Scale" which is effective until 2005.
- (d) When computing the reimbursement amount, the Child Care Program shall establish a reasonable relationship between the need for part-time or full-time care and the conditions for which child care is required.
- (e) Child Care Program shall issue a Payment Invoice and an attendance form for parent and provider to sign and submit for a reimbursable payment for child care services rendered the previous month. The attendance form must show the number of hours the child is in the care of the service provider. Failure to submit a completed and signed payment invoice and/or an attendance form shall result in no payment.
- (f) A completed signed payment invoice and/or attendance form must be received by the Child Care Program within the first three working days of the month. Invoices received after the third (3<sup>rd</sup>) working day of the month will be considered late and will not be processed until the following month.
- (g) The family shall pay its portion of the child care cost. If the child is enrolled in a child care center, the family shall pay directly to the child care center. If the child is in relative or group home or in home care, the co-payment is paid directly to the child care program through payment at the CNMI Treasury.

- (h) Effective Oct. 1, 2009, all parents will pay their co-payments directly to the CNMI Treasury.
- (i) The family shall be responsible for any child care costs in excess of the maximum child care rates as set forth in the current CNMI plan.

Part 400 Other Requirements

§ 55-50-401 Reporting Changes

A parent who is a recipient of subsidized child care services shall be responsible to report in writing in a prescribed form to the Child Care Program within 10 calendar days of the occurrence any changes in:

- (a) Monthly gross income and the source of the income;
- (b) Address, including:
  - 1. Place of residence; and
  - 2. Mailing address;
  - 3. contact number
- (c) Family member size
- (d) Marital status;
- (e) Providers from whom the parent is receiving child care services;
- (f) Circumstances which may affect the recipient's eligibility for continuing services, including, but not limited to;
  - 1. Changes in number of hours of childcare required and cost of child care;
  - 2. Changes in hours of employment, educational program, or job, vocational or employment training;
  - 3. Anticipated changes in the individual's situation that may affect the individuals eligibility for continued child care assistance;
- (g) Attendance: Parent shall report any more than 2 absences in a month.

§ 55-50-405 Re-determination of eligibility

(a) The Child Care Program shall re-determine income and program eligibility for continued child care payments;

- (1) When information is obtained that there are anticipated changes in the individual's or family's situation;
- (2) Promptly, not to exceed 30 days, after information is received that changes have occurred in the individual's or family's circumstances which may result in ineligibility
- (3) When a payment invoice for services rendered within 60 days is not submitted to the Child Care Program; and
- (4) Not less frequently than every 6 months from the month eligibility was determined.
- (b) Re-determination of eligibility shall be made in the same manner as the disposition of an application including signing and dating a form prescribed by the Child Care Program.
- (c) Child care shall be terminated for recipients when they do not complete the process of re-determination of eligibility, which include attending a mandatory orientation.

Part 500- Adverse Actions

§ 55-50-501 Denial, Suspension or termination of child care.

Child care payments shall be denied, suspended, or terminated when:

- (a) The parent does not submit the signed payment invoice; or
- (b) The payment invoice prescribed by the Child Care Program is not signed and dated; or
- (c) The child no longer meets the eligibility requirements; or
- (d) The parent no longer meets the eligibility requirements; or
- (e) The provider no longer meets the licensing requirements, or
- (f) Conditions initially present in the family situation have changed and child care is no longer needed or any listing/registration requirements for exempt care; or
- (g) The parent(s) voluntarily requests in writing discontinuance of child care services; or

- (h) The parent (s) and the child are unable to use child care or
- (i) The parent (s) cannot be located; or
- (j) The family fails to provide the required verification for redetermination or to support the reported changes; or
- (k) When recipients do not complete the process of redetermination or eligibility; or
- (1) When the Child Care Program determines that there are insufficient funds to maintain all children receiving care. Priorities for eligibility will be determined pursuant to section 60-10-105 of these regulations.
- (m) When the parent does not pay their contribution to the cost of child care at the minimum percentage fee (co-payment).

### § 55-50-505 Notice of adverse action

- (a) Prior to any action to reduce, deny, suspend, or terminate any childcare service specified in these regulations, the Child Care Program shall provide the parent with timely and adequate notice before the adverse action is taken.
- (c) The notice of adverse action shall be considered timely when the Child Care Program provides the notice at least 10 calendar days prior to the effective date of action.
- (c) In order to be adequate, the notice shall contain the following information:
  - 1. The proposed action and the reason for the proposed action and
  - 2. A citation to the Child Care Program rules supporting the proposed action
  - 3. The name and telephone number of the person to contact for additional information.
  - 4. The family's right to appeal the Child Care Program's decision to the Secretary, Department of Community and Cultural Affairs.

