

EMPLOYMENT RULES AND REGULATIONS
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PART 0. AUTHORITY AND PURPOSE

- A. Authority. The Department of Labor (the “Department), pursuant to its powers, duties, and 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, 11-66, 12-11, and 12-58 as amended, does hereby promulgate and issue these regulations that shall govern the hiring of citizens, permanent residents, and foreign national workers in the Commonwealth.
- B. Purpose. The purpose of these regulations is to set forth the necessary procedures and requirements regarding the placement of citizens and permanent resident workers in jobs for which they are qualified or can be trained, to set forth the necessary procedures and requirements regarding the hiring and employment of foreign national workers in jobs that support the Commonwealth’s economy, and to provide procedures for investigating and adjudicating complaints regarding violations of the Commonwealth Employment Act of 2007, PL 15-108; the Minimum Wage and Hour Act, as amended; and Public Laws No. 11-6, 11-66, 12-11, and 12-58 as amended.
- C. Name. These regulations shall be known as the “Employment Rules and Regulations.”

PART I. DEPARTMENT OF LABOR

(Chapter 1 of PL 15-108)

- A. Delegation of authority. (Sections 4401, 4402 of PL 15-108) The Secretary of the Department 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, 11-66, 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 Written delegation of authority previously issued shall remain in full force and effect until rescinded, altered, or modified as circumstances require.
- B. Appearance of conflict. (Section 4403 of PL 15-108) Employees of the Department shall avoid the appearance of conflicts of interest by reporting to the Secretary any contractual interest in an employment agency or other business engaged in recruiting or processing employment-related documents when the contractual interest is held by or for the benefit of the employee or a member of the immediate family of the employee. For purposes of this section, the term “employee” means any person whose salary is paid by or through the Department and any contractor with the Department and the term “immediate family” means parent, sibling, or child. Employees of the Department shall advise the Secretary if any person with a close familial or personal relationship appears before the employee at the Department or requests the employee to act in regard to the exercise of any power of the Department under this Act and shall perform no such act unless permitted in writing by the Secretary.
- C. Preparation and use of standard forms. It is the policy of the Department to use standard forms where possible to simplify administrative tasks, to permit the use of online filing, and to make operations more efficient. The Secretary or a designee may, at any time, amend, modify, alter, or substitute any of these forms, or add new forms as may be necessary for efficient operation

of the Department, all without any amendment of these regulations. The Department may require that information on the standard forms be supplemented as provided in these regulations. Providing a standard form in no way limits the Secretary as to information that may be required in support of an application, request, or submission to the Department.

PART II EMPLOYMENT PREFERENCES FOR CITIZENS AND PERMANENT RESIDENTS

(Chapter 2 of PL 15-108)

SECTION 1: GENERAL

(Chapter 2, Article 1 of PL 15-108)

1. **Definitions.** As used in PL 15-108, the following terms shall, unless the context clearly indicates otherwise, have the following meanings:
 - (a) “Administrative Hearing Office” means the hearing office of the Department of Labor; and for purposes of 1 CMC §§9109 and 9110 as those provisions may apply to these regulations;
 - (b) “Citizen” means a person who is a citizen or national of the United States;
 - (c) “Department” means the Department of Labor;
 - (d) “Domestic helper” means a person who assists an employer with the domestic duties of a household, including but not limited to cooking, cleaning, and care for children, elders, and handicapped persons in the home; and does not include farmers;
 - (e) “Employer” means a person, corporation, partnership, or other legal entity that has a current business license issued by the Commonwealth, is doing business in the Commonwealth, and has one or more approved employment contracts with foreign national workers, or is acting directly or indirectly in the interest of a person, corporation, partnership or other legal entity in relation to an employee; or a person employing a domestic helper, farmer, household maintenance worker, or yard worker; and does not include the government of the United States;
 - (f) “Employment Services” means the Division of Employment Services of the Department of Labor;
 - (g) “Hearing officer” means a hearing officer appointed by the Secretary who serves in the Administrative Hearing Office and who conducts mediations, hearings, and other proceedings as necessary; and for purposes of 1 CMC §§9109 and 9110 as those provisions may apply to these regulations;
 - (h) “Indigenous” means a person generally recognized in the community as a person of Northern Marianas Descent, who is also a citizen or permanent resident of the Commonwealth and speaks the Carolinian or Chamorro language to a degree of fluency such that the person may accomplish the basic daily tasks of life without resorting to a language other than the Carolinian or Chamorro language;
 - (i) “Job classification” means the job classifications described by regulation promulgated by Employment Services;
 - (j) “Permanent resident” means a person who is legally residing in the Commonwealth without restrictions as to employment in the Commonwealth, including but not limited to eligible

immediate relatives of citizens and citizens of the Freely Associated States of the Federated States of Micronesia, The Republic of the Marshall Islands, and the Republic of Palau;

- (k) "Regulation" means a regulation or regulations promulgated by the Secretary of Labor, the Secretary of Public Health, or the Commonwealth immigration authority;
- (l) "Secretary" means the Secretary of Labor.

SECTION 2: PRIVATE SECTOR EMPLOYMENT

Chapter 2, Article 2 of PL 15-108

- A. Management of the labor pool in the Commonwealth: The Labor Department's objective under PL 15-108 is to achieve high quality employment for citizens of the CNMI in productive businesses that drive sustainable economic growth and opportunities. High levels of participation in high quality, well-paid, and diversified employment by an adaptable and skilled workforce will help ensure the economic well-being of the Commonwealth. The Department seeks to make faster and more efficient match-ups of people's skills with the job opportunities that are available and to reduce skill shortages in the future by cooperating with government-private partnership efforts to help people make informed decisions about education and training. At the same time, the Department seeks to provide fair employment opportunities for global skills and talent that support the CNMI's economy in ways that recognize and balance the Commonwealth's objectives with respect to full employment for its citizens. Citizen and permanent resident employment and foreign national worker employment are both necessary components of the Commonwealth's economic success in the future.
- B. Primary job preference. (Section 4521 of PL 15-108) Citizens and permanent residents shall be given a primary preference for employment in the Commonwealth. This requirement underlies all regulations with respect to the hiring, renewal, replacement, and termination of employees. An important part of the implementation of the primary job preference is emphasis on jobs and occupations for which citizens and permanent residents are or can be qualified and which should be attractive to them. A Jobs Study by the Office of Public Auditor in 2006 and 2007 provided useful observations and conclusions in these regards. For this purpose, four categories of jobs merit special attention.
 - 1. The "A" list. In the past, certain job classifications were reserved for citizens and permanent residents entirely, or available only on a one-to-one basis with foreign national workers. These job classifications continue to merit the most careful attention and emphasis in implementation of the preference for citizens and permanent residents. These are:
 - (a) Accounting clerk
 - (b) Bookkeeping clerk
 - (c) Bus driver (including transit, tour, and school bus driver)
 - (d) Custodian
 - (e) Hotel front desk clerk
 - (f) Janitor
 - (g) Messenger, courier

- (h) Receptionist, information clerk
 - (i) Retail trade cashier
 - (j) Retail trade clerk
 - (k) Secretary (other than legal, medical, and executive)
 - (l) Security guard
 - (m) Surface tour boat operator, motor boat operator
 - (n) Taxi driver, chauffeur
 - (o) Telephone receptionist, responder, answering service
 - (p) Tour guide and escort
2. The "B" List. Certain jobs, *in addition to* the "A" list, warrant special efforts to place citizens and permanent residents. These are:
- (a) Accountant
 - (b) Brickmason, blockmason, stonemason
 - (c) Cement mason, concrete finisher
 - (d) Electrician
 - (e) Executive secretary, administrative assistant
 - (f) Heating and airconditioning mechanic, installer
 - (g) Human resource manager
 - (h) Operating engineer, other construction equipment operator
 - (i) Paving, surfacing, and tamping equipment operator
 - (j) Refrigeration mechanic, installer
 - (k) Service station attendant
 - (l) Ship captain, boat captain
 - (m) Stock clerk, stockroom, warehouse, storage yard
 - (n) Truck driver, light or delivery services
3. The "C" list. Certain jobs require an orientation or transition period but after appropriate training or on-the-job training can readily be filled by citizens and permanent residents. These are:
- (a) Auditing clerk
 - (b) Auto mechanic
 - (c) Carpenter
 - (d) Cook
 - (e) Maintenance building repairer
 - (f) Sales representative
 - (g) Secretary, legal, medical, and executive
 - (h) Stock clerk, sales floor
 - (i) Warehouse worker
4. The "D" list. Particular care must be given to the preference for citizens and permanent residents in filling any job for which the wage is more than \$10 per hour. All jobs for which the wage rate or equivalent salary is \$10 per hour or more are included on the "D" list.

Examples of these relatively high-paying jobs that citizens and permanent residents can be available to fill are:

- (a) Assistant manager, housekeeping
- (b) Customer complaint clerk
- (c) Diving instructor
- (d) Financial controller
- (e) Food & beverage manager
- (f) Front office manager
- (g) Guest service manager
- (h) Inventory controller
- (i) Kitchen manager
- (j) Maintenance manager
- (k) Preschool teacher
- (l) Sales manager, marketing manager
- (m) Station manager

C. Secondary job preference. Foreign national workers who are currently in the Commonwealth shall be given a secondary preference for employment within the Commonwealth. Employment Services shall provide services to foreign national workers who are in the Commonwealth, who have abided by Commonwealth law and worked productively, and who seek to continue their employment in the Commonwealth. Foreign national workers who fill jobs that support the CNMI economy, in an appropriate balance with the Commonwealth's objectives regarding citizen employment, are a valuable resource to the Commonwealth and their work and contributions are important.

D. Job vacancy announcement. (Section 4522 of PL 15-108)

1. Job vacancy announcement. Any employer may submit a proposed job vacancy announcement to Employment Services by e-mail to the address provided by the Department or in writing in order to utilize the referral service in locating a suitable employee. An employer who intends to employ a foreign national worker (under a new employment contract, a renewal of existing employment contract, or a transfer from an existing employment contract) must submit a proposed job vacancy announcement to Employment Services. The proposed job vacancy announcement shall include a job description, a statement of the wages to be paid, a statement of all benefits to be provided, and, if applicable, a statement that the job posted in connection with a proposed renewal or transfer of a foreign national worker or is posted in connection with a proposed off-island replacement for a foreign national worker. The job description shall be defined by the Occupational Information Network (O-NET) which is an online database that stores information on occupational titles based on the most current version of the Standard Occupational Classification (SOC) System. The O-NET is found at <http://online.onetcenter.org>. For specialty jobs not adequately defined by O-NET classifications a parenthetical description may be appended to the closest O-NET classification. The statement of wages shall include the hourly or bi-weekly amount to be paid and any statement required to comply with regulations issued pursuant to the Resident

Workers Fair Compensation Act. Employment Services shall review job vacancy announcements and approve those that meet all requirements.

2. Employer registration. Citizens, permanent residents, and foreign investors may register with Employment Services online at www.marianaslabor.net or in writing in order to utilize the services available to employers from Employment Services. Registrants shall complete a standard form for registration and shall provide the Tax Identification Number issued by the Division of Revenue and Taxation and an industry code from the North American Industrial Classification System (NAICS) appropriate to their line of business. The NAICS is available online at www.census.gov/epcd/www/naics.html. Employment Services shall review employer registrations and approve those that meet all requirements. Approved employer registrations remain in effect until further notice from Employment Services.
 - (a) Disqualification. Persons who entered the Commonwealth for employment may not employ others or utilize the services available to employers from Employment Services.
 - (b) Employer solvency. An employer must be financially solvent and able to meet the obligations of an employment contract in order to utilize Employment Services. If a foreign national worker is employed, the bonding requirement for employer obligations will meet this requirement. However, Employment Services also has responsibility for referring local residents for whom no bonding is required. Employment Services may, at its discretion, evaluate employer financial capability upon receipt of a proposed job vacancy announcement. Employment Services may request such other evidence of solvency as is required for an evaluation. Employment Services may reject a proposed job vacancy announcement if it finds the employer has presented insufficient evidence that the employer is financially capable.
 - (c) Financial requirements for non-business employers. A non-business employer is a single individual person who is not incorporated or operating as a partnership or limited liability company and who does not have a business license.
 - (i) Non-business employers may employ full time foreign national workers only as domestic helpers, farmers, household maintenance workers, and yard workers.
 - (ii) Non-business employers must not currently be receiving nor within the past year have received assistance from the Nutrition Assistance Program, Security Supplemental Income from the Social Security Administration, any government subsidy in the form of public utilities from the Commonwealth Utilities Corporation, or low income housing from the Mariana Islands Housing Authority.
 - (iii) A non-business employer must earn an annual wage or salary equal to or greater than 110% of the United States Department of Health and Human Services Poverty Guidelines for the State of Hawaii. These guidelines are at *Federal Register*, Vol. 72, No. 15, January 24, 2007, pp. 3147–3148 or at <http://aspe.hhs.gov/poverty/07poverty.shtml>.

(iv) Members of a household may aggregate their income for purposes of qualifying as a non-business employer, but every person whose income is considered for purposes of meeting the financial requirements of this section must sign the foreign national worker's approved employment agreement and thereby becomes fully responsible, jointly and severally, for all of the employer's obligations under the agreement.

(d) Tax standing. An employer must be in good standing with respect to the payment of all taxes in order to utilize Employment Services. Employment Services shall obtain from the employer a certification of good standing from the Department of Revenue and Taxation.

(e) Outstanding complaints and judgments. An employer must have no outstanding judgments arising out of Department proceedings or outstanding billings from the Commonwealth Health Center on behalf of a foreign national worker that are more than 60 days in arrears, except matters on appeal. An employer with more than one outstanding complaint pending with the Department may not be a suitable employer who should be permitted to utilize Employment Services. Employment Services may reject a proposed job vacancy announcement if it finds the employer has presented insufficient evidence that outstanding judgments or complaints should not disqualify the employer.

E. Job referral and advertising. (Section 4523 of PL 15-108)

1. Immediate publication of job vacancy announcements. Approved job vacancy announcements from registered employers shall be published immediately on the Department's website, at no charge to the employer, and shall remain on the website for as long as the job is vacant or until Employment Services issues a certification of compliance allowing the job to be filled by a foreign national worker. Alternatively, if the website is not available, the job vacancy announcement may be published for two days in each of two successive weeks in an English-language newspaper of general daily circulation in the Commonwealth. Employment Services may require, upon notice to the employer, publication in Chinese or Korean language newspapers for certain unskilled jobs under particular circumstances when utilization of on-island foreign national workers is more likely to come from these sources.
2. Referral service. Employment Services shall provide a referral service for citizens, residents, and foreign national workers located in the Commonwealth. This service shall match information about prospective employees with information about job vacancies so that private sector jobs may be filled expeditiously with qualified persons who are willing and able to do the work required by the employer.
3. Job applicant registration. Citizens, permanent residents, and foreign national workers may register with Employment Services for assistance in finding employment in the Commonwealth. Registrants shall complete a standard form for registration online or in writing. Registered applicants may post resumes on the Department's website.

4. Orientation and assistance to registered persons seeking employment. Employment Services will provide orientation materials to help applicants with job applications and interviews and with referrals to other agencies that provide related assistance.
5. Cataloging and evaluation of skills. Employment Services will catalog and evaluate the skills, qualifications, and interests of applicants seeking employment in order to be able to match applicants with job vacancy announcements. For jobs with a legitimate requirement for fluency in a foreign language, Employment Services will evaluate oral foreign language skills through the use of standard conversational tests administered by translators employed or contracted by the Department. Employment Services will evaluate written foreign language skills through the use of standard written tests administered by translators employed or contracted by the Department.
6. Referral List. Employment Services shall maintain a current list of all persons who have registered within the past six months and who have not yet become employed.
7. Employment referral. With respect to each job vacancy announcement, Employment Services shall determine whether any person on the Referral List is qualified for the vacancy. If candidates are available from the Referral List, a suitable number of qualified candidates will be referred to the employer within five (5) working days after receipt of the proposed job vacancy announcement.
8. Employer action on referrals. After receiving a referral from Employment Services, an employer may take any of the following actions:
 - (a) Any citizen or permanent resident may be hired rather than a person referred by Employment Services without any justification required to be submitted to Employment Services.
 - (b) In cases where more than one applicant is referred by Employment Services, any applicant referred may be hired rather than any other applicant referred without any justification required to be submitted to Employment Services.
 - (c) Employers may reject persons who are referred by Employment Services using the employer's normal hiring criteria in compliance with Commonwealth law with a short statement of reasons submitted to Employment Services.
 - (d) Employers may reevaluate their employment needs and hire no one for the proposed position. In this case, the employer shall notify Employment Services that the vacancy no longer exists.
9. Good faith effort to hire. An employer must make a good faith effort to hire a citizen or permanent resident for a job vacancy apart from the referral service provided by Employment Services in the event that referral service is unsuccessful in locating a qualified applicant. A good faith effort may include :

- (a) Posting of the job vacancy announcement at the employer's place of business and with the Workforce Investment Agency, the Office of Vocational Rehabilitation, the Adult Development Institute at the Public School System, the Northern Marianas College, and other suitable locations;
- (b) Publication in church bulletins and other newsletters, magazines, or similar publications that have a substantial audience with citizens and permanent residents and may appear less frequently than the newspapers of general circulation normally used to advertise jobs under Part II, Section 2(D)(10).
- (c) Outreach for candidates from the mainland United States if local citizens and permanent residents are not available.
- (d) If required under Part VI, Section 3(A)(12), an employer must have filed with Employment Services a workforce plan acceptable to the Director of Employment Services targeted at the particular job.

A certification of compliance may be issued only upon completion of action on referrals and a showing by the employer of a good faith effort to hire a citizen or permanent resident worker for the job.

10. No waivers. There are no waivers available with respect to the publication requirement. However, the publication requirement, like all other sections of Part II of these regulations, does not apply to certain employers who fall within one of the four exemptions in Section 4526 of PL 15-108. (See Part II, Section 2(G).)
11. Publication filing. If the 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, 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;
12. Employer declaration. Within fourteen (14) days after publication, the employer shall file a declaration on a standard form by e-mail to the address provided by the Department or in writing with respect to the citizens and permanent residents who applied for the job, the action taken on each application, and a short statement of the reasons for rejecting any applicant referred by Employment Services.
13. 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 Director of Labor within ten (10) days after the date of the denial. If affirmed, the denial may then be appealed to the Administrative Hearing Office within fifteen (15) days after the date of the denial. (See Part VI, Section 4(A)(10).)