#### § 55-50-510 Administrative Appeal Requests

- (a) A parent may file a written request for an administrative appeal when the family is dissatisfied with the Child Care Program's adverse action of denying, reducing, terminating, suspending, and assistance. The family shall have an opportunity to:
  - 1. Examine the case record as well as all documents and records to be used at the appeal hearing at a reasonable time before the date of the hearing as well as during the hearing;
  - 2. Present the case independently or with the aid of legal counsel;
  - 3. Bring witnesses, including and interpreter if non-English speaking;
  - 4. Establish all pertinent facts and circumstances;
  - 5. Advance any arguments appropriate to the issue being heard without undue interference; and
  - 6. Question or refute any testimony or evidence, and to confront and cross-examine any witness.
- (b) The appeal request shall be in writing delivered to the Department of Community and Cultural Affairs Office of the Secretary within 10 calendar days of the date on which the notice informing the family of a child care program's decision was delivered to the family and shall refer to the following:
  - 1. The request is for an administrative appeal.
  - 2. The specific action identified in the notice that is being appealed; and
  - 3. Whether continuation of benefits at the current level are being requested with the understanding that the family will be required to pay back the total value of benefits (received pending the decision) if the DCCA decision is upheld.
- (c) If the request is not filed within 10 calendar days of the date the notice was provided to the family, the request shall be denied and the Office of the Attorney General shall provide notice of denial to the family.
- (d) The Attorney General or designee shall preside over a hearing within 30 days of timely appeal request.
  - 1. The hearing shall be informal where strict rules such as the exclusion of hearsay evidence do not apply. However, the evidence presented must be relevant.

- 2. The family and the Child Care Program shall have an opportunity to present evidence, including witness testimony and documents. Each party shall also have the right of cross-examination.
- 3. The hearing shall be audio-recorded.
- 4. The Attorney General or designee shall issue a written decision to the Child Care Program and the family within 30 days after the hearing.
- (e) In the event that an appeal decision is rendered in favor of the family, benefits shall be restored as appropriate.

### § 55-50-515 Overpayment and recoupment

- (a) Failure to provide the Child Care Program notice of a change in circumstances could result in an overpayment. An overpayment may occur when a Child Care Provider receives payments to which the provider is not entitled, including but not limited to:
  - 1. Administrative errors, such as a parent is not charged the appropriate payment amount;
  - 2. Parent errors, such as unintentional errors in payment invoices or fraud; and
  - 3. Provider errors, such as failure to immediately inform of a child's absences; or fraud.
- (b) An overpayment made to a provider shall be recovered through;
  - 1. A reduction of the amount payable to the provider in subsequent months until the entire amount of overpayment is recovered. The parent is responsible for the difference and must pay the difference to the provider.
  - 2. Repayment in full or in part, by the provider to the Child Care Program;
- (c) Parents subject to recovery of overpayment shall be provided written notice by the Child Care Program stating:
  - 1. Reasons, dates, and the amount of the overpayment
  - 2. The proposed method by which the overpayment shall be recovered; and
  - 3. The parent's right to request and administrative appeal if the individual disagrees with the Child Care Program's proposed action.

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- (d) When there is both and overpayment and an underpayment to the parent, the overpayment and underpayment shall be offset one against the other in correcting the payment.
- (e) Overpayment to parents may be recovered from the family that was overpaid, from individuals who were members of the family when overpaid, or from families which include members of a previously overpaid family.
- (f) When recouping child care overpayments, overpayment may be recovered only from child care benefits, provided the parent continues to receive such benefits.
- (g) Recovery of child care overpayments to parents who formerly received child care benefits shall be referred to the Child Care Program's investigation office for collection action.
- (h) If a parent for whom a collection action has been initiated fails to make a payment for any month in the calendar tax year, the Child Care Program may refer debts exceeding twenty-five dollars to the comptroller of the State for tax set off.
- (i) If the DCCA Child Care Program underpays a provider, the DCCA Child Care Program will reimburse the provider by paying back the underpaid amount.

### § 55-50-520 Termination For Insufficient Funds

- (a) The Child Care Program may suspend or terminate benefits, reduce benefits, or refuse to take new applications for certain or all classes of beneficiaries as set forth in Section 1006, the Child Care Program determines, at its discretion, that insufficient funds will be available to pay for child care services at current amounts through the end of the fiscal year.
- (b) The budget will be managed by reviewing monthly expenditures, and evaluating whether the cumulative expenditures at the end of any given month is less than or equal to the number of months that have expired in the fiscal year times 1/12 of the budget appropriation for child care payments.
- (c) When the Child Care Program determines that the budget appropriation has or soon will be exceeded, notices of adverse action may be issued to limit the number of children receiving

- subsidies in any given month. This determination is entirely within the Child Care Program's discretion.
- (d) Case termination, suspension or reduction of benefits, or refusal to take application will be prioritized as set forth in section 55-50-105.



## Commonwealth of the Northern Mariana Islands OFFICE OF THE GOVERNOR **Division of Environmental Quality**

Frank M. Rabauliman, Director P.O. Box 501304, Saipan, MP 96950 1<sup>st</sup> Floor Gualo Rai Commercial Building Chalan Pale Arnold, Gualo Rai

## PUBLIC NOTICE OF CERTIFICATION AND ADOPTION OF REGULATIONS OF The Division of Environmental Quality

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER AS PROPOSED REGULATIONS Volume 31, Number 04, pp 029424-447, April 27, 2009

Regulations of the Division of Environmental Quality: NMIAC 65-120 Wastewater Treatment and Disposal Regulations.

ADOPTION OF PROPOSED AMENDMENT TO THE WASTEWATER TREATMENT AND DISPOSAL REGULATIONS: The Division of Environmental Quality hereby adopts the abovereferenced regulations as permanent regulations, which were published in the Commonwealth Register at pages 029424-447, in Volume 31, Number 04 on April 27, 2009, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The Division of Environmental Quality announced that it intended to adopt them as permanent, and now does so. Id. The Division of Environmental Quality certifies by signature below that, as published, such adopted regulations are a true, complete and correct copy of the referenced Proposed Regulations, and that they are being adopted without modification or amendment.

PRIOR PUBLICATION: The prior publication was as stated above. The Division of Environmental Quality adopts the regulations as final as of the date of signing below.

MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY: None

AUTHORITY: The Director of the Division of Environmental Quality is empowered with the authority to promulgate, adopt and amend regulations regarding matters entrusted to the Director; CNMI Environmental Protection Act, P.L. 2-32, 2 CMC §§ 3101 et seq. (as amended by P.L. 11-103), 1 CMC §§ 2646 to 2649, and Public Law 11-108.

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

COMMENTS AND AGENCY CONCISE STATEMENT: Pursuant to the APA, 1 CMC § 9104(a)(2), the agency received no comments on the proposed regulations. Upon this adoption of the regulations, the agency, if requested to do so by an interested person, within 30 days of adoption, will issue a concise statement of the principal reasons for and against its adoption.

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JUNE 22, 2009

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

I DECLARE under penalty of perjury that the fore was executed on the 18 day of 500 day of the Northern Mariana Islands.	going is true and correct and that this declaration, 2009, at Saipan, Commonwealth
Certified and ordered by:    Compared by:	6/18/09 Date
Filed and Recorded by:	
ESTHER M. SAN NICOLAS	06 · 18 · 09

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Commonwealth Register



## Commonwealth of the Northern Mariana Islands Department of Labor

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

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

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER
AS PROPOSED REGULATIONS
Volume 31, Number 5, pp 029577-592, of May 20, 2009

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

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

I also certify by signature below that: as published, such adopted regulations are a true, complete and correct copy of the referenced Proposed Regulations, and that they are being adopted without modification or amendment, except as stated as follows, which changes are non-material:

- 1. §60.8: a re-numbering has been done in response to staff reviews. Subsection 6 of this section in the prior regulations was deleted. Two new subsections are being added. One of the new subsections was numbered 19 in the proposed regulations. That subsection is now the new subsection 6, replacing the deleted old subsection 6. This change is a change in numbering of subsections within the same section.
- 2. §30.2-715: a clarifying reference to A List and B List jobs has been added in response to staff reviews. This change clarifies the job categories to which the section refers.
- 3. §50.3-140(c): a clarifying reference to food has been added in response to staff reviews. This change clarifies that the \$100 requirement applies to food supplied as a benefit by non-business employers as had been the case in prior regulations.

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

MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY: Section 60.8 shall be amended to reflect a renumbering of subsection 6; Section 30.2-715 shall be amended to add references the A List and B List jobs; and Section 50.3-140(c) shall be amended to add a reference to food supplied as a benefit by non-business employers. I further request and direct that this Notice be published in the Commonwealth Register.

AUTHORITY: The Department is required by the Legislature to adopt rules and regulations regarding

those matters over which the Department has jurisdiction, including its regulation of the workforce participation, job preference, and foreign worker requirements, as provided in P.L. 15-108.