14. Certification of compliance. If no qualified citizen or permanent resident applicant is identified through publication, referral, or good faith efforts to hire, Employment Services shall issue to the employer a certification of compliance document in the standard form prescribed by the Department.
15. Career guidance. Employment Services will be proactive in coordinating with representatives of the Workforce Investment Agency, the Public School System, the Northern Marianas College, the CNMI Office of Personnel Management, representatives of private educational institutions in the Commonwealth, the Department of Commerce, or the Strategic Workforce Action Team (SWAT) to discuss and cooperatively implement ways to improve career guidance for citizens and permanent residents.
16. Education and training resources. Employment Services will maintain a current inventory of useful education and training resources in the Commonwealth, and will provide persons who register with information about these resources available to help improve job skills and competency.
17. Implementation of secondary job preference. Foreign national workers may register with Employment Services at any time during or at the termination of a contract or during the 15-day period after termination of a contract. If, in the implementation of the secondary job preference for foreign national workers who are currently located in the Commonwealth, an appropriate job opportunity is identified either by Employment Services or by the foreign national worker, Employment Services shall transmit promptly to a hearing officer an inquiry about the proposed employment. If the hearing officer finds that the employee has no disqualification and the employer has no outstanding unpaid judgments more than 60 days overdue in respect of Department of Labor proceedings or other disqualifications, the hearing officer may authorize the foreign national worker to be employed on a temporary basis and may authorize the employer to file all necessary materials to meet the requirements of Section 4922. The hearing officer shall act within five business days on each inquiry from Employment Services in this regard. The Administrative Hearing Office shall hold hearings on the third Wednesday of each month with respect to all pending temporary authorizations. If no written objection is filed at least five days prior to the hearing date by the Director of Labor, the Director of Employment Services, the foreign national worker, or the current temporary employer of the foreign national worker, the hearing officer may grant an administrative transfer so that a foreign national worker may become employed by the temporary employer under a new approved employment contract without first exiting the Commonwealth.

F. Compliance with Resident Workers Fair Compensation Act, 4 CMC §9501 et seq. (Section 4524 of PL 15-108)

[RESERVED. The regulations on medical insurance are published by the Secretary of Public Health. Until such regulations are released for comment and then published in final form, a determination with respect to equivalent benefits under the RWFCFA cannot be completed. See also Part VI, Section 2(C) and Part VI, Section 3(B) which also await the regulations from the Secretary of Public Health.]

G. Work force participation by citizens and permanent residents. (Section 4525 of PL 15-108)

1. Participation requirement. In the full-time work force of any employer, the number of citizens and permanent residents employed shall be at least twenty (20) percent of all employees and this requirement shall be at least thirty (30) percent by the year 2013. The phase-in to thirty (30) percent shall occur as follows: for the calendar years 2008, 2009, and 2010 the requirement will remain at twenty (20) percent; for the calendar years 2011 and 2012 the requirement will be twenty-five (25) percent; and for the year 2013 and thereafter, the requirement will be thirty (30) percent.
 - (a) For purposes of this requirement, a full-time employee is one who works the minimum hours and weeks for a full-time position as defined by federal law. All foreign national workers employed under approved employment contracts are full-time employees.
 - (b) For purposes of this requirement, an employer may aggregate one or more part-time jobs filled by citizens or permanent residents into the hours required for a full-time job. Under these circumstances, more than one employee is performing the “job” for the employer. This flexibility allows citizens and permanent residents who prefer to work part-time to have more access to the job market and allows employers to keep valuable citizen employees who prefer to work part-time.
 - (c) The citizen and permanent resident participation requirement applies during a calendar year to the average number of full-time employees during the year or portion of a year. An employer may compare the average number of full-time employees who are citizens and permanent residents during a calendar year to the average number full-time employees in determining compliance with the percentage requirement. Alternatively, an employer may compare the actual number of full-time employees who are citizens and permanent residents during a calendar year to the actual number of full-time employees. The requirement applies at the time of hire of a foreign national worker.
2. Employment on more than one island. If an employer operates on more than one island, the citizen and permanent resident participation requirement applies in aggregate to all islands. Employees on any island are counted toward the aggregate minimum percentage on all islands.
3. Employment of consultants. For purposes of the participation requirement, the term “citizens and permanent residents employed” shall not include consultants, advisers, or agents who are independent contractors or who are not full-time employees.
4. No waivers. There are no waivers available with respect to the participation requirement. However, the participation requirement, like all other sections of Part II of these regulations, does not apply to certain employers who fall within one of the four exemptions in Section 4526 of PL 15-108 (see subsection H below).

5. Reports. Each employer of foreign national workers shall submit quarterly a brief report on a standard form provided by the Department showing any applicable exemption and, for non-exempt employers, for each employee, the full name; classification as citizen, permanent resident, or foreign national worker; classification as full-time, part-time, or part-time aggregated (see subsection 1(b) above) and last four digits of the social security number or the entire LIIDS number. The report may be submitted by e-mail to the address provided by the Department or in writing, and a current report must be on file with Employment Services showing compliance with the workforce participation requirement in order for a certification pursuant to Part II, Section 2(E)(13) to be issued by Employment Services.

H. Exemptions. (Section 4526 of PL 15-108)

1. 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. For purposes of this section, all full-time employees are counted.
 - (a) An employer against whom two or more judgments are entered in Department proceedings within any two year period automatically loses this 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.
 - (b) An employer with fewer than five employees who has been in operation in the Commonwealth for three years or more and all retail establishments that handle food stamps no matter how long in operation shall have at least one citizen or permanent resident employee after June 30, 2008.
2. Particular construction project. An exemption for a particular construction project is available by written order signed by the Secretary.
 - (a) A “particular” project means a project limited to one building or one infrastructure improvement. “Limited duration” means two years or less.
 - (b) An application for an exemption for a particular construction project shall be made in writing, signed by the employer, stating the name of the project, the purpose of the project, the nature of the construction, the location of the project, the total cost of the project, the duration of the project, the number of foreign national workers to be employed on the project, the O-NET job classifications of the workers on the project,

and the arrangements made to repatriate each worker within seven (7) days of the completion of the project.

- (c) Each foreign national worker employed on a construction project under this exemption shall receive from the employer, upon arrival in the Commonwealth, a notice containing a clear explanation of the limitations on the worker's eligibility to remain in the Commonwealth.
3. Incentive exemption. An incentive exemption shall be available if the citizen and permanent resident employees in the full-time work force of an employer in specified job categories exceeds substantially thirty (30) percent of the employer's total full-time work force in these positions. The incentive benchmark is thirty-five (35) percent for A-List and B-List jobs aggregated within the employer's workforce (See Part II, section 2(B)).
4. Light manufacturing employer holding waiver prior to Jan. 1, 2007. Certain light manufacturing employers have in the past held waivers applicable to statutory and regulatory requirements comparable to the requirements of Part II of these regulations. These past waivers have been long-standing, and business expectations and plans rest on those waivers. An exemption is available for any light manufacturing employer holding a waiver prior to Jan. 1, 2007. For purposes of this section, "manufacturing" means the transformation of raw materials into finished goods for sale, or intermediate processes involving the production or finishing of semi-manufactures. "Light manufacturing" means a light industrial use where all processing, fabricating, assembly, or disassembly of items takes place wholly within an enclosed building. Typical items for processing, fabricating, assembly, or disassembly under this use include but are not limited to apparel, food, drapes, clothing accessories, bedspreads, decorations, artificial plants, jewelry, instruments, computers, and electronic devices.
- I. Investigation. (Section 4527 of PL 15-108) The Director of Labor shall conduct investigations as necessary and appropriate to enforce the provisions of PL 15-108 and the regulations promulgated thereunder to ensure lawful working conditions, employer-supplied benefits, and health and safety for citizens, permanent residents, and foreign national workers. In conducting these investigations, the Director shall have all of the powers delegated and described with respect to inspections and investigations conducted pursuant to Part VI of these regulations.
- J. Adjudication of claims. (Section 4528 of PL 15-108)
1. The adjudication of claims under Section 4528 of PL 15-108 shall proceed according to the rules and regulations in Part VI, Section 4 below. Claims must be filed in accordance with the time limits in Section 4962(b) of PL 15-108. No complaint may be filed more than six months after the date of the last-occurring event that is the subject of the complaint, except in cases where the actionable conduct was not discoverable upon the last-occurring event. In such instance no complaint may be filed more than six months after the date a complainant of reasonable diligence could have discovered the actionable conduct.

2. The term “just cause” for rejecting an application for employment includes all of the lawful criteria that an employer normally applies in making hiring decisions such as rejecting persons with criminal records for positions of trust, rejecting persons without an educational degree necessary for the position, rejecting persons with no favorable recommendation from prior employment, rejecting persons with an employment history indicating an inability to perform the job successfully, rejecting persons with an educational background making it unlikely that the necessary education or training to hold the position could be accomplished successfully within a reasonable time, and similar just causes.
 3. All hearings shall be open to the public.
 4. A hearing officer is authorized to award actual damages for any out-of-pocket costs attributed directly to the action of the employer in refusing employment and liquidated damages of up to six months wages if actual damages are uncertain or cannot be ascertained under a satisfactory or known rule, provided however, any damages award, no matter what components are included, cannot exceed six months’ wages for the job for which a citizen or permanent resident applied.
 5. A hearing officer is authorized to levy a fine not to exceed \$2,000 for each violation by an employer.
- K. Statistical data. (Section 4529 of PL 15-108) The Department will aggregate the NAICS data for full-time employees and part-time employees who are citizens and permanent residents into the following categories for purposes of the Department’s annual report.
1. Professional, technical, and managerial
 2. Clerical, sales, and service
 3. Agricultural, fisheries, forestry, and groundskeeping
 4. Light manufacturing
 5. Construction and structural work
 6. Care for children, elders, or handicapped persons in the home, housework, gardening, and related private residence work
- L. Online implementation. The functions of Employment Services will operate online using a website the URL of which is www.marianaslabor.net. The purpose of moving various functions online – such as posting of job vacancy announcements, posting of resumes with the applicant’s consent, delivery of responses and determinations by the Department, delivery of statements and declarations required of employers, notices, regulations, and other materials – is to make Employment Services processes faster, more efficient, and less costly for the Department, employers, and job seekers. Employment Services will issue guidance for employers and applicants for the use of the website to file materials and to access information. Employers of twenty-five (25) or more employees will be required to use available online functions on and after March 1, 2008. Employers of ten (10) or more employees will be required to use available online functions on and after May 1, 2008. All employers will be required to use available online functions on and after September 1, 2008. Applicants for employment will use the online functions at their option and always will have the option of providing paper copies in person at the Department.

PART III. MORATORIUM ON THE HIRING OF FOREIGN NATIONAL WORKERS

(Chapter 3 of PL 15-108)

- A. Moratorium phase-out. (Section 4601 of PL 15-108) The moratorium is phased out as follows:
1. 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.
 2. 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.
 3. As of January 1, 2010, the moratorium does not apply to agricultural, fishing and fisheries, forestry, and groundskeeping positions.
 4. As of January 1, 2011, the moratorium expires with respect to all remaining positions.
 5. Applications to bring foreign national workers to the Commonwealth, to renew foreign national workers, or for administrative transfers by foreign national workers may be submitted in advance of the date on which the moratorium no longer applies to the employer to take effect after the date on which the moratorium no longer applies to the employer.
- B. Exemptions. (Section 4602 of PL 15-108) While the moratorium is being phased out, there are six exemptions to the moratorium, and these are defined areas of economic growth and development and areas set aside for the preservation of the tax base of the Commonwealth. Exemptions are claimed on a standard form. A claim of exemption shall be either granted or denied by the Director of Labor. A denial may be appealed to the Administrative Hearing Office within fifteen (15) days after the date of the denial. (See Part VI, Section 4(A)(10).)
1. Renewals. The renewal of an approved employment contract with a foreign national worker is governed by Section 4935 of PL 15-108. See regulations with respect to that section. If a renewal is available under Section 4935 of PL 15-108 and the procedures required by that section are followed, the renewal is not affected by the moratorium. Neither Section 4935 of PL 15-108 nor any other provision of PL 15-108 provides any right to a renewal, either for the employer or the employee. The Department may, under the conditions and criteria provided in these regulations, deny any renewal application.
 2. Replacements. A replacement is a foreign national worker not currently present in the Commonwealth.
 - (a) Preference for workers currently located in the Commonwealth. An employer seeking an exemption from the moratorium for a replacement worker shall first contact

Employment Services so that eligible foreign national workers already in the Commonwealth can be placed. A foreign national worker who is working under a Temporary Work Authorization issued by a hearing officer (see Part VI, Section 4(A)(18)) or a foreign national worker who transfers to an employer through an administrative order issued by a hearing officer (see Part II, Section 2(F)(17) and Part VI, Section 4(G)(4)) is not a replacement, and employment of TWA workers and workers holding transfers is not limited by the moratorium.

(b) Requirements.

- (i) A replacement worker may be hired only when a foreign national worker has actually departed the Commonwealth or the employer has reported to the Department that the employee is missing and cannot be located. See Part VI, Section 3(H)(2)(b). A replacement worker may be hired only for a position for the same employer and within the same O-NET job classification as the departed worker.
- (ii) A claim of exemption for replacement may be denied if the foreign national worker being replaced departed the Commonwealth after filing a complaint and being awarded relief or if the Director of Labor finds any violation of Commonwealth law in connection with the employment of the foreign national worker being replaced.
- (iii) The employment of a replacement must comply with Part II of these regulations.
- (iv) The entry permit is an important control that assists in maintaining the proper status of foreign nationals within the Commonwealth. Failure to return an entry permit or file the required notice for a departing worker is grounds for denial of a replacement. See Part VI, Section 2(E)(6).
- (v) Periodic exit: Foreign national workers who exit the Commonwealth pursuant to Part VI, Section 5(C) and elect not to return to the Commonwealth in an employment status may be replaced without regard to the moratorium.
- (vi) Religious leaders: Persons who qualify as religious leaders and enter the Commonwealth pursuant to Part VI, Section 2(G) are not subject to the moratorium.

3. Incentive hiring. This exemption is intended to allow the growth, through the use of foreign national workers, of the businesses of employers who have an exemplary record of employing citizens and permanent residents. An incentive exemption shall be available if the citizen and permanent resident employees in the full-time work force of an employer in specified job categories exceeds substantially thirty (30) percent of the employer's total full-time work force in these positions. The incentive benchmarks are as follows:

- (a) A-List jobs: thirty-five (35) percent
- (b) B-List jobs: thirty-five (35) percent

(c) C-List jobs: thirty-five (35) percent

(d) D-List jobs: thirty-five (35) percent

4. Visitor industry supporting services. This exemption is intended to allow the growth, through the use of foreign workers, of the businesses that support the visitor industry and that have a good record of employing citizens and permanent residents. In order to qualify for an exemption, an employer must demonstrate:

(a) Compliance with the requirement that twenty (20) percent of the full-time work force be citizens and permanent residents.

(b) Alternatively, that compliance will be met within one year as to the requirement that twenty (20) percent of the full-time work force be citizens and permanent residents. This provision permits new businesses and expanding businesses some leeway to accomplish the necessary hiring. Compliance is determined on an annual basis from one year after the date of the grant of the exemption.

“Visitor industry supporting services” means businesses that supply services to tourists, residents, and others, but whose customers are, in significant part, persons visiting the Commonwealth as tourists. This exemption recognizes that a web of commercial services supports the visitor industry and is necessary for it to prosper.

5. Major new development. Applicants for the grant of an exemption for a major new development must submit documentation and supporting information to demonstrate that the necessary findings can be made by the Secretary, that:

(a) The major new development is in the best interest of the Commonwealth. This may be demonstrated by participation in or support of income-generating activities that will significantly expand the tax base of the Commonwealth’s economy, attract additional visitors, extend the stay of existing visitors, or other similar factors.

(b) The prospective employer has invested at least \$1 million in the Third Senatorial District or \$250,000 in the First or Second Senatorial Districts in a building, facility, or infrastructure where the exempted employment will occur. Except in unusual circumstances, this must be demonstrated by submission of an audited financial statement.

Projects that receive an exemption for a construction project under Part II, Section 2(G)(2) from the requirement for participation of citizens and permanent residents in the workforce may also receive an exemption under this subsection. The exemptions must be applied for separately.

6. Legislated hiring. Certain light manufacturing operations have had a legislated exemption in order to promote economic growth, and that exemption has been relied upon with respect to these businesses. Those legislated hiring provisions are continued.

- C. Reserved. (Section 4603 of PL 15-108)
[RESERVED]
- D. Employment requirements. (Section 4604 of PL 15-108) If an exemption to the moratorium is available, and a foreign national worker is hired, all of the requirements of Part VI of these regulations with respect to the employment of foreign national workers must be met. No provisions of Part VI of these regulations are waived by qualification for an exemption from the moratorium.
- E. Reserved. (Section 4605 of PL 15-108)
[RESERVED]
- F. Enforcement. (Section 4606 of PL 15-108)
[RESERVED]
- G. Penalties. (Section 4607 of PL 15-108)
[RESERVED]

PART IV. RESERVED

(Chapter 4 of PL 15-108)

PART V. CERTIFICATION PRE-CLEARANCE

(Chapter 5 of PL 15-108)

- A. Required clearances. (Section 4801 of PL 15-108) Certain Commonwealth statutes, rules, regulations, policies and practices require certifications of various kinds. If the documentation comes from outside the Commonwealth, the Department accepts only documentation from approved persons, agencies, and entities covered by Part V, Section B below. Examples are health certifications (Part VI, Section 2(C)), police clearances, marriage and birth records, (Part VI, Section 2(B)(4)).
 - 1. Approved list. (Section 4802 of PL 15-108). The list of approved persons, agencies, and entities published by the United States Department of State, the United States Citizenship and Immigration Service and the United States Department of Justice may be obtained from the Secretary's office.
 - 2. The Secretary has made no determination with respect to any other persons, agencies, or entities.
- B. Limited applicability of Administrative Procedure Act. (Section 4803 of PL 15-108)
[RESERVED]

PART VI. EMPLOYMENT OF FOREIGN NATIONAL WORKERS

(Chapter 6 of PL 15-108)

SECTION 1: GENERAL

(Chapter 6, Article 1 of PL 15-108)

1. Definitions. The definitions in Part II, Section 1 are incorporated by reference and, in addition, as used in this Part VI, the following terms shall, unless the context clearly indicates otherwise, have the following meanings:
 - (a) “Approved employment contract” means a written contract between a foreign national worker and an employer, which has been approved by the Secretary, specifying the terms and conditions for work to be performed by the foreign national worker within the Commonwealth;
 - (b) “Approved health insurance contract” means a written contract executed by an employer, providing coverage for health care costs of one or more foreign national workers, in a form that has been approved by the Secretary of Public Health;
 - (c) “Approved security contract” means a written contract executed by an employer providing full security for all employer obligations with respect to the employment of foreign national workers as required by this chapter, in a form that has been approved by the Secretary;
 - (d) “*Bona fide* non-profit religious undertaking” means a religious organization legally established or incorporated in the Commonwealth that is exempt from Commonwealth taxation, or U.S. taxation as an organization described in 26 U.S.C. §501(c)(3);
 - (e) “Debarment” means, pursuant to an administrative order, the temporary or permanent prohibition on employment by an employer of foreign national workers;
 - (f) “Entry permit” means the entry permit card issued by Commonwealth immigration authority using the Labor and Immigration Identification Data System (LIIDS) or comparable system, and delivered to a foreign national worker pursuant to this chapter;
 - (g) “Foreign national worker” means any person who is not a citizen of the United States or a permanent resident of the Commonwealth who enters the Commonwealth for the purpose of being employed or otherwise to perform services for compensation in the Commonwealth; but does not include persons exempted pursuant to section 4965;
 - (h) “Immediate family” of a foreign national worker means a legally recognized spouse or a child, whether natural or adopted, if adopted before his or her 18th birthday;
 - (i) “Mediation” means an informal, non-public, confidential meeting attended by the parties to a labor dispute or potential labor dispute together with a mediator at the Administrative Hearing Office in order to seek a voluntary resolution of the dispute satisfactory to all parties and reflected in a written agreement;

- (j) "Repatriation" means the exit from the Commonwealth and travel to the point of hire for a foreign national worker or member of the immediate family of a foreign national worker whether by voluntary action of the foreign national worker or by deportation; and in the case of the death of a foreign national worker while in the Commonwealth, the embalming and shipment of the body to the point of hire;
- (k) "Termination" means, with respect to an approved employment contract, the expiration of the contract according to its terms, termination by a party for cause or as otherwise permitted by this chapter during the term of the contract, or termination by the Secretary for cause during the term of the contract; and
- (l) "Transfer" means any process by which a foreign national worker who enters the Commonwealth pursuant to an approved employment contract with one employer becomes employed by a different employer without first exiting the Commonwealth.