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

COMMENTS AND AGENCY CONCISE STATEMENT: Pursuant to the APA, 1 CMC sec. 9104(a)(2), the Department reports that it has received no written or oral submissions respecting the proposed regulations. The Department circulated the proposed regulations extensively before publication and adopted the informal oral comments it received in the proposed regulations that were published. Informal staff reviews revealed a few points, described above, for clarifying changes. Upon this adoption of the regulations, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for its adoption. The Department received no comments stating reasons against its adoption.

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

I DECLARE under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 12th day of June, 2009, at Saipan, Commonwealth of the Northern Mariana Islands.

Attorney General, and shall be published (1 CMC § 2153(f) (publication of rules and regulations)).

Certified and ordered by:

06/12/09 Date

Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC § 9104(a)(3) (obtain AG approval) the certified final regulations, modified as indicated above from the cited proposed regulations, have been reviewed and approved as to form and legal sufficiency by the CNMI

ADDOCK J. HUESMAN Acting Attorney General (T0047)

Filed and Recorded by:

Commonwealth Register

06.22.09

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## AMENDMENTS TO THE EMPLOYMENT RULES AND REGULATIONS

OF THE DEPARTMENT OF LABOR

### SUBCHAPTER 80-20 DEPARTMENT OF LABOR

Section 80-20.1 Delegation of authority. The Secretary of Labor hereby delegates authority under the Commonwealth Employment Act of 2007, PL 15-108; the Minimum Wage and Hour Act as amended; and Public Laws No. 11-6, 12-11, and 12-58 to the Director of Employment Services, the Director of Labor, and the hearing officers in the Administrative Hearing Office. Written delegation of authority previously issued shall remain in full force and effect until rescinded, altered, or modified as circumstances require. A delegation of the Secretary's authority to the Deputy Secretary shall occur whenever the Secretary is off-island.

### SUBCHAPTER 80-30 EMPLOYMENT OF CITIZENS AND PERMANENT RESIDENTS

Section 30.2 Private sector employment preferences

Section 30.2-400 Job referral

§ 30.2-445 No waivers. There are no waivers available with respect to the publication requirement.

\* \* \*

§30.2-450 Publication filing. When a job vacancy announcement is published on the Department's website, no filing of proof of publication is required. If the job vacancy announcement is published elsewhere to fulfill the requirements of §30,2-440(a), the employer must file with Employment Services, no later than thirty (30) days from last publication, a statement or invoice from the provider of publication services showing the dates on which the job vacancy announcement was published.

§30.2-460 Cancellation of the job vacancy announcement. Employment Services may cancel a job vacancy announcement or deny certification if insufficient reasons are stated for failure to hire or if no statement is received within 14 days. A denial may be appealed to the Administrative Hearing Office within fifteen (15) days after the date of the denial. (See Section 80-50.4-155.)

\* \* \*

### §30.2-480 Workforce plan.

(b) Employers covered. Every employer, unless exempted, is required to have a workforce plan.

(g) Loss of exemption. An employer against whom two or more judgments in labor cases or consolidated agency cases are entered in Department proceedings within any two year period automatically loses any applicable exemption and a plan must be filed with Employment Services within 30 days of the entry of the second judgment. No administrative proceeding is required to remove the exemption. A "judgment" for purposes of this subsection is a final action, which includes a decision of a hearing officer that has not been appealed within the time allowed, or a decision of the Secretary on a matter that has been appealed within the time allowed, provided however that a stay of the removal of the exemption may be provided by a court of competent jurisdiction. The exemption automatically becomes unavailable on the date on which the second judgment is entered. The term "two judgments" includes judgments in two separate actions or cases bearing two separate case numbers, and also includes judgments with respect to two complainants in the same action or a case bearing only one case number. "Within a two-year period" for purposes of this section is any 24-month period. This period does not relate to a calendar year.

### Section 80-30.2-600 Workforce participation by citizens and permanent residents

§30.2-620 No waivers. There are no waivers available with respect to the participation requirement.

### Section 80-30.2-700 Exemptions.

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§30.2-705 Employers with fewer than five employees. The provisions of Section 4525 of PL 15-108 do not apply to employers with fewer than five employees except as provided in this section and, with respect to this section, do not apply to owner-operated businesses with no employees other than owners. For purposes of this section, all full-time employees are counted. All retail establishments that handle food stamps shall have at least employee who is a citizen or permanent resident after June 30, 2008. All employers with fewer than five employees shall have at least one employee who is a citizen or permanent resident after October 1, 2009. All

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such employers are subject to the job vacancy announcement requirements for all job vacancies.

\* \* \*

§30.2-715 Incentive exemption. An incentive exemption with respect to Section 4521 (job preference for A-List and B-List jobs) but not with respect to Section 4525 (workforce participation by citizens) or Section 4522-23 (job vacancy announcements and referrals) shall be available if the citizen and permanent resident employees in the full-time workforce of an employer in that O-NET classification exceeds substantially thirty (30) percent of the employer's total full-time workforce in these positions. The incentive benchmark is fifty (50) percent for the employer's total full-time work force in each of the A-List and B-List job categories, however all job vacancies must be advertised (See Section 80-30.2-205).

\* \* \*

§30.2-725 Loss of exemption. An employer against whom two or more judgments in labor cases or consolidated agency cases are entered in Department proceedings within any two year period automatically loses any applicable exemption and all provisions of PL 15-108 automatically become applicable. No administrative proceeding is required to remove the exemption. A "judgment" for purposes of this section is a final action, which includes a decision of a hearing officer that has not been appealed within the time allowed, or a decision of the Secretary on a matter that has been appealed within the time allowed, provided however that a stay of the removal of the exemption may be provided by a court of competent jurisdiction. The exemption automatically becomes unavailable on the date on which the second judgment is entered. The term "two judgments" includes judgments in two separate actions or cases bearing two separate case numbers, and also includes judgments with respect to two complainants in the same action or a case bearing only one case number. "Within a two-year period" for purposes of this section is any 24-month period. This period does not relate to a calendar year.

\* \* \*

## **SUBCHAPTER 80-40 MORATORIUM**

Section 80-40.1 <u>Moratorium phase-out</u>. The previously legislated moratorium on the hiring of foreign national workers is phased out as follows:

Page 3 PAGE 029640 Section 40.1-100 Visitor industry. As of January 1, 2008, the moratorium does not apply to the visitor industry. The visitor industry includes hotels, airlines, aircraft services, tour packagers, tour guides, tourist transportation, and tourist sports, charters, and recreation services.

Section 40.1-200 Services industry. As of January 1, 2009, the moratorium does not apply to the services industry. The services industry includes accountants, lawyers, banks and financial services, medical and health care services, maintenance and repair and rental services, restaurants and catering services, retail and wholesale sales and services, bakeries with retail outlets, freight and shipping services, appraisal and surveying services, and education services.

Section 40.1-300 Agricultural. As of July 1, 2009, the moratorium does not apply to agricultural, fishing and fisheries, forestry, and groundskeeping positions.

Section 40.1-400 All other. As of July 1 1, 2009, the moratorium expires with respect to all remaining positions.

#### SUBCHAPTER 80-50 EMPLOYMENT OF FOREIGN NATIONAL WORKERS

Section 80-50.2 Entry into the Commonwealth

Section 50.2-200 Approved employment contract

§50.2-205 Application. An application for approval of an employment contract must be signed by a director, officer, or manager of a corporation or other business organization and must submitted to the Director of Labor on a standard form provided by the Department in person by an employee of a corporation or other business organization who shall present sufficient identification and proof of status. An application must be signed and submitted in person by a non-business employer. No person who is an agent and no person holding a power of attorney may sign or submit an application. The Director shall review the application to ascertain if it is complete. An incomplete application will not be accepted. The Director shall take action on a complete application as soon as practicable after receipt, depending primarily on the time required for investigation, if any, of representations made in the application. The Director may approve or deny the application. Approval of the application is an agreement or contract between the Director and the employer as to the terms under which the employer will operate.

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A denial shall be on a standard form. No other documentation with respect to a denial is required. A denial may be appealed to the Administrative Hearing Office within fifteen (15) days after the date of the denial. (See Section 80-50.4-155.)

\* \* \*

#### Section 80-50.3 Standards for Employment

## Section 50.3-100 Standard conditions of employment

§50.3-105(c)(iii): Hiring for part-time. An employer may employ a foreign national worker part-time for no more than 32 hours a month. An employer who has signed an approved employment contract with a foreign national worker may not hire that foreign national worker for part-time work.

\* \* \*

§50.3-140(c): Deductions for employer-supplied food, transportation, and other purposes. Allowable deductions for employer-supplied food, transportation to and from the worksite, utilities for the personal use of a foreign national worker, and other benefits or purposes may be no more than the expenses actually incurred by the employer in providing such benefits or \$100 per month for food provided by non-business employers.