SECTION 2: ENTRY INTO THE COMMONWEALTH

Chapter 6, Article 2 of PL 15-108

- A. Entry by foreign national workers. (Section 4921 of PL 15-108) Airport processing. When a foreign national worker arrives at the airport for initial entry to the Commonwealth, he or she shall have for inspection by the Commonwealth immigration authority a copy of the approved employment contract for the worker's services and a copy of the sworn affidavit required under Part VI, Section 2(B)(4) of these regulations. If the affidavit was executed outside the Commonwealth, the foreign national worker shall attest under penalty of perjury that all information contained in the affidavit is true. The arriving foreign national worker shall sign a standard form in the worker's native language with an English translation attached attesting to notice with respect to the description of the job in the employment contract, attesting to notice with respect to attendance at an orientation session, specifying any recruiting agreement, and acknowledging receipt of the telephone numbers and offices where assistance will be provided in case there are any problems locating the employer or the job. If a foreign national worker cannot complete these requirements at the airport for any reason, the worker may be paroled into the Commonwealth for a specified period of time in which to correct deficiencies or may be repatriated.
- B. Approved employment contract. (Section 4922 of PL 15-108) An application for approval of an employment contract must be signed by a director, officer, or manager of a corporation or other business organization and must be submitted to the 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, or may hold the application for no more than ten (10) days to give the employer an opportunity to correct deficiencies. A

checklist of deficiencies shall be on a standard form. A denial shall be on a standard form. No other documentation with respect to a deficiency or 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 Part VI, Section 4(A)(10).). An application for approval of an employment contract shall be accompanied by the following documentation:

1. Certification of compliance document from Employment Services. See Part II, Section 2(E)(13) above.
2. Proposed employment contract. A standard form contract provided by the Department and signed by the foreign national worker that complies with all applicable Commonwealth laws.
3. Proposed health insurance contract. A contract signed by the employer (after the date on which the Secretary of Public Health publishes final regulations in that regard) that would cover the foreign national worker if entry to the Commonwealth is granted.
4. Worker affidavit. A sworn affidavit from the foreign national worker, executed under penalty of perjury in accordance with Part VI, Section 2(A)(3) of these regulations, as to the foreign national worker's age of 21 years or more; a minimum of two (2) years experience in the O-NET job classification for which the contract has been entered; receipt and understanding of the Notice to Foreign National Workers provided by the employer; marital status and identity, age, address, and relationship of immediate family members; and criminal record, if any; and the payment of recruiting fees in the country of origin and the identification of the recruiting agency or agent. The affidavit shall be accompanied by a color photo and an original or certified copy of a birth certificate and police clearance. No employer shall be held liable for false information contained in the affidavit unless the employer has knowledge that the information is false. A standard form of affidavit is provided by the Department.
5. Employer good standing. A certification by the Division of Revenue and Taxation of the employer's good standing with respect to any current business licenses for activities in which the foreign national worker will be engaged and current full payment of all taxes; a copy of the employer's business license; and a certification by the Commonwealth Health Center of no outstanding bills more than 60 days in arrears with respect to medical care for any foreign national worker. The Department will check information provided by the Department of Finance with respect to any checks that have failed to clear in order to determine good standing in that respect.
6. Recruiting agreement. A copy of any recruitment agreement made between the employer and the foreign national worker, or between the employer and a recruitment agent or agency with respect to the foreign national worker.
7. Notice to Foreign National Workers. A copy of the notice required under Part VI, Section 3(H) that has been delivered to the prospective foreign national worker. A standard form of notice is provided by the Department.

8. Employer waiver, consent, and certification. A waiver, consent, and certification shall be provided in the form provided by the Department.
- (a) A waiver shall be provided of rights to confidentiality concerning records with respect to the employer in the possession of other government agencies. Such records may be made available to the Department, upon its request, for purposes of administering the labor laws.
 - (b) An express written consent shall be provided with respect to administrative inspections by the Department of the employer's worksites in accordance with the provisions of Part VI, Section 3(I) of these regulations.
 - (c) A certification shall be provided, under penalty of perjury, by the employer of satisfaction and compliance with all Commonwealth statutory and regulatory requirements for preference for the employment of citizens and permanent residents set out in Part II of these regulations; all applicable statutory or regulatory requirements of the United States; and all regulatory requirements of the foreign national worker's home country that are the subject of a memorandum or other arrangement with the Commonwealth; and an attestation that the statements made in the application, the contract, and the supporting papers are true.
 - (d) A non-business employer (an employer who does not have a business license) must certify, in addition, that he or she is not receiving certain specified government assistance and has met the financial requirements. See Part II, Section 2(D)(4).
9. Payment of fee. Payment of the fee required under Part VI, Section 6(H) of these regulations. Payment in cash or by money order or debit card is acceptable and the Director of Labor may approve payment by check or credit card for particular employers with a creditworthy history of payment to the Department. If check or credit card payments do not clear, a penalty fee of \$35 will be assessed.
10. Barred List. The Director of Labor shall maintain a Barred List containing the names of employers who have been barred from employing foreign national workers in an administrative order of a hearing officer, or in an order by the Secretary on appeal. The Barred List is available to the public. No employment contract shall be approved and no entry permit shall be issued to or for an employer on the Barred List. Employers barred for a specific period of time shall be removed from the Barred List upon the expiration of the specified time period. Employers barred permanently must petition the Director of Labor to be removed from the Barred List.
11. Effect of pending cases. The Director of Labor may suspend action on any application for an approved employment contract during the pendency of any case before the Administrative Hearing Office. The Director shall give written notice to the employer of such suspension. An employer may appeal the decision to suspend processing and request an expedited hearing.

12. Effect of checks that do not clear. The Director of Labor may hold for ten (10) days any application for which the fees are paid by check and will deny the application if a check for applicable fees does not clear.
13. Effect of on-island labor pool. The Director of Labor may reject an application for an off-island hire if the circumstances of the on-island labor pool indicate that there is no substantial justification of need. The Director of Labor may issue temporary holds with respect to all application for off-island hires in the event of business closings or other events that cause a temporary increase in the unemployed on-island labor pool.

C. Health certifications . (Section 4923 of PL 15-108)

[RESERVED. The requirements for health certifications in effect in 2007 remain in place until final regulations for this section are provided by the Secretary of Public Health.]

D. Approved security contract. (Section 4924 of PL 15-108) An employer must provide a security contract in one of three forms for approval by the Director of Labor. Each contract shall secure the performance by the employer of all statutory financial obligations with respect to each foreign national worker listed in the contract. The Director shall approve only contracts that include a waiver of all defenses except presentment of a final judgment and that meet the requirements set out below.

1. U.S. national rating. A contract with an insurance company that has a rating from A.M. Best Company, which is a national rating agency in the United States. The Secretary has approved all companies with a financial strength rating of B+ or better, a credit rating of bbb or better, and a debt rating of bbb or better. Information about the ratings of insurance companies that are currently rated is at www.ambest.com.
2. Licensed company with audited financial statement. A contract with an insurance company, licensed to conduct insurance business in the Commonwealth and in good standing with respect to all Commonwealth requirements for insurance companies, as follows:
 - (a) The insurance company shall submit to the Department an audited financial statement not more than three months old at least once each year during the period of time in which bonds are outstanding. The Department will examine the financial statement to determine the amount of liquid financial assets currently available (not required to meet liabilities) to satisfy judgments arising out of Department proceedings.
 - (b) The Department will authorize the insurance company to issue bonds for a specified number of foreign national workers for one year based on the currently available liquid financial assets shown on the current audited financial statement. The Department will authorize bonding for one foreign national worker for each \$1,000 in currently available liquid financial assets.
 - (c) Authorized bonding may be renewed, increased, or decreased upon submission of a subsequent audited financial statement showing currently available liquid financial

assets to support the bonding to be authorized. If a financial statement shows inadequate liquid financial assets to support the authorized bonding, the Department shall cancel authorized bonding to the extent required on thirty (30) days notice and notify any affected employer to submit substitute bonding within thirty (30) days.

- (d) Within ten (10) days of the service of a notice of claim upon the insurance company, the amount of the claim or \$1,000, whichever is less, shall be deposited by the insurance company with the Department for a period not to exceed ninety (90) days while the Department adjudicates the claim. If the claim is denied, the deposit shall be returned. If the claim is granted, the deposit shall be held until the employer pays the judgment or the bond is called to pay the judgment. If the Department fails to adjudicate the claim within 90 days, the deposit shall be returned promptly.

3. Labor Trust Account Revolving Fund coverage. A standard form contract with the Department as follows.

- (a) Coverage is provided for the employer's financial obligations with respect to a specific named foreign national worker including up to three months' unpaid wages, other damages, and the cost of repatriation, not to exceed a total of \$3,000. The cost of medical care is not included in this coverage; medical care is covered under Section 4932 of PL 15-108.
- (b) Payment may be made by the employer for Labor Trust Account Revolving Fund coverage under any one of the following options:
 - (i) If the employer has been in business and employed foreign national workers in the Commonwealth continuously for the previous five years and has had no complaints filed with the Department that resulted in any money judgment, payment may be made in three monthly installments or in a lump sum amount, at the employer's option, of an amount that is 125% of the current cost of repatriation of the foreign national worker covered in the account. If a worker is repatriated by the employer and the Department determines there are no outstanding obligations of the employer with respect to that worker, the amount paid into the Labor Trust Account Revolving Fund with respect to that worker shall be repaid by the Department to the employer less four (4) percent or the Department's actual administrative costs, whichever is lower.
 - (ii) If the employer does not qualify under (i) above, payment is required of the estimated total repatriation cost for the foreign national worker plus an estimated amount to cover other obligations of the employer. The estimated amount will be determined by the Department on a case-by-case basis taking account of the employer's prior record in employing foreign national workers, paying judgments, financial stability, and any other relevant factors. If a worker is repatriated by the employer and the Department determines there are no outstanding obligations of the employer with respect to that worker, the amount paid into the Labor Trust Account Revolving Fund with respect to that worker shall be repaid by the

Department to the employer less four (4) percent or the Department's actual administrative costs, whichever is lower.

- (iii) At any employer's option, payment may be made in the amount of \$75 per year for each foreign national worker employed together with a waiver of any right to be repaid by the Department. The amount to be paid per worker may be adjusted periodically after an audit of the Labor Trust Account Revolving Fund in order to keep the revolving fund solvent and able to meet its obligations as circumstances change over time. The Department will notify employers of adjustments at least 90 days before such adjusted amount comes into effect. The adjusted amount comes into effect automatically after notice.
- (c) Eligibility is available only for employers who have no outstanding unpaid amounts due the Labor Trust Account Revolving Fund or unpaid judgments arising out of Department proceedings more than 60 days in arrears, except those on appeal.
- (d) All interest earned on the Labor Trust Account Revolving Fund is returned to the fund.

A standard form contract is provided by the Department.

4. Operation of the Labor Trust Account Revolving Fund. Any person authorized to pay from the fund shall be bonded with a fidelity bond in an amount appropriate to the protection of the fund. The Labor Trust Account Revolving Fund shall be audited annually by a certified public accountant and the audit shall be reviewed by the Office of the Public Auditor. The audit report shall be a part of the annual report provided pursuant to Section 4970(a)(1).
5. Payments from the Labor Trust Account Revolving Fund. Funds in the trust account may be used by the Secretary to pay a final judgment against an employer who has paid for coverage from the Labor Trust Account Revolving Fund arising out of a Department proceeding which judgment the employer has failed to pay for thirty (30) days or more and administrative costs associated with that judgment as determined by the Secretary. The Secretary may in his or her discretion, but is not required to, pay judgments which remain unpaid by reason of defaults by insurers if an employer has a contract with an insurance company, and a claim has been made and denied or is uncollectible and the foreign national worker opts for repatriation. These judgments normally would be paid from the Deportation Fund established pursuant to PL 11-66. The Secretary may, in his or her discretion, assign judgments paid from the Trust Account for collection by a private firm. A final judgment is one in which all appeals have been exhausted. Payments are limited to the amount of the judgment or \$3,000, whichever is a lower amount, less any repatriation costs to be met by the Commonwealth. The Secretary shall be substituted for the payee in any available cause of action to collect on the judgment from the employer or insurer. Payments made from the Labor Trust Account Revolving Fund extinguish any claims by or on behalf of foreign national workers against the Deportation Fund or any other Commonwealth government fund available for compensation for unpaid obligations of an employer to a foreign national worker.

6. Limitation on recovery. A foreign national worker who has a judgment arising out of a case or matter brought before a court or other administrative agency and not adjudicated by the Department may not recover from the Labor Trust Account Revolving Fund or the Deportation Fund for any money damages awarded by the court or other administrative agency, provided however that the costs of repatriation may be paid from these funds as appropriate. Enforcement of judgments from courts or other administrative agencies in cases not adjudicated by the Department is through the processes of those courts or other administrative agencies.
 7. Defaults. Any default on an approved security contract requires the Department to publish an appropriate notice that the defaulting person or corporate entity is no longer acceptable to the Department. An employer that is a party to any approved security contract with such defaulting person or entity must provide the Department with a substitute approved security contract within sixty (60) days of receipt of notice or forfeit the privilege of employing foreign national workers.
 8. Audited financial statement. A financial statement is a written report which quantitatively describes the financial health of a company. This includes an income statement and a balance sheet, and may also include a cash flow statement at the discretion of the Director of Labor. Financial statements are usually compiled on a quarterly and annual basis. An audit is an unbiased examination and evaluation of the financial statements of an organization. For purposes of allotted slots based on an audited financial statement, the audit must be done externally and signed by a certified public accountant. A certified public accountant (CPA) is an accountant who has passed the Uniform Certified Public Accountant Examination in the United States and has met additional education and experience requirements for certification as a CPA. Only CPAs who are licensed in the Commonwealth and are able to provide the public attestation (including auditing) opinions on financial statements.
 9. Relationship to other funds. The Labor Trust Account Revolving Fund does not affect in any way the operation of the Deportation Fund or any other funds that may be available to cover the same or similar circumstances as the Labor Trust Account Revolving Fund with respect to employers who did not pay for coverage from the Labor Trust Account Revolving Fund.
- E. Entry permit. (Section 4925 of PL 15-108)
- (a) Entry permit required. Every foreign national worker admitted to the Commonwealth for purposes of employment must have a current entry permit in his or her possession at all times as provided under Part VI, Section 3(A)(2). If an entry permit lapses and is no longer current, the foreign national worker is automatically, as of the day after the expiration date of the entry permit, not eligible to remain in the Commonwealth.
 - (b) Initial entry permit. When the Commonwealth immigration authority is notified by the Director of Labor that the Department has received 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 for a foreign national worker, and the airport processing provided for in Part VI, Section 2(A)(1) has occurred, the Commonwealth immigration authority shall authorize for entry or deny entry to the foreign national worker named in the documentation. If the foreign national worker is admitted for entry, the Commonwealth immigration authority shall cause to be issued an entry permit. An entry permit is valid for no more than one year from the date of issue. The entry permit will be delivered to the Director of Labor, and will be presented to the foreign national worker at the orientation session as provided in Part VI, Section 3(D)(6) of these regulations.

- (c) Entry permit requirements explained at orientation. Each aspect of the requirements for an entry permit shall be explained to entering foreign national workers at the orientation session. See Part VI, Section 3(D)(1)(f).
- (d) Renewal of entry permit. An entry permit may be renewed annually so long as the foreign national worker is otherwise qualified to remain in the Commonwealth. A renewal may be granted for no more than one year from the date of expiration of the prior entry permit. The employer shall file an application for renewal on the standard form provided by the Department together with payment of the nonrefundable, nontransferable fee provided in Part VI, Section 6(H). An application for renewal shall either be granted or denied. A denial of renewal may be appealed to the Administrative Hearing Office within fifteen (15) days after the date of the denial. (See Part VI, Section 4(A)(10).)
- (e) Adjustment of date. An employer may request, at renewal, an adjustment in the date of an entry permit to match the date of an approved employment contract, provided however, that such an adjustment of the date may not result in a renewal period of more than one year.
- (f) Return of the entry permit at departure. Just prior to a foreign national worker's departure from the Commonwealth, the employer shall collect the worker's entry permit and return it to the Enforcement Division within ten (10) days of the worker's departure. An employer who fails to collect a departing worker's entry permit shall give written notice to the Enforcement Division on a standard form provided by the Department within ten (10) days of the worker's departure. The entry permit is an important control that assists in maintaining the proper status of foreign nationals within the Commonwealth. Failure to return an entry permit or file the required notice is grounds for denial of a replacement.

F. Entry by immediate family members of foreign national workers . (Section 4926 of PL 15-108)

1. An "immediate family member" of a foreign national worker is a spouse for whom the foreign national worker can produce an appropriate marriage certificate or record, or a child for whom the foreign national worker can produce an appropriate birth certificate or record. The provisions of Part V apply to these records.
2. An immediate family member may enter the Commonwealth if the foreign national worker provides:

- (a) Documentation that the foreign national worker earns an annual wage equal to or greater than 150% of the United States Department of Health and Human Services Poverty Guidelines for the State of Hawaii. These guidelines are published each year in the at *Federal Register* and online at <http://aspe.hhs.gov/poverty/07poverty.shtml>. A copy is posted at the Labor Department and on the Labor Department's website, www.marianaslabor.net. Alternatively, a foreign national worker may provide equivalent assurance that immediate family members will not require social services from the Commonwealth government due to lack of income or support during their period of stay in the Commonwealth. This may include information with respect to housing arrangements, cooking facility and food arrangements, and an undertaking not to apply for or accept such social services directly or indirectly.
 - (b) Documentation of insurance coverage for each family member entering the Commonwealth.
 - (c) Documentation of arrangements for the education of each minor child entering the Commonwealth.
 3. An immediate family member may enter the Commonwealth only after 90 days have passed since the foreign national worker entered. For purposes of this requirement, the foreign national worker "entered" the Commonwealth on the date that his or her entry permit was issued.
 4. An immediate family member may enter the Commonwealth as a student at a private education institution and as a parent accompanying a student under the special visa provisions with respect to student visitors without regard to the requirements of Part VI, Section 2(F)(2) above. An immediate family member who enters under the student visa must remain eligible under that visa by remaining in private school; otherwise the immediate family member must exit the Commonwealth, wait 90 days, and then re-enter the Commonwealth under the provisions of Part VI, Section 2(F)(2).
 5. An immediate family member over the age of 21 may be employed in the Commonwealth on the same terms and subject to the same requirements as any foreign national worker. No exit from the Commonwealth is required to change from immediate family member status to foreign national worker status. Once employed pursuant to the procedures in Part VI, Section 2, an immediate family member must surrender the entry permit showing immediate relative status and be issued an entry permit showing employment status. After issuance of an entry permit based on employment status, the former immediate relative shall be treated for all purposes as a foreign national worker.
- G. Entry by foreign national workers in religious occupations. (Section 4927 of PL 15-108)
1. After October 2008, only persons with a vocation of minister, priest, or other religious leader equivalent may enter the Commonwealth for purposes of employment by a *bonafide* non-profit religious undertaking for the purpose of carrying on a religious occupation.

2. A “*bona fide* non-profit religious undertaking” is an organization legally established or incorporated in the Commonwealth that is exempt from Commonwealth taxation or that is exempt from federal taxation under 26 U.S. C. §501(c)(3). The documentation to establish that the employer is a *bona fide* non-profit religious undertaking must be attached to the application for an approved employment contract submitted pursuant to Part VI, Section 2(B).
3. A “vocation of minister or its equivalent” means that the foreign national worker has been an active, registered or recognized member of the religious organization for the two years immediately preceding entry to the Commonwealth and seeks entry for the primary purpose of serving as a minister, priest, cleric, preacher, rector, parson, reverend, nun, monk, or equivalent leader position that directs the religious affairs of the *bona fide* non-profit religious undertaking.
4. A foreign national worker in a religious occupation must have an approved employment contract that complies with Part VI, Section 2(B), however the contract term may be three years. All other requirements for the approved employment contract (other than the term) apply to foreign national workers in religious occupations in the same way as they apply to all other foreign national workers. A foreign national worker working under a three-year contract must provide a health certification pursuant to Part VI, Section 2(C) within the first month of each year under the contract.

SECTION 3: STANDARDS FOR EMPLOYMENT

Chapter 6, Article 3 of PL 15-108

- A. Standard conditions of employment. (Section 4931 of PL 15-108)
 1. Single employer. A foreign national worker may be employed by only one employer pursuant to a single approved employment contract.
 - (a) Business employers. An employer of any foreign national worker other than a domestic helper or farmer must hold a business license. An employer who holds a business license may be a corporation, partnership, or other legal entity, or may be a single individual person in a sole proprietorship.
 - (b) Non-business employers. A non-business employer is a single individual person who is not incorporated or operating as a partnership or limited liability company and who does not have a business license. A non-business employer may employ a foreign national worker only as a domestic helper, a farmer, a household maintenance worker, or a yard worker.
 - (c) Part-time casual employment. Section 4922(b) of PL 15-108 permits part-time casual employment.

- (i) Eligibility. A foreign national worker who entered the Commonwealth pursuant to an approved employment contract and who is currently eligible to remain in the Commonwealth may engage in part-time casual employment.
 - (ii) Single employer. The “single employer” is the employer under the approved employment contract under which a foreign national worker was permitted to enter the Commonwealth until such time as the foreign national worker leaves the Commonwealth or transfers to another employer. That employer remains responsible for financial obligations under the employment contract with the foreign national worker. The employer under the approved employment contract has no liability for wages for part-time work under this section.
 - (iii) Hiring for part-time. An employer may employ a foreign national worker part-time for no more than 32 hours a month. A notice of part-time hiring on the standard form provided by the Department must be filed before any work by the foreign national worker begins. The notice, once filed, is sufficient to satisfy Section 4963(c) of PL 15-108. An employer who has signed an approved employment contract with a foreign national worker may not hire that foreign national worker for part-time casual work. An employer may not hire a foreign national worker for part-time casual work for any type of work done by regular employees of the business. A notice of part-time hiring may be denied by the Director of Labor if it appears that the part-time employment is being used to circumvent the requirement of full-time work under an approved employment contract, a non-business employer is not financially responsible, or the part-time work is otherwise in violation of Commonwealth law. A denial may be appealed to the Administrative Hearing Office within fifteen (15) days after the date of the denial. (See Part VI, Section 4(A)(10).)
 - (iv) No renewal required. A notice filed with the Department in connection with part-time work is good until the foreign national worker’s status as eligible to remain in the Commonwealth under an approved employment contract changes.
 - (v) Failure to file. Any person who employs a foreign national worker for part-time work without first filing a notice with the Department shall be barred from further employment of foreign national workers in any capacity and shall be assessed a fee equal to all of the fees applicable to an approved employment contract under Part VI, Section 6(H). An order of debarment and an assessment of fees may be appealed to the Administrative Hearing Office on the standard form provided by the Department.
2. Identification. A foreign national worker must keep his or her entry permit in his or her personal possession at all times during the worker’s working hours or when on a plane or boat during business hours. “Personal possession” means actual physical possession on the person or within the immediate reach of the person. Personal possession shall not be a requirement when the foreign national worker is receiving medical treatment or when physical possession would not be practicable, at which time the entry permit shall be kept within a reasonable distance of the foreign national worker. This requirement is not in

conflict with the Anti-Trafficking Act of 2005 which makes confiscation of travel documents for the purpose of controlling an alien's movements a criminal offense. A foreign national worker who is not currently employed under an approved employment contract (and therefore cannot be located at the employer's address) must provide a current residence address and telephone contact to the Enforcement Division and update that information as necessary so that the foreign national worker may be located by the Department.

3. Contract term. The usual approved employment contract provides for a one-year term. An employer and employee may agree on a two-year term, provided however that a foreign national worker employed under a two-year contract must provide an additional health certification pursuant to Part VI, Section 2(C) within the first month of the second year under the contract. Employers with special needs or specialty jobs may contract for a shorter period of time than one year. Part-time employment, see Part VI, Section 3(A)(1)(d), is employment at will and has no set term, however, part-time employment may not continue beyond the foreign national worker's eligibility under an approved employment contract to remain in the Commonwealth.
4. Wage rates. Wages shall be stated in hourly terms unless the foreign national worker is overtime-exempt, in which case wages shall be stated in bi-weekly terms. The wages of domestic helpers and farmers shall be stated in hourly terms. No foreign national worker employed pursuant to these regulations shall be paid less than the minimum wage provided by law. An approved employment contract shall provide that any future increase in the applicable minimum wage prior to the termination of the contract shall apply to work performed under the contract on or after the effective date of the increase.
5. Location of work site. A foreign national worker may have one or more work sites, however a worker may be assigned on only one island. The island where a foreign national worker will be assigned to work must be stated in the approved employment contract or in an approved change to the employment contract. Assigning a foreign national worker to work in a location not specified in the approved employment contract or in an approved contract change is a ground for denial of a renewal of the contracts of any foreign national workers in that O-NET job classification.
6. Hours of work. The hours of work shall be specified in the approved employment contract. Overtime work may be offered by the employer but not required. Any period of time during which the worker is required to be present at any location within the Commonwealth designated by his or her employer shall be considered working hours for purposes of determining wages and overtime pay. If a foreign national worker accepts employer-supplied housing, the employer shall not require the worker to remain in the housing during non-working hours or take or threaten to take any adverse action against the worker for refusing to remain in the housing during non-working hours. A domestic helper who lives in the same household as the employer and is on "sleeping time" or "rest time" is not on working hours.
7. Payment of wages. A foreign national worker shall be paid bi-weekly in cash or by check or direct deposit in a United States bank payable in United States currency in an amount specified in the approved employment contract. Receipts for cash payments must be

signed by the foreign national worker. The employer shall retain receipts for cash payments, cancelled checks or deposit records of payment for two years.

8. Deductions from wages. Each expense of the employer to be deducted from the wages of a foreign national worker shall be specified in the approved employment contract and the total deductions shall not exceed thirty (30) percent of a worker's bi-weekly wages or the maximum permitted under the Fair Labor Standards Act (FLSA), whichever is less. The only permitted deductions are those described in this section.
 - (a) Deductions for medical insurance premiums. Regulations with respect to deductions for medical insurance premiums will be provided when the Secretary of Public Health publishes final regulations for the pool insurance.
 - (b) Deductions for employer-supplied housing. An employer providing housing for a foreign national worker may deduct from the wages of a foreign national worker who earns the minimum wage no more than \$100 per month for the cost of housing. The deduction for a foreign national worker who earns more than the minimum wage shall not exceed the fair market value of the housing supplied.
 - (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 the amounts provided in Part II, Section 2(F) with respect to the Resident Worker Fair Compensation Act, whichever is less.
 - (d) Deductions by non-business employers. Non-business employers may deduct up to \$100 per month for housing and up to \$100 per month for food, local transportation, and all other benefits without regard to the thirty (30) percent limitation.
 - (e) Deductions under court or administrative order. Employers may deduct amounts required or allowed by court or administrative order.
 - (f) Documentation of deductions. The amount of and reason for each deduction shall be identified on the wage statement or other documentation of wage payment provided to the employee.
 - (g) Loans and advances. Loans and advances may be agreed between an employer and foreign national worker in writing signed by the worker. However, repayment of loans and advances occurs under a separate arrangement and may not be accomplished pursuant to a deduction from wages absent a court or administrative order. Loans may not be made for recruitment, processing, or other employment-related fees.
9. Documents. A copy of the approved employment contract shall be provided to the foreign national worker by the employer prior to arrival in the Commonwealth. An entry permit shall be provided to the foreign national worker at the orientation session. (See Part VI,

Section 3(D)(6).) No employer may withhold from any foreign national worker any passport, entry permit, approved employment contract, or other document related to the status of the foreign national worker.

10. Subcontracting. Any subcontract by an employer to another employer for the services of a foreign national worker shall be implemented or performed only with the prior approval of the Secretary. Application for approval of a subcontract shall be submitted on a standard form provided by the Department. Temporary census workers may be subcontracted to the Department of Commerce without prior approval.
11. Contract changes and reduction in hours. Any change to an existing approved employment contract shall be implemented or performed only with prior approval of the Director of Labor and notice to any affected foreign national worker. A request for contract change must be submitted on a standard form provided by the Department. A contract change may not be put into effect until ten (10) days after notice is given to the affected foreign national workers. A contract change may be denied by the Director of Labor. A denial may be appealed to the Administrative Hearing Office within fifteen (15) days after the date of the denial. (See Part VI, Section 4(A)(10).)
12. Workforce or manpower plan. (Section 4931(k) of PL 15-108)
 - (a) The workforce plan. A workforce plan has as its objective an increase in the percentage of citizens and permanent residents in the workforce of the employer. A workforce plan must be appropriate to the particular circumstances of and skills required by the business of the employer. The plan shall identify specific positions on the "A" List, the "B" List, the "C" list, or the "D" List (see Part II(2)(B) of these regulations), currently occupied by foreign national workers, for which citizens and permanent residents will be recruited and trained as necessary. The plan shall include a timetable for accomplishing the identified replacement of foreign national workers with citizens and permanent residents and shall identify the employee responsible for carrying out the plan.
 - (b) Employers covered. Every employer with ten (10) or more employees, unless exempted, is required to have a workforce plan. Employers with fewer than ten (10) employees who are found to have violated the workforce participation requirement of Section 4525 of PL 15-108 may be ordered by a hearing officer to adopt a workforce plan, and such employers will be subject to all provisions of law and regulations with respect to a workforce plan from and after the date of the hearing officer's order.
 - (c) Filing with Employment Services. Every employer required to have a workforce plan must have on file with the Director of Employment Services a written, current plan. A workforce plan is current if it has been updated and filed within the past 14 months.
 - (d) Failure to file. Failure to file a required workforce plan is a ground for denial of contract renewal for any foreign national worker holding a position that should have been covered by the workforce plan.

- (e) Exemption for compliance with the workforce participation requirement. An employer that has submitted to the Director of Employment Services adequate documentation with respect to compliance for the immediately preceding two years with the twenty (20) percent requirement for employment of citizens and permanent residents under Part II, Section 2(G) of these regulations is exempt from the requirement to file a workforce plan. Adequate documentation includes a list of the full names of the employees who are citizens and permanent residents and who have been employed during each calendar quarter of the immediately preceding two years.
- (f) Exemption for holder of an exemption from the workforce participation requirement. An employer that is exempt from compliance with the twenty (20) percent requirement for the employment of citizens and permanent residents under Part II, Section 2(G) of these regulations is exempt from the requirement to file a workforce plan. In order to be eligible for the exemption, each employer must file with the Director of Employment Services a Claim of Exemption on the standard form provided by the Department. It is the responsibility of the employer to ensure that a Claim of Exemption continues to be an accurate representation to the Director of Employment Services. If circumstances change and no exemption is available, the employer shall file a Withdrawal of Claim of Exemption on the standard form provided by the Department. If no form has been filed, or an inaccurate form is on file, no exemption is available and the employer is subject to all penalties in the same manner as if the requirement for a workforce plan applied fully to the employer.
- (g) Lifting of exemption if two adverse judgments entered. Employers of fewer than ten (10) employees are exempted from the requirement to file a workforce plan. However, if an exempted employer has two or more judgments entered against them within any two-year period, the exemption is automatically lifted and a plan must be filed with Employment Services within 30 days of the entry of the second judgment. All full-time and part-time employees are counted. A “judgment” for purposes of this subsection is a final order by a hearing officer that has not been timely appealed, or a final order of the Secretary that has not been timely appealed. An appeal to a court of competent jurisdiction from a final order of the Secretary does not operate to continue an employer’s previous exemption. “Two or more judgments” for purposes of this section means judgments entered in two or more separate cases or judgments entered for two or more individual complainants in the same case. “Within a two-year period” for purposes of this section is any 24-month period. This period does not relate to a calendar year.
- (h) Failure to achieve measurable progress. Failure to achieve measurable progress under a workforce plan in filling positions with citizens and permanent residents is a ground for denial of contract renewal for foreign national workers holding positions cover by the workforce plan.
13. Safe workplace conditions. Every employer shall provide safe workplace conditions for all employees, including domestic helpers and farmers.

- (a) Every employer shall furnish and ensure the use of such safety devices and safeguards (such as machine guarding, electrical protection, scaffolding, safe walking and working surfaces, means of egress in case of emergency or fire, ventilation, 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.
 - (b) An employer shall provide an adequate supply of drinking water and sufficient and sanitary toilet facilities at the worksite or reasonable access thereto.
 - (c) The U.S. Department of Labor's Occupational Safety and Health regulations as published and amended in the Code of Federal Regulations are recognized as the minimum standards required of every employer in the Commonwealth.
14. Safe housing conditions. Every employer who provides housing for employees shall provide safe housing conditions.
- (a) The site of the housing shall be safe.
 - (i) Grounds around worker housing shall be adequately drained to prevent flooding, collection of waste water, and mosquito breeding.
 - (ii) 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 employer-supplied housing are responsible for assisting in this maintenance to the extent that they generate such refuse.
 - (iii) Whenever worker housing is closed on a temporary or permanent basis, the employer shall ensure that all garbage, waste, and other refuse is collected and disposed of, and that the grounds and housing are left in a clean and sanitary condition.
 - (b) The building structure for housing shall be safe.
 - (i) Worker housing shall be constructed in a manner which will provide protection against the elements, including, wind, rain, flood, and fire.
 - (ii) Each room for sleeping purposes shall contain at least 50 square feet of floor space for each occupant. At least a seven-foot ceiling shall be provided.
 - (iii) Separate bedding, which may include bunks, shall be provided for each occupant. Spacing of single bedding shall not be closer than 36 inches both side-to-side and end-to-end. Elevation of single bedding shall be at least 12 inches from the floor.
 - (iv) Where workers cook, live, and sleep in a single room, a minimum of 100 square feet per person shall be provided.

- (v) Natural ventilation consisting of operable windows shall be provided, the area of which shall be not less than one-fourth the floor area of the living quarters. In lieu of natural ventilation, mechanical ventilation may be provided which shall supply at least 15 cubic feet of fresh air per person per minute.
 - (vi) All exterior openings shall be screened with at least 16-mesh per inch material.
 - (vii) An adequate and convenient water supply shall be provided for drinking, cooking, bathing, and laundry purposes.
- (c) Toilet facilities shall be safe.
- (i) The sit down toilets provided shall be no fewer than one per fifteen (15) persons. Where there are ten (10) or more persons of different sexes using the toilets, separate toilet facilities, appropriately identified, shall be provided for each sex.
 - (ii) 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.
 - (iii) Natural ventilation consisting of operable windows or other openings shall be provided, the area of which shall not be less than one-tenth of the floor area of the toilet facility. In lieu of natural ventilation, mechanical ventilation capable of exhausting at least two cubic feet per minute per foot of floor space may be used.
 - (iv) All outside openings shall be screened with at least 16-mesh per inch material.
 - (v) Toilet 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.
 - (vi) Toilet facilities shall have adequate lighting.
 - (vii) An adequate supply of toilet paper shall be assured by the employer.
 - (viii) Access to toilet facilities shall not intrude upon sleeping quarters.
- (d) Laundry, hand-washing, and bathing facilities shall be safe.
- (i) Sanitary laundry, hand-washing, and bathing facilities shall be provided in the following ratio: one laundry tray or tub for every fifteen (15) or fewer persons or an equivalent laundry alternative; one hand-wash basin per family or per six or fewer persons; and one showerhead for every ten (10) or fewer persons.

- (ii) 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.
- (e) Sewage and refuse disposal shall be safe.
 - (i) 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.
 - (ii) Where public sewers are not available, facility wastewater shall be treated or disposed of using an on-site wastewater treatment system meeting all applicable Commonwealth regulations.
 - (iii) 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.
- (f) Food storage, kitchen, and eating facilities shall be safe.
 - (i) Cooking facilities are to be provided wherever workers are provided common living quarters.
 - (ii) Cooking facilities shall be in an enclosed and screened shelter.
 - (iii) Food shall be stored safe from contamination by water, dirt, poisonous substances, rats, flies, or other vermin.
 - (iv) Refrigeration facilities shall be provided for storage of perishable food.
 - (v) Facilities shall be adequate for ensuring sanitary maintenance of eating and cooking utensils.
- (g) Health measures.
 - (i) Adequate first aid supplies shall be available at the living site for the emergency treatment of injured persons.
 - (ii) The employer shall report to the Division of Health Services the name and address of any foreign national worker known to have or suspected of having a communicable disease.

(iii) 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.

(iv) The employer shall provide adequate access to medical care if the employee's condition appears to be serious.

B. Medical insurance. (Section 4932 of PL 15-108)

[RESERVED. These regulations are published by the Secretary of Public Health. Until such regulations are published, employers remain responsible for medical care for foreign national workers in the same manner as provided under the Nonresident Workers Act. See Section 4972(g) of PL 15-108.]

C. Benefits. (Section 4933 of PL 15-108) Except as otherwise provided by a memorandum or other agreement between the Commonwealth and the foreign country that issued a passport to the foreign national worker, employers may but are not required to provide housing, food, transportation, and other benefits beyond medical care; and foreign national workers may not be required by an employer to utilize housing, food, transportation, or other benefits beyond medical care.