\* \* \*

# §50.3-155 Contract extension, contract amendment and reduction in hours.

- (a) An extension to an existing approved employment contract for up to six months may be agreed by the parties at any time during the term of the contract and filed with the Department on the standard form provided by the Department for that purpose.
- (b) A change (amendment) to an existing approved employment contract may be implemented or performed only with prior agreement of both parties to the contract and with prior submission on a standard form provided by the Department, provided however that hours may not be reduced below thirty-two (32) per week.
- (c) A contract extension or amendment does not require prior approval of, but may be denied by, the Director of Labor. A denial by the Director may be appealed to the Administrative Hearing Office within fifteen (15) days after the date of the denial. (See Section 80-50.4-155.)

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\* \* \*

## Section 50.3-300 Contract renewal, non-renewal, and termination

§50.3-305(d): Documents. A request for renewal shall be accompanied by copies of an approved employment contract, an approved health insurance contract (after the date on which the Secretary of Public Health publishes final regulations in that regard), and an approved security contract covering the foreign national worker to be renewed. An employer may submit a new employment contract with new terms as necessary. A request for renewal may be submitted and approved without an accompanying health certificate, but the health certificate must be submitted within sixty (60) days of approval or the renewal is subject to revocation. A request for renewal may be submitted and approved if the Job Vacancy Announcement is on file (on line), but the JVA must be certified within sixty (60) days of approval or the renewal is subject to revocation.

\* \* \*

#### Section 50.3-400 Transfer by administrative order.

§50.3-420. Extension of time. Extensions of time within which to locate an employer may be granted by the Administrative Hearing Office upon application submitted within ten (10) days after expiration of the initial period of time within which to locate an employer and assumption of full responsibility by the foreign national worker for medical and other expenses with an appropriate guarantee under terms acceptable to the hearing officer and payment of a fee.

§50.3-422. Objections to proposed transfer. The Director of Employment Services shall circulate to all Sections within the Department each request for permission to transfer received by Employment Services. If no objection is received, a hearing officer may issue an order granting permission to transfer. If an objection is received, a hearing officer shall conduct a hearing on the objection and the burden of proof is on the objecting officer of the Department.

Section 50.3-500 Reductions in force

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## §50.3-540 Limitations on new hires of foreign national workers.

- (a) On-island hires. An employer who has laid off citizens, permanent residents, or foreign national workers shall be barred for a period of 90 days from the effective date of termination. from hiring any new foreign national workers to work in the O-NET job classifications held by laid-off workers
- (b) Off-island hires. An employer who has laid off citizens, permanent residents, or foreign national workers shall be barred for a period of six months following the effective date of termination from hiring foreign national workers from off-island to work in the O-NET job classifications held by laid-off workers.

§50.3-545 Pending applications for approved employment contracts. Upon receipt of notice from an employer of a reduction in force, downsizing or partial closure, the Director shall immediately deny all pending applications filed by the employer to hire foreign national workers from off-island.

# Section 50.4 Adjudication of disputes

# Section 50.4-700 Orders and relief

§50.4-725 Whistleblower relief. In order to promote the public interest in securing compliance with Commonwealth law, a foreign national worker who provides the Department with information on the basis of which a compliance agency case is brought may be granted a transfer by a hearing officer even if not qualified under Section 80-50.4-720 above.

Section 50.4-900 Judicial review. Judicial review of a final action of the Secretary is authorized after exhaustion of all administrative remedies. Appeal from a final action by the Secretary shall be directly to the Commonwealth Superior Court and shall be initiated within thirty (30) days of the final action.

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

\* \*

#### **SUBCHAPTER 80-60 OTHER PROVISIONS**

<u>Section 60.8 Fees</u>. The following fees shall be collected by the Department. All fees are nonrefundable and nontransferable unless otherwise provided in these regulations.

6	Application for part-time employment ————————————————————————————————————	<del>-\$40.00</del>
6.	Filing an appeal of a denial to the Hearing Office (per person)	\$25.00
13.	Penalty fee for untimely renewal (limit 60 days)	\$5.00/day
14.	Processing a temporary work authorization (6 months)	\$150.00
15.	Renewal of temporary work authorization (per month)	\$25.00
16.	Mediation of labor disputes	No fee
17.	Filing a labor complaint (per person)	\$20.00
18.	Filing an appeal to the Secretary (per person, except in agency cases)	\$40.00
27.	Contract extensions (up to six months)	\$35.00/month

\* \* \*

Section 60.9 Statistical data

Section 60.9-200 Standard data sets. The Department will publish on its website and provide to the Department of Commerce annual statistics with respect to the number of permit transactions within industry categories.

# Section 60.12 Transition

Section 60.12-335 Effect of PL 110-229. In order to promote recovery from severely adverse economic conditions, to accommodate the uncertainties with respect to implementation of PL 110-229 (the federalization law), to minimize costs imposed on businesses, and to allow the labor department to function efficiently under a substantially reduced budget, the requirements of the periodic exit have been suspended until further publication of regulations.

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#### BOARD OF PROFESSIONAL LICENSING

#### Commonwealth of the Northern Mariana Islands P.O. Box 502078

Saipan, MP 96950 Tel. No.: (670) 664-4809 Fax No.: (670) 664-4813 e-mail: bpl@pticom.com

# NOTICE OF PROPOSED AMENDMENTS TO THE BOARD OF PROFESSIONAL LICENSING REGULATIONS FOR REAL PROPERTY APPRAISERS

The Board of Professional Licensing ("BPL") hereby gives notice to the general public that it proposes to amend the following of the Regulations for Real Property Appraisers and \$125-40 of NMIAC Title 125:

- Section 4.4 (A) (d) of the regulations and Section 125-40-115 (a) (4) (iv); and
- Section 8.5 (A) of the regulations and Section 125-40-520 (a).

The BPL must amend the regulations to include the changes to the appraisal log sheet for trainees as required by the Appraisal Qualifications Board (AQB) and, to correct a typo error under Section 8.5 of the regulations.

The Board is soliciting comments regarding these proposed amendments must be received by the Board within thirty (30) days of first publication of this notice in the Commonwealth Register. Interested persons may request copies of the proposed amendments by contacting us at 664-4809 or by email at <a href="mailto:bpl@pticom.com">bpl@pticom.com</a> or come by our office located at Bldg. 1242, Pohnpei Ct., Capitol Hill, Saipan. Written comments on these amendments should be drop off at our office or sent to the BPL, P.O. Box 502078, Saipan MP 96950.

Certification by the Office of the Attorney General

Pursuant to 1 CMC \$2153, as amended by P.L. 1050, the proposed amendments to the rules and regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the Office of the Attorney General.

Acting Batterney General

Date

#### NOTICE OF PROPOSED AMENDMENTS TO THE

#### BOARD OF PROFESSIONAL LICENSING REGULATIONS FOR

#### REAL PROPERTY APPRAISERS

Citation of Statutory Authority

The Board of Professional

Licensing has statutory power to promulgate and effect regulations pursuant to P.L. 14-95, as amended.

Summary of Amendment

The BPL must amend the regulations to include the changes to the appraisal log sheet for trainees as required by the AQB and to correct a typo error under Section 8.5 of the regulations.

Citation of Affected Regulations

Section 4.4(A)(4)(d) and Section 8.5(A)

For Further Information:

Florence C. Sablan

BPL at Tel# 664-4809

Section 4.4 (A)(4)(d) of the Regulations for Real Property Appraiser or Section 125-40-115 (a)(4)(iv) of 125-40, NMIAC Title 125.

- 4.4 A. Trainee Real Property Appraiser Classifications
  - 4. Training
    - d. An appraisal log shall be maintained by the appraiser trainee and shall, at a minimum, include the following for each appraisal:
      - i) Type of property
      - ii) Date of report
      - iii) Client name and address of appraised property
      - iv) A description of the work performed by the trainee or applicant
      - (v) The scope of the review performed by the supervising appraiser
      - (vi) The level of supervision performed by the supervising appraiser
      - vii) Number of actual work hours by the trainee/applicant on the assignment
      - viii) Name, signature and license number of the supervising appraiser

Section 8.5 (A) of the Regulations for Real Property Appraiser or Section 125-40-520 (a) of 125-40, NMIAC Title 125.

- 8.5 Inactive Status
  - A. A license may be placed on an inactive status upon notification to the Board by the licensee in writing of the effective date of inactivation and payment of an inactive <u>fee</u>.

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# KUETPON PROFESIONÅT MANLISENSIA Commonwealth gi Sangkattan na Islan Marianas Siha

P.O. Box 502078 Saipan, MP 96950 Tel.: (670) 664-4809 Fax No.: (670) 664-4813 s-mail: bpl@pticom.com

# NOTISIAN I MAPROPONEN AMENDASION SIHA PARA REGULASION MANLISENSIAN PROFESIONÅT SIHA PARA I REAL PROPERTY APPRAISERS

I Kuetpon Profesionat Manlisensia ("BPL") gaige guini na ha nana'i notisia para i pupbliku henerat na mapropone para u ma'amenda i sigiente siha gi Regulasion para i Real Property Appraisers yan §125-40 gi NMIAC Titulu 125:

- Seksiona 4.4 (A) (d) gi regulasion siha yan i Seksiona 125-40-115 (a) (4) (iv); yan
- Seksiona 8.5 (A) gi regulasion siha yan Seksiona §125-40-520 (a).