D. Orientation. (Section 4934 of PL 15-108)

1. Presentation. The orientation program in Saipan shall be presented every Tuesday morning at 9:00 a.m. at the conference room, second floor, Afetna Square Bldg, San Antonio, Saipan, unless rescheduled or canceled by the Director of Labor. The orientation program on Rota and Tinian will be scheduled as necessary.
2. Format. The presentation format is video tape augmented by oral presentations as necessary. The videotape will address common questions from and problems faced by foreign national workers in the Commonwealth. The videotape will be revised periodically to incorporate new material or increase the effectiveness of the presentation.
3. Translations. The orientation shall be made available in Mandarin, Tagalog, and Korean, in addition to English. Foreign national workers from India and Bangladesh are presumed to have sufficient English to participate meaningfully in an orientation session in English. For other languages, the employer shall provide a translator when the foreign national worker attends the orientation session.
4. Attendance by foreign national workers. Every foreign national worker who enters the Commonwealth shall attend the first orientation session available after date of entry unless excused for illness or other unavoidable circumstance. Upon renewal and registration with the Division of Immigration, the Director of Labor may require that some or all of the foreign national workers who entered the Commonwealth prior to the availability of the orientation program also attend an orientation session. A hearing officer may require any foreign

national worker who files a complaint to attend an orientation session in order to be informed of rights and responsibilities.

5. Attendance by employer representatives. Any employer or representative of an employer of foreign national workers may attend an orientation session at any time.
6. Entry permit. The entry permit will be delivered personally to the foreign national worker at the orientation session, and the worker will sign a receipt for the entry permit that will become a part of the Department's records.

E. Contract renewal, non-renewal, and termination (Section 4935 of PL 15-108)

1. Renewal. An approved employment contract may be renewed for work within the same O-NET job classification. No right to renewal for either the employer or foreign national worker is conferred by Section 4935 or any other section of PL 15-108 or these regulations. Renewal is granted or denied by the Department taking account of the interests of the Commonwealth with respect to employment of citizens and permanent residents and enforcement of the requirements of PL 15-108 and these regulations.
 - (a) Form. A request for renewal is made on the standard form provided by the Department.
 - (b) Fee. A nonrefundable, nontransferable fee for renewal, as provided in Part VI, Section 6(H), must be paid at the time the request is submitted.
 - (c) Time. A request for renewal shall be submitted no earlier than forty-five (45) days prior to the termination date of the approved employment contract and no later than thirty (30) days prior to that termination date.
 - (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.
 - (e) Certification as to job classification and wage rate. A request for renewal shall be accompanied by a certification by the employer and the employee, on the standard form provided by the Department, that the foreign national worker has been assigned duties and responsibilities, and has performed services, only within the O-NET job classification in the approved employment contract and that the wages paid have been in accordance with the documentation filed with Employment Services with respect to the job.
 - (f) No disputes. A request for renewal shall be accompanied by a certification by the employer and the employee that there are, as of the date of the application, no disputes pending between them, no complaints outstanding, and no grievances unaddressed.

- (g) Outstanding obligations. A renewal may not be granted if the employer has any outstanding payment more than 60 days in arrears with respect to any approved health insurance contract (after the date on which the Secretary of Public Health publishes final regulations in that regard), any approved security contract, or any judgment in a Department proceeding, except those on appeal.
- (h) Renewal for particular job categories. At the time of submission of a renewal application, the employer of foreign national workers in particular job categories specified below must appear, with the foreign national worker, at the Labor Processing Division, for an interview with respect to the terms and conditions under which the foreign national worker is employed. No agents or persons holding powers of attorney may appear on behalf of the employer for this interview. For purposes of this subsection, a corporate representative may not be a foreign national worker and such representatives shall produce for inspection at the interview sufficient identification and proof of status:
- (i) Farmers;
 - (ii) Dancers;
 - (iii) Masseuses; and
 - (iv) Other employers to whom the Director of Labor gives notice as a result of adverse judgments in Department proceedings or law enforcement matters.
- (i) Renewal under changed circumstances. A foreign worker whose personal circumstances have changed since arrival in the Commonwealth in a way that affects adversely the likelihood that the worker will continue to work, pay just debts and taxes, obey Commonwealth laws, or become a recipient of public assistance may be denied renewal.
- (j) Barred List. No renewal of an employment contract shall be approved for an employer on the Barred List. (See Part VI, Section 2(B)(10).)
- (k) Pending cases. The Director of Labor may suspend action on any application for renewal of an approved employment contract during the pendency of any case before the Administrative Hearing Office. The Director shall give written notice to the employer of such suspension. An employer may appeal the decision to suspend processing and request an expedited hearing.
- (l) Effect of denial. The denial of a request for renewal may be appealed to the Administrative Hearing Office within fifteen (15) days after the date of the denial. (See Part VI, Section 4(A)(10).). While an appeal is pending, an employee may continue to work for the employer.

2. Non-renewal. An employer may elect not to renew an approved employment contract of a foreign national worker. No reason need be given.

(a) Notice. An employer shall provide to the foreign national worker, obtain a signature acknowledgment from the worker for, and file with the Department a notice of the employer's intent not to renew on a standard form provided by the Department at least thirty (30) days before the termination date in the approved employment contract.

(b) Effect of failure to notify. If an employer fails to notify properly pursuant to subsection (a) above, the employer remains the last employer of record (responsible for medical expenses and repatriation) and is liable to pay the employee's full wages up to a maximum of thirty (30) days beyond the termination date of the contract until notice is given and thirty (30) days has elapsed. After the termination date of the contract, the employee is not required to work for the employer in order to be entitled to wages. At any time until thirty (30) days after the termination date of the contract, the employee may register with Employment Services and proceed under Part II, Section E(17) or file a complaint and proceed under Part VI, Section 4(A) but may not pursue both avenues simultaneously.

3. Termination. The parties may terminate an approved employment contract.

(a) Termination for cause. During the term of the contract, an employer or employee may terminate an approved employment contract for cause as defined in the contract. An employer shall give written notice to the foreign national worker and to the Department on a standard form provided by the Department at least ten (10) days prior to the termination date. A foreign national worker may file a complaint with the Administrative Hearing Office contesting a termination for cause. The Director of Labor may investigate a termination to determine if the termination was in compliance with Commonwealth law and these regulations.

(b) Termination by consent. An employer and employee may terminate an approved employment contract by consent during the term of the contract. The consent of the employee shall be evidenced by an appropriate writing filed with the Department at least ten (10) days prior to the termination date.

(c) Last employer of record. Under any termination of an approved employment contract, the employer remains the last employer of record (responsible for medical expenses and repatriation) until the foreign national worker transfers, is repatriated, or in the case of medical expenses, a period of 96 days expires.

F. Transfer by administrative order. (Section 4936 of PL 15-108)

1. A transfer may be made only by administrative order issued by a hearing officer. See Part VI, Section 4(G)(4).

2. A foreign national worker may not transfer to an employer on the Barred List. See Part VI, Section 2(B)(10).
 3. An application for an approved employment contract in the case of a transfer must be submitted within the time allowed by administrative order. If an application for an approved employment contract is filed and has correctable deficiencies, an automatic extension of ten (10) days from the end of the time allowed by administrative order is afforded to file a proper application. The employer and the foreign national worker are responsible for staying in contact with the Department and ensuring that no deficiencies remain at the end of the automatic extension. No further extensions will be granted and the transfer will be automatically denied if deficiencies remain. Denial of a transfer may be appealed to the Administrative Hearing Office within fifteen (15) days after the date of the denial. (See Part VI, Section 4(A)(10).)
 4. If a transfer is completed as required by this section, the new employer shall assume all legal responsibilities for the transferred worker, including but not limited to the costs of repatriation, as of the date of approval of the employment contract. The new employer is not responsible for any of the obligations of the former employer up to the date of approval of the employment contract.
- G. Reductions in force. (Section 4937 of PL 15-108) Circumstances of economic necessity may require an employer to reduce the workforce or close the business. Employers have the right to make such decisions. However, because Commonwealth law allows employers to employ foreign national workers only by entering into an employment contract approved by the Department, and because foreign national workers are permitted to remain in the Commonwealth only by virtue of being a party to such an employment contract, the right of employers of foreign national workers to reduce their workforce is not unlimited.
1. Notice. Before commencement of a reduction in force, an employer shall give at least 60 days written notice to the Department and at least 30 days notice to each affected employee on the standard form provided by the Department.
 2. Effective date. The effective date of termination is a date at least 30 days after the employees to be laid off have received notice of termination due to reduction in force, downsizing, or closure of the business. The employment contracts and work permits of laid-off foreign national workers shall terminate automatically on the effective date of termination.
 3. Permission to enter and meet. The employer shall allow representatives from the Department to meet with the employees to be laid off on employer premises, during work hours. The purpose of the meeting shall be to advise the employees of their rights and responsibilities in connection with the lay-off, and to answer their questions.
 4. Order of layoff: The employer shall layoff foreign workers before laying off citizen or permanent resident workers in the same O-NET job classification except as agreed with the Department for important business reasons. The employer shall lay off more recently

arrived foreign national workers before laying off longer-term foreign national workers in the same O-NET job classification except as agreed with the Department.

5. Cooperation with the Department. The employer shall cooperate with the Department investigators and other staff by providing documentation indicating which foreign national workers seek repatriation; which workers intend to seek a transfer employer; payroll summaries for the three pay periods preceding the effective termination date; and such other documentation as necessary to allow the Department to account for all of the laid off employees. Upon request, the employer shall also produce documentation confirming the economic necessity of the lay-offs. Economic necessity may be shown by a substantial reduction in work orders, a substantial reduction in funds, or a good faith reorganization to improve efficiency, among other factors.
6. Company housing. The employer shall permit laid-off foreign national workers housed in employer-provided housing at the time of the reduction in force to remain in that housing for a period of 30 days following the effective date of termination upon the same terms stated in each affected workers' employment contract. The employer is not responsible for providing food for laid-off workers.
7. Department action . If an employer fails to comply with paragraphs 3 through 5 above, or the Director of Labor finds that the lay-offs were not prompted by economic necessity, the Director may bring an administrative action against the employer at the Administrative Hearing Office within 30 days of the date of the employer's notice of lay-off.
8. Limitations on new hires of foreign national workers.
 - (a) On-island hires. An employer who has laid off 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 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.
9. 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 for O-NET job classifications held by the laid-off workers.
10. Relief from time limits. An employer may petition the Director in writing for relief from the time limits stated in subsection (7) above. The Director may grant such relief only for good cause shown. A denial of a petition for relief may be appealed to the Administrative Hearing Office within fifteen (15) days after the date of the denial. (See Part VI, Section 4(A)(10).)

11. Transfers in event of reduction in force. In the event of a reduction in force due to economic necessity, other remedies are ordinarily not sufficient to provide the foreign national worker with the benefit of the bargain made when entering an approved employment contract and a transfer may be granted. The Administrative Hearing Office shall convene a hearing within fifteen (15) days of notice to workers with respect to a reduction in force to determine worker status.
 12. Rights and remedies. The rights and remedies afforded all employees under these regulations, and the obligations imposed upon employers, are in addition to, and not in lieu of, any other contractual or statutory rights and remedies. In particular, these regulations do not excuse employers from the requirements of the federal Worker Adjustment and Retraining Notification Act (the "WARN Act"), 21 U.S.C. § 2101 et seq. (1988), pursuant to which covered employers must provide affected employees and specified government entities at least 60 days notice of a mass lay-off or company closure.
 13. Investigatory powers. Nothing in this section shall be construed to limit the Department's general investigatory and enforcement authority under the Commonwealth Employment Act of 2007, PL 15-108; the Minimum Wage and Hour Act; or these regulations to investigate alleged violations of same. In particular, the Department may conduct an investigation related to lay-offs of foreign national workers if the Director or a designee has reason to believe the lay-offs were not prompted by economic necessity. Nor shall anything in this section be construed to limit the right of foreign national workers to file meritorious complaints against an employer for violations of the PL 15-108, the Minimum Wage and Hour Act, or these regulations, related to the lay-off.
- H. Avoidance and early resolution of potential labor disputes. (Section 4938 of PL 15-108)
1. Notice to Foreign National Workers. The notice required under Section 4938 shall be in the standard form provided by the Department. The notice will be supplied by the Department in English, Mandarin, Tagalog, and Korean. Foreign national workers from India and Bangladesh are presumed to have sufficient English to understand the English-language version of the notice. Employers bringing foreign national workers from countries requiring translation to other languages shall supply a translation. The notice shall be delivered to the foreign national worker while in the home country before departure for the Commonwealth. Receipt of the notice shall be confirmed by the foreign national worker upon arrival in the Commonwealth. See Part VI, Section 2(A).
 2. Reporting of disputes. A system of informal reporting of disputes is intended to facilitate early resolution of the potential dispute and to maintain the employment relationship. Disputes may be reported orally, by telephone or in person, or in writing to the Enforcement Section.
 - (a) Reporting by employees. In the event that an employer fails to make full and complete payment of bi-weekly wages on two successive occasions, or if a conflict arises between the foreign national worker and the employer about working conditions or the implementation of the terms of the approved employment contract, the foreign national worker shall report the potential dispute to the Department promptly.

- (b) Reporting by employers. In the event that a foreign national worker fails to report for work for five successive workdays without notice to the employer of medical or other reasons for absence, or if a conflict arises between the employer and the foreign national worker about working conditions or the implementation of the terms of the approved employment contract, the employer shall report the potential dispute to the Department promptly. This provision does not limit the right of an employer to terminate an approved employment contract for cause pursuant to the terms of the contract.
3. Mediation of disputes. Disputes reported under Section H(2) may be mediated under the procedures set out in Part VI, Section 4(A)(18)(a-d).
4. Accountability. Each employer is accountable for every foreign national worker for whom the employer has had an approved employment contract in effect at any time during the preceding calendar year and shall ensure that such persons are currently employed by the employer, have transferred to another employer by administrative order, have exited the Commonwealth, are otherwise accounted for as remaining in the Commonwealth lawfully, or are deceased. In the event that an employer becomes unable to account for a foreign national worker, the employer shall report to the Department within fifteen (15) business days on the standard form provided by the Department.
- I. Inspection of worksites . (Section 4939 of PL 15-108)
1. Timing and frequency of inspections. An administrative schedule of worksite inspections shall be established each year. Normally worksites are inspected once per calendar year, and not more than four times in any calendar year, except that follow up inspections of worksites where violations have been found may be conducted with more frequency.
2. Procedure for inspections and investigations.
- (a) Inspections shall be conducted during normal business hours or, if an administrative warrant is obtained, at any other reasonable time under the circumstances.
- (b) The investigator shall present himself or herself to the authorized representative at the worksite and shall provide identification as a Department investigator. The investigator shall inform the authorized representative at the worksite that the worksite has been chosen for inspection by the Department, and shall furnish to such person a copy of the current statutes and regulations authorizing worksite inspections.
- (c) The investigator shall ask the authorized representative at the worksite if he or she consents to the inspection. If the authorized representative consents to the inspection, the investigator is authorized to inspect all areas of the worksite and premises and perform all functions listed in subsection (b) above. If the authorized representative refuses to permit entry, or does not consent to allow inspection of the worksite, the

investigator may not proceed with the inspection unless an administrative warrant is obtained.

- (d) In all cases where the authorized representative refuses to permit entry, does not consent to allow inspection of the worksite, or unreasonably obstructs the investigator in carrying out the inspection, the investigator shall serve notice upon the authorized representative of an administrative hearing at which the employer shall be required to show cause why the employer should not be disqualified by the Department from employing foreign national workers or enjoined from future refusals with respect to inspection.
3. Violations. If upon inspection a violation is found of any provision of the Commonwealth Employment Act of 2007, the Minimum Wage and Hour Act, or the Departments regulations promulgated pursuant to Commonwealth law, the Director may, within thirty (30) days:
- (a) Warning. Issue a warning to the responsible party to correct the violation. If the responsible party does not comply within ten (10) days and correct the violation, the Director may issue a Notice of Violation.
 - (b) Notice of violation. Issue a notice of violation to the responsible party. Upon issuance of a notice of violation, an action is opened in the Administrative Hearing Office with the Director of Labor as the complainant. If the notice of violation is issued in circumstances where a complaint has been filed with the Administrative Hearing Office by an individual complainant, the caption on the case may be amended to reflect the Director of Labor as the complainant. The Division of Labor’s legal counsel shall represent the Division of Labor and the Director in such actions.
4. Inspections pursuant to warrant. For purposes of Section 4939 of PL 15-108, “reasonable suspicion” means specific facts about the suspected employer or worksite justifying inspection efforts beyond the norm for businesses of that type.
- J. Investigation. (Section 4940 of PL 15-108) The Director of Labor may conduct investigations as necessary and appropriate to enforce the provisions of PL 15-108 with respect to foreign national workers and these regulations to ensure lawful working conditions, employer-supplied benefits, and health and safety for foreign national workers. In conducting these investigations, the Director shall have all of the powers delegated and described with respect to inspections and investigations pursuant to Part VI of these regulations.

SECTION 4: ADJUDICATION OF DISPUTES

Chapter 6, Article 4 of PL 15-108

A. Complaints and actions in labor matters. (Section 4941 of PL 15-108)

- 1. Adjudicative proceeding. “Adjudicative proceeding” means a judicial-type proceeding leading to the issuance of a final order. The parties to an adjudicative proceeding are one or

more complainants and one or more respondents. A complainant is a person who is seeking relief from any act or omission in violation of a statute, executive order, contract, or regulation. A respondent is a person against whom findings may be made or who may be required to provide relief or take remedial action. A “person” in this context includes an individual, partnership, corporation, association or other entity or organization. A “party” to an adjudicative proceeding is a person or government agency admitted as a party to the proceeding.

2. Rules of practice. Pursuant to the Administrative Procedure Act, these rules and regulations in this Section 4 are generally applicable to adjudicative proceedings in all actions pursued by the Director of Labor and other persons. Upon notice to all parties, a hearing officer may, with respect to matters pending before that hearing officer, modify or waive any rule herein upon a determination that no party will be prejudiced and the ends of justice will be served.
3. Pro se litigants. In applying the rules of procedure to adjudicative proceedings, a hearing officer shall give added accommodation to parties appearing *pro se* to ensure that no party is prejudiced and that the ends of justice will be served. The Administrative Hearing Office will take all steps necessary to develop the record fully, including the record adverse to the Department.
4. Complaint. “Complaint” means any document initiating the adjudicative proceeding, whether designated a complaint, appeal, or an order for proceeding, or otherwise. Registration by a foreign national worker with Employment Services may be deemed a “complaint” by a hearing officer under circumstances in which it is appropriate to do so.
5. Case numbers. Each case shall be assigned a unique case number at the time of the filing of the complaint. All pleadings of any kind shall clearly show the case number.
6. Location for filing. A complaint and any other pleadings shall be filed at the office of the Department of Labor on the island where the employment occurred, unless good cause is shown.
7. Signature on pleading. Each pleading shall be signed by the party filing it or by an attorney admitted to practice in the CNMI representing a party. The signature constitutes a certificate by the signer that he or she has read the pleading; that to the best of his or her knowledge, information, and belief, there are good grounds to support it; and that it is not filed for purposes of delay.
8. Computation of time periods. In computing any period of time under these rules, or in a decision or order issued hereunder, the time begins with the day following the act, event, or default, and includes the last day of the period unless it is a Saturday, Sunday, or non-work day observed by the Commonwealth government, in which case the time period includes the next business day. When a prescribed period of time is seven (7) days or less, Saturdays, Sundays, and non-work days shall be excluded from the computation.

9. Filing of a consolidated agency case . The Director of Labor may commence an action against an employer or employee for an alleged violation of the labor or wage laws in force in the Commonwealth by filing a complaint with the Administrative Hearing Office. The caption shall set forth the names and addresses of the parties. The complaint shall contain a short description of the nature of the alleged violation of law and the relief sought. A Department action may require all foreign national workers employed by an employer to attend a hearing for purposes of determining eligibility for awards of damages and transfer relief.
10. Filing of a labor case .
- (a) Any employer or employee may file a complaint with the Administrative Hearing Office regarding any violation of the Commonwealth Employment Act of 2007, the Minimum Wage and Hour Act, as amended, the Fair Labor Standards Act, as amended, and Public Laws 11-6 and 12-11, as amended, and these rules and regulations; or any breach 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), or any other document filed with the Department. Each individual complainant shall file a separate complaint. Cases may be handled together, but complaints cannot cover the allegations of more than one complainant.
 - (b) A foreign national worker may file a complaint if the worker entered the Commonwealth for employment even if an incomplete application has been filed, the employment contract has not been approved, the employer never provided any job, the employment contract has been terminated, the employee has fallen into illegal status, the employee has been working illegally, the employee has violated Commonwealth law, or similar circumstances exist. The Administrative Hearing Office will adjudicate all complaints of those who entered the Commonwealth for employment regardless of when they entered the Commonwealth or their current status in the Commonwealth. Persons who did not enter the Commonwealth for employment (such as tourists) may pursue their claims in the Commonwealth courts.
 - (c) A complaint may be filed only after the violation or breach has occurred. Prior to filing an action in any Commonwealth court, a foreign national worker shall file a complaint with the Division of Labor so that remedies available under Commonwealth law may be considered expeditiously and potential violations may be investigated by the Director of Labor for the potential benefit of other similarly-situated workers.
 - (d) A complaint filed by an individual shall be filed on the standard form provided by the Department. The Administrative Hearing Office shall post in a prominent place a translation of the complaint form in Mandarin, Tagalog, and Korean for reference by complainants. No other form of complaint is required. Any additional or explanatory materials may be filed at the option of the complainant in any form chosen by the complainant. The Administrative Hearing Office shall provide personnel to assist *pro se* complainants in filling out the complaint form. No pleading will be refused or stricken

for failures of form, however the hearing officer may direct that more understandable pleadings be substituted or that a proper signature be added.

11. Filing of a denial case. In the event of an administrative denial under these regulations, the employer or employee adversely affected by the denial (or both) may file a denial case with the Administrative Hearing Office on a standard form provided by the office challenging the basis for the denial. Appeals of an administrative denial must be filed within fifteen (15) days of the date of the denial.
12. Filing of a labor case to determine status. The Director of Labor may file a complaint in the Administrative Hearing Office in a labor case in the matter of a foreign national worker who is litigating in some other forum and who is not currently employed under an approved employment contract in order to determine eligibility for transfer.
13. No administrative rejection for untimeliness. Failure to file within the statutory time limit of six months (see Part VI, Section 6(B)(2)) shall not be grounds for refusal to accept a complaint or appeal.
14. No filing fee for indigents. Indigent complainants may file *in forma pauperis* and are not required to pay a filing fee. The standards of the Commonwealth Superior Court with respect to waiver of fees for indigents shall be followed. A complainant who files *in forma pauperis* and is later found by a hearing examiner not to qualify for that status may be ordered to pay the filing fee. (For filing fees, see Part VI, Section 6(H).)
15. No retaliation. An employer shall not retaliate against an employee for filing a complaint. Such retaliation is a separate cause of action against the employer.
16. No response to the complaint required. The respondent may, but is not required to, file a written response to the complaint.
17. Assistance and representation. Any party may be represented by counsel, at the party's own expense. A party appearing *pro se* may be assisted by any person, regardless of whether that person is a lawyer, except that a person who is deportable or who has been the subject of debarment for past misconduct may not serve as an assistant. Each authorized counsel or assistant must file a written notice of appearance with the Administrative Hearing Office. A standard form for this purpose is provided by the Department.
18. Translation. A party requiring the services of a translator to and from English shall provide a competent translator at their expense. The Administrative Hearing Office may require certification of a translator in order for the translator to participate in a hearing. A translator who has translated a document shall sign the document on its face as evidence of the translation. Such a signature constitutes a declaration, under the penalty of perjury, that the translator has accurately translated the document and has not included any statements beyond those made in the document. A hearing officer may disqualify a person

from participating in a proceeding as a translator, upon a finding, supported by credible evidence, that the person is not sufficiently competent or truthful as a translator.

19. Mediation of the complaint. The Administrative Hearing Office shall, refer each complaint in a labor case for mediation. Mediations may be conducted by the Director of Labor or a designee, by a hearing officer, or by a mediator designated by the Administrative Hearing Office. Mediators need not be lawyers or have any formal certification. The Administrative Hearing Office shall schedule the mediation as promptly as practicable, normally within five (5) days of filing of the complaint, and notify the parties.
- (a) The parties must be given at least three (3) days notice before the mediation session. Notice of mediation may be issued to the complainant when the complaint is filed. Telephone notice of the mediation session is sufficient.
 - (b) The mediation will be conducted informally and confidentially without a taped or other record of the proceedings.
 - (c) No oral statement made at a mediation is admissible in evidence.
 - (d) If the mediation is successful, the mediator shall reduce the agreement to writing and the agreement shall be signed by both parties within three (3) days after the mediation session. . If the foreign national worker is represented by counsel or a professional assistant, any mediator may approve the settlement agreement. If the foreign national worker is unrepresented, a hearing officer must approve the settlement agreement.
 - (e) If a foreign national worker who is a complainant does not attend the mediation session after adequate notice, a hearing officer may deny authorization to seek temporary work pending a hearing on the matter. If a foreign national worker does not attend the mediation session after requesting a rescheduling and does not provide the Administrative Hearing Office with at least five (5) days notice, the hearing officer may dismiss the complaint without prejudice.
 - (f) If an employer who is a complainant does not attend the mediation session after adequate notice, a hearing officer may dismiss the complaint without prejudice.
 - (g) If the complaint is not resolved at mediation, the Director of Labor may file a motion to dismiss if the complaint has not been timely filed or is otherwise deficient on its face. A hearing officer may then examine the complaint for timeliness. If the complaint is not timely filed, the hearing officer shall dismiss the complaint with prejudice. If the complaint is timely filed, the hearing officer shall set a hearing date and inform both parties of the date.
20. Permission to seek temporary work pending a hearing. A hearing officer may authorize a foreign national worker who attends a mediation session at which no agreement is reached

to seek employment in the Commonwealth on a temporary basis pending a hearing in the case.

- (a) A foreign national worker to whom permission to seek temporary work is granted shall make a good faith effort to find work and shall appear in person at Labor Enforcement at least once in each calendar month to report on such efforts to find work. Failure to make a good faith effort to find work shall be grounds for denying a request for transfer. Failure to report or false or fraudulent reports shall be grounds to dismiss the pending case.
- (b) An order granting permission to seek temporary work shall have attached to it a copy of the Barred List. An employer on the Barred List may not employ a worker pursuant to a temporary work authorization. A copy of the order shall be transmitted by the Administrative Hearing Office to Employment Services within three days of issuance.
- (c) If a foreign national worker who has received permission to seek temporary work finds work, the Department shall issue a temporary work authorization for up to six months while the case is pending. A temporary work authorization may be renewed for an equal term and shall expire automatically ten (10) days after the date of a hearing officer's final order in the case, or in the event of a timely appeal ten (10) days after the date of the Secretary's order, or in the event of a timely appeal to a court ten (10) days after the date of the court's final order. .
- (d) An employer who hires a foreign national worker under a temporary work authorization shall file with the Department prior to the commencement of any work by the foreign national worker a short form statement of employment terms on the standard form provided by the Department.
- (e) The financial obligations with respect to, medical expenses (see regulations published by the Secretary of Health) and repatriation (see Part VI, Section 5(D)) remain with the last employer of record at the time the complaint was filed and are not shifted to the employer who hires the worker under a temporary work authorization. The financial obligations with respect to payment of wages and any employer-supplied housing or other benefits (other than health care) are the responsibility of the employer who hires the worker under a temporary work authorization.
- (f) If employment under the temporary work authorization ends prior to the determination of the pending case, the foreign national worker shall report to Labor Enforcement within ten (10) days for a renewal of the permission to seek temporary work.

21. Investigation of the complaint. A hearing officer may refer a complaint to the Director of Labor for investigation, and the Director of Labor or a designee may also initiate such investigation of the complaint as appears warranted by the allegations, other information provided by the complainant or available to the Department, and past complaints filed by the complainant or violations adjudicated against the respondent. Investigators may conduct interviews of the parties and others, request documents from the parties, inspect

worksites and living quarters, and undertake such other investigative actions as are warranted. Any non-privileged information gathered during an investigation shall be made available to the parties on request. Investigators may make such written report of the investigation as may be useful, but no written determination is required. At any time, an investigator may request from Administrative Hearing Office a continuance of the hearing for further investigation. Such requests for continuance shall be granted unless serious adverse consequences to a party would result.

22. Recusal of an investigator. An investigator shall be impartial. An investigator may voluntarily enter a recusal if the investigator's impartiality might be called into question. A party may request the recusal of an investigator. The request must be in writing supported by a sworn affidavit. The Director of Labor shall decide the request based only on the written affidavit.

B. Jurisdiction of the Administrative Hearing Office. (Section 4942 of PL 15-108) The Administrative Hearing Office shall have jurisdiction to decide all issues of fact and related issues of law. Jurisdiction attaches upon the filing of a complaint, and no procedural or investigative document is required in order for the Administrative Hearing Office to hold a hearing on the complaint.

C. Reserved. (Section 4943 of PL 15-108)

D. Powers of the hearing officer. (Section 4944 of PL 15-108)

1. Amendment of pleadings. A hearing officer may allow appropriate amendments to pleadings when the determination of a controversy on the merits will be facilitated thereby and it is in the public interest.
2. Motions and requests. An application for an order or any other request may be made by motion. The hearing officer may allow oral motions or require motions to be made in writing. If a motion is made in writing, the hearing officer shall specify the time period for response to the motion. The hearing officer may allow oral argument or written briefs in support of motions.
3. Prehearing conferences. A hearing officer may direct the parties to participate in a pre-hearing conference. At a pre-hearing conference, a hearing officer may discuss any matter that may facilitate resolution of the dispute, including settlement. Pre-hearing conferences may be conducted by telephone, in writing, or in person. A hearing officer may, but is not required to, reduce the results of a pre-hearing conference to an order. A statement on the record at the hearing may be used as an alternative.
4. Consolidation. A hearing officer may consolidate two or more matters for hearing if the issues or evidence are the same or substantially similar. When consolidated hearings are held, a single record of the proceedings may be made, evidence introduced in one matter may be considered in consolidated matters, and the decision of the matters may be separate or joint, at the discretion of the hearing officer.

5. Bifurcation. A hearing officer may bifurcate or separate one or more matters (such as status and eligibility for transfer separated from damages and other claims) for hearing on separate occasions. When separate hearings are held, evidence introduced at one session may be considered in another session, and the decision of the issues may be separate or joint, at the discretion of the hearing officer.
6. Discovery. A hearing officer may, but is not required to, allow discovery. A party may request discovery regarding any matter, not privileged, that is relevant to the subject matter of the proceeding. If discovery is permitted, it is not ground for objection that the information sought will not be admissible at the hearing. Appropriate methods of discovery include depositions on oral examination or written questions, written interrogatories, production of documents or other evidence for inspection, and requests for admissions. Upon motion and good cause shown, a hearing officer may make any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. If a party fails to respond to discovery permitted by a hearing officer, an order may be entered by the hearing officer compelling response in accordance with the request.
7. Subpoenas. Upon written application by a party or *sua sponte*, a hearing officer may issue a subpoena as authorized by law. A subpoena may compel attendance of non-party witnesses and production of relevant records and other tangible things in the possession or under the control of the non-party witness. Any person compelled to testify in response to a subpoena may be represented, counseled or advised by a lawyer or authorized agent. Within ten (10) days of the receipt of a subpoena but no later than the date of the hearing, the person against whom the subpoena is directed may move to quash or limit the subpoena. Any such motion shall be answered within ten (10) days. An order with respect to a subpoena shall specify the date, if any for compliance. Upon the failure of any person to comply, a party adversely affected may apply to a court of competent jurisdiction for enforcement.
8. Classified or sensitive material. The hearing officer may implement procedures for dealing with classified or sensitive material, including limiting discovery or the introduction of evidence, redacting documents, using unclassified or non-sensitive summaries, and conducting *in camera* hearings.
9. Conduct of hearings. A hearing officer shall preside at each hearing conducted by the Administrative Hearing Office. A hearing officer shall administer oaths and may examine witnesses. A hearing officer may exercise, for the purpose of the hearing and in regulating the conduct of the proceeding, such powers vested in the Secretary as are necessary and appropriate. A hearing officer may conduct a hearing telephonically at the request of the Labor Department office on Rota or Tinian or at the request of a party on Saipan. At the conclusion of a hearing, a hearing officer shall issue such findings, decisions, and orders as are necessary to resolve the matter.
10. Continuances. Continuances may be granted only in cases of prior commitments for a court proceeding, a showing of undue hardship, or a showing of other good cause. Requests for continuance must be in writing and must be filed more than five (5) days prior to the date

set for the hearing. Oral orders with respect to continuances shall be confirmed in writing. The Administrative Hearing Office shall not stay any proceeding to allow the parties to proceed with their claims in a different forum except upon order of a court of competent jurisdiction.

11. Further investigation. A hearing officer may refer a matter to the Director of Labor for further investigation of the complaint at hand or of the actions of the complainant or respondent.
12. Attendance at hearings. A hearing officer may grant an extension of time to a foreign national worker who has exited the Commonwealth to re-enter more than five (5) days prior to a scheduled hearing for which his or her attendance is required. A hearing officer may grant to a foreign national worker who has re-entered the Commonwealth in order to attend a hearing an extension of time for exit from the Commonwealth after a hearing.
13. Amendments to conform to the evidence. When issues are not raised in a pleading, prehearing stipulation, or prehearing order and are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence may be ordered by a hearing officer.
14. Dismissal. 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 the party's representative appears at the time and place fixed for the hearing unless good cause is shown. A dismissal may be entered against any party failing, without good cause, to appear at a hearing. A dismissal may be entered against any person who has left the CNMI and has been absent for six months or more without having notified the Administrative Hearing Office of their contact information.
15. Separation of functions. No officer, employee, or agent of the Commonwealth engaged in the performance of investigative or prosecutorial functions in connection with any proceeding shall, in that proceeding or a factually related proceeding, participate or advise in the decision of a hearing officer except as witness or counsel in the proceedings.
16. Recusal of a hearing officer. A hearing officer shall be impartial. A hearing officer may voluntarily enter a recusal if the hearing officer's impartiality might be called into question. A party may request the recusal of a hearing officer. The request must be in writing supported by a sworn affidavit. The hearing officer shall decide the request based only on the written affidavit. If the hearing officer refuses the recusal, the hearing officer shall state reasons for the refusal. A party may contest the refusal by written petition to the Secretary or a designee.

E. Service of process. (Section 4945 of PL 15-108)

1. Service of a complaint, time requirements. Service of the complaint on the respondent shall be made within five (5) days of the filing and proof of service shall be filed with the

Administrative Hearing Office within two (2) days of service. If a complainant is represented by counsel, counsel shall complete service. If complainant is not represented by counsel, the Director of Labor, or a designee, shall complete service.

2. Service of a response, time requirements. No response is required, however if a written response is made, it shall be served on the Administrative Hearing Office and the complainant within twenty (20) calendar days after service of the complaint.
3. Service, address. Employers and employees are responsible for keeping contact information in the Department's records up to date and accurate. Service may be made at the address currently shown on the records of the Department unless a party knows of an actual current address.
4. Service, methods. Service of any pleading, notice, or order may be made anywhere within the territorial limits of the Commonwealth. Service may be made by delivery to the party personally; or service may be made by United States mail first class postage prepaid; or service may be made by publication in a newspaper of general daily circulation on business days in the Commonwealth.
 - (a) Personal service. Personal service is made by delivery of a copy of the pleading, notice, or order to the party personally or by leaving a copy of the pleading, notice or order at the party's dwelling house or usual place of abode with some person of suitable age and discretion then residing there. If a party is represented by counsel, personal service may be made on counsel. If a party is represented by an agent authorized by appointment or by law to receive service of process, personal service may be made on the agent. Service may be made on any person designated by the complainant. Service is complete upon delivery.
 - (b) Mail service. Mail service is made by delivery of a copy of the pleading, notice, or order to the United States Post Office, with first class postage prepaid, addressed to the complainant at the address provided on the complaint form or addressed to the respondent at the address provided on the approved employment contract unless a party has notified the Department of a change of address in which case service shall be made to the address last provided by the party. If a party is represented by counsel, mail service may be made on counsel. If a party is represented by an agent authorized by appointment or by law to receive service of process, mail service may be made on the agent. Service is complete upon mailing. When documents are served by mail, five (5) days is added to the prescribed period after service to exercise a right or take an action.
 - (c) Publication service. Publication service is made by publishing a copy of the pleading, notice, or order in an English-language newspaper of general daily circulation on business days in the Commonwealth at least once in each of two weeks. If the Department uses publication service without first attempting personal or mail service, publication with respect to any party who is a citizen of a foreign country shall be supplemented by a one-time publication in a newspaper of the party's national

language if such newspaper exists in the Commonwealth. Service is complete upon last publication.

(d) Alternative service. Notice may be given by telephone or electronic mail as the Administrative Hearing Office determines appropriate.

5. Service by a party. Either personal service or mail service must be attempted before publication service may be used by a party.
6. Service by the Department. The Department may use publication service for any notice or any order without first attempting any personal or mail service. The Department normally will publish on the first Monday of a month, and normally will publish at least once in each of two successive weeks, but is not required to do so. In matters in which a Department representative has personally informed a foreign national worker and confirmed in writing or it has been ordered by a hearing officer that notices with respect to a particular matter may be posted under defined circumstances, the Department may use posting in a public place as service for any notice without first attempting any other service.

F. Conduct of hearings. (Section 4946 of PL 15-108)

1. Public proceedings. Absent a finding by a hearing officer, hearings shall be open to the public. In unusual circumstances, a hearing officer may order a hearing or any part thereof closed if doing so would be in the best interests of the parties, a witness, the public, or other affected persons. Any order closing the hearing shall set forth the reasons for the decision. Any objections thereto shall be made a part of the record.
2. Rules of evidence for hearings. The Commonwealth rules of evidence are generally applicable to adjudicative proceedings before the Administrative Hearing Office. To the extent that these rules may be inconsistent with a rule of special application as provided by statute, executive order, or regulation, the latter are controlling. The parties may offer such evidence as is relevant to the dispute, and the hearing officer may request the production of evidence by a party. Strict adherence to the formal rules of evidence shall not be necessary, and the hearing officer shall make appropriate accommodations for *pro se* litigants. The hearing officer may make rulings on evidentiary issues and the introduction of evidence. The hearing officer may waive any rule upon a determination that no party will be prejudiced and that the ends of justice will be served.
3. Exhibits. Parties shall exchange copies of exhibits at the earliest practicable time and, in any event, at the commencement of the hearing. Exhibits offered in evidence shall be numbered and marked for identification. One copy shall be furnished to each of the parties and to the hearing officer. If a record from any other proceeding is offered in evidence, a true copy shall be presented for the record in the form of an exhibit unless the hearing officer directs otherwise. The hearing officer shall direct the use of documents as to which only parts are relevant, or bulky documents, so as to limit irrelevant material in the record. The authenticity of all documents submitted as proposed exhibits in advance of a hearing shall be presumed unless written objection is made prior to the hearing. Objection to

authenticity shall not prevent the admission of a document but a hearing officer may consider matters of authenticity when deciding the weight to give the evidence.