I BPL debi na u amenda i regulasion siha para u na'såonåo i tinilaika para i appraisal Qualifications Board (AQB) yan, para u na'dinanche i typo error gi papa' i Seksiona 8.5 gi i regulasion siha.

I Kuetpo ha solisisita infotmasion siha sigun i manmaproponen amendasion siha na debi na u marisibi ni Kuetpo gi halom i trenta (30) diha siha gi este i finene'na na notisian pupblikasion gi halom i Rehistran Commonwealth. Maninteresåo na petsona siha siña manmanggågåo kopia siha ni manmaproponen amendasion ni u ma'ägang ham gi 664-4809 pat gi email gi bpl@pticom.com pat fatto gi ofisina ni gaige gi Bldg. 1242, Pohnpei Ct., Capitol Hill, Saipan. Tinige' infotmasion gi este na amendasion siha debi na u mapega guatu gi ofisinan-måmi pat u mana'hånåo para i BPL, P.O. Box 502078, Saipan MP 96950.

Nina hålom as: Thansing & Murum	5/27/09
Francisco Q. Guerrero	Fecha
Kuetpo, BPL	
Rinisibi as:  Esther S. Fleming Espisiat Na Ayudante Para i Atministrasion	6/04/07 Fecha
Rinisibi as: Inwoloz	06.18.09
Esther M. San Nicolas	Fecha
Rehistran Commonwealth	

JUNE 22, 2009

Settifikasion ginen i Ofisinan Abugådu Heneråt

Sigun i 1 CMC § 2153, komu ma'amenda ginen i Lai Pupbliku 1050, i manmapropone na amendasion siha para i areklamento yan regulasion siha ni mañechetton guini ni manmaribisa yan ma'apreba komu fotma yan sufisiente ligåt ginen i Ofisinan Abugådu Heneråt.

**JUNE 22, 2009** PAGE 029651

# MWIISCHIL PROFESSIONAL LICENSING Commonwealth Téél falúw kka falúwasch Efáng Marianas

P.O. Box 502078 Seipél, MP 96950 Tilifoon. No.: (670) 664-4809 Fax No.: (670) 664-4819

Email: bpl@pticom.com

# ARONG REEL POMWOL LLIWEL KKAAL NGÁLI ALLÉGHÚL MWIISCHIL PROFESSIONAL LICENSING REEL MÉÉL FALÚW (LAND APPRAISERS)

Mwiischil Professional Licensing ("BPL") nge ekke isisiwow arong ngáliir toulap bwe ekke pomwoli bwe ebwe liweli tálil allégh kkaal reel Méél Falúw me Talil 125-40 llol NMIAC Title 125:

- Tálil 4.4 (A) (d) llól allégh kkaal me Tálil 125-40-115 (a) (4) (iv); me
- Tálil 8.5 (A) llól allégh kkaal me Tálil 125-40-520 (a).

BPL ebwe schéschéél lliweli allégh kkaal bwelle ebwe aschuwulong ssiwel kkaal llól tilighial appraisal ngáliir schóóy akkabwung (trainees) iye Mwiischil Appraisal Qualification Board e tittingor (AQB) me, rebwe awela typo error faal Tálil 8.5 llól allégh kkaal.

Schóóy Mwiisch re tittingór aghiyegh, ischil mángemáng reel pomwol lliwel kkaal ikka rebwe bwughil llól eliigh (30) ráálil reel mmwal akkatéél arong yeel llól Commonwealth Register. Schóókka re tipeli rebwe ffailong reel numero ye 664-4809 me ngáre email reel bpi@pticom.com me toolong llol bwulasiyo 1242, Pohnpei ct., Capitol Hill, Seipél, Ischil mángemáng reel lliwel kkaal ebwe isisilong reel bwulasiyo me ngáre akkafang ngáli BPL, P.O Box 502078, Seipél MP 96950.

Francisco Q. Guerrero Samwoolul, BPL

Mwrir sangi:

Esther St. Fleming

Sow Alillisii Sow Lemelen

Rál

Ammwel sángi:

Esther San Nicolas

Commonwealth Register

**JUNE 22. 2009** 

# Alúghúlúgh mreel bwulsiyool Sów Bwungul Allégh Lapalap

Sángi allégh ye 1 CMC Talil 2153, iye aa lliwel mereel P.L. 1050, pomwol lliwel kkaal ngáli allégh kka e appasch nge raa takkal amweri fischi me allégheló mereel Bwulasiyool Sów Bwungul Allégh Lapalap.

Acting ngáli Sów Bungul Allégh Lapalap

6/14/09 Rál