4. Judicial notice. A hearing officer may take judicial notice of adjudicative facts that are not subject to reasonable dispute, provided however that as to facts so noticed, the parties shall be given adequate opportunity to show the contrary.
5. Privilege. Except as otherwise required by law, the privilege of a witness, person, government or political subdivision shall be governed by the principles of common law as they may be interpreted by the courts of the Commonwealth in light of reason and experience.
6. Record. All hearings shall be recorded. Parties may provide a stenographic reporter at their own expense. The media on which recordings of proceedings are made shall be maintained by the hearing office until the expiration of all appeals, at which time the media may be destroyed.
7. Default. Except for good cause shown, failure of a party to appear at a hearing after timely being served notice to appear shall be deemed to constitute a waiver of any right to pursue or contest the allegations in the complaint. If a party defaults, the hearing officer may enter a final order containing such findings and conclusions as may be appropriate.
8. Closing the record. When a hearing is conducted, the record shall be closed at the conclusion of the hearing unless the hearing officer directs otherwise. If any party waives a hearing, the record shall be closed upon receipt of submissions of the parties or at the time deadlines set by the hearing officer for receipt of such submissions. Unless the hearing officer directs otherwise, no document or other evidentiary matter may be submitted after the record is closed.
9. Standards of conduct. All persons appearing in proceedings before a hearing officer are expected to act with integrity and in an ethical manner. A hearing officer may exclude parties, participants, and their representatives for refusal to comply with directions, continued use of dilatory tactics, refusal to adhere to reasonable standards of orderly and ethical conduct, failure to act in good faith, or acting in violation of these rules and regulations. A hearing officer shall state on the record the cause for suspending or barring any person from participation in a proceeding. Any person so suspended or barred may appeal to the Secretary, but no proceeding shall be delayed or suspended pending disposition of the appeal. A hearing officer shall suspend the proceeding for a reasonable time if it is necessary for a party to obtain another lawyer or representative. A hearing officer may apply the Commonwealth Disciplinary Rules and Procedures for guidance when issuing decisions regarding ethics.
10. Ex parte communications. A hearing officer shall not consult any person or party on any issue of fact or question of law unless upon notice and opportunity for all parties to participate or learn the results of such communication. Communications for the sole purpose of scheduling hearings or considering requests for extensions of time are not considered *ex parte* communications so long as other parties are notified of any request and

given an opportunity to respond. A person who makes or attempts to make an *ex parte* communication may be subject to sanction including exclusion from the proceedings and adverse ruling on the issue which is the subject of the prohibited communication.

11. Expedited hearings. The Commonwealth immigration authority 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.

G. Orders and relief. (Section 4947 of PL 15-108)

1. Dismissal. The hearing officer may, after notice and an opportunity to be heard is provided to the parties, dismiss *sua sponte* a complaint that the hearing officer finds on its face to be without merit. Parties adversely affected by a dismissal may appeal.
2. Issuance of orders. The hearing officer shall, upon concluding a hearing, issue any necessary findings, decisions, and orders as soon as practicable. Issuance of findings, decisions, and orders shall be pursuant to 1 CMC 9110, but shall not be judicially reviewable until final.
3. Authority. The hearing officer is authorized to:
 - (a) Award unpaid wages or overtime compensation, amounts unlawfully deducted from wages or unlawfully required by an employer to be paid by a foreign national worker, damages for unlawful termination of an approved employment contract, or damages, when appropriate, for conduct of the employer that is in violation of Commonwealth or federal law;
 - (b) Assess liquidated damages of up to six months wages if actual damages are uncertain or cannot be ascertained under a satisfactory or known rule in cases in which the employer's conduct is found to have been retaliatory;
 - (c) Cancel or modify an entry permit or an approved employment contract or require an employer thereafter to pay foreign national workers only by check or direct deposit in a United States bank payable in United States currency (no cash payments) in cases where payment records have been negligently or inappropriately kept;
 - (d) Order temporary or permanent debarment of an employer or order an employer to attend one or more orientation sessions under Part VI, Section 3(D) for education as to rights and responsibilities under Commonwealth law;
 - (e) Disqualify a foreign national worker, temporarily or permanently, from employment in the Commonwealth;
 - (f) Levy a fine not to exceed \$2,000 for each violation of any provision of PL 15-108;
 - (g) Issue declaratory or injunctive relief as appropriate;

- (h) Award attorneys fees when appropriate in addition to any other remedy; provided however that attorneys fees shall not be recoverable against the Commonwealth and
 - (i) Use the inherent powers of a hearing officer and powers granted by the Administrative Procedures Act to further the interests of justice and fairness in proceedings.
4. Transfers. Only a hearing officer may grant a transfer. Nothing in the Commonwealth Employment Act of 2007, PL 15-108, or in these regulations creates any right to a transfer. A hearing officer may grant a transfer if other remedies are insufficient to provide a foreign national worker the benefit of the bargain made when entering the approved employment contract. If a hearing officer grants a transfer, a foreign national worker may become employed under a new approved employment contract without first exiting the Commonwealth.
- (a) The grounds for granting transfer relief include:
 - (i) An unlawful termination of an approved employment contract by an employer;
 - (ii) The voiding of an approved employment contract or debarment of an employer for a violation of these regulations or PL 15-108;
 - (iii) A reduction in force pursuant to Section 4937 of PL 15-108;
 - (iv) The abandonment of the worker during the term of an approved employment contract, but prior to ninety (90) days before the termination date of the contract, by an employer who failed to pay bi-weekly wages on two successive occasions, closed a business, declared bankruptcy, or exited the Commonwealth evidencing an intent not to return; or,
 - (v) Upon a finding by the hearing officer that the foreign national worker has prevailed under an equivalent theory of law or equity and that transfer relief is appropriate.
 - (b) A transfer may be granted only to a foreign national worker who has complied with the provisions of the approved employment contract to the extent practicable under the circumstances, and for whom transfer relief is required in order to assure receipt of the benefit of the bargain under the contract that is the subject of the action. A settlement may include transfer relief, if appropriate, and subject to approval by a hearing officer.
 - (c) The order granting a transfer shall specify the time period within which the foreign national worker must secure new employment, which time period shall not be longer than thirty (30) days from the date of the order unless the hearing officer makes specific findings of exigent circumstances requiring a longer period.
 - (d) The order granting a transfer shall include a referral to Employment Services so that available positions for foreign national workers can first be filled by foreign national

workers already in the Commonwealth and shall attach a copy of the current Barred List, see Part VI, Section 2(B)(10), so that the foreign national worker knows which employers cannot employ transfers. A copy of any order granting a transfer shall be transmitted by the Administrative Hearing Office to Employment Services within three days of issuance.

5. Whistleblower relief. In order to promote the public interest in security compliance with Commonwealth law, a foreign national worker who provides the Department with information on the basis of which a compliance agency case is concluded successfully may be granted a transfer by a hearing officer even if not qualified under subsection 4 above.
6. Repatriation. The hearing officer may assess costs for repatriation of a foreign national worker.
7. Frivolous actions. The hearing officer may find an action to be frivolous if it is unfounded in fact or law or initiated primarily to obtain an undue pecuniary benefit or for distraction or delay. The filing of an action which is determined by a preponderance of the evidence to be frivolous shall be grounds for permanently disqualifying the foreign national worker who filed the action from employment in the Commonwealth or permanently barring an employer who filed the action from further employment of foreign national workers.
8. Solicitation of sponsorships. The purpose of Section 4963(k) and Section 4964(d) of PL 15-108 is to prevent illegal sponsorships in which the employer is offering no viable job but files an application in order to allow the foreign national worker to remain in the Commonwealth. These sections do not apply to employment arrangements in which the employer is offering a legitimate, viable, wage-paying job. The hearing officer shall apply these sections in this way.
 - (a) A foreign national worker who intentionally and knowingly violates Commonwealth law by paying an application fee or a renewal fee that should be paid by an employer solely in order to remain in the Commonwealth, under circumstances in which the employer provides no viable wage-paying job for the worker, may be deported if, under all the circumstances of the case, deportation is the appropriate remedy.
 - (b) A foreign national worker who pays an application or renewal fee in connection with an existing, viable, wage-paying job may not be deported on account of the violation of these sections. If the employer provides a viable job for which the worker has been employed, they have not participated in an illegal sponsorship arrangement involving sham employment. Foreign national workers who pay an application or renewal fee under these circumstances may have a claim against the employer whose responsibility it is to pay the fee and may be awarded damages if, under all the circumstances of the case, damages are the appropriate remedy. Similarly, a foreign national worker who pays an application or renewal fee without knowledge or intent to participate in an illegal sponsorship arrangement may not be deported on account of the violation of these sections. A hearing officer may take account of the information about illegal sponsorships provided at an orientation session.

- (c) An employer who engages in an illegal sponsorship by filing an application for an approved employment contract without the intent or present ability to provide a viable, wage-paying job for a foreign national worker may be barred from further employment of foreign national workers if, under all the circumstances of the case, debarment is the appropriate remedy.
- (d) An employer who requires or permits a foreign national worker to pay an application or renewal fee in connection with an existing, viable, wage-paying job may be fined up to \$2,000 and ordered to pay the amount of the fees to the worker in addition to any other remedies if, under all the circumstances of the case, these are the appropriate remedies.
9. Order. As soon as practicable, and generally within fifteen (15) days after the close of the record, the hearing officer shall complete and issue or enter any necessary decisions and orders. A decision of a hearing officer shall include findings of fact and conclusions of law, with reasons therefore, on each material issue of fact or law presented on the record. A decision shall be based on the whole record, supported by reliable, probative evidence, and in accordance with the statutes and rules and regulations conferring jurisdiction. An order may be made with respect to amounts to be paid, actions to be taken, or other relief to be accorded. An order shall include a schedule of payment for all awards, if any, to the prevailing party.
10. Date of an order. The hearing officer shall sign and enter the date on which an order was signed. The date on which the order was signed is the date the order was issued or entered.
11. Motion for reconsideration. A party may file a motion for reconsideration within fifteen (15) days after service of an order. The motion shall state concisely the matters or controlling decisions that a party believes the hearing officer overlooked or misapprehended. A response may be filed no later than five (5) days after the filing of the motion. No affidavits shall be filed or additional evidence offered. No oral argument shall be heard unless the hearing officer directs to the contrary. A motion for reconsideration may be granted for mistake, inadvertence, surprise, or excusable neglect; newly discovered evidence which, by due diligence, could not have been discovered in time to move into evidence at the hearing; fraud, misrepresentation, or misconduct of an adverse party; the judgment is void, has been satisfied, released, or discharged, or a prior judgment on which it is based has been reversed; or other reason justifying relief. A properly filed and served motion for reconsideration tolls the time for filing a notice of appeal. The time for appeal begins to run again on the date the decision on a motion for reconsideration is signed. After a decision on a motion for reconsideration is signed, no further motions or filings may be made with the Administrative Hearing Office other than a notice of appeal.
12. Correction of errors. A hearing officer may *sua sponte* correct an error prior to the time the record is certified for appeal.
13. Referral to the Commonwealth immigration authority. The hearing officer shall notify the Commonwealth immigration authority promptly upon cancellation or modification of an

entry permit. The hearing officer may refer any person to the Commonwealth immigration at the conclusion of any labor case.

14. Satisfaction of a judgment from a bond. Within thirty (30) days after the date of a final judgment including an award of money damages, the final judgment shall be presented to the holder of the bond under Part VI, Section 2(D) above. If the final judgment has not been fully satisfied within sixty (60) days after the date of the final judgment, the Department shall execute on the bond for payment of the judgment.
15. Reimbursement. Any claim made for reimbursement from any government fund on account of an award of unpaid wages, overtime, or other damages in an order of a hearing officer shall be made within one year of the date of the order of the hearing officer or an order after appeal.

H. Appeal to the Secretary . (Section 4948 of PL 15-108)

1. Commencing an appeal. An appeal is commenced by filing a notice of appeal on the standard form provided by the Department and payment of the fee required in Part VI, Section 6(H) of these regulations. A notice of appeal must be filed within fifteen (15) days of service of the decision on the party who is appealing. See Part VI, Section 4(A)(7) above with respect to computation of time limits.
2. Procedural requirements. Service of process with respect to appeals shall be as provided in Part VI, Section 4(E) of these regulations. Alternative forms of notice by telephone or electronic mail may be used. The party who seeks relief from the Secretary is the appellant. The party against whom relief is sought is the appellee. The Secretary may entertain an *amicus* brief with fifteen (15) days notice to the parties.
3. Preparation of the record. Upon receipt of a timely notice of appeal and the fee required in Part VI, Section 6(H) of these regulations, the Administrative Hearing Office will make a copies of the media on which the proceeding was recorded and deliver a copy to each party. If a written transcript is necessary, it is the responsibility of the appealing party to prepare and certify it.
4. Rules of practice on appeals before the Secretary. When the Secretary is exercising jurisdiction over appeals from final orders of the Administrative Hearing Office, the Secretary shall have all the powers and responsibilities of a hearing officer. No hearing or oral argument on an appeal is required. The Secretary shall notify the parties by mail of the time and place for any hearing on the appeal and shall not schedule the hearing with less than fifteen (15) days notice or change a hearing date with less than fifteen (15) days notice.
5. Administrative review by the Secretary. In a review on appeal, the Secretary may restrict review to the existing record, supplement the record with new evidence, hear oral argument, or hear the matter *de novo* pursuant to 1 CMC §§9109 and 9110. Upon completion of review, the Secretary shall affirm, reverse, or modify the findings, decision, or order of the hearing officer. The Secretary may remand under appropriate instructions all

or part of the matter to the Administrative Hearing Office for further proceedings. The Secretary's decision shall constitute final agency action for purposes of judicial review.

- I. Judicial review. (Section 4949 of PL 15-108) Judicial review of a final action of the Secretary is authorized after exhaustion of all administrative remedies and shall be initiated within fifteen (15) days of the final action. Except as may be contrary to the provisions of PL 15-108, judicial review shall be pursuant to 1 CMC §9112. Appeal from a final action by the Secretary shall be directly to the Commonwealth Superior Court.

SECTION 5: EXIT FROM THE COMMONWEALTH

Chapter 6, Article 5 of PL 15-108

- A. Exit during the contract term. (Section 4951 of PL 15-108) A foreign national worker who exits the Commonwealth during the term of an approved employment contract shall file with the Enforcement Division, a notice on the standard form provided by the Department. A foreign national worker who fails to file the notice before departing the Commonwealth may be precluded from re-entering the Commonwealth.
- B. Exit after the contract term. (Section 4952 of PL 15-108) Each foreign national worker is required to exit the Commonwealth within fifteen (15) days after the termination date of an approved employment contract unless the contract is renewed (see Part VI, Section 3(E)), or a case or transfer is pending, or the worker has filed for a fifteen (15) day extension in connection with processing a transfer or filing a complaint (see Part VI, Section 5(E)(1)).
- C. Periodic exit. (Section 4953 of PL 15-108) PL 15-108 imposes a periodic exit requirement on all persons who enter the commonwealth for employment.
 1. Policy with respect to periodic exit. There are three policy reasons for a periodic exit requirement. The first and primary reason is to open up opportunities for U.S. citizens and permanent residents to be trained and employed in positions previously held by foreign national workers. Substantial survey and other work by the Office of Public Auditor, the Northern Marianas College, the Special Workforce Action Team, the Workforce Investment Agency, and other agencies and groups with responsibilities to train and place U.S. citizens and permanent residents, in addition to data generated by the Department of Labor, has documented the very great difficulty in finding job opportunities for citizens when jobs are filled on a long-term basis by foreign national workers. This is an especially difficult problem in a relatively small jobs market. Increased employment for citizens and permanent residents is essential to the economic well-being of the Commonwealth. The second reason, is to enforce the basic bargain that was made with each foreign national worker who entered the Commonwealth for employment that supports the Commonwealth's economy and not for permanent residence or change in status. Data, studies, and surveys including those regarding past experience when an open-ended permission was granted to settle in the Commonwealth indicate that there would be a substantial burden on the Commonwealth's economy and its taxpayers if temporary employment in the Commonwealth could lead to a change in status. The third reason is that the Commonwealth's need to ensure that overstayers are kept to a minimum and the laws with

respect to temporary permission to work in the Commonwealth are fairly and rigorously enforced.

2. Repatriation. An exit by a foreign national worker under the periodic exit requirement is a repatriation. See Part VI, Section 5(D).
3. Timing of exit. A foreign national worker must exit the Commonwealth within three years of the date on which the foreign national worker entered the Commonwealth and remain outside the Commonwealth for at least six consecutive months.
 - (a) The date on which a foreign national worker entered the Commonwealth is the entry date stamped on the worker's passport.
 - (b) The date on which a foreign national worker exited the Commonwealth is the exit date stamped on the worker's passport.
 - (c) If a tourist visa is issued to the foreign national worker after exit from the Commonwealth for purposes of a visit to the Commonwealth, the six month period shall begin again from the date on which, under the tourist visa, the foreign national worker exits the Commonwealth.
 - (d) The timing of the periodic exit is left up to the employer and the employee.
4. Employers and employees covered. Unless an exemption applies, the periodic exit requirement covers all employers in the Commonwealth who employ foreign national workers and all foreign national workers who are present in the Commonwealth. On or before June 15 of each year, the employer shall e-mail to the address provided by the Department or file in writing with Labor Enforcement the names of employees who have exited or will exit during the calendar year. This list may be amended at the end of any calendar quarter.
5. The "key employee" exemption. Each employer with ten (10) or more employees may designate certain employees as key to the business and exempt them from the exit requirement. This allows each business to determine for itself whether a worker has skills important to the continued success of the business. The exemption may not reach more than ten (10) percent of an employer's foreign national workers. On or before March 15 of each year, the employer shall e-mail to the address provided by the Department or file in writing with Labor Enforcement the names of employees exempt from the periodic exit requirement. This list may be amended at the end of any calendar quarter. In any event, every employer shall be entitled to designate at least one foreign national worker as a key employee.
6. Equivalent exit. The periodic exit requirement serves two objectives that are important to the management of the Commonwealth's labor pool. First, and primarily, the periodic exit serves the objective of promoting employment opportunities for U.S. citizens and permanent residents. Second, the periodic exit requirement serves the objective of promoting enforcement, understanding and clarity with respect to the requirement that the status of guest workers does not change as a result of their work in the Commonwealth.

- (a) Employers who have complied with the requirements of Section 4525 of PL 15-108 with respect to citizen and permanent resident participation in their full-time workforce have met the primary objective of the periodic exit requirement. They have provided significant employment opportunities for U.S. citizens and permanent residents. For that reason, these employers may satisfy the periodic exit requirement by repatriating their foreign national workers under Section 4953(a) for 60 consecutive days (rather than six consecutive months) and submitting to the Department a consent document signed by the foreign national worker acknowledging permanent residence in the country that issued the worker's passport and no change in status by reason of employment in the Commonwealth. The consent document shall be accompanied by a legal opinion, signed by an attorney admitted to practice in the Commonwealth, that the consent document was signed under circumstances that make it legally effective in the Commonwealth, given the nature of the employment, the education and language capability of the foreign national worker, and any other circumstances appropriately considered.
- (b) Non-business employers who have hired domestic helpers, farmers, household maintenance workers or yard workers in compliance with Sections 4522 and 4532 of PL 15-108 may utilize the 60-day alternative as provided in subsection (a) above. Statistical analyses by the Division of Employment Services demonstrate that these jobs, although advertised and open to U.S. citizens and permanent residents, are very rarely filled by persons other than foreign national workers. Foreign workers employed by non-business employers facilitate the holding of jobs by U.S. citizens and permanent residents and maintenance of residences by foreign investors all of which benefits the CNMI economy.
- (c) Should any 60-day exit requirement be found by a hearing officer or court not to be applicable to any worker, then the six-month exit requirement would automatically apply to that worker.
7. Work while the foreign national worker is outside the Commonwealth. A foreign national worker who exits the Commonwealth and is residing in a foreign country may perform work for an employer located in the Commonwealth under any contract arrangement acceptable to the employer and the worker. When a foreign national worker is outside the Commonwealth (and outside the United States), the worker is not working under Commonwealth law with respect to foreign national workers and the minimum wage does not apply.
8. Exit while awaiting processing. A foreign national worker who is proceeding with a renewal or transfer may sign a contract and undergo a health examination while on-island and then fulfill the periodic exit requirement by exiting until their documents are processed. Under circumstances of a transfer, the foreign national worker may claim the 60-day equivalent exit if available either under the entitlement of the former or new employer.
9. Automatic contract extension or renewal. An employer may retain a foreign national worker in his or her former job after the periodic exit has been completed. . If the foreign national worker exits during the term of an employment contract, that employment contract is automatically extended, without fee, by the six month or 60-day period that the foreign national worker exited. If the foreign national worker exits at the end of a contract

term, that employment contract may be renewed, without fee, under the terms of Section 4935 substituting the termination date of the periodic exit for the termination date of the contract.

10. Contract adjustments to accommodate exit. Under circumstances in which a foreign national worker has completed a one-year contract, and the employer plans to renew the employee but wishes to schedule the employee for a six-month exit, the employer may enter into an employment contract with the employee for six months under Part VI, Section 3(A)(3) at half the cost of the application fee under Part VI, Section 6(H), process the necessary documents while the employee is completing the exit period, and re-start the employee again under a one-year contract at the end of the periodic exit.
 11. Status. Foreign national workers who return to the Commonwealth after six months' or sixty days abroad are starting a new period of residence in the Commonwealth. No period of prior residence is relevant to status after return. A foreign national worker loses employment status in the Commonwealth on the last exit date available to that worker to remain in compliance with Commonwealth law.
 12. Disqualification. An employer may not employ a foreign national worker, who is not exempt, who has not complied with the periodic exit requirement.
- D. Responsibility for costs of repatriation. (Section 4954 of PL 15-108)
1. Last employer of record. The last employer of record is the employer under the most recent approved employment contract, on file at the Department, with respect to the foreign national worker. The last employer of record is responsible for all of the costs of repatriation of a foreign national worker. Repatriation costs include the costs with respect to the embalming and transport of deceased workers back to the point of hire.
 2. Employment on temporary work authorization. An employer of a foreign national worker under temporary work authorization (see Part VI, Section 4(A)(17)) is not responsible for repatriation costs.
 3. Illegal employment. An employer who employs a foreign national worker without an approved employment contract, without an approved security contract, or without an approved health insurance contract (after the date on which the Secretary of Public Health publishes final regulations in that regard) or who is otherwise in violation of Commonwealth law shall be assessed full or partial repatriation costs by the Director of Labor.
 4. Joint and several liability. In situations in which there is a last employer of record and a foreign national worker has also been employed illegally by another employer, the Director of Labor may assess repatriation costs entirely to the last employer of record, entirely to the illegal employer, or partially to both employers. If a foreign national worker has been employed illegally and a last employer of record is assessed repatriation costs, that employer may recover the assessed repatriation costs from the illegal employer in an action before the Commonwealth Superior Court.

5. Appeals. Within fifteen (15) days of the issuance of an assessment of repatriation costs by the Director of Labor, any person or party affected by the assessment order may appeal the order in accordance with Part VI, Section 4(H) and seek judicial review in accordance with Part VI, Section 4(I). A standard form for an appeal is provided by the Department.
- E. Responsibility for medical expenses: The last employer of record shall be responsible for medical expenses of the foreign national worker for up to a maximum of 96 days after termination of the approved employment contract to allow for the completion of transfers, cases, and appeals. In the event of requests for extensions of time to pursue cases and appeals, the hearing officer may inquire as to how medical expenses will be met in order that this burden not fall upon the Commonwealth government. A foreign national worker who remains in the Commonwealth after the expiration of the employer's responsibility for medical expenses shall be personally responsible for his or her medical expenses, and failure to pay outstanding bills for medical expenses or lack of means to pay significant medical bills that may be incurred in the future may be considered by hearing officers under appropriate circumstances.
- F. Stay and re-entry for litigation purposes . (Section 4956 of PL 15-108)
1. Extension for purposes of filing a claim. A foreign national worker must exit the Commonwealth within fifteen (15) days after the termination of an approved employment contract or any renewal. An automatic extension of an additional fifteen (15) days is available if the foreign national worker is in the process of preparing a complaint to be filed with the Labor Department, a complaint in a civil matter to be filed with the any court , or a complaint to the Department of Public Safety with respect to a criminal matter.
 2. Extension by order of a hearing officer. A foreign national worker who attends a mediation session after filing a complaint (see Part VI, Section 4(A)(16)) may request an extension of time for departure from the Commonwealth from the hearing officer. In deciding a request for extension of time the hearing officer shall consider whether the foreign national worker is likely not to appear at the hearing, r a deportation order already has been entered, the foreign national worker may continue a fraudulent scheme to the detriment of the Commonwealth, the foreign worker has adequate resources to return to the Commonwealth for proceedings before the Department, or equivalent circumstances exist. A hearing officer's order granting an extension of time shall also set an initial hearing date in the matter. A denial of a request for an extension of time may be appealed to the Administrative Hearing Office within fifteen (15) days after the date of the denial. (See Part VI, Section 4(A)(10).)
- G. No stay or bar in other actions. (Section 4957 of PL 15-108)
[RESERVED]

SECTION 6: OTHER PROVISIONS
Chapter 6, Article 6 of PL 15-108

- A. Regulations. (Section 4961 of PL 15-108) In order to implement the legislative oversight requirement, amendments to these regulations after the effective date of the initial regulations

shall be published for comment in the normal course as for other regulations and then, after the public comment period has been completed, the final regulations shall be transmitted to the presiding officers of the Legislature for a thirty (30) day period of consideration. If all or any part of the regulations is rejected by a joint resolution within the thirty (30) day period, the regulations shall be amended accordingly before going into effect. No further period for public comment is required after submission to the Legislature.

- B. Limitations. (Section 4962 of PL 15-108) The Commonwealth Employment Act of 2007 includes new provisions to avoid disputes where possible and to resolve disputes as promptly as possible. In the past, very large backlogs have built up in large part because complainants had one year in which to file complaints and often waited until the very end of the period to file, then claimed damages back to the very beginning of the contract. An extensive orientation session will brief incoming foreign national workers on their rights. Documentation requirements have been improved. For these reasons, the statute of limitations with respect to filing individual labor complaints is six months from the date the actionable conduct could have been discovered with reasonable diligence. In any event, an individual must file a complaint within thirty (30) days of the termination of an approved employment contract. However, the Director of Labor may file an action against an employer on behalf of individual workers after the 30-day period for an individual complaint has expired. The six month period within which the Director may file a complaint does not commence until after an investigation involving multiple workers has been concluded.
- C. Prohibitions. (Section 4963 of PL 15-108)
[RESERVED]
- D. Sanctions and penalties. (Section 4964 of PL 15-108)
[RESERVED]
- E. Exemptions. (Section 4965 of PL 15-108)
[RESERVED]
- F. No liability. (Section 4966 of PL 15-108)
[RESERVED]
- G. Required records. (Section 4967 of PL 15-108) An employer of a foreign national worker shall keep for at least four years, and present immediately upon written request by the Director of Labor or a designee, the following information:
1. Personnel records for each foreign national worker including the name, current residence address, age, domicile, citizenship, point of hire, and , entry permit expiration date, and approved employment contract termination date;
 2. Payroll records for each foreign national worker including the O-NET job classification; wage rate or salary, number of hours worked each week, gross compensation, itemized deductions, and evidence of checks or direct deposits for net payments made biweekly;

3. Documentation for each foreign national worker including approved employment contract, police clearance, health certificate, and tax payment records; and
4. The employer's business license and security contract information with respect to each foreign national worker.
5. The number and type of employment-related accidents or illnesses involving workers and adequate identification of each worker involved.

H. Fees . (Section 4968 of PL 15-108) The following fees shall be collected by the Department. All fees are nonrefundable and nontransferable unless otherwise provided in these regulations.

1. Processing a request for a job vacancy announcement	No fee
2. Registration with Employment Services	No fee
3. Application for an approved employment contract	\$250.00
4. Attendance at orientation	No fee
5. Application for part-time casual employment	\$40.00
6. Request for contract amendment or change	\$25.00
7. Request for exemption (moratorium)	\$500.00
8. Request for contract renewal	\$250.00
9. Request for approval of subcontracting	\$25.00 per person
10. Certificate of good standing	\$100.00
11. Processing a transfer after administrative order	\$250.00
12. Filing of workforce plan	No fee
13. Replacement or duplicate entry permit	\$50.00
14. Penalty fee for untimely renewal	\$5.00 per day up to 30 days
15. Appeal of failure to timely renew entry permit	\$100.00
16. Processing a temporary work authorization	\$150.00
17. Renewal of temporary work authorization	\$50.00
18. Mediation of labor disputes	No fee
19. Filing a labor complaint	\$20.00 per person
20. Filing an appeal to the Secretary	\$25.00 per person
21. Copying costs for documents in Department files	\$0.50 per page
22. Transcript of labor hearing (tape only)	\$10.00 per tape
23. Printed version of Labor Rules and Regulations	From Law Revision Commission
24. Expedited processing	\$150.00 in addition to fee
25. Miscellaneous certifications	\$25.00

I. Statistical data. (Section 4969 of PL 15-108) The Department will aggregate the NAICS data for full-time employees and part-time employees who are foreign national workers into the following categories for purposes of the Department's annual report.

1. Professional, technical, and managerial
2. Clerical, sales, and service
3. Agricultural, fisheries, forestry, and groundskeeping
4. Light manufacturing
5. Construction and structural work

6. Care for children, elders, or handicapped persons in the home, housework, gardening, and related private residence work

J. Required reports. (Section 4970 of PL 15-108)
[RESERVED]

K. Electronic filing and access. (Section 4971 of PL 15-108)

1. Electronic forms. These regulations are designed to foster the use of Internet access so that forms may be filed via the Department's website. To that end, most submissions to the Department are standard forms that are available for downloading from the Department's website.

2. Online functions . The functions of the Department with respect to foreign national workers will be put online using a website the URL of which is www.marianaslabor.net. The purpose of moving various functions online – such as submission of applications, notices, complaints, appeals, and other forms – is to make the Department's processes faster, more efficient, and less costly for the Department, employers, and foreign national workers and their representatives. The Department will issue guidance for employers and foreign national workers for the use of the website to file materials and to access information. Employers of more than 25 employees will be required to use available online functions on and after March 1, 2008. Employers of more than ten (10) employees will be required to use available online functions on and after July 1, 2008. All employers will be required to use available online functions on and after January 1, 2009. Foreign national workers and their representatives will use the online functions at their option and always will have the option of providing paper copies in person at the Department.

3. Online access. The Department will provide for access via the Department's website for employers and foreign national workers to revised statutes and regulations, announcements, notices, opinions and orders, and public data from the Department. The Department will also provide for secure access to data pertaining to individual employers or foreign national workers for purposes of updating, correction, or supplementation of the Department's records.

L. Transition. (Section 4972 of PL 15-108)

1. Transition for employment contracts. The transition for employment contracts is for the purpose of ensuring that , the maximum number of contracts are in compliance with PL 15-108, without impairing any existing contract.

(a) Proposed job vacancy announcements submitted in 2007 and job vacancy announcements approved in 2007 will be processed under the regulations applicable in 2007. Proposed job vacancy announcements submitted after January 1, 2008 will be processed under these regulations.

- (b) Applications for approval of employment contracts submitted during 2007 will be processed under the regulations applicable in 2007. Applications submitted after January 1, 2008 will be processed under these regulations.
 - (c) An employment contract in effect on January 1, 2008 shall be performed under these regulations, provided however that reasonable expectations and business plans grounded in the regulations that applied in 2007 will be respected upon request to and approval of the Director of Labor. Employment contracts, the applications for which were submitted in 2008, shall be performed under these regulations.
 - (d) An employment contract in effect on January 1, 2008 under which a foreign national worker of an age of less than 21 years is working may be performed in accordance with its terms after January 1, 2008, the effective date of PL 15-108. However, the employer of an underage worker must bring the worker to the Department by February 15, 2008 to meet with an investigator who will determine whether the employer and the nature of the employment are suitable for an underage person. The contract may be renewed if the foreign national worker is under the age of 21 at the time of renewal provided that an investigator has determined in connection with the renewal application that the employer and the nature of the employment are suitable for an underage person. Underage persons who are in unsuitable employment may register with Employment Services to find suitable employment and may remain in the Commonwealth until suitable employment is found or the person gains the age of 21, at which time the person shall have 30 days to find an employer and these regulations shall apply in full.
2. Transition for the Resident Workers Fair Compensation Act provisions: An employer may elect to reexamine benefits offered in the past and, if benefits are not offered to foreign national workers, no equivalent is owed to citizen and permanent resident employees. The requirements for compliance with the Resident Workers Fair Compensation Act will be suspended during the term of contracts currently in force on January 1, 2008 until those contracts are completed, and no equivalent compensation for citizen and permanent resident employees will be due in the interim.
3. Transition for religious occupations. The transition for religious occupations is for the purpose of phasing out the availability of approved employment contracts for foreign national workers hired by bona fide religious affiliates as employees rather than as leaders.
- (a) The transition for religious occupations is in effect from January 1, 2008, the effective date of PL 15-108, through October 1, 2008.
 - (b) During the transition period, the Director of Labor may approve employment contracts under which a bona fide religious undertaking (see Part VI, Section 2(G)) is the employer and the position to be filled by the foreign national worker is a professional position in a religious vocation or occupation. Such an employment contract may be for a term of three years.

- (c) After October 1, 2008, the Director of Labor may not approve any employment contract other than for a priest or similar leader of a bona fide religious undertaking. (See Part VI, Section 2(G).) No employment contracts for foreign national workers as employees of a bona fide religious undertaking will be approved. Existing contracts in effect on January 1, 2008, with foreign national workers who are employees and not leaders are not affected but may not be renewed at expiration in 2008 unless, under Part VI, Section 3(A)(3), the contract term will not extend beyond October 2008.
4. Transition for periodic exit requirement. The transition for the periodic exit requirement is for the purpose of ensuring that these exits occur in an orderly fashion throughout the first three -year period after the effective date of PL 15-108 and are not bunched at the very end of the three-year period. It would adversely affect the economy of the Commonwealth if all exits occurred in the third year of the three-year period.
- (a) The transition for the periodic exit requirement is in effect from January 1, 2008, the effective date of PL 15-108, to July 1, 2011, a date 42 months after the effective date of PL 15-108.
- (b) For purposes of the transition, foreign national workers lawfully in the Commonwealth on January 1, 2008, the effective date of PL 15-108, shall be deemed to have entered the Commonwealth on that date, except as provided below.
- (c) During the transition period, each employer shall have an exemption for key employees of up to ten (10) percent of the employer's total number of foreign national workers.
- (d) During the transition period, each employer may earn additional exemptions up to a total of five (5) percent of the employer's total number of foreign national workers.
- (i) Employers who carry out the periodic exit requirement of at least twenty (20) percent of the exit-eligible work force during the period from January 1, 2008 through December 31, 2008 shall be able to claim a key employee exemption for an additional three (3) percent of the full-time work force.
- (ii) Employers who carry out the periodic exit requirement of at least thirty (30) percent of the exit-eligible work force from January 1, 2009 through December 31, 2009 shall be able to claim a key employee exemption for an additional two (2) percent of their exit-eligible work force.
- (e) Employers with only one exit-eligible employee shall accomplish the periodic exit for that employee no later than September 30, 2009 unless alternative arrangements are made with the Director of Labor before June 30, 2009. The Director will accommodate reasonable requests based on personal needs, scheduling problems, vacation or school requirements, or other factors.
- (f) In the event that the Department determines that periodic exits have not begun or been accomplished by at least thirty percent of the exit-eligible foreign national workers by

September 30, 2008, the Department shall hold a lottery to determine which exit-eligible foreign national workers shall begin the periodic exit during the period January 1, 2009 through March 30, 2009 in order to ensure that a sufficient number of exits will occur in order to keep the exit program on schedule so that there is no bunching of exits at the end of the initial three-year period. In the event that the Department determines that periodic exits have not begun or been accomplished by at least sixty percent of the exit-eligible foreign national workers by September 30, 2009, the Department shall hold a lottery to determine which exit eligible foreign national workers shall begin the periodic exit during the period January 1, 2010 through March 30, 2010 in order to keep the exit program on schedule so that there is no bunching of exits at the end of the initial three-year period.

- (g) The exit of every exit-eligible employee shall be accomplished by December 30, 2010. An additional lottery shall be held, as necessary, to accomplish this result.
- (h) A renewal application under Part VI, Section 3(E) of these regulations may be denied for failure to comply with the transition provisions implementing the periodic exit requirement. The renewal period may be truncated to less than one year in order to ensure compliance with the periodic exit requirement.
- (i) Effect of the moratorium. While the moratorium is in effect (from 2008 through 2011), Section 4602 of PL 15-108 provides that a foreign national worker who exits the Commonwealth and is covered by the moratorium shall, at the conclusion of the required absence, be considered a renewal for the purposes of the moratorium. This section affects only the exemption from the moratorium and no other circumstance. The resumption of employment is considered a renewal only for purposes of accommodating the moratorium and not affecting foreign national workers solely because of the application of the moratorium. This provision affords an exemption to the moratorium but does not afford any right to a renewal.

SECTION VII. SEVERABILITY

If any provision of these regulations or the application of such regulations to any person or circumstance shall be held invalid by a court of competent jurisdiction, the remainder of such regulations or the application of such regulations to persons or circumstances other than those as to which it was held invalid shall not be affected thereby.

SECTION VIII. EFFECTIVE DATE

These regulations are effective on January 1, 2008, and shall not apply retroactively to applications in the Division of Labor or proceedings in the Administrative Hearing Office that were pending before that date except with respect to appropriate forms of notice given by the Department